

FYI

ROBERTSON MONAGLE & EASTAUGH

ATTORNEYS AT LAW
1810 Samuel Morse Dr., Suite 202
RESTON, VA 20190
PHONE: 571 313 1792
FAX: 571 313 1973

Date: December 7, 2012

To: Mark Earnest

From: Brad Gilman

Re: Meeting with Carl Burgess, Executive Council, Yukon Territory--
Significance of the Shakwak Project to the Pt. Lutak Plan

The Alaska Governor's Office requested that I meet with Carl Burgess, the Intergovernmental Relations Officer for the Executive Council of the Yukon Territory. The Executive Council is the Yukon's version of the Governor's Office in Juneau. Mr. Burgess works directly for Yukon Territory Premier Darrell Pasloski.

We spent the first half of the meeting discussing the burgeoning potential mineral development in the Yukon Territory. The Yukon Territorial Government views Haines and Skagway as the logical ports for supporting any new development in the north. I briefed him on the Borough's planning process for the expansion of the Pt. Lutak port infrastructure, and promised to keep him informed on our progress (he says only half jokingly that he would probably get better information directly from us than his own ministries).

We then shifted the discussion to Mr. Burgess' main reason for being in Washington, D.C. He has been tasked by the Premier to work with the Alaska Governor's Office to secure the final funding to complete the reconstruction of the North Alaska Highway (commonly referred to as the "Shakwak Project").

As I understand it, the Shakwak Project stems from a 1977 agreement between the U.S. and Canada relating to the transfer of the Alaska-Canada Highway to Canadian ownership and control after World War II. The Canadians were not maintaining the northern stretch of the road shortly after the war. The U.S. and Canada eventually agreed upon a protocol to upgrade the North Alaska Highway, and the Congress authorized the Shakwak Project. The agreement called for the U.S. to pay for the reconstruction of the North Alaska Highway, and for the Canadians to pay for the year-round maintenance of this stretch of road. The U.S. financial contribution for the Project is transferred to the Yukon Territorial Government, which oversees both the reconstruction and the maintenance of the North Alaska Highway.

173

For the last decade, the U.S. financial obligation to the Shakwak Project was funded at \$30 million annually through the Highway Bill. The Congress failed to renew the Shakwak funding mechanism in this year's Highway Bill. The Yukon Territorial Government maintains that it will need \$12-15 million per year for eight years in order to finish reconstruction between Destruction Bay and Beaver Creek.

Mr. Burgess informed me that there are roughly 600 Canadian residents living along the North Alaska Highway corridor between Haines Junction and the Alaska border to the northwest. The Yukon Territorial Government is currently allocating between 10-15 percent of its annual road maintenance budget for this stretch of road, solely in consideration of the Canadian obligation to the Shakwak Project. Should the United States renege on its obligations under the 1977 Agreement to pay for the reconstruction of the road, the Yukon Territorial Government will eventually discontinue the Shakwak Project and greatly reduce the amount of money budgeted for maintaining the North Alaska Highway.

Completion of the Shakwak project is potentially significant to the residents of Haines and the Haines Borough, as follows:

- If the Canadians determine that the U.S. has failed to fulfill its obligation under the 1977 Agreement, they may decide to shift maintenance money from the North Alaska Highway to the stretch of road between Dawson and Whitehorse. This will lead to the long-term deterioration of the road corridor between Haines, Haines Junction and the Alaska border. A bad road system will impact the ability to move cargo to and from Alaska via the road; will impact cargo movements to and from Haines; and will discourage tourism.
- Road maintenance may end up being a factor in the decision of the Wellgreen Mine and other potential operators on where to route supplies and ore. A fully reconstructed and well maintained North Alaska Highway may improve opportunities for the use of Pt. Lutak in the Yukon mining development. A deteriorating North Alaska Highway may, in contrast, result in the routing of supplies and ore down the central Yukon Territory highway between Dawson and Whitehorse. This would make Skagway a more attractive port alternative for new mineral development.

While supportive of the Shakwak Project, the Alaska Delegation has many competing demands statewide. Without community and stakeholder involvement, the Shakwak Project funding mechanism may be pushed aside as a second tier priority. I am recommending that the Haines Borough identify the Shakwak Project funding mechanism as a Federal Priority for the 113th Congress (2013 and 2014). The Congress intends to take up a multi-year reauthorization of the Highway Bill next year. The Haines Borough can help the State of Alaska establish the Shakwak Project as a federal priority.

The Shakwak Project: A Vital Strategic Link

WHAT IS THE SHAKWAK PROJECT?

The Shakwak Project is the result of an enduring international treaty that celebrates a rich history of partnership between the United States and Canada.

Under the 1977 treaty, the U.S. funds reconstruction of 325 miles of the Haines Road and the Alaska Highway within Canada. The Government of Yukon manages the reconstruction and maintains the highways for year round access.



WHY IS THE SHAKWAK IMPORTANT TO THE U.S.?

National Security – The Shakwak provides the only year round land - based link between the lower 48 states and the American Arctic; an immense region with significant military, economic and environmental importance.

Economic Development – This secure, established, transportation corridor is a key economic enabler for the entire region connecting marine ports in Alaska and Canada with domestic and international markets; moving commodities, goods, services, and people.

