Bureau of Land Management
Alaska State Office
Division of Conveyance Management

BLM/AK/AD-91/032+2651+960
Rep 1994

The Native Allotment Handbook

April 1991

FIG 123—Toy woodpecker (¼).

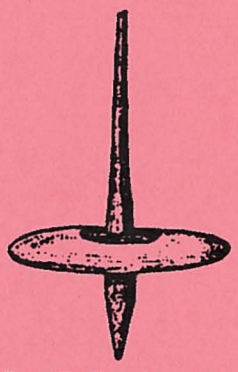
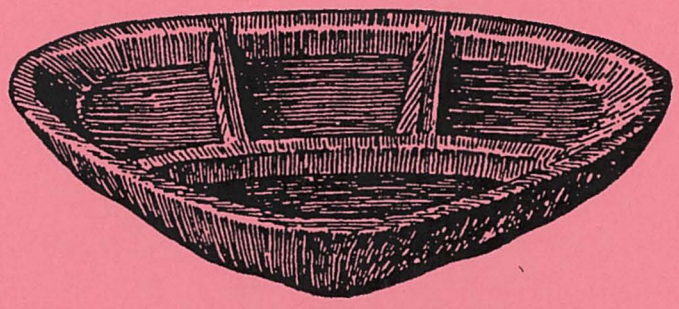


FIG. 122—Top from Cape Prince of Wales (about ¼).



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CHAPTER I - INTRODUCTION

A. General. In many ways, the processing of a Native allotment application is not very different from the adjudication of other types of claims. It begins with the filing of an application. If the lands were available at the time use and occupancy began, a field examination is done to locate the claim on the ground, to collect information which may help adjudication, and to determine whether evidence found supports the applicant's claim. Final adjudication is completed, and the application is either rejected or approved. If approved, the land is surveyed, and a certificate of allotment is issued.

What sets the Native allotment program apart from other adjudicative efforts is the large number of judgement calls required and the vast array of changes the program has encountered during its 80-year existence. Changes in legislation, policy, philosophy, and those brought about by administrative appeal and litigation have caused frequent setbacks and rehandling of previously processed cases. This handbook represents an effort to consolidate all current law and policy for the Native allotment program. The text covers both field and adjudicative procedures. However, all personnel involved with the allotment program, in any capacity, should familiarize themselves with the entire handbook. It is not intended to be a static source document, but one that will require continuous update as new law is developed through the administrative and legal process.

B. Background. The basis for the Native Allotment program is the Alaska Native Allotment Act of May 17, 1906, as amended by the Act of August 2, 1956, 34 Stat. 197, as amended 70 Stat. 954; 43 U.S.C. 270-1 through 270-3 (1970). The act is simply worded and says:

> That the Secretary of the Interior is hereby authorized and empowered, in his discretion and under such rules as he may prescribe, to allot not to exceed one hundred and sixty acres of nonmineral land in the district of Alaska to any Indian or

> Eskimo of full or mixed blood who resides in and is a native of said district, and who is the head of a family, or is twenty-one years of age; and the land so allotted shall be deemed the homestead of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable until otherwise provided by Congress. Any person qualified for an allotment as aforesaid shall have the preference right to secure by allotment the nonmineral land occupied by him not exceeding one hundred and sixty acres.

Allotment of lands to Native Americans is not unique to Alaska and has its basis in legislation originally designed for the lower 48 states. A basic consideration underlying the allocation of land to Indians was the belief that private, individual ownership was an instrument of civilization. The desire of white citizens to occupy or use land held by Indian tribes also played a great part in the Indian allotment concept. Between 1900 and 1910, over 50 different allotment acts were passed by Congress, each with different provisions designed to meet specific situations. The act most familiar to the Bureau of Land Management (BLM) was the Indian Allotment Act of 1887. It was also applicable in Alaska although only three conveyances have been made under that authority.

Congress has frequently used the term "homestead" in connection with Indian allotments, not to superimpose the requirements of the general homestead laws on them, but rather to signify that the allotted land had special status. Thus, in 1906, Congress extended the allotment concept to Alaska by providing for an allotment not to exceed 160 acres, under rules to be developed by the Secretary, which was to be the homestead of the Native allottee.

Occupancy of the site was not originally a requirement. The authorization for the Secretary to develop rules was intended to recognize the cultural differences within Alaska and between Alaska and the other states.

The 1956 amendment (Appendix 1) does several things:

1. Includes the Aleuts.

2. Restricts allotments to vacant, unappropriated and unreserved non-mineral land.

3. Permits allotment of lands described in No. 2 above which may be valuable for coal, oil or gas.

4. Authorizes conveyance of allotted lands to third parties.

5. Authorizes the allotment of national forest land if occupancy commenced prior to establishment of the particular forest or if the Secretary of Agriculture certifies that this land is chiefly valuable for agriculture or grazing.

6. Requires allotment applicants to make proof satisfactory to the Secretary of substantially continuous use and occupancy for five years.

Interpretations of the 1956 amendment have been that only one allotment is authorized, but that it may be in non-contiguous tracts, and that the Secretary may (and does) consider Native customs, land character, and seasonal use.

During the late nineteenth and early twentieth centuries, the Lower 48 forces which shaped Indian legislation were weak or non-existent in Alaska; i.e., no large reservations blocking railroad development, generally little demand for Native land by white settlers and little concern with encouraging the Alaska Native to adopt civilization. The Natives were essentially ignored by Congress. Thus, attempts at settling ownership questions and Native allotment activity were very sporadic and continually put off. During the first 65 years following the Native allotment act, few allotment applications were filed and only about 100 certificates of allotment were issued.

With Statehood in 1959 and the filing of numerous Native protests in the mid-60's, primarily against continued disposal of Federal land to the State, matters came to a head. Legislation was passed several times by either the House or Senate separately but not together. In the year preceding the enactment of the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601), the Bureau of Indian Affairs (BIA) and Rural Alaska Community Action Program

(RurAlCAP) combined forces to assist the Natives in filing allotment applications in the belief that the allotment act would soon be repealed.

When finally enacted on December 18, 1971, ANCSA dealt primarily with a settlement via regional and village corporations; however, two sections related to Native allotments.

Section 18(a) repealed the allotment acts in Alaska, giving Natives with applications then on file with the Department of the Interior the option of having their allotment applications processed or filing for a primary place of residence under Sec. 14(h)(5) of ANCSA. Sections 18(b) and 14(h)(6) provided that the acreage of allotments approved during the first four years of ANCSA would be deducted from the total acreage allowed under Sec. 14(h). Acreage so charged totalled 195,000.

By the time ANCSA was signed, over 9000 applications had been generated. Originally estimated as having an average of four parcels per application, this figure has been revised downward to about 1.5 parcels.

By the end of 1971, only half of the allotment applications had been transmitted to BLM by BIA. During his visit to Alaska in February 1972, Assistant Secretary Harrison Loesch waived the regulations relating to the certifications required by BIA. The only surviving certification was that the applicant be a Native entitled to an allotment. The task remaining for BIA, then, was to provide plottable legal descriptions and maps without the benefit of on-the-ground visits. The agency established a project office in Sacramento, California, recruited employees from its offices all over the country and tried to provide the required information. Problems arose because so few people were familiar with Alaska, shortcuts were taken, and personnel were working with inaccurate or insufficient information and the inherent problems of protraction diagrams. Mistaken locations and conflicts with other allotment applications or other land applications, either on paper or on the ground, or both, are very prevalent.

Mr. Loesch also publicly told the Native leaders that BLM's substantial use and occupancy policy would become more lenient.

This meant essentially a very liberal interpretation of use and occupancy. Field reports during this era were therefore often based on "fly-overs" and winter work.

During 1973 and 1974 there were three major Departmental policy changes concerning both field and adjudicative findings (Appendices 2, 3, and 4). In most cases, this meant new field exams and re-adjudication of all cases already processed. In 1974, all allotment processing was suspended for 72 days between the second and third policy changes.

In essence, then, the Bureau in Alaska had to shift from a program of trying to field examine and adjudicate allotments based on a best possible interpretation of the regulations before ANCSA to the Loesch extreme leniency policy of February 1972; to the Secretary's June 6, 1973 policy (Appendix 2) which turned BLM back to the regulatory criteria and emphasized the discretionary nature of allotments; to the October 18, 1973 policy (Appendix 3) which specified 5 years use and occupancy prior to any withdrawal, added some use and occupancy criteria, and instituted the affidavit concept; to the Secretary's September 5, 1974 policy (Appendix 4), relating to field examination procedures and witness statements.

The October 1973 policy requiring 5 years' use and occupancy prior to a withdrawal was challenged in Herman Joseph, et al. v. United States, Civil No. A 76-20 (Judgement October 19, 1979; USDC Alaska). On May 25, 1979, Secretarial Order 3040 (Appendix 32) decreed that use and occupancy had only to be commenced or an application filed before the date of a withdrawal. A year earlier, the same policy had been instituted for Classification and Multiple Use Act classifications.

The Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA) (94 Stat. 2371) resulted from several years of bitter controversy over the extent to which Alaska lands would be reserved for the public.

Section 905 of ANILCA (Appendix 5) was intended to overcome the many legal and procedural delays which had plagued allotment processing. It provided that allotment applications pending on or before the date of ANCSA were, with certain exceptions, approved

by operation of law on June 1, 1981. The exceptions are important (Appendix 6). Equally troublesome are the conflict resolution requirements (because of inaccurate legal descriptions), the amendment provisions, and protest problems. Section 905 has not, and could not have, done what the authors intended.

C. Surface Management. Normally, jurisdiction over applied-for land remains with BLM until it is conveyed, subject to the rights and obligations of the claimant. In Alaska, however, the legal principles of ANILCA and the need to facilitate BIA's administrative responsibilities dictate otherwise. A Memorandum of Understanding, between BIA and BLM, effective February 20, 1979 (minor revisions dated January 16, 1980) (Appendix 7), provides that:

1. For land under BLM jurisdiction, such jurisdiction over adjudicated Native allotments passes from BLM to BIA on the date the applicant is advised that his/her application has been approved even though a Certificate of Allotment has not yet been issued; and

2. The BLM and BIA will coordinate where applications for use authorizations cover both approved allotments and adjacent public lands (including unapproved allotments).

In addition, jurisdiction over those allotments which were legislatively approved by ANILCA passed to BIA on June 1, 1981. The BLM retains the authority to approve uses on unapproved allotments but coordination with BIA is required.

Allotment lands claimed within national parks and wildlife refuges are under the jurisdiction of the managing agency and BLM's sole responsibility is to process the allotment application and survey the claim.

Instruction Memorandum (IM) AK-80-2 (October 3, 1979) (Appendix 8) covers the matter of unauthorized use on unapproved allotments. It allows BIA to investigate alleged trespass and relay its findings to the BLM field offices for action. The IM also provides for interagency cooperation in trespass abatement. (See Chapter III. K.

Unauthorized Use.) Action cannot be taken on alleged trespass on an allotment that is situated on land conveyed out of U. S. ownership.

D. Roles. Problems and questions involving allotments should be elevated through the normal supervisory channels. Policy and procedural guidance will be provided by the Division of Conveyance Management. Legal questions and requests for Regional Solicitor's opinions will be referred to the Solicitor's Office through the Branch of Conveyance Coordination.

E. Illustrations and Use of Standard Documents. The documents included as illustrations in this handbook represent samples of those glossaries and other forms most frequently used in the Native allotment program. When actually preparing a document, adjudicators should refer to the most current Native allotment glossaries available from either the Native Allotment Coordinator or the Document Processing Branch. In most cases, the wording in the glossaries has been approved by or developed through coordination with the Office of the Regional Solicitor. Glossaries do not exist for every possible situation. Therefore, adjudicators are cautioned to make certain standard wording is used only when it fits the case at hand. Case-specific wording may be approved by the branch chief signing the document. However, proposed changes to standard wording which will be used on a routine basis must be submitted to the Native Allotment Coordinator, who has the responsibility to finalize any changes with input from all the Branches.

Illustrations in the handbook will not be updated to reflect minor changes, but will be deleted or modified whenever the form is no longer in use or there is a major legal or policy change.

"Notice" format will be used whenever individuals or entities outside the Department are given a specific timeframe in which to respond. Response times as well as distribution and courtesy copies will be consistent between branches of adjudication in order to ensure that the Bureau's clientele know what to expect.

The BIA has asked that the original certificates and certified true copies of all notices and decisions be sent to its Alaska Title Services Center (ATSC). In addition, copies of notices concerning

changes in location, reinstatements and case closures (other than certificates) will be sent to BIA's Area Forester, Branch of Natural Resources, Bureau of Indian Affairs, Juneau Area Office, P.O. Box 3-8000, Juneau, Alaska 99802.

CHAPTER II - PREADJUDICATION

Preadjudication consists of those steps necessary to determine whether an allotment application is legally defective. See Appendix 30 for information on legal deficiences. A thorough review of the case file at this stage may reduce or eliminate expensive field work later. If the application is acceptable, then a field examination can be requested. However, keep in mind that many questions cannot be answered with finality until the parcel has been located on the ground.

Field dollars are concentrated in survey windows as directed by the Patent Plan Process. In almost all cases, a field person will be in the survey window area a year before the survey season. All issues which require resolution in the field must be identified three to four months in advance of the beginning of the field season. Issues which could best be resolved in the field should be highlighted in the request for field report.

A. Effect of Filing a Native Allotment Application. For every Native allotment application there are at least two significant dates. The first is the date that the allottee first initiated use and occupancy of the applied-for lands. The second is the date on which the application was filed. By regulation, the Department must protect Native allottees in possessory enjoyment of the land. However, use and occupancy without the benefit of an application creates an "inchoate" right only, i.e., one that is not vested or perfected. Use and occupancy may be considered an appropriation of the land, but not a segregation. The completion of 5 years use and occupancy coupled with the filing of an application vests a preference right in the applicant. Once that preference right becomes vested, the preference right relates back to the initiation of occupancy and takes preference over competing applications filed prior to the Native allotment application. See Golden Valley Electric Association (on Reconsideration), 98 IBLA 203 (1987).

It should be noted, however, that the filing of an application segregates the land against other applications for title (but not against the Federal government). This is true even if the applicant

has not yet completed 5 years' use and occupancy. However, the applicant (or BIA on behalf of the heirs) still has to file proof of such use within 6 years to fully comply with the law and obtain favorable action on the application.

B. Reviewing the Case File. Native allotment applications are serialized under casetype 2561 and have an F, A, or AA prefix designating the land office having jurisdiction over the application at the time of filing; some very old cases may have the prefix J for the now extinct Juneau Land Office. Some case files originally established with an F prefix were later transferred to the Anchorage Land District during a boundary shift. The F prefix was retained but the serial number should be followed by the designation (Anch.). There are no FF cases. This is a computer designation only. The information contained in the case file is filed chronologically with the oldest information filed first (on the bottom) and the newest information filed last (on the top).

Review the file to determine the complete name and current address of the applicant. Compare any name changes with the village enrollment sheets. If it appears the applicant is deceased, request verification from BIA or the BIA contractor. (The BIA realty function is handled by agencies or contractors, depending on the area of jurisdiction.) The BIA or BIA contractor is the representative for the estates of deceased Natives and as such is the official contact in these cases (See Chapter X. B. Deceased Applicants). The BIA or the contractor may also be contacted for assistance in verifying name and address changes. If BIA is unable to provide a change of address for an applicant, it may be helpful to check with Alaska Legal Services Corporation (ALSC) or the village corporation. Verify name and address shown in the Alaska Automated Lands and Minerals Record System (AALMRS) case file abstract and correct as necessary.

Note the name of any attorney of record. If the applicant is represented by legal counsel, address all correspondence to the applicant in care of the attorney. When sending documents by Certified Mail - Return Receipt Requested (CM-RRR), use the applicant-in-care-of-attorney address. Send a copy by regular mail to the applicant's address.

If the applicant is deceased, address all correspondence to the applicant (either with (deceased) after their name or to the heirs of the applicant) in care of BIA or the contractor and send a copy of the document to any attorney of record. If any heirs or potential heirs have been identified in the case file, send a copy of the document to them. If a decision, adverse to the applicant, is being issued, contact by telephone, the BIA or contractor's office and ask for any known potential heirs. List these individuals in the casefile as people to be copied the decision; do not refer to them as heirs. Send a copy of the decision to all of these individuals. If BIA or the contractor does not have or does not wish to give a list, proceed without further delay. It is not necessary to actively pursue the determination of heirs, unless the application is an Aguilar type (see Stipulation 2 of Appendix 17).

Since it is not unusual for an applicant to have more than one application, use the "FIND" program in AALMRS to determine whether an individual has more than one case file. Check every name the person may have used (maiden name and various married names). Remember that the same name does not necessarily mean the same person. (See Chapter II. C. Combining Case Files.)

Although the adjudicator must be familiar with the content of all documents in the file, the application requires special scrutiny. At this time in the Native allotment program, do not be concerned with minor omissions in the application form; rather, concentrate on these key areas:

1. Timely Filing. Was the application timely filed, i.e., was it "pending before the Department of the Interior" on or before December 18, 1971? To be timely filed, a Native allotment application must have been filed with an agency of the Department of the Interior by December 18, 1971, due to the repeal of the Native Allotment Act by Section 18 of ANCSA. Many applications which were timely filed with BIA were either not date stamped by that agency at all or not date stamped until 1972. Most of these were transmitted to BLM long ago and are considered timely filed unless there is clear evidence in the file to the contrary, e.g., applicant's signature date after December 18, 1971, or some indication that there should be further investigation. Fanny Barr applications are

considered timely filed (see Chapter II. B. 8. Barr (Lost) Applications).

Occasionally a "found" application is still submitted by BIA. This is one that has acceptable proof showing that the application was in BIA's possession on or before December 18, 1971, but was not transmitted to BLM. In this case acceptable proof could include BIA correspondence which refers to the fact the application was on file or a BIA certification date prior to December 18, 1971. Whenever a found application is received by BLM, issue a notice (Illustration 0, Glossary 581a) with copies to interested parties (Appendix 9).

2. Reconstructed Applications. Reconstruction of an application filed in time, where neither the original nor a copy is presently available, is legally authorized. William Yurioff, et al., 43 IBLA 14, 16, (1979) holds, "If appellant had timely filed an application with BIA which was lost, he should be given opportunity to reconstruct his original application." In order to consider an application as being timely filed and to allow reconstruction, there must be sufficient objective, documentary proof showing timely receipt by BIA; affidavits attesting to a timely filing alone are not sufficient (see Heirs of Linda Anelon, 101 IBLA 333 (1988)) and will be grounds for refusal to accept the application. When a determination has been made that a reconstructed application is improper, issue a rejection decision.

Reconstructed applications for an additional parcel may also be acceptable.

For purposes of BLM allowing reconstruction of Native allotment applications, filing with a non-federal entity is not sufficient and individuals making such claims must have utilized the Barr procedures established for applications filed with RurAlCAP/BIA that were lost or misplaced before December 18, 1971. (See Chapter II. B. 8. Barr (Lost) Applications.)

See Appendix 10 for specific examples in determining the acceptability of reconstructed applications. However, note

that a federal agency document showing timely receipt is not required. See Anelon at 337.

3. BIA Certification. Has BIA certified that the applicant is a Native qualified to make application under the Act? The certification requirements as to occupancy, staking, and conflict were waived by Assistant Secretary Harrison Loesch on February 4, 1972. (See Chapter I. B. Background.)

   The BIA certification as to residency and Native status will not be challenged unless documentation in the case file indicates one of these areas require further investigation. A simple inference without further evidence that BIA was mistaken in its certification will not support a challenge. If BIA has not certified the application, retain a copy and send the original to the BIA Area Office (CM-RRR) with a cover memo requesting certification. Fanny Barr cases usually have a copy of a blanket certification from BIA.

4. Land Description. The allotment may consist of one 160-acre tract, or two or more non-contiguous parcels, but 43 CFR 2561.0-8(a) requires each parcel to be in a reasonably compact form.

   If the lands included in the application were surveyed at the time of filing, the land must be described according to legal subdivisions and must conform to the plat of survey when possible. Surveyed land could include rectangular net, U. S. Surveys, or lots within U. S. Surveys (i.e., townsite lots).

   If unsurveyed, the lands must be described by metes and bounds and tied to natural objects. A map, such as a sketch on a USGS quad should accompany a metes and bounds description. When there is a disagreement between the map and description, the map generally rules. However, many times it takes a field examination to determine the actual location. In some cases, allotment applications have been described in terms of aliquot parts even though the land is unsurveyed. This is not a legal defect, and the applicant will be given an opportunity to correct the legal description. Cases closed for this reason will be reinstated.

If the lands included in the application are later surveyed under the rectangular system, the allottee may, when possible, elect to conform to the smallest legal subdivision (40 acres) or surveyed lot(s), or a combination of the two. Refer to 43 CFR 2561.1(c). If an allotment described this way exceeds 160 acres, the rule of approximation will be applied to bring the allotment as close to 160 acres as possible. See 43 CFR 2650.5-2 and 62 I.D. 416, 421. The rule of approximation only applies to allotments located on lands which are surveyed under the rectangular system of survey. Those requiring special surveys may not exceed the 160-acre limitation.

If the allotment application describes more than 160 acres, the Secretary shall reduce the acreage to 160 acres in the manner least detrimental to the applicant, (ANILCA Sec. 905(b)). Before rejecting excess acreage, issue a notice requesting relinquishment.

If it becomes necessary to reduce an aliquot part description for any reason (rule of approximation, conflict resolution, etc.), the general guideline is to describe the application in no less than 2.5-acre increments.

It is important that BLM personnel have a clear understanding of the rectangular system of survey and how it differs from exterior boundary surveys done for State and Native selections. Under the rectangular system, interior section lines are surveyed (shown as a solid line on the plat of survey), and quarter corners of each section are monumented. In order to convey an allotment by an aliquot part description, the land must be part of a true rectangular survey as described above unless an entire island is conveyed. Exterior boundary surveys have protracted sections and lots (shown as dashed lines on the plat of survey) and no internal monumentation. Therefore, aliquot part conveyances may not be made in townships with this type of survey even though the MTP will indicate a "surveyed" township with the exception for entire islands noted above. Special surveys will be executed for allotments in these areas.

Be alert for any obvious discrepancies that exist between the written description, map, and status plat depicting the location of the application. If a plotting correction results in the application being depicted in a different section, follow the notice procedures set out under Amended or Corrected Descriptions below. Remember that many applicants did not apply for the full 160 acres, and we are neither required nor authorized to give an allottee more land than is described in his/her application.

5. Amended or Corrected Descriptions. Section 905(c) of ANILCA allows an applicant to amend his/her application if the land described in the application is not that which the applicant originally intended to claim and describe in the original application. The right to amend the land description has been extended to heirs under Mary Olympic v. United States, 615 F. Supp. 990 (D. Alaska).

   a. Standards for Amendments. We cannot accept an amended application if it is an attempt to move the allotment parcel from the location originally intended and applied for. Section 905 does not authorize an applicant to substitute different land. Joash Tukle, 86 IBLA 26 (1985). Attempts to amend allotment descriptions must be supported by sufficient proof that a description error was made. Amendments submitted after an applicant has accompanied a field examiner to one location need to be looked at carefully before requesting a supplemental field report.

      In Angeline Galbraith, 97 IBLA 132, 147 (1987), 94 I.D. 151 (1987), IBLA states that the question of intent must be determined based on facts and circumstances reflected in the record. The Board continues that "relevant to the question of intent are the geographic positions of the land described in the original application and the proposed amendments, the relation of the parcels to each other and to any landmarks or improvements, the history of the legal status of the parcels, and the reasons why the original application did not correctly describe the intended land."

b. Amendments that Affect Acreage. Additional acreage cannot be added after December 18, 1971, and Sec. 905(c) of ANILCA cannot be used as a reason to allow additional acreage. Sec. 905(c) is only applicable where the original description designates lands other than what was intended to be described in the application.

An applicant has to establish that any additional acreage claimed was timely filed. William Carlo, Jr., 104 IBLA 277 (1988). Mapping or description error can be used as proof to support a timely filed application for additional acreage; however, where the application is definite on its face, the acreage will stand. For example, an application has two parcels totalling 120 acres. If one of the parcels has a metes and bounds description approximating 40 acres which concludes with "containing 40 acres", the applicant would be unable to later claim that parcel to be 80 acres even though his application acreage does not total 160.

c. Notice of Amendment. Any amendments filed by an applicant after December 2, 1980, require issuance of a notice to the State of Alaska and all other interested parties. (Interested parties are those individuals and entities identified in IM AK 85-305, Appendix 9, with the exception that the BIA contact will be the appropriate agency office or contractor rather than the Area Office.) This notice will allow 60 days for the filing of comments or a protest (see Illustration 1, Glossary 582a). Following the notice period, a decision accepting or rejecting the amendment will be issued; do not issue a government contest if not accepting an amendment. The decision will give the right of appeal and private contest, as appropriate (see Appendix 11). If the amendment is accepted, request a minerals report immediately. If an application is again amended, another decision is appropriate.

If a parcel description was of record (i.e., in the case file) as of December 2, 1980, even though not on the master title plats correctly, an additional protest period will not

be allowed. This includes any amended description either from the applicant or in a field report signed by the appropriate manager. The reason for this policy is because the description was already of record even though the status tracking records had not yet been changed to reflect the timely description.

If the parcel has been amended and is now on land that was conveyed out of Federal ownership prior to ANILCA, the Aguilar procedures will be followed and the allotment will not be subject to another ANILCA protest period. This is because Congress had no authority to legislatively approve allotments on non-Federal lands.

Regardless of whether an applicant's amendment is for an entirely different tract of land or simply makes a slight correction, an additional protest period, for the entire parcel, begins to run with the issuance of the notice, and action on the entire parcel must be delayed until the protest period ends (Appendix 11). No portion of the parcel is automatically approved prior to the running of the additional protest period. The final land description for the entire parcel is the only one approved or adjudicated. Similarly, an additional protest period will be given if the applicant has shown that he/she actually filed for more acreage than described on his/her original application. For instance, if a parcel was originally described as containing 40 acres and the applicant has submitted evidence to support the fact that the parcel included 60 acres, a new protest period will be given for the entire parcel. See Richard L. Nevitt v. U.S., Civ No. 80-226, Opinion (D.Alas. September 28, 1987).

Amendment of one parcel does not affect processing of other parcels in the same application.

Minor boundary adjustments initiated by BLM personnel during field examinations to resolve slight boundary conflicts or changes in parcel shape to more accurately describe the applied-for lands do not subject the

application to a new protest period unless:

(1) The change results in movement of the allotment into a section not previously occupied by it (either totally or partially);

(2) The land status changes;

(3) Any known third-party interests are in conflict; or

(4) The field report notes that the change in location has placed the application in a conflict with an existing access route which has not previously been protested.

If the change results in any of these occurrences, the notification procedures for amendments will be followed.

Where boundary adjustments are made based on standard survey requirements, a new protest period will not be given, even if the adjustment puts the allotment into another section. This is because there has been no actual change in the location of the allotment. The only time an allotment application is subject to a new protest period after survey occurs when the surveyor has actually changed the description of the allotment. Look at the survey field notes to verify that a change was or was not made. If a minor change should occur, the criteria for a new protest period is the same as that stated above for minor boundary adjustments initiated by the field examiners. If a new protest period is justified, a notice will not be sent until after the applicant has conformed to survey. It must be kept in mind, however, that if survey puts the allotment into a section that the United States does not own, title recovery will be necessary.

d. Cutoff for Amendments (Final Date to Amend). Section 905(c) of ANILCA allows the Secretary to establish a cutoff date for amendments to allotment applications provided that the applicant is notified at least 60 days prior to the cutoff date. Section 905(c) also states, "No allotment application may be amended for location

following adoption of a final plan of survey which includes the location of the allotment as described in the application or its location as desired by amendment." The "final plan of survey" is interpreted as the issuance of special instructions. However, in order to trigger this finality, the applicant must have been notified as required by ANILCA. No amendment is allowable after giving such notice, regardless of whether or not the application describes the land originally sought. See Angeline Galbraith, 97 IBLA 132, 146. (1987) (See also Chapter V. B. 6.)

6. Has Evidence of Occupancy Been Filed? If the application was not legislatively approved and requires adjudication under the 1906 criteria, evidence of 5 years use and occupancy must have been filed within 6 years of the filing of the original application. An exception to this rule is found in applications filed before 1958. Use and occupancy became a statutory requirement under the 1956 amendment (see Appendix 1). On December 6, 1958, the Secretary published regulations implementing this statute, 23 F.R. 9484, 43 CFR 67.5(f) (1959). Therefore, applicants filing prior to 1958 had until 1964 to file proof of use and occupancy. (Evidence of 5 years' use and occupancy was first required by regulation on June 22, 1935, under Circular 1359.)

   This 6-year period is referred to as the "statutory life" of the claim, although the requirement is actually regulatory rather than statutory. Failure to file within the 6 years is grounds for rejection of the claim (although if the lands were still open, the applicant could have filed a new application and applied the previous occupancy period to the new application). Claims rejected for failure to file evidence of occupancy have been commonly called "stat. life" cases and are legally closed if a decision rejecting the claim was issued prior to December 18, 1971 and was not appealed. Applications which were rejected on factual issues before the statutory life of the claim had expired, should be reinstated to give the applicant a hearing on those factual issues.

   If the application and evidence of occupancy were filed at the

same time, but use and occupancy began less than 5 years before the filing, the applicant (or BIA on behalf of heirs) will have had to submit a new evidence of occupancy to show 5 years' use completed within 6 years of the filing the application. (Again, note exception for applications filed before 1964, supra.) If the claim was legislatively approved, no evidence of occupancy is required.

7. Reinstated Applications.

a. Criteria for Reopening Cases. In deciding whether a case should be reinstated, the following criteria needs to be considered:

(1) The following types of case files will not be reopened:

(a) Properly closed files:

i. status shows that the land was unavailable at the time claimed use began;

ii. properly relinquished;

iii. statutory life expired/mineral waiver not signed;

iv. land certificated for acreage applied for even if less than 160 acres.

(b) Any file that we would simply be rejecting for another reason (i.e., legal defect).

(c) A file that was closed erroneously if the applicant filed again under a different serial number and the subsequent file was closed properly. A case could be reinstated, however, if the applicant first applied for say only 40 acres and then applied again (on or before December 18, 1971) for 40 to 120 acres.

(2) Do not review or reopen, at our own initiative, any file closed prior to December 18, 1971. Review and possibly reinstate, if the applicant, a legal representative or BIA, requests reinstatement and presents clear and compelling evidence that the file was erroneously closed. Clear and compelling means:

(a) specific reasons for reopening (why the closure was erroneous); and

(b) supporting documentation, i.e. affidavits from the applicant, heirs, and/or individuals knowledgeable of applicant's use of the land and, in situations involving relinquishments, intent of the applicant.

If the requests are to be rejected, administrative finality could be used as one reason (see Solicitor's opinion of July 11, 1988).

If a case file has been reinstated but does not meet the criteria noted above, request the required information. If the information is not received, close the file by notice stating that the application was reinstated in error.

(3) Review, at our own initiative, all files closed after December 18, 1971, to ensure proper closure and reinstate those which were erroneously closed.

Whenever a case is being reinstated, complete part I of Mini Review form dated December 17, 1979 (Illustration 2), and route the case to the Title and Land Status Section (T&LS) for replotting to the status plat. Update the AALMRS abstract (status, history, and land description) to show the application (or parcel) has been reinstated. There are two common situations requiring reinstatement of previously closed cases:

b. Pence Cases. The first are those commonly called the Pence cases. Sarah Pence, et al. v. Thomas Kleppe, et al. (Pence I), 529 F. 2d 135 (9th Circuit, 1976) resulted from situations where BLM initially rejected allotment

applications without hearings for lack of evidence of use and occupancy, independent use as a minor child, status as head of household, community use, etc. On appeal, the Interior Board of Land Appeals (IBLA) affirmed as did the District Court of Alaska after Sarah Pence filed a lawsuit in 1975. The Ninth Circuit, however, ruled that applicants are entitled to an oral hearing if a proposed rejection is based on the factual issues. All cases closed in whole or in part because of factual issues have been or should now be reinstated for continued processing under the 1906 act or Sec. 905 of ANILCA. The ALSC later appealed the Departmental decision to handle oral hearings using established contest procedures. IBLA ruled that contests met the Ninth Circuit requirement; the District Court and Ninth Circuit agreed. [Pence v. Andrus (Pence II), 586 F. 2d 733 (9th Circuit, 1978).] Proposed adverse actions based on factual issues have since been handled through contest proceedings.

c. Invalid Relinquishments. Reinstatement is also required when there has been an invalid relinquishment of an application. In order for a relinquishment to be valid, the application must have been knowingly and voluntarily relinquished by the applicant. There could be many reasons why an allottee signed a relinquishment: he/she could have been promised a townsite lot rather than an allotment or maybe he thought he would lose his entire allotment if he didn't relinquish a portion. Whatever the reason, it must be decided if the relinquishment was given intentionally, consciously, or willfully. See Peter Andrews, Sr. v. Bureau of Land Management, 93 IBLA 355 (1986).

On July 12, 1977, the Secretary directed that all relinquishments filed thereafter would require the concurrence of BIA (Appendix 12).

The circumstances surrounding relinquishments filed before July 12, 1977 will be investigated by BLM if there are indications in the file that make the relinquishment appear suspect. If it is determined that the

relinquishment was unknowing and involuntary, reinstate the application. Such applications qualified for legislative approval if they met the ANILCA criteria. Any relinquishments received after July 12, 1977, which have not been approved by BIA will be submitted by memo CM-RRR (retaining a copy) to the BIA Area Office for certification of validity. The burden of proof for establishing that a relinquishment is not valid is on the applicant.

The IBLA decision, Matilda Titus, 92 IBLA 340 (1986), deals with the issue of reinstatement of previously relinquished applications when the applied-for land is no longer in federal ownership. It states:

> Where lands described in a previously relinquished Native Allotment application are patented to another, and the applicant requests reinstatement of the relinquished application, the Department has a duty to a Native Allotment applicant to make a preliminary investigation and determination regarding whether the relinquishment was voluntary and knowing. If it was not, the application should be reinstated and, if deemed appropriate, the Department should pursue recovery of such lands.

According to Heirs of William A. Lisbourne et al., 97 IBLA 342, (1987), heirs may offer evidence as to whether an applicant acted knowingly and voluntarily. However, the burden of proof that the heirs have is a "heavy one since the issue turns largely on their decedent's state of mind."

In reinstatement requests of any type, the applicant and all interested parties will be notified by CM-RRR. The notice will provide a 60-day period in which to file a protest and/or comments under Sec. 905(a)(5) of ANILCA (Illustration 3, Glossary 584a). A decision either accepting or rejecting the request for reinstatement will be issued following a 60-day period.

In reinstatements initiated by BLM, issue a decision reinstating the claim. Provide in the decision, a 60-day period in which to file a protest under Sec. 905(a)(5) of ANILCA unless one has already been provided either by the allotment being on our records during the 180 days following ANILCA or by a previous notice.

8. Barr (Lost) Applications. In the late 1970's, a substantial number of applications were found which should have been submitted to BIA by RurAlCAP prior to ANCSA but were overlooked. The Department originally declined to accept them as not pending before the Department on December 18, 1971. Litigation resulted [Fanny Barr, et. al. v. United States, Civil No. A76-160 (USDC Alaska)]. As a result of a stipulated settlement in 1982, approximately 535 cases have been accepted for normal processing as though they had been timely filed. The court has a continuing role and not all cases in this category are properly described yet. Cases accepted so far are deemed to be petitions for acceptance as timely filed applications.

Fanny Barr petitions are initially established as 75.09 case types (Native allotment litigation) and require publication in a local newspaper of the applicant's name, address and application description. The publication provides a 180-day period during which ANILCA protests may be lodged against the claim and interested parties may submit evidence refuting the applicant's class membership eligibility. During this same 180-day period, the adjudicator must issue a notice, as provided for in ANILCA, if the land may be valuable for minerals, excluding oil, gas or coal. This requires that the mineral report be requested prior to publication.

In addition to the publication requirement, BIA must have certified that the applicant is eligible to receive an allotment, and the applicant must have filed a Consent to Adjudication and Limited Waiver. (Refer to Stipulation VI of Appendix 13.) If the BIA certification has not been filed, send a memo CM-RRR to the BIA Area Office in Juneau, giving the agency 30 days from receipt in which to respond. If the Consent to Adjudication has not been submitted, write to ALSC (CM-RRR)

giving a 30-day deadline.

Adjudication will immediately refer any cases for which evidence has been submitted refuting the applicant's eligibility as a class member to the Office of the Regional Solicitor through the Division of Conveyance Management paralegal staff. The United States and the State of Alaska have 30 days following the date of the last publication in which to examine the evidence and challenge the applicant's right to receive an allotment under the Barr suit. (Refer to Appendix 14.)

