September 22, 2003

Re:

Meeting between John F. Bennett and this correspondent on Monday, 18AUG03 at DOT/PF Right-of-way offices located at 2720 Pickett Place, Fairbanks, Alaska

John F. Bennett
Chief of Right-of-Way Section Northern Region
Alaska Department of Transportation & Public Facilities
2720 Pickett Place
Fairbanks, Alaska 99709

John:

I started and had intended to send this letter much earlier; the recent marathon reminded me that I had not done so. I apologize for its lateness.

During our above referenced meeting, you informed me that the DOT/PF would not respond to a proposal until it had been reduced to and presented in writing. I asked to whom such a letter should be addressed. As you then advised, I have addressed this missive to you.

I initiated the above referenced meeting to inform the DOT/PF of Alaska Ski Corporation's current position as it relates to the settlement easement agreement between DOT/PF and Alaska Ski Corporation. The following account of that meeting is offered for the record.

I explained to you that the purpose of my visit to your offices was to determine the possibility of negotiating some sort of formal agreement to replace the now damaged, if not defunct, settlement agreement and easement over Alaska Ski Corporation's land on Ester Dome, which had long since been rendered non-binding due to the repeated breach of that agreement by agents of the DOT/PF.

I told you that the repeated destruction by DOT/PF personnel of Alaska Ski Corporation's signs (which occupied no portion of the existing roadway), and the repeated widening of the road surface (located inside the 'New Loop') by DOT/PF personnel beyond the existing surface agreed to as part of the easement agreement (28-foot back-of-ditch to back-of-ditch), were material breaches of that agreement. And, I told you that Alaska Ski Corporation considers that settlement and consequent easement agreement (if not completely null and void) to be seriously compromised.

Your response was to tell me that there had been court decisions that disallowed the placement of private signs within public easements. I responded to you by reiterating that Alaska Ski Corporation would post any land to which it held title and for which it paid property taxes.

I reminded you that to date the DOT/PF had <u>not</u> proved the existence of any prior public right-of-way across U. S. Survey No. 4004, other than the public right-of-way which runs north and south along the section line between Ranges Two West and Three West. I told you that Alaska Ski Corporation had every right to post land that it owned and paid property taxes on; and, that the DOT/PF had no right to destroy, either by accident or with purpose, 'No Trespassing' signs located on Alaska Ski Corporation land. I informed you that Alaska Ski Corporation would be replacing the destroyed signs and installing additional signs as needed on its land. And, I told you that in the future I expected DOT/PF personnel to look for and to avoid Alaska Ski Corporation's signs which were Alaska Ski Corporation's private property.

John F. Bennett, DOT/PF/ Access U. S Survey 4004, Ester Dome

I told you again that the public record clearly showed that the roadway from the St. Patrick Road to the lodge site was not the Ester Dome Road quitclaimed to State of Alaska by the U. S. Department of Commerce; that it was in fact the Ullrhaven Road, a road constructed entirely by Alaska Ski Corporation not the DOT/PF. I reminded you that the original and true Ester Dome Road is what is now called the Henderson Road. And, I told you that the DOT/PF's repeated trespass onto Alaska Ski Corporation land to maintain a road which It had no legal right to maintain in the first place, and its repeated destruction of signs and barriers that Alaska Ski Corporation had erected over the years to protect its holdings on Ester Dome against trespass and vandalism, had provided access for the general public onto Alaska Ski Corporation land, resulting in loss to Alaska Ski Corporation due to the consequent destruction of Alaska Ski Corporation property.

I told you that Alaska Ski Corporation was still willing to grant the DOT/PF an easement to cross U. S. Survey No. 4004; as long as, certain historical facts were recognized for the record and such easement was mutually beneficial to both the parties. I reminded you that, long before Alaska Ski Corporation had been forced to pursue its past litigation against the DOT/PF, Alaska Ski Corporation had offered such an easement without cost to the DOT/PF. I told you, that if the DOT/PF's then Right-of-Way Agent, Mr. Harold Cameron, had done his research properly and had been willing to address the situation in an open and reasonable manner when that offer was tendered, the subsequent litigation would not have been necessary and the matter could have been put to rest then and there.

