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February 20, 2014

Mr. Jason Meyer, Deputy Land and Minerals Director
St. Louis County Land and Minerals Department
Government Service Center, Room 208
320 West 2nd Street
Duluth, Minnesota 55802

Re: Prescriptive Easement over RD-ID-13134b

Dear Mr. Meyer:

I recently received a letter from your office outlining the County's plan to record a prescriptive easement over property owned by my family, identified as RD-ID-13134b. This road and surrounding property has been in my family for over 50 years, so we have a considerable amount of knowledge of the situation. We are writing to object to this proposal, and as I will not be able to attend the public hearing scheduled for February 26th in Mountain Iron, I ask that this comment letter and attachments be entered into the permanent record.

I do not believe the County has satisfied the legal requirements to obtain a prescriptive easement over this property. From information gathered from the Minnesota Department of Natural Resources website, a prescriptive easement can only be created when there has been "… actual, open, continuous, exclusive, and adverse use of another's property for a statutory period of 15 years." These conditions have not been met by St. Louis County for this road.

As you probably know, our road was originally part of the main Pfeiffer Lake Road, which connected Highway 1 on the north with Forest Road #405 on the south. In the early 1980's, the U.S. Forest Service rerouted the road from the west side of Pfeiffer Lake, where it ran through our property, to the east side of the lake where it exists today. The reason given for this rerouting was that shortly after leaving our property, the road descended into a number of large swamps and the road had become a maintenance nightmare with flooding, beaver dams, plugged culverts, etc. Abandoning our road and rerouting the new road to higher ground was determined to be more cost effective than continuing to maintain the old road. The portion of the old road south of our property today is permanently flooded.

The U.S. Forest Service turned down an offer to donate an easement over this road in 1982. The reason cited for declining the easement donation was the statement that: "Any timber sale spurs, that will be needed off the existing road, will exit north or south of your property." (Attachments 1 and 2) In 1987, the Forest Service once again confirmed that the road was abandoned, and they would not be doing any maintenance on the road. (Attachment 3)

Consequently, for the past 30+ years, my family members and I have maintained this road for our own use, mowing it annually to keep the weeds and brush from taking over and filling potholes as needed. Several times over the past 30 years, most recently in 2007, there have been major windstorms that have blown down numerous (20+) large trees. After the 2007 event, the road was impassable for nearly two months until my family spent four solid days cutting trees and clearing the road. If not for our maintenance efforts, this road would not be passable today (Attachment 4). It has been maintained and used as a private driveway to our cabin, and as a walking trail beyond our cabin entrance. There has been no actual, open, exclusive, or continuous use of this road by St. Louis County for any purpose.

We also note that our property is located in Section 22. The justification map and notes of forestry activities listed on the County website for RD-ID-13134b, and the map included with the notice of this proposed easement plan, covers Section 34 which is in fact over one mile south of our property on the other side of the swamps. All forest management activities shown on the justification map obtained their access from the new Pfeiffer Lake Road, in accordance with the plan that was explained to us in 1982.

You may ask why we object to the prescriptive easement now if we offered to donate an easement over the road in the past. We object because over the past 30 years the portion of the road to the north that we do not own has twice been used as an access road for logging activities. We have seen first-hand what passes for "restoration" after the road is used for these activities. Both times the road has been left in poor condition, with large ruts and the drainage blocked, resulting in muddy areas and almost impassable conditions. The first time this happened, I complained to the Forest Service office in Cook, but nothing was done. The second time I didn't bother complaining. Both times we have been forced to spend our own time and money repairing the damage to restore the road to a passable condition for access to our property by passenger cars. We do not want the road we have maintained through our private property for 30 years to end up in the same condition.

In the end, we do not believe the County has met the legal requirements to impose a prescriptive easement over this road. To summarize:

1. The road in question was formally abandoned by the Forest Service over 30 years ago. This is not a case of someone forgetting to record an easement over a road; it was purposely abandoned because it was not needed for forest management and there is documentation of this in writing.
2. No maintenance has been done on this road by any government agency over the past 30+ years.

3. No forest management activity in the area by any government agency has utilized this roadway for over 30 years. The justification cited by the County does not include or involve this road.
4. The only reason the road continues to exist is because of maintenance done by the property owners.
5. The north half of the road is a private driveway for the cabin on the property, and the south half has been maintained to a lesser standard by us as a walking trail.
6. Signage on both sides of the road indicates the road runs through private property.
7. The road ends in a swamp approximately 500 feet beyond our south property boundary line, and therefore serves no useful purpose as access to other properties.

We respectfully request that this road be removed from the proposed prescriptive easement map. If it is not removed, we WILL appeal that decision and take the necessary legal action to preserve our rights. If you have any questions about our position, feel free to contact me.

Sincerely,

Steve Kernik

Attachments:
1. Letter from John Kernik offering an easement to FS
2. Letter from Robert Rehfeld declining the easement offer
3. Letter from William Stocker confirming no maintenance by FS
4. Photo documentation of private maintenance

ATTACHMENT 1

May 10, 1982

Supervisor Robert Rehfeld
Superior National Forest
P. O. Box 338
Duluth MN 55801

Dear Bob:

Recently I offered to donate .6 of a mile of 66 feet R.O.W. on FR 266 and traversing the E½ of the SE¼, Section 22, Township 61, North Range 17 West to the U.S. Forest Service.

I have received an informal note from your lands department refusing the donation.

As the ultimate decision maker on the Superior National Forest, I would like to have a formal letter from you verifying the refusal decision for my records.

Sincerely,

John L. Kernik
P. O. Box 370
Duluth MN 55801

ATTACHMENT 2

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
SUPERIOR NATIONAL FOREST
P.O. BOX 338, DULUTH, MN 55801

5420

May 17, 1982

Mr. John Kernik
P.O. Box 370
Duluth, MN 55801

Dear John:

Thank you for the offer of the right-of-way donation.

The decision has been made to decline the offer.

A new road (Hulm Road) has been designed and right-of-way obtained that will go east of Pfieffer Lake. This new road will bypass the large swamp area south of your property. It will better serve the large block of Federal land south and east of the lake. Any timber sale spurs, that will be needed off the existing road, will exit north or south of your property.

Sincerely,

ROBERT O. REHFELD
Forest Supervisor

ATTACHMENT 3

UNITED STATES
DEPARTMENT OF
AGRICULTURE

FOREST
SERVICE

Engineering West Zone
118 S. 4th Ave. E.
Ely, MN 55731

Reply to: 7700

Date: June 29, 1987

Mr. Frank L. Kernik
995 W. Sherren Street
St. Paul, MN 55113

Dear Mr. Kernik:

This letter is in response to your concerns with the abandoned road from Pfieffer Lake campground to your property. I apologize for not responding sooner.

Since the Forest Service has abandoned the old road we will not be maintaining it beyond our campground entrances. I have looked at the section up to your driveway and believe it to be in fairly good shape; however, if you wish, you may obtain a permit from the Virginia District for pit-run gravel to fill areas as you see fit. There are areas in the pit containing material suitable for use as surfacing. The stockpiled gravel is our reserve for our gravel surfaced roads so we need to retain it.

I hope this solution meets your needs.

Sincerely,

William Stocker

WILLIAM M. STOCKER
Zone Engineer

cc: Virginia R.D.

ATTACHMENT 4

RD-ID-13134b Maintenance

Freshly mowed – August, 2007

After a wind storm - October 8, 2007

Impassable road – October 8, 2007

Impassable road – October 8, 2007

Impassable road – October 8, 2007

Road partly cleared - October 13, 2007