

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

NORTHERN REGION PRECONSTRUCTION, Right of Way Section

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March 26, 2004

Re: Project MGS-STP-0200(30/66880)
St. Mary's/Pitka's Point Road
17(b) Easement Transfer

Sharon Janis, Chief of Division of Realty
United States Fish & Wildlife Service
1011 East Tudor Road
Anchorage, Alaska 99503

Dear Ms. Janis:

Please accept this letter as an appeal for reconsideration of our January 16 and March 1, 2004 letters requesting a transfer of administration of 17(b) easement EIN 4b C3 D1 between St. Mary's Airport road and the village of Pitka's Point. The final design package will be ready for advertising by the end of March pending certification of Right of Way. Therefore, a speedy resolution of this issue is in the public's best interest as well as the best interest of the residents of Pitka's Point and St. Mary's.

In your March 11 response, you had two issues that resulted in declining our request. You were concerned that as we had not yet secured legal access across a native allotment that the road passes through (U.S. Survey No. 8371), a transfer of administration of the 17(b) easement could serve to facilitate trespass across the allotment. The project we are ready to advertise is funded through the Federal Highway Administration. As such, we are obligated to certify that all right of way has been acquired prior to advertising for construction and that all right of way has been acquired in compliance with the strict provisions of the federal "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended". As a manager of a federal realty office, you should be able to appreciate the fact that if we allowed a trespass to occur on the allotment, we could be subject to sanctions by FHWA including non-participation in the federal portion of the project funding. Please rest assured that the allottee's rights are being protected without the need for USFWS intervention.

The second issue was that USFWS would like DOT to take administration of other 17(b) easements in the area. During my 18 years with Northern Region DOT Right of Way, to my knowledge we have only accepted administration of a single 1-acre site easement that was to be used for temporary parking to one of our adjoining road projects. We worked out a master MOU with BLM for 17(b) easement transfers of administration in 1996. We generally do not incorporate 17(b) easements into our road projects due to the limitations on use and width and typically acquire a higher interest right of way over an alignment most suited to new construction. Also, the policy of the department over the past several years has been to divest

ourselves of the maintenance for as many local community roads as possible. This will allow the department to focus on our core highway system while the trend of decreasing maintenance revenue continues. Many of our current and upcoming projects require local match funding as well as a transfer of maintenance responsibility. Although our intent is to continue maintaining the St. Mary's Airport and Pitka's Point road, we are unable to accept additional responsibilities beyond the scope of these projects.

Please note that DOT&PF was maintaining Pitka's Point road as far back as 1982 before many of us had a clear understanding of 17(b) easement management. The Pitka's Point Native Corporation signed a letter of non-objection in 1981 in anticipation of that work and again resolved in 2001 that the pending project is in the best interest of its shareholders.

It is my understanding that if a transfer of administration for this 17(b) easement cannot be secured from USFWL, our current project will be delayed or possibly shelved. The absence of a transfer of administration also raises the question of whether DOT has authority to continue maintenance of Pitka's Point road. I can't help but believe that the residents of Pitka's Point and St. Mary's will be very disappointed to learn that reconstruction of the road may not take place this year due to USFWL's reluctance to transfer administration to DOT.

Should your office see fit to relax it's position on the transfer issue, I have enclosed a copy of our existing BLM MOU regarding 17(b) transfers that you might find helpful as a guide.

I look forward to reaching a speedy resolution of this problem.

If you have any further questions regarding this correspondence, please feel free to contact me at (907) 451-5423 or by email at johnf_bennett@dot.state.ak.us.

Sincerely,



John F. Bennett, PLS, SR/WA
Chief, Right of Way

Enclosures: as stated

Cc: Pitka's Point Native Corporation