I told you that Alaska Ski Corporation desired an early and amicable resolution of this issue. And, I told you that if this matter could not be settled through fair and factual negotiation, Alaska Ski Corporation would again be forced to pursue litigation.

In regard to any future negotiation related to access for DOT/PF across Alaska Ski Corporation property, the following is a list of some of the items of concern to Alaska Ski Corporation:

- Type of easement or taking.
- 2. Width of easement or taking.
- 3. Compensation for easement or taking.
- 4. Guarantees & penalties.

I look forward to meeting again with you to resolve this matter. And, I await your written response to set the time and place for such a meeting.

Sincerely,

Charles L. 'Mac' Fields, Registered Agent for

Alaska Ski Corporation Post Office Box 71356 Fairbanks, Alaska 99707

cc: file

CERTIFIED MAIL NO. 7002 0860 0008 4333 4523

Restricted Delivery: John F. Bennett

Subject: Ester Dome Road

Date: Mon, 17 Sep 2001 11:44:34 -0800

From: "John F. Bennett" < johnf_bennett@dot.state.ak.us>

To: Paul R Lyle <paul_lyle@law.state.ak.us>
CC: Joel A Craft <joel craft@dot.state.ak.us>

FYI - Paul, some time ago in a passing conversation you wondered whether the Alaska Ski Corp ever built the loop road realignment that was agreed in the 1989 Stipulations for Settlement. The issue came up recently with M&O and it appears that Alaska Ski corp never realigned the road.

Joel Craft (our M&O manager) told me the other day that he was having some heated conversations with Mac Fields regarding our maintenance of the original road. As Ak Ski Corp never built the loop road noted in the settlement, M&O continues to maintain the original road. The current conflict had to do with the width of the maintenance. Fields states that paragraph 3 of the settlement states that the the old road "will remain in its present location and condition". He says that is limited to a 28' width based upon his earlier measurements.

As the intent of the settlement was to relocate to the loop (with its defined 75' wide easement), the settlement never resolved the right of way width of the original road. I spoke to Fields and noted that the intent of the settlement was to resolve future conflict by relocating the road out of their way and into a defined easement that would not be the subject of continued debates. I asked why Ak Ski had never built the loop. He said they spent all of their money on attorneys and had none left to build the road. He said that the design requirements of the settlement made it virtually impossible and uneconomical to build.

Unfortunately, although the settlement says that Ak Ski "will" do this and "will" do that, it never sets a date for compliance. It did establish a date by which Ak Ski would grant the easement and that was executed in November of 1989.

Joel mentioned to me that a couple of the design requirements stated in the settlement did not appear to be very realistic. Based on that I told Fields to consider requesting a variance from the stipulations. If the request was reasonable and it would entice them to construct the loop road, we would consider it. JohnB

John F. Bennett < johnf_bennett@dot.state.ak.us > Chief, Right of Way
Northern Region
Department of Transportation

Subject: Ester Dome Road

Date: Tue, 04 Sep 2001 10:11:04 -0800

From: "John F. Bennett" < johnf_bennett@dot.state.ak.us>

To: Joel A Craft < joel craft@dot.state.ak.us>

Joel, the file is thick and goes back to about 1980 but it is sketchy as to whether there was any agreement to the width of the ROW for the existing road. Early on we had argued that the existing road was subject to maybe a 60' wide or 100' wide easement. On January 13, 1989 in a letter from Paul Lyle to Alaska Ski Corp. attorney, Cory Borgeson, we said we would reduce our claimed road width from 100' to 50' (25' on each side.) The next document in the negotiations in our file was the Stipulations for settlement dated 7/19/89. All this document states is that the existing road would remain open until Alaska Ski Corp. built the loop bypass. Stipulations even state that DOT would foot the bill for a fixed amount for \$9200 for materials. The longer they put off constructing the road, the more it will cost.

