

**DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES**

*NORTHERN REGION, RIGHT OF WAY*

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March 1, 1995

Re: McCarthy Road Right of Way

Walter M. Wood  
P.O. Box 868  
Valdez, AK 99686

Dear Mr. Wood:

My apologies for the length of time it has taken me to respond to your phone call regarding the status of the McCarthy road right of way near your property at 27 mile.

Part of the reason for the delay was due to my absence from the office for two weeks. However, the primary reason for the delay was that I was hoping to provide you with a conclusive answer as to the width of the right of way as opposed to our best guess this month.

There have been conflicting court rulings and administrative determinations whereby the width of the right of way could be a total of 100', 200' or 300'. One opinion states that the McCarthy road is an extension of the Copper River Highway. A 1992 Superior Court judgement declared the Copper River Highway right of way to be 300 feet wide by virtue of a Public Land Order. I personally do not believe that this applies to the McCarthy road.

Another opinion suggests that the original 200 foot wide Copper River Railroad right of way was conveyed intact to the State of Alaska in 1959. This concept was disputed by the Interior Board of Land Appeals in 1993 which stated that the original railroad right of way was eliminated by virtue of "merger of title" when it was relinquished from the railroad to the federal government. They further stated that the McCarthy road right of way exists by virtue of a Public Land Order "local" road easement which was limited to 100 feet in width.

Due to this confusion, we have requested the Department of Law to review the facts and provide us with one answer. Unfortunately, a request such as this can take months and may actually not be issued this year.

The two scenarios you have with your subdivision involves platting a right of way which is 100 feet or 50 feet on each side of centerline. If you proceed with the 200' definition, you might be withholding more than is necessary. If you use the 100' definition, you may find your subdivision in conflict with the pending Attorney General's opinion.

As you had expressed a desire to meet the State's right of way needs, I would recommend that

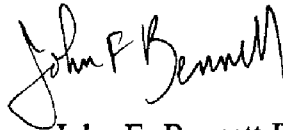
you plat 100 feet on each side of centerline for the McCarthy road. Although I have never been out there, my discussions with George Levasseur indicate that a 50 foot right of way will make it much more difficult to adequately maintain much of the McCarthy road.

You may wish to keep in touch with George over the next several months as to the outcome of the Attorney General's opinion.

Aside from the right of way issue, you had also asked whether we would consider purchasing materials from you for upcoming projects and if we could construct a turnout near your property. Currently we are working on the McCarthy road location study which will result in recommendation for future construction projects and a project to repair the slide damage a milepost 44 - 47 (Long Lake). Materials for the Long Lake project or any others which may result from the location study will likely be contractor furnished rather than State furnished. Therefore, at the time a project is advertised, I would advise you to contact prospective bidders who may be interested in negotiating a sale for materials. Should the location study result in a construction project along a section adjoining your land, you will be able at that time to discuss the possibilities of a turnout with the design project manager.

I'm sorry that I could not provide you with more concrete answers to your questions, however I recommend that you stay in touch with George or our office so that we can keep you up to date.

Sincerely,



John F. Bennett PLS, SR/WA  
Right of Way Engineer  
Northern Region

cc: George Levasseur, Southcentral District, M&O Manager