

**From:** [Nick Bancks](#)  
**To:** [Joe Pavelko](#); [Mark Johnson](#)  
**Subject:** Conveyance of Interest on OHF acquisition in SEMN  
**Date:** Tuesday, May 7, 2024 10:56:04 AM  
**Attachments:** [Airport fence exhibit.pdf](#)  
[External Fence Line Discrepancy Exhibit.msg](#)  
[Fillmore County Journal Article.pdf](#)

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Joe & Mark,

I ran into an issue with a property recently purchased with OHF dollars as I was preparing to convey to DNR Forestry where it appears that I will need to convey a small portion of land to a LGU to avoid a potential claim of adverse possession. Here's a summary of this issue and my conversations with DNR to date:

TPL purchased ~257 acres of property in Fillmore County in January 2024 as an addition to adjacent State Forest lands. In addition to State lands the property is also adjacent to the City of Rushford's municipal airport, a portion of which is fenced and shares a boundary with the TPL-purchased property. During the process of acquisition I went through normal due diligence to clean up title to prepare to convey to the State, which included a survey of the entire property. The surveyor found that the airport fence line is off at multiple locations along the shared boundary and encroaches onto the TPL property, but at most for a distance of 0.7 of a foot, and at least, 0.1 of a foot. I asked him to calculate the amount of land we're talking about that the airport fence line encroaches onto TPL-owned property and **it was ~478 sq. ft.**

I've included an exhibit map of the airport fence line that shows the locations and distance where the fence is off. A note about the map, if the distance is listed to the inside of the fence that is where the fence comes back onto City property from the surveyed boundary, but if the distance is on the outside that is where the fence deviates onto TPL property. I've also included the surveyor's email acknowledging that the potential margin of error in their standard surveying methods could account for most if not all the discrepancies so you can see how minute the amount is we're discussing here.

This fence line discrepancy was so small so as not even to be listed on the survey, however it was a note in the survey field notes shared with DNR. In order to accept title and property DNR was requiring the City of Rushford sign off on a boundary affidavit to acknowledge the fence line discrepancy. Initially, I made this request to the City and they indicated in both writing and verbally that they would proceed with signing the affidavit. I then proceeded to closing on the property, with the intent to file and record the affidavit prior to conveyance to DNR. However, due to concerns with the affidavit potentially affecting federal funding for the airport the City reneged on signing the affidavit after I had acquired the property. They made this decision in a city council meeting which was recorded in the local newspaper. I then asked DNR if they would proceed with an acceptance of risk given that the area is so small (478 sq. ft.) so as not to even present an issue as far as use and ownership is concerned, however DNR is not willing to take the property without either quit claiming that small portion to the City, or granting the

City an easement. DNR's contention is that because this is a known encroachment, and because it was publicly acknowledged in a city council meeting with a reporter putting it in newspaper article that this would essentially create a precedent they don't want to set (and cannot due to state statute). The newspaper article is the last attachment.

Because of DNR's stance and the City's resistance to the boundary affidavit it looks like a quit claim deed conveying the 478 sq. ft. to the City is the path of least resistance in order to get DNR to accept the property and get it into public ownership, where it should be. Because of the NOFR do I need to make the request to council to release the 478 sq. ft., or is there an alternative path forward?

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