At the end of the protest period if no evidence refuting applicant's eligibility as a class member has been submitted and the BIA certification and applicant's Consent to Adjudication are in the case file, the petition is ready to be converted to a true Native allotment application. The case type is changed from 75.09 to 2561 on both the case file and in AALMRS. If the applicant already has a pending Native allotment application, the Barr parcel(s) will be combined with the existing 2561 case file. (See Chapter II. C. Combining Case Files.) The case file must also be sent to T&LS for correction of the Master Title Plat (MTP) and Historical Index (HI) information from a litigation file to a Native allotment application. The application is now either deemed legislatively approved effective June 1, 1981, or ready to be processed under the 1906 regulations. If an ANILCA protest has been filed, follow the procedures outlined in Chapter IV. Protests. All further processing will be handled exactly the same as for any other Native allotment application with two exceptions:

1. Under the terms of the Barr stipulation, the United States will not initiate a suit to recover title on this type of application; however, we may request voluntary reconveyance. If the landowner is not the United States and does not wish to voluntarily return title, the application will be rejected. Since reconveyance is voluntary and the United States will not initiate a suit, hearings will not be held to determine validity of an

application.

2. All correspondence relating to title recovery and rejection decisions issued for Barr parcels will cite the Barr litigation in the opening paragraph.

C. Combining Case Files. Although an allotment may consist of a number of parcels, the concept that an applicant is entitled to one allotment has not changed. Therefore, all active and/or conveyed Native allotment applications filed by the same person will be combined into one case file. Legally rejected and closed relinquishments are not combined with active or conveyed files. Combining eases administration and assures that acreage entitlement is not exceeded.

Retain the senior file (there may be some exceptions) and combine the documents in that file in chronological order. Issue a notice which explains the combining/closure action to the applicant. Parcel designations may need to be changed. Be sure to describe the parcels clearly in the notice. (See Illustration 4; Glossary 693a.) Copies of the notice must be served on interested parties (Appendix 9). Enter action code 372 (Application Combined) to the AALMRS history for both files and use the remarks section to cross-reference the combined files. For the file being closed, delete all other history items and land description and change the status code to 88 (Closed/Combined). Audit the retained file making certain that the history and land description reflect all pertinent actions on all parcels. Send the case files to Docket for appropriate notation to its records and to T&LS for MTP and HI correction.

D. Land Status

1. General. During this step the adjudicator will check current status as well as status of each parcel at the time use and occupancy was commenced by the applicant. Research documents include HI's, MTP's, Executive Orders and Public Land Orders (EOs and PLOs) found in the Alaska Orders Book, Secretarial Orders, Public Laws, Miscellaneous Documents Index (MDI), other case files, case file abstracts and TWPALL program in AALMRS, and serial register pages. Old MTPs in

conflicting cases are often quite valuable in determining status at time of application.

In order to receive an allotment adjudicated under the 1906 Act, the land claimed by the allottee must have been vacant, unreserved, and unappropriated at the time the applicant's substantial personal and independent use commenced (Secretarial Order No. 3040). Some case files may reflect a now-obsolete Departmental policy that use and occupancy had to be completed prior to the date of a withdrawal or reservation. (See Chapter I. B. Background.)

2. Specific

a. Segregation. Apparent conflicts with existing or revoked withdrawals or other types of segregative claims will be identified on the request for field report. It is the field examiner's responsibility to determine whether there is a conflict and to document it in the field report. We will not routinely rely on the Division of Cadastral Survey to locate withdrawal or other segregative boundaries on the ground for the sole purpose of adjudicating allotment applications. However, in order to reject an allotment application based on land status, there must be a prima facia case that the lands were actually segregated. This may necessitate a survey especially if the allotment is near the boundary of a withdrawal. See Ramona Field, 110 IBLA 367 (1989).

As discussed in more detail below under National Forests, the matter of ancestral use or "tacking on", where the applicant added his/her period of use to that of his/her ancestors to show commencement of use prior to a withdrawal, has been litigated in three instances. In each case, the courts have agreed with the government that such action is contrary to congressional intent.

A side issue has been the age of an applicant when independent use and occupancy commenced. This has been the subject of several appeals to IBLA. If there is clear evidence in the case file that a minor applicant used the

land as an independent citizen, the application may be approved as to that requirement. However, the Board has held that applicants who were 7 years old on the date the land was segregated from entry are entitled to a contest hearing to establish independent use and occupancy; applicants who were 5 and younger are to be rejected as a matter of law. Catherine Angaiak (On Reconsideration), 65 IBLA 317 (1982); William Bouwens, 46 IBLA 366 (1980); Floyd L. Anderson, Sr., 41 IBLA 280, 86 I.D. 345 (1979). As a matter of policy, 6 year olds asserting independent use will be treated as having a right to a hearing and will be contested.

(1) Power Withdrawals. Allotments which include lands withdrawn, reserved or classified for powersites or power project purposes were not precluded from legislative approval or approval under the 1906 act (See Sec. 905(d) of ANILCA). Such applications were legislatively approved unless:

(a) The land was included as part of a project licensed under Part I of the FPA;

(b) The land was (at the time of ANILCA) used for purposes of generating or transmitting electrical power or for any other project authorized by an Act of Congress;

(c) The land status exists as referenced in Sec. 905(a)(4) of ANILCA; or

(d) A valid protest was filed pursuant to Sec. 905(a)(5) of ANILCA.

If an application was legislatively approved and the applicant's use and occupancy began after the powersite withdrawal or classification, the allotment will be subject to Sec. 24 of the Federal Power Act (FPA) of June 10, 1920 (41 Stat. 24), as amended.

If an application was not legislatively approved because of one of the four exceptions noted above, the allotment application must be adjudicated under the 1906 Act, including the determination of land availability, without regard for the type of withdrawal.

Where the allotment is approved subject to Sec. 24 of the FPA, and the conditions set out in the last "Provided further, . . ." in Sec. 905(d) of ANILCA do not exist, the certificate of allotment must state that the right of the United States to re-enter the land pursuant to that authority expires on December 1, 2000 (see Chapter V. B. 4.).

(2) National Forests, Refuges, Parks and NPRA. For many years an issue involving the allowance of Native allotments in the National Forests concerned the principle of "tacking on" where applicants in the Tongass National Forest were adding their own use and occupancy after the date of the forest withdrawal to that of their ancestors using the land before the withdrawal in order to claim entitlement to forest lands. The Bureau's position that the applicant had to have personally used and occupied the land prior to the forest withdrawal was affirmed by IBLA and concurred in by the District and Ninth Circuit courts [Albert Shields v. United States, 698 F. 2d 987 (9th Circuit), cert. denied, 104 S. Ct. 73 (1983)]. The Supreme Court refused to hear the case, and the application files are now closed.

George Akootchook, et al. v. United States, 747 F. 2d 1316 (9th Circuit, 1984), cert. denied, 105 S. Ct. 2358 (1985) was similar to Shields in that it involved allotment applications based on ancestral use in the Arctic, Yukon Delta and Kodiak National Wildlife Refuges. As in Shields, the Bureau ruled that personal use by the applicant did not predate the refuge withdrawals, and therefore, the land was not available. The IBLA affirmed. The District Court

agreed and the Ninth Circuit affirmed. In doing so, however, the Ninth Circuit observed that the whole situation was unfair and that Congress should look at it. The ALSC submitted draft legislation in October 1985 which would override both the Shields and Akootchook decisions.

Jonah Leavitt, et al. v. United States, A 78-287 Civil (Order of Dismissal, August 5, 1981; USDC Alaska) involves ancestral use in the Naval Petroleum Reserve in Alaska (NPRA). Section 905(a)(1) of ANILCA should have cured this problem except that by the date of enactment of ANILCA these allotment applications were located on lands IC'd or patented to the Barrow Village or Arctic Slope Regional Corporations. The case was dismissed without prejudice in 1981 because of Sec. 905. Proposed legislation may settle the matter; if not, the lawsuit may be reactivated. A similar situation exists with applications filed by Elsie Crow and about 50 others on the North Slope. Title may not be recovered because they do not predate the NPRA withdrawal; draft legislation was submitted in 1983.

(3) Multiple Use Classifications (MUCs). Pursuant to the Classification and Multiple Use Act of 1964 millions of acres in several parts of Alaska were classified for various purposes. The classifications were designed to control disposal of lands or the type of claims that would be allowed. The classifications outlived their usefulness with the passage of ANCSA, and in due time they were revoked. However, substantial acres were for a while segregated against Native allotment applications. The allotment application must be rejected if use and occupancy commenced during the period that such classifications were in effect because the land was unavailable.

By Secretarial decree in 1978, it was ruled that if use and occupancy commenced before the date of the

segregative effect of the classification, the allotment application could be approved, all else being regular. Initial classifications were proposed and brought before the public; final classifications completed the process. Final classifications sometimes described different land and segregations than originally covered by the initial classification. Both the initial and final classifications had a segregative effect on the land. Therefore, care must be taken to determine the proper dates of segregation and what lands were segregated from specific claims.

Care also needs to be taken to determine whether an allotment within an MUC was legislatively approved. Each MUC reads somewhat differently. If the MUC "excludes" valid existing rights, those allotments (whether filed prior to the MUC or filed later with use predating the MUC) were legislatively approved, all else being regular. However, if the MUC is only "subject to" valid existing rights an allotment application must be adjudicated pursuant to the 1906 act, even if the application was filed prior to the effective date of the MUC. If an MUC states it "will not affect" valid existing rights, the meaning is equivalent to "subject to". A classification which is made "subject to" valid existing rights actually attaches to the land as a secondary claim. If a prior claim was closed, no hole was left since the classification had attached. See Arnold v. Morton, 529 F. 2d, 1101 (9th Cir. 1976), 55 I.D. 205 (1935), and State of Alaska v. Thorson and State of Alaska v. Westcoast (On Reconsideration), 83 IBLA 237 (1984).

(4) Grazing Leases. The Alaska Grazing Lease Regulations, 43 CFR 4200, provide that lands leased for grazing for domestic livestock are not subject to settlement, location and acquisition under the non-mineral public land laws, unless and until the BLM determines the lease should be cancelled. Therefore, if the use and occupancy claimed by an allotment applicant on such lands does not predate issuance of

the grazing lease, the allotment application must be rejected. See Harold J. Naughton, 3 IBLA 237 (1971).

Reindeer grazing permits issued under 43 CFR 4300 do not segregate. Should a valid allotment be found to exist on a permitted area, the permit is considered to be automatically terminated as to the affected land. Upon approval of the allotment, the adjudicator will advise the appropriate district office to notify the permittee.

(5) Submerged Lands and Shoreline Limitation. A Native allotment application may not include submerged lands because it can only cover public lands. The definition of public land does not include submerged lands. (Note that tundra ponds are not considered submerged lands. Refer to Chapter III. N. Describing Allotments for Survey.)

Allotments abutting meanderable non-navigable lakes (50 acres or larger in size) and streams (3 chains or more wide) enjoy riparian rights. This means that (1) the boundary line moves as the water line moves and (2) the upland owner owns a slice of the submerged lake or riverbed, which is not charged against the 160-acre entitlement.

An allotment for land bordering a navigable lake or stream cannot extend below the mean high water mark because the State owns the land beneath such waters. Moreover, the allotment application is subject to the 160-rod limitation of 43 CFR 2094. This means that an allotment can cover a maximum of one-half mile of shoreline unless the limitation is waived. Such waivers are routinely given unless the field examiner can document the need to reserve shore space. If so, a metes and bounds description must be provided which accommodates the reduced shore space. (See also Chapter III. M. Navigability.)

(6) School Sections in Place. The Act of March 4, 1915, set aside surveyed sections 16 and 36 in each township for the support of common schools in the Territory of Alaska with certain special provisions for land in the Tanana Valley. If not under a Federal withdrawal or appropriation, title to these surveyed sections vested in the State on January 3, 1959; however, the lands in each designated section were segregated from entry (including use and occupancy under the allotment act) on the date the official plat of survey was approved. If use and occupancy predated the approved plat of survey, title recovery may be necessary. However, the State would not be entitled to acreage elsewhere if title is recovered. Refer to Chapter II of BLM's State Adjudication Handbook for a more detailed discussion of school sections.

b. Conflicts

(1) With Other Allotment Applications. If there is an apparent conflict between two or more allotment applicants, the adjudicator will inform the applicants by notice (Illustration 5; Glossary 008a) prior to preparing the request for field report if time permits. A copy of this notice will be sent to the proper BIA field office/contractor. The notice will clearly explain the nature of the apparent conflict and give the applicant 60 days in which to provide clarification. Alert the field examiner to potential conflicts in the request for field report. (See also Chapter V. C. 6. Other Native Allotment Applications.)

(2) With Other Claims. The allotment applicant's claimed use and occupancy must predate other claims of record, including mining claim locations which have been properly recorded under the provisions of Sec. 314 of the Federal Land Policy and Management Act (FLPMA); 43 U.S.C. 1744. (Mining claims do not appear on the MTP, but are found in AALMRS.) If there appears to be a conflict with another individual's

claim, request that it be addressed in the field report. If the claimed use and occupancy does not predate other claims, secure additional evidence (Illustration 6; Glossary 586a) before requesting field report if time permits. (See Chapter V. C. 5. Other Land Title Applications.)

c. Legislative Approval. Certain allotment applications were legislatively approved on June 1, 1981, by operation of Sec. 905 of ANILCA. There have been many discussions about whether legislative approval is equivalent to equitable or legal title. Several IBLA decisions have interpreted legislative approval as actual transfer of title to the applicant, distinguishing it from administrative approval under 1906 which does not transfer title. Stephen Northway, 96 IBLA 301, 306 (1987).

In order to qualify for legislative approval, certain land status must exist.

(1) The land must have been in federal ownership on December 2, 1980; and

(2) The land included in the application must have been unreserved on December 13, 1968; or

(3) The land must be part of NPRA; and

(4) If the land has been validly state selected prior to December 18, 1971, or tentatively approved (TA'd), it must be in a village core township withdrawn by Sec. 11(a)(1)(A) of ANCSA (Appendix 15); and

(5) If the land is within the boundaries of any unit of the National Park System, it must also be within a village 25-township (ANCSA 11(a)(1)) withdrawal. The National Park System is currently interpreted as also including units not a part of a park or conservation system but administered by the National Park Service. Refer to status of Alagnak Wild and Scenic River issue.

Careful review of the status of the land as of December 13, 1968 is essential. The date use and occupancy commenced has no bearing on whether or not the application was legislatively approved.

Allotment applications filed prior to State selections (for lands outside core townships) qualified for legislative approval, all else being regular, since the applications segregate the lands and they cannot be validly selected by the State (State of Alaska, 109 IBLA 339 (1989) and State of Alaska, 116 IBLA 301 (1990)).

If the land is no longer in Federal ownership, applications were not legislatively approved unless:

(1) TA in core township; or

(2) Land was conveyed after 1980, reconveyed and meets the other criteria under Sec. 905 of ANILCA.

The determination as to whether the allotment would otherwise qualify for legislative approval will be made before initiating title recovery.

A valid protest filed pursuant to Sec. 905(a)(5) of ANILCA precludes legislative approval. (See Chapter IV. A. ANILCA Protests.)

(Refer to Chapter V. B. Legislative Approval for decision-writing instructions.)

d. Applications for Lands no Longer in Federal Ownership

(1) General. Native allotment applications for lands which are no longer in Federal ownership may be processed under certain circumstances. If an allottee's use and occupancy began prior to selection of the land by another applicant, the government may be obligated to pursue title recovery which may include bringing suit to recover title. Certain

situations, however, preclude title recovery, including:

(a) Existence of a bona fide purchaser (determined after a hearing) (Appendices 16 and 16a); and

(b) Fanny Barr applications (see Chapter II. B. 8. Barr (Lost) Applications).

Although we may seek voluntary reconveyance in either of the above situations, we cannot sue to recover title.

Note: The general rule found in 43 U.S.C. 1166 which states that the United States must bring suit to vacate or annul a conveyance within 6 years of its issuance does not apply in suits to recover title to Native allotments.

(2) Tentative Approvals and Interim Conveyances (IC's). In reviewing TA and IC documents, determine whether the allotment application is still depicted in the section from which it was originally excluded. If the allotment application has not moved and was excluded from the lands described in the conveyance document (either by serial number or because it was located within a larger exclusion), it will be processed following standard procedures. If an allotment was excluded from a conveyance document and later increased in acreage, title recovery is not necessary for the additional acreage.

Additional guidelines exist for inholdings such as allotment applications which lie within TA'd lands. First, if a TA used the language "presently shown in" to describe the location of the allotment, the allotment application is considered excluded from the TA even if it moves into another section. Secondly, if the allotment was legislatively approved and lies within an ANCSA core township that was TA'd, no recovery is required because of the effect of Sec. 11

of ANCSA on the TA. However, it is necessary to formally rescind that portion of the TA covering the allotment application and to reject the State selection application prior to conveyance of the allotment. This should be done in the allotment approval decision.

If the land was found valuable for coal, oil and/or gas, the TA should not be rescinded nor the State selection rejected as to these minerals unless the regional corporation is entitled to receive the reserved minerals under Sec. 14(h)(6) of ANCSA. If a regional corporation is entitled to the reserved minerals, the TA (within a core township) should be rescinded for both surface and subsurface estates when the allotment is approved (approval confirmed). The reason for rescinding the minerals must be cited in the decision. See Solicitor's opinion dated November 22, 1989.

Also note that any tentative approvals rescinded prior to ANILCA remain rescinded and title recovery is not required. Tentative approvals outside the core township, purported to be rescinded by decision after December 2, 1980, were not properly rescinded and title recovery may be required as discussed below. Section 906(c) of ANILCA confirmed all TA's and all title in these lands were deemed to have vested in the State as of the date of the TA.

Inholdings, such as allotment applications excluded by serial number from a TA or IC, which appear in a different location following survey will be processed in accordance with the procedures set out in the August 19, 1986, Memorandum of Understanding between the State of Alaska and BLM (Appendix 24) or IM AK 88-53 (Appendix 25) as appropriate. Also refer to Chapter VIII. Title Affirmation/Concurrence and Illustrations 7 and 7a (Glossaries 566a and 568a).

In general, inholdings not identified as exclusions must go through formal title recovery following the procedures outlined in the Title Recovery Handbook, IM AK 85-271 and IM AK 85-271, Change 1.

(3) Aguilar Cases - Patented Land. If use and occupancy began prior to selection by the State of Alaska and the lands were subsequently patented to the State without excluding the Native allotment application, a true Aguilar situation exists.

In the case of Ethel Aguilar, et al. v. United States, 474 F. Supp. 840 (D Alaska, 1979), a number of allotment applications had been rejected for lack of Federal jurisdiction because, although use and occupancy had commenced prior to a State selection, the land had since been patented to the State of Alaska. The IBLA affirmed (Ethel Aguilar, 15 IBLA 30), but the District Court for Alaska ruled that the government had a responsibility to determine if the applications were valid and if so to recover the land from the State for conveyance to the Native applicant. This principle has since been extended to all case types in similar circumstances, including TA'd and IC'd lands.

Procedures for adjudicating these claims are set out in 14 court-approved stipulations (Appendix 17). The Aguilar procedures issued January 19, 1988, and a series of standard glossaries have been developed to facilitate processing.

The recovery principles of Aguilar apply in all cases where the land has been conveyed to someone or some entity other than the allotment applicant except those for which title recovery is required due to adjudicative error (e.g., failure to exclude a valid allotment of record) or a shift in the plotted description of an approved allotment at survey. Title recovery is commenced only after an application is adjudicated and determined to be valid. Making this

determination may require that a factual hearing be held before a BLM officer. When the decision to recover title has been made, follow the procedures set out in the Title Recovery Handbook, IM AK 84-271 and Change 1, dated August 4, 1986.

E. Minerals. If a minerals report has not been requested previously, request leasable information from the Chief, Branch of Mineral Assessment (985) and locatable information from the appropriate district manager (Illustration 8). Usually this report was requested when the application was filed. Order another report whenever there is an amendment or relocation that moves the application into another section. There is no need to request a new report for coal, oil or gas if a parcel remains partially in a section already determined valuable since the parcel will be subject to a mineral reservation regardless of the value within the new section.

If the report indicates the land is valuable for coal, oil, or gas, and a mineral reservation decision has not been issued, include the reservation, using the appropriate paragraphs, in the approval decision. (See Illustrations 9 and 9a, Glossaries 24a and 28a.)

If the land is identified as being potentially valuable for locatable minerals (gold, silver, etc.) or leasable minerals other than coal, oil, or gas (e.g., phosphate, oil shale, geothermal steam, etc.), the applicant may be precluded from gaining title. Although geothermal steam is also considered a leasable mineral which could preclude approval of an allotment, to date only three areas in the state have been classified as valuable for such (two areas in the Aleutian Islands and one area on the Seward Peninsula). Therefore, mineral reports for land outside these areas which indicate potential value for geothermal steam are questionable. If in doubt, request verification and/or a corrected report from Minerals (985).

A mineral-in-character determination will be requested for those parcels identified as potentially valuable to determine whether the land was valuable for minerals at the time equitable title was earned which is the actual date when proof of use and occupancy was filed with BLM. Heirs of Simon Paneak, 55 IBLA 305 (1981).

One exception would be those applications that included proof of use and occupancy, which were filed with the BLM after December 18, 1971, and were deemed timely filed (i.e., reconstructed applications, Fanny Barrs and those which were timely filed with BIA but not forwarded to BLM until later). The date to be used for mineral-in-character determinations for these applications is December 18, 1971. If the land is found to be valuable for minerals other than coal, oil or gas, the application will be rejected if the applicant was notified under the provisions of Sec. 905(a)(3) of ANILCA by notice or the Federal Register list (Appendicies 5 and 18).

Although rare, the date to be used for mineral determinations on allotments which otherwise qualify for legislative approval, for which no proof of use and occupancy has been filed, is June 1, 1981. In this case, however, if the report indicates the land may be valuable for minerals and the applicant is notified pursuant to Sec. 905(a)(3), it would result in the allotment being adjudicated under 1906 and rejected for failure to file proof within 6 years of application (Stat. life).

If the land description has changed, an application may qualify for legislative approval, even though the originally described land was valuable for minerals. In this case, adjudication has 180 days from filing of an amended/corrected legal description in which to issue a notice that the newly-described lands may be valuable for minerals and the application must be adjudicated under the 1906 criteria. See Solicitor's opinion, Native allotments that Move (By Amendment) Onto Mineral Lands (January 11, 1984). For amendments due to field examination, the 180 days will begin when the District Manager approves the field report. Because the time frame is relatively short, the mineral classification report must be ordered immediately upon confirmation of a change in location and must clearly indicate the date the report is needed. Failure to issue such notice within the 180-day time frame would preclude rejection of an otherwise legislatively approved allotment located on mineral lands.

The ANILCA notification provision only applies to applications which would have otherwise qualified for legislative approval. If an applicant was notified timely that the land may be valuable for

minerals, and it is later determined that the lands are not valuable for minerals, the application still was not legislatively approved and must be adjudicated under the 1906 act.

Allotment applications which require 1906 adjudication will be rejected if the lands are found to have been valuable for minerals other than coal, oil or gas. Notification pursuant to Sec. 905 of ANILCA is not required under 1906 adjudication.

Upon passage of ANILCA, the State protested many allotments believing the lands to be valuable for minerals. In response to these protests, the State was given a 60-day period in which to submit additional evidence as to the mineral character of the lands with a verbal 15-day extension. It is possible that additional protests of this type may be filed as a result of relocations or reinstatements. If the protest is not accompanied by supporting information and the BLM report is negative, issue a notice requesting additional evidence (Illustration 10, Glossary 589a). If the State fails to respond, continue processing the allotment application and dismiss the protest in the approval decision, (if otherwise legislatively approved).

If the State supplies information which indicates definite mineral potential, request a mineral-in-character report and issue a notice to applicant that the lands may be valuable for minerals (see glossary 711a). (The 180-day requirement to notify the applicant still applies in these cases.)

In instances when the land has been determined non-mineral in character and conflict exists with a State mining claim, continue processing the application, if the land is State selected but not TA'd. If the land has been TA'd, title recovery is required unless land is also in a village core township. If the land is determined to be non-mineral in character and there is a conflict with a Federal mining claim, and the allottee's use and occupancy predate the location of the mining claim, the mining claim must be cleared from the record before the Certificate of Allotment is issued. This will be done by an appealable decision declaring the mining claim null and void ab initio because the land was appropriated and unavailable for mineral entry due to the allotment applicant's

use and occupancy. (See Chapter II. D. 2. b. (2), Conflicts With Other Claims and Chapter V. C. 7. Mining Claims.)

Sand and gravel are no longer considered minerals for purposes of Native allotment adjudication (Sec. 905(a)(3) of ANILCA).

F. Case File Auditing - AALMRS. The Native Allotment Action Code Dictionary, is included as Appendix 19 to this handbook. It identifies the allowable action and status codes for Native allotment case types, describes the appropriate use of each code, and shows the office responsible for entering the code. This appendix will be updated as soon as all new codes and definitions have been finalized for the new land information system.

A complete audit of history and land description will be done during preadjudication or whenever the adjudicator begins work on a file that has not been audited. Each subsequent action will be coded as the action is completed. Management will track progress (particularly for the Patent Plan Process) based on the data in AALMRS. Questions posed by applicants and interested parties may be answered from the case file abstract. Therefore, accurate and timely coding is critical.

G. Request for Field Examination. Prior to requesting a field examination, thoroughly review the case file and status to be sure an examination is necessary. The request for field examination is in the form of a memorandum directed from an adjudication branch chief to the appropriate district manager. It may be handwritten but must include the survey year and window number assigned under the Patent Plan Process, if any. Refer to Illustration 26 for sample field report request. If the parcel(s) to be examined must be limited to a certain acreage, state this on the request. If there are potential conflicts, note them. If the land is surveyed and the applicant is required to conform to survey, let the examiner know so that he/she does not go to the extra effort to write a metes and bounds description or prepare a sketch for survey request. The field report request should also include the following additional information:

1. USGS quad.

2. Date of birth and date of death (if applicable).

3. If the applicant is deceased, attempt to identify the next of kin or a family member for use as a contact.

4. Name, address and phone number of the BIA contractor.

5. A clear statement as to the reason why the field report or supplemental field report is necessary.

While it is the field examiner's responsibility to be familiar with the land status and the particulars of the application, common sense requires adjudicators to include important information on the request to make certain it is not overlooked.

If the field examiner has questions or concerns regarding the request for field examination, he/she will contact the branch to resolve the issues prior to field work being started.

CHAPTER III - FIELD PROCEDURES

A. General. The purpose of the field examination is to provide an on-site inspection of the lands claimed by the applicant and a careful investigation of evidence in the field to determine compliance with the requirements of the Native Allotment Act. The field examiner must have a good understanding of the laws, regulations and policies affecting Native allotments in order to provide an objective assessment of the available data.

The field report is used by adjudicators in the Division of Conveyance Division as part of the evidence for determining the validity of the allottee's claim. In most cases the field examination provides the only opportunity for the adjudicator to know what is actually on the ground. The field report may be cited or quoted to support an approval or contest of the allottee's claim.

The report is also used by Cadastral Survey to determine the location of the claim when performing the survey. In addition, BIA, or its contractors, may use the field report to help the applicant verify the true location of the parcel and to resolve other conflicts.

Finally, the report becomes a permanent part of the record and may be of legal significance in the final outcome of the case. Not only do adjudicators weigh the field report as evidence in determining validity, but the report may be quoted or analyzed in Administrative Law Judge, IBLA, or court decisions. Since the field examiner's report has such far-reaching implications, he/she is tasked with an objective and thorough approach to the gathering and documentation of data. Any statements or conclusions by the field examiner should be based on an analysis of the facts.

Field examinations are required for all allotments. Following ANILCA, a "field check" confirming the location and boundaries of legislatively approved allotments replaced the need for a complete examination dealing with use and occupancy. However, field checks often proved to be inadequate because changes in

location made applications subject to new protest periods and potential 1906 adjudication. Therefore, because the major cost of field work centers on transportation to the allotment, a complete field examination will be done on all parcels while at the site(s).

Written notice of the field examination schedule must be provided to the Native allotment applicant and interested parties (Appendix 9); a reasonable attempt will be made to notify all parties 30 days prior to scheduled examination date. It may also be helpful to contact village leaders, i.e., mayor, council president, etc.

The written notice to each applicant will encourage him/her to accompany the field person during the examination and will ask the applicant to designate in writing his/her representative in the event he/she cannot be present. This representative may be a family member, a representative appointed by the village, or a friend of the applicant who is familiar with the applicant's allotment, has been on the allotment, and knows where all possible improvements, resources, or other evidence are located. Other knowledgeable representatives may be substituted at the discretion of the applicant. In the absence of, or in addition to, a representative appointed by the applicant, a representative from the BIA agency or the BIA contractor's office may accompany the field examiner. Where diligent efforts fail to locate anyone to participate in the field trip, proceed with the examination and thoroughly document the field report regarding efforts to locate someone.

It is important to keep in mind that all evidence of use or non-use, as well as non-exclusive (communal use), must be documented. It is necessary to collect, and objectively consider, analyze and use all relevant and available data whether it be on-the-ground evidence or oral or written statements provided by the applicant or others. (See Chapter III. B. Field Investigation Guidelines.) There may be very little physical evidence, but it is the sum total of all information gathered that results in a conclusion.

B. Field Investigation Guidelines. Department of Interior guidelines for conducting field examinations of Native allotment claims include memoranda from Assistant Secretary Jack O. Horton, dated June 6, 1973 (Appendix 2) and October 18, 1973 (Appendix 3), as

well as a memorandum from the Deputy Assistant Secretary, dated September 5, 1974 (Appendix 4). Acquaint yourself with these Secretarial guidelines before beginning any field work.

1. Prior to going to the field, review the case file to become familiar with:

   a. The application, including claimed uses and dates (time frames) the applicant claims use. Pay particular attention to use claimed prior to any segregation of the land.

   b. Pertinent data concerning the applicant.

   c. All pertinent land status, including status at the time claimed use began, as well as current land status. Current MTP's, HI's, TWPALL's and survey plats should be reviewed.

   d. Potential or existing conflicts such as withdrawals (including revoked withdrawals and multiple use classifications), state and Native selections, community use areas, settlement applications, and minerals.

   e. Presence of granted rights-of-way, Omnibus Act roads or material site grants to determine whether the applicant's claimed use and occupancy pre-dates the right-of-way or if the presence of the right-of-way is evidence of non-exclusive use.

2. Review previously-examined/surveyed applications which have a common boundary with the parcel to be examined.

3. Review any navigability determination reports which have been prepared. These may be found in the appropriate ANCSA corporation easement file. See Chapter III. M. Navigability. If a navigability determination has not been made, contact the Division of Conveyance Management to find out if one is scheduled. The review of these reports will be beneficial in properly describing a parcel and also in obtaining possible information on the use of the water body by the applicant and others.

4. Contact the Native allotment applicant and other interested parties (Appendix 9) as to the date of field exam, and meeting time/place. Letters to the applicant should be followed up with a telephone call a few days prior to the appointed date.

5. Develop a field file, consisting of copies of the application and its amendments, mineral reports, withdrawals, protests, previous field reports, copies of field reports of adjacent parcels, affidavits supporting or disputing the claim, maps of adjacent Native allotments, appropriate USGS (1:63,360 scale) maps, MTP's, HI's, abstracts, aerial photos, easement blue lines, surveys, survey field notes, etc. Maps covering adjoining lands may be helpful as would survey plats to locate existing monuments.

6. In most instances it is appropriate to let the applicant show you where the parcel is rather than to lead him/her to it; however, many applicants have never flown to or over their allotment and may have difficulty locating it from the air. In this case, direct the applicant to the lands in the application. It is a good idea to start from a point that is known to the applicant or representative and fly the route he/she is used to taking. If the wrong land has been described, have the applicant take you to the proper lands. If the applicant does not appear to know the location, document this fact but take him/her to the applied-for lands.

7. See Chapter III. C. Use and Occupancy, for an in-depth discussion. To substantiate use and occupancy, look for the following while at the parcel:

   a. Corners left by the applicant.

   b. Access to the parcel.

   c. History of use by the applicant.

   d. Conflicting uses, such as other allotments, community use, minerals, timber cutting, access routes crossing the parcels, etc.

e. Improvements (buildings, fish racks and wheels, tent frames, docks, cabins, corrals, trails, power and pipelines, etc.) Show on site plot. Verify that the improvements belong to the applicant.

f. Other signs of use.

g. Resources to support the claimed use (fur bearers, berry bushes, big game animals, etc.).

h. Knowledge of the parcel by the applicant. Verification of information provided through written witness statements.

i. Cultural resources. (In this context simply note your observations. If a detailed cultural resource evaluation is required, it will be performed by a trained archaeologist. See Chapter III. J. Cultural Resources (1906 Adjudication Only) and Chapter V. C. 14. National Historic Preservation Act.)

j. Other improvements on or near the parcel.

k. Navigability Information. (See Chapter III. M. Navigability.)

8. To complete the field work:

a. Take pictures of anything needed to substantiate the field report. (Examples would include: improvements or remains of improvements; implements used to process fish or game; evidence of resources such as berry bushes or antlers; or evidence of activities such as wood cutting or birch bark gathering.) Include a picture of the applicant.

b. Take pictures of boats seen or used on the water bodies to aid in navigability determinations.

c. Mark the point of beginning so it will be plainly visible for the surveyors, and take a picture of it.

d. Do not assume the surveyors will have a helicopter for access. Describe the land accordingly.

e. Determine corners and boundaries to be adjusted.

f. Complete Field Report form (Illustration 11).

g. Make a site plot of the parcel (see Chapter III. N. 1. Site Plots.) and plot the location of the parcel on a 1:63,360 scale map.

9. Any government contest of the application will be based, in part, on the field examiner's report and testimony; therefore, provide as much documentation as possible.

C. Use and Occupancy. Early field reports and adjudication reflected the "homestead" attitude by virtue of reduction in acreage or total rejection because of lack of proof (under the homestead criteria) of substantial use and occupancy. In 1966, the Solicitor ruled that homestead criteria could not be used to reject Native allotment applications. Cultivation was dropped as a valid requirement. As late as 1973, some physical evidence of use and occupancy, such as dwellings, tent frames, fish racks, etc., was almost mandatory, as well as a determination that the resources were present for which the applicant had claimed use, e.g., berry picking, fishing, trapping, hunting, etc.

Currently, if the resources are available that the applicant claims have used in the traditional Native manner, the potential exists for a favorable field report on those cases which require adjudication. (Secretarial Guidelines of October 18, 1973, Appendix 3.) However, this should not be interpreted to mean that the mere presence of resources automatically results in a favorable report. It is the summary of all evidence obtained, positive or negative, and the extent to which this evidence supports substantial and potentially exclusive use in the context of the traditional and local Native lifestyle which determines the outcome of the field examination. See Angeline Galbraith (On Reconsideration), 105 IBLA 333, for an in-depth discussion of the concepts of "substantial" and "exclusive" as they pertain to Native allotments.

Departmental regulation 43 CFR 2561.0-5(a) defines the term "substantially continuous use and occupancy" as ". .contemplates the customary seasonality and occupancy by the applicant of any land used by him for his livelihood and well-being and that of his family. Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use."

This definition is our primary guidance. It was supplemented by the October 18, 1973, Secretarial policy statement which noted that "Substantial use and occupancy cannot be defined in any more detail than in the regulations. It will depend largely upon the mode of living of the Native . . . . The customs of the applicant must be considered." (emphasis added.)

No single issue is more central to successful field reporting or adjudication of Native allotment cases. The following policy governs in observing and reporting the sufficiency of "use and occupancy."

1. For a Native allotment to be approved, there must be evidence of use by the applicant which pre-dates any segregation of the land; i.e., the use must have commenced when the lands were "vacant, unappropriated, and unreserved." 43 CFR 2561.0-2. The field examiner should look for and document evidence which substantiates use during the claimed period of time. For lands which were withdrawn after the date that use and occupancy is claimed to have begun, the critical period for use and occupancy would begin prior to the date of withdrawal and continue up to the time that proof of use and occupancy was filed.

   For example, if an applicant claimed use and occupancy in 1960 and the State filed a selection in 1964, the field examiner would look for evidence of use and occupancy beginning prior to the 1964 selection. If the field examiner observed a relatively new cabin built in 1980, that cabin would not substantiate use and occupancy commencing in 1960. The field examiner would document the presence of the cabin but would also document its new condition and the year

it was built. On the other hand, a cabin built in 1962 by the applicant would serve as evidence of use and occupancy commencing prior to segregation by the State's application.

The important thing is to become familiar with the time period during which the lands could have been available to the applicant and to document evidence with that time period in mind. See Golden Valley (On Reconsideration), 98 IBLA 203, 205 (1987), State of Alaska v. 13.90 Acres of Land, 625 F. Supp. 1315 (D. Alaska 1985), Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979) for further discussion of Native allotment preference rights relating back to the date use and occupancy commenced.

Occupancy means the act of taking possession of property, which may or may not include actual tenancy on the property.

2. Use and occupancy may be seasonal. Seasonal use means that which follows a yearly pattern, such as picking berries or fishing as those seasons occur on a regular basis. Seasonal use is contrasted to intermittent use which may not occur on a regular basis. Intermittent use may also be characterized as a few trips to the land per year for a few days to a week per trip. See United States v. Estate of George D. Estabrook, John J. Estabrook, Leland R. Estabrook, 94 IBLA 38, 39 (1986) and State of Alaska, 113 IBLA 80, 84 (1990).