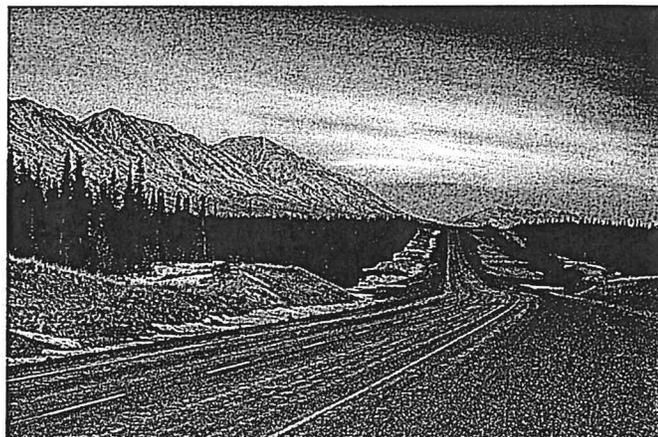
Energy Security – The corridor supports ongoing development of energy projects in the Arctic region critical to the establishment of secure domestic energy sources for the future.

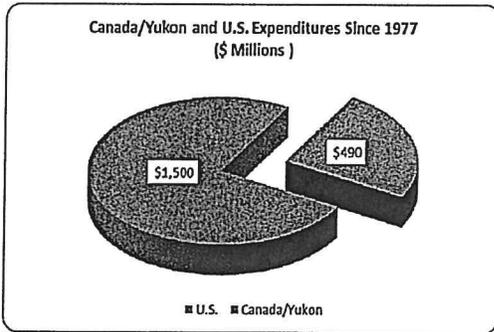
Tourism - The north and the Arctic hold incredible potential as a tourism destination. The Alaska Highway is already a recognizable brand within the tourism industry and the Shakwak provides a base to continue to grow this segment of the economy.

WHAT HAS BEEN ACCOMPLISHED SO FAR?

There has been significant progress made over the life of the Shakwak Project including:

- ✓ 325 Miles of reconstructed highway,
- ✓ 90 Miles of paving completed,
- ✓ 5 major bridges replaced,
- ✓ BST or Pavement over entire route,
- ✓ Internationally recognized Permafrost Research station established



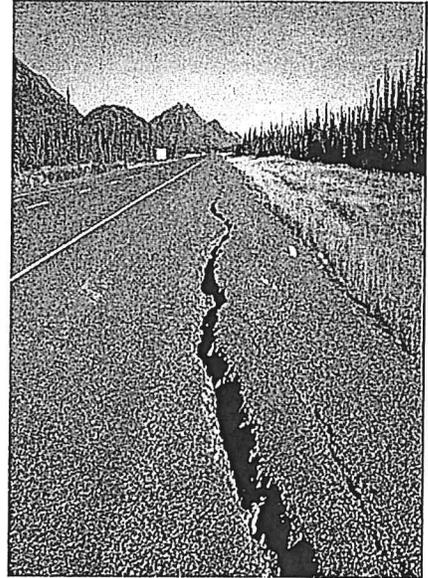


HOW MUCH HAS BEEN SPENT?

Although Shaktak funding has not been consistent over the life of the project, since 1977 approximately \$490 Million has been allocated towards capital improvements.

In the same period Canada and the Yukon have spent an additional \$1.5 Billion on improvements and maintenance of the

remaining portions of the Alaska Highway. Yukon has also made significant improvements to the Klondike Highway, another key link to the Alaskan panhandle. An estimated 80% of the traffic on the Haines Road and North Alaska Highway is travelling to or coming from the U.S.



WHAT IS LEFT TO DO?

Permafrost Rehabilitation - To meet the terms of the Shaktak Agreement it is necessary to first stabilize and rehabilitate areas most susceptible to permafrost melting between Destruction Bay and the Alaska/Yukon border (145 Miles). Estimated cost is \$70 Million and it is expected it will take at least seven years or longer to complete this work.

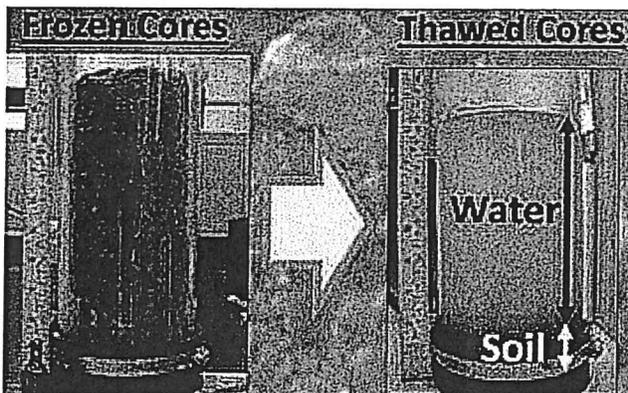
Paving – Paving from Haines Junction to Destruction Bay (67 Miles) could be done now with funding of approximately \$40 Million over five years. Paving the remainder of the route between Destruction Bay and Beaver Creek (145 Miles) can be completed to fulfill the terms of the agreement once permafrost rehabilitation is complete. This has an estimated cost of \$90 Million and could be done over eight years.

Annual Funding Requirements – Depending on the level of paving activity desired, annual funding allotments of \$12 - \$15 Million (2012 \$) are required to complete the project.

WHY IS PERMAFROST AN ISSUE?

