

Subject: McCarthy Road

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Organization: Alaska DOT&PF

To: doug_gardner@law.state.ak.us

Doug, thanks for sending up the McCarthy road opinions. I decided to get this e-mail off to you as I have been out of the office a lot during September and expect to be gone a lot during October. I hope things will cool off a bit then. My objective was to read through the opinions and then go back over my historical documents to clarify in my own mind whether I thought there were any other arguments worth pursuing.

Accepting the IBLA decision for the rest of the McCarthy road has some serious implications for us. On the Chitina end it may put us into a inverse condemnation situation for a recently constructed project unless we make a prescriptive easement case based on our 20+ year old ROW plans. Our ongoing McCarthy Road location study involves an upgrade of the road through a lot of National Park Service land. As a federal agency, they are obligated to buy into the Billum IBLA decision. That limitation would mean that the ROW would have to be expanded through the park lands requiring we go through the NEPA 4(f) process which in turn will require a full blown EIS and probably add several years to the project. On the other hand, as NPS is a participating partner in developing this road project, if we could convince them that Billum was an anomaly and the correct answer should have been for a 200' wide ROW, we would be back on track.

I have also recently recieved correspondence from an Anchorage law firm representing an unnamed client who have requested under freedom of information, all of the information we have regarding ROW issues on the Chitina/Mccarthy road. They stated that the request does not involve any litigation with the State but we suspect they represent a property owner in McCarthy who has contested the ROW in the past. We passed that request on to our Fairbanks AG staff because I got the impression that the litigation would start shortly after we gave them everything in our files.

Anyway, this issue isn't going away and now it appears that I'm the bottleneck for the time being. I'll get back with you as soon as I can clear a few more things off my desk. thanks, JohnB