Although not stated specifically, I would think that we would assert the 50' total width for the existing road noted in Paul Lyles 1989 letter. JohnB

John F. Bennett < johnf_bennett@dot.state.ak.us > Chief, Right of Way
Northern Region

Department of Transportation

Subject: Alaska Ski clarification re. payment Date: Tue, 19 Feb 2002 11:59:11 -0900

From: "Paul Lyle" <Paul Lyle@law.state.ak.us>

To: <johnf bennett@dot.state.ak.us>

We paid \$10,000, as I said. That was consideration for the settlement. In addition, we were to pay up to \$9,200 for materials to upgrade the road and haul the box beam guard rail to the site for them. Since they never constyructed the road, we never paid the \$9,200. Nor are we obliged to pay the \$9,200 until the road is done. The \$9,200 is clearly a reimburseable item. Paul

Subject: Re: Alaska Ski / Ester Dome Road

Date: Tue, 19 Feb 2002 12:00:13 -0900

From: "John F. Bennett" < johnf bennett@dot.state.ak.us>

To: Paul Lyle < Paul_Lyle@law.state.ak.us>

Yes, I would appreciate a fax copy for our files so the question doesn't come up again. No rush. JohnB

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Paul Lyle wrote:
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> We paid them $10,000 on November 28, 1989. I have a copy of the
 > warrant if you need it. My entire file was returned from
 > archives. I plan to keep it here indefinitely.
>>>> "John F. Bennett" <johnf bennett@dot.state.ak.us> 02/19/02
> 11:45AM >>>
 > Thanks Paul, you have pretty much confirmed my thoughts. One
> thing that
> I don't think I saw in the file but you might confirm is whether
 > we ever
> made a payment to Alaska Ski or if the payment was only supposed
 > made if they constructed the loop road. If we have not made a
 > payment
 > then I just needed to be aware of a potential outstanding
 > obligation to
         I suppose that as the years progress and the value of the
> pay.
 > $10k is
 > reduced by inflation, the odds that they will construct the loop
> are
 > also reduced. Thanks, JohnB
> Paul Lyle wrote:
>> John: I have reviewed the stipulation. There is also an
 > > easement (recorded at Book 645, Page 950). The easement
 > includes
 > > a metes and bounds description. What should be included in
 > that
 > > description is:
 > >
 > > 1. Ester Dome Road, 75 feet wide, starting at its
 > intersection
 > > with the eastern boundary of USS 4004;
 > > 2. Crossing the present road to the intersection with the
 > 1987
_> > loop;
 > >
 >> 3. Around the 1987 loop to its intersection with the present
 > > road;
> >
 > > 4. From that intersection, over the present road to the
 > western
 > > boundary of USS 4004.
 > >
 > > That's what you've got in the formal easement.
 > Para. 3 of the settlement stipulation states that the section
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> of
> > the road between the loop "will remain in its present
> location
> > and condition." (emphasis added)
> >
>> Para. 6 of the stipulation states that the road presently
>> traversing USS 4004 will "remain open to public traffic until
>> new loop is constructed [by Alaska Ski] and DOT/PF certifies
>> the construction standards" set forth in the stipulation are
> > satisfied.
> >
> > My interpretation of these paragraphs and the recorded
> easement
> > is that DOT has a perpetual public easement over the road
>> described above and a temporary easement in the straight