3. Departmental regulation 43 CFR 2561.0-5(a) requires that use be "at least potentially exclusive of others." This does not mean that the applicant could not permit others to use the land, but rather that evidence on the land should be such ". . . that there is a public awareness and acknowledgement of the applicant's superior right to the land. . ." See Estabrook, supra at 53 . See also Angeline Galbraith (On Reconsideration), 105 IBLA 333, 334, 335 (1988) for further discussion. The exclusive use requirement will be a basis for denial only if it is proved and documented that an allotment filing is in conflict with areas of prior Native community use or there is substantial use of the parcel (such as improvements) by others without permission of the applicant. The existence of roads and trails used by the "public" should be documented in the

field report. Any evidence which might clarify the historical use of a road or trail should also be documented. If the public's use of the roads or trails predates that of the allottee's, the certificate of allotment will be issued subject to the road or trail.

4. Familial or ancestral use of a parcel is quite common; however, the applicant must be able to demonstrate use as an independent citizen which precedes any withdrawal of the land. (See Chapter II. D. 2. a. Segregation, for a discussion on age and independent use.)

5. The type of evidence acceptable to confirm use will depend on the uses claimed by the applicant, the traditional Native lifestyle in the subject area and natural resources available.

   a. Formulate a good understanding of the traditional and local Native uses of the land.

   b. Consider the uses actually claimed by the applicant.

   c. Investigate all portions of the parcel which might yield evidence of use and occupancy. In Linda L. Walker, 23 IBLA 299 (1976), IBLA ruled that, ". . .A field examination of a land claimed for a Native Allotment is not sufficiently thorough where the field examiner reveals in his report that only a portion of the parcel was actually examined for evidence of use and occupancy. . ." The decision goes on to say, ". . .We do not suggest that an examiner needs to make an intensive investigation of every square foot of a parcel, but he should see enough to satisfy him that an applicant has probably not occupied any portion of the parcel before reaching that conclusion. . ."

   d. Ask the applicant or his/her representative to show you all available physical evidence and document that you asked. This will help to ensure that no significant evidence is missed and also can be of importance at a future date if the field report is being weighed as evidence by an Administrative Law Judge or by IBLA.

6. The examiner must also consider whether the evidence is sufficient to support the applicant's claim of use and occupancy. The examiner's final conclusions are not only determined by whether or not evidence is present, but also by whether that evidence (or lack of evidence) is enough to say that the applicant's claim is (or is not) supported.

   a. Consider the type of physical evidence that would remain assuming the claimed type of use has occurred.

   b. Consider how long ago the claimed use took place and what effect the intervening years would have on the evidence.

   c. Were or are the resources present to support the claimed use?

   d. Weigh the evidence you have gathered. Consider whether the documentation of use or non-use is adequate to support your conclusion.

7. Since Adjudication must examine the entire record before approving or contesting a Native allotment application, the field report will not be the sole basis upon which such a decision is made. See State of Alaska, 113 IBLA 80, 84 (1990). However, the field report will be part of the evidence weighed. If an approval decision is appealed, IBLA will review the field report as part of the evidence that was used in making that determination. If there is insufficient factual evidence in the record to support the applicant's claimed use and occupancy, a government contest will be initiated to afford the applicant due process. (Contest procedures are discussed in Chapter V. D. Contests). Thus, thorough documentation of evidence of use or non-use as observed by the field examiner plays a vital role in the final outcome of the case.

   In cases where a contest is initiated, the field examiner may be called to testify regarding the field report. The better the documentation in the field report, the stronger the case for contest and the more credible the field examiner's testimony.

For this reason, the field examiner should, in cases where use cannot be documented, record that the resources and/or physical evidence normally associated with the claimed use is not present. For example, if the applicant claims that the land was used for fishing and there are no water bodies in or near the parcel, then this should be documented. Documentation of the non-use must be thorough, consisting of photographs, statements by knowledgeable persons, and personal observations.

The Bureau will not contest use and occupancy on only a portion of a parcel unless there is a conflicting claim or use.

D. Abandonment and Cessation of Use. Many Native allotment cases reflect the change in lifestyles which Alaska Natives have followed in the past fifty years. Many Native people no longer live on or use the land in the manner they did in the 1950's or 60's. The change from pure subsistence to a "cash" and subsistence lifestyle brings more Native people to the villages and towns, leaving their allotments seemingly "abandoned" for longer periods of time. Intent to abandon is not really a consideration except where it may take the form of a relinquishment. See U.S. v. Flynn and Orock, 53 IBLA 208 (1981).

The issue of cessation of use will not normally arise unless there is an intervening withdrawal or claim during a period of non-use where the earlier use and occupancy is not covered by an allotment application until after the intervening right has been created. See Chapter V. C. 2. c. Withdrawals and also Jonas Ningeok, 109 IBLA 347 (1989), for a more in-depth discussion.

Any question concerning abandonment or cessation of use should be discussed with Conveyance Management's Allotment Coordinator before concluding that the applicant has not complied with the 1906 act.

E. Amended or Corrected Descriptions. Many errors were made in written descriptions and maps prepared during the application process (see Chapter I. B. Background). Therefore, valid changes in the description of the claimed land may be made if it is determined that the applicant (or BIA) made an error in map

reading or describing the land. Changes in descriptions are not allowed if the applicant merely desires to move his claim or to split parcels and claim additional parcels. If a valid amendment is involved (i.e., the present description varies from the land the applicant intended to describe in the original application), the newly-described area will be field examined. Refer to Chapter II. B. 5. Amended or Corrected Descriptions for more discussion.

If the examiner is unsure whether the case involves a valid amendment, both areas should be field examined. Consultation with BIA may be appropriate. If an application is amended and the newly-described land does not qualify for legislative approval, the case will be adjudicated under the 1906 criteria.

F. Approved Acreage. Applications are often unclear as to the amount of land to be addressed by the field report. Examples would be where the application describes 150 acres, but the description concludes with "160 acres more or less," or the application description and map disagree.

1. During the field exam, an attempt will be made to determine the intent of the applicant. Use the intended acreage in field reports. Refer to Chapter II. B. 5. b. Amendments that Affect Acreage, for further discussion on acreage. Referral to BIA for resolution is also appropriate. Remember, any change from the original application must meet the ANILCA criteria. (Heirs may be consulted, Mary Olympic, supra.)

2. Field reports must clarify any situation where acreage discrepancies exist and shall provide a clear description upon which Adjudication can act.

G. Conflicting Claims. A myriad of conflicting claim situations may exist on the ground. Conflicts between two or more Native allotments can be resolved as discussed below. Conflicts with other types of claims or land status (including settlement claims, potential ANCSA 14(c) claims, withdrawals, rights-of-way, etc.) must be adjudicated, but identification and recommendations should be developed in the field. Boundary adjustments are not appropriate for conflicts between claims other than Native

allotments (See Chapter II. D. Land Status and Chapter V. C. Under Act of 1906.)

The first part of this discussion is confined to conflicts where two individual Native allotment applicants claim the same land. Basically, two situations occur: (1) paper conflicts but no actual use conflict; and (2) on-the-ground use conflicts.

The field report must discuss the conflict and its resolution. Note: Field reports must provide two descriptions in all on-the-ground conflict cases: (1) the areas of conflict; and (2) the areas as resolved. Indicate whether all parties to the conflict have agreed to the resolution and if not, why not, and what efforts were made to secure agreement. The agreement should be in writing.

1. Paper Conflict. If the situation is a paper conflict, Adjudication will document the file and submit corrections to T&LS.

2. On-the-Ground Conflicts. If on-the-ground conflicts are found during the field examination, attempt to resolve the conflicts. All parties, including the BIA representative, if one is available, should sign a written agreed-upon solution. Attempt to resolve the matter amicably. In all cases where a resolution is accomplished, document the resolution and provide descriptions of the lands in all affected files. These descriptions should be signed by all parties to the agreed-upon solution. Boundaries may be adjusted in one or more of the allotment applications under the criteria of ANILCA, Sec. 905(b). Site plots and survey instructions will be prepared by the field examiner.

   If the conflicts cannot be resolved in the field, Adjudication will attempt to resolve the conflict using available evidence, existing field reports and contacts with BIA or the BIA contractor, and the applicants.

   If Adjudication and BIA have exhausted all efforts to resolve the conflicts, the district will adjust the boundaries pursuant

to Sec. 905(b) of ANILCA. This does not mean returning to the field, unless the district feels it is necessary.

In some cases it may be necessary to reduce acreages in order to resolve these conflicts if there is not enough land available (no contiguous land to use to adjust the boundaries) to provide the total applied-for acreage. Section 905 of ANILCA provides authority to adjust up to 30% of the parcel acreage originally described for Native allotment applications, providing a reduction does not exclude claimed improvements. Solutions providing for extremely long, skinny parcels are not acceptable.

3. Mineral Lands. (Refer to Chapter II. E. Minerals.) Allotment applications which require adjudication under the 1906 act plus those for which notice was given pursuant to Sec. 905(a)(3) of ANILCA (which also require 1906 adjudication), must be screened for value for minerals.

   The request for field examination will indicate whether there is potential mineral value and whether proper notice was given (See Illustration 26.) If there is an indication of mineral potential, consult the district office geologist as to the need for a mineral exam. If unaccompanied by a minerals specialist while examining the parcel(s), be alert for signs of mining activity such as corner posts, mine tailings, mining equipment, etc.

   The field report will include findings obtained from the above procedures and recommendation(s) for a further review of the allotment to determine if it does conflict with a mining claim or if there is evidence of mineral value.

4. Miscellaneous: In the process of conflict resolution, keep two points in mind:

   a. Avoid the creation of land patterns that will complicate future management by private or public land managers; and

   b. Consider public and private access to water and land transportation routes or facilities when making boundary

adjustments. (Refer to Chapter III. L. Public Access.)

H. Reduced Acreage. In the early 1960's many allotments were reduced to 5-acre tracts that surrounded the applicant's improvements. During the late 1960's, this practice was changed to bring it in line with the regulations so that 40 acres of surveyed land (smallest legal subdivision) became the smallest area to which an allotment could be reduced. As a matter of policy, this practice applies to unsurveyed lands as well. However, allowable acreage is always dependent on land availability.

Allotment applications which require 1906 adjudication may be contested for reduced acreage based on lack of use and occupancy.

1. Continue to utilize the 40-acre practice, where appropriate (i.e. without conflicting claims), as the smallest area to which an allotment may be reduced, whether surveyed or unsurveyed.

2. If a "reduction" recommendation is to be made, the "non-use" or community use of an area must be documented. (Refer to Chapter III. C. Use and Occupancy for sufficiency and documentation.)

3. As with any negative conclusion, a simple statement as to lack of evidence of use on an area will not sustain a contest recommendation, particularly if the claimed uses are those such as berry picking or hunting. Many uses utilize the entire parcel and leave no trace of physical evidence. If the primary claimed use is one which requires only a small area (e.g., fish camp or cabin site), carefully document the use that has occurred on the remainder of the parcel. A reduced acreage recommendation must be supported by thorough documentation to prevail at a hearing.

4. If non-use, or reasonable evidence of non-use, of an area can be documented, Adjudication will request affidavits and other supporting evidence concerning use of such areas. If evidence of use is not received from the applicant, Adjudication will contest the parcel. (See Chapter V. D. Contests.)

5. All field reports recommending a reduced acreage will have to describe two areas on the maps and survey instructions; the area used and the total applied-for area.

I. Management of Mineral and Vegetative Resources. Management of mineral and/or vegetative resources on unapproved Native allotments is a subject of concern from two aspects:

1. Unauthorized commercial use by the applicant; and

2. Unauthorized use by persons other than the applicant.

These subjects are discussed further in Chapter III. K. Unauthorized Use. The filing of the allotment application segregates the land from the operation of the public land and mineral laws and appropriation of these resources constitutes an unauthorized use.

Management of mineral and vegetative resources is the responsibility of the administering Federal agency (see Chapter I. C. Surface Management) and the Native allotment applicant prior to approval. After approval of an allotment on BLM-administered lands, this responsibility shifts to BIA, which must approve any disposal of the resources proposed by the Native allotment applicant. The applicant may not dispose of mineral and vegetative resources for profit prior to approval of the allotment, but may use them for personal and immediate family benefit. Subsistence resources such as furs, fish, etc., may be sold pursuant to State law.

J. Cultural Resources (1906 Adjudication Only). Cultural resources may occur on Native allotments. The most frequent occurrences are isolated artifacts or flakes, house pits, old structures and graves.

In State of Alaska, 85 IBLA 196 (1985) (Blatchford and Mack allotments on Yukon Island), IBLA ruled an evaluation of cultural resources under the National Historic Preservation Act (NHPA) is required before issuing a certificate under the 1906 act. Specific operating procedures were developed through a programmatic agreement signed by BLM, BIA, the Advisory

Council on Historic Preservation and the State Historic Preservation Officer (See Appendix 28). Pursuant to this agreement, BLM field crews will identify allotments with surface features indicating the presence of significant cultural properties, and will provide this information to their District's Cultural Resources Specialist who in turn will notify the BIA and the State Historic Preservation Officer of their findings. No collection or disturbance of such surface features is to take place.

1. Section 304 of the National Historic Preservation Act of 1966, as amended, and Sec. 9 of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470) require that information concerning cultural resources be given special consideration in order to protect the resources or the site at which the resources are located. For this reason, the field report (Illustration 11) contains a "yes/no" block as to whether the report includes data on cultural resources. If the examiner reports on cultural resources, he or she will mark the "yes" block and include the cultural resource information and any pictures or sketches of same in a separate report to be placed in the case file in a blue "Not for Public Viewing" folder labeled with the case file serial number and "Cultural Resources Report".

2. Any objects or sites of cultural value, or graves must be thoroughly documented, by written description, photography and mapping, whether traceable to the applicant and his/her family or to others. Areas containing these objects or graves are not to be excluded from the allotment except possibily for old community use sites or community cemeteries, which may indicate nonexclusive use. Complete documentation of any graves, objects, and/or sites of historical value is required not only for BLM but also for BIA's future use in exercising its trust responsibilities.

3. Instruction Memorandum AK 77-76, Field Examination of Cultural Resources by Realty Personnel (March 25, 1977), (Appendix 20) provides guidance on necessary procedures although somewhat out-of-date otherwise. The examiner will take notes in the field and later transfer the information onto

the appropriate form obtained from the district cultural resources specialist. Any further questions should also be addressed to those individuals.

K. Unauthorized Use.

1. Prior to approval of the allotment application, the agency having jurisdiction over the land (see Chapter I. C. Surface Management) retains unauthorized use abatement responsibility. In the case of BLM lands, at least, BIA assumes this responsibility after the application is approved. Prior to approval, either agency may initiate unauthorized use investigation with BIA providing its findings to the district offices for appropriate action (Appendix 8).

2. Prior to approval, removal of resources or construction of improvements by a third party constitutes unauthorized use. An allotment applicant may, before approval, utilize resources for his/her personal use, but not for most commercial purposes except in the case of subsistence resources under State fish and game laws. After approval, the allottee and BIA assume jurisdiction over all resources not reserved to the United States.

3. Unauthorized use that does not result in resource damage probably does not constitute a case that could be successfully prosecuted. This type of use, however, should be discouraged.

4. When an unauthorized use is detected, document it in the field report. Follow normal procedures for such cases on BLM-managed land, being sure to notify BIA or BIA contractor and the BLM district realty staff; advise the managing agency if not on BLM-managed land.

L. Public Access. Many existing access routes (land and water) and public use areas cross lands included in Native allotment applications. As the applications are processed to certificate of allotment, public access may be restricted or eliminated. It is vital that the field examiner clearly document in the field report the existence of public access as well as any historical data on

public use.

1. All public access routes or public use areas found while field investigating an allotment will be documented to the fullest extent possible in field reports. This type of information is best obtained from individuals who are familiar with and reside in/near the area. Public use prior to and during the period of use claimed by the allottee should be documented. Any periods of non-use by the public which may allow the allottee's right to become superior should also be documented. Dates of the origin, development and use of such areas, including widths of roads or trails, are very important in ascertaining the public/Native allottee rights and will be included in the field report.

2. A recommendation for a public access reservation will be included in the field report when the road or trail predates the applicant's claimed use and occupancy. Whether such a reservation can be included will depend on facts developed during the adjudication process.

   (For a more detailed discussion see Chapter V. C. 11. Omnibus Act Roads and C. 12., Roads and Trails.)

M Navigability. Generally, title to the beds of water bodies determined navigable as of January 3, 1959 (the date of statehood) passed to the State of Alaska under the terms of the Submerged Lands Act. Such lands are not available for Native allotments.

The Supreme Court gave this definition of "navigable waters" in Daniel Ball 10 Wall 577 (1871): ". . . those rivers must be regarded as public navigable waters in law which are navigable in fact. And they are navigable in fact when they are used or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. . ."

Administrative determinations of navigability are made in the Division of Conveyance Management and will usually be the final word (subject to appeals or Bureau-motion changes because of

criteria changes). An important legal point, however, is that only the Federal courts may make a final navigability determination.

Navigability criteria fitting Alaska waters have evolved over the past 10 years. At present, BLM determines a water body navigable if in 1959 it was navigable or was susceptible to navigation by any craft with a load capacity of at least a thousand pounds. Such crafts include inflatable rafts, canoes, jet boats, skiffs, and riverboats. There are thus many shallow lakes, streams and sloughs in Alaska that meet this standard.

The BLM identifies navigable waters located on lands applied for under the Statehood Act, ANCSA, and the Native Allotment Act in reports prepared for the use of Cadastral Survey. These reports are found in the appropriate ANCSA corporation easement files. Examiners should consult these reports prior to going to the field.

In the field, if it appears that a stream less than three chains in width or a flowing lake (a lake with an effluent) less than 50 acres in size lying in or crossing allotments may meet the BLM's standard for a navigable water body, field personnel should adjust allotment boundaries so as to exclude the potentially navigable body and document their findings for the case file. Personnel should question allottees (and document responses) about past use of boats to and through the allotment, taking care to record the boat's length and method of propulsion; the physical character of the water body (e.g., width, depth, impediments); and their opinion about the suitability of the water body for navigation. Field personnel also should document (and photograph) their own observations of boats on the water body as well as the water body's physical character.

Any information bearing on navigability is to be noted in the field report (Illustration 11). The field report should be as detailed as possible with regard to the navigability of small water bodies.

N. Describing Allotments for Survey. A critical function of the field report is to provide a description of the location of the parcel to assist the survey team in finding it easily. In addition, the field report should include sufficient instructions to enable the crew to perform a survey that will cover those lands for which the

applicant intended to apply. This is accomplished through a site plot. The following are guidelines only; the realty specialist and his/her reviewer will coordinate as to the appropriate level of detail necessary.

1. Site Plot. A site plot is completed on form 2060-2 and is comprised of a diagram of the parcel and survey instructions which describe key items that must be included in the parcel. In the past, the site plot was a "sketch diagram," or hand-drawn picture of the parcel, and the survey instructions were written as a metes and bounds description of the parcel. Currently, the diagram is usually derived from maps through machine-copying or use of a zoom transfer scope. The examiner no longer writes a metes and bounds description, but instead describes several items in his or her survey instructions to enable the surveyor to write the metes and bounds description. Instructions for preparing the diagram and the survey instructions are given below.

   a. Diagram. When available in a timely manner, and if they can be machine copied legibly, use orthophoto quads as the base for the site plot. All lettering should be neatly printed using a fine point black pen (reproducible). Serial number, applicant's name, and case type should appear in the upper right hand corner. Township, Range, Meridian, and protracted or surveyed sections, should be in the lower right hand corner. All site plots must show scale, date of preparation, USGS quad and signature of land examiner near the bottom. The site plot must show the location of protracted or surveyed section lines, prominent topographic features, the direction of flow of any water bodies and the direction North. In preparing freehand site plots, use a zoom transfer scope or machine copy enlargement from topo maps so that the subject property boundary will be drawn to scale 1-inch equals 20 chains with the beginning point of the survey clearly shown. In some instances, a different scale may be more practical. The site plot should show the location of all pertinent improvements (especially trails) and natural features and agree with the USGS quad. If land forms are significantly different from those shown on the quads, say

so on the site plot. To insure meaningful machine reproductions, use cross-hatching in the legend rather than color. All site plots must show the scale, date of preparation, and signature of land examiner near the bottom. See Illustration 11a for samples of site plot diagrams.

b. The survey instructions may be included on the site plot form with the diagram, if there is room, or attached on a separate piece of paper. They should include:

1) a written description of the monument which marks the point of beginning or corner No. 1 (See Chapter III. N. 2. for instructions on marking and describing corner No. 1)

2) instructions which elaborate on the physical features the description is intended to cover, including:

a) improvements belonging to the applicant;

b) common boundaries;

c) conflicts to avoid (See Chapter III. G. for a discussion of conflict resolution);

d) acreage (See Chapter III. F. Approved Acreage);

e) corners that may be adjusted;

f) water boundaries, including instructions for meandering them (Note: tundra ponds if included as part of the acreage do not need to be meandered);

2. Guidelines - Describing Corner No. 1.

a. Marking the Point of Beginning (Corner No. 1).

Whenever possible, help the surveyors by adequately monumenting the point of beginning when in the field. The point of beginning and Corner No. 1 are often synonymous. If the corner is a tree, do everything possible to make it conspicuous.

(1) Blaze with a hatchet.

(2) Paint with fluorescent or other paint.

(3) Inscribe and tack up an aluminum BLM Location Marker.

(4) Flag with brightly colored tape.

(5) Use metal stakes and markers.

If suitable trees are not available (e.g., in the tundra where a monument will be visible from the air), use a survey marker triangle mounted on an aluminum rod. Identify with a BLM location marker, if available, or appropriate marker according to the terrain.

If the above suggestions are not practical, locally-developed techniques may be used as long as high visibility from the air and on the ground is assured and reasonable permanency is obtained. If it is impossible to monument the corner, try to put a monument on one of the boundary lines or close to/on an improvement. Thoroughly document the location of the monument in relation to the actual corner.

b. Describing the Appearance of Corner No. 1.

Be as detailed as possible. For example:

"Corner No. 1 is a black spruce tree, 4 inches in diameter, breast height, which has been blazed, painted red, flagged with surveyor's plastic tape and tacked with an aluminum BLM location marker."

Photograph Corner No. 1 on the ground and if an aircraft is

available, take at least one low-altitude photograph of the corner. Photos should attempt to confirm location and show applicant or authorized representative who accompanied the field examiner.

c. Describing the Geographic Location of Corner No. 1.

1). Make reference to an approximate location on a USGS map.

2). State approximate bearing and distance from survey monument, BLM stake, tagged tree, or prominent topographic features.

3). Describe location of Corner No. 1 in relation to surrounding topographic or physiographic features, the BLM location tag, stake, or survey marker.

4). State approximate latitude-longitude and by what method obtained, i.e., scaled, Loran C, etc. (This is optional.)

d. Sample Description of Corner No. 1

Corner No. 1, the point of beginning, is located on the north shore of Frog Pond in the NE 1/4 of Sec. 14, T. 5 S., R. 10 W., Seward Merdian. From corner No. 1, the BLM location marker bears north approximately 2 chains. The location marker consists of an orange triangular survey marker stamped with the serial number. The location marker is 10 feet south of a large willow flagged with pink survey ribbon. The monument is on line 1 - 2 of the parcel.

3. Guidelines - Water Related Descriptions. The following definitions are provided to assist in describing water bodies and water boundaries.

a. Definitions - Water Related Descriptions

Accretion - the gradual and imperceptible addition of soil or other material by the natural processes of waterborne

sedimentation or by the action of currents against shores and banks. Accretion is the washing up of sand, silt or soil so as to form firm ground called alluvion. In common practice the term alluvion and accretion have been used almost interchangeably. Usually, however, alluvion means the deposit itself while accretion usually denotes the act of deposition. See RELICTION, EROSION, AVULSION, RIPARIAN RIGHTS.

Avulsion - a river's sudden change in flow alignment out from its previous left and right bank to a new channel, leaving an identifiable upland area between the abandoned channel and the new channel. The new flow alignment will generally be a shortcut in channel length because of hydraulic considerations.

The U.S. Supreme Court in Iowa vs. Nebraska (143 US 359) distinguished avulsion from rapid erosion, but some State courts have established different definitions. See Goins vs. Merryman (183 Okla. 155). Frequently the elements of sudden and perceptible changes are included in the definitions. See ACCRETION, AVULSION.

Erosion - in riparian law, the washing away of land by the sea or a river's flow. Usually considered as an imperceptible action, the rate of erosion may be quite rapid in total effect and may be distinguished from avulsion by the absence of identifiable upland between the former and new channels. See RIPARIAN LAW.

Fixed Boundary - an unchangeable boundary created by operation of law. For example: (1) a standard parallel or other control line becomes a fixed boundary on return of areas in adjacent quarter sections; (2) A median line of a non-navigable stream becomes a fixed boundary after an avulsive change; 3) Meanderings can become fixed boundaries when omitted lands have been created by gross error or fraud in the original survey.

Littoral Owner - one who owns land abutting a sea or ocean where the tide regularly rises and falls. In common

usage, the word "riparian" is often used instead of littoral to include seashore boundaries as well as inland water boundaries.

Meanderable Waters - "Lakes" 50 acres or more in size and streams (rivers, creeks, sloughs, etc.) three chains or more in width are meanderable, and the water area is to be excluded from the survey. Tidal waters and navigable waters are also meanderable.

Navigable Waters - waters which afford a channel for useful commerce or travel. The beds of navigable bodies of water are not public domain and are not subject to survey and disposal by the U.S. Under the laws of the U.S., the navigable waters have always been and shall forever remain, common highways. This includes all tidewater streams and other important permanent bodies of water whose normal and natural condition at the date of admission of a State into the Union was such as to classify the same as navigable water.

Reliction - the gradual and imperceptible recession of the water resulting in an uncovering of land once submerged. Also known as dereliction. See ACCRETION.

Riparian Boundaries - water boundaries, or boundaries formed by rivers, lakes or seas. The general rule is that riparian boundaries shift with changes due to accretion or erosion but retain their original location if brought about by avulsion or by artificial causes. See ACCRETION, AVULSION, RELICTION, EROSION, AND LITTORAL.

Riparian Lands - in strict interpretation, the lands bordering on a river. The term "riparian" is also used as relating to the shore of a sea or other tidal water or of a lake or other considerable body of water not having the character of a watercourse.

Riparian Law - the branch of law which deals with the rights in land bordering on a river, lake, or sea.

Riparian Owner - one who owns land having a boundary defined by a watercourse. Usage has broadened the term to include land along a sea or other tidal water or along the shore of a lake or other considerable body of water. Strictly speaking, the correct term for land bordering a sea, or other tidal water is "littoral." See LITTORAL.

Riparian Rights - the rights of an owner of land bordering on the river; lake, or sea which relate to the water (its use), ownership of the shore, rights of ingress or egress, accretions, etc.

Tundra Ponds - In several areas of Alaska there is a combination of flat topography, permafrost and other features that result in a myriad of tundra ponds. Areas such as the Yukon Delta and the Yukon Flats often are as much water as land. Most of the tundra ponds in these areas are very shallow (less than 5 feet deep), poorly defined and with no drainage. Survey in these areas is very difficult due to the land/water pattern. Areas determined as "tundra ponds" (no matter what the size) will be surveyed as land. Areas of "lakes" 50 acres or more in size will be segregated from the survey. The field examiner should offer an opinion in the report as to whether tundra ponds exists; however, the final determination will be made by the surveyor.

b. When the water boundary of an application has a general trend, the survey instructions should normally call for a rectangular (or square) pattern with a ratio of length to width of 4 to 1, or less. The surveyed area is to encompass all improvements, high intensity use areas, and the maximum land area possible, especially if there is a great deal of meanderable water. Give instructions for the adjustment of a boundary to obtain the allotted acreage.

c. When a peninsula or point of land projects into the waterbody, the land mass will be surveyed and there need not be much concern with the survey not being rectangular or square in shape. The allotment may have only one or

two straight lines on the boundary, with other boundaries following the lines of mean-high water of the waterbody. (See Illustration 12, Example III.)

d. As a general rule, only the "land" area within the boundaries of a description will be conveyed. Meanderable water will be excluded by the survey and the applicant will normally receive less than the applied-for acreage. Instructions can be given for the adjustment of a boundary for acreage, but keep in mind the adjustment may extend a great distance onto land with unadjudicated claims. (See Illustration 12, Example IV.)

Survey plats completed after January 19, 1990 will contain a statement that acceptance of the survey does not transfer interest in submerged lands to which the State is entitled (See memorandum from State Director, Alaska, dated January 19, 1990). This statement will be of significance if the survey did not exclude a navigable water body (i.e., a stream shown as a single line on USGS inch-to-mile maps).

e. Streams or rivers more than three chains wide must be meandered. Non-navigable streams less than three chains wide will be meandered if they are being used as a boundary.

The field report needs to state that the survey should meander the (right/left) bank if tidal or navigable, or if the non-navigable, nonmeanderable stream form a boundary. Otherwise, field personnel should treat such streams as "dry land."

f. Identify the right or left bank of the stream/river/slough and always show direction of flow with an arrow on the map. Looking downstream, the right side is termed the right bank of the stream and the left side is termed the left bank. If the direction of flow can't be determined, use the terms northerly bank, easterly bank, etc.

g. Do not allow the boundary of the survey to encompass lands on both sides of a meanderable water body (generally a river) unless the applicant definitely wants two land masses. This situation causes extra survey work and raises costs. However, if it is necessary to include two land masses, the examiner must write a separate description for each land mass. (See Illustration 12, Examples I and II.)

h. Lakes 50 acres or larger in size must be meandered.

i. Lakes less than 50 acres must be meandered if they are navigable (accessible by boat). A portion of a non-navigable lake will be meandered if it is used as a boundary unless the applicant requests otherwise. Ordinarily, field personnel should regard such non-navigable lakes as "dry land."

4. Miscellaneous Guidelines

a. Field examiners will discover that a majority of the Native allotment application descriptions are incorrect, requiring some type of modification.

b. A Native allotment application description must, when possible, conform to the rectangular system if surveyed on the date of application. (See Chpater II. B. 4. Land Description.) If the described lands later become part of the rectangular system, the applicant may elect to conform to the existing survey. Allotment applications are generally described in terms of opposite boundaries being equal distant in length and parallel to each other. However, the allotment should be described as applied for, barring any conflicts which would otherwise preclude following the application description.

c. Make certain that the applicant agrees with any corrections to his description while in the field. Communication at this point is essential. If an interpreter is necessary, it is important that he/she, as

well as the applicant, understand what is being proposed. Other aids to insure accurate communication in both directions could include affidavits, maps, pictures and aerial photos; whatever is available and appropriate. If possible, photograph the applicant standing beside Corner No. 1. Make corrections to rectify an improperly written application description, but unless an obvious mistake has been made in staking, do not amend descriptions by changing locations of on-the-ground boundaries unless conflict resolution is required. Have the applicant sign a written statement verifying any corrections made. If the applicant is not available, provide a proposed corrected legal description and narrative rationale so that Adjudication and/or BIA can take the appropriate action.

d. For Native allotments or other claims that are adjacent, and have a common boundary, be consistent with the description; if possible utilize the same point of beginning and/or Corner No. 1.

e. State whether the site plot or acreage figure controls the survey. Indicate whether adjustments can be made, and if so, where.

f. Always make certain that the site plot and quad map agree.

g. All descriptions containing any type of a road as a boundary or partial boundary of a parcel should be written in explicit terms. State whether the description goes to the centerline of the road or to the exterior boundary of the right-of-way, and if so, which boundary. If a boundary of the parcel (or a portion of the boundary) is the exterior boundary of the right-of-way, the width of the right-of-way from centerline must be given.

If a road or trail traverses a parcel and future access information is necessary, request that the survey show an "informational traverse" of the road or trail.

h. Make certain the description closes.

i. Do not create isolated tracts of unmanageable public land.

Q. Field Report Conclusions The examiner 's conclusion should summarize his or her findings based on the evidence/information/data gathered as a result of the field examination itself. In other words, the conclusion should be fully supported by the field examiner's documentation.

The conclusion should not attempt to approve or recommend contest for the application. This decision, a delegated function of Adjudication, can be made only after consideration of the entire record. See State of Alaska, 113 IBLA 80 (1990). Each examiner is encouraged to state the rationale used in reaching his or her conclusion and to summarize the evidence that was considered in reaching the conclusion.

Suggested wording for a favorable or an unfavorable conclusion is given below:

1. *I have considered the following:* [List only those things which were actually obtained or considered]

   a. *My observations of the physical evidence on the claimed land;*
   b. *My observations of the resources on the claimed land;*
   c. *My observations of evidence of use prior to any segregation of the land;*
   d. *Affidavits submitted to me as a part of this examination;*
   e. *My interview with the applicant or his/her authorized representative(s);*
   f. *My interviews with other individuals knowledgeable about the lands.*

The evidence I found supports the applicant's claim.

2. *I have considered the following:* [List only those things which were actually obtained or considered]

a. *My observations of the lack of physical evidence on the claimed land;*
b. *My observations of the lack of resources on the claimed land;*
c. *My observations of the lack of evidence of use prior to any segregation of the land;*
d. *Affidavits submitted to me as a part of this examination;*
e. *My interview with the applicant or his/her authorized representative(s);*
f. *My interviews with other individuals knowledgeable about the lands.*

I have not found evidence to support the applicant's claim.

There will be times when drawing a conclusion one way or the other is extremely difficult. It is important, however, for the examiner to summarize the findings and to make a favorable or unfavorable determination based on his or her physical examination of the site. This kind of evidence is not available to Adjudication from any other source.

Since Adjudication must make the final decision to approve or reject based on the entire record, the field report, whether favorable or unfavorable, may be followed up with a request of the applicant for additional evidence, if it is felt that more evidence is needed to reach a decision.

P. After the Field Examination. Field reports will be completed and submitted to Adjudication in accordance with deadlines established under the Patent Plan Process.

When the report has been written and approved, take the following actions:

1. Enter the necessary AALMRS coding;

2. Notify the applicant and interested parties (Appendix 9) that the field report has been completed; and

3. Route the case file (with the original and 1 copy of the field report) to the appropriate branch of adjudication.

Adjudication will ensure that a copy of the field report is forwarded to BIA or the BIA contracting agency with the first document issued after the field report is received from the district. (See Memorandum from the Deputy State Director for Conveyance Management, dated February 5, 1990.)

CHAPTER IV - PROTESTS

A. ANILCA Protests. Section 905(a)(5) of ANILCA sets out the types of protests which could preclude legislative approval of an allotment application. In Eugene M. Witt, 90 IBLA 265 (1986), IBLA held that approval of an allotment application under the 1906 criteria prior to ANILCA does not prevent or bar an individual or entity who can make the requisite showings under Sec. 905(a)(5) from protesting an approved allotment. However, individuals or entities who were served with a copy of an adverse decision who failed to respond or exhausted their appeal rights without favorable results may not file a further protest. The ANILCA requirements are set out below.

Protest By	Requirements
Native Corporation	1. The land must be withdrawn for selection by the protesting Native corporation. 2. The protest must state that the applicant is not entitled to the land. 3. The protest must be signed by a person authorized to sign for the corporation.
State (for access)	1. Protest must state that the land is necessary for access to land owned by the U.S., State of Alaska, or a political subdivision thereof, to resources located thereon, or to a public body of water regularly used for transportation purposes; 2. The protest must state with

specificity the facts upon which the conclusions concerning access are based; and

3. The protest must state that no reasonable alternatives for access exist.

Person or Entity

1. Protest must state that the applicant is not entitled to the land and the land is the site of improvements claimed by the person or entity.

In order to be valid, a protest must be timely filed (between December 2, 1980, and June 1, 1981, or within 60 days of the date of notification of relocation or reinstatement) and meet the above criteria. When a protest is received, a letter of acknowledgment will be sent to the protestor with a copy going to the Native allotment applicant (Illustration 13; Glossary 591a).

The specific facts of each protest must be addressed on a case-by-case basis. For State protests, three affirmative statements are required by ANILCA as shown above. Specificity is not required for the first and third statement. See State of Alaska, 95 IBLA 196 (1987) and State of Alaska (Elliot R. Lind)(On Reconsideration), 104 IBLA 12 (1988), for discussions on protests.

For the purposes of access protests filed by the State, review the protest against the following criteria after review of applicable topographic maps, aerial photography, Alaska Road Commission reports, community and village profiles, land ownership patterns, Sec. 17(b) easements (if ANCSA-selected lands), field reports, and other information in the Native allotment case file and described in the protest.

1. Have the correct lands been described?

2. Are there trails, roads, etc., which cross the allotment application and lead to public lands or waters?

3. Has the surrounding land been selected and conveyed under ANCSA with no reservations for the trail or road in the conveyance (e.g., 17(b) easements, granted rights-of-way, Omnibus Act roads)?

A legally insufficient protest must be dismissed, and the reasons for the dismissal recited. The dismissal will contain an appeal paragraph.