Melting permafrost presents the most significant technical challenge to maintaining a safe and reliable highway connection.

Permafrost is ice rich soil that normally stays frozen year round. In a frozen state it provides a suitable base for a road however when it melts it causes severe distortions of the road surface as well as significant cracking along the road shoulders.



Permafrost melt creates significant safety issues for highway users and increases costs of all transported goods.

Yukon's highway maintenance costs are over 5 times higher in these permafrost areas than in areas immediately adjacent.

Shakwak Highway Project

United States / Canada International Agreement

Status Report



Prepared by:
Yukon Highways and Public Works

June 2011

Contents:

- Strategic Importance – Alaska’s Major Land Link to the Lower Forty Eight.
- What Remains to be Done.
- History of the Project and Place in U.S. Legislation.
- Consequences if Funding is Discontinued.
- Appendices:
 - The Terms of the Shakwak Agreement
 - Funding Summary
 - Maintenance Costs
 - Permafrost as Addressed in the Agreement

THE SHAKWAK PROJECT

United States / Canada International Agreement

Strategic Importance – Alaska’s Major Land Link to the Lower Forty Eight

The North Alaska Highway and Haines Highway form the only land connection between the National Highway System in the separated areas of Alaska. The Alaska Highway is the only year round land connection between the National Highway System in the Lower 48 and Alaska. Therefore these highways play a key strategic role in relation to US security, tourism and commercial transportation.

National Defense

- ⚡ The Alaska Highway is strategically important to the US as it is the only access by land between the Lower 48 States and the Pacific Command bases located in Alaska
- ⚡ 80% of all goods and commodities, including military materiel, are shipped to Alaska by sea through the Port of Anchorage. A long term disruption in the port operations in Anchorage would seriously disrupt DOD logistics. DOD relies on the Alaska Highway as an alternative route from the “lower 48”

Energy Security

- ⚡ The Alaska Highway is of critical importance to construction of the proposed Alaska Natural Gas Pipeline. Good highway access will have a large impact on construction logistics and costs. The Highway also plays an important role in re-supply for oil production on Alaska’s north slope.

Tourism

- ⚡ Tourism is important to Alaska’s economy and a large number of US citizens visit Alaska each year via the Alaska Highway. 80 to 85% of traffic on the North Alaska Highway is American. Visitors to Alaska need a safe well maintained highway in order to sustain the tourism industry

Trucking

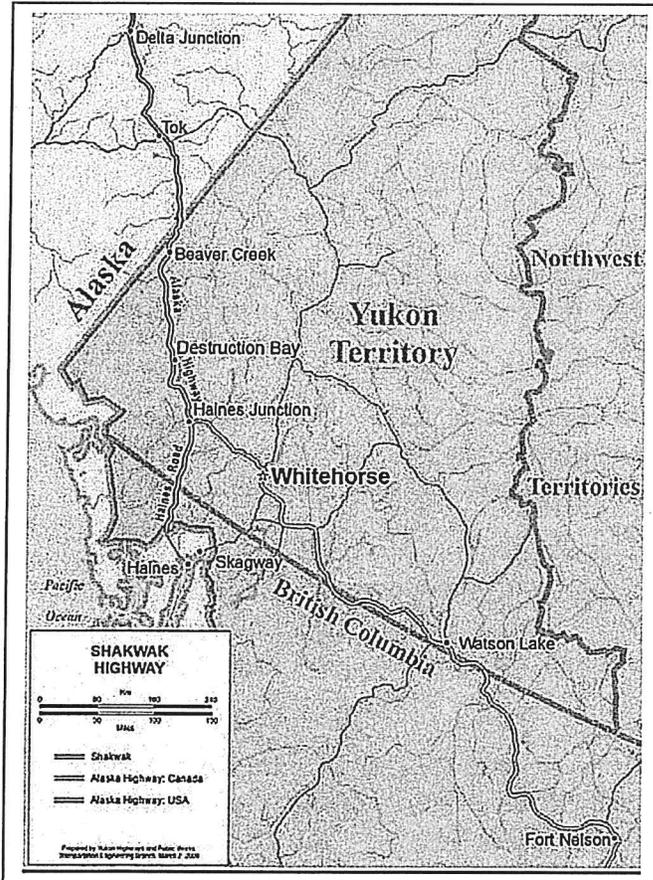
Lynden Transport of Seattle, WA comments:

- ⚡ Reconstructing the Haines Road and the North Alaska Highway is critical to truckers carrying goods between the lower forty-eight states and Alaska. Bringing that part of the road up to the same standard as the rest of the highway will enable truckers to complete deliveries on time, reduce energy costs and extend the life of vehicles.
- ⚡ These highways are instrumental to trade, tourism, jobs, access to medical care and all other necessities of life.

