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July 15 1995

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Dan Baum
DOT
Environmental services

Northern Region DOT # 16

Hello Dan,

Our development work at the end of the McCarthy road is going to enter a new stage as soon as the bridge design is finalized and we hope to have the NPS and DOT involved in order to avoid the confusion existing there now. I have been in touch with John Jarvis vis a vis the visitor facilities needed and there is cautious optimism this can be developed privately, alleviating the need for a federal or state presence on the private land surrounding the end of the road. Visitation is down this year and that has cooled some of the rhetoric from the residents and highlighted the need for greater customer assistance by the business community. I have expanded the tramstation to meet this need temporarily and I want to emphasize this has not been done to flaunt property right or wave a red flag in front of your office. The question of the final location of the tramstation depends very much on the redesign of the intersection surrounding the bridge. I hope you have received my video which illuminates the shortcomings of the current situation. We currently are gaining a much wider acceptance of the need for development by the area residents and have received guarded cooperation from most.

This is therefor an auspicious time to approach the state need for right of way and Syren need for privacy a little more rationally. After studying the title deed it is clear the state is entitled to whatever right of way was extant at statehood for this road. Regardless of my opinion it seems the court agrees with the Ahtna tribe that that is 100 ft wide on this road. Dowl engineers has confirmed their plat information was derived from the DOT in 1977 and since that information has been shown to be flawed the plat itself will have to be redrawn. I received a letter, a copy of which I enclose, from one of the original signers of the plat in which he makes very plain they weren't trying to give away any extra acreage at that time. We will ask the state to justify, and buy, any land used beyond a one hundred foot width for these reasons.

At the time of the delivery of the june 1 letter asking me to vacate my building site George Levvaseur made a parting comment that the state has no desire to operate a parking or camping facility in competition with local private efforts. If this is true then I would point out that not enforcing the removal of parked cars and other non mobil items stored on the right of way by local residents constitutes a defacto violation of that policy. I have noticed there are no other places on state roads where this many illegally parked and stored cars is allowed. We currently have 27 to deal with.

I called the trooper office once in July to ask them to contact a business owner who had parked in our truck driveway and was treated to a lecture about my "illegal" building. He spoke in ignorance but if you could send the Glennallen detachment a letter saying I am not a criminal and that I truly wish to resolve this issue to the benefit of all I would greatly appreciate it. I apologize for the time and inconvenience this may cause you and I hope you will visit us so I can give you some free parking near the tram in compensation. That should not be interpreted as a bribe however and you can of course park for free in the right of way!

I look forward to future discussions with your office and I hope the summer is treating you well as it is us.

Respectfully,

Rory Elliott

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July 10, 1995

DOT

Dear Sir/MS:

In the 1960's I purchased land near McCarthy and then had it subdivided. When this was done I was led to believe the state right of way would be 200 feet. Since that time the legal right of way has been limited by the courts along the Chitna - Kennicott road to 100' feet.

I had no intension of giving to the state any more right of way than what they have been given legal right to.

As the original purchaser I request that the state right of way on my property (and any parcels I have sold) be limited to 100 feet.

Respectfully,
Alvin M. Syren

Alvin M. Syren

August 4, 1995 - jfb

Re: Randy Elliot's Letter of July 15, 1995
West McCarthy Subdivision

Elliot claims that as DOWL prepared the plat for West McCarthy Subdivision based upon erroneous information with regard to the width of the McCarthy road right of way, that any claim beyond 100 feet in total width would be invalid.

Response: Documents in DOT&PF files clearly indicates that an assertion made to DOWL with regard to the ROW width was in good faith. The DOT&PF basis for claiming a 200 foot wide right of way was that the original railroad right of way was merely transferred to the State by virtue of the "Omnibus Act" quitclaim deed via a relinquishment from the Copper River and Northwestern Railroad to the federal government. The original railroad ROW was 100 feet on each side of centerline and the consensus was that it was transferred to the State intact.

The subdividers of McCarthy West subdivision, Alvin and Lester Syren purchased the land from DNR in the early 1960's. The DNR patent made no reference to a right of way, but as the it preceded the subdivider's patent, the land became subject to any existing rights.

The McCarthy West subdivision was prepared by Dickinson-Oswald-Walch-Lee (DOWL) in 1976. It was recorded as plat 77-7 on 4/18/77 in the Chitina Recording District. Based upon information from DOT&PF, the McCarthy road is depicted on the plat as having a right of way of 200 feet. The plat also has a certificate of Ownership and Dedication which in part states "We hereby dedicate to the public, all easements, streets, thoroughfares, parks and other public spaces as shown hereon." There is no note or indication that the McCarthy road was not part of that dedication.

In 1989, BLM issued a decision regarding a native allotment that straddled the McCarthy road. The decision stated that the allotment was only subject to a "local" road easement of 50 feet on each side of centerline. DOT&PF Northern Region through the AGO filed an appeal to that decision claiming the right of way to be 200 and possibly 300 feet in width. On August 25, 1993, the IBLA issued a decision (IBLA 89-614) essentially stating that the railroad right of way did not transfer to the state and the McCarthy road right of way was based upon Public Land Order No. 601. As the McCarthy road was considered an unnamed "local" road, it could only be subject to the 100 foot (total) width. The initial Northern Region reaction was that the IBLA presented a reasonable argument and that we would be unlikely to win an appeal. Therefore, the appeal with regard to the allotment was dropped. With regard to the rest of the McCarthy road, DOT&PF management elected to obtain a formal Attorney General's Opinion as to the McCarthy road right of way. This opinion was requested on May 16, 1995. Until the opinion is received, DOT&PF does not intend to take any action which would reduce the width of the right of way within the McCarthy West subdivision.

The McCarthy West subdivision was developed in what was then and is now a part of the Unorganized Borough. If the subdivision had been in an organized borough, the dedication would have been formally accepted during the platting process completing what is known as a

"statutory dedication". In the absence of a an official entity that can accept dedications on behalf of the public, a "common law" dedication can be made. In this case the offer of the dedication was made by the subdivider's Certificate of Ownership and Dedication and the acceptance was accomplished by public use and maintenance. AS 40.15.070 states that the Department of Natural Resources is the platting authority outside of the organized boroughs for the change or vacation of existing plats. Therefore, a suggestion that the ROW shown on the McCarthy West subdivision plat can be reduced unilaterally by the adjoining owner is incorrect. At a minimum, even if the ROW was less than 200 feet in width prior to the subdivision, an action through DNR would be required to vacate the ROW. If our 200 foot wide ROW is valid, a reduction of the width would require both a DNR vacation and a DOT&PF Commissioner's Deed of Vacation.