If a protest was withdrawn, the adjudicator must still determine if the protest was legally sufficient or not. Looking at the reason the protest was withdrawn may be sufficient if the reason cited was that the party did not have an interest in the land, or there was no existing trail, etc. However, usually the protest itself will need to be reviewed. If the protest was legally sufficient, the allotment was not legislatively approved, even though the protest was withdrawn. See Clarence Lockwood et al., 95 IBLA 261 (1987); Stephen Northway, 96 IBLA 301 (1987), Richard L. Nevitt v. United States of America, et al., (9th Circuit, 1987); Lucy Lincoln, 102 IBLA 182 (1988).

However, if a decision has been issued stating the allotment was legislatively approved because the protest was withdrawn, that decision is final and will not be reexamined or vacated.

A protest that was legally insufficient and was withdrawn need not be dismissed; likewise, a legally sufficient protest resulting in adjudication under the 1906 criteria need not be dismissed. A conditional relinquishment of a protest will not be accepted.

Language suitable for dismissing a protest is included in Illustration 9, Glossary 28a. When a protest is dismissed, legislative approval, if applicable, falls into place.

If a valid protest was filed, and later the Native allotment applicant relinquished the portion of the allotment which provided the reason for the protest (i.e. airport, someone else's

improvements), the allotment was not legislatively approved since the entire claim was the subject of a legally sufficient protest during the 180 days following ANILCA.

B. Regular Protests. The provisions governing regular protests are found in 43 CFR 4.450-2 (Subpart A). A protest is any objection raised by any person to any action proposed to be taken. Such protests must be adjudicated before processing the application further. These protests should not be serialized but filed in the appropriate Native allotment case file. The IBLA prepared a handout regarding protests and the following is from that handout.

"How to adjudicate protests:

1. Summary dismissal

   a. When the protest contains merely conclusory (naked) allegations that indicate no basis for changing BLM's proposed action. (Ask: Does protest raise reasonable suspicions about correctness of BLM's proposed action?) Phillip A. Kulin, 53 IBLA 57 (1981).

   b. When the protest is filed after the party has failed to appeal a BLM decision. Horizon Exploration Co., 72 IBLA 43 (1983).

   c. When the protest is filed after the BLM decision. Willamette Logging Communications, Inc., 86 IBLA 77 (1985); Sierra Club Legal Defense Fund, Inc., 84 IBLA 311 (1985); Goldie Skodras, 72 IBLA 120 (1983).

      Note: In some cases in the past, protests have been entertained, with IBLA approval, even when brought [filed] after the protested action has been taken. [IBLA will make that decision if an appeal is filed on the summary dismissal.] Further, the Board has recently clarified that a protest against a survey may not be dismissed as untimely, even after survey is complete, where the protestant did not have notice that the survey was being contemplated. Peter Paul Groth, 99 IBLA 104 (1987).

2. Full adjudication is appropriate when the protest raises reasonable doubt about correctness of BLM's proposed action, e.g., when the protest is supported by some convincing evidence. In such case, an adjudicator should:

   a. Further investigate the grounds of the protest independently, and/or

   b. Direct the protestant to provide additional information.

   c. A decision on the protest should not be reached until all reasonably available information has been considered. Patricia C. Alker, 62 IBLA 150 (1982); Lee S. Beilski, 39 IBLA 211, 86 I.D. 80 (1979)."

CHAPTER V - ADJUDICATION

If the field report was completed prior to the 1985 field season, the first step is to notify interested parties (Appendix 9) that adjudication has commenced. This may be done by sending a copy of Additional Evidence Request (Illustration 6; Glossary 586a) or by hand completed form sent regular mail (Illustration 14; Glossary 592a). The format is immaterial so long as these parties are notified that adjudication has begun.

Send a copy of the field report to the appropriate BIA agency or the BIA contractor with the first document issued after the field report is completed. If an action was taken and a field report was not sent, be sure to send it with the next document.

Note: Prepare a work plat using the most current status for each major action. This plat should be filed right behind the case file copy of the action. The work plat should show the date pulled and current-to date near the remarks column. When the plat is folded for the file, the parcel designation and date taken should be written on the lower right hand corner. This information should be readily discernible at any time the case file is reviewed by others.

A. Repeat the following preadjudication steps

1. Review the application. Verify that it is indeed ready to be processed through final adjudication. Check for changes which may have occurred since preadjudication, such as name change, address, legal counsel, death of applicant, etc. Correct the AALMRS abstract as necessary. Recheck the land status of the parcel as described in the field report.

2. Verify the location of the parcel. If the location has been changed as a result of field examination, we must have the concurrence of the applicant, or BIA on behalf of the heirs, unless the change was made during the field examination when the applicant or his/her authorized representative was present. Written authorization of a representative must be in the case file or the field examiner must state that the

representative was authorized by the applicant. If the land description was changed without the benefit of an applicant's or an authorized representative's presence, a notice must be issued to allow the applicant to agree or disagree with the changed description. This notice (the final date to amend notice) will allow a 60-day time limit for the applicant to reply; no reply will indicate agreement (Illustration 15; Glossary 694a). (See Chapter II. B. 4. Land Description.)

If the land is unsurveyed, make certain the field report contains either a properly written metes and bounds description or a site plot. Also make certain the report covers the amount of acreage applied for (no more and no less, unless reduction is required in order to resolve conflicts). If the land is surveyed by rectangular net, the smallest aliquot part which may be described is 2.5 acres. If the rule of approximation applies, make certain it has been correctly used.

If it is determined that a field examination was done on the wrong land, request another field examination.

If the location has changed to the extent that a new protest period is required, follow the notification procedures set out under Chapter II. B. 5. c. Notice of Amendment. Issue a final date to amend notice to the applicant before issuing a relocation notice.

If the new location places the application in a different section, request new mineral classification reports, locatable and leasable (Illustration 8).

3. Check for mineral determination. Has the land in the allotment application been identified as being potentially valuable for minerals (locatable or leasable minerals other than coal, oil or gas)? If so, was the applicant notified of this fact prior to June 1, 1981, within 180 days of the notice of amendment of location, or within 180 days after the District Manager approved a field report showing an amended location. Check the June 4, 1981, Federal Register list (Appendix 18) and the file for personal correspondence.

If the applicant was notified pursuant to ANILCA and it is later found that the lands are not valuable for minerals, the allotment still must be adjudicated under the 1906 act and was not legislatively approved. Note: only parcels otherwise qualifying for legislative approval require applicant notification. If the mineral classification report is positive, and the applicant has been notified, or the application is being adjudicated under the 1906 act for other reasons, request a mineral examination from the appropriate district office if this has not already been done. (See Chapter II. E. Minerals.)

B. Legislative Approval. Check the location as field examined and determine whether the allotment was legislatively approved. See Appendix 31 for checklist. If the land status is such that a parcel qualifies for legislative approval, a valid protest has not been filed, and other criteria met, issue a decision (Illustration 9, Glossary 28a). Use and occupancy is not an issue in legislative approvals. Legislative approval can attach to a portion of an allotment if that portion is the only part available (land status wise) for legislative approval and there is no protest or conflict (see Solicitor's opinion dated December 4, 1990).

The decision will include (refer also to Glossary 28a):

1. Dismissal of any legally insufficient protests.

2. Declaring any granted rights-of-way null and void where the applicant's use and occupancy predates the grant;

3. Decision language for mineral reservation if the lands are classified as valuable for coal, oil or gas and a mineral decision has not been issued.

4. Reservations and "subject to's" that may be included in the certificate of allotment:

   a. Ditches and canals (Act of August 30, 1890; 43 U.S.C. 945); applies to all certificates of allotment;
   b. Coal, oil or gas (See Chapter II. E. Minerals);

c. Omnibus Act roads (See Chapter V. C. 11. Omnibus Act Roads);
d. Granted rights-of-way (See Chapter V. C. 8.. Use Authorizations);
e. 44 L.D. 513s (See Chapter V. C. 10. 44 LD 513s);
f. Right of re-entry under Sec. 24 of the Federal Power Act (if use and occupancy began after power withdrawal); Section 905(d) of ANILCA. (See Chapter II. D. 2. a. (1) Power Withdrawals.)

5. Rejection of conflicting applications including selections made under the Statehood Act or ANCSA. If a decision rejecting conflicting claims is being issued on an allotment already certificated, use loss of jurisdiction as the reason for the rejection.

6. A clear and accurate USGS quad depicting the Native allotment (1:63,360) and site plot from the field report (if unsurveyed) or the survey plat (if surveyed) showing the location of the allotment, and an opportunity for the applicant to file an amended description within 60 days if the land described in the decision is not the land the applicant intended to claim. This paragraph satisfies the notification requirement of Sec. 905(c) of ANILCA, and will be used in all approval decisions unless notification was given earlier or the applicant originally applied for surveyed lands.

7. If the parcel(s) is/are scheduled for survey under the Patent Plan Process, include the projected survey year(s) in the decision, and include the private survey option whether or not it has been scheduled for survey.

8. Request conformance to survey if the parcel has been surveyed but not conformed (include copy of the survey plat). If the allotment is surveyed and the applicant was not given a final date to amend notice before survey, the decision will allow 60 days to conform to survey to meet the notification requirement in No. 6 above (see Daniel Roehl, 103 IBLA 96 (1988)).

9. The standard appeal paragraph listing all adverse parties. Adverse parties are those named in the heading, regardless of whether the decision is favorable or unfavorable to their interests, and any others adversely affected by our actions. The appeals paragraph must also list the appropriate BIA or BIA contractor office as another entity that must be served a copy of the appeal, unless that office is an addressee.

Public access other than those categorized above (e.g., Iditarod Trail), may not be reserved when the allotment was legislatively approved.

Allotment applications already approved under the 1906 act may have qualified for legislative approval if they met the legislative approval criteria, Eugene M. Witt, supra. In these instances, the certificate of allotment should include both the 1906 and ANILCA citations. If an allotment was previously approved under the 1906 act and a decision still needs to be issued (i.e. to reject conflicting claims) mention needs to be made in the decision that the allotment was also legislatively approved (use Glossary 28a). If an allotment was previously approved under the 1906 act and the approval noted that the certificate would be made subject to a public use trail, modify the earlier decision, if the allotment was also legislatively approved, to delete the public use trail.

Whenever a previously 1906 approved parcel is determined to also have been legislatively approved, if a decision is not needed for other reasons, the adjudicator will document the case file using the form shown as Illustration 16 (Glossary 692a).

C. Under Act of 1906. If the parcel does not qualify for legislative approval, it must be adjudicated under the 1906 criteria. Use the adjudication checklist (Appendix 29). Put this checklist in each file requiring 1906 adjudication. Check the location as field examined and verify that the land was available at the time the applicant's claimed use and occupancy began.

If the lands were closed to entry after use and occupancy commenced, check the applicant's date of birth to determine whether he/she could have used the land as an independent citizen

prior to segregation by the withdrawal. (Refer to discussion of independent use under Chapter II. D. Land Status.)

If all the evidence in the case file is favorable and there are no conflicts, proceed with approval and request for survey. If the field report has concluded that the applicant has met the requirements of the 1906 act, be sure this conclusion is supported by the rest of the report as well as the rest of the file. When approving an allotment under the 1906 act, provide an evaluation of the evidence in the decision when necessary, as discussed in State of Alaska, 113 IBLA 80 (1990).

The exception to proceeding to approval occurs if the allotment is within an area administered by the National Park Service. In these cases, when it appears that the allotment is valid and BLM proposes to approve it, the following steps will be taken: (1) Contact the NPS by memorandum of our proposed action (see Glossary 727a), and provide NPS with 30 days to submit evidence they wish us to consider prior to the final decision. During that time, the NPS can request a meeting to explain their evidence. Do not make a final decision on the allotment at such an explanatory meeting. However, for the evidence to be considered, it must be in writing to become a part of the file. Decisions are made based on evidence in the file; (2) Any evidence received from the NPS office will be forwarded to the applicant and BIA or BIA contractor for their perusal and comment within an additional 30-day period; (3) After this time period, adjudicate the application from the information in the case file. If the application is valid, issue an approval decision. If not, issue a contest complaint.

If an allotment has already been approved and a decision is being issued in which the prior approval is being confirmed, the above procedures are not necessary.

If all the evidence in the case file is not favorable, or if there are conflicting claims or uses, consider the following specific guidelines:

1. Witness Statements. The entire file must support the conclusion, especially if there is some type of conflict involved (e.g. located within an area administered by the

National Park Service or the existence of conflicting information). If the field report is unfavorable, or the favorable conclusion is not supported, or the examiner was unable to reach a conclusion (as in pre-1986 field reports), or there is a question about whether personal use and occupancy predated a withdrawal, request additional evidence from the applicant, including witness statements (Illustration 6, Glossary 586a). If the land was segregated prior to claimed use and occupancy, it is appropriate to include the segregation date in the request.

When reviewing witness statements and affidavits look for:

a. Consistency between the application, field reports, and statements;

b. The location of the land;

c. Dates (especially if there is a status conflict). Note: Use and occupancy dates in the case file and the AALMRS abstract should be the same;

d. Improvements; and

e. Land used by others without the applicant's permission which indicates community use of the parcel as opposed to a trespass situation.

There is no minimum number of statements required. The quality of each statement is what is important. The important thing to remember is, do the witness statements fill the information gap? If independent use is the question, the statements must address this issue. Simply affirming that the applicant used the parcel is not sufficient. Opinions or emotions expressed in the affidavits are not sufficient in determining the facts.

There are some instances where a rejection decision should be issued without a hearing. Examples include land availability at the time use and occupancy began, and applicant claiming independent use at age 5 or younger. See Chapter II. D. Land

Status. Decisions are also issued without a hearing when denying an amendment, a reconstructed application or a reopening of a relinquished application. See Chapter V. D. Contests, for those cases where a hearing is required.

2. State Selections. The information in this section pertains only to pending selection applications not to tentative approvals or patents.

   a. Selection predates claimed use and occupancy. Allow the applicant 60 days to provide witness statements or other evidence verifying date of use and occupancy. Use Illustration 6 (Glossary 586a) as a guide. If witness statements show that use and occupancy began prior to the selection filing date, follow "b." below. If not, reject the Native allotment application. (Refer to Chapter V. E. Rejections.)

   b. Use and occupancy (but not filing date) predate State selection. Issue decision approving Native allotment giving the State 60 days to initiate a private contest, followed by 30 days in which to appeal (Illustration 9a, Glossary 24a). (State of Alaska, et al., 41 IBLA 315 (1979); State of Alaska, 41 IBLA 309 (1979)).

   c. Use and occupancy and filing date predate State selection. Reject the State selection with right of appeal (Illustration 9a; Glossary 24a). State selections should not be rejected as to reserved mineral estates.

   d. Confirmation of prior approval. Prior to 1984, State selection applications were not routinely rejected when the allotment application was approved. In reviewing a case that falls into this category, if the allotment was not previously approved by decision, issue a decision confirming the approval and rejecting the State selection application, with the right of appeal. If the allotment was previously approved by decision, simply reject the state selection without confirming the prior approval. It is unnecessary to include a 60-day right of private contest in the decisions confirming approvals even if the filing

date does not predate the State selection (Illustration 9a, Glossary 24a).

e. "Held" for Approval Decisions. In the early 1980's it was standard practice to issue decisions which "held" an allotment application for approval. Some of the decisions were very explicit and said the approval would be final without further notice. Others only stated that the addressed parties had 60 days to initiate a private contest and gave an appeal period for all parties not having a right to initiate a private contest. These decisions are to be treated as final, and no further decision is necessary. If a decision needs to be issued regarding another issue (i.e., reject a village selection) do not confirm the prior approval. Simply state the date it was approved.

f. Coding. Whenever a State selection is rejected in part, enter action code 627 (rejected as to NA conflict) into the abstract for the State selection file and update the township data.

g. Copying documents to the State. If an allotment parcel is surrounded by State selected or conveyed land, copies of all documents go to the State Title and Contract Section. This Section is an addressed party if their application is being rejected. The State Interest Determination Unit will receive a copy by CM-RRR only of documents where the State may have an interest. That unit will be a named interested party in the appeal paragraph if the decision addresses any trails or roads. They must be an addressed party to a decision if a protest is being dismissed.

3. Withdrawals. If independent use and occupancy began prior to withdrawal, approve the allotment, all else being regular. The agency responsible for managing the withdrawal will be an addressed party in the decision. If all right, title, or interests are being conveyed to the Native allottee, the decision will include language that states the portion of the withdrawal in conflict with the allotment application will be removed from the records under the terms of Public Land Order 6590 when the Certificate of Allotment is issued. There are exceptions

to the use of PLO 6590 and it should be read carefully before using it. If PLO 6590 cannot be used, the Withdrawal Section (932) will issue a separate PLO after the land is conveyed. Send a copy of the decision to the Withdrawal Section (932); and send a copy of the certificate of allotment, with the withdrawal serial number noted on the transmittal letter, to the Withdrawal Section for AALMRS update of the affected withdrawal.

If the applicant's use and occupancy does not predate the withdrawal and has not been substantiated, reject the portion of the allotment application in conflict with the withdrawal. There may be times when it is difficult to determine if the allotment is within the withdrawal because it is close to the boundary. In those cases a survey of the withdrawal may be necessary (See Ramona Field, 110 IBLA 367 (1989)). (See Chapter V. E. Rejections and Illustration 17 (Glossary 596a) for more information and decision language.)

If an applicant began using the land and then stopped years prior to filing an application, review the status of the land during those intervening years. If there has been an intervening withdrawal or claim, that withdrawal or claim attached to the land and the Native allotment application must be rejected. The applicant never established a vested right prior to the withdrawal since rights vest only after the required 5 years of use and occupancy is coupled with the filing of an application. See Jonas Ningeok, 109 IBLA 347 (1989).

4. ANCSA Selections. Appropriate language for rejecting village/regional selections and cemetery/historical Place selections is found in Illustration 9 (Glossary 28a) and Illustration 9a (Glossary 24a). A valid Native allotment application will always prevail over an ANCSA selection because a timely filed Native allotment application always predates an ANCSA filing.

Whenever an ANCSA selection is rejected (in whole or in part), enter action code 627 into the abstract for the ANCSA selection file and update the township data.

Before 1984, ANCSA selection applications were not routinely rejected when the allotment application was approved. For cases that fall into this category, if the allotment was previously approved by letter, not by decision, issue a decision confirming the approval and rejecting the village/regional selection. If the allotment was previously approved by decision, reject the village or regional selection and simply state the date the allotment was approved.

5. Other Land Title Applications. Conflicts with any other application (e.g., T & M, homestead, etc.) should be resolved either by obtaining a relinquishment, contesting one or both of the applications, or issuing a decision before a survey is requested. This must be done on a case-by-case basis. There is no set rule. Appropriate action depends upon the circumstances.

6. Other Native Allotment Applications. Conflicts with other Native allotment applications occur both before and after field examination. Ideally, the field examiner has resolved any paper or actual conflicts while in the field and clearly states the resolution in the field report. Practically speaking, this is often not the case as conflicting parcels have often been examined by different individuals at different times.

   Resolution of actual conflicts is not an invitation to move an allotment elsewhere. It is only for the purpose of adjusting boundaries to eliminate the conflicts.

   The first attempt at resolution should be through consultation with BIA or BIA contractor, and the applicants or their attorneys as necessary and by using the field reports and field sketches with the assistance of T&LS (see Illustration 5, Glossary 008a).

   If there is an actual conflict that cannot be resolved, with the assistance of BIA or the BIA contractor and the applicants, the cases will be returned to the field office with a request for conflict resolution. (A second field examination will be conducted only as a last resort, if the district feels it is

necessary.) The field examiner will make recommendations to resolve the conflict in a manner consistent with the provisions of Sec. 905(b) of ANILCA (see also Chapter III. G. Conflicting Claims). Following resolution, the examiner will amend the field reports to reflect the new descriptions.

A Native allotment cannot be legislatively approved until a conflict is resolved. Section 905(a)(1) of ANILCA states that approval becomes effective "at the time the adjustment becomes final".

7. Mining Claims. If there is a conflict with a Federal mining claim, determine whether use and occupancy predates the location of a validly-recorded claim. (See Chapter II. D. 2. b. (2).) If it does, and the lands are not classified as potentially valuable for minerals (or are determined non-mineral-in-character by a mineral examination), the mining claim will be declared null and void ab initio in a separate decision by the Branch of Mineral Adjudication (982) before the allotment is approved. If the mining claim location predates the allotment applicant's use and occupancy of the land, the latter will have to be rejected with an appealable decision.

8. Use Authorizations. The Bureau of Land Management has the authority to issue use authorizations across unapproved Native allotment applications but uses it sparingly. This authorization is tempered by the agreement to consult BIA prior to issuance of the use authorization. (Remember: the filing of the allotment application coupled with the completion of the requisite use and occupancy vests a preference right in the applicant.) See Edward A. Nickoli, 90 IBLA 273 (1986) for a discussion on the Secretary's authority to reserve rights-of-way. A certificate of allotment can be made subject to this right-of-way only if BIA and the applicant have concurred. If an allotment has already been approved pursuant to either the 1906 act or ANILCA, the certificate of allotment cannot be made subject to a right-of-way being issued since that approval. Approval under ANILCA is June 1, 1981, not the date of any decision which may have been issued.

If an easement or right-of-way has been negotiated between the applicant, BIA and a party other than BLM (i.e., the State), the certificate of allotment cannot be made subject to it.

If an applicant's use and occupancy predated a right-of-way granted subject to valid existing rights, that portion of the grant in conflict with the allotment application must be declared null and void. This action is taken in the same decision approving the allotment. Once the decision is in final package, send it along with the Native allotment and right-of-way case files to the appropriate district. The district will surname the package, if they concur, and return it to the adjudicator. After the district surnames, the appropriate branch chief or representative will sign the decision. The branch will forward a copy of any appeal to the district office.

The certificate of allotment may be made subject to use authorizations granted prior to the applicant's claimed use and occupancy. Many granted rights-of-way have indefinite terms and all airport leases have definite terms that cannot be terminated upon conveyance. However "lesser" authorizations (land use permits) may be terminated upon conveyance if the authorization so states. Pending applications for use authorizations will be rejected by the appropriate district office. Request the district office to take this action to be coordinated with the issuance of the approval decision. Note: There are no escrow provisions for Native allotment applications. If the allotment will be issued subject to the use authorization, send a copy of the decision to the holder of the use authorization and to the corresponding case file.

9. Natural Gas Pipeline. The right-of-way grant for the Natural Gas Pipeline (F-24538) excluded Native allotment applications located on the right-of-way as of December 1, 1980. If the location of the allotment application changes after that date to correctly describe the original intent and the application is now shown to be in conflict with the right-of-way, include the following disclaimer in the approval decision:

> The allotment shall not be subject to right-of-way grant F-24538, issued to Northwest Alaskan Pipeline Company

on December 1, 1980, as the allotment was a valid existing right at the time of grant issuance.

Adverse action against either the Trans Alaska Pipeline System or Northwest gas pipeline rights-of-way must be coordinated with the Branch of Pipeline Monitoring (983).

10. 44 L.D. 513s. If use and occupancy does not predate a notation of Federal appropriation of land under the provisions of 44 L.D. 513, the Government's interest will be reserved in the certificate of allotment and will be protected as long as there is continued Federal use. Check the field report for information as to whether the Government is still using the right-of-way. Another source to use is the ANCSA Sec. 17(b) easement file. If it can be determined that the Government no longer requires the right-of-way, or the use of a 44 L.D. 513 notation was inappropriate to begin with, the notation should be removed from the records prior to conveyance of the allotment. These situations require coordination with the appropriate district office. If use and occupancy predates the 44 L.D. 513 notation, the agency will be listed in the heading of the Native allotment approval decision, and the decision will state that the Government's authorization to use the land terminates when the decision becomes final.

11. Omnibus Act Roads. Omnibus Act roads were transferred to the State of Alaska by a quitclaim deed dated June 30, 1959, and are identified in Schedule A of the original deed by description and mileage. The Department's position is that the quitclaim deed transferred an easement interest and not the full fee. Therefore all allotments encompassing an Omnibus Act road must be made subject to an easement for the road. However, research is required to determine whether the applicant's use and occupancy predated the quitclaim deed, any withdrawal for the road, or public use of the road. If the applicant's use did predate, title recovery is required to obtain the easement back, as in other Aguilar-type situations. See modified Regional Solicitor's opinion dated August 23, 1982 (Appendix 33).

Omnibus Act road widths are derived basically from

Secretarial Order 2665, as amended (Appendix 21) and PLO 1613. However, PLO's 601 and 757 may have some impact.

The specific language to be used in making the Certificate subject to an Omnibus Act road is found in Illustrations 9 and 9a (Glossaries 24a and 28a). There is a wording variation for those Omnibus Act roads described in Public Land Order 1613. Note: Realignment of any Omnibus Act road is a new right-of-way grant and not subject to the Omnibus Act "rules".

Also note that the Omnibus Act quitclaim deed did pass full fee title to some sites (as opposed to an easement in the case of the road system). It is necessary to examine the appropriate schedule to determine what interest was transferred.

12. Roads and Trails.

a. General. An allotment may be made subject to traditional public access routes including roads and trails when approving under the 1906 act. First, determine whether use and occupancy predated the road or trail. It may be difficult to establish a specific date when the road or trail was first used. Sources that may be of help include a BLM historian, realty specialists, the ANCSA Sec. 17(b) easement case file, dated aerial photographs, State R.S. 2477 Trails System Maps, or Claus Naske's Alaska Road Commission Narrative.

Based on Degnan v Hodel, No. A87-252 Civ (D. Alas.) (1989), the Iditarod Trail cannot be reserved in the certificate of allotment based on the National Trails System Act. However, the certificate of allotment can be made subject to a public use trail based on use of the trail prior to and during the time of the applicant's use. This is true for any public use trail, not only the Iditarod. Care needs to be taken that the trail actually runs through the allotment.

Second, establish a width for each road or trail to which a certificate will be made subject. The maximum width

will be as specified in the ANCSA easement regulations, 43 CFR 2650.7(b)(2). Justification for a greater width must be given in the field report (see Chapter III. L. Public Access).

Foot Trails - Actual width not to exceed 25 feet

ATV, 4x4 use - Actual width not to exceed 50 feet

Existing roads - Actual width

The Iditarod Trail will always be 25 feet in width in the certificate of allotment.

Amendment of applications to exclude land occupied by a foot or ATV trail is not usually allowed, in order to avoid retaining a narrow strip of Federally-owned land within or between allotment applications. Applications crossed by roads may be amended to exclude these wider rights-of-way if the amendment is consistent with the provisions of Sec. 905(c) of ANILCA. (See Regional Solicitor's opinion dated December 22, 1983.)

The BLM's authority to exercise discretion in the area of public access roads and trails, when approving under the 1906 act, has been upheld in IBLA decisions Leo Titus, Sr., 89 IBLA 323 (1985) and Edward A. Nickoli, 90 IBLA 273 (1986).

When making a certificate of allotment subject to a right of public access use the appropriate wording in Glossary 24a and document the case file using Illustration 16 (Glossary 692a). Legislatively approved allotments cannot be made subject to this type of reservation.

b. R.S. 2477. Determining the validity of an R.S. 2477 road or trail is beyond the jurisdiction of BLM. However, if a claimed R.S. 2477 crosses an allotment, follow the procedures set out for public access under Roads and Trails and determine if the applicant's use predated the road or trail. If the State has filed an ANILCA protest

based on a claimed R.S. 2477, evaluate the protest on its merits as a publicly used road or trail and either dismiss the protest and legislatively approve or adjudicate under the1906 act. (See Chapter IV. Protests.) (Refer to Appendix 22 for more information on R.S. 2477.)

13. Alaska Railroad Transfer Act of 1982 (ARTA). Instructions for processing allotment applications which include the right-of-way for the Alaska Railroad are found in a Regional Solicitor's Opinion dated July 20, 1983. (See Appendix 27.)

14. National Historic Preservation Act. On April 15, 1988, a Programmatic Agreement among affected agencies and the Advisory Council on Historic Preservation was signed (see Appendix 28). The BLM is responsible for making available to BIA any records, maps and documents which may assist the BIA in observing the requirements of Section 106 requirements of the National Historic Preservation Act. The Division of Lands and Renewable Resources has made these records available.

    At the time a certificate of allotment is issued for an allotment approved under the 1906 act, notify, by copy of the happy letter along with a copy of the certificate, other Federal agencies when the land involves units under their jurisdiction. Request that these agencies provide or make available to the BIA, any additional documentation they may have pertaining to the properties (See Glossary 688a.)

A 1906 approval decision will also include those items explained under Legislative Approval, as applicable. (See Chapter V. B.) In addition, a 1906 approval decision will include a statement that the 160-rod shore space limitation has been waived, if appropriate. This waiver is not necessary on legislatively approved allotments.

D. Contests

1. Government. A government contest must be filed in all cases where the Bureau proposes to reject the application on the basis of factual evidence (evidence that can be questioned,

proved or disproved). However, a government contest must also be used whenever it is necessary to sort out conflicting evidence in the administrative record in order to determine the ultimate disposition of the application. A government contest is not issued if the allotment is on lands no longer under our jurisdiction. In these cases follow the Aguilar hearing procedures. However, if a portion of the allotment is still on land under Federal jurisdiction and a portion is not, issue a government contest for the entire parcel; note this status in the contest complaint and bring the situation to the attention of the Solicitor's office in the memorandum transmitting the proposed contest to the Solicitor's office.

A government contest is not issued where a request for reinstatement of a relinquished application, amendment, or reconstructed application is being denied. Rejection decisions are issued in these cases. (See Chapter V. C. 1. Witness Statements.)

Draft the proposed contest and transmit it by memo, through the paralegal, to the Regional Solicitor for approval (see Illustration 18, Glossary 597a). When approved, the contest complaint (Illustration 19, Glossary 16a) will be issued under a cover letter explaining the contest (Illustration 20, Glossary 41a). The package will also include an answer form for the allottee to complete (Illustration 21, Glossary 31a). The applicant and all parties of interest (Appendix 9) receiving copies of the complaint will be served by CM-RRR.

If the complaint is answered, do the following:

a. Prepare Form 1850-1 (see Illustration 22);

b. Make up two special case files:

(1) One for the Administrative Law Judge (ALJ) containing legible copies of the documents listed below. (Evidentiary documents, such as field reports, may not be submitted to the ALJ. Evidence will be introduced at the hearing.)

(a) Application and map;
(b) Any location changes;
(c) Current and accurate plat, HI, and AALMRS abstract;
(d) Copy of contest complaint;
(e) Copy of answer;
(f) Signed copy of transmittal Form 1850-1.

Staple the original, signed Form 1850-1 to the outside of the case file.

(2) One for the paralegal in the Branch of Conveyance Coordination, containing legible copies of the complaint, answer and transmittal.

c. Send the ALJ's file, CM-RRR, to:

Office of Hearing and Appeals
U.S. Department of the Interior
6432 Federal Building
Salt Lake City, Utah 84138

d. Send the original case file (which contains the originals of the documents going to the ALJ) to Docket (the Regional Solicitor's office does not want the case file; they will request it when they need it).

e. Send copies of Form 1850-1 to:

Regional Solicitor
Appropriate BLM District Office
Appropriate BIA Office/Contractor
Attorney of Record
Other Interested Parties (see Appendix 9)

Do not serialize the contest. It is a part of the Native allotment case file.

2. Private. The regulations governing private contests are set out in 43 CFR 4.450. When a private contest is filed, check to make certain the complaint meets the CFR requirements. If

the complaint is deficient, it will be summarily dismissed and processed as a protest. If the complaint is sufficient, hold for proof of service on the contestee and the contestee's answer. Serve copies of private contests, CM-RRR, on all parties of interest (Appendix 9).

We can grant one or more 30-day extensions, but a written request must be filed before the time for filing the contests has expired. All parties must be sent a copy of each request for extension and each grant. When all documents are in, including proofs of service (actual certified cards or copies), do the following:

a. Fill out Form 1850-1 (contestee chooses location of hearing, usually included with his/her answer). (See Illustration 23.)

b. Make a file for the ALJ following the procedures outlined under Government Contests, above, with this exception: include originals of contest documents. Send, CM-RRR, to Office of Hearing and Appeals in Salt Lake City.

c. Send the original case file (including copies of contest documents and Form 1850-1) to Docket.

d. Send copies of Form 1850-1 as directed in Government Contests above.

No file goes to the Regional Solicitor since BLM is not involved in a private contest.

The ALJ will schedule a hearing. After the hearing has been held, the ALJ will issue a written decision. The decision may be appealed to IBLA by either party. When the decision becomes final, Adjudication will take appropriate action either to proceed toward conveyance or closure.

Contest of one parcel need not preclude action on other parcels; however, approval of the Office of the Regional Solicitor is required before proceeding with action on other parcels.

In the absence of an answer to the complaint, the case must be decided based on the evidence in the file which will result in either approval or rejection.

E. Rejections. Prepare the decision citing all reasons for rejection; this includes all legal defects, even though there may be only one primary reason. (See Illustration 17, Glossary 596a).

If the rejection is not appealed, or is affirmed on appeal, update and lock AALMRS history and land information. Change status code and follow standard case closure procedures, if the whole claim was rejected. (See Chapter V. G. Case Closure.)

F. Affirming, Modifying, or Vacating Decisions. The receipt of additional information or the need to correct an administrative error may require the issuance of a decision which affirms, modifies, or vacates an earlier one. If the original decision was not appealed, simply issue a new decision that incorporates the needed changes.

The filing of an appeal, however, removes BLM's authority to consider the matter further. The decision may not be changed until IBLA has remanded the case to us. It is possible to ask IBLA for a remand without deciding the appeal, if there is new information that would change the original decision.

The new decision must clearly state its effect on the original decision - what has been changed and what has not. The new appeal period applies only to the changed portion of the decision.

On occasion, it has been necessary to vacate decisions which stated that an allotment application had been legislatively approved. This is a very serious matter because the applicant had been led to believe that he/she had at least equitable, if not legal, title to the land. However, Congress established the criteria for legislative approval, and we have no discretion in the matter. If an application did not meet the criteria, it was not legislatively approved even though we issued a decision which so stated.

Even if the allotment can be approved under the 1906 act, the earlier decision stating the allotment was legislatively approved must be vacated and another decision issued. The change in approval authority may cause a conflicting claimant to appeal the 1906 approval, challenging use and occupancy.

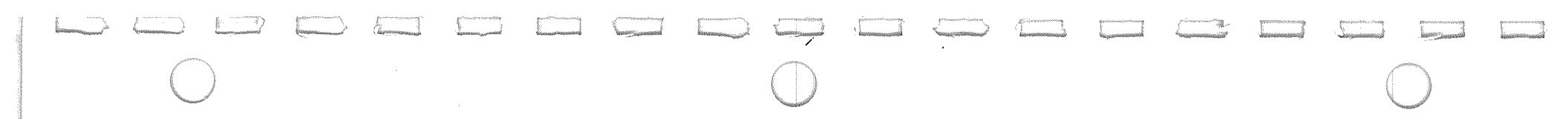
A decision which vacates a previous decision in its entirety generally does not contain an appeal paragraph because no adverse action has been taken; it is as though the original decision had never been issued. However, an exception is a decision vacating a prior notice of legislative approval or even a 1906 approval. The recipient could argue that BLM was correct the first time and that he/she is adversely affected by revocation of the approval.

G. Case Closure. Whenever an entire case file is closed without issuance of a Certificate (i.e. valid relinquishment, ALJ decision, or rejection) notify the applicant and interested parties (Appendix 9) through issuance of a notice (see Illustration 24, Glossary 601a). If a parcel has not been conveyed, issue a similar notice; however, the case will not be closed unless all parcels have been finally adjudicated. If a notice is being issued because of a valid relinquishment, acknowledge the relinquishment in the notice.

Update status, history, and land description fields in AALMRS. Route the case to T&LS and then to Docket for appropriate action.

H. Appeals. Appeals are processed under existing procedures which are standard for all case types. If an appeal is filed, the appellant must serve a copy of the notice of appeal on all adverse parties. For this reason it is critical that all adverse parties be listed in the appeals paragraph of the decision, if not listed as an addressee and the appeal paragraph references the addressees. Although BIA or the BIA contractor may not technically be an adverse party, that office is to be noted in the appeal paragraph, as a party to be served a copy of the appeal, to insure proper notification. (See Chapter V. B. 10. for definition of adverse parties.) If there are interested parties (Appendix 9) who are not adverse parties, they must be notified of the appeal.

If the parties have been given a 60-day right to file a private contest, do not proceed with adjudication for 90 days from receipt of the decision (60 days for the right to file a contest followed by a 30-day appeal period), plus the 10-day grace period.



