



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Transportation and Public Facilities

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January 17, 2013

Andy Loranger
Refuge Manager
Kenai National Wildlife Refuge
United States Fish & Wildlife Service
POB 2139; Ski Hill Rd MS 519
Soldotna, AK 99669-2139

RE: Sterling Highway MP 45-60 Project - ANILCA Title XI process

Dear Mr. Loranger:

As Sponsors of the Sterling Highway MP 45-60 Project (Project), the Alaska Department of Transportation and Public Facilities (DOT&PF) and the Federal Highway Administration (FHWA), are preparing a Draft Supplemental Environmental Impact Statement (DSEIS) that once approved, would allow for critical improvements to the Sterling Highway at Cooper Landing. This letter is to inform you that the Sponsors have determined that the Juneau Creek Alternative (JCA) will not be pursued as the preferred alternative while certain lands crossed by this alternative alignment remain in a federally designated Wilderness status.

As you know, Mystery Creek Wilderness is a Conservation System Unit (CSU) within the Kenai National Wildlife Refuge (Refuge). The JCA would cross a corner of this CSU, thereby invoking ANILCA Title XI. In addition, as we have previously discussed, under Department of Interior's ANILCA Title XI regulations, the USFWS must prepare a Compatibility Determination on the JCA that would determine if the Project is compatible with the purposes of the Refuge. These circumstances have been weighed and found to present an unacceptable risk to the Project. With the current land status in place, the JCA will not be pursued as the preferred alternative for the Project.

The decision to discontinue pursuit of the JCA was carefully considered:

- The likelihood of successfully securing a transportation right-of-way across the Wilderness unit is highly uncertain with a low probability for success.
- Coordination to date with the USFWS has led the Project Sponsors to believe that JCA could not be found compatible with the purposes of the Refuge.
- Impacting federally designated Wilderness would require action by the President of the United States and a joint resolution by Congress. Given that there are alternatives which could avoid the Wilderness unit, this further clouds any probabilities for success.
- There is strong support and public demand for the completion of the NEPA process and construction of the Project in a timely manner. If the Sponsors chose to pursue the JCA as

the preferred alternative, it is more likely that further delays will befall the progress of this much-needed public improvement. As the longest standing on-going EIS in the country, the weight of further delay would likely crush the Project and could waste investments that have been made over decades toward the goal of bringing to fruition a widely supported highway improvement.

We have consulted with USFWS regarding protocol for submitting an SF299 application for transportation and utility systems and facilities on federal lands. Those consultations have established that the JCA is the only alternative that affects a CSU under USFWS jurisdiction. Our decision not to advance the JCA as a the preferred alternative, therefore, obviates the submittal requirements for an SF299 application, and ANILCA Title XI will not be triggered with respect to USFWS for this Project.

However, we do believe that the JCA remains a reasonable alternative for evaluative purposes as part of the DSEIS. As such, the Sponsors will continue to evaluate the JCA under the DSEIS for these reasons:

- The JCA met the purpose and need, physical environment, social environment, transportation, cost and engineering feasibility criteria as presented in the Evaluation Criteria and Alternatives Analysis (HDR, May 2003).
- The federally-recognized Kenaitze Indian Tribe requested full evaluation of this alternative.
- Cook Inlet Region, Inc., the regional Alaska Native Corporation within whose region the Project is located, requested full evaluation of this alternative for consistency with the intent of the Russian River Land Act (RRLA). The RRLA specifically authorized removal of the associated land from the Refuge and the Wilderness designation through a land exchange between CIRI and USFWS. This authority was granted by the RRLA in 2002 but there is currently no evidence either party wishes to pursue such a land exchange.
- Public and agency expectation exists that this alternative will be fully evaluated.

I thank you and your staff for providing guidance to the Project team on the previously-anticipated ANILCA Title XI process. Although this decision negates that need, your input was valuable in leading us to this decision, a decision the Sponsors feel is best given the circumstances we have described.

Sincerely,



Kelly Petersen, P.E.
Project Manager

CC: Tim Haugh, FHWA Alska Division Environment Program Manger
Ken Morton, P.E., DOT&PF Preconstruction Engineer
Kim Rice, P.E., DOT&PF Deputy Commissioner
Kim Stricklan, P.E., DOT&PF Chief, Preliminary Design & Environmental
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Travis Moseley, USFS District Ranger, Seward Ranger District
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Project File