THE SHAKWAK PROJECT

United States / Canada International Agreement

What Remains to be Done



Haines Highway:

- ✚ Earthworks, Drainage structures, gravel base course and interim asphaltic surface treatment is 100% complete
- ✚ Asphalt concrete paving is 64% complete (includes work scheduled for 2011)
- ✚ 63 kms (39 miles) of asphalt concrete paving still to be completed at an estimated cost of \$33 million in 2011 dollars

North Alaska Highway

- ✚ Earthworks, Drainage structures, gravel base course and interim asphaltic surface treatment is 100% complete.
- ✚ Replacement of major bridges in 100% complete
- ✚ Asphalt concrete paving is 2% complete
- ✚ 100 kms (62 miles) of asphalt concrete pavement still to be completed on stable section of highway at an estimated cost of \$53 million in 2011 dollars
- ✚ Repeated restoration of 218 kms (136 miles) of highway is necessary for the foreseeable future in areas of thaw unstable permafrost until the subgrade has reached equilibrium and distortions have stabilized. This is estimated to cost \$70 million in 2011 dollars over the next 15 to 20 years.
- ✚ One small bridge remains to be upgraded at an estimated cost of \$3 million in 2011 dollars
- ✚ Future paving of 218 kms (136 miles) when the permafrost is sufficiently stabilized. The estimated cost in 2011 dollars is \$115 million.

THE SHAKWAK PROJECT

United States / Canada International Agreement

History of Project and Place in US Legislation

- ✚ The Alaska Highway and Haines Road, collectively known as the Northwest Highway System, were constructed by the United States army and civilian contractors hired by the United States government during World War 2 for defense against a Japanese invasion of Alaska.
- ✚ In 1945, following the war, the Northwest Highway System was transferred to Canada.
- ✚ After the transfer Canada focused its maintenance and upgrading efforts on the portion of the Alaska Highway south of Whitehorse, Yukon's capital, since few Canadian residents lived north of the city.
- ✚ The northern section of the Alaska Highway and the Haines Road fell into disrepair and in 1955, since these highways were still important to the United States and Alaska, discussions between Canada and the USA commenced on upgrading the northern sections.
- ✚ In 1973 Public Law 93-87 established a program to upgrade the northern section of the Alaska Highway and the Haines Road in Canada under title 23 United States Code, Sec. 218. The program was subject to the negotiation of a suitable agreement with Canada.
- ✚ In 1977 the Shakwak Agreement was signed by the Canadian and United States governments. The Agreement set out the terms and conditions under which upgrading of 325 miles of highway would proceed.
- ✚ The goal of the Shakwak Program was and continues to be the reconstruction of the North Alaska Highway and the Haines Road to a modern, all-weather 2 lane paved highway to be funded by the United States with year round maintenance of the reconstructed highway to be funded by Canada.
- ✚ Program funds have been authorized in surface transportation legislation since 1973, the most recent being in Public Law 109-59 (SAFETEA-LU). The funding has been continued in various extensions since SAFETEA-LU expired on Sept 30, 2009.

THE SHAKWAK PROJECT

United States / Canada International Agreement

Consequences if Funding is discontinued – Unsustainable Maintenance Costs

- ✚ Under the Shakwak Agreement, Canada has agreed to maintain the highways after construction while the Agreement remains in force and effect. In 1992 Canada devolved the maintenance responsibility for the Alaska Highway and Haines Highway to the Government of Yukon. Yukon agreed to comply with the terms and conditions of the Shakwak Agreement in the performance of its Operation & Maintenance responsibilities.
- ✚ If Shakwak funding is discontinued prior to the highway reconstruction being completed as per the terms and conditions of the Agreement, Yukon will be burdened with additional costs. These costs relate to maintenance and rehabilitation of the thin asphaltic surface on areas where the asphalt concrete paving is incomplete, and to restoration of the highway surface in areas of thaw unstable permafrost where the subgrade has not reached equilibrium.
- ✚ The greatest cost impact will be in relation to the unstable permafrost areas. Currently Yukon's summer maintenance costs in these areas are typically 5 to 6 times as much as in non-permafrost areas. This represents a premium for maintenance of \$2.2 million / year ⁽¹⁾ for the 218 kms of the North Alaska Highway located on thaw unstable permafrost. This premium is in addition to the Shakwak funded surface restoration in these areas which requires an estimated expenditure of \$4.6 ⁽²⁾ million / year
- ✚ Should the Shakwak funding for surface restoration be discontinued Yukon's maintenance costs would increase by \$4.6 million per year effectively increasing current expenditures by 200% for the next 15 to 20 years or until the highway subgrade reaches a stable equilibrium.
- ✚ Such increased costs would likely be unsustainable for Yukon and as a result severe deterioration of the northern areas of the Alaska Highway would be inevitable.



Severe highway surface distress caused by differential settlement and cracking of the highway embankment

(1) Average summer maintenance costs over the past 5 years for the Beaver Creek section (permafrost) are \$12,266/km compared to \$2,293/km for the Haines Junction section (no permafrost). Maintenance premium due to thaw unstable permafrost is $[(12,266 - 2,293) \times 218 = \$2,174,288 / \text{year}]$