CHAPTER VI - REQUEST FOR SURVEY

A. BLM Survey. The request for survey is in the form of a memorandum issued to the Deputy State Director for Cadastral Survey (920). (See Illustration 27.) The memo may be handwritten and will include the following information:

1. Case type
2. Serial No. and Parcel, where applicable
3. Applicant's name and address (if deceased, so note)
4. Description including Meridian, Township, Range and Section (the metes and bounds description need not be copied from the field report.)
5. Navigability information if parcel straddles a water body.
6. Acreage (e.g., not to exceed 55 acres)
7. Request for "informational traverse" of a trail/road/gravel pit, etc. if this information is needed.
8. Right-of-way width from centerline, if parcel is intended to be adjacent to the right-of-way.
9. Patent Plan Window No.
10. Exclusion Survey (if so, note)
11. IC'd/TA'd/Patented (if the surrounding land has been IC'd, TA'd, or patented, so indicate giving name of grantee)
12. Adjudicator's name and Branch

Attach a copy of the field report (the original stays in the file) and a set of pictures. If there is only one set of pictures, make a copy of the photos for the case file; send originals to Cadastral and ask that they be returned when Cadastral is finished with them. If there are no pictures, note this fact on the request for survey. If there is a significant problem with the survey instructions prepared by the field examiner, e.g., meanders, acreage, access, etc., return the case file to the district office for correction. Note: If the applicant is required to conform to an existing rectangular net survey, a special survey will not be requested even though the examiner may have prepared a metes and bounds description for the parcel.

It is important to indicate on requests for survey whether the

lands have been conveyed to the State or a Native corporation. When the allotment is located on lands conveyed to a Native corporation, Cadastral must request permission from the corporation to enter the land for survey. Also, lands conveyed to the State require different handling depending on whether they are within a TA or a patent. If the allotment is located on lands which have been TA'd, a U.S. survey may be made; however, for allotments located on lands patented to the State, the State provides the special instructions for an Alaska State Land Survey. It is also helpful to Cadastral on allotments which are adjacent to State patents (along township or patent boundaries) if we include additional information regarding the adjacent lands, should the allotment move or be expanded to accommodate acreage and result in a title recovery situation. In this case, the U.S. survey may include only the lands outside the patent and a separate Alaska State Land Survey must be made to accommodate lands within the patent.

If the allotment straddles a water body, that is, streams or lake outlets, ask the Navigability Section for navigability information (it may not necessarily be the same as what was determined for the same water body in the rest of the township). The request should be done either in person or through a short-note transmittal with a copy of the field examiner's report and sketch map attached. Note the information received on the request for survey. If the Navigability Section has included determinations of Native allotments in their reports for the PPP, refer to these reports before requesting survey.

If a survey has been filed for an allotment and a water body was not excluded from the survey, do not request a supplemental survey.

A request for survey is done concurrently with the approval decision unless an exclusion survey is needed to accommodate the Patent Plan Process. An exclusion survey is not requested unless the application has not been adjudicated and a year or less is left before survey. Cadastral will be notified immediately to cancel the survey request if:

- An approval decision is reversed on appeal;

- A claim or any portion thereof is validly relinquished;
- A rejection becomes final;
- BLM prevails in a contest action; or
- For any reason exclusion survey is no longer needed.

Cadastral expends a lot of work on each survey request; therefore, be sure to include all information they may need at the onset. Likewise, if the survey request must be amended or cancelled, contact the Branch of Special Instructions, Records and Contracts immediately to suspend their work, before requesting a supplemental field report or submitting a new survey request. This is particularly important for applications that have already had special instructions written.

B. Private Survey Option. A Native allotment applicant has the option of having BLM survey his allotment at no cost, or hiring a licensed surveyor to do so. This option may be exercised only after approval and survey request.

If an applicant chooses to have a private surveyor perform the work, he/she must provide the name, address and telephone number of the private surveyor and send a letter waiving his/her right to free survey.

When an applicant elects to hire a private surveyor and provides the required information, Adjudication will notify Cadastral. If the case file already includes a request for private survey, Adjudication will so advise Cadastral when the request for survey is made and attach a copy of the waiver of free survey.

Once the special instructions are written, Cadastral will request the private surveyor to come into the office to discuss the instructions and supply the necessary monuments.

For all surveys done by private surveyors, the surveyor will do the work, complete the survey plat, write the field notes and return the plat and field notes and any unused survey monuments to BLM. The plat and field notes will then be reviewed by BLM for completeness and accuracy. If the plat is accepted, the survey will filed in both Public Rooms and plotted on the MTP by T&LS.

Include the private survey option in approval decisions (see Illustrations 9 and 9a, Glossaries 24a and 28a). The option is available to all applicants whose claims have not yet been surveyed.

An applicant may not amend his/her application after special instructions are written if he/she received notification pursuant to Sec. 905(c) of ANILCA. In an effort to finalize locations within a survey window, Adjudication will ensure that each applicant for whom a survey is requested receives such notice. Where the approval decision did not include the ANILCA notice or an exclusion survey is requested within a survey window, notify the applicant of the final date to amend by Glossary 694a. This must be done prior to the date survey requests are due. (See Chapter II. B. 5. Amended or Corrected Descriptions and Chapter V. B. 6. Legislative Approval.)

CHAPTER VII - CONFORMANCE TO SURVEY

In this context, conformance means asking the applicant whether the survey correctly locates the land applied for. (It also mean the realignment of applied-for boundaries to fit an existing survey.)

Upon receipt of the plat of survey, T&LS will plot the survey to the MTP, and note the Native allotment within that survey, removing the old plotting. Title and Land Status will forward the case file to Conveyances for issuance of a conformance notice to the applicant (Illustration 25; Glossary 602a). The interested parties (Appendix 9) will be sent a copy of the conformance notice and enclosures.

Beginning January 19, 1990, all survey plats not in final form will include a statement regarding the transfer of water bodies within the survey. If this statement is not on the plat, include the statement in the conformance notice (see illustration 25, Glossary 602a).

If the allottee did not receive a final date to amend notice, the conformance notice will allow 60 days for response; otherwise the time frame is 30 days. If the notice is for 60 days, the applicant will also be informed that no more amendments will be allowed, citing Sec. 905(c) of ANILCA.

A conformance notice is not an invitation to amend and is sent for the sole purpose of ensuring that we have not made an error. If the applicant received a final date to amend notice prior to survey, the only error that could be shown is that the survey was not done on the land described in the notice (or depicted on the map attached to the notice) or described in the request for survey. If the surveyed location is not correct, Adjudication will ask T&LS to show both the unconformed application and the survey while the discrepancy is being resolved.

CHAPTER VIII - TITLE AFFIRMATION/CONCURRENCE

The Native allotment, as surveyed, may be plotted on the MTP in a different location than previously shown.

If the allotment was originally excluded from an IC and survey of the allotment has shifted its location to a different section--but still within an IC to the same corporation--send a request for title affirmation letter and form (Illustration 7, Glossary 566a). The title affirmation not only allows for conveyance of the Native allotments, but also confirms the corporation's boundaries. Many corporations do not understand this form and it may be necessary to follow up after 30 days with a telephone call. If further delays are experienced, write a letter to the Native allotment applicant, with a copy to BIA or the BIA contractor and the Native corporation stating that the only thing delaying the certificate is the corporation's failure to return the form (be sure this is a true statement). If the form is not returned within a reasonable time, inform the corporation by letter that because the form was not received, title recovery proceedings are being initiated.

Although, in order to expedite the process, the request for title affirmation and the approval decision are normally issued at the same time, there will be times an approval decision should not be issued until the title affirmation is signed. Such times would include, but would not be limited to, instances where there is evidence that the corporation objects to a certain allotment or where the corporation has leased the land.

If the allotment was originally excluded from a TA, and survey of the allotment has shifted its location to a different section--but still within the same township or same TA--send a notice to the State requesting concurrence (see Appendix 24 and Illustration 7a, Glossary 159a).

Be sure a copy of the executed title affirmation form or State concurrence notice is filed in the appropriate village, regional and/or State case files as well as the Native allotment file.

When survey shifts the location of an allotment to conveyed land not meeting the criteria above, full title recovery will be necessary.

CHAPTER IX - UNSURVEYED ALLOTMENTS IN NPS UNITS

There have been times when a Native allottee requests the National Park Service to buy his/her land. If the allotment is unsurveyed, the procedures to follow are set out in Appendix 26. These procedures are to be used carefully; never suggest to the allottee that they could use this process. The procedures will only be implemented when an allotment is completely surrounded by park land. If the allotment abuts another Native allotment or other claim, it will not be appropriate to use these procedures unless the claimant abutting the Native allotment also wishes to sell.

If another agency or landowner indicates an interest in using these procedures, contact the Native Allotment Coordinator, who will coordinate procedures with BIA and the landowner.

CHAPTER X - CERTIFICATES OF ALLOTMENT

Certificates of allotment will be prepared following the specific guidance set out in the Patent Handbook, issued under IM AK-89-337, dated September 18, 1989. The applicant's legal name must be used in the certificate. However, there is no requirement that "Jr." or "Sr." be a part of the name. There may be times when this reference first appears in a death certificate or correspondence. In these cases, inquire of BIA, the BIA contractor or the applicant as to whether the "Jr." or "Sr." should be used.

Note: Applications approved under 1906 which were also legislatively approved should include both citations in the certificate. (See Chapter V. B. Legislative Approval.)

There may be only one certificate of allotment. Where more than one parcel is approved, present policy dictates that the parcels will be conveyed as approved survey plats are received from Cadastral Survey. Therefore, after the first certificate is issued to an applicant, subsequent certificates will be issued as supplemental certificates to the first one. Supplemental certificates will be issued in accordance with the Regional Solicitor's 1973 opinion enclosed with IM AK 84-10 (October 6, 1983), Appendix 23.

A. Applicant Age. An allottee must be 21 years of age or head of household at the time of certificate in order to receive a conveyance.

B. Deceased Applicants. A certificate may not be issued in the name of a deceased applicant. A written statement from BIA is sufficient evidence to show that the applicant is deceased.

A death certificate already in the case file does not require additional verification from BIA unless there is a discrepancy between the name, age, or other pertinent information in the case file and that appearing on the death certificate or the statement from BIA. However, if there is a death certificate in the file, fill out a memo to the file (as shown in Illustration 28) using the information from the death certificate, then destroy the death

certificate. If the death certificate does not have a State file number, the recorder's number is acceptable. If neither of these numbers are available so state on the memo.

When the case file contains the above-described memo, or a statement from BIA that the applicant is dead, the certificate of allotment will be issued to the "Heirs, Devisees and/or Assigns" of the applicant.

If there is information in the case file that indicates the applicant may be deceased but there is no death certificate, above-described memo or statement from BIA, call the proper BIA office or BIA contractor (Appendix 9) for verification. If not received within approximately two weeks, issue a written request for verification and send it by certified mail to the appropriate BIA agency or contractor with a copy to the Area Office in Juneau. This letter will indicate that issuance of the certificate has been suspended until BIA submits written verification of the applicant's status.

If a certificate of allotment has been erroneously issued to an applicant following his or her death, a corrected certificate of allotment will be issued upon the request of either the BIA or the probate judge.

C. Notification to Interested Parties. The original of the certificate of allotment will be sent to BIA, Alaska Title Services Center. Notify interested parties (Appendix 9) when the certificate of allotment has been issued by copy of the transmittal letter. See Patent Handbook for sample. If an allotment was not legislatively approved and is within a unit under the jurisdiction of another Federal agency, send a copy of the certificate of allotment along with a copy of the transmittal letter to the Federal agency. That Federal agency must also be requested to provide or make available to BIA any additional documentation they may have pertaining to significant cultural properties relative to the allotment location if the allotment was approved pursuant to the 1906 act. (See Appendix 28 and Glossary 25a, card b). Also see Glossary 25a for proper distribution of the happy letter and the certificate.

CHAPTER XI - PROGRESS REPORTING

Report one unit of 4213-20 progress for each parcel certificated, rejected, or properly relinquished.

H-2561-1 - NATIVE ALLOTMENTS
Standard Notice for Application Deemed Timely Filed
(Glossary 581a)

Card a

(SC-1) (2561)
(96(SC-2))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE

(SC-3) [Name and (SC-3) address c/o attorney if (SC-3) represented; BIA, if deceased]	:	(SC-4) Native Allotment Application
State of Alaska Department of Natural Resources Division of Land & Water Management State Interest Determinations Unit P.O. Box 107005 Anchorage, Alaska 99510-7005	:	

Allotment Application Deemed Timely Filed

The Bureau of Indian Affairs completed the required certification and filed Native allotment application and evidence of occupancy for (SC-5) [serial #] on behalf of (SC-6) [applicant's name] on (SC-7) [date]. The application was filed under the provisions of the Native Allotment Act of May 17, 1906, 43 U.S.C. 270-1 to 270-3 (1970), which was repealed with a savings provision by the Alaska Native Claims Settlement Act, 43 U.S.C. 1617. The application was for approximately (SC-8) acres of land located within (SC-9). The applicant's use and occupancy of the lands is claimed to have begun on (SC-10).

Evidence accompanying the application shows that it had been delivered to the Bureau of Indian Affairs on (SC-11). The Interior Board of Land Appeals (IBLA) has ruled that if an applicant provides satisfactory evidence that he had delivered his application before December 18, 1971, to the agency office of the Bureau of Indian Affairs which held it past the time when it should have been filed with the Bureau of Land Management, the application may be adjudicated as having been timely filed. William Yurioff, 43 IBLA 14 (1979).

H-2561-1 - NATIVE ALLOTMENTS
Standard Notice for Application Deemed Timely Filed
(Glossary 581a)

Therefore, Native allotment application (SC-12) must be and is hereby deemed timely filed. We will begin normal processing of the allotment application pending field examination and further determination of valid existing rights.

The State of Alaska and all interested parties, as shown by the records of the Department of the Interior, have 60 days from the date of this notice to file a protest in accordance with Sec. 905(a)(5) of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634.

If a protest is filed please refer to serial number (SC-13).

(SC-14 Option 3/4/6/7/8

Option 3- Ann Johnson
Chief, Branch of Calista Adjudication

Option 4- Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication

Option 6- Mary Jane Piggott
Chief, Branch of Southwest Adjudication

Option 7- Terry R. Hassett
Chief, Branch of KCS Adjudication

Option 8- Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Enclosure:
Master Title Plat

Copy furnished to:

(SC-15) (CM-RRR) [applicant, if represented by attorney]
(w/cy of enclosure)

(SC-16) (CM-RRR) [interested parties]
(w/cy of enclosure)

Bureau of Indian Affairs
Alaska Title Services Center (ATSC)
1675 C Street
Anchorage, Alaska 99501-5195
(certified true copy)

H-2561-1 - NATIVE ALLOTMENTS
Standard Notice for Application Deemed Timely Filed
(Glossary 581a)

Area Forester
Branch of Natural Resources
Bureau of Indian Affairs
P.O. Box 3-8000
Juneau, Alaska 99802

cc:

(SC-17) [BLM District Office]

(SC-18) [conflicting case files]

Hard copy 0581c

H-2561-1 - NATIVE ALLOTMENTS
Standard Notice of Proposed Relocation
(Glossary 582a)

Card a

(SC-1) (2561)
(96(SC-2))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE

(SC-3)[name and (SC-3 addresses of (SC-3 interested parties]	:	(SC-4) Native Allotment Application
State of Alaska Department of Natural Resources Division of Land and Water Management State Interest Determinations Unit P.O. Box 107005 Anchorage, Alaska 99510-7005	:	

Native Allotment Application Relocation

Under the provisions of Sec. 905(c) of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634, the State of Alaska and all interested parties are to be notified of an intended correction of a Native allotment application location.

Notice is hereby given that an amended land description for Native allotment application (SC-5) of (SC-6) [applicant's name] has been proposed as follows:

(SC-7) [parcel, if applicable]

From: (SC-8)

To: (SC-9)

Acres: (SC-10)

You have 60 days from the date of this notice to file a protest and to submit comments regarding acceptance or rejection of the allotment application as corrected.

H-2561-1 - NATIVE ALLOTMENTS
Standard Notice of Proposed Relocation
(Glossary 582a)

After the 60-day comment/protest period, we will process the application.

(SC-11) Option 3/4/6/7/8
Option 3= Ann Johnson
Chief, Branch of Calista Adjudication
Option 4= Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication
Option 6= Mary Jane Piggott
Chief, Branch of Southwest Adjudication
Option 7= Terry R. Hassett
Chief, Branch of KCS Adjudication
Option 8= Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Enclosure:
Master Title Plat

Copy furnished to:

(SC-12)[applicant] (CM-RRR)
(w/cy of enclosure)

(SC-13)[applicant c/o attorney, if represented; BIA, if deceased]
(w/cy of enclosure)

(SC-14)[others as appropriate: see Appendix 9 in Handbook]

Bureau of Indian Affairs
Alaska Title Services Center (ATSC)
1675 C Street
Anchorage, Alaska 99501-5198
(certified true copy)

cc:
DM-(SC-15)

(SC-16)[conflicting applications]

Hard copy 0582c

Illustration 2
(II.B.7.)

H-2561-1 — NATIVE ALLOTMENTS
Mini Review Form

NATIVE ALLOTMENT REVIEW

ALLOTMENT APPLICANT NAME Erick J. Carlson SERIAL NO. AA6239 Parcel/Lot C

SELECTION: NATIVE CORPORATION NAME _____ SERIAL NO. _____

STATE SELECTION (SERIAL NO.) _____ OTHER _____

COMPLETE EITHER SECTION I OR SECTION II - AS APPROPRIATE

SECTION I

Application reconsidered because: ADP CODE

- ☐ Application rejected because the evidence was inadequate to support a claim of use and occupancy (factual issue - Fence) SC
- ☐ Application rejected because applicant failed to provide evidence of five years use and occupancy prior to a withdrawal (S.O. 3040 of May 5, 1979) SC
- ☐ Application closed because of non-agricultural classification by Forest Service SC
- ☐ Application closed because of lack of showing as to head of household SC
- ☐ Abandonment; if there is no conflicting claim SC
- ☐ Application closed based on filing date rather than date of occupancy SI
- ☐ Application closed; signature date same as occupancy date SI
- ☐ Age of applicant DOB: _____ SC
- ☐ Application closed subsequent to February 4, 1972 for lack of BIA certification as to use and occupancy (requirement waived) SC
- ☐ Lands Patented/IC'd (Aguilar) SI
- ☐ OTHER _____ SC

NOTE: This allotment case file requires reinstatement and reopening until a final determination can be made. NOTE: Use ADP Code 188 on each of the above.

Date _____ _____ ADJUDICATOR
Date _____ _____ NATIVE ALLOTMENT SPECIALIST
Date _____ _____ CHIEF, BR OF LANDS & MINERALS OP

SUPPLEMENTAL INFORMATION: Approval given - all _____ 134; Parcel(s) _____
Survey requested - all _____ 127; Parcel(s) _____
Cert. issued - all _____ 212; Parcel(s) _____

SECTION II

Application closed/rejected because of:

- ☐ Relinquishment 311 or 3
- ☐ Failure to file mineral waiver 3
- ☐ Statutory life expired 3
- ☐ Land under prior withdrawal (Occupancy Date _____) (Withdrawal Date _____) 4
- ☐ Ancestral use 3
- ☐ Age of applicant: DOB: _____ 9
- ☐ Lack of BIA certification as to use and occupancy prior to February 24, 1976 3
- ☒ OTHER Combined with case file F12212(Mach) which contains Parcels A and D (et. some applicant 3

RECOMMENDATION: This Native allotment application was properly closed ~~rejected~~ for the above reason(s) and requires no further examination.

Date 5-3-85 Nancy L. Larsen ADJUDICATOR
Date _____ _____ NATIVE ALLOTMENT SPECIALIST
_____ _____ [redacted] Allotment Section

H-2561-1 - NATIVE ALLOTMENTS
Standard Notice of Proposed Reinstatement
(Glossary 584a)

Card a

(SC-1) (2561)
(96(SC-2))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE

(SC-3)[name]	:	(SC-4)
(SC-3 [address c/o attorney if]	:	Native Allotment
(SC-3 represented; BIA if deceased]	:	Application
	:	
State of Alaska	:	
Department of Natural Resources	:	
Division of Land and Water Management	:	
State Interest Determinations Unit	:	
P.O. Box 107005	:	
Anchorage, Alaska 99510-7005	:	

Native Allotment Application (SC-5 y/n)["y"=Proposed] Reinstatement

Notice is hereby given that the Native allotment application (SC-6) [case file #] of (SC-7) [applicant's name] has been(SC-8 1/2) ["1"= proposed for reinstatement] ["2"=reinstated] as follows:

Within: (SC-9)

Containing approximately (SC-10).

The application was originally filed on (SC-11). Use and occupancy is claimed since (SC-12). On (SC-13), the application was rejected because (SC-14). On (SC-15), (SC-16) [applicant, BIA] requested the application be reinstated (SC-17) [give reason].

The State of Alaska and interested parties have 60 days from the date of this notice to file a protest as allowed in subsection 905(a)(5) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 43 U.S.C. 1634, and to submit comments regarding acceptance or rejection of the allotment application reinstatement.

H-2561-1 - NATIVE ALLOTMENTS
Standard Notice of Proposed Reinstatement
(Glossary 584a)

After this 60-day comment/protest period, an appealable decision either accepting or rejecting the reinstatement will be issued.

(SC-18) Option 3/4/6/7/8
Option 3- Ann Johnson
Chief, Branch of Calista Adjudication
Option 4- Chief, Branch of Doyon/Northwest Adjudication
Option 6- Mary Jane Clawson
Chief, Branch of Southwest Adjudication
Option 7- Terry R. Hassett
Chief, Branch of KCS Adjudication
Option 8- Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Enclosure:
Master Title Plat

Copy furnished to:

(SC-19) [applicant, if represented by attorney]
(w/cy of enclosure)

Bureau of Indian Affairs
Alaska Title Services Center (ATSC)
1675 C Street
Anchorage, Alaska 99501-5198
(certified true copy)

(SC-20) (CM-RRR) [appropriate BIA office]
(w/cy of enclosure)

(SC-21) (CM-RRR) [interested parties]
(w/cy of enclosure)

cc:
(SC-22) [conflicting case files]

DM-(SC-23)

Hard copy 0584c

H-2561-1 - NATIVE ALLOTMENTS
Standard Notice for Combining Case Files
(Glossary 693a)

(SC-1) (2561)
(SC-2) (2561)
(96(SC-3))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE

(SC-4) [Applicant's name and address	:	(SC-5)
c/o attorney, if represented	:	(SC-6)
BIA, if deceased]	:	Native Allotment
	:	Applications

Native Allotment
Applications (SC-7) and (SC-8) Combined
Case File (SC-9) Closed

On (SC-10), the Bureau of Indian Affairs filed a Native allotment application on behalf of (SC-11). It was serialized as case file (SC-12). This application is for approximately (SC-13) acres in (SC-14) Meridian, Alaska. On (SC-15) [date(s)], the Bureau of Indian Affairs also filed Native allotment application(s) on behalf of (SC-16), serialized as (SC-17), Parcel(s) (SC-18).

Case file (SC-19) is hereby administratively combined with case file (SC-20) in order to facilitate adjudication of (SC-21)'s applications for Native allotment and to simplify correspondence and filing. The land described in

H-2561-1 - NATIVE ALLOTMENTS
Standard Notice for Combining Case Files
(Glossary 693a)

application (SC-22) is now known as Parcel (SC-23) of case file (SC-24). Case file (SC-25) will be closed and deleted from the records, and (SC-26) will be used for (SC-27) [both, all three, etc.] parcels of (SC-28)'s Native allotment application.

(SC-29 3/4/6/7/8)
Option 3 = Ann Johnson
Chief, Branch of Calista Adjudication
Option 4= Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication
Option 6= Mary Jane Piggott
Chief, Branch of Southwest Adjudication
Option 7= Terry R. Hassett
Chief, Branch of KCS Adjudication
Option 8= Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Copy furnished to:

(SC-30) [applicant, if represented by attorney]

(SC-31) [appropriate BIA office]

Bureau of Indian Affairs
Alaska Title Services Center (ATSC)
1675 C Street
Anchorage, Alaska 99501-5198
(certified true copy)

State of Alaska
Department of Natural Resources
Division of Land and Water Management
State Interest Determinations Unit
P.O. Box 107005
Anchorage, Alaska 99510-7005

(SC-32) [interested parties]

cc:
DM-(SC-33)

(SC-34) [affected case files]

Hard copy on 0693c

H-2561-1 - NATIVE ALLOTMENTS
Standard Notice for Conflict Resolution
(Glossary 008a).

Card a

(SC-1) (2561)
(SC-2) (2561)
(96(SC-3))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE

(SC-4) [Name and address]	:	(SC-5) [Serial #]
(SC-4)	:	Native Allotment
(SC-4)	:	Application
	:	
(SC-6) [Name and address]	:	(SC-7) [Serial #]
(SC-6)	:	Native Allotment
(SC-6)	:	Application

Native Allotment Application Conflict
Resolution Required

According to our records, your applications are in conflict. The area in dispute is (SC-8 y/n) ["y"=a portion of] Parcel (SC-9) of Native allotment application (SC-10) and (SC-11 y/n) ["y"=a portion of] Parcel (SC-12) of Native allotment application (SC-13). Maps of the area are enclosed. In order to resolve this conflict, you may need to ask the Bureau of Indian Affairs (BIA) for assistance.

Section 905(b) of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634, states:

> Where a conflict between two or more allotment applications exists due to overlapping land descriptions, the Secretary shall adjust the descriptions to eliminate conflicts, and . . . may expand or alter the applied for allotment boundaries . . . Provided, That the Secretary shall, to the extent feasible, implement an adjustment proposed by the affected parties . . .

H-2561-1 - NATIVE ALLOTMENTS
Standard Notice for Conflict Resolution
(Glossary 008a)

In order for us to continue processing your applications, you must agree with each other on the boundaries of each allotment and let us know what the boundaries are within 60 days of your receipt of this notice. If an agreement cannot be reached with the conflict being resolved, the boundaries will be adjusted by BIA or BLM before the on-the-ground survey is done.

(SC-14 Option 3/4/6/7/8

Option 3- Ann Johnson
Chief, Branch of Calista Adjudication

Option 4- Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication

Option 6- Mary Jane Piggott
Chief, Branch of Southwest Adjudication

Option 7- Terry R. Hassett
Chief, Branch of KCS Adjudication

Option 8- Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Enclosure:
(SC-15)

Copy furnished to:

Bureau of Indian Affairs (CM-RRR)
(SC-16)
(w/cy of enclosure)

State of Alaska
Department of Natural Resources
Division of Land and Water Management
State Interest Determinations Unit
P.O. Box 107005
Anchorage, Alaska 99510-7005

Bureau of Indian Affairs
Alaska Title Services Center (ATSC)
1675 C Street
Anchorage, Alaska 99501-5198
(certified true copy)

(SC-17)

cc:
DM-(SC-18)

(SC-19) (2651)

(SC-20)

H-2561-1 - NATIVE ALLOTMENTS
Request for Additional Evidence
(Glossary 586a)

Card a

(SC-1) (2561)
(96(SC-2))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE

(SC-3) [applicant name and	:	(SC-4)
(SC-3) address c/o attorney if	:	Native Allotment
(SC-3) represented; BIA, if deceased]	:	Application

Additional Evidence Requested

On (SC-5), the Bureau of Indian Affairs filed a Native allotment application (SC-6) and evidence of occupancy on behalf of (SC-7). The application was filed under the provisions of the Act of May 17, 1906, 43 U.S.C. 270-1 to 270-3 (1970), which was repealed with a savings provision by the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1617. (SC-7 y/n) ["y"=This notice pertains only to Parcel (SC-8).] The (SC-9 1/2)["1"=application] ["2"=parcel] is for approximately (SC-10) acres of land located in (SC-11). Use and occupancy of these lands is claimed since (SC-12).

Card b

The Native allotment application was not legislatively approved because on (SC-1), (SC-2) filed a valid protest against the application under the criteria set forth in Sec. 905(a)(5) of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634, which provides that:

Card c

> . . . the Native allotment application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, if on or before the one hundred and eightieth day following the effective date of this Act . . . (A) A Native Corporation files a protest with the Secretary stating that the applicant is not entitled to the land described in the allotment application, and said land is withdrawn for selection by the Corporation pursuant to the Alaska Native Claims Settlement Act (ANCSA) . . .

H-2561-1 - NATIVE ALLOTMENTS
Request for Additional Evidence
(Glossary 586a)

Card d

. . . the Native allotment application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, if on or before the one hundred and eightieth day following the effective date of this Act . . . (B) The State of Alaska files a protest with the Secretary stating that the land described in the allotment application is necessary for access to lands owned by the United States, the State of Alaska, or a political subdivision of the State of Alaska, to resources located thereon, or to a public body of water regularly employed for transportation purposes, and the protest states with specificity the facts upon which the conclusions concerning access are based and that no reasonable alternatives for access exist . . .

Card e

. . . the Native allotment application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, if on or before the one hundred and eightieth day following the effective date of this Act . . . (C) A person or entity files a protest with the Secretary stating that the applicant is not entitled to the land described in the allotment application and said land is the situs of improvements claimed by the person or entity.

Card f

The Native allotment application was not legislatively approved because Sec. 905(a)(4) of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634, provides that:

. . . Where an allotment application describes land which . . . was validly selected by . . . the State of Alaska pursuant to the Alaska Statehood Act . . . [it] shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, the Alaska Native Claims Settlement Act, and other applicable law . . .

Card g

Because the claim is within (SC-1), a unit of the National Park System, the application was not legislatively approved because Sec. 905(a)(4) of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, provides that:

. . . Where an allotment application describes land within the boundaries of a unit of the National Park System established on or before the effective date of this Act . . . the application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, the Alaska Native Claims Settlement Act, and other applicable law . . .

H-2561-1 - NATIVE ALLOTMENTS
Request for Additional Evidence
(Glossary 586a)

Card h

Under the 1906 Act, Department regulations provide that an applicant must maintain substantially continuous use and occupancy of the lands for a period of five years. Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others.

A field examination of the claim was performed on (SC-1) to determine if (SC-2) [applicant's name] has complied with the provisions of the Act. The field examiner determined there was no physical evidence on the ground, nor was there substantial information to support the claimed use and occupancy.

On the basis of the examiner's report, it appears the applicant has not met the use and occupancy requirements for the claimed lands. All further action on the application will be suspended for 60 days from the date of receipt of this notice to allow time to submit evidence in support of the claim. We need notarized witness statements which clearly supports (SC-3) [the applicant]'s occupancy of the land. (SC-4 y/n)[don't use if applicant deceased]["y"=Any assistance the applicant needs in completing witness statements or questions the applicant has should be directed to (SC-5) [BIA or contractor] at the following address:

(SC-6)

If the supporting evidence is not submitted in the time allowed, or if the information received is not sufficient to meet the requirements of the regulations, action will be taken to allow for an oral hearing in accordance with Pence v. Kleppe, 529 F 2d 135 (9th Cir 1976).

In any correspondence concerning this claim, please refer to serial number (SC-7).

(SC-8 3/4/6/7/8)

Option 3- Ann Johnson
Chief, Branch of Calista Adjudication
Option 4- Chief, Branch of Doyon/Northwest Adjudication
Option 6- Mary Jane Clawson
Chief, Branch of Southwest Adjudication
Option 7- Terry R. Hassett
Chief, Branch of KCS Adjudication
Option 8- Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

H-2561-1 - NATIVE ALLOTMENTS
Request for Additional Evidence
(Glossary 586a)

Enclosures:
Suggested Guidelines for
Statement of Witnesses
Field Report

Copy furnished to:

(SC-9) [applicant, if represented by attorney]
(w/cy of enclosures)

Bureau of Indian Affairs
Alaska Title Services Center (ATSC)
1675 C Street
Anchorage, Alaska 99501-5198

(SC-10) [appropriate BIA office or contractor]
(w/cy of enclosures)

(SC-11) [others as appropriate]

cc:
DM-(SC-12)

Hard copy 0586c

H-2561-1 - NATIVE ALLOTMENTS
Request for Title Affirmation from Corporations
(Glossary 566a)

Card a

(SC-1)[Serial # & casetype]
(SC-2)[Parcel #]
(96(SC-3)[Branch code]

(SC-4)[Village corporation name and address]
(SC-5)[Regional corporation name and address]

Gentlemen:

The Bureau of Land Management is proposing to issue a Certificate of Allotment to (SC-6)[name] for Native allotment application (SC-7)[Serial # and Parcel(s)]. This allotment application was originally excluded from Interim Conveyance Nos. (SC-8)[#] dated (SC-9)[date] in:

(SC-10)[Sec./Township/Range/Meridian].

However, survey of this allotment application now correctly described as (SC-11) [U.S. Survey No.] is depicted on our records as being in:

(SC-12)[Sec./Township/Range/Meridian].

Before we can convey U.S. Survey No. (SC-13) to (SC-14) or patent the lands within Interim Conveyance No. (SC-15) to your corporation, you must sign and return a Title Affirmation on Survey of Inholdings (Title Affirmation). We are enclosing two variations of the Title Affirmation form. One form is to be used if a notary public or postmaster is available. The other form is to be used if neither are available. Please have the authorized officer for your corporation sign and return one of these forms within 30 days. If you cannot return the form within 30 days, please contact (SC-16) [adjudicator and phone number]. (SC-17 y/n)["y"=When the attached form is received, the selection as it pertains to Native allotment (SC-18), will be removed from the records.][Use only if the form is also used as a relinquishment.]

Sincerely,

(SC-19 3/4/6/7/8

Option 3= Ann Johnson
Chief, Branch of Calista Adjudication
Option 4= Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication
Option 6= Mary Jane Piggott
Chief, Branch of Southwest Adjudication
Option 7= Terry R. Hassett
Chief, Branch of KCS Adjudication

H-2561-1 - NATIVE ALLOTMENTS
Request for Title Affirmation from Corporations
(Glossary 566a)

Option 8- Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Enclosures:
Master Title Plat
Survey Plat
Two Title Affirmations on Survey of Inholdings

Copy furnished to:

(SC-20) [Appropriate BIA office and/or contractor]

(SC-21) [Native allotment applicant]

H-2561-1 - NATIVE ALLOTMENTS
Request for Title Affirmation from Corporations
(Glossary 566a)

Card b [Separate document]

If a notary public or postmaster is available please return this form

(SC-1) [serial #'s and case type]
(SC-2) [Parcel #'s]

Title Affirmation on Survey of Inholdings
(SC-3 y/n)["y"=Relinquishment of Selection Application (SC-4)]

In order to allow conveyance of surveyed tracts of land to private applicants and to finally identify a legal description to be used in the patent confirming boundaries, to be issued for Interim Conveyance (IC) No. (SC-5) to (SC-6), (SC-7 y/n) ["y"=recorded in the (SC-8) Recording District, Book (SC-9), page (SC-10),] the authorized officer of said corporation hereby agrees on behalf of the corporation that:

1. The surveyed description of (SC-11) [Name] Native allotment application, (SC-12) [#] which was excluded from said corporation's conveyance is:

   (SC-13) [U.S. Survey # or rectangular description].

   Containing (SC-14) acres.

2. Said corporation understands that the above survey description will not be included in the patent and will supersede the unsurveyed identification used in the IC.

3. Said corporation (SC-15 y/n)["y"=hereby relinquishes its selection application (SC-16) and] disclaims any right, title, and interest, if any, in the lands as described above.

_____ Date

_____ Signature of Corporate Official

_____ Title

STATE OF ALASKA)
)ss.
_____JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the _____day of _____, 19__, appeared before me _____ [name of corporate officer] who is known to me and who stated he/she is a corporate official acting on behalf of _____ [name of corporation] and that he/she executed the foregoing pursuant to lawful authority for the purposes stated therein.

_____

Notary Public or Postmaster in
and for the State of Alaska.
My Commission Expires: _____

H-2561-1 - NATIVE ALLOTMENTS
Request for Title Affirmation from Corporations
(Glossary 566a)

(SC-17 y/n)
["y"=Return to: (Corporation name and address)

NOTE: SC-7 and SC-17 used if corporation desires to record document.

H-2561-1 - NATIVE ALLOTMENTS
Request for Title Affirmation from Corporations
(Glossary 566a)

Card c [Separate document]

If a notary public or postmaster is not available please return this form. Two witnesses are required when using this form.

(SC-1) [serial #'s and case type]
(SC-2) [Parcel #'s]

Title Affirmation on Survey of Inholdings
(SC-3 y/n)["y"=Relinquishment of Selection Application (SC-4)]

In order to allow conveyance of surveyed tracts of land to private applicants and to finally identify a legal description to be used in the patent confirming boundaries, to be issued for Interim Conveyance (IC) No. (SC-5) to (SC-6), (SC-7 y/n) ["y"=recorded in the (SC-8) Recording District, Book (SC-9), page (SC-10),] the authorized officer of said corporation hereby agrees on behalf of the corporation that:

1. The surveyed description of (SC-11) [Name] Native allotment application, (SC-12) [#] which was excluded from said corporation's conveyance is:

   (SC-13) [U.S. Survey # or rectangular description].

   Containing (SC-14) acres.

2. Said corporation understands that the above survey description will not be included in the patent and will supersede the unsurveyed identification used in the IC.

3. Said corporation (SC-15 y/n)["y"=hereby relinquishes its selection application (SC-16) and] disclaims any right, title, and interest, if any, in the lands as described above.

I certify under penalty of perjury that I am the corporate official for (SC-17) and am acting on behalf of said corporation.

_____ Date

_____ Signature of Corporate Official

_____ Title

_____ Date

_____ Witness

_____ Date

_____ Witness

(SC-18 y/n)
["y"=Return to: (Corporation name and address)

NOTE: SC-7 and SC-18 used if corporation desires to record document.