> > of the present road between the loop area. The portion of
> Ester
> > Dome Road located between the loop area (i.e. the straight
> > section of the present road not included in the recorded
> > easement) may be maintained by DOT, but not improved (i.e.,
> not
> > widened, upgraded or paved).
> >
> > The stipulation specifically states that present road will
> > remain in its present location and condition and that it will
> be
>> open to public traffic at all times until the loop is
> > constructed.
> >
>> The stipulation says the "rest of the road" (i.e. the road
>> outside of the loop) will remain in its present condition,
> gravel. Although, standing alone, that sentence could be
> interpreted to mean that the entire road crossing USS 4004
> > remain gravel, I don't think that is a reasonable
> interpretation
> > when looking at para. 2 (which required the Alaska Ski to
> grant
>> the State a perpetual easement over the whole road as
> relocated
> > with the loop) and the recorded easement itself. Moreover,
> at
> > least a portion of the $10,000 settlement amount paid under
> > 4 was compensation for the express easement on the straight
>> sections of the road included in the metes and bounds
> > description.
> >
> I think it would be an unreasonable interpretation of the
>> easement and settlement to conclude that an express public
> > easement can never be paved.
> > Therefore, I recommend that you not pave the center portion
>> the road as that would constitute an expanded use of the
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> easement
> and would probably constitute an inverse taking. However,
> > portion of the present road within the recorded easement may
> be .
> > improved and upgraded as any other public road.
> >
> > Will there be a safety issue on this road if we pave part of
> > and leave part of it gravel? If so, DOT may want to consider
> > either not paving the road or constructing and paving the
> > and charging the cost of constructing the loop (without
> paving)
>> to Alaska Ski. That would probably require us to file
> > litigation. Nevertheless, Alaska Ski committed itself to
> > constructing the road and committed itself to paying for all
> > labor and costs to do so in excess of $9,200. You could
> increase
>> that amount to the inflation adjusted figure for 2002 and you
> > could base the estimated cost on the average of three private
> > contractor estimates of cost (without profit included) so
> that.
> > Alaska Ski can't complain they are being gold-plated.
> >
>> You may also want to see if Alaska Ski is willing to allow
> > road to be paved without payment of any kind to Alaska Ski.
> If
> > so, we need to get it in writing.
> >
> > With the perfection that comes with hindsight, if I had this
> > case to do over again, I would have insisted on a provision
> that
> > said that, if Alaska Ski did not construct the loop within 5
> > years, the State would automatically get an easement to the
>> entire present road. However, that's not what we did.
```

John F. Bennett < johnf_bennett@dot.state.ak.us>

Chief, Right of Way

Northern Region

> > Paul

Department of Transportation

GRANT OF EASEMENT

ALASKA SKI CORPORATION, an Alaska Corporation,* in consideration of Ten Dollars (\$10.00) and other valuable consideration, receipt of which is acknowledged, hereby grant, bargain, sell, and convey to STATE OF ALASKA,**an easement for a public road which the basis of bearings and distances is U.S. Survey No. 4004 and the record plat of Ullrhaven Subdivision, Fairbanks Recording District, Fourth Judicial District, State of Alaska:

Beginning at the southeast common corner of 4004 and Survey No. Subdivision; thence, bearing N 00°02'15" E along the east common boundary of U.S. Survey 4004 and Ullrhaven Subdivision, distance of 608.29 feet, to the northeast corner of Ullrhaven Subdivision and the True Point of Beginning. Thence, continuing North along said east boundary, a distance of 75.55 feet; thence, bearing S 83°07'47" W, distance of 494.10 feet; thence, bearing right along an arc with radius of 1070.92 feet, a distance of 163.69 feet; thence, bearing N 88°06'45" W, a distance of 226.68 feet; thence, bearing right along an arc with radius of 237.50 feet, a distance of 182.39 feet; thence, bearing N 44°06'45" W, a distance of 105.46 feet; thence, bearing left along an arc with radius of 312.50 feet, a distance of 571.07 feet; thence right, bearing N 76°31'58" W, a distance of 583.92 feet; thence, left along an arc with radius of 75.00 feet, a distance of 17.63 feet; thence, West, a distance of 446.82 feet, to a point on the west boundary of U.S. Survey No. 4004; thence, South along said west boundary, a distance of 50.00 feet, to a point which lies on the boundary common to Sections 25 and 36, Township One North, Range Three West, Fairbanks Meridian; thence, continuing South along the west boundary of U.S. Survey No. 4004, a distance of 25.00 Tast, a distance of 446.82 on the boundary common to

Final Easements 4 Stips-

Grant of Easement 0012c/hls Page 1 of 4

DAW OFFICES
BIRCH, HORTON, BITTNER AND CHEROT
A PROFESSIONAL CORPORATION
100 CUSHANN STREET, SUITE 311
FAIRBANNS, ALASKA 99701
(907) 452x1666

Ranges Two West and Three West, Fairbanks Meridian, and which lies 25.00 feet South of the northeast corner of said Section 36; thence, bearing S 76°31'58" E, a distance of 583.92 feet; thence, bearing left along an arc with radius of 75.00 feet, a distance of 94.62 feet; thence, bearing right along an arc with radius of 237.50 feet, a distance of 434.01 feet; thence, bearing S 44°06'45" E, a distance of 105.46 feet; thence, bearing left along an arc with radius of 312.50 feet, a distance of 239.98 feet, to a point which lies on the north boundary of Ullrhaven Subdivision; thence, bearing S 88°06'45" E along said north boundary, a distance of 30.02 feet to the northeast corner of Lot 4, Ullrhaven Subdivision; continuing along the north boundary Ullrhaven Subdivision, a distance of 856.83 feet, to the True Point of Beginning; comprising 4.81 acres, more or less.

The general location of the relocated road as set forth above, is described and depicted in a stipulation for Settlement filed on July 20, 1989 in superior court case no. 4FA-87-1951 Civil.

In witness whereof the above-named corporation has caused this deed to be executed at Fairbanks, Alaska on the date indicated below.

ALASKA SKI CORPORATION

Dated: 10/31/89

By: Mules

By:

Charles Fields Its: President

ALASKA SKI CORPORATION

Dated: _//-7-89

John D. Williams

Its: Secretary/Treasurer

Grant of Easement 0012c/hls Page 2 of 4

LAW OFFICES
BIRCH, HORTON, BITTNER AND CHEROT
A PROFESSIONAL CORPORATION
FOR CUSHMAN STREET, SUITE 311
FAIRBANKS, ALASKA 99701
(907) 4524666

STATE OF ALASKA

Dated: November 30, 1989

By: D.L.OdgaThor

Its: Chief Right of Way Agent

<u>ACKNOWLEDGMENT</u>

