

APPENDIX F

GENERAL CORRESPONDENCE WITH STATE AND FEDERAL AGENCIES

- Conversation Log with the U.S. Coast Guard Dated December 5, 2002
- U.S. Fish & Wildlife Service Email Dated July 29, 2003
- BLM Email Dated March 10, 2003
- Alaska Department of Natural Resources Email Dated March 14, 2003
- ADOT&PF Memo Dated May 15, 2003

ASCG

CONVERSATION LOG

INCORPORATED

Job / Task No: 4444/0100
Project: Taylor Highway EA

Time:	2000	Date:	December 5, 2002
To:	Jim Helfinstine	From:	Kim Stricklan
Firm:	US Coast Guard	Firm:	ASCG, Inc.
Phone No.:	N/A	Phone No.:	907-339-6568

Subject: Taylor Highway Reconstruction EA, U.S. Coast Guard Permitting Requirements

Summary of Conversation:

Mr. Helfinstine, with the office of Aids to Navigation, attended the subject meeting. After the meeting, I asked him what type of coordination we would need to complete with the U.S. Coast Guard, since there will be some in-water work at the South Fork Bridge to repair concrete damage/spalling on the piers. In addition, in-water work will occur at Chicken Creek during bridge replacement.

As background, the U.S. Army Corps of Engineers (USACE) Navigable Waters web page indicates there are no navigable waters within the proposed project area. However, the Draft Upper Yukon Area Plan identifies the South Fork as navigable and it is also likely that Chicken Creek is considered navigable. Therefore, we wanted to ensure we were coordinating as needed with the U.S. Coast Guard.

According to Mr. Helfinstine, although the South Fork and Chicken Creek may be considered navigable, the activity would qualify for an exemption. He was choosing not to make a determination either way as to the navigability of either water body. He confirmed there was no need to submit a request for a "Navigability Determination" and no U.S. Coast Guard permit would be required.

Miller, Beth

From: JimZelenak@fws.gov
Sent: Tuesday, July 29, 2003 5:17 PM
To: Miller, Beth
Subject: Taylor Highway Raptors

Hi Beth,

Larry Bright asked me to get back to you regarding your request for info on raptors along the Dalton highway. Our data are probably very similar to those from ABR. I only found two peregrine falcon nest sites within a mile of the road along the section you specified. Their locations (lat./long. degrees:minutes:seconds) are:

1. [redacted], this nest is about 0.6 miles WNW of the road where it switches back at the mine site about 2 road-miles east of the South Fork crossing.
2. [redacted] this nest is about 0.6 miles WNW of the road where it crosses from Eagle A-2 quad into Eagle A-3 quad at the west end of the proposed project area.

Generally we are not concerned with work that occurs on the existing road surface, but there may be other issues such as gravel mine sites that could be close to raptor nest sites. Such data would be useful in the EA. Also, we would like to see habitat mapping and quantification of wetland habitats that will be impacted by the project. We look forward to reviewing the draft EA when it is available. Thanks. Call or write if questions.

-jim

Jim Zelenak
U.S. Fish and Wildlife Service
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Fairbanks, AK 99701
ph: (907) 456-0354
fax: (907) 456-0208
jim_zelenak@fws.gov

Miller, Beth

From: Nancy_Whicker@ak.blm.gov
Sent: Monday, March 10, 2003 3:18 PM
To: Miller, Beth
Subject: Re: Taylor Highway and WSR Information

In response to your email and telephone inquiry last week:

1. My understanding from our conversation is that FHWA/ADOT will receive a 200 foot easement deed for the Taylor highway and that within the ROW ADOT controls the land. They can perform maintenance and minor realignments without needing anything further from BLM as long as they remain with their 200 foot ROW.

Yes and No..... The Taylor Highway was quit claimed to the State of Alaska at statehood (Omnibus Act; PL 86-70). It was classified as a secondary highway, Class A, which meant a 100 foot from centerline right of way (200 feet total). The Wade Creek Junction to the Canadian Border is classified as a feeder road with a 50 foot from centerline right of way (100 feet total). The right of way is for highway and highway material use only which would include maintenance and minor alignment adjustment. BLM is the management agency for the land the right of way sits on, therefore BLM can issue other right of ways within or across the existing highway right of way (with the State of Alaska Dept. of Transportation and Public Facilities' concurrence) if the new authorizations do not cause conflict with highway purposes.

