

# MEMORANDUM

State of Alaska 61

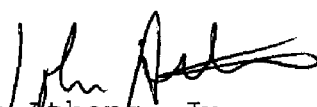
Department of Law

TO: John Miller, P.E.  
Chief, Right-of-Way  
DOT/PF, Northern Region

DATE: October 7, 1993

FILE NO: 225-90-0014

TEL. NO.: 451-2811

FROM:   
E. John Athens, Jr.  
Assistant Attorney General

SUBJECT: Native Allotment AA-2520  
IBLA No. 88-614  
John Billum

CONFIDENTIAL - ATTORNEY/CLIENT COMMUNICATION

John Bennett asked me if I would comment on the implication of the recent Billum decision of the IBLA with regard to the right-of-way for the Chitina/McCarthy Road as a whole. Although the Billum decision pertains specifically to the right-of-way which crosses the Billum allotment claim, the rationale for the decision appears to be applicable to the rest of the right-of-way. What this means is that if the state were to assert a 200 foot wide right-of-way on the Chitina/McCarthy Road at a location other than the Billum allotment, the landowner could assert a trespass or inverse claim based on the rationale of the Billum decision. It is my opinion that despite the opposing arguments of the state, the Billum rationale would be followed in another adjudication, and the state would be limited to a 100 foot wide right-of-way.<sup>1</sup> I have carefully reviewed the Billum decision, and I believe that reversal of it by a court is unlikely were the state to seek judicial review of the decision.

I suggest that before DOT/PF takes any action to officially accept the right-of-way width as 100 feet for the entire length of the road, that an analysis be done to determine if there are other documents which would affect the title on other parts of the road. See note 1, below.

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<sup>1</sup> Of course, it is possible that there may be different title documents which affect different parts of the road. Should there be different title documents than what was considered by the IBLA in Billum, then a different conclusion may be warranted.