STATE OF ALASKA

ss.

FOURTH JUDICIAL DISTRICT

This is to certify that before me, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared Charles Fields of Alaska Ski Corporation, and he acknowledged to me that he is the President for the corporation named in the foregoing instrument, and acknowledged that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and acknowledged said instrument to be the free act of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal on the day and year first in this certificate written.

Notary Public in and Bor Alaska My Commission Expires: 18-13

ACKNOWLEDGMENT

STATE OF ALASKA

ss.

FOURTH JUDICIAL DISTRICT

This is to certify that before me, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared John D. Williams of Alaska Ski Corporation, and he acknowledged to me that he is the Secretary/Treasurer for the corporation named in the foregoing instrument, and acknowledged that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and acknowledged said instrument to be the free act of said corporation.

Grant of Easement 0012c/hls Page 3 of 4

JAW OFFICES

SIRCH, HORTON, BITTNER AND CHEROT
A REOFESSIONAL CORPORATION
100 CUSHMAN STREET, SUITE 311
FAIRBANKS, ALASKA 99701
(907) 452-1666

In witness whereof, I have hereunto set my hand and affixed my official seal on the day and year first in this certificate written.

Notary Public in and for Alaska My Commission Expires: 08 35 9

ACKNOWLEDGMENT

STATE OF ALASKA

SS.

FOURTH JUDICIAL DISTRICT

This is to certify that before me, a notary public in and for the State of Alaska, duly commissioned and sworn, personally appeared (1.0/sa/10/ of STATE OF ALASKA, and he/she acknowledged to me that he/she is the chick (1/sa/10/ for the corporation named in the foregoing instrument, and acknowledged that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and acknowledged said instrument to be the free act of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal on the day and year first in this certificate written.

Notary Public in and for Alaska My Commission Expires: 6/6/92

P.O. Box 1356 Fairbanks, AK 99707

** 2301 Peger Road Fairbanks, AK 99709

SIRCH, HORTON, BITTNER AND CHEROT
A PROFESSIONAL CORPORATION
100 CUSHMAN STREET, SUITE 311
FAIRBANKS, ALASKA 199701
(907) 432-16666

Grant of Easement 0012c/hls Page 4 of 4

OFFICE OF THE ATTORNEY GENERAL STATE OF ALASKA	100 Cushman, Sulte 400 Phone: (907) 452-1568
	Irst National Center 100 Fairbanks, Alaska 99701

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA FOURTH JUDICIAL DISTRICT

ALASKA SKI CORPORATION Plaintiff,

vs.

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STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES,

Defendants.

4FA-87-1951 Civil

FILED in the Trial Courts State of Alaska, Fourth District

JUL 2 0 1989

Clerk, Trial Courts _ Deputy

STIPULATION FOR SETTLEMENT

A settlement conference was held in this case before Judge Greene on June, 14, 1989. The parties reached a settlement. The terms of the settlement were placed on the record and the parties were ordered to reduce the settlement to writing. Thereafter, the parties agreed to slightly different settlement terms to their mutual benefit. Therefore, the parties stipulate to settle this matter as follows:

- 1. A portion of the road presently traversing U. S. Survey 4004 will be permanently relocated to the location of the loop constructed by Alaska Ski Corporation in 1987. The general location of the loop is shown on Exhibit A attached hereto and incorporated by reference herein.
