

# Wrangeli - St. Elias

NATIONAL PARK & PRESERVE



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George -

This is the information we have pulled together for our land status information regarding the McCarthy Road. If you hold other information to complete our file, please let me know. This is still in draft.

Goose Island was great for cod fishing. I probably caught 3 dozen. Had a great time. Thanks for the advice on Friday. Hope you had a good weekend. You were probably warmer than we were.

Kaw wade



SUMMARY: McCARTHY ROAD RIGHT-OF-WAY, WRST  
April 24, 1992

BACKGROUND AND DISCUSSION

The McCarthy Road (Chitina to McCarthy) was originally a 200' wide railroad right-of-way held by the Copper River Railway Company (later the Copper River and Northwestern Railway Company) pursuant to an 1898 Congressional grant.

In 1932, Congress transferred the authority to "locate, lay out, construct, and maintain wagon roads and pack trails" between navigable waters and permanent settlements from the Secretary of War to the Secretary of the Interior.

In 1939, the Copper River and Northwestern Railway Company abandoned the railroad.

In 1941, Congress authorized the Secretary of the Interior to accept "...gifts and conveyance of..." the abandoned railroad right-of-way from the Copper River and Northwestern Railway Company, "to be used, operated, and maintained, as far as may be practicable or necessary, as a public highway, tramroad, or tramway...."

In 1945, the General Land Office formally accepted the railroad right-of-way from the Copper River and Northwestern Railway Company for the Secretary of the Interior, and noted "the easements for the railroad rights-of-way" canceled on GLO records.

Question: did relinquishment qualify as "gifts and conveyance"?

Question: what right-of-way existed following acceptance and cancellation?

Assumption: relinquishment did effect conveyance, the railroad right-of-way was canceled, and a practicable or necessary "public highway, tramroad, or tramway" right-of-way remained under authority of the Secretary of the Interior.

In 1956, Congress transferred "the functions, duties, and authority pertaining to the construction, repair, and maintenance of roads, tramways, ferries, bridges, trails, and other works in Alaska..." from the Secretary of the Interior to the Secretary of Commerce.

In 1959, Congress directed the Secretary of Commerce to transfer to the State of Alaska "all lands or interests in lands...which are owned, held, administered by, or used by the Secretary in connection with the activities of the Bureau of Public Roads in Alaska." Congress also delegated responsibility to the State of

Alaska "for the maintenance of roads, including bridges, tunnels, and ferries, transferred to it...as long as any such road is needed for highway purposes." Neither the Alaska Omnibus Act, nor the resultant quitclaim deed defined the scope of the rights-of-way transferred.

Question: was the "public highway, tramroad, or tramway" right-of-way administered in connection with the Bureau of Public Roads?

Question: did Alaska's delegated authority for "roads" extend to tramways or unconstructed road rights-of-way?

Assumption: the Bureau of Public Roads did administer the public tramway for the Secretary of Commerce and the interest in a "public highway, tramroad, or tramway" did transfer to the State.

The width of public highway reservations, rights-of-way and easements in Alaska were established prior to the Omnibus Act by a series of public land orders and secretarial orders (1949 to 1958). These proclamations designated the width of specified public highways and stated that such width would attach to new public highway construction when survey stakes were set and notification posted. If a road was not specifically listed, it was to be classified as a "Local Road" with a right-of-way or easement 100' wide.

Question: would S.O. 2665 widths for public highways attach the subject "public highway, tramroad, or tramway" right-of-way without construction of a road and the required staking and notification?

Assumption: the width of the "public highway, tramroad, or tramway" right-of-way was already set at 200' by the original railroad right-of-way grant, and the P.L.O.s and S.O.s did not attach.

The McCarthy Road was never specifically listed in the P.L.O.s or S.O.s. Amendment 2 to S.O. 2665 added the "Copper River Highway" to the list of Through Roads with a 300' wide right-of-way reserved for highway purposes. However, the "Copper River Highway" does not include the McCarthy Road: the "Copper River Highway" has popularly been used to describe the route from Cordova to the Richardson Highway by way of either Chitina or the Tasnuna River; the Omnibus Act quitclaim deed transferred the McCarthy Road as a separate route; the State of Alaska referred to the "Copper River Highway" and the McCarthy Road as separate routes in briefs filed during litigation in the 1970's (Dist. Alaska, A 33-73); and Alaska DOT&PF stated in a 3/14/88 letter that the "Copper River Highway" does not include the McCarthy Road.

Question: does the "Copper River Highway" include the McCarthy Road?

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Assumption: the "Copper River Highway" does not include the McCarthy Road, and the designated width for the CRH does not affect the McCarthy Road right-of-way.

