

STATE OF ALASKA

CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

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Kenai National Wildlife Refuge
P.O. Box 2139
Soldotna, AK 99669

Re: Marathon Road 17(b) Easement

To the Refuge Staff:

The Citizens' Advisory Commission on Federal Areas has reviewed the Draft Environmental Assessment for the Marathon Road 17(b) Easement. The draft EA examines 3 alternatives for addressing trespass and other illegal activities on Kenai Native Association (KNA) lands adjoining this road. These include Alternative A, which would continue current easement management; Alternative B, which would terminate the easement; and preferred Alternative C, which would develop regulations requiring the public to sign in and out of the easement area. We offer the following comments for your consideration.

The Commission fully appreciates that KNA faces problems with trespass on its lands crossed by the Marathon Road. It is apparent that some action needs to be taken to alleviate trespassing, illegal dumping, vandalism and gravel theft on KNA lands. However, we do not view either Alternative B or Alternative C as the best means to address these problems.

Alternative B, which would terminate the easement, is not acceptable. As the EA points out, Marathon Road provides the only public access route to the Kenai Refuge boundary in the area. This portion of the refuge is used extensively by the public for hunting, fishing and recreational activities. The EA fails to discuss any other potential alternative access routes into this area of the refuge.

According to the 1988 Memorandum of Understanding between the Bureau of Land Management and the U.S. Fish and Wildlife Service and the regulations at 43 CFR 2650.4-7(a)(13), any proposal to terminate a 17(b) public easement must be supported by

1) a determination that the easement is not longer necessary for public access or governmental function, or 2) an alternative easement has been offered, or 3) the termination is required by law. None of the criteria necessary to terminate an easement has been met.

Alternative C, which proposes development of regulations requiring easement users to sign in and out of the area would do little or nothing to eliminate trespass, gravel theft, dumping, vandalism or other illegal activities on KNA lands. Those people who are likely to engage in illegal activities would not be deterred by a requirement to sign in and out of the area. Requiring the public to register to use a public easement to access public lands could also establish an undesirable precedent. We are not aware of a similar requirement for any other 17(b) easement.

Most importantly, requiring users to provide their full name, address, date of entry, vehicle license number, size of group and their time of entry and departure would be an unacceptable breach of privacy. Would the sign in location be staffed so this information could be kept confidential or would it be readily available to the general public at an unstaffed site? Would every member of a group be required to provide a name and address or just the vehicle operator? How long would this information be retained by the refuge? If illegal activity on KNA lands was discovered, how and by whom would this information then be used? Because the U. S. Fish and Wildlife Service has no authority over illegal activities on KNA lands, the only result of this proposal would be the creation of a citable offense for not signing in and out of the area. How would this sign in and out requirement be enforced? This alternative would create a significant administrative burden for the refuge management without providing an effective solution to the problem of illegal activity on KNA land.

Section 907 of ANILCA provides authority for the U.S. Fish and Wildlife Service and KNA to enter into a land bank agreement. Only KNA can determine if a land bank agreement would be beneficial or consistent with its planned future land use. However, such an agreement could provide KNA with “technical and other assistance with respect to fire control, trespass control, resource and land use planning, the management of fish and wildlife and the protection, maintenance and enhancement of the special values of the land subject to the agreement, all with or without reimbursement as agreed upon by the parties.” (Sec. 907(c)).

The draft EA gives no indication that a land bank agreement has been considered as a possible solution to the trespass and other management issues on KNA lands. The Commission is not suggesting that KNA pursue this option, rather the final EA should discuss the possibility of this approach.

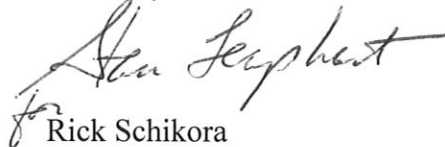
The Commission supports Alternative A, the no action alternative. At the same time, we encourage the USFWS and KNA to jointly develop a public program to educate easement users of the restrictions on easement use, location of private property and the need to respect private property rights. KNA could also consider fencing its property or placing signs along the easement, as well as increased enforcement. Limited fencing at the

access points to the gravel pit may be effective in preventing gravel theft, target shooting and vandalism on this portion of KNA lands.

While the Commission appreciates the opportunity to provide comments on this draft EA, we are disappointed that the consultation and coordination section does not list the State of Alaska as having been consulted during the preparation of the document. This is particularly disappointing since “having the Alaska State Troopers respond to the [trespass] incident in a timely manner” is cited in the EA as one of the problems with the existing situation. Consultation with the Alaska State Troopers and other State agencies may have yielded a wider range of options for addressing the trespass issue as well as the other illegal activities on KNA lands.

If we can provide any additional information or clarify any of our comments, please contact our office. We look forward to your decision on this issue.

Sincerely,


for Rick Schikora
Chairman.

Cc: Jerry Sansone – DNR
Stephanie Clusiau – DNR
Ellen Simpson – ADF&G
Sally Gibert - DNR