- Alaska Ski Corporation will grant the state an express public easement, seventy-five (75) feet wide, over the entire length of the road crossing U.S. Survey 4004. easement will extend from the easterly boundary to the westerly boundary of U.S. Survey 4004 and will follow the course of the

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road as relocated over the loop constructed by Alaska Ski Corporation in 1987.

- The loop portion of the road will be upgraded to 20 mile per hour local road standards and will comply with the cross section prepared by DOT/PF, attached hereto as Exhibit B incorporated by reference herein, with the following amendments:
 - a. The inside slope of the loop is modified from 5:1 to 4:1, with the recognition that there may be some variation of the slope along the steepest portion of the hillside. Along that portion of the hillside the parties may adjust the slope as required by site conditions.
 - The outside slope of the loop will be constructed with a 2:1 slope. Where the steepest portion of the hillside makes it impossible to construct a 2:1 slope, the outside slope of the loop will be no less than 1.25:1.

The loop will be surfaced with six inches of inch and one-half minus schist. Alaska Ski Corporation will haul the surfacing material at its own expense. Approximately 400 feet of box beam guardrail will be installed on the loop on the steepest part of the hillside. The state will haul the quardrail to the site. The rest of the road traversing U.S. Survey 4004 will remain in its present location and condition.

The state will pay up to a maximum of \$9,200 for materials necessary to bring the road up to the construction standards set forth in paragraph 3. Any material costs exceeding that amount will be borne by Alaska Ski Corporation. The State pay Alaska Ski Corporation an additional \$10,000

STIPULATION FOR SETTLEMENT <u>Alaska Ski Corp. v. State</u> 4FA-87-1951 Civil

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consideration for this settlement when the public easement is executed by Alaska Ski Corporation.

- Alaska Ski Corporation will provide or pay for all labor necessary to relocate the road and construct the loop.
- 6. The road presently traversing U.S. survey 4004 will remain open to public traffic until the new loop is constructed and DOT/PF certifies that the construction standards set forth herein have been satisfied.
- Alaska Ski Corporation will provide the state with a metes and bounds description of the entire length of the easement traversing U.S. Survey 4004 as descibed in paragraph 2 of this stipulation no later than August 15, 1989.
- Upon signature of this stipulation and the public required under paragraph 2, this case easement shall dismissed, each party bearing its respective costs and attorney's fees.

DATED:

DOUGLAS B. BAILY ATTORNEY GENERAL

By:

R. Lyle

Assistant Attorney General

DATED:

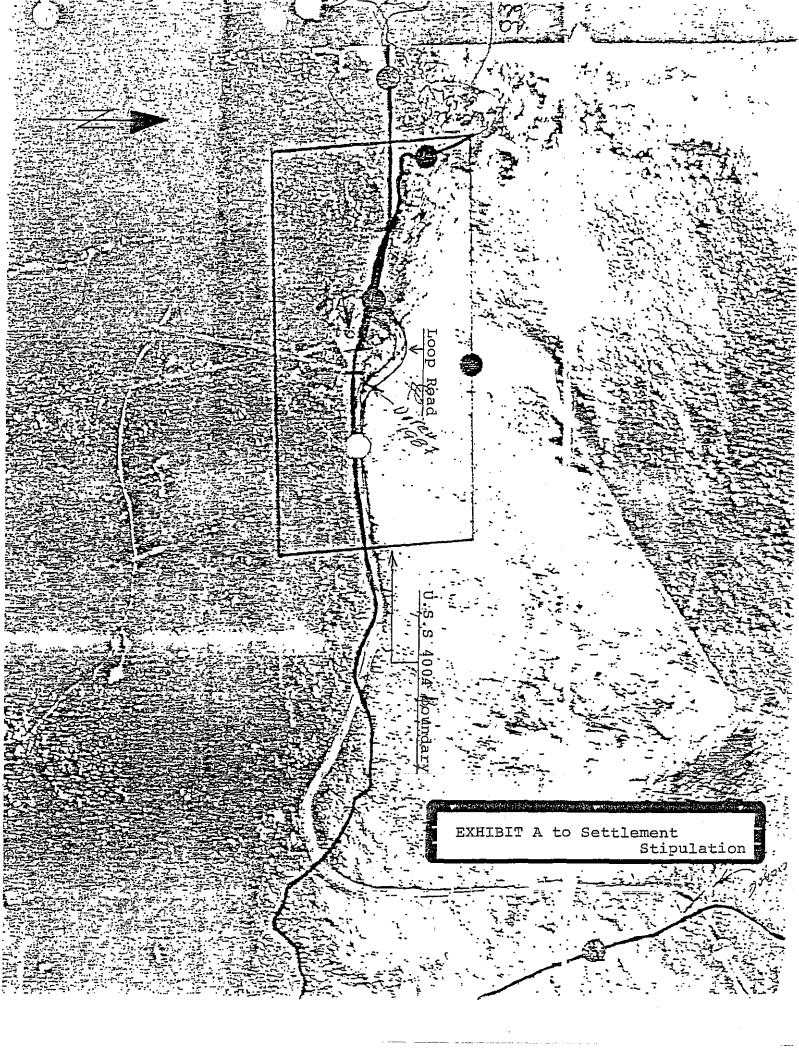
BIRCH, HORTON, BITTNER, CHEROT & ANDERSON

Borgeson

Attorney for Plaintiff

v. State Alaska Ski Corp. 4FA-87-1951 Civil

STIPULATION FOR SETTLEMENT



DEPARTMENT OF TRANSPO TION PUBLIC FACILITIES

Computations

Project No. :. Bridge No.

Checked by ..

From: Rod Platzle

Pate: 6/27/89

EXHIBIT B to Settlement . Stipulation 5" Surfacing Maft Canpragra! Sheet 250-119