Hard copy 0566a

H-2561-1 - NATIVE ALLOTMENTS
Request for Concurrence from the State
(Glossary 159a)

Card a

(SC-1)[Serial #(s)]
(96(SC-2))[Branch code]

(SC-3)[Carol Shobe or other]
State of Alaska
Department of Natural Resources
Division of Land and Water Management
Land Title Section
3601 C Street, Suite 960
Anchorage, Alaska 99503

Dear (SC-4):

The Bureau of Land Management is proposing to issue a (SC-5)[Certificate or Patent] to (SC-6)[name] for (SC-7)[type of claim and serial #]. This claim was originally excluded from the tentative approval dated (SC-8)[date], which conveyed all available lands in unsurveyed (SC-9)[township/range/meridian]. At the time of tentative approval, the (SC-10)[claim or parcel] was depicted on our records as being in protracted (SC-11)[Sec./township/range/meridian] (unsurveyed). However, survey of this (SC-12)[allotment or application] now described as U.S. Survey No. (SC-13) is depicted on our records as being in protracted (SC-14)[Sec./township/range/meridian] (unsurveyed). In order for us to proceed with the processing of this (SC-15)[allotment or application], we need your concurrence with the adjustment of the State's title as described above.

Aperture cards showing the current status and survey plat of the claim are enclosed.

Sincerely,

(SC-16 3/4/6/7/8)

Option 3- Ann Johnson
Chief, Branch of Calista Adjudication
Option 4- Donald E. Runberg
Chief, Branch of Doyon/Northwest
Adjudication

H-2561-1 - NATIVE ALLOTMENTS
Request for Concurrence from the State
(Glossary 159a)

Option 6- Mary Jane Piggott
Chief, Branch of Southwest Adjudication
Option 7- Terry R. Hassett
Chief, Branch of KCS Adjudication
Option 8- Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Enclosures:
Aperture cards

As a duly authorized official of the State of Alaska, I do hereby concur with the adjustment of the State's title as to lands in Native allotment application (SC-17), (SC-18 y/n)["y"-Parcel (SC-19)] now described as U.S. Survey No. (SC-20).

_____ _____
(Signature) (Date)

Hard copy 0159c

Illustration 8
(II.E.; V.A.2.)

H-2561-1 - NATIVE ALLOTMENTS
Form for Requesting Mineral Reports

_____ (2561)
(96__)

Memorandum

To: _____ DM ( )
_____ Chief, Branch of Mineral Assessment (985)

From: Chief, Branch of _____ Adjudication (96__)

Subject: Report of _____ Leasable Minerals
_____ Locatable Minerals

Specify in your report the mineral or minerals involved, and where applicable, whether disposal of the lands would unreasonably interfere with operations under the mineral or geothermal leasing acts.

Native Allotment Name of Applicant:

Date of submission of use & occupancy:

Please advise whether these lands:

____ Are valuable or prospectively valuable for coal, oil, or gas.

____ Were valuable for leasable minerals other than coal, oil, or gas on the above date.

____ Were valuable for locatable minerals on above date.

Land Description:

___ Report needed by:_____. Allotment qualifies for legislative approval if deemed not valuable for minerals other than coal, oil or gas.

H-2561-1 - NATIVE ALLOTMENTS
Standard Decision for Legislative Approval
(Glossary 28a)

Card a

(SC-1) (2561)
(SC-2) (SC-3)
(96(SC-4))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

(SC-5) [applicant name] [address: c/o attorney if represented or BIA if deceased]	:	(SC-6) Native Allotment Application
(SC-7 y/n) State of Alaska Department of Natural Resources Division of Land and Water Management Title and Contract Section 3601 C Street, Suite 960 Anchorage, Alaska 99503	:	(SC-8) (SC-9 y/n) State Selection [if dismissing a protest, the State Interest Determinations Unit has to be addressee even if no State selection involved]
(SC-10) [Village corp/name & address]	:	(SC-11) (SC-12 y/n) Village Selection
(SC-13) [Reg corp/name & address	:	(SC-14) (SC-15 y/n) Regional Selection
(SC-16 y/n) [i.e., ROW Holder, Agency responsible for withdrawal]	:	(SC-17 y/n)
(SC-18) Options 1/2/3/4/5/6/7/8/9	:	

Option 1=Protest Dismissed
Option 2=Legislative Approval of Native Allotment Confirmed
Option 3=Approval of Native Allotment Confirmed
Option 4=Native Allotment Application Legislatively Approved
Option 5=State Selection Rejected in Part
Option 6=Regional Selection Rejected in Part
Option 7=Village Selection Rejected in Part
Option 8=Native Allotment Subject to Mineral Reservation
Option 9=Final Date to Amend
Option 10=Native Allotment Application Conformed to Survey

On (SC-19), the Bureau of Indian Affairs (BIA) filed Native allotment application (SC-20) and evidence of use and occupancy on behalf of (SC-21).

H-2561-1 - NATIVE ALLOTMENTS
Standard Decision for Legislative Approval
(Glossary 28a)

The application was filed under the provisions of the Act of May 17, 1906, as amended, 43 U.S.C. 270-1 to 270-3 (1970), which was repealed with a savings provision by the Alaska Native Claims Settlement Act (ANCSA), of December 18, 1971, 43 U.S.C. 1617. The application, (SC-22 y/n)["y"=as amended,] which was before the Department on (SC-23), indicates use and occupancy since (SC-24), for approximately (SC-25) acres of (SC-26) [surveyed/unsurveyed] land (SC-27 1/2)["1"=located as follows:

(SC-28) [land description, by parcel, if necessary]]

["2"=. This decision pertains only to Parcel (SC-29) which is located as follows:

(SC-30)]

Note: Use SC-22 if description was corrected prior to ANILCA and describes amended location.

Card b [amended description]

Pursuant to Sec. 905(c) of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634, the land description above (SC-1 y/n) [for Parcel (SC-2)] was amended in order to encompass the land the applicant originally intended to claim. By Notice dated (SC-3), the State of Alaska and interested parties were afforded sixty days to protest the application, in the location described above, under the criteria of Sec. 905(a)(5) of ANILCA. (SC-4 y/n)["y"=No protest was filed.](SC-5 y/n)["y"= On (SC-6), the amendment was accepted.] (SC-7 y/n)["y"=Based on (SC-8)[give reason] the amendment is hereby (SC-9 1/2) ["1"=accepted.] ["2"=rejected.]

Card c [reinstatement approved]

This application was (SC-1) [relinquished, rejected] on (SC-2) [date]. On (SC-3) [date] the Bureau of Land Management received a request for reinstatement from (SC-4). By Notice dated (SC-5), the State of Alaska and interested parties were afforded sixty days to comment on or to protest the application, in the location described above, under the criteria of Sec. 905(a)(5) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA), 43 U.S.C. 1634. (SC-6 1/2)["1"=A timely protest was filed] ["2"=No protest was received] and the reinstatement was approved on (SC-7). (SC-8 y/n)["y"=Based on (SC-9)[give reason] the reinstatement is hereby approved.].

Card d [protest filed]

On (SC-1), (SC-2) filed a protest against Native allotment application (SC-3), pursuant to Sec. 905(a)(5) of (SC-4 1/2) ["1"=ANILCA] ["2"=the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634], which provides that:

H-2561-1 - NATIVE ALLOTMENTS
Standard Decision for Legislative Approval
(Glossary 28a)

Card e [Native corporation protest]

> . . . the Native allotment application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, if on or before the one hundred and eightieth day following the effective date of this Act . . . A Native corporation files a protest with the Secretary stating that the applicant is not entitled to the land described in the allotment application, and said land is withdrawn for selection by the Corporation pursuant to the Alaska Native Claims Settlement Act. . . .

(SC-1 1/2/3/4)

Option 1=
The protest period ended (SC-2 1/2) ["1"=on June 1, 1981, the one hundred and eightieth day following the effective date of ANILCA.] ["2"=on (SC-3), sixty days following mailing of the Notice.] The protest received on (SC-4) was therefore, not timely filed. This protest must be and is hereby summarily dismissed.

Option 2=
The protest did not state that the applicant is not entitled to the land described in the allotment application. Therefore, the protest must be and is hereby summarily dismissed.

Option 3=
The protest did not state that the land is withdrawn for selection by the corporation pursuant to ANCSA. Therefore, the protest must be and is hereby summarily dismissed.

Option 4=
Since the protest was legally insufficient, (SC-1) withdrew it on (SC-2).(SC-3 y/n) ["y"= The protest was summarily dismissed on (SC-4).]

Card f [State protest]

> . . . the Native allotment application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, if on or before the one hundred and eightieth day following the effective date of this Act . . . The State of Alaska files a protest with the Secretary stating that the land described in the allotment application is necessary for access to lands owned by the United States, the State of Alaska, or a political subdivision of the State of Alaska, to resources located thereon, or to a public body of water regularly employed for transportation purposes, and the protest states with specificity the facts upon which the conclusions concerning access are based and that no reasonable alternatives for access exist . . . .

(SC-1 1/2/3/4/5)

Option 1=
The protest period ended (SC-2 1/2) ["1"=on June 1, 1981, the one hundred and eightieth day following the effective date of ANILCA.] ["2"=on (SC-3), sixty days following mailing of the Notice.] The protest received on (SC-4) was therefore, not timely filed. This protest must be and is hereby summarily dismissed.

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Option 2=
This protest filed by the State of Alaska does not state the land described in the allotment application is necessary for access to lands owned either by the United States, the State of Alaska, or a political subdivision of the State, to resources located thereon, or to a public body of water regularly employed for transportation purposes. Therefore, the protest must be and is hereby summarily dismissed.

Option 3=
This protest filed by the State of Alaska does not state with specificity the facts upon which the conclusions concerning access are based and that no reasonable alternatives for access exist. Therefore, the protest must be and is hereby summarily dismissed.

Option 4=
The protest states that the land described in (SC-1 y/n) ["y"=Parcel (SC-2) of] the application is used for (SC-3). The protest further states that there is no reasonable alternative for access existing because (SC-4). Based on a review of the case file, topographic maps, field reports, (SC-5), and easements reserved pursuant to Sec. 17(b) of ANCSA, (SC-6). Therefore, this protest is dismissed (United States v. Mary S. Napouk, 61 IBLA 316).

Option 5=
Since the protest was legally insufficient, the State of Alaska withdrew it on (SC-1).(SC-2 y/n) ["y"= The protest was summarily dismissed on (SC-3).]

Card g

> . . . the Native allotment application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, if on or before the one hundred and eightieth day following the effective date of this Act . . . a person or entity files a protest with the Secretary stating that the applicant is not entitled to the land described in the allotment application and that said land is the situs of improvements claimed by the person or entity.

(SC-1 1/2)

Option 1=
The protest period ended (SC-2 1/2) ["1"=on June 1, 1981, the one hundred and eightieth day following the effective date of ANILCA.] ["2"=on (SC-3), sixty days following mailing of the Notice.] The protest received on (SC-4) was therefore, not timely filed. This protest must be and is hereby summarily dismissed.

Option 2=
The protest filed by (SC-5) did not state that the land described in the allotment application is the situs of improvements claimed by the protestant. Therefore, the protest must be and is hereby summarily dismissed.

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Card h [Legislative approval]

The Native allotment application has been reviewed under the provisions of Sec. 905 of (SC-1 1/2) ["1"=ANILCA] ["2"=the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634,] and (SC-2) [it was, Parcels A and B were, etc.] legislatively approved, effective June 1, 1981, pending confirmation of location, as to the lands described above.

Card i [previously 1906 approved, eligible, too, for legislative approval] [confirm only if previous approval was not in the form of a decision w/all interested parties receiving a copy]

(SC-1 y/n) [Parcel (SC-2) of] Native allotment application (SC-3) was approved pursuant to the Act of May 17, 1906 on (SC-4), and also was legislatively approved pursuant to Sec. 905 of (SC-5 1/2) ["1"=ANILCA] ["2"=the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634,] effective June 1, 1981. (SC-6 y/n)["y"=The approval is hereby confirmed.]

Card j [previous legislative approval confirmed] [only confirm if previous notification was not in the form of a decision w/all interested parties receiving a copy]

On (SC-1), the applicant was informed that Native allotment application (SC-2), (SC-3 y/n)["y"=Parcel (SC-4),] was legislatively approved pursuant to Sec. 905 of (SC-5 1/2)["1"=ANILCA]["2"=the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634], effective June 1, 1981. (SC-6 y/n)["y"=That approval is hereby confirmed, pending confirmation of the location of the (SC-7 1/2)["1"=allotment]["2"=parcel]].

Card k [no minerals or decision to reserve already issued]

All applications approved pursuant to ANILCA are subject to the provisions of the Act of March 8, 1922, as amended, 43 U.S.C. 270-11 and 270-12. (SC-1 1/2) ["1"=Pursuant to the Act and to the requirements of 43 CFR 2561.0-8(d) and 43 CFR 2093.4-1, a decision was issued on (SC-2) that the (SC-3) [what minerals] in the lands in (SC-4 y/n) ["y"=Parcel (SC-5) of] application (SC-6) will be reserved to the United States in the Certificate of Allotment, when granted. ["2"=It has been determined that the above-described lands are without value for minerals; therefore, none shall be reserved to the United States.]

Card l [mineral reservation]

The Bureau of Land Management has determined that the lands in (SC-1 y/n) ["y"=Parcel (SC-2) of] this application are classified as valuable for (SC-3) [what mineral(s)]. The Act of March 8, 1922, as amended, 43 U.S.C. 270-11 and 270-12, states that (SC-4) [what minerals] cannot be conveyed to Native allotment applicants.

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If (SC-5 y/n) [use if applicant deceased. "y"=BIA, acting for] the applicant does not believe that the land is valuable for (SC-6) [what mineral(s)], then a petition (request) for reclassification must be submitted within 30 days from date of receipt of this decision. With the request, geological or technical information must be submitted from a mineral expert which agrees with their belief that (SC-7) [what minerals is/are] not present under the land.

If the petition and information required are not submitted within thirty days, (SC-8) [this mineral/these minerals] will be reserved to the United States in the Certificate of Allotment, when granted.

Card m [State rejection]

On (SC-1), the State of Alaska filed general purposes grant selection (SC-2) pursuant to Sec. 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339), as amended, for lands in (SC-3), including the lands in (SC-4 y/n) ["y"=Parcel (SC-5) of] Native allotment application (SC-6). (SC-7 y/n)["y"=This township is the core township for (SC-8).] The allotment application was legislatively approved: therefore, the State selection is rejected as to the land described above and all the minerals therein(SC-9 y/n) ["y"=, except (SC-10)[what minerals]. The State selection for the reserved minerals will be adjudicated at a later date.]

Card n [village rejection]

On (SC-1), (SC-2) filed village selection (SC-3), (SC-4 y/n) ["y"=as amended.] under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, 43 U.S.C. 1601 et seq., for lands in (SC-5), including the lands in (SC-6 y/n) ["y"=Parcel (SC-7) of] Native allotment application (SC-8). The allotment application was legislatively approved: therefore village selection application (SC-9) is rejected as to the land described above.

Card o [regional selection]

On (SC-1), (SC-2) filed regional selection (SC-3), (SC-4 y/n) ["y"=as amended.] under the provisions of Sec. (SC-5) of the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, 43 U.S.C. 1601 et seq., for lands in (SC-6), including the lands in (SC-7 y/n) ["y"=Parcel (SC-8) of] Native allotment application (SC-9). The allotment application was legislatively approved: therefore the regional selection is rejected as to the land described above and all the minerals therein(SC-10 y/n) ["y"=, except (SC-11) [what minerals]. The regional selection for the reserved minerals will be adjudicated at a later date.] [Note: Do not use (SC-10) if selection being rejected is a 14(h)(1)].

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Card p [use if a withdrawal which conflicts with allotment can be removed by PLO 6590]

That portion of withdrawal, (SC-1), in conflict with Native allotment application (SC-2), will be removed from the records under the terms of Public Land Order 6590 when the Certificate of Allotment is issued.

Card q

The Certificate of Allotment will reserve the following to the United States:

A right-of-way for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

Card r [Option 1/2/3]

[Option 1=
All the oil and gas in (SC-1 y/n) ["y"=Parcel (SC-2) of] the land so allotted, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of March 8, 1922, as amended, 43 U.S.C. 270-11 and 270-12.]

Option 2=
All the coal, oil and gas in (SC-1 y/n) ["y"=Parcel (SC-2) of] the land so allotted, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of March 8, 1922, as amended, 43 U.S.C. 270-11 and 270-12.]

Option 3=
All the coal in (SC-1 y/n) ["y"=Parcel (SC-2) of] the land so allotted, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of March 8, 1922, as amended, 43 U.S.C. 270-11 and 270-12.]

Card s Option 1/2

Option 1=
This allotment shall be subject to:

Option 2=
Parcel (SC-1) of this allotment shall be subject to:

Card t [Omnibus Road. NOT PLO 1613]

An easement for highway purposes, extending (SC-1) feet each side of the centerline of the (SC-2) and transferred to the State of Alaska pursuant to the quitclaim deed dated June 30, 1959, and executed by the Secretary of Commerce pursuant to the authority of the Alaska Omnibus Act, Pub. L. 86-70, 73 Stat. 141.

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Card u [Omnibus Roads, PLO 1613]

An easement for highway purposes, including appurtenant, protective, scenic, and service areas, extending 150 feet each side of the centerline of the (SC-1) Highway as established by Public Land Order 1613 (23 F.R. 2376) pursuant to the Act of August 1, 1956, 43 U.S.C. 971a, and transferred to the State of Alaska pursuant to the Alaska Omnibus Act, Pub. L. 86-70, 73 Stat. 141, as to (SC-2).

Card v [R.S. 2477 claim]

The State of Alaska claims that (SC-1) is subject to an R.S. 2477, 14 Stat. 253, right-of-way, for (SC-2). This claimed R.S. 2477 right-of-way will not be listed in the Certificate of Allotment as the Federal government has no authority to adjudicate rights that are determined by State law.

Card w

The survey of (SC-1 y/n)["y"=Parcel (SC-2) of] this Native allotment application was officially filed (SC-3), and a copy is enclosed.

The official surveyed description of (SC-4 1/2)["1"=the parcel]["2"=the claim] is as follows:

(SC-5).

Containing (SC-6) acres, as shown on the plat of survey (SC-7 1/2) ["1"=accepted] ["2"=officially filed] on (SC-8).

(SC-9 y/n) [To be used if no final date to amend notice has been sent.] ["y"=
The (SC-10 y/n) [use if applicant deceased; "y"=BIA, acting for the] applicant has 60 days from the receipt of this decision to notify this office in writing, if the survey as described does not contain all the improvements originally intended to be on this parcel. Any claim that the surveyed location is different than the intended location must be clearly supported by evidence of the error. Pursuant to Sec. 905(c) of ANILCA, you cannot change the location of the allotment after the expiration of the 60 days allowed in this decision. Unless so notified, (SC-11 y/n)["y"=Parcel (SC-12) of] the allotment application will be considered correctly surveyed. Any party, other than the applicant, who has concerns regarding the survey, must submit those concerns within 30 days.

(SC-13 y/n) ["y"=
On (SC-14) the applicant was sent a final date to amend notice (copy attached). Since no response was received the survey is considered correct. However, the applicant has 30 days from receipt of this decision to notify this office, in writing, if the survey does not include the land shown in the final date to amend notice.]

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(SC-15 y/n) [Use if similar statement is not on survey plat.]
["y"=The statement appearing in the next paragraph is now being included in conformance notices. This was requested by the State of Alaska, and is intended to remind the applicant that if the claim includes navigable water, the State owns the lands beneath that water. This is true even if the plat of survey for the claim does not show the water.

Conveyance of the above-described property does not purport to include or transfer any interest in submerged lands within the surveyed boundaries to which the State of Alaska may be entitled under the Equal Footing Doctrine and section 6(m) of the Alaska Statehood Act, P.L. 85-508, notwithstanding the use, location, or absence of meander lines on the relevant survey plat to depict such water bodies.]

Card x [use if unsurveyed]

Option 1/2

Option 1=
A map showing the approximate location of the allotment application is enclosed.

Option 2=
Maps showing the approximate location(SC-1)["s" or omit] of the allotment application are enclosed.

Card y

Before the Certificate of Allotment can be issued for the land, the boundaries must be surveyed. Traditionally this is done by the Bureau of Land Management (BLM) at no expense to the applicant. However, when BLM pays for the survey it is done in the regular order of business and may require several years because of the large number of allotment applications already scheduled. (SC-1 y/n)["y"=The land in (SC-2 y/n) ["y"=Parcel (SC-3) of] Native allotment application (SC-4) is tentatively scheduled for survey in (SC-5).] (SC-6 y/n)["y"=The land in (SC-7 y/n)["y"=Parcel (SC-8) of] Native allotment application (SC-9) has not yet been scheduled for survey.] In order to secure an earlier survey, the (SC-10 y/n) [use if applicant deceased. "y"=Bureau of Indian Affairs (BIA), acting for the] applicant may instead choose to hire a private surveyor at the applicant's expense. (SC-11 y/n)["y"=The (SC-12 y/n)["y"=BIA, acting for the] applicant may choose to hire a private surveyor for one parcel and not another.]

If the (SC-13 1/2) ["1"=applicant; "2"=BIA] chooses to hire a private surveyor, (SC-14 1/2/3) ["1"=he; "2"=she; "3"=BIA] will need to submit to this office the surveyor's name, address and phone number and a letter waiving the right to a free survey. The BLM survey office will then write the special instructions and contact the surveyor the applicant has selected.

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The (SC-15 1/2) ["1"=BIA; "2"=applicant] has 60 days from the receipt of this decision to inform this office of (SC-16 1/2/3) ["1"=his; "2"=her; "3"=its] decision. If the (SC-17 1/2) ["1"=BIA; "2"=applicant] has not contacted the BLM within that time, BLM will proceed with government survey plans.

Card z [final date to amend]

If the land described in this decision is not what the applicant intended to apply for, (SC-1) has 60 days from receipt of this decision to notify this office. If a request for amendment is submitted, (SC-2) must provide clear and substantial evidence that the amended description describes land (SC-3) intended to claim at the time of application. Different land cannot be substituted or applied for.

If notification is not received, steps will be taken to order survey of the land as described above and as shown on the attached map. The location of the allotment cannot be changed after (SC-6 y/n) ["y"=survey instructions have been written or] expiration of the 60 days allowed for amendment. (Section 905(c) of ANILCA.)

Card A

Any questions the applicant may have regarding future use relative to (SC-1 y/n)["y"=Parcel (SC-2) of] the Native allotment or any assistance the applicant may need with the description should be directed to the (SC-3) at the following address:

(SC-4)

Card B

An appeal from this decision may be taken to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the enclosed regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E. The appellant has the burden of showing that the decision appealed from is in error.

If an appeal is taken, the notice of appeal must be filed with the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 within 30 days of the receipt of this decision. Do not send the appeal directly to the Board. The appeal and case history file will be sent to the Board from this office. The regulations also require the appellant to serve a copy of the notice of appeal, statement of reasons, written arguments or briefs on the Regional Solicitor, Alaska Region, U.S. Department of the Interior, 222 West Eighth Avenue, #34, Anchorage, Alaska 99513-7584. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations. Form 1842-1 is enclosed for additional information.

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If an appeal is filed, (SC-1 1/2/3/4)

Option 1=each party named in the heading of this decision must be served.

Option 2=the adverse party to be served is:

(SC-2) [Name and address of adverse party]

Option 3=the adverse parties to be served are:

(SC-3) [Names and addresses of adverse parties]

Option 4 [Use together with Option 1]=In addition, the following (SC-4 1/2) ["1"=agency] ["2"=agencies] must also be served:

(SC-5) [Name and address of BIA agency or contractor (unless named in heading of decision).

If appropriate, name and address of the Federal agency with jurisdiction of land.

State Interest Determinations Unit of State of Alaska if there is reference to access (any type of trail or road).]

(SC-6 Option 3/4/6/7/8

Option 3=	Ann Johnson Chief, Branch of Calista Adjudication
Option 4=	Donald E. Runberg Chief, Branch of Doyon/Northwest Adjudication
Option 6=	Mary Jane Piggott Chief, Branch of Southwest Adjudication
Option 7=	Terry R. Hassett Chief, Branch of KCS Adjudication
Option 8=	Chief, Branch of Cook Inlet and Ahtna Adjudication

Enclosures:
Form 1842-1
Appeal Regulations
Map(s) of area(s) [field report sketch: USGS quad (both if final date to amend)]
(SC-7 y/n) Survey plat [if conforming to survey]
(SC-8 y/n)["y"=MTP] [if appropriate]
(SC-9 y/n)["y"=Final Date to Amend Notice]

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Copy furnished to:

(SC-10) (CM-RRR) [interested parties not named in heading, including
(w/cy of enclosures) those parties listed under Card A, options 2 and 3]

(SC-11) (CM-RRR)[appropriate BIA office or contractor]
(SC-12 y/n)["y"=(w/cy of field report)
(SC-13 y/n)["y"=w/cy of enclosures)]

Bureau of Indian Affairs
Alaska Title Services Center
1675 C Street
Anchorage, Alaska 99501-5198
(certified true copy)

State of Alaska
Department of Natural Resources
Division of Land and Water Management
State Interest Determinations Unit
P.O. Box 107005
Anchorage, Alaska 99510-7005
(SC-14 y/n)["y"=(w/survey plat)]

Area Rights Protection Officer
Bureau of Indian Affairs
Juneau Area Office
P.O. Box 3-8000
Juneau, Alaska 99802

(SC-15 y/n) [Use if applicant reinstated or relocated if Area Forester wasn't previously notified of change]

"y"=
Area Forester
Branch of Natural Resources
Bureau of Indian Affairs
P.O. Box 3-8000
Juneau, Alaska 99802]

(SC-16 y/n)
"y"=Copper River Native Association
Attn: Les Sutherland
Drawer H
Copper Center, Alaska 99573

cc:
DM-(SC-17)

(SC-18) [affected case files not listed in heading]

(SC-19 y/n)
"y"=
Branch of Land Resources (932)]

(SC-20)

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Card a

(SC-1) (2561)
(SC-2) (SC-3)
(96(SC-4))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

(SC-5)[applicant name] [address; c/o attorney if represented or BIA if deceased]	:	(SC-6) Native Allotment Application
(SC-7 y/n) State of Alaska Department of Natural Resources Division of Land and Water Management Title and Contract Section 3601 C Street, Suite 960 Anchorage, Alaska 99503	:	(SC-8) (SC-9 y/n) State Selection
(SC-10)[Village corp/name & address]	:	(SC-11) (SC-12 y/n) Village Selection
(SC-13)[Reg corp/name and address]	:	(SC-14) (SC-15 y/n) Regional Selection
(SC-16 y/n)[i.e., ROW Holder, Agency responsible for withdrawal]	:	(SC-17 y/n)

(SC-18) Options 1/2/3/4/5/6/7/8

Option 1=Native Allotment Application Approved
Option 2=Native Allotment Application Approval Confirmed
Option 3= State Selection Rejected in Part
Option 4=Regional Selection Rejected in Part
Option 5=Village Selection Rejected in Part
Option 6=Native Allotment Subject to Mineral Reservation
Option 7=Final Date to Amend
Option 8=Native Allotment Application Conformed to Survey

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On (SC-19), the Bureau of Indian Affairs (BIA) filed Native allotment application (SC-20) and evidence of use and occupancy on behalf of (SC-21). The application was filed under the provisions of the Act of May 17, 1906, as amended, 43 U.S.C. 270-1 to 270-3 (1970), which was repealed with a savings provision by the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, 43 U.S.C. 1617. The application, (SC-22 y/n)["y"=as amended,] which was before the Department on (SC-23), indicates use and occupancy since (SC-24) for approximately (SC-25) acres of (SC-26 [surveyed/unsurveyed]) land (SC-27 1/2)["1"=located (SC-28 1/2) ["1"=as follows] ["2"=within]:

(SC-29) [land description, by parcel, if necessary]]

["2"=. This decision pertains only to Parcel (SC-30) which is located as follows:

(SC-31)]

Note: Use SC-22 if description was corrected prior to ANILCA and describes amended location.

Card b [Previously approved. Confirmed] [Confirm only if previous approval was not in the form of a decision w/all interested parties receiving a copy]

On (SC-1), Native allotment application (SC-2) for (SC-3) [name] was approved under the Act of May 17, 1906, as amended, 43 U.S.C. 270-1 to 270-3 (1970), for (SC-4)[Option 1/2][Option 1=approximately (SC-5) acres located within (SC-6).] [Option 2=the lands described above.] (SC-7 y/n)["y"=That approval is hereby confirmed.]

Card c [amended description]

Pursuant to Sec. 905(c) of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634, the land description above (SC-1 y/n) [for Parcel (SC-2)] was amended in order to encompass the land the applicant originally intended to claim. By Notice dated (SC-3), the State of Alaska and interested parties were afforded sixty days to protest the application, in the location described above, under the criteria of Sec. 905(a)(5) of ANILCA. (SC-4 y/n)["y"=No protest was filed.](SC-5 y/n)["y"= On (SC-6), the amendment was accepted.] (SC-7 y/n)["y"=Based on (SC-8)[give reason] the amendment is hereby (SC-9 1/2) ["1"=accepted.] ["2"=rejected.]

Card d [reinstatement approved]

This application was (SC-1) [relinquished, rejected] on (SC-2) [date]. On (SC-3) [date] the Bureau of Land Management received a request for reinstatement from (SC-4). By Notice dated (SC-5), the State of Alaska and interested parties were afforded sixty days to comment on or to protest the application, in the location described above, under the criteria of Sec. 905(a)(5) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA), 43 U.S.C. 1634. (SC-6 1/2)["1"=A timely protest was filed] ["2"=No protest was received] and the reinstatement was approved on (SC-7). (SC-8 y/n)["y"=Based on (SC-9)[give reason] the reinstatement is hereby approved.].

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Card e (use if land reserved on December 13, 1968, i.e., MUC, withdrawal, etc.)

Section 905(a)(1) of (SC-1 1/2)["1"=the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634.] ["2"=ANILCA] provides that:

> Subject to valid existing rights, all Alaska Native allotment applications made pursuant to the Act of May 17, 1906 (34 Stat. 197, as amended) which were pending before the Department of the Interior on or before December 18, 1971, and which describe . . . land that was unreserved on December 13, 1968 . . . are hereby approved. . . (emphasis added)

This application was not legislatively approved and must be adjudicated because the lands described were reserved by (SC-2) on (SC-3).

Card f [use if SS predates NA filing, but not use and occupancy]

The Native allotment application was not legislatively approved and must be adjudicated because the lands were validly selected by the State of Alaska on (SC-1). Section 905(a)(4) of (SC-2 1/2) [Option 1=the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634.] [Option 2=ANILCA] provides that:

> Where an allotment application describes land . . . which on or before December 18, 1971, was validly selected by . . . the State of Alaska pursuant to the Alaska Statehood Act and was not withdrawn pursuant to Sec. 11(a)(1)(A) of the Alaska Native Claims Settlement Act . . . [it] shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, the Alaska Native Claims Settlement Act, and other applicable law.

Card g [NA within national park, outside ANCSA Sec. 11(a)(1) withdrawal]

Since the claim is within (SC-1), the application was not legislatively approved and must be adjudicated because Sec. 905(a)(4) of (SC-2 1/2) [Option 1=the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634.] [Option 2=ANILCA], provides that:

> Where an allotment application describes land within the boundaries of a unit of the National Park System established on or before the effective date of this Act and the described land was not withdrawn pursuant to section 11(a)(1) of the Alaska Native Claims Settlement Act . . . the application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, the Alaska Native Claims Settlement Act, and other applicable law.

Card h [valid protest filed]

The application was not legislatively approved and must be adjudicated because on (SC-1), a valid protest was filed by (SC-2) under the criteria set forth in Sec. 905(a)(5) of (SC-3 1/2) [Option 1=the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634.] [Option 2=ANILCA]. Section 905(a)(5) states in pertinent part:

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. . . the Native allotment application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, if on or before the one hundred and eightieth day following the effective date of this Act--

(SC-4 Option 1/2/3)

[Option 1=
(A) A Native Corporation files a protest with the Secretary stating that the applicant is not entitled to the land described in the allotment application, and said land is withdrawn for selection by the Corporation pursuant to the Alaska Native Claims Settlement Act;]

[Option 2=
(B) The State of Alaska files a protest with the Secretary stating that the land described in the allotment application is necessary for access to lands owned by the United States, the State of Alaska, or a political subdivision of the State of Alaska, to resources located thereon, or to a public body of water regularly employed for transportation purposes, and the protest states with specificity the facts upon which the conclusions concerning access are based and that no reasonable alternatives for access exist;]

[Option 3=
(C) A person or entity files a protest with the Secretary stating that the applicant is not entitled to the land described in the allotment application and that said land is the situs of improvements claimed by the person or entity.]

Card i [use if a notice or decision was issued (to applicant or in Federal Register) stating that land may be valuable for minerals]

Section 905(a)(3) of (SC-1 1/2) ["1"=the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634.] ["2"=ANILCA] provides that:

When on or before the one hundred and eightieth day following the effective date of this Act, the Secretary determines by notice or decision that the land described in an allotment application may be valuable for minerals, excluding oil, gas, or coal, the allotment application shall be adjudicated pursuant to the provision of the Act of May 17, 1906, as amended. . .

This application was not legislatively approved and must be adjudicated because on (SC-2), the Secretary determined by (SC-3 1/2) ["1"=notice] ["2"=decision] that the described lands may be valuable for minerals. The lands have since been found to be non-mineral in character.

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Card j [use this card for evaluating evidence of use and occupancy. This is especially needed if there are conflicting applications, property interests and/or conflicting facts.]

(SC-1)

Card k [1906 approved]

Based upon adjudication of (SC-1 y/n [Parcel (SC-2) of] the application, this office has determined that at the time the claim was initiated, the lands were vacant, unappropriated and unreserved and the applicant has satisfied the use and occupancy requirements of the Act of May 17, 1906, as amended. Therefore, Native allotment application (SC-3) is hereby approved as to the lands described above.

Card l [no minerals, or decision to reserve already issued]

All applications approved pursuant to the Act of May 17, 1906 are subject to the provisions of the Act of March 8, 1922, as amended, 43 U.S.C. 270-11 and 270-12. (SC-1 Option 1/2)[if "1"=Pursuant to that Act and to the requirements of 43 CFR 2561.0-8(d) and 43 CFR 2093.4-1 a decision was issued on (SC-2) stating that the (SC-3 coal, oil, and/or gas, as appropriate) in the lands in (SC-4 y/n) [Parcel (SC-5) of] application (SC-6) will be reserved to the United States in the Certificate of Allotment, when granted. ["2"=It has been determined that the above-described lands are without value for minerals; therefore, none shall be reserved to the United States.]

Card m [mineral reservation]

The Bureau of Land Management has determined that the lands in (SC-1 y/n) [Parcel (SC-2) of] this application are classified as valuable for (SC-3)[what mineral(s)]. The Act of March 8, 1922, as amended, 43 U.S.C. 270-11 and 270-12, states that (SC-4)[what mineral(s)] cannot be conveyed to Native allotment applicants.

If (SC-5 y/n) [use if applicant deceased: "y"=BIA, acting for] the applicant does not believe that the land is valuable for (SC-6)[what mineral(s)], then a petition (request) for reclassification must be submitted within 30 days from the date of receipt of this decision. With the request, geological or technical information must be submitted from a mineral expert which agrees with their belief that (SC-7)[what minerals is/are] not present under the land.

If the petition and information required are not submitted within thirty days, (SC-8)[this/these minerals] will be reserved to the United States in the Certificate of Allotment, when granted.

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Card n [Roads and Trails]

The Act of May 17, 1906, as amended, allows Alaska Natives to acquire an allotment by proof of substantially continuous use and occupancy for a period of five years. As defined in the regulations in 43 CFR 2561.0-5a:

> . . .Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others. . . .

According to information in the case file, public use of (SC-1)[name of road/trail] began in (SC-2), which is prior to the applicant's claimed use and occupancy. The type of use identified is (SC-3). Therefore, the applicant's use of this (SC-4)[road/trail] was not potentially exclusive of others and the Certificate of Allotment, when issued, will be subject to the (SC-5)[road/trail].

Card o [State rejection]

On (SC-1), the State of Alaska filed general purposes grant selection application (SC-2) pursuant to Sec. 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339), as amended, for lands in (SC-3), including lands encompassed by (SC-4 y/n)["y"=Parcel (SC-5) of] Native allotment application (SC-6). Section 6(b) of the Alaska Statehood Act of July 7, 1958, provides that the State may only select vacant, unappropriated, and unreserved public lands in Alaska. The lands described above were (SC-7 1/2)["1"=appropriated by the occupancy of the Native applicant] ["2"=segregated by the Native allotment application] at the time of State selection. Therefore, State selection (SC-8) is rejected as to (SC-9 1/2)["1"=the lands described above] ["2"=the (SC-10) acres in conflict with Native allotment application (SC-11)] and all the minerals therein (SC-12 y/n)["y"=, except (SC-13). The State selection for the reserved minerals will be adjudicated at a later date.]