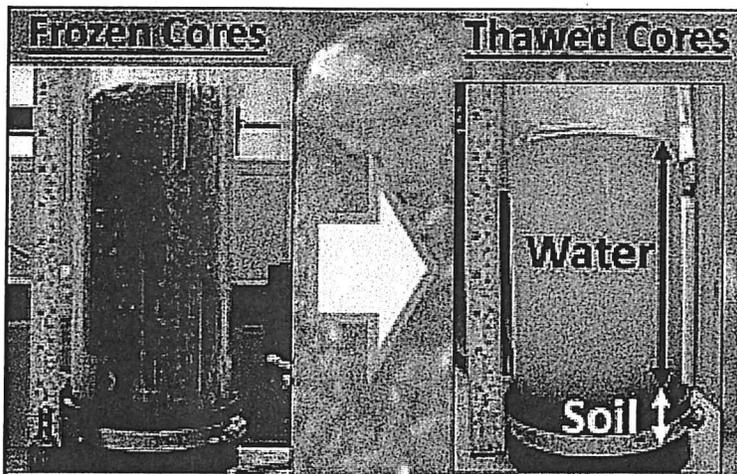
(2) This estimate is based on a lifespan of 4 years for 50% of the 218 kms from Destruction Bay to the Canada/ US border at a surface restoration cost of \$170 k / km. $[(218 / 2) \div 4 \times \$170,000 = \$4,632,500]$ per year

THE SHAKWAK PROJECT

United States / Canada International Agreement

Consequences (cont'd) – Highway Unreliable due to Permafrost Degradation

- ✦ Thaw unstable permafrost is a major problem along the North Alaska Highway particularly the 218 kms (136 miles) from Destruction Bay to the Canada / US border. Thawing of the warm ice-rich permafrost results in large settlements of the highway embankment causing severe surface distress. The current global warming trend exacerbates the problem.
- ✦ If the United States discontinues funding for the Shakwak Project before the requirements of the agreement are complete, the sections of the highway affected by thaw unstable permafrost will deteriorate rapidly.
- ✦ Unfortunately there is currently no proven cost effective technology for constructing a stable highway in this type of terrain. As a result, frequent restoration of the road surface is required in order to maintain a highway that is acceptable to users.
- ✦ As part of the effort to find adaptive measures to mitigate the effects of thawing permafrost, Yukon is coordinating a cooperative research program at a highway test section near Beaver Creek, Yukon. Several heat extraction techniques are being evaluated to determine their usefulness in stabilizing the highway embankment foundation. Some potential applications are emerging that may slow the permafrost degradation and improve safety for road users.
- ✦ Permafrost problems pose the greatest threat to the reliability of the North Alaska Highway and dealing with those problems is the most critical issue remaining on the Shakwak Project.



Ice rich permafrost is very strong in its frozen state and makes for a good highway foundation. However when it thaws the ice becomes water and the soil completely loses its ability to support the weight of the highway embankment

THE SHAKWAK PROJECT
United States / Canada International Agreement

Appendix 1 - The Terms of the Shakwak Agreement

The key terms of the Shakwak Agreement between the United States and Canada to implement the purpose of section 218, title 23, United States Code are for:

- ✚ Canada to reconstruct the North Alaska Highway and the Haines Highway to standards agreed in writing prior to commencement of reconstruction.
- ✚ The United States to pay to Canada the cost of reconstruction out of funds appropriated for that purpose by the US Congress.
- ✚ Canada to provide necessary right of way for the reconstruction for a period of 25 years from the agreement coming into force and thereafter until 5 years after either party shall have notified the other that the right of way is no longer required for the purpose of the highways - whereupon the agreement shall cease to have force and effect.
- ✚ Canada not to impose, or permit any highway toll to be charged for the use of the highways by vehicles or persons.
- ✚ Canada not to levy or assess, directly or indirectly, any fee, tax, or other charge for the use of the highways by vehicles or persons from the United States that does not equally apply to vehicles or persons of Canada.
- ✚ Canada to grant reciprocal agreement of vehicle registrations and drivers' licenses in accordance with agreements between responsible authorities in each country.
- ✚ Canada to maintain the highways after construction while the Agreement remains in force and effect.
- ✚ Canada to provide access to natural construction materials such as gravel, rock and earth fill to be used for the reconstruction.
- ✚ Canada to arrange for the reconstruction to be performed under contracts awarded by competitive bidding insofar as possible and without regard as to whether the contractors are American or Canadian.
- ✚ Canada to supervise the reconstruction and obtain the concurrence of the United States related to programming and administering the work.

THE SHAKWAK PROJECT
United States / Canada International Agreement

Appendix 2 - Funding Summary

Funding for the reconstruction has been appropriated by the United States as follows:

Legislation	Authorization (\$ millions)	Appropriation (\$ millions)	Source
P.L. 93-87 (Federal Aid Highway Act of 1973)	58.7	36.7	General Funds
P.L. 97-424 (Surface Transportation Assistance Act of 1982)	38.1	38.1	Transfer from apportionments to State of Alaska for various programs
P.L. 102-240 (Intermodal Surface Transportation Efficiency Act of 1991)	89.6	89.6	Interstate Construction funds
P.L. 105-178 (Transportation Equity Act for the 21 st Century)	94	84.9	National Highway System funds
P.L. 108-88; 108-202; 108-224; 108-263; 108-280; 108-310; 109-14; 109-20; 109-35; 109-37; 109-40; 109-42; (Surface Transportation Extension Acts of 2003, 2004 and 2005)	18.8	17.7	National Highway System Funds
P. L. 109-59 (SAFETEA-LU)	150	134.9	National Highway System funds
Surface Transportation Extensions for FY10 and FY11	60	56.1	National Highway System funds
TOTAL	522.2	458	

