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General Counsel

February 8, 2014

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Leo von Scheben, Commissioner
Department of Transportation & Public Facilities
3132 Channel Drive
P. O. Box 112500
Juneau, AK 99811-2500

Re: Unlawful Taking/Trespass Ahtna, Inc. Lands

Commissioner von Scheben:

Your attention is directed to earlier correspondence from this office dated August 9, 2007 (copy enclosed). More specifically, Ahtna would like to resolve the dispute concerning the Brenwick-Craig Road along the Klutina River which the State asserts a claim to under the now repealed R.S. 2477.

Prior to 1971 and selection of this land by Ahtna, Inc. ("AI"), this office has been provided no records which indicate that the State of Alaska expended any money in the construction of the Brenwick-Craig Road from approximately the Princess Lodge to Klutina Lake. If funds were expended by the State, it is believed these monies were spent on that portion of the road between the Copper River and the Richardson Highway.

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Ahtna has a land management plan which includes a use permit system. In accordance with that plan, AI installed a permit fee station (steel and concrete) along the trail. The permit fee station was dug up and removed by State DOT employees last summer. AI recovered the fee station from DOT's trash dump and had to re-install it at AI's cost. AI had no notice that DOT employees intended to forcefully remove the fee station although the station had been placed on land Ahtna owns. The costs to AI for location and re-installing the fee station total in excess of \$1,000.00 for which AI expects to be reimbursed.

The Bureau of Land Management has identified an easement in accordance with 17(b) that follows the Brenwick-Craig trail. AI proposes that the State's claim to be consistent with that of the federal government and limited in scope to the 17(b) easement.

AI requests that the State take no action to enter on to AI's lands until this matter is resolved. This means that DOT is directed to take no further action to contract to maintain the Brenwick-Craig Road where it crosses AI land. If we are not able to discuss settlement within the scope of this proposal, AI will take appropriate legal action to resolve the title issue.

It is recommended that you review *Clark v. Taylor*, 9 Alaska 289 (D. Alaska Terr. 1938). This case stands for the proposition that public user establishes a road limited to the width of the actual use. In addition, should a state or territory seek to accept the public grant of a right-of-way pursuant to R.S. 2477, then this acceptance must be demonstrated by actually building, constructing and maintaining the road. No such evidence exists in the record of this case and AI submits that the State, prior to 2007, performed no maintenance or construction work along this portion of the Brenwick-Craig Road.

AI has additional grounds to believe that the State of Alaska has no right to claim R.S. 2477 rights-of-way over any of its lands. The Alaska Statehood Act was a compact entered into by the people of Alaska making all selections subject to the rights of Alaska Natives. This was carried forward in the disclaimer clause of the Alaska Constitution, Art. XII, § 12. AI as the successor-in-interest to the Athabasca people in the Ahtna Region decline to recognize State assertions of rights-of-way pursuant to R.S. 2477. For this additional reason, your department is requested to refrain from entering onto Ahtna lands until the issue regarding the State's claim to the Brenwick-Craig Road has been resolved.

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If you are willing to discuss resolution of the matter regarding the Brenwick-Craig Road, please contact this office as soon as possible. Ahtna would appreciate a response within fourteen days.

Sincerely,

J. Michael Robbins

Enclosures

cc: K. Johns, CEO (w/enc)
K. Martin, V-P, Lands & Resources(w/enc)
Leone Hatch, AAG (via U.S. mail and email leone.hatch@alaska.gov) (w/enc)