

STATE OF ALASKA, DEPARTMENT OF HIGHWAYS

IBLA 76-117

Decided March 15, 1979

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting applications for rights-of-way F 21463 and F 21464.

Appeal dismissed without prejudice.

1. Rules of Practice: Appeals: Dismissal

Where the Board of Land Appeals determines that matters raised in an appeal may become moot, or in any event, will be more clearly delineated by further action of BLM relating to subject matter of the appeal, such an appeal will be dismissed without prejudice to the appellant, subject to its right to assert its views in any future appeal to the Board.

APPEARANCES: Woodrow Johansen, for the appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

The State of Alaska, Department of Highways, has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated June 24, 1975, rejecting its applications for rights-of-way for the Upper Dietrich and Yukon River maintenance camps. The camps were to be used to maintain the Prudhoe Bay-Yukon River road which was intended to serve the trans-Alaska oil pipeline.

Appellant applied for rights-of-way pursuant to section 203(b) of the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. § 1652(b)(1976). This section "authorizes and directs the Secretary of the Interior \* \* \* to issue \* \* \* rights-of-way \* \* \* that are necessary for or related to the construction, operation, and maintenance of the trans-Alaska oil pipeline system \* \* \*." (Emphasis added.)

The Prudhoe Bay-Yukon River road is an integral part of the trans-Alaska oil pipeline system, following the course of the pipeline for much of its northern route. See 43 U.S.C. § 1652(b); Final Environmental Impact Statement, Proposed Trans-Alaska Pipeline, March 20, 1972. Appellant applied for rights-of-way for two maintenance camps, the Upper Dietrich and the Yukon River, to be located at two points along this road.

Citing a recommendation by the Alaska Pipeline Office, in which the Fairbanks District Office concurred, the BLM State Office rejected appellant's applications. It referred to the following language in the recommendation:

Yukon River Site - This site should be denied pending completion of a detailed study and plan for the Yukon River crossing area. It is questionable whether a permanent facility such as a highway maintenance camp should be permitted so close to the river and in the location requested. Either the Pump Station 6 area or Five Mile Camp should be considered for the maintenance camp.

Upper Dietrich Site - This proposed site is located in Material Site 108-2 which is adjacent to the northern-most stand of white spruce along the pipeline route. This stand of timber has been nominated for inclusion in a Statewide ecological reserve system. This area provides the opportunity to study a plant species at both its latitude and elevation range limits. The proposed maintenance camp would be incompatible with the objectives of the research area. It is suggested that either the Dietrich or Chandalar Camps be considered for the maintenance camp. It would seem desirable to have the maintenance camp located adjacent to an airstrip.

Furthermore, the BLM State Office noted that the Alaska Pipeline Office had stated that it felt appellant should submit a "comprehensive maintenance plan" for the Prudhoe Bay-Yukon River road, indicating the location and facilities for proposed maintenance camps, rather than "piecemeal applications." The BLM State Office concluded by quoting the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.* (1976), to the effect that the Federal Government should insure that appropriate consideration is given to environmental values in all decisionmaking.

Appellant, in its statement of reasons for appeal, contends that both maintenance camps are necessary to maintain the Prudhoe Bay-Yukon River road. As to the Yukon River site, applicant argues, it is necessary because of the "long distance [approx. 137 miles] between the existing [camp] \* \* \* at Livengood and the proposed [camp] \* \* \* at Prospect." The Yukon River camp would be responsible for 81 miles of

the road between those two camps. Furthermore, the fact that it was once a bridge contractor's camp site "eliminates the need to develop an entirely new pad" for the camp.

The area adjacent to Pump Station #6 and near the Yukon River site was rejected because of uncertainty as to the "availability of space within the area withdrawn for pump station construction," the "uneconomical cost of site development due to topography and poor foundation material," and the lack of an adequate water supply. The Five Mile campsite, on the other hand, is considered an adequate alternative to the Yukon River camp and a separate application for this site has been filed by the appellant.

Appellant disagrees with BLM's objection to having the Yukon River camp close to the river. It is to be located approximately 700 feet from the river. Appellant argues that "[t]his objection is apparently based on the concept that river frontage should be reserved for the development of water-related facilities such as boat landings or wharves for barge operation." This, presumably, is what is being planned for the "Yukon River crossing area" as mentioned in the recommendation to the BLM State Office by the Alaska Pipeline Office. Appellant contends that the Yukon River maintenance camp would not adversely affect commercial development of the river area, arguing that

the Alyeska ferry landings on the upstream side of the Yukon River Bridge could be readily adapted to use by commercial river traffic. If ultimate development in the area reaches the extent that the river frontage downstream from the bridge is needed to accommodate river traffic, the 700 ± feet between the boundary of the camp pad and the water's edge should provide sufficient space for wharves and related building structures.

As to the Upper Dietrich site, appellant argues, it is necessary "because of anticipated heavy winter maintenance on the section of road ascending the face of the Chandalar Shelf." The Upper Dietrich camp would be located at the base of the Chandalar Shelf.

The Chandalar camp on the other hand, is considered undesirable because it is located "on the 'Shelf'" and as such it is fully exposed to the high winds common in the area and because it experiences icing problems during the winter months resulting from sidehill seepage. The Dietrich camp also was rejected because it is considered too far away from the section of road requiring heavy winter maintenance. A round trip to this section would require 50 miles of travel, "significantly increas[ing] the cost of maintaining an already expensive piece of road." A maintenance camp at the base of the Chandalar Shelf, on the other hand, would be "reasonably protected from the elements" and "constant patrolling of the problem area during the winter [would] \* \* \* be both practical and economical."

Appellant states that it is not concerned about the proximity of airstrips to the Upper Dietrich camp as: "Most of our camp supplies would be shipped over the highway by truck. The airstrips at Dietrich and Chandalar would be close enough to meet our occasional needs for air transport."

Appellant also contends that the Upper Dietrich camp would not be incompatible with use of the stand of white spruce trees bordering the camp as a research area. Appellant intends to preserve this stand of trees as a wind break and as a screen between the camp and the road. Furthermore, appellant argues, it intends to clear the area (previously used as a materials site) such that the cleared area would be "more than adequate for our space requirements." Appellant speculates that the camp might additionally provide "a measure of security [for the trees] \* \* \* against possible damage or abuse by motorists, as well as being a convenient location for research groups to set up temporary field camps."

[1] In October, 1978, subsequent to the filing of this appeal, the State of Alaska assumed responsibility for maintenance of the road from Alyeska. It thereupon applied for and was granted temporary sites. Issuance of permanent sites by BLM is awaiting a comprehensive maintenance plan from the State so that it can dovetail the State's requests with BLM's plans for the entire utility corridor. An entire new set of applications is in the process of being submitted by the State of Alaska.

In view of these developments, we feel that it would be premature to rule on the issues pressed in this appeal. In the first place, when finally presented with the comprehensive maintenance plan BLM might well decide to permit utilization of the two sites involved herein or alternatively, appellant may determine that the two sites are not essential to maintenance of the pipeline. Moreover, in the absence of such a plan any review which we might afford appellant would necessarily be restricted. This is particularly true, herein, since the rejection of the two sites by BLM was, at least partially, premised on the absence of a comprehensive maintenance plan. We have determined, therefore, to dismiss the present appeal without prejudice to appellant's claims herein. Should subsequent action on the new application by BLM be adverse to the interests of the State, the State may at that time seek review before this Board.

Accordingly, pursuant to the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed without prejudice.

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James L. Burski  
Administrative Judge

We concur.

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Douglas E. Henriques  
Administrative Judge

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Frederick Fishman  
Administrative Judge.

