

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities

TO: Joe Perkins, P.E.
Commissioner
DOT&PF

DATE: August 6, 1999

FILE NO:

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FROM: Anton K. Johansen, P.E.
Regional Director
Northern Region

SUBJECT: Ahtna Lands Issues
Status Report

The following briefing outlines the current status of several right of way issues involving Ahtna lands.

- Gulkana Wayside:* The Department has clear title to a tract of land adjoining milepost 127 on the Richardson highway at the Gulkana River by virtue of a BLM Townsite Trustee's Deed. The site is used heavily by the general public for sport fishing and boating. Nearby Gulkana Village residents cite problems with litter, waste and overnight camping at that location. The Department has been working with Ahtna and Gulkana Village to address their concerns while recognizing the necessity of maintaining public access to the river and maintenance access to the bridge. Solutions have included the design and construction of a campground with parking, camping areas, toilets, boat launch and picnic areas both at the existing site, an alternate site on the north side of the highway and a combination of both. These solutions are intended to result in a managed facility that will eliminate concerns regarding contamination of drinking water and litter. The Department of Natural Resources has prepared several conceptual plans in anticipation of FHWA funding for a project that was estimated in the STIP to cost approximately \$2,000,000 through the construction phase. Advancement of this project has been delayed due to an FHWA ruling that would prevent DNR collection of fees from public users. As DNR cannot manage or operate this facility without user fees, they are currently seeking reconsideration by FHWA.
- Ringling Pit:* Ahtna is interested in acquiring the Ringling property to avoid destruction of cultural sites. The Department believes a mutually agreeable solution can be reached that does not involve an exchange of cash. The value of the Ringling pit lies in the value of material reserves as well as a residual land value. The Department also has concern about FHWA participation in the considerable cost of archeological clearances that have taken place at Ringling. We propose to exchange the material reserves on a yard for yard basis for material of equal quality and cost-of-extraction from material bearing lands owned by Ahtna. The residual land value would be exchanged for Ahtna materials at a cubic yard price to be negotiated. This solution would benefit the parties by eliminating the conflict over the Ringling pit, avoid an exchange of cash and possibly provide project materials from multiple material sites. It is important, however, to ensure that the public obtains equal value in this exchange, that the material is as good or better than the Ringling material, and that the cost of pit development and archeological clearances do not result in a continuation of Ringling type issues.

3. *Chistochina/Copper Center #2 Airport*: Ahtna has an outstanding obligation (ANCSA Section 14(c)(4)) to convey both Chistochina Airport and Copper Center #2 Airports to DOT&PF. Controversy has accompanied Chistochina since the passage of ANCSA. A given acreage (93 acres) was the standard template for 14(c)(4) conveyances. After IBLA cases and much ado an Agreement was consummated reducing the boundaries of the expected conveyance at Chistochina. Eighteen years has past. Numerous requests for conveyances have been made. Ahtna even attempted to abandon the airport. Intervention, requests and inquiries have proved fruitless. Ahtna's obligation to convey Chistochina is not a matter of choice; it is a matter of law. DOT has already compromised this facility to bare bones. Further negotiations on this matter are fruitless. Pursuit of legal action to compel performance of the Agreement and the provisions of ANCSA may be the only way to ever obtain title. Copper Center has a shorter history but the same bottom line. An airport that existed in 1971 required to be conveyed to the State by ANCSA. Numerous requests and no action by Ahtna.
4. *Vacations of highway rights of way*: Ahtna submitted a request on May 15, 1996 to vacate 56 areas of old highway rights of way and material sites. This was an unusually large request given our typical annual number of 8-12 requests for right of way vacations. In the summer of 1996 a college intern was hired to research the land status of the 56 requested areas and prepare packages to be circulated through our Department sections for comments. To avoid overwhelming the comment process, the request was broken into 3 packages to be circulated separately. The first batch was circulated in November 1996 and all sections returned comments in January of 1997. On December 4, 1996, a letter was sent to Ahtna informing them of the process used to act upon their request and giving them an update of the current status. The second batch of proposed vacations was circulated internally in March of 1997. Comments were received from all sections in June of 1997. On July 1, 1997, Ahtna was informed in writing of the results of the comment process for the first package. This letter stated which areas were not eligible for vacation and why. It also stated that cable locates would be required for those areas that were eligible for vacation in order that public utility easement be reserved where necessary. Most importantly, it notified Ahtna that they would be responsible for the cost of a fair market value appraisal and the publication of a 3-week public notice. Based upon comments from the public and other agencies, the Department would then be able to make a final determination as to which parcels could be vacated. The appraisal is necessary to establish the 90% fair market value that is now required by the Department for vacations of excess highway easements. We received no response from Ahtna regarding the July 1, 1997 letter. The press of other business and the lack of response from Ahtna resulted in a reduced priority for this task. At this time, the results of the second batch of vacations could be forwarded in a letter to Ahtna with little additional effort. However, we have found in other vacation requests, that once cable locates, appraisals and public notices are required, many applicants lose interest. Therefore, it would be beneficial to know whether Ahtna is interested in pursuing the vacations before additional public funds are used to continue the processing.
5. *Klutina Lake Road*: In July of this year, Fish & Game responded to complaints that Ahtna was assessing fees for travel and fishing access along the Klutina Lake road. (Also known as the Brenwick-Craig road) Ahtna asserts that the existing right of way is based on a 60-foot wide ANCSA 17(b) easement that is subject to joint management between Ahtna and BLM. Their

intent was to control trespass, uncontrolled camping and fishing access to the Klutina River. While recognizing Ahtna's right to manage and prevent trespass on their lands, Northern Region Right of Way issued a letter dated July 30, 1999 asserting the Department's jurisdiction over the Klutina Lake road. Under AS 19.30.400, the State claims each right of way granted under 43 USC 932 (RS-2477) that was accepted either by the State or Territory of Alaska or by public user. The Klutina lake road right of way is a portion of the "Valdez-Copper Center" trail that has been accepted by the Department of Natural Resources as RST 633 under their RS-2477 management regulation. (11 AAC 51. 010) As Klutina Lake road is listed as a part of the Official Highway System, management jurisdiction of this public right of way lies with DOT&PF. As early as 1964, BLM also had acknowledged the validity of the RS-2477 status for this road. The right of way width according to AS 19.10.015 is 100 feet (50 feet each side of physical road centerline). Our letter also placed Ahtna on notice that a toll/information booth they had constructed was encroaching on the Klutina Lake road right of way and that they were to remove it within 15 days.