THE SHAKWAK PROJECT
United States / Canada International Agreement

Appendix 3 - Maintenance Costs

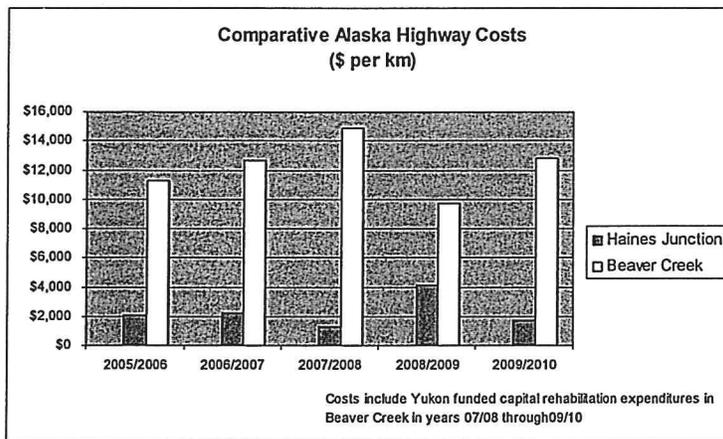
- ✚ An analysis of Alaska Highway costs was completed early in 2011 with the objective of quantifying the maintenance and surface restoration costs in areas of thaw unstable permafrost.
- ✚ The analysis compared Alaska Highway summer maintenance costs for the Beaver Creek highway maintenance section which is entirely located in thaw unstable permafrost with the Haines Junction highway maintenance section which is not affected by permafrost. The Yukon government's cost / km based on the analysis is shown below.

Haines Junction

	Maintenance	Resurfacing	Capital	Total
2005/2006	\$2,022	\$78	0	\$2,100
2006/2007	\$1,419	\$803	0	\$2,222
2007/2008	\$1,265	\$32	0	\$1,297
2008/2009	\$2,540	\$1,579	0	\$4,119
2009/2010	\$1,731	\$0	0	\$1,731

Beaver Creek

	Maintenance	Resurfacing	Capital	Total
2005/2006	\$3,415	\$7,839	\$0	\$11,254
2006/2007	\$3,374	\$9,253	\$0	\$12,627
2007/2008	\$2,706	\$9,364	\$2,838	\$14,907
2008/2009	\$4,389	\$4,587	\$733	\$9,709
2009/2010	\$4,009	\$6,513	\$2,316	\$12,837



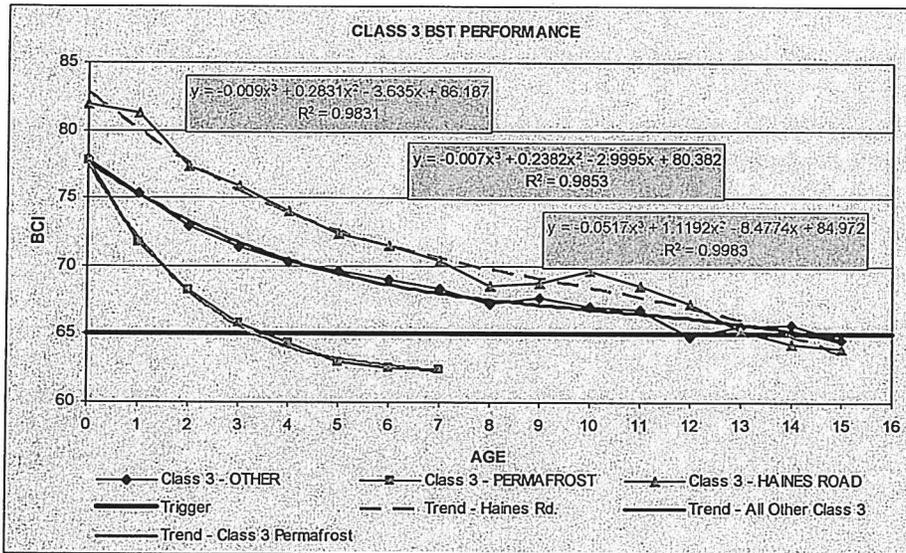
Yukon Government expenditures per kilometer on summer maintenance activities related to the surface condition of the highway are 5 to 6 times more for the Beaver Creek section compared to the Haines Junction section due to the highway being mostly constructed over thaw unstable permafrost.

THE SHAKWAK PROJECT

United States / Canada International Agreement

Appendix 3 - Maintenance Costs (cont'd)

- Further analysis examined the life span of the highway surface in areas of the north Alaska Highway constructed on thaw unstable permafrost in comparison with highway surface performance where permafrost is not present.



- The analysis shows that the highway surface deteriorates much more rapidly where thaw unstable permafrost is present as represented by the green line in the graph. Comparing this to the blue line which represents the performance of the same surface structure, but not affected by permafrost, it is easily seen that surface restoration is required much more frequently when permafrost is present – every 3 to 4 years, compared to every 12 to 14 years when permafrost is absent.
- Typical surface restoration in permafrost affected areas of the Alaska Highway costs \$170,000 / km. This cost is incurred every 4 years until the highway sub-grade reaches a stable equilibrium.

THE SHAKWAK PROJECT

United States / Canada International Agreement

Appendix 4 – Permafrost as Addressed in the Agreement

- ✚ The Shakwak Project Procedures Manual agreed to by the United States and Canada establishes the standards to which the reconstruction is to be completed. Both governments recognized from the outset of the project that it would be necessary to address highway surface failures related to thaw unstable permafrost and a procedure was agreed regarding how this problem would be addressed
- ✚ Both governments agreed that repeated application of a thin asphaltic surface treatment would be required until the highway subgrade had reached equilibrium and the distortions had stabilized.