The State converted the original railroad bed to a road in the 1960's. The Chitina Bridge was constructed in 1963. Files indicate the BLM granted one right-of-way for the McCarthy Road in 1972 and received two other applications that were never granted for realignments of the road at various points. The 1972 right-of-way was never constructed and was relinquished in 1984. There is no indication that the McCarthy road was constructed as a public highway prior to the 1959 quitclaim.

Question: Is the McCarthy Road authorized at all points?

Assumption: There were unauthorized realignments on what are now NPS lands.

In 1973, the BLM requested a Solicitor's opinion on whether the railroad relinquishment of 1945 was effective and whether the Omnibus validly transferred the right-of-way to the State. No answer has been located, and other memos indicate that no answer was ever sent. The validity of the State's right-of-way along the original railroad right-of-way was also challenged during 1973 litigation over development of the Copper River Highway. The case was settled in 1975 and that issue was never decided by the court.

In 1986, the NPS requested a Solicitor's opinion on NPS authorities to regulate public use of State road rights-of-way held pursuant to the Omnibus Act. No response has been prepared.

In 1989, the NPS, FHWA, Ahtna Inc., and Alaska DOT&PF, DNR, and DF&G signed a 5-year Memorandum of Understanding and agreed to coordinate planning of highway development and land management for the McCarthy Road.

## CONCLUSIONS: ACCEPTABLE USE

Based on the assumptions stated above, the State of Alaska holds a valid right-of-way for the McCarthy Road. There are, however, locations along the road where realignments from the original railroad grade require NPS authorization. Pursuant to the Omnibus Act authorization, the McCarthy road right-of-way is for the maintenance of the road as a public highway as long as it is needed for highway purposes; the State has relatively unlimited authority to manage the right-of-way for public highway purposes within the right-of-way.

## CONCLUSIONS: WIDTH

The width of the McCarthy Road was never specifically set by the Omnibus Act, the quitclaim deed, or the various P.L.O.s or S.O.s. Under such authorities, the McCarthy Road right-of-way would be 100' wide.

The original railroad right-of-way granted in 1898 was 100' on each side of the center line of the railway. Since that right-of-way was never redefined by the P.L.O.s or S.O.s and the right-of-way was quitclaimed to the State in 1959, the original width remains valid. Therefore, the width of the State's right-of-way for the McCarthy Road is 200', 100' either side of the centerline of the original railway.

## CONCLUSIONS: MATERIAL SITES

Alaska DOT&PF has mapped or expressed interest in 18 material site rights-of-way along the McCarthy Road. Of these, only the two at either end of the Kuskalana Bridge have been identified as valid material site rights-of-way under NPS jurisdiction; eight are on private, Ahtna Inc., or University of Alaska land, and eight were never authorized. The two valid material sites under NPS administration are subject to the terms and conditions attached to the original BLM right-of-way grants.

Although there is no explicit authorization of material sites in the McCarthy Road right-of-way, public highway purposes probably include the authority to extract materials for the construction, maintenance, and repair of the McCarthy road, as long as such actions are located within the defined width of the right-of-way.

The NPS believes that the State may be permitted to remove mineral materials from park land for construction, maintenance, and repair of the McCarthy Road if: mineral materials are not available from non-park lands; extraction from the right-of-way adjacent to the road would otherwise degrade visitor experience; "hiding" material sites on park lands would serve park purposes; and all NEPA, NHPA, ANILCA, and other applicable compliance work is properly conducted.

Therefore, the State of Alaska currently has two valid material sites authorized on NPS land. Additional material sites on NPS land are possible but not necessarily likely; material sources on other lands are preferable under current policy.

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## Background on McCarthy Road Authorities

May 14, 1898

- Congress passed an act granting railroad rights-of-way in Alaska:  
Sec. 2. That the right of way through the lands of the United States in the District of Alaska is hereby granted...to the extent of one hundred feet on each side of the center line of said road....  
[30 Stat. 409]

January 27, 1905

- Congress passed an act establishing a board under the under the Secretary of War with the authority to:  
locate, lay out, construct, and maintain wagon roads and pack trails from any point on the navigable waters of [the district of Alaska] to any town, mining or other industrial camp or settlement, or between any such town, camps, or settlements therein, if in [the board's] judgement such roads or trails are needed and will be of permanent value for the development of the district; but no such road or trail shall be constructed to any town, camp, or settlement which is wholly transitory or of no substantial value or importance for mining, trade, agricultural, or manufacturing purposes.... It shall be the duty of said board, as far as practicable, to keep in proper repair all roads and trails constructed under their supervision....  
[33 Stat. 616, as amended by 34 Stat. 192 (May 14, 1906)]