BUT, the FHWA is involved because the DOT&PF proposal is a Federal-Aid Highway project using federal dollars. Thus, FHWA will be making a formal request for appropriation of BLM-managed public lands needed for the proposed highway project. When BLM processes the request, FHWA in turn will issue AK DOT&PF a Right of Way (Highway Easement Deed) for the lands appropriated for Federal-Aid highway purposes. There has not been such a request nor is there presently an easement deed from FHWA to DOT&PF for the Taylor Highway from MP 64 to the Canadian border. Administration of highway-related issues on public lands within a Federal-Aid right of way rests with the FHWA with BLM continuing to administer the land for uses not related to the Federal-Aid highway system.

2. My understanding on river work is that BLM manages the water in the Fortymile Wild and Scenic River and any work ADOT proposed below ordinary high water would need concurrence from BLM. Is this correct?

Yes and No.... BLM administratively determined the South Fork River navigable (although delineated as a "Scenic" segment of the Fortymile Wild and Scenic River system) which means the State retains ownership of the riverbed between the ordinary high water marks. BUT, any action that could affect the "free flowing condition" and other outstanding resource values within the Wild and Scenic River corridor would need an analysis and determination of effect from the BLM as the managing agency.

Wade Creek ("Recreational"), Mosquito Fork at the bridge and Walker Fork ("Scenic") were administratively determined by BLM to be non-navigable so BLM retains the management of those waters. Any effect to the "free flowing condition" of these streams would also need analysis and a determination of effect from BLM.

Miller, Beth

From: Frank Maxwell [frank_maxwell@dnr.state.ak.us]
Sent: Friday, March 14, 2003 10:15 AM
To: Miller, Beth
Subject: Re: Taylor Highway

The bridge is within the Wild and Scenic River Corridor managed by BLM. The area between the ordinary high water banks is state land by virtue of navigability. In a cursory search, I can't find any records here regarding the right-of-way, but it is likely to be 100' or greater in width, thus the small coffer dams will be well within the existing right-of-way and no action on our part is necessary.

Call me if you have any questions.

Frank 907.451.2728

"Miller, Beth" wrote:

The bridge is located at MP 75.3 of the Taylor Highway. It is about 10 miles east of the MosquitoForkBridge. The coffer dams will be approximately 2-3 feet larger than the piers and the piers are about 3 feet in diameter. Workers will access the piers by boat.

Thanks.

Beth

-----Original Message-----

From: Frank Maxwell [mailto:frank_maxwell@dnr.state.ak.us]
Sent: Wednesday, March 12, 2003 5:42 PM
To: Miller, Beth
Subject: Re: Taylor Highway

Beth, Sorry about the delay in responding- I was away on emergency leave and am catching up on email, etc. Is this the bridge located near the Mosquito Fork Wayside shown in our Upper Yukon Plan? Once I get it located, I can look up the right-of-way and see if it is wide enough to accommodate the work. Do you have any dimensions for the coffer dam and associated work area?

I suspect that there is enough room to not require any permit on our part, but if that is not the case, we will issue a right-of-way for this.

Frank 451-2728

"Miller, Beth" wrote:

Hi Frank,

I am working on the Environmental Assessment for the Taylor Highway rehabilitation from MP 64.5 to the Canadian Border. I am wondering if we are going to need any permits from DNR for bridge work that will be conducted on the SouthForkBridge. According to the Draft Upper Yukon Area Plan the South Fork is considered navigable. The work will entail repairing concrete spalling on the bridge piers. The work will most likely be conducted by building a wooden coffer dam around the pier and pumping it out to repair the pier. If you need any additional information let me know.

Thanks,
 Beth

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

DESIGN & ENGINEERING SERVICES DIVISION, NORTHERN REGION

FRANK H. MURKOWSKI, GOVERNOR

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Post-it® Fax Note: 7671	Date 2/04/04	# of pages 1
To B. Fa Miller	From Tim Woster	
Co./Dept. ASCG	Co. DOT SPA	
Phone # 339-6554	Phone # 451-2288	
Fax # 339-5329	Fax # 451-5126	

May 15, 2003

Re: Taylor Highway MP 64 to Canadian
Border Wade Creek Right of Way &
Section 4(f) Analysis

Mr. Tim A. Haugh
Environment & Right-of-Way
Programs Manager / Team Leader
Federal Highway Administration
P.O. Box 21648
Juneau, AK 99802-1648

Dear Mr. Haugh:

This letter transmits a copy of a memorandum from John F. Bennett, Right of Way Chief for the Northern Region of the Alaska Department of Transportation and Public Facilities. The memorandum was developed at your request, made during a teleconference involving Mr. Bennett, Mr. Tim Woster, Ms. Melissa Parker, Mr. Tiff Vincent and Mr. Ed DeCleva.

