



Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-4801

DEPARTMENT OF ADMINISTRATION

May 18, 1982

MEMORANDUM

To: Claudio Arenas, Planning Director

From: Gary Thurlow, Borough Manager

Subject: IDITAROD TRAIL

Attached is a letter of May 11, 1982, from the State Trail Coordinator on the Iditarod Trail and a map, showing a solid line, the actual alignment of the Iditarod Trail as determined by latest surveys.

As I understand it, some of the route as shown by solid line goes across lands owned by the Knik Village Corporation (Knikatnu Village Corporation).

In my opinion, the Borough may obtain a reconveyance of the Iditarod Trail to the Borough under Section 14(c)(3) of the Alaska Native Claims Settlement Act. Under Section 14(c)(3) of ANCSA the local government within which the Native Village is located may obtain a reconveyance of at least two square miles for community development and expansion.

Accordingly, the townships or sections through which the trail passes should be flagged so that the Borough does not inadvertently approve a subdivision on top of the trail which would wipe out a portion of the trail.

Do you agree that this should be done? Do you have any type of administrative procedures that would cause properties traversed by the trail to be flagged for future reference? Should a centerline description be prepared at somebody's expense, so that the trail as described can be recorded and picked up by persons causing title searches to be made?

A handwritten signature in cursive script, appearing to read "Gary Thurlow".

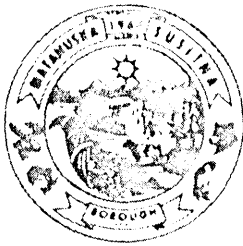
Gary Thurlow
Borough Manager

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Attachments:

Map

DNR Letter from Mr. Crenshaw



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DEPARTMENT OF ADMINISTRATION

May 18, 1982

Division of Parks

MAY 19 1982

Ron Crenshaw
State Trail Coordinator
State of Alaska
Department of Natural Resources
619 Warehouse Dr., Ste. 210
Anchorage, Alaska 99501

Dear Mr. Crenshaw:

RE: Iditarod Trail-Knik to Susitna River
File #2424-14 (8251.1)

In your letter of May 11, 1982, you state:

"The BLM is first looking into the ANCSA easement identification process across Knikatnu, Inc. lands and trying to determine why an easement was not retained for this portion of the Iditarod Trail."

I would hope that somehow in the BLM review BLM will determine, that, in fact, it is possible to reserve an easement for the Iditarod Trail.

However, if no Iditarod Trail was identified, the reason probably is BLM, through its interim conveyence procedures, does not notify the local governments and the State of Alaska of its intention to convey lands, with or without trail easements, if a trail within the lands proposed for conveyence does not serve an adjacent property owned by the State of Alaska or by the local government.

The reason for this is that BLM, under its interim conveyence regulations, does not consider the public to be an interested party with respect to reservation of roads and trails. The only entity that would be denominated an interested party, with rights of notice and appeal, would, under a ANCSA Board interpretation of the BLM regulation, be a property owner which owns property which is reached by the road or trail. This is pretty much the "easement by necessity" or "easement by implication" that exist when properties are conveyed in parcels, leaving the rearward parcels landlocked, and without access, unless an easement of necessity is found or an easement by implication is found.

With this type of regulation, there would have been no reason for the BLM to notify the State of Alaska or the local government of a proposed interim conveyence that would do away with the Iditarod Trail, unless the trail, as shown, provided access to specific parcels owned by the State or the local government.

The local government is entitled to obtain a minimum of two square miles from lands conveyed to a Native Village Corporation for community development and expansion. This is provided for under Section 14(c)(3) of the Alaska Native Claims Settlement Act. In my opinion, there would be few local community uses that would more qualify for "community development" or "community expansion" than a National Historic Trail going through the community. Accordingly, it would be our opinion that if BLM did not reserve an easement across Knikatu lands for an Iditarod Trail, then the local government, in this case the Matanuska-Susitna Borough, would have the right to obtain from the Knik Village Corporation a reconveyance of the right-of-way to the Borough under Section 14(c)(3).

Note!

There is a third federal law that might possibly have some application. It is an 1866 Act which preserved public highways across publically owned lands. The law is codified under 43 U.S.C. Sec. 932 and was repealed several years ago. However, the repealer would not affect roads already in existence. This particular Act was used in court action by the City of Anchorage to preserve road access across Alaska Railroad lands to the present Port of Anchorage. This was done in about 1923. It was also used by the City of Dillingham to preserve access to a major city street from downtown Dillingham to the city dock. A winter trail, which is only actively used one time a year, might not fall within the classification of a "public highway", although, if someone had sought to press this issue back between 1910 and 1921, they would have probably prevailed with respect to the trail being a "public highway"

Sincerely,

Gary Thurlow
Borough Manager

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