June 30, 1932

- Congress passed an act stating that:  
the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska, and upon the Secretary of War, as provided for in the Act of January 27, 1905, as amended by the Act of May 14, 1906...shall hereafter by administered by the Secretary of the Interior.... The Secretary of the Interior shall execute or cause to be executed all laws pertaining to the construction and maintenance of roads and trails and other works in Alaska, heretofore administered by said board of road commissioners under the direction of the Secretary of War;... the said board is directed to turn over to the Secretary of the Interior all equipment, materials, supplies, papers, maps, and documents, or other property utilized in the exercise of such powers, for the use of the said Secretary in the administration of the construction and maintenance of roads, tramways, ferries, bridges, and trails, and other works in the Territory of Alaska....  
[47 Stat. 446]

July 15, 1941

- Congress passed an act to authorize return of the Copper River and Northwestern Railway Company right-of-way to the U.S., and acceptance of that right-of-way by the Secretary of the Interior:

[The Company] is hereby authorized to give and convey to the United States of America (1) all or any portion of its railroad right-of-way acquired under grants made by Congress.... The Secretary of the Interior is hereby authorized and empowered to accept, on behalf of the United States and without cost to the United States, gifts and conveyances of said properties to be used, operated, and maintained, as far as may be practicable or necessary, as a public highway, tramroad, or tramway under the provisions of the Act of June 30, 1932....

Furthermore, the right-of-way was made exempt to the Act of 8/8/22 which would have attached the land to adjacent lands. [P.L. 176, 55 Stat. 594]

March 29, 1945

- The Copper River and Northwestern Railway Company relinquished "any and all rights that may have been obtained in and to rights-of-way...for railroad purposes in Alaska...." [Relinquishment; ARO-OL, L3027 McCarthy Road, WRST]

May 11, 1945

- The Commissioner of the General Land Office accepted the relinquished right-of-way and noted it canceled. [Decision 1906338 "F"; ARO, L3027 McCarthy Road, WRST]

August 10, 1949

- PLO 601 reserved public lands in Alaska for highway purposes and set widths: the Alaska Highway -- 600 feet; other listed through roads - 300 feet; listed feeder roads - 200 feet; local roads - 100 feet. Local Roads were those not classified in PLO 601 as through or feeder roads.

October 16, 1951

- PLO 757 amended PLO 601 and reduced the number of roads defined by width.
- Secretarial Order 2665 set the width of the Alaska Highway at 600 feet, other identified through roads at 300 feet, identified feeder roads at 200 feet, and local roads (those not classified as through or feeder roads) at 100 feet.

S.O. 2665 also established rights-of-way or easements for existing feeder and local roads at the widths stated above, and provided that such rights-of-way or easements would attach to future public roads constructed.

June 29, 1956

- Congress transferred "the functions, duties, and authority pertaining to the construction, repair, and maintenance of roads, tramways, ferries, bridges, trails, and other works in Alaska..." to the Department of Commerce.  
[P.L. 627, 70 Stat. 377]

September 15, 1956

- Amendment 2 to S.O. 2665 was published to add reclassify and delete roads. The "Copper River Highway" was added to the list of through roads with a width of 300 feet. The Copper River Highway is not defined to include or exclude the McCarthy Road.

April 7, 1958

- PLO 1613 revoked PLO 601 as modified by PLO 757 and reestablished the land reservations.

June 25, 1959

- Congress passed the Alaska Omnibus Act and directed the Secretary of Commerce to,  
transfer to the State of Alaska by appropriate conveyance without compensation...all lands or interests in lands...which are owned, held, administered by, or used by the Secretary in connection with the activities of the Bureau of Public Roads in Alaska....

The Omnibus Act further stated,

The State of Alaska shall be responsible for the maintenance of roads, including bridges, tunnels, and ferries, transferred to it under [this act] as long as any such road is needed for highway purposes.

[P.L. 86-70, 73 Stat. 141]

June 30, 1959

- The Secretary of Commerce transferred to the State of Alaska, by quitclaim deed,  
all rights, title, and interest of the Department of Commerce in and to all of the real properties listed in Schedules A, B, and C, attached hereto and made parts hereof, which properties are now owned, held, administered, or used by the Department of Commerce in connection with the activities of the Bureau of Public Roads in Alaska....

In Schedule A - Highways, Federal-aid Secondary Highway System, Class "A" Routes, page 11, the McCarthy Road is described as FAS Route No. 850, "From junction with FAS Route 851 at Chitina easterly to McCarthy," for a System Mileage of 59.0 miles.

[Quitclaim Deed; ARO-OL L3027, Omnibus Act (Quitclaim Deed of 1959) Road R-O-Ws, General]

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