The memorandum summarizes the opinion of Mr. Bennett about the status of the Taylor Highway Right-of-Way between Walker Fork and Jack Wade Junction, with special attention given to the portion along Wade Creek that is subject to federal mining claims. The purpose is to clarify the scope of the Section 4(f) analysis that is required to complete the Environmental Document for the Taylor Highway, MP 64 to Canadian Border project.

As summarized in Mr. Bennett's memorandum, we believe the Taylor Highway has a 200-foot wide right of way along Wade Creek, even though that right of way is subject federal mining claims that existed before the Taylor Highway right of way was established. Since federal mining claims are a private property right, we believe the project will not cause right of way impacts to the Recreational Segment of the Wild and Scenic River corridor unless project work impacts land outside the 200-foot right of way. As a result, requirements for Section 4(f) analysis apply only to those impacts that extend beyond that 200-foot wide corridor.

Please review the attached memorandum and let us know whether you concur with Mr. Bennett's opinion.

Sincerely,



David T. Bloom, P.E.
Preconstruction Engineer
Northern Region

TW/cw

Enclosure: As stated

V:\May\66444 (Clinton)\Haugh for 3-16

CONCUR Tim Ayl 2-03-04

Tim Ayl ENV/ROW program manager

MEMORANDUM**State of Alaska**
Department of Transportation & Public Facilities
Northern Region Design & Engineering Services**TO:** Tim Woster, PE
Design Project Manager
Northern Region**DATE:** 5/8/03**FILE NO:**
TELEPHONE NO: 451-5423
FAX NO: 451-5411**FROM:** John F. Bennett, PLS, SR/WA
Chief, Right of Way
Northern Region**SUBJECT:** Taylor Hwy. Right of Way
Walker Fork to Canada Border
STP -0785(11)/66446
Section 4(f) - ROW Impact

The purpose of this memo is to review the basis of the existing right of way for the Taylor Highway and its relationship with the Section 4(f) evaluation that is required due to the Wild and Scenic River land classifications along the project corridor.

The Walker Fork to Canada Border portion of the project commences at milepost 82 and extends 26.5 miles in an easterly direction to the Canada Border. More than half of the segment from Walker Fork to Jack Wade Junction is subject to federal mining claims. This memo will focus on the section of existing highway right of way that passes through lands that are both subject to existing federal mining claims and Wild and Scenic River classifications (PL 96-487). With respect to the rectangular system, this includes Sections 19, 18, 17, 8, 9, 4, 3, & 2 within Township 27 North, Range 20 East and Sections 35 & 36 within Township 28 North, Range 20 East, Copper River Meridian. The land status includes the following elements: The townships in question have been tentatively approved (TA'd) for conveyance to the State of Alaska excluding those lands subject to valid federal mining claims. The mining claims constitute a private interest with the potential of going to patent and conveyance of fee title. Until patent is issued, the fee estate underlying the claims is retained by the federal government. A right-of-way easement interest for the Taylor highway is held by the State of Alaska.

The Fortymile Mining District is the second oldest district in Alaska with gold first being discovered in the district in 1886. Alaska Road Commission Maps of the Eagle District dating from 1925 indicate a road/trail network throughout the Fortymile mining area. Routes and work performed are noted beginning in the 1926 ARC Annual Report. Locations route survey maps dating between 1947-1949 provide plan & profile data for the proposed Tok-Eagle road. The DOT&PF 1977 EIS for the Taylor Highway - Tetlin Junction to Canadian Border states that "the Taylor Highway was constructed from June 1946 to October 1953." It evolved from the trail system connecting Chicken, Eagle and the gold placers of the Fortymile region to the Alaska Highway.

Much of the existing right of way for the Taylor Highway is based upon federal Public Land Orders. These rights of way for highway purposes were established across unreserved federal lands under the authority of the Departments of the Interior and Commerce between 1942 and 1958. The PLO right of way constitutes the majority of varying interests in the DOT&PF inventory. At statehood, the federal government transferred 5,400 miles of these rights of way to

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the State of Alaska¹. Although most of these rights of way were initially established as withdrawals, subsequent PLO's converted them to easement status². PLO 601, dated August 10, 1949, withdrew certain lands for highway purposes. Among these was the Tok-Eagle Road that was classified as a "feeder road" with a width of 200 feet. Prior to PLO 601 the only basis for a public right of way across the unreserved public lands would have been under the federal RS-2477 law. Where applicable, the width of an RS-2477 trail right of way would have been limited to "ditch to ditch" or that area necessary to construct and operate the road. PLO 757 and Secretarial Order 2665, both dated October 16, 1951 revoked prior highway withdrawals (including PLO 601) and established easements for certain "through, feeder and local" roads. The Taylor highway was specifically named as a "feeder" road in SO 2665 with an easement width of 100 feet on each side of centerline.

