

MEMORANDUM

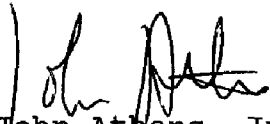
**CONFIDENTIAL
ATTORNEY/CLIENT
COMMUNICATION**

State of Alaska
Department of Law

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TO: Richard Odsather
Chief, Right-of-Way
DOT/PF, Northern Region

DATE: August 28, 1989
FILE NO.: 225-90-0014
TEL. NO.: 452-1568
SUBJECT: Billum native
allotment appeal

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

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

The issue in this allotment appeal concerns the width of the Chitina-McCarthy Road. The BLM held that it was 100 feet wide. The state has a very good argument that it is 200 feet wide. The state also has a fair argument that the right-of-way width is 300 feet. It is my recommendation that the state argue on appeal only for a 200 foot wide right of way.

I believe that arguing for a 300 foot ROW casts the state in an unsympathetic light. Given the nature of the Chitina-McCarthy Road, a small wilderness road with low traffic volume and little prospect for being further developed, pushing for a 300 foot ROW would make the state appear greedy and overbearing. In terms of need there would appear to be no justification for a right-of-way width in excess of 200 feet. (Please correct me if I am wrong.)

The argument for a 300 foot wide right-of-way stems from a 1956 amendment to D.O. 2665 which classified the Copper River Highway as a "through road." Whether the Copper River Highway extends from Cordova to Chitina or Cordova to McCarthy (and Kennecott) is not made clear. Although a rational argument can be made that the Copper River Highway extends from Cordova to McCarthy, I am not convinced that the intent of the 1956 amendment was to make this whole length a "through" road with a 300 foot wide ROW.

I suspect that the intent of D.O. 2665 was with respect to the Cordova to Chitina segment, since this is the segment that is considered important for providing Cordova with road access. Since I believe it is easier to argue for a 300 foot wide right-of-way for the Cordova-Chitina segment rather than the Chitina-McCarthy segment in terms of both need and the intent of D.O. 2665, I would prefer to argue only for a 200 foot wide ROW in the Billum case.

Please let me know what you think about limiting our argument to a 200 foot wide ROW for the Chitina-McCarthy Road.

EJA/jah

*Verbally told Joan to go for 200' ROW 8-28-89
will send note formally requesting course of action.
Copy Traker/Suzanne when done.*