Card p [village rejection]

On (SC-1), (SC-2) filed village selection (SC-3), as amended, under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, 43 U.S.C. 1601 et seq., for lands in (SC-4), including lands in (SC-5 y/n) [Parcel (SC-6) of] Native allotment application (SC-7). The subject lands were segregated by the Native allotment application at the time of village selection. Application (SC-8) is therefore rejected as to (SC-9 1/2)["1"=the land described above.] ["2"=that portion in conflict with (SC-10 y/n) [Parcel (SC-11) of] Native allotment application (SC-12).]

Card q [regional rejection]

On (SC-1), (SC-2) filed regional selection (SC-3), as amended, under the provisions of Sec. (SC-4) of the Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, 43 U.S.C. 1601 et seq., for lands in (SC-5), including lands in (SC-6 y/n [Parcel (SC-7) of] Native allotment application (SC-8).

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The subject lands were segregated by the Native allotment application at the time of regional selection. Therefore, selection application (SC-9) is rejected as to (SC-10 1/2)["1"=the lands described above.] ["2"=that portion in conflict with Native allotment application (SC-11)] and all the minerals therein (SC-12 y/n)["y"=, except (SC-13). The regional selection for the reserved minerals will be adjudicated at a later date.]

Note: Do not include SC-12 in Sec. 14(h)(1) selection rejections.

Card r [use if a withdrawal which conflicts with allotment can be removed by PLO 6590]

That portion of withdrawal, (SC-1), in conflict with Native allotment application (SC-2), will be removed from the records under the terms of Public Land Order 6590 when the Certificate of Allotment is issued.

Card s

The Certificate of Allotment will reserve the following to the United States:

A right-of-way for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

Card t [Option 1/2/3]

[Option 1=
All the oil and gas in (SC-1 y/n)["y"=Parcel (SC-2) of] the land so allotted, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of March 8, 1922, as amended, 43 U.S.C. 270-11 and 270-12.]

[Option 2=
All the coal, oil and gas in (SC-1 y/n)["y"=Parcel (SC-2) of] the land so allotted, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of March 8, 1922, as amended, 43 U.S.C. 270-11 and 270-12.]

[Option 3=
All the coal in (SC-1 y/n)["y"=Parcel (SC-2) of] the land so allotted, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of March 8, 1922, as amended, 43 U.S.C. 270-11 and 270-12.]

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Card u 1/2

Option 1=
This allotment shall be subject to:

Option 2=
Parcel (SC-1) of this allotment shall be subject to:

Card v [Omnibus Road, NOT PLO 1613]

An easement for highway purposes, extending (SC-1) feet each side of the centerline of the (SC-2) and transferred to the State of Alaska pursuant to the quitclaim deed dated June 30, 1959, and executed by the Secretary of Commerce pursuant to the authority of the Alaska Omnibus Act, Pub. L. 86-70, 73 Stat. 141.

Card w [Omnibus Roads, PLO 1613]

An easement for highway purposes, including appurtenant, protective, scenic and service areas, extending 150 feet each side of the centerline of the (SC-1) Highway as established by Public Land Order 1613 (23 F.R. 2376) pursuant to the Act of August 1, 1956, 43 U.S.C 971a, and transferred to the State of Alaska pursuant to the Alaska Omnibus Act, Pub. L. 86-70, 73 Stat. 141.

Card x [Non-exclusive use access]

The continued right of public access along the non-exclusive use (SC-1) [name of trail/road] not to exceed (SC-2) feet in width (SC-3 y/n) [as shown on U.S. Survey No. (SC-4), Alaska].

Card y [R.S. 2477 claim]

The State of Alaska claims that (SC-1) is subject to an R.S. 2477, 14 Stat. 253, right-of-way for (SC-2)[name of trail/road]. This claimed R.S. 2477 right-of-way will not be listed in the Certificate of Allotment as the Federal government has no authority to adjudicate rights that are determined by State law.

Card z

The survey of (SC-1 y/n)["y"=Parcel (SC-2) of] this Native allotment application was officially filed (SC-3), and a copy is enclosed.

The official surveyed description of (SC-4 1/2)["1"=the parcel] ["2"=the claim] is as follows:

(SC-5)

Containing (SC-6) acres, as shown on the plat of survey (SC-7 1/2) ["1"=accepted] ["2"=officially filed] on (SC-8).

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(SC-9 y/n) [To be used if no final date to amend notice has been sent.]
["y"=
The (SC-10 y/n) [use if applicant deceased; "y"=BIA, acting for the] applicant has 60 days from the receipt of this decision to notify this office in writing, if the survey as described does not contain all the improvements originally intended to be on this parcel. Any claim that the surveyed location is different than the intended location must be clearly supported by evidence of the error. Pursuant to Sec. 905(c) of ANILCA, you cannot change the location of the allotment after the expiration of the 60 days allowed in this decision. Unless so notified, (SC-11 y/n)["y"=Parcel (SC-12) of] the allotment application will be considered correctly surveyed. Any party, other than the applicant, who has concerns regarding the survey, must submit those concerns within 30 days.

(SC-13 y/n) ["y"=
On (SC-14) the applicant was sent a final date to amend notice (copy attached). Since no response was received the survey is considered correct. However, the applicant has 30 days from the receipt of this decision to notify this office, in writing, if the survey does not include the land shown in the final date to amend notice.]

(SC-15 y/n) [Use if similar statement is not on survey plat.]
["y"=The statement appearing in the next paragraph is now being included in conformance notices. This was requested by the State of Alaska, and is intended to remind the applicant that if the claim includes navigable water, the State owns the lands beneath that water. This is true even if the plat of survey for the claim does not show the water.

Conveyance of the above-described property does not purport to include or transfer any interest in submerged lands within the surveyed boundaries to which the State of Alaska may be entitled under the Equal Footing Doctrine and section 6(m) of the Alaska Statehood Act, P.L. 85-508, notwithstanding the use, location, or absence of meander lines on the relevant survey plat to depict such water bodies.]

Card A

Option 1/2

[If "1"=A map showing the approximate location of the allotment application is enclosed.]

[If "2"-Maps showing the approximate location(SC-1)["s" or omit] of the allotment application are enclosed.]

Card B [private survey option]

Before the Certificate of Allotment can be issued for the land, the boundaries must be surveyed. Traditionally this is done by the Bureau of Land Management (BLM) at no expense to the applicant. However, when BLM pays for the survey it is done in the regular order of business and may require several years because of the large number of allotment applications already scheduled.

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(SC-1 y/n)["y"=The land in (SC-2 y/n) [Parcel (SC-3) of] Native allotment application (SC-4) is tentatively scheduled for survey in (SC-5).] (SC-6 y/n)["y"=The land in (SC-7 y/n)["y"=Parcel (SC-8) of] Native allotment application (SC-9) has not yet been scheduled for survey.] In order to secure an earlier survey, the (SC-10 y/n) [use if applicant deceased; "y"=Bureau of Indian Affairs (BIA), acting for the] applicant may instead choose to hire a private surveyor at the applicant's expense. (SC-11 y/n)["y"=The (SC-12 y/n)[BIA, acting for the] applicant may choose to hire a private surveyor for one parcel and not another.]

If the (SC-13 1/2) ["1"=applicant; "2"=BIA] chooses to hire a private surveyor, (SC-14 1/2/3) ["1"=he; "2"=she; "3"=BIA] will need to submit to this office the surveyor's name, address and phone number and a letter waiving the right to a free survey. The BLM survey office will then write the special instructions and contact the surveyor the applicant has selected.

The (SC-15 1/2) ["1"=applicant; "2"=BIA] has 60 days from the receipt of this decision to inform this office of (SC-16 1/2/3) ["1"=his; "2"=her; "3"=its] decision. If the (SC-17 1/2) ["1"=applicant; "2"=BIA] has not contacted the BLM within that time, BLM will proceed with government survey plans.

Card C [final date to amend]

If the land described in this decision is not what the applicant intended to apply for, (SC-1) has 60 days from receipt of this decision to notify this office. If a request for amendment is submitted, (SC-2) must provide clear and substantial evidence that the amended description describes the land (SC-3) intended to claim at the time of application. Different land cannot be substituted or applied for.

If notification is not received, steps will be taken to order survey of the land as described above and as shown on the attached map. The location of the allotment cannot be changed after (SC-4 y/n)["y"=survey instructions have been written or] expiration of the 60 days allowed for amendment. (Section 905(c) of ANILCA.)

Card D

Any questions the applicant may have regarding future use relative to (SC-1 y/n)["y"=Parcel (SC-2) of] the Native allotment or any assistance the applicant may need with the description should be directed to (SC-3)[the Bureau of Indian Affairs or contractor] at the following address:

(SC-4)

Card E [Use if conflict predates NA filing, but not use and occupancy]

The addressed parties have 60 days from receipt of this decision in which to initiate a private contest against the Native allotment application pursuant to Departmental regulation 43 Code of Federal Regulations (CFR) 4.450 (copy enclosed).

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Failure of any of the addressed parties to initiate a private contest within the time indicated above will result in the Native allotment application being approved and the other parties being rejected as to the lands in Native allotment application (SC-1). This action will become final without further notice. The addressed parties have a 30 day appeal period which commences upon expiration of the 60 days allowed for initiation of a private contest. (State of Alaska, 48 IBLA 229). To avoid summary dismissal of the appeal, there must be strict compliance with the regulations. All parties not having the right to initiate a private contest who wish to appeal this decision must follow the provisions of the appeal procedures.

Card F

An appeal from this decision may be taken to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the enclosed regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E. The appellant has the burden of showing that the decision appealed from is in error.

If an appeal is taken, the notice of appeal must be filed with the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599, within 30 days of the receipt of this decision (SC-1 y/n)(use if card E has been used) ["y"=,except for those parties who have the appeal period set forth above]. Do not send the appeal directly to the Board. The appeal and case history file will be sent to the Board from this office. The regulations also require the appellant to serve a copy of the notice of appeal, statement of reasons, written arguments or briefs on the Regional Solicitor, Alaska Region, U.S. Department of the Interior, 222 West Eighth Avenue, #34, Anchorage, Alaska 99513-7584. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations. Form 1842-1 is enclosed for additional information.

If (SC-2 y/n)[a private contest or] an appeal is filed, (SC-3 1/2/3/4)

[Option 1=each party named in the heading of this decision must be served.]

[Option 2=the adverse party to be served is:

(SC-4)[Name and address of adverse party]

[Option 3=the adverse parties to be served are:

(SC-5)[Names and addresses of adverse parties]

[Option 4 (use together with Option 1)=In addition, the following (SC-6 1/2) ["1"=agency] ["2"=agencies] must also be served:

(SC-7) [name and address of BIA agency or contractor (unless named in heading of decision).

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(Glossary 24a)

If appropriate, name and address of the Federal agency with jurisdiction of land.

State Interest Determinations Unit of State of Alaska if there is reference to access (any type of trail or road)]

(SC-8) Option 3/4/6/7/8
Option 3= Ann Johnson
Chief, Branch of Calista Adjudication
Option 4= Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication
Option 6= Mary Jane Piggott
Chief, Branch of Southwest Adjudication
Option 7= Terry R. Hassett
Chief, Branch of KCS Adjudication
Option 8= Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Enclosures:
Form 1842-1
Appeal Regulations
(SC-9 y/n) [Private Contest Regulations]
Maps of area(s) [field report sketch: USGS quad (both if final date to amend)]
(SC-10 y/n) Survey plat [if conforming to survey]
(SC-11 y/n) MTP [if appropriate]
(SC-12 y/n) ["y"=Final Date to Amend Notice]

Card G

Copy furnished to:

(SC-1) (CM-RRR) (w/cy of enclosures) [interested parties not named in heading,] including those parties listed under Card D, options 2, 3 and 4]

(SC-2) (CM-RRR) [appropriate BIA office and/or contractor]
(SC-3 y/n) ["y"=(w/cy of field report)]
(SC-4 y/n) ["y"=(w/cy of enclosures)]

(SC-5 y/n) [Use if application reinstated or relocated if Area Forester wasn't previously notified of change.]

"y"=
[Area Forester
Branch of Natural Resources
Bureau of Indian Affairs
P.O. Box 3-8000
Juneau, Alaska 99802]

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Bureau of Indian Affairs
Alaska Title Services Center (ATSC)
1675 C Street
Anchorage, Alaska 99501-5198
(certified true copy)

State of Alaska
Department of Natural Resources
Division of Land and Water Management
State Interest Determinations Unit
P.O. Box 107005
Anchorage, Alaska 99510-7005
(SC-6 y/n)["y"=(w/survey plat)]

Area Rights Protection Officer
Bureau of Indian Affairs
Juneau Area Office
P.O. Box 3-8000
Juneau, Alaska 99802

(SC-7 y/n)
["y"=Copper River Native Association
Attn: Les Sutherland
Drawer H
Copper Center, Alaska 99573]

(SC-8)

cc:
DM-(SC-9)

(SC-10) [affected case files not listed in heading]

(SC-11 y/n)
["y"=
Branch of Land Resources (932)]

(SC-12)

Hard copy 0024c

H-2561-1 - NATIVE ALLOTMENTS
Standard Notice Regarding Minerals
(Glossary 589a)

Card a

(SC-1) (2561)
(96(SC-2))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE

State of Alaska	:	(SC-3)
Department of Natural Resources	:	Native Allotment
Division of Land and Water Management	:	Application
State Interest Determinations Unit	:	
P.O. Box 107005	:	
Anchorage, Alaska 99510-7005	:	

Additional Evidence Required

On (SC-4), pursuant to Sec. 905(a)(3) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 43 U.S.C. 1634, the State of Alaska filed a request for the adjudication of Native allotment application (SC-5), under the Act of May 17, 1906, as amended, 43 U.S.C. 270-1 to 270-3 (1970). This request was made on the basis that the subject lands were valuable for minerals, excluding oil, gas, coal, sand or gravel.

The Bureau of Land Management (BLM) has not classified these lands as valuable for minerals, and other information currently available to BLM does not indicate mineral values.

You have 60 days from the date you receive this notice to substantiate your claim that there are minerals under this allotment. If such data is not made available to BLM within that time, we will consider the allotment to be nonmineral in character and will continue to process the claim to Certificate of Allotment.

(SC-6 3/4/6/7/8)

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Standard Notice Regarding Minerals
(Glossary 589a)

Option 3- Ann Johnson
Chief, Branch of Calista Adjudication
Option 4- Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication
Option 6- Mary Jane Piggott
Chief, Branch of Southwest Adjudication
Option 7- Terry R. Hassett
Chief, Branch of KCS Adjudication
Option 8- Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Location: (SC-7)

Enclosure:
Mineral Classification Report

Copy furnished to:

(SC-8) [Applicant]
(w/cy of enclosure)

Bureau of Indian Affairs
Alaska Title Services Center (ATSC)
1675 C Street
Anchorage, Alaska 99501-5198
(certified true copy)

cc:
(SC-9)

(SC-10) [BLM District Office]

Hard copy 0589c

H-2561-1 - NATIVE ALLOTMENTS
Field Report Form

Form 2060-1
(May 1980)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

LAND REPORT TITLE PAGE

State	District
County	Resource area
Type of Action	Serial Number
Applicant's name	Address *(include zip code)*

Date(s) of examination

LANDS INVOLVED

TOWNSHIP	RANGE	MERIDIAN	SECTION	SUBDIVISION	ACRES

Purpose of report

Prepared by	Title	Date of report

GPO 890-88

H-2561-1 - NATIVE ALLOTMENTS
Field Report Form

NATIVE ALLOTMENT FIELD REPORT

Case No: _____ **Parcel:** _____

Name of Applicant: _____

Area or Village: _____

Date of claimed occupancy: _____

A. TRACT LOCATION

1. a. USGS 1" = 1 mile location map (quad): _____

   b. Tract located as described in application: _____ Yes _____ No

   If no explain: _____

2. Does tract length to width ratio exceed (4 to 1) or exceed 160-rod shore space limitation: _____ Yes _____ No If yes, explain: _____

3. Land posted: _____ Yes _____ No If yes, describe: _____

4. Access to tract by applicant: _____

   (Also indicate any existing "public" access routes or 17(b) easements which cross the allotment.)

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5. Examiner accompanied to tract by applicant or authorized representative:

_____ Yes _____ No If not, why: _____

_____

6. Others present during field exam: _____

_____

_____

B. LAND USE AND OCCUPANCY

1. History of land use by the applicant (dates, types of use, circumstances, etc.): _____

_____

_____

_____

2. Are there any conflicts to applicant's exclusive use of land? (Explain):

_____

_____

_____

_____

_____

3. Evidence of use on each parcel claimed by applicant.

a. Man-made (cabin, cache, tent frame, fish wheel, boat dock, fish racks, etc.): _____

_____

_____

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Field Report Form

b. Signs of use (boxes, firepits, trails, firewood cutting, cabin logs, etc.): _____

_____

_____

c. Are natural resources there to support claimed use? (berrypicking areas, wildroots, greens, hunting, fishing, etc.): _____

_____

_____

4. Applicant's personal knowledge of the parcel: _____

_____

_____

C. OTHER FIELD DATA

1. Antiquities, archeological, cultural values in area: _____ Yes _____ No

_____

_____

_____

_____

2. Other improvements on or near the parcel (powerlines, pipelines, telephone lines, etc.): _____

_____

_____

_____

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Field Report Form

D. OTHER FACTORS

E. CONCLUSIONS

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Field Report Form

F. SURVEY INSTRUCTIONS

BLM Marker Location: Sec. , T. , R. , Meridian

LORAN Coordinates For BLM Marker: N., W.

Realty Specialist Date

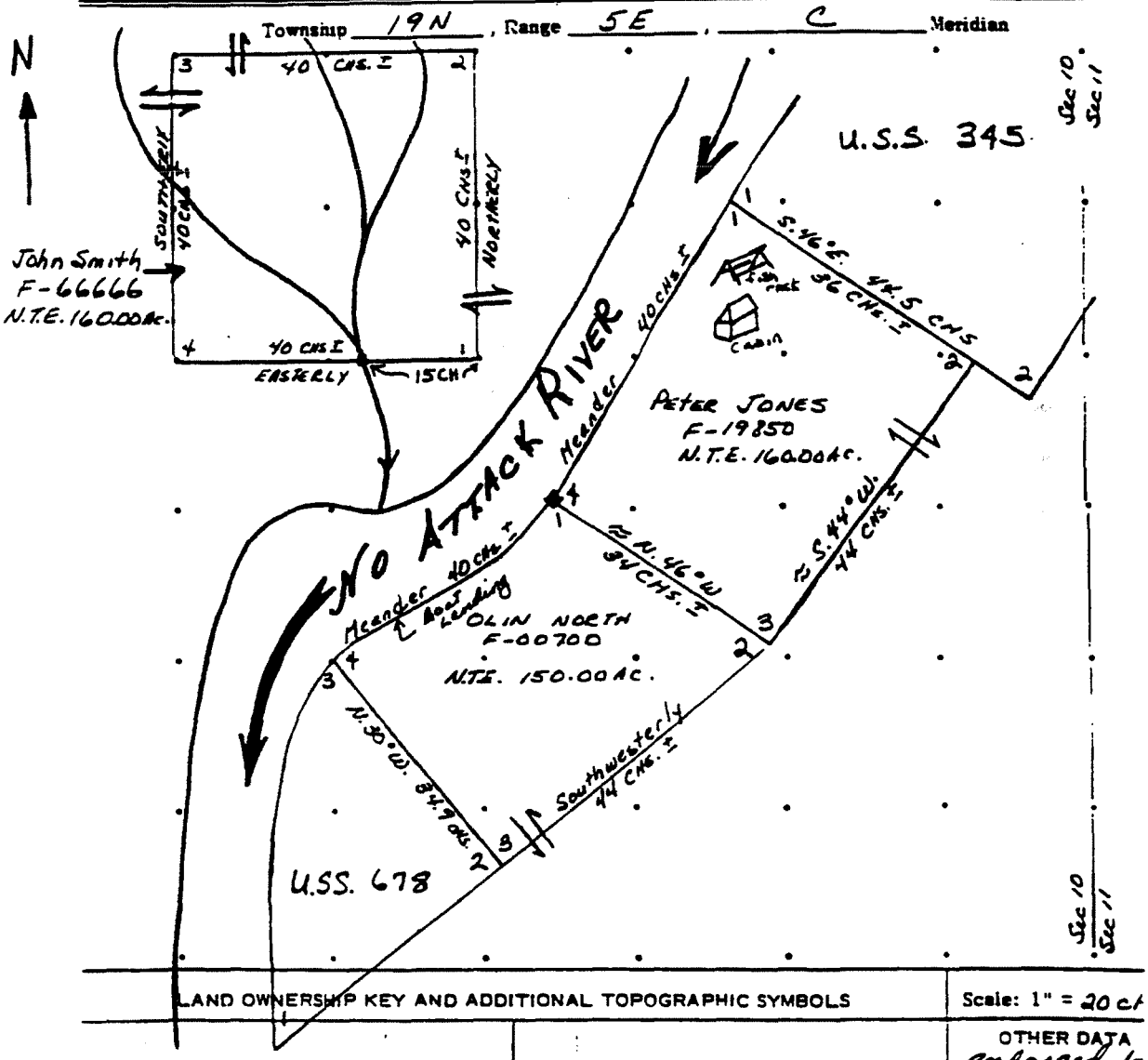
Assistant District Manager, Lands Date

H-2561-1 - NATIVE ALLOTMENTS
Sample Site Plots

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

SITE PLOT

Peter Jones
Serial Number
F-19850



LAND OWNERSHIP KEY AND ADDITIONAL TOPOGRAPHIC SYMBOLS

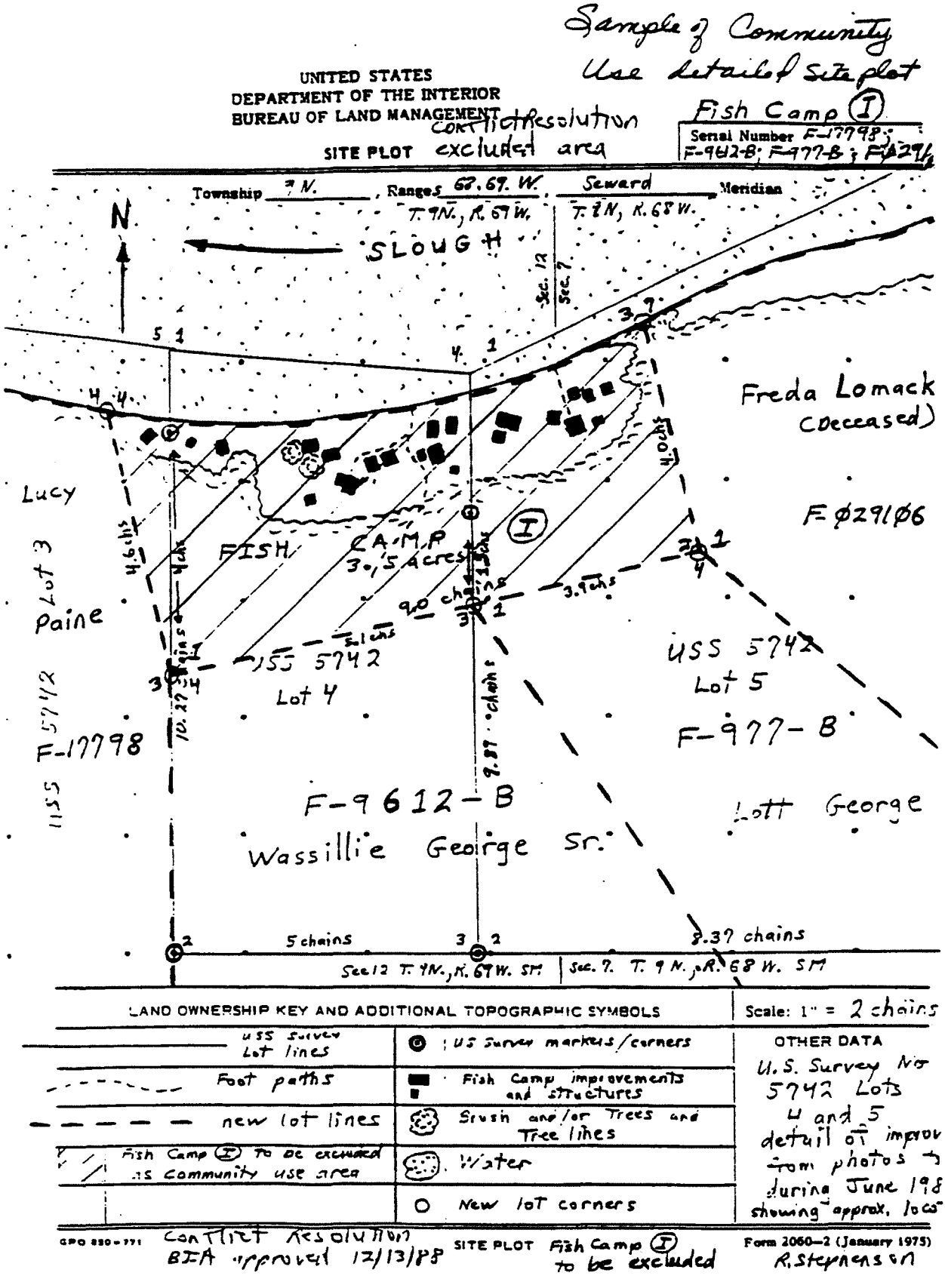
Scale: 1" = 20 ch

	FISH RACK
	CABIN
JJ	LINES TO BE ADJUSTED TO ACCOMODATE ALLOTTED ACREAGE

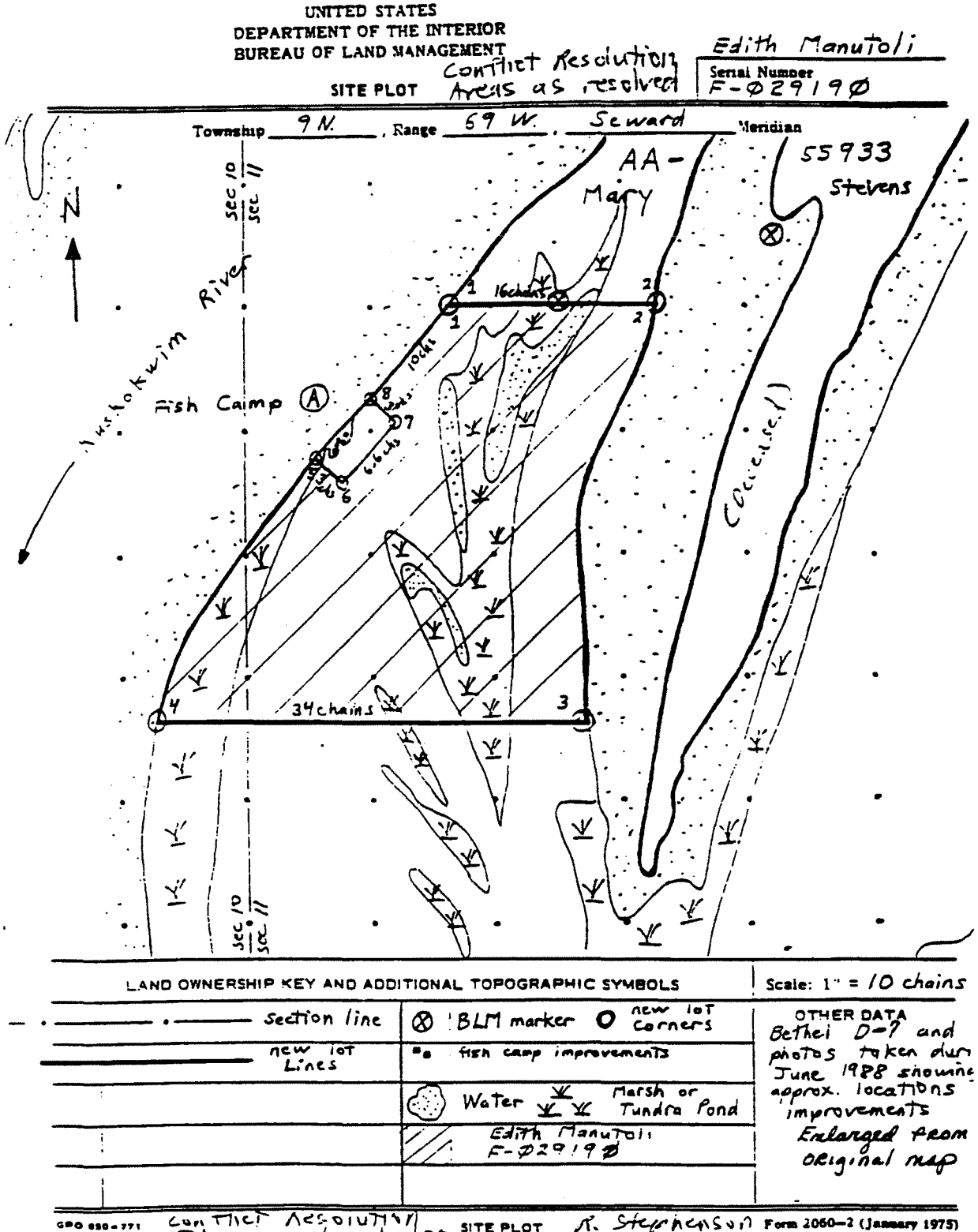
OTHER DATA
enlarged fr
original pre
also Valde
USGS Quad
Realty Speci
John Thomas
June 30, 1989

GPO 850 - 771 | SITE PLOT | Form 2060-2 (January

H-2561-1 - NATIVE ALLOTMENTS
Sample Site Plots



H-2561-1 - NATIVE ALLOTMENTS
Sample Site Plots



H-2561-1 – NATIVE ALLOTMENTS
Sample Site Plots

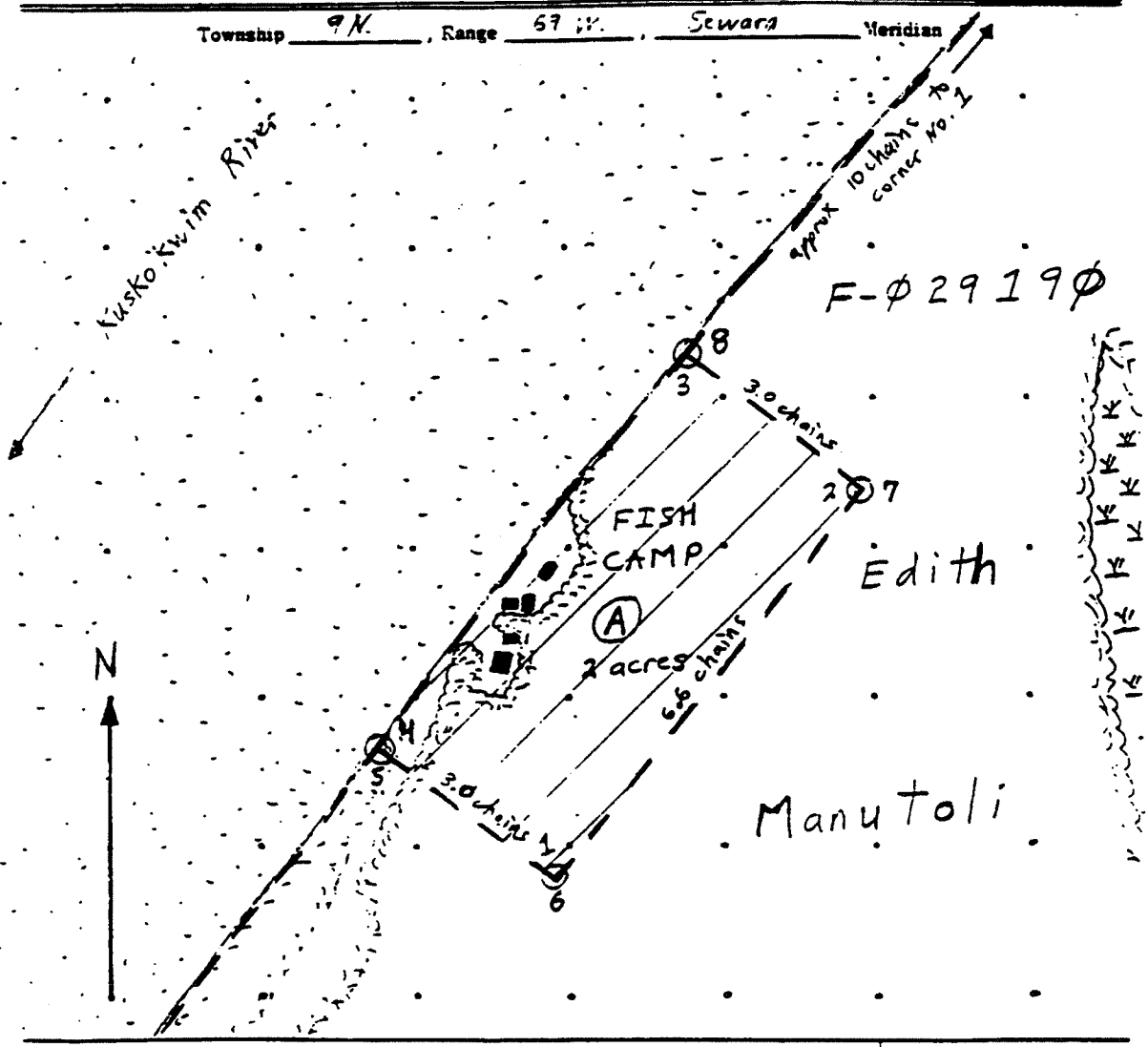
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Conflict Resolution Fish Camp (A)

SITE PLOT excluded area

Serial Number F-Ø2919Ø

Township 9N., Range 69W., Seward Meridian

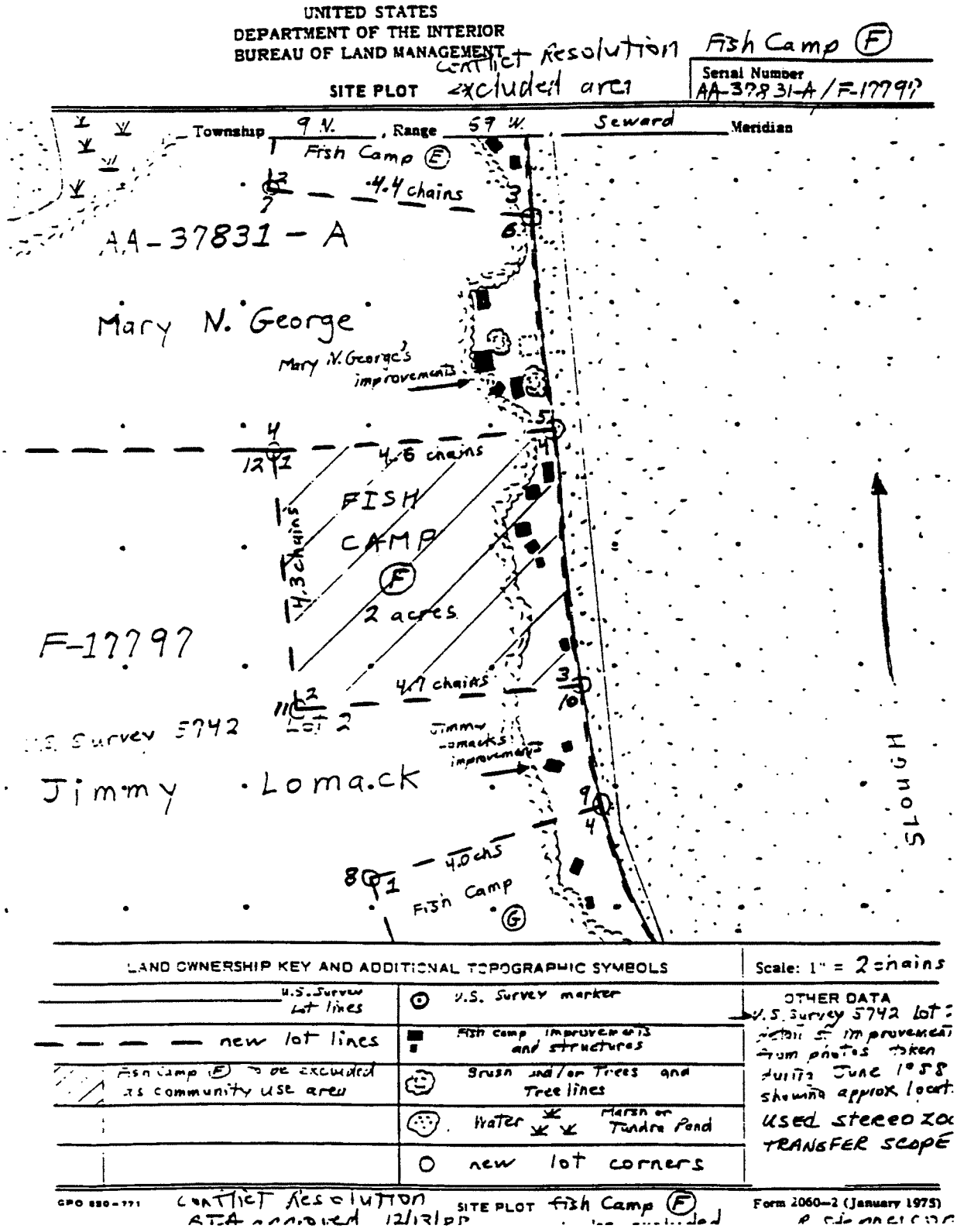


LAND OWNERSHIP KEY AND ADDITIONAL TOPOGRAPHIC SYMBOLS		Scale: 1" = 2 chains
new lot lines	new lot corners	OTHER DATA
Fish Camp (A) to be excluded is community use area	Fish Camp improvements and structures	NW¼ Section 11 T. 9 N., R. 69 W. SM Detail of improvements from photos taken during June 1988 showing approx. locations. Enlarged from original.
	Brush and/or Trees and Tree lines	
	Water	
	Marsh or Tundra Pond	

GPO 890-771 Conflict Resolution FIA approved 12/13/88 SITE PLOT fish Camp (A) to be excluded

Form 2060–2 (January 1975) R. Stevenson, Realty Officer

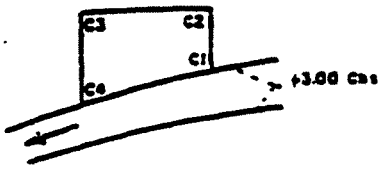
H-2561-1 - NATIVE ALLOTMENTS
Sample Site Plots



H-2561-1 - NATIVE ALLOTMENTS
Sample Descriptions

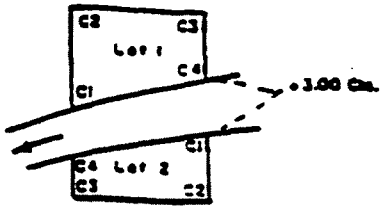
Illustrative Examples

I.