As of August 10, 1949, those portions of the Taylor (Tok-Eagle) road which had been surveyed or constructed across unreserved, unappropriated federal lands were subject to a 200-foot wide right of way. However, valid existing federal mining claims would not have been considered "unreserved" federal lands and PLO 601 and its subsequent modifications would have been subject to those claims unless they were relinquished and the lands returned to the public domain. The effect of the 200-foot wide PLO reservation for the Taylor Highway would depend upon the ultimate disposition of the federal mining claims. There are two possible scenarios:

1. Mining claimants successfully receive patent: In this scenario, the claimants eventually receive fee title to their claim. If the mining location that led to patent preceded PLO 601 in time, it would not be subject to the highway right of way. After patent, the state would only be able to claim a "ditch to ditch" width right of way either by prescription (adverse possession against the private interest) or under the RS-2477 grant.
2. The mining claims are relinquished or invalidated: In this scenario, the claimant never obtains a patent and the claims return to the public domain. In this case, the PLO reserving the highway right of way no longer is subject to the prior existing claims and may be fully asserted.

However, while the underlying federal and the mining claim interests co-exist, the State would assert the proposition that PLO 601 was not defeated on August 10, 1949 where

¹ On June 30, 1959, pursuant to section 21(a) of the Alaska Omnibus Act, the Secretary of Commerce issued a quitclaim deed to the State of Alaska in which all rights, title and interest in the real properties owned and administered by the Department of Commerce in connection with the activities of the Bureau of Public Roads were conveyed to the State of Alaska. The Taylor Highway was designated as Federal Aid Secondary Class "A" Route 185 and described as follows:

From FAP Route 62 (Alaska Hwy.) at Tetlin Junction approximately 80 miles west of Alaska-Canada Border; thence northeasterly to the Yukon River at Eagle.
Constructed mileage - 161.0 miles.

² Whether or not the State received a fee or easement interest had been a subject of debate for several years. On February 19, 1993 the Attorney General's Office issued an opinion concluding that "under the Alaska Omnibus Act and resulting Quitclaim Deed, the State of Alaska received, in general, easements for its roads at statehood."

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federal lands were reserved by mining claims. We assert that PLO 601 and subsequent PLOs were impressed on the lands along the Taylor highway commencing in 1949. They do however, lie dormant with regard to the private mining interest that preceded them. On the other hand, we believe that the PLO's are effective against the underlying federal interest both today and in the future should the claims be relinquished.

A 1998 U.S. District Court case State of Alaska vs. David B. Harrison, et al.³ supports the proposition that PLO 601 survived the reserved land status across the Taylor highway mining claims when it was enacted in 1949. This case involved the Chickaloon River Road and lands that were reserved by a railroad townsite in 1917 and subsequently claimed under a native allotment. With regard to the road right of way, the court found the following:

"The State of Alaska asserts that it possesses a right-of-way for Chickaloon River Road. According to the State of Alaska, this right-of-way was first created for the benefit of the United States in 1949 by Public Land Order 601 which withdrew and reserved fifty feet on each side of the centerline of all 'local roads' including the Chickaloon River Road. The United States then quitclaimed the right-of-way to the State of Alaska in 1959 as part of the Alaska Omnibus Act.

The Harrison defendants contend that the reservation under PLO 601 did not apply to Chickaloon River Road because the land which it traverses was land withdrawn from the public domain as part of the 1917 railroad townsite withdrawal. Thus it could not also be reserved as a 'local road' under Public Land Order 601.

There is no inconsistency or conflict between the railroad townsite withdrawal and Public Land Order 601. The latter was expressly made subject to the former. When in 1955, the Department of the Interior revoked the 1917 railroad townsite withdrawal, the Department of Interior did so without purporting to affect the right-of-way created by Public Land Order 601.....Therefore, the court finds that a right-of-way for Chickaloon River Road was first created for the benefit of the United States in 1949 and was later quitclaimed to the State of Alaska in 1959."

The 200-foot wide right of way created by PLO continues to exist with respect to the remaining federal interest underlying the Taylor Highway mining claims. It is my understanding that 4(f) impacts would not be considered over private land interests and that they need not be considered to the extent that the proposed project would be located within the existing right of way for the Taylor Highway. For the purpose of evaluating the 4(f) impacts across these mining claims, the existing right of way corridor should be held as being 200 feet in width, 100 feet on each side of the road centerline. Therefore, project use of land within the 200-foot right of way corridor is not subject to 4(f).

³ Case No. A94-0464-CV Order on Motion for Partial Summary Judgment dated October 28, 1998.