DEPARTMENT OF PUBLIC WORKS OF CANADA PACIFIC/WESTERN REGION		Page 4 of 4							
		Procedure Number E-3							
SHAKWAK HIGHWAY PROJECT	PROCEDURES	Issue Date 1993-02-10	Rev. No. 1						
TITLE DESIGN CRITERIA		Approved By							
<p>4. <u>ROAD STRUCTURE (CONT'D)</u></p>	<p>.3 Minimum Thickness of Structural Elements</p> <table style="width: 100%; border: none;"> <tr> <td style="padding-right: 20px;">Asphaltic Concrete</td> <td>80 mm</td> </tr> <tr> <td>Granular Base Course</td> <td>160 mm</td> </tr> <tr> <td>Granular Subbase</td> <td>Variable</td> </tr> </table> <p>Additional course(s) of approximately 80 mm of asphaltic pavement will be placed as required based on rebound values established in the two years following initial surfacing or where deformation or distress has occurred.</p> <p>Shoulders shall be surfaced with asphaltic concrete to provide lateral stability to the traffic lanes and to improve safety and drainage.</p> <p>In permafrost areas, the highway, although the asphaltic concrete may have been laid, shall not be considered complete until the highway structure has reached a stable condition, i.e. maintains a Present Serviceability rating of 8.0 on a scale of 10 for a period of one year after placement of the latest surface layer. In areas of known thaw unstable conditions a thin flexible asphaltic surface treatment may be used, with repeated applications as required, until the subgrade has reached equilibrium and the distortions have stabilized. The final surface will not be placed until equilibrium has been achieved either through thaw and subsequent natural consolidation or through the use of artificial insulation.</p> <p>Similarly in areas where unusual subsoil conditions contribute to long term settlement or distortion, the highway shall not be considered to be complete until a PSR of 8.0 is achieved for a minimum period of one year.</p>	Asphaltic Concrete	80 mm	Granular Base Course	160 mm	Granular Subbase	Variable	<p>5. <u>BRIDGE DESIGN</u> See Procedure E-6.</p> <p>6. <u>HYDROLOGY AND HYDRAULICS</u> See Procedure E-4.</p> <p>7. <u>CULVERTS</u> See Procedure E-4.</p>	
Asphaltic Concrete	80 mm								
Granular Base Course	160 mm								
Granular Subbase	Variable								

EMBASSY OF THE
UNITED STATES OF AMERICA

No. 11

Ottawa, January 11, 1977.

Sir:

I have the honor to refer to the discussions between representatives of our two governments regarding bilateral cooperation in the reconstruction of Canadian portions of the Alaska Highway.

As a result of these discussions, I now have the honor to propose that the conditions set forth in the attached annex, which accord with the understandings reached between the representatives of our two governments, should govern such reconstruction. These conditions shall not affect continuing obligations of the two governments regarding the status and use of the Alaska Highway, including the agreements effected by exchanges of notes dated March 17 and 18, 1942; November 28 and December 7, 1942; and April 10, 1943.

If these conditions are acceptable to your government, I propose that this note, together with its annex, and your reply indicating such concurrence, shall constitute an agreement between our two governments, which shall enter into force on the date of your reply. Accept, Sir, the renewed assurances of my highest consideration.

The Honorable

Donald Jamieson,

Secretary of State

for External Affairs,

Ottawa.


01/12

ANNEX

Agreed conditions regarding a program of cooperation between the Government of the United States represented by the Federal Highway Administrator, Department of Transportation, and the Government of Canada, represented by the Minister of Public Works, to improve certain highways in Canada to facilitate transportation between and within their respective countries, and to implement the purposes of section 218 of Title 23, United States Code. These shall apply only to the program authorized by that section.

The Government of the United States and the Government of Canada agree as follows:

Article I

For purposes of this Agreement:

1. "Highways" means that portion of the Alaska Highway from the Yukon-Alaska border to Haines Junction in Canada and the Haines Cutoff Highway from Haines Junction in Canada to the British Columbia-Alaska border.
2. "Reconstruction" means the supervising, inspecting, actual rebuilding, paving, and all other work incidental to the reconstruction of the highways (except for providing right-of-way), including but not limited to planning studies, environmental studies, locating, surveying, plan and specification preparation, contracting, financial control, traffic control devices, and those utility relocations which are the responsibility of the Canadian Government.
3. "Maintain such highways" means to perform such work on a year round basis as shall be necessary to keep the completed highway and related facilities in a state of repair and use equivalent to the standards to which they are reconstructed under this Agreement.

Article II

1. The United States and Canada agree to the reconstruction of such Highways in accordance with standards agreed to by them jointly in writing prior to commencement of reconstruction.

2. The United States will pay to Canada the cost of reconstruction out of funds appropriated for that purpose by the Congress of the United States and will

(a) Inform Canada of the amount of funds appropriated from time to time therefor in order that Canada may schedule and perform the reconstruction or such part thereof as may from time to time be paid for out of such appropriated funds,

(b) Provide liaison with Canadian officials responsible for the program to meet and discuss planning, programming and scheduling of reconstruction, and

(c) Process an Environmental Impact Statement in accordance with the laws of the United States and of Canada.

