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DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

NORTHERN REGION PRECONSTRUCTION, Right of Way Section

July 26, 2004

Re: Ester Dome Road
Alaska Ski Corporation v. SOA
4FA-87-1951 Civil
Road Design Issues

Charles L. "Mac" Fields, Registered Agent
Alaska Ski Corporation
P.O. Box 71356
Fairbanks, Alaska 99707

Dear Mr. Fields:

On August 18, 2003, we met to discuss issues regarding certain requirements stated in the July 19, 1989 Stipulation for Settlement for the above referenced case. Subsequently we received a letter from you on September 29, 2003 documenting the issues we discussed at our meeting. Since then I had mentioned to you that my response was pending a review by our Attorney General's Office. We now have our AGO comments and although the time it has taken me to respond may not seem lengthy in terms of a case file that is almost 25 years old, it has still taken too long to get this letter to you and for that I apologize.

The purpose of your visit and letter was to negotiate a new agreement regarding the easement crossing Alaska Ski Corporation property as you believed that 1989 settlement had been "rendered non-binding due to the repeated breach of that agreement by agents of the DOT/PF." You had asserted that DOT maintenance activities including destruction of Alaska Ski Corporation signs and widening of the existing road constituted a material breach of the 1989 agreement. Upon review, the Attorney General's Office has advised me that the 1989 Stipulation for Settlement is not "null and void" and is still binding on the parties.

It is clear in your letter that you have never willingly accepted the legal or factual arguments put forth by the State that a public road easement existed across U.S. Survey No. 4004. Although I can understand your desire for an outcome that would have been more satisfactory to the Alaska Ski Corporation, I am not in a position to revisit the historical record or debate the decisions that led to the 1989 settlement. Both parties were represented by counsel and an agreement was reached. However, as 15 years has passed since the agreement was signed, the department is willing to review the design requirements for the "new loop" road to see whether an application of current design standards might lessen your burden. Upon review we have found that a reconsideration of the terms of the settlement agreement could reduce the burden on both parties. The focus of our review was on the installation of the guardrail and the allowance for reimbursement of \$9200 worth of materials.

"Providing for the movement of people and goods and the delivery of state services."

You had mentioned in your letter that Alaska Ski Corporation is still willing to grant DOT an easement to cross US Survey No. 4004 and that consideration must be given for the type and width of the easement as well as compensation for the “taking”. I presume you are talking about an easement for the existing road that passes through the center of your property. As a result of the settlement, Alaska Ski Corporation executed an easement in favor of the State and in turn the State paid \$10,000 to ASC in consideration for the easement. If I understand correctly, ASC proposed the loop road alignment to allow for more flexible development options for the remainder of the property. The execution of and payment for the loop road easement represent the only terms of the settlement that have been completed in 15 years. If ARC is proposing to execute an easement for the existing road in exchange for the loop road easement and a release from the construction obligation on the loop road, then there may be some room for discussion. We could consider an exchange for an easement of equivalent type, width and value. This would not include any additional compensation or conditions. However, for the purposes of this discussion, I will presume that the loop road will be constructed within the 75’ wide easement granted in 1989.

The terms of the 1989 settlement that are most appropriate for reconsideration are the requirement for 400 feet of boxbeam guardrail, the typical section slopes and the \$9200 reimbursement for materials. Current design standards would suggest that guardrail would not be warranted for a low volume and low speed facility such as Ester Dome road. You had argued that one reason you had never proceeded with the construction of the loop road as required under the settlement terms was due to the fact that box beam guardrail was prohibitively expensive when compared to the more common “W” style guardrail. I suspect if that wasn’t the case 15 years ago it certainly is the case now for any style of guardrail given the current steel prices. I propose that we eliminate the requirement for any guardrail from the settlement agreement. This will in turn eliminate or reduce other provisions of the settlement agreement such as ARC’s labor for guardrail installation, DOT’s obligation to haul the guardrail to the site and a proportionate reduction of the \$9200 that DOT was to reimburse ARC for materials. In my estimation, the only materials requiring delivery to the site under the 1989 settlement was the guardrail and approximately 1,250 cubic yards of 1 ½” minus schist surfacing material. (6” x 24’ x 2,800’ appx.) We have estimated the cost in 1989 dollars of 400 feet of boxbeam guardrail not including delivery and 1,250 cubic yards of surfacing material delivered and determined that the guardrail would have made up 48% of the materials cost. Due to the increase in steel prices, the box beam guardrail would have made up approximately 58% of the material costs at 2004 prices. Therefore, we propose to reduce the maximum reimbursable amount to be paid from DOT to ARC to 50% of the \$9200 reimbursement or \$4600 dollars. With regard to the typical section required under the settlement, we propose to reduce the 5:1 backslope to a 2:1 slope if a 2:1 slope will result in a stable and maintainable slope. All other provisions of the typical section such as the 24-foot top, 6” of surfacing material, 2:1 backslopes and 3-foot ditches will still apply.

We believe that the guardrail and slope concessions will significantly reduce your obligation under the settlement and will hopefully increase your incentive to complete the loop road. Should you accept these concessions, please sign the concurrence line below and return the letter to our offices. The offer of the above mentioned concessions is contingent on the loop road work being completed and accepted by DOT within 24 months of your concurrence signature.

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

Concur – Charles L. “Mac” Fields
Registered Agent for Alaska Ski Corporation

Date

Cc: AGO, Transportation, Fairbanks
Howard Thies, Director, Maintenance and Operations, Northern Region