3. Canada will

(a) Provide, without participation of the United States funds appropriated for the reconstruction, all necessary right-of-way for the reconstruction of such highways for a period of 25 years from the date of entry into force of this agreement and thereafter until five years (or such shorter period as the parties may agree upon) after either party shall have notified the other that the right-of-way is no longer required for its purposes for the said highways, whereupon this Agreement shall cease to have force or effect,

(b) Not impose any highway toll, or permit any such toll to be charged for the use of such highways by vehicles or persons,

(c) Not levy or assess, directly or indirectly, any fee, tax, or other charge for the use of such highways by vehicles or persons from the United States that does not apply equally to vehicles or persons of Canada,

(d) Continue to grant reciprocal recognition of vehicle registrations and drivers' licenses in accordance with agreements between responsible authorities in each country,

(e) Maintain such highways after reconstruction while this Agreement remains in force and effect,

(f) Permit those performing the reconstruction to obtain natural construction materials, such as gravel, rock and earth fill, without cost to be used in the reconstruction, provided that the materials required shall be obtained in accordance with the directions and regulations of the appropriate Department of the Government of Canada,

(g) Perform all reconstruction engineering, including preparation of Environmental Assessments and Statements, all necessary surveys, and preparation of reconstruction plans, specifications and estimates,

(h) Commence the reconstruction only after receiving advice from the United States that the Environmental Impact Statement has been satisfactorily processed in accordance with the laws of the United States,

(i) Arrange for the reconstruction to be performed under contracts awarded by competitive bidding insofar as possible and without regard as to whether the contractors are American or Canadian,

(j) Supervise the reconstruction,

(k) Obtain interim and final concurrence of the United States in the following:

- (1) Programming and scheduling of work.
- (2) Scope, terms of reference and provisions of the Environmental Assessment and Statement.
- (3) Alignment of the highways.
- (4) Contract plans, specifications and estimates.
- (5) Award of contracts.
- (6) Acceptance of projects for final payment.

(1) Permit the reasonable access of authorized representatives of the United States to the site of reconstruction and will make available the accounts and records relating to the reconstruction contracts, at all reasonable times, for purposes of inspection, verification and general monitoring of the reconstruction.

4. (1) The United States and Canada will jointly consider the settlement of claims by contractors or other persons arising out of reconstruction contracts and the reconstruction or either of them, and if any such claim cannot be resolved by agreement, the same shall be determined by the Federal Court of Canada in an action by or against Her Majesty the Queen in right of Canada,

(2) All legal costs, and other monies, paid out by Canada to settle any such claim whether pursuant to a final judgment of the Federal Court of Canada, or otherwise, shall be one of the costs of reconstruction for the purposes of this Agreement.

(3) The United States shall not be liable for the payment of such claims or judgments to the extent that they are held by the Federal Court of Canada to be the result of negligence on the part of Canada or its employees during the administration of the reconstruction.

5. The United States and Canada jointly will develop operating procedures consistent with this Agreement, including procedures for resolving disputes between the parties.

Article III

This Agreement shall not be construed so as to vest in the United States any proprietary interest in the highways, and upon completion of the project, or any part thereof, the highways shall remain, in all respects, an integral part of the Canadian Highway System.

DIST:

GWU/P. A. Lortie/2-1120/so

MIN-2
PDM
PARL. SEC.
FAI
FPR
PAG
FCO
ECT
/ FLA

FILE DIARY DIV. CIRC.

Note No. GWU-156

Excellency,

I have the honour to refer to your Note No. 11 of January 11, 1977, concerning bilateral cooperation in the reconstruction of Canadian portions of the Alaska Highway.

I am pleased to inform you that the Government of Canada accepts the proposals set out in your Note and agrees that your Note, together with its Annex, and this reply, which is authentic in English and French, shall constitute an agreement between our two Governments which shall enter into force on today's date.

Accept, Excellency, the renewed assurances of my highest consideration.

Secretary of State
for External Affairs

His Excellency Thomas O. Enders,
Ambassador of the United States of America,
Ottawa.

DIST:

GWU/P.A. Lortie/2-1120/so

MIN-2
PDM
PARL. SEC.
FAI
FPR
PAG
FCO
ECT
FLA

FILE DIARY DIV. CIRC.

Le 11 février 1977

Note n° GWU-156

Excellence,

J'ai l'honneur de faire référence à votre Note n° 11 du 11 janvier 1977 au sujet de la collaboration de nos deux pays à la reconstruction de certains tronçons canadiens de la route de l'Alaska.

J'ai le plaisir de vous informer que les propositions énoncées dans votre Note agréent au Gouvernement du Canada et que ce dernier accepte que votre Note, ainsi que son annexe, et la présente réponse, dont les versions anglaise et française font également foi, constituent entre nos deux gouvernements un Accord qui entre en vigueur à la date de la présente réponse.

Veuillez agréer, Excellence, les assurances renouvelées de ma très haute considération.

**Le Secrétaire d'Etat aux
Affaires extérieures,**

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
Don C. Jamieson

Son Excellence Thomas O. Enders
Ambassadeur des Etats-Unis d'Amérique
Ottawa.