Do This ——

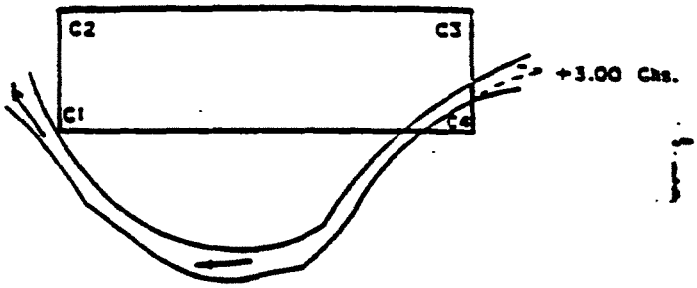
Don't go across meanderable bodies of water without requesting two lots.



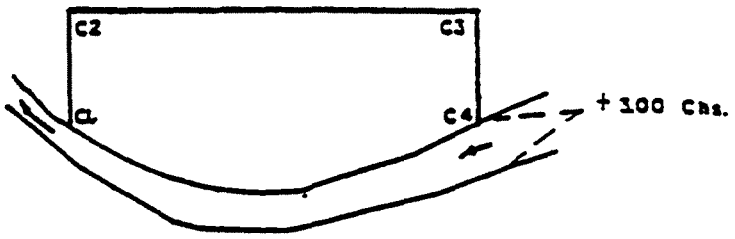
Avoid this unless the applicant actually claims use and occupancy on both sides of the river.

—AVOID THIS—

II.



Don't create slivers of unmanageable land and extra small lots on opposite sides of the rivers.



— DO THIS —

Illustrative Examples

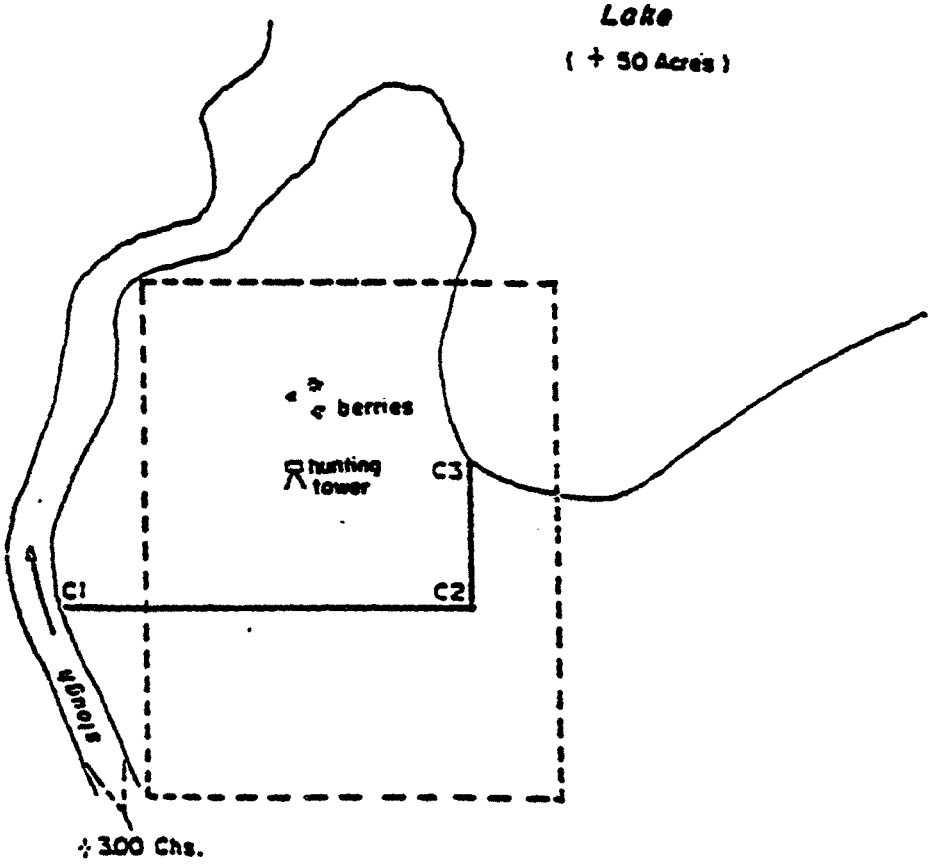
III.

Do this. ——————

Don't do this, - - - - - - - -

Look at the land mass and provide for the survey of it.

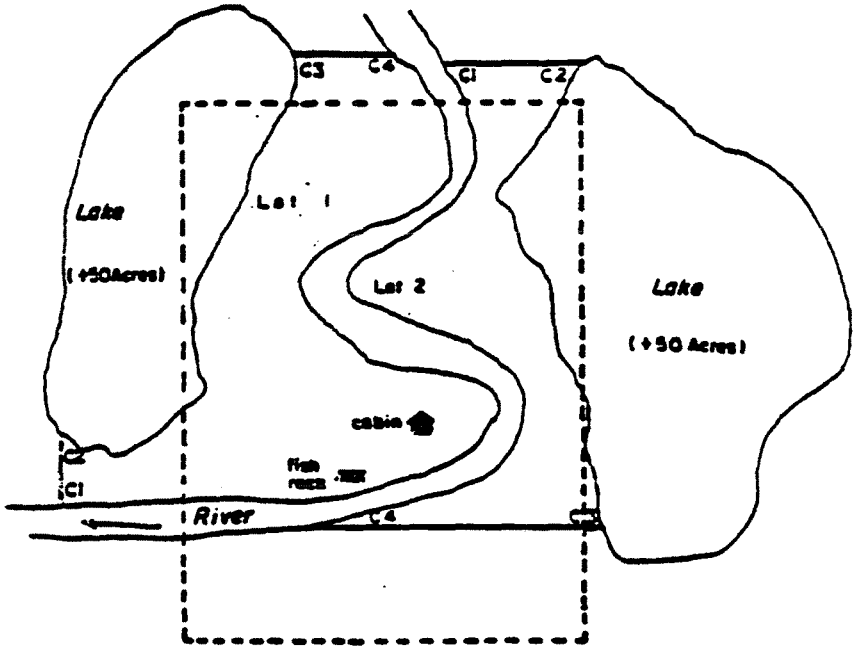
The boundaries of a survey need not always be square or rectangular.



H-2561-1 - NATIVE ALLOTMENTS
Sample Descriptions

Illustrative Examples

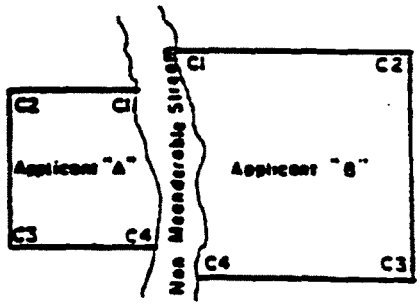
IV.



Do this ——————
Don't do this - - - - - - - -

Segregatable water will be excluded from the survey. The land mass within the boundaries of the description will be conveyed.

V.

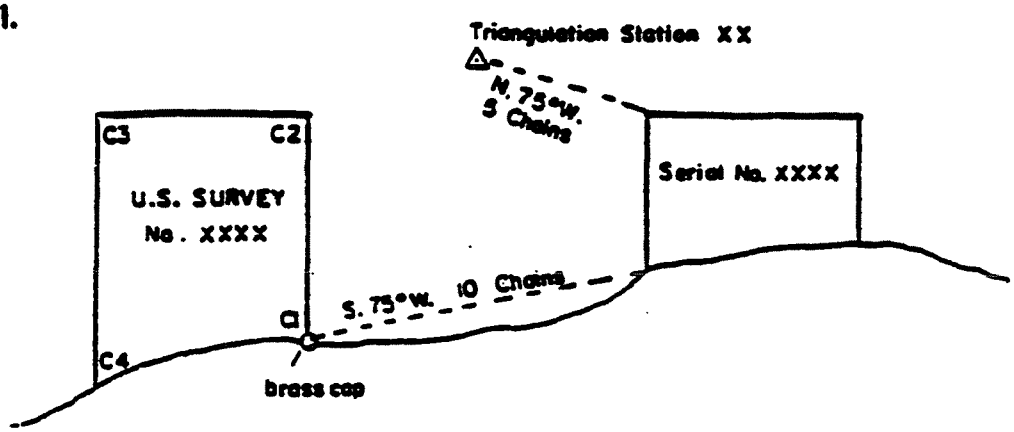


Stream can be meandered if the applicant so desires. Applicant should understand "Riparian Rights". A "Fixed" and "Limiting" boundary could be surveyed down the centerline of the stream making that boundary permanently in place.

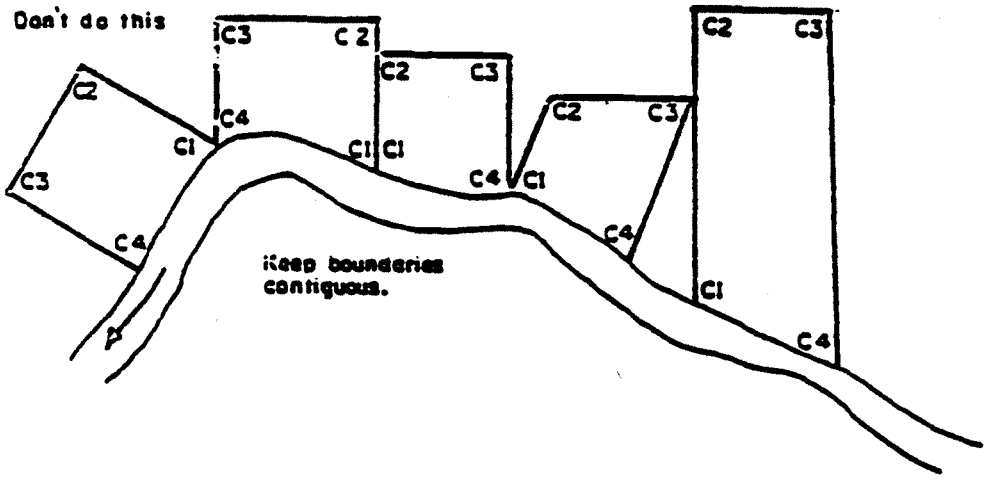
H-2561-1 - NATIVE ALLOTMENTS
Sample Descriptions

Illustrative Examples

VI.



Make rough ties to known survey monuments.
Avoid conflicts.

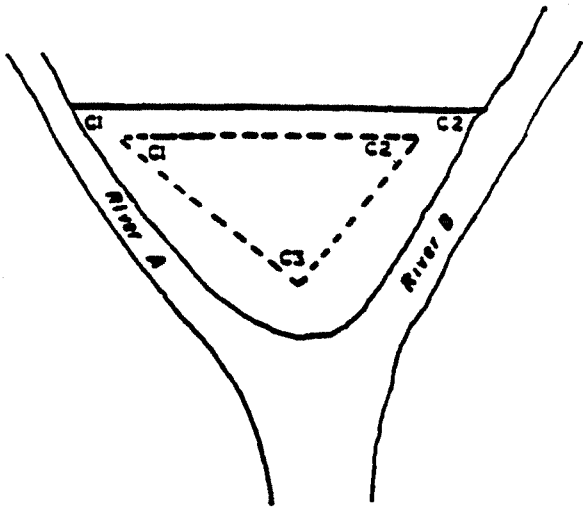


H-2561-1 - NATIVE ALLOTMENTS
Sample Descriptions

Illustrative Examples

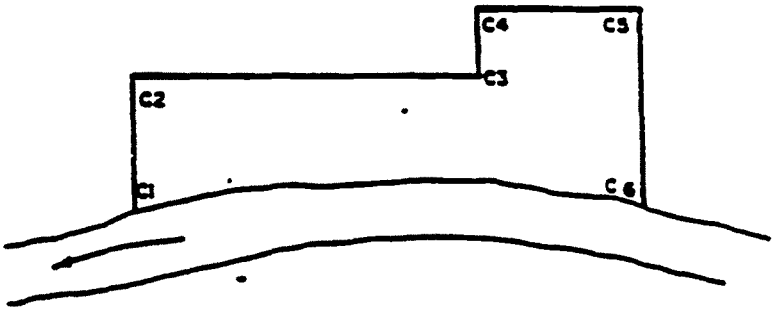
VIII.

Do this ——————
Don't do this - - - - -



On water bodies, provide for access to the parcel.

IX.



Do not create extra corners unless absolutely necessary.

H-2561-1 - NATIVE ALLOTMENTS
Standard Letter Acknowledging ANILCA Protest
(Glossary 591a)

Card a

(SC-1) (2561)
(96(SC-2))

(SC-3) [Protester's name and address]

Dear (SC-4):

This is to acknowledge receipt of the protest that you filed against Native allotment application (SC-5).

The protest appears to meet the criteria set forth in Sec. 905(a)(5) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1634. Therefore, the Native allotment application will be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended. If the protest is later determined to be legally insufficient, the legislative approval of the claim will be deemed effective. You will be advised as we proceed.

(SC-6 3/4/6/7/8)

Option 3- Ann Johnson
Chief, Branch of Calista Adjudication
Option 4- Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication
Option 6- Mary Jane Piggott
Chief, Branch of Southwest Adjudication
Option 7- Terry R. Hassett
Chief, Branch of KCS Adjudication
Option 8- Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

H-2561-1 - NATIVE ALLOTMENTS
Standard Letter Acknowledging ANILCA Protest
(Glossary 591a)

Copy furnished to:

(SC-7) [Native allotment applicant]

(SC-8) [Attorney of record]

(SC-9) [Appropriate BIA office]

cc:

(SC-10)

(SC-11)

(SC-12) [BLM District Office]

Hard copy 0591c

H-2561-1 - NATIVE ALLOTMENTS
Standard Form for Adjudication Commencing
(Glossary 592a)

Card a

(SC-1) 2561
(96(SC-2))

Date _____

Native Allotment

Serial No. _____

Applicant: _____

Notice is hereby given of the following action(s) on the subject Native allotment.

_____ Adjudication is about to commence.

_____

(SC-3 3/4/6/7/8)

Option 3= Ann Johnson
Chief, Branch of Calista Adjudication
Option 4= Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication
Option 6= Mary Jane Piggott
Chief, Branch of Southwest Adjudication

H-2561-1 - NATIVE ALLOTMENTS
Standard Form for Adjudication Commencing
(Glossary 592a)

Option 7- Terry R. Hassett
Chief. Branch of KCS Adjudication
Option 8- Ramona Chinn
Chief. Branch of Cook Inlet and Ahtna
Adjudication

Copies furnished to:

(SC-4)

Hard copy 0592c

H-2561-1 - NATIVE ALLOTMENTS
Standard Final Date to Amend Notice
(Glossary 694a)

(SC-1) (2561)
(96(SC-2))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE

(SC-3) [Applicant's name and address	:	(SC-4)
c/o attorney, if represented	:	Native Allotment
__ BIA, if deceased]	:	Application
	:	

Final Date for Amendment

The land in (SC-5) [Parcel # of] Native allotment application (SC-6) is presently scheduled for survey in (SC-7).(SC-8 y/n) ["y"= The attached maps depict the land shown to the field examiner on (SC-9) by (SC-10) [person who accompanied the examiner].] If the land described in this notice and shown on the attached maps is not what (SC-11) intended to apply for, (SC-12) has 60 days from receipt of this notice to notify this office. If a request for amendment is submitted, (SC-13) must provide clear and substantial evidence that the amended description describes the land (SC-14) intended to claim at the time of application. Different land cannot be substituted or applied for. The land is presently described as:

(SC-15) [if available, use the field report's survey instructions description]

Section 905(c) of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634, authorizes a Native allotment applicant to amend the description of the land in his/her application to accurately describe the land for which he/she applied prior to a date certain to allow for orderly adoption of a plan of survey for the specific area. If notification is not received, steps will be taken to order survey of the land as noted above and as shown on the attached map. The location of the allotment cannot be changed after special instructions for survey have been approved(SC-16 y/n)["y"=, or expiration of the 60 days allowed for amendment].

H-2561-1 - NATIVE ALLOTMENTS
Standard Final Date to Amend Notice
(Glossary 694a)

Any assistance (SC-17) may need should be requested from (SC-18) [BIA or contractor names] at the following address:

(SC-19)

(SC-20 3/4/6/7/8)
Option 3 = Ann Johnson
Chief, Branch of Calista Adjudication
Option 4= Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication
Option 6= Mary Jane Clawson
Chief, Branch of Southwest Adjudication
Option 7= Terry R. Hassett
Chief, Branch of KCS Adjudication
Option 8= Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Enclosure:
Field Report Sketch
USGS quad

Copy furnished to:

Bureau of Indian Affairs
Alaska Title Services Center (ATSC)
1675 C Street
Anchorage, Alaska 99501-5198
(certified true copy)

(SC-21) [appropriate BIA office or contractor]
(w/enclosures)
(SC-22 y/n)["y"=(w/cy of field report)]

State of Alaska
Department of Natural Resources
Division of Land and Water Management
State Interest Determinations Unit
P.O. Box 107005
Anchorage, Alaska 99510-7005

(SC-23)

cc:
DM-(SC-24)

Hard copy 0694c

Illustration 16
(V.B.; V.C.12.)

H-2561-1 - NATIVE ALLOTMENTS
Case File Documentation Form
(Glossary 692a)

Native Allotment
Case File Documentation of
Adjudicative Decision

Date (SC-1) _____

Serial No. (SC-2)
Parcel (SC-3)

(SC-4 1/2/3)

Option 1=
[The subject claim has been reviewed under ANILCA and is found to have been legislatively approved.

Therefore, Certificate of Allotment may issue.]

Option 2=
[The decision to make the claim subject to non-exclusive use access for the Iditarod Trail is based on the following: _____

_____

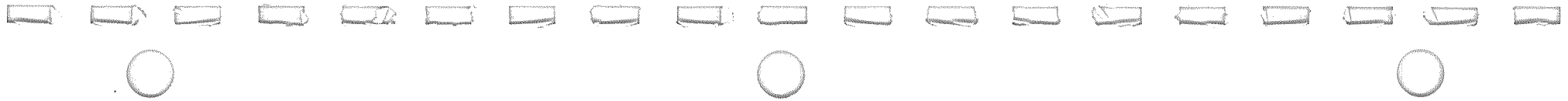
_____

_____]

Option 3=
[Other scenarios, as appropriate. Use this type of form to document the case file in lieu of a less permanent note, such as a short note transmittal form.]

_____
Adjudicator

Hard copy on 0692c



H-2561-1 - NATIVE ALLOTMENTS
Standard Rejection Decision
(Glossary 596a)

Card a

(SC-1) (2561)
(96(SC-2))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

(SC-3) [Applicant name	:	(SC-4)
(SC-3 address c/o attorney if	:	Native Allotment
(SC-3 represented; BIA if deceased]	:	Application
	:	
(SC-5) [adverse party name and	:	(SC-6) [case file #]
(SC-5 address]	:	(SC-7) [type of file]
(SC-5	:	

Native Allotment Application Rejected

The Bureau of Indian Affairs (BIA) completed the required certification and filed Native allotment application and evidence of occupancy for (SC-8) [serial #], on behalf of (SC-9) [applicant], on (SC-10) [date filed with BLM]. The application was filed under the provisions of the Act of May 17, 1906, 43 U.S.C. 270-1 to 270-3 (1970), which was repealed with a savings provision by the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1617. The application was for approximately (SC-11) acres of unsurveyed land located in (SC-12).

The Act of May 17, 1906, authorizes allotments of 160 acres or less of vacant, unappropriated, and unreserved nonmineral land in Alaska. Lands reserved for (SC-13) [type of withdrawal] are not open to the initiation of Alaska Native allotment claims. No right may be initiated under the Act of May 17, 1906, by occupation and use of lands not open to appropriation. See James S. Picnalook, Sr., Mabel Bullard, 22 IBLA 191 (1975) and Andrew Gordon McKinley, Annie Bennett (On Reconsideration), 61 IBLA 282 (1982), and Annie Bennett, 92 IBLA 174 (1986). No Native may avail himself to any period of use and occupancy by his ancestors to establish a right to allotment. Where a Native was born after lands were withdrawn, the application must be rejected. See Arthur R. Martin, ET AL., 41 IBLA 224 (1979).

H-2561-1 - NATIVE ALLOTMENTS
Standard Rejection Decision
(Glossary 596a)

Our records indicate the date of birth for (SC-14) [name of applicant] to be (SC-15). As the lands within Native allotment application (SC-16) were reserved on (SC-17) [date of withdrawal] for (SC-18) [purpose of withdrawal], (SC-19) years before the applicant's birth, the application must be and is hereby rejected.

The right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, is allowed in accordance with the enclosed regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E. The appellant has the burden of showing that the decision appealed from is in error.

If an appeal is taken, the notice of appeal must be filed with the Bureau of Land Management, Alaska State Office, 222 West Seventh, #13, Anchorage, Alaska 99513-7599, within thirty (30) days of receipt of this decision. Do not send the appeal directly to the Board. The appeal and case history file will be sent to the Board from this office. The regulations also require the appellant to serve a copy of the notice of appeal, statement of reasons, written arguments, or briefs on the Regional Solicitor, Alaska Region, U.S. Department of the Interior, 222 West Eighth Avenue, #34, Anchorage, Alaska 99513-7584. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations. Form 1842-1 is enclosed for additional information.

(SC-20 3/4/6/7/8)

Option 3- Ann Johnson
Chief, Branch of Calista Adjudication
Option 4- Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication
Option 6- Mary Jane Piggott
Chief, Branch of Southwest Adjudication
Option 7- Terry R. Hassett
Chief, Branch of KCS Adjudication
Option 8- Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Enclosures:
Form 1842-1
Appeal Regulations

Copy furnished to:

(SC-21) [applicant, if represented by attorney]
(w/cy of enclosures)

H-2561-1 - NATIVE ALLOTMENTS
Standard Rejection Decision
(Glossary 596a)

Bureau of Indian Affairs
Alaska Title Services Center (ATSC)
1675 C Street
Anchorage, Alaska 99501-5198
(certified true copy)

State of Alaska
Department of Natural Resources
Division of Land and Water Management
State Interest Determinations Unit
P.O. Box 107005
Anchorage, Alaska 99510-7005

(SC-22) [interested parties]

(SC-23) [BIA and/or contractor]

(SC-24) [Alaska Legal Services Corporation]

cc:
(SC-25) [BLM District Office]

Hard copy 0596c

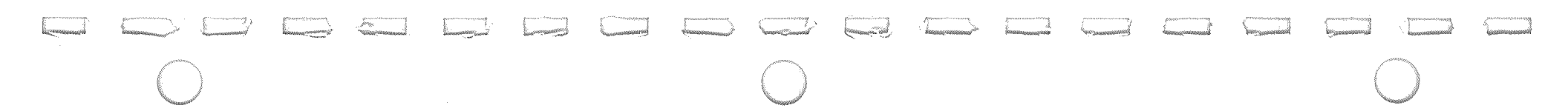


Illustration 18
(V.D.1.)

H-2561-1 - NATIVE ALLOTMENTS
Transmittal Memorandum of Proposed Contest
(Glossary 597a)

Card a

(SC-1)
(96(SC-2))

Memorandum

To: Regional Solicitor, Office of the Solicitor, Anchorage, Alaska

Through: Paralegal (961)

From: (SC-3 3/4/6/7/8) [Chief, Branch of _____ Adjudication (96_)]

Subject: Proposed Contest of Native Allotment Application (SC-4) for (SC-5) [name]

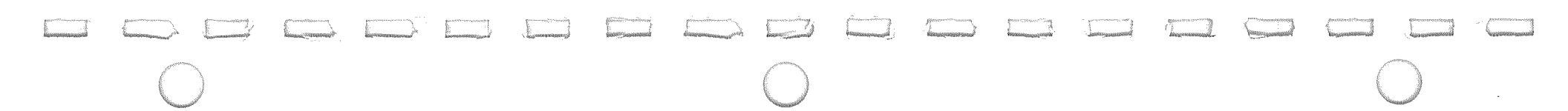
Transmitted herewith are the case file for Native allotment application (SC-6) and a proposed contest complaint for your review. The Government seeks a hearing to establish the charges as set forth in the complaint.

Please examine the proposed complaint for sufficiency and return it together with the case file to us with your recommendations.

Enclosures:
Case file (SC-7)
Proposed Contest Complaint

cc:
Paralegal (961)
(w/proposed contest complaint)

Hard copy 0597c



H-2561-1 - NATIVE ALLOTMENTS
Standard Contest Complaint
(Glossary 16a)

Card a

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
State Office
222 West Seventh Avenue, #13
Anchorage, Alaska 99513-7599

UNITED STATES OF AMERICA	)	
	)	
Contestant	)	
	)	
vs.	)	Involving:
	)	Serial No. (SC-1)
(SC-2)	)	
	)	
Contestee	)	Native Allotment Claim

COMPLAINT

In accordance with Title 43, Code of Federal Regulations, Part 4, Subpart E, the United States of America, acting by and through the Chief, Branch of (SC-3 3/4/6/7/8) Adjudication, Alaska State Office, Bureau of Land Management, Department of the Interior, brings this contest against the contestee named above and alleges:

1. The lands hereinafter described are public lands of the United States.

2. The contestant is informed and believes that the above-named contestee is the claimant of the above-identified Native allotment claim and that the contestee's address is:

   (SC-4) [Actual address of contestee, unless applicant is deceased: cover letter will be addressed to applicant c/o attorney, if represented]

3. Said Native allotment claim is situated in the (SC-5) Recording District, (SC-6) Judicial District, State of Alaska, and is more particularly described as follows:

   (SC-7)

   Containing approximately (SC-8) acres.

H-2561-1 - NATIVE ALLOTMENTS
Standard Contest Complaint
(Glossary 16a)

4. So far as is known to the contestant, there are no other proceedings pending for acquisition of title to, or an interest in, the above-described lands except:

(SC-9) [Describe all Executive Orders, Public Land Orders, Public Laws, conflicting applications that pertain to the land in the application being contested. List each conflict and any narrative description.]

5. [Use to explain why allotment application was not legislatively approved. (SC-10 Option 1/2/3)]

Option 1-
Section 905(a)(1) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 43 U.S.C. 1634, provides that an allotment must be adjudicated if the lands applied for were not vacant and unappropriated on December 13, 1968. The lands described in the subject Native allotment application were segregated on (SC-11) by (SC-12). The allotment must, therefore, be adjudicated pursuant to the requirements of the Native Allotment Act of 1906.

Option 2-
Section 905(a)(4) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 43 U.S.C. 1634, provides that:

(SC-13 y/n) ["y"-
Where an allotment application describes land within the boundaries of a unit of the National Park System established on or before the effective date of this Act and the described land was not withdrawn pursuant to Section 11(a)(1) of the Alaska Native Claims Settlement Act. . . . the application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, the Alaska Native Claims Settlement Act, and other applicable law.

The lands described in the subject Native allotment application are within the boundaries of (SC-14). The allotment must, therefore, be adjudicated pursuant to the requirements of the Native Allotment Act of 1906.

(SC-15 y/n) ["y"-
. . . where an allotment application describes land . . . which on or before December 18, 1971, was validly selected by or tentatively approved or confirmed to the State of Alaska pursuant to the Alaska Statehood Act and was not withdrawn pursuant to section 11(a)(1)(A) of the Alaska Native Claims Settlement Act . . . the application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, the Alaska Native Claims Settlement Act, and other applicable law.

H-2561-1 - NATIVE ALLOTMENTS
Standard Contest Complaint
(Glossary 16a)

The lands described in the subject Native allotment application were selected by the State of Alaska on (SC-16). The allotment must, therefore, be adjudicated pursuant to the requirements of the Native Allotment Act of 1906.]

Option 3=
Section 905(a)(5) of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 43 U.S.C. 1634, provides that the Native allotment application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, if on or before the one hundred and eightieth day following the effective date of ANILCA:

(SC-17 y/n)["y"=
A Native Corporation files a protest with the Secretary stating that the applicant is not entitled to the land described in the allotment application, and said land is withdrawn for selection by the Corporation pursuant to the Alaska Native Claims Settlement Act. . .

(SC-18 y/n)["y"=
The State of Alaska files a protest with the Secretary stating that the land described in the allotment application is necessary for access to lands owned by the United States, the State of Alaska, or a political subdivision of the State of Alaska, to resources located thereon, or to a public body of water regularly employed for transportation purposes, and the protest states with specificity the facts upon which the conclusions concerning access are based and that no reasonable alternatives for access exist. . .]

(SC-19 y/n)["y"=
A person or entity files a protest with the Secretary stating that the applicant is not entitled to the land described in the allotment application and that said land is the situs of improvements claimed by the person or entity.]

On (SC-20), (SC-21) filed a valid protest. The allotment must, therefore, be adjudicated according to the Native Allotment Act of 1906.

6. The contestant charges:

["a" cites the act and regulations. For most contests there needs to be at least b, c, e and f listed below to state the actual charges. If there is more than one issue that requires the cites of another act (i.e., ANILCA), proceed to 7. a and b. Be sure to identify <u>all</u> deficiencies so that everything is addressed at the hearing.]

H-2561-1 - NATIVE ALLOTMENTS
Standard Contest Complaint
(Glossary 16a)

a. The Act of May 17, 1906, as amended August 2, 1956, 43 U.S.C. 270-1 to 270-3 (1970) and the regulations thereunder, specifically 2561.2(a), Title 43, Code of Federal Regulations (CFR), provide that an allotment will not be made until the lands are surveyed by the Bureau of Land Management, and until the applicant or the authorized officer of the Bureau of Indian Affairs has made satisfactory proof of substantially continuous use and occupancy of the land for a period of five years by the applicant. As defined in 43 CFR 2561.0-5, the term "substantially continuous use and occupancy" contemplates the customary seasonality of use and occupancy by the applicant of any land used by him for his livelihood and well-being and that of his family, and such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use.

b. (SC-22) [applicant's name] has not made satisfactory proof of substantially continuous use and occupancy of (SC-23 1/2)["1"=Parcel (SC-24)] ["2"=the claimed allotment land] for a period of 5 years.

c. (SC-25) did not make substantial actual use and occupancy of (SC-26 1/2) ["1"=Parcel (SC-27)] ["2"=the claimed allotment land] that was at least potentially exclusive of others.

d. (SC-28 y/n)["y"=(SC-29) has not demonstrated sufficiently personal use in (SC-30 1/2)["1"=his]["2"=her] own right, as an independent citizen, prior to segregation of the land by (SC-31) on (SC-32).]

e. (SC-33) failed to submit sufficient evidence of use and occupancy of (SC-34 1/2) ["1"=Parcel (SC-35)] ["2"=the claimed land] in response to the notice issued on (SC-36) apprising (SC-37 1/2)["1"=him]["2"=her] of the need to file additional evidence of use and occupancy.

f. Case file (SC-38) [serial #], the official case file for the Native allotment application of (SC-39), does not contain satisfactory proof to establish that (SC-40 1/2)["1"=he]["2"=she] made substantially continuous use and occupancy of (SC-41 1/2) ["1"=Parcel (SC-42) of the allotment claim.] ["2"=the claimed allotment land.]

WHEREFORE, the contestant requests that it be allowed to prove its allegations and prays that any and all adverse interests of the contestee be invalidated.

N O T I C E

This complaint is filed in the Alaska State Office, Bureau of Land Management, Department of the Interior, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599, and any papers pertaining thereto shall be sent to such office for service on the contestant.

H-2561-1 - NATIVE ALLOTMENTS
Standard Contest Complaint
(Glossary 16a)

In compliance with the court order issued in Pence vs. Kleppe, 529 F.2d 135 (9th Cir. 1976) (Pence I) and the decision announced in Donald Peters 26 IBLA 235 (1976) (Peters I), the Interior Department's existing contest regulations published in Title 43, Code of Federal Regulations, Sec. 4.451 et seq., will be used in the adjudication of Native allotment applications.

Unless contestee files an answer to the complaint in such office within 30 days after service of this notice and complaint, the allegations of the complaint will be taken as admitted and the case will be decided without a hearing. Any answer should be filed in accordance with Title 43, Code of Federal Regulations, Part 4, Subpart E.

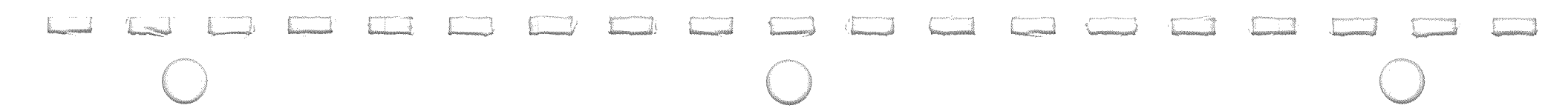
Dated: _____

UNITED STATES OF AMERICA

_____
(SC-43 Option 3/4/6/7/8

Option 3= Ann Johnson
Chief, Branch of Calista Adjudication
Option 4= Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication
Option 6= Mary Jane Piggott
Chief, Branch of Southwest Adjudication
Option 7= Terry R. Hassett
Chief, Branch of KCS Adjudication
Option 8= Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Hard Copy 0016c



H-2561-1 - NATIVE ALLOTMENTS
Cover Letter for Contest Complaint
(Glossary 41a)

Card a

(SC-1)
(96(SC-2))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

(SC-3) [Applicant's name and address c/o attorney if represented: BIA if deceased]

Dear (SC-4):

We are writing to you about your Native allotment application (SC-5). The Bureau of Land Management (BLM) feels you have not shown sufficient use and occupancy of the lands you claim. This is to advise you that you may request a hearing so you can tell an administrative law judge how and when you used the land.

You may bring other people (your friends or relatives) to the hearing who can also tell the judge what they know about when and how you used the land. After the judge listens to a representative from BLM, and to you and your witnesses, he will decide if you have shown sufficient proof of your use and occupancy for you to receive a Certificate of Allotment.

There are two very important papers attached to this letter. The Complaint tells why BLM thinks you have not submitted enough information to support your claim. The one page form is your answer to that complaint. If you would like to have a hearing, you must complete this form by doing the following:

1. State at which village you want the hearing to be held;

2. Sign your name, and date it.

Then you must mail the answer form so it will reach BLM within 30 days after you have received this letter. If your answer is not received in the BLM office within 30 days, your application will be rejected, and your case file will be closed.

H-2561-1 - NATIVE ALLOTMENTS
Cover Letter for Contest Complaint
(Glossary 41a)

However, if your request for a hearing is received by BLM during this 30-day period, you will then be advised as to the date, place and time for your hearing in plenty of time to gather your information and get your witnesses together. This notice will come directly from the administrative law judge.

Sincerely,

(SC-6 Option 3/4/6/7/8

Option 3= Ann Johnson
Chief, Branch of Calista Adjudication
Option 4= Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication
Option 6= Mary Jane Piggott
Chief, Branch of Southwest Adjudication
Option 7= Terry R. Hassett
Chief, Branch of KCS Adjudication
Option 8= Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Enclosures:
Contest Complaint
Answer Sheet

Copy furnished to:

(SC-7) [applicant, if represented by attorney]

State of Alaska
Department of Natural Resources
Division of Land and Water Management
State Interest Determinations Unit
P.O. Box 107005
Anchorage, Alaska 99510-7005
(w/cy of contest complaint)

(SC-8) [Interested parties]
(w/cy of contest complaint)

(SC-9) [Bureau of Indian Affairs or contractor]

cc:
(SC-10) [BLM District Office]

(SC-11)

Hard copy 0041c

Illustration 21
(V.D.1.)

H-2561-1 - NATIVE ALLOTMENTS
Answer Form for Contest Complaint
(Glossary 31a)

NOTE: If allegation in Complaint contains charges in more than paragraph 6, the second sentence will have to be changed accordingly.

Card a

DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
State Office
222 West Seventh Avenue, #13
Anchorage, Alaska 99513-7599

UNITED STATES OF AMERICA	)	
	)	
Contestant	)	
	)	
vs.	)	ANSWER
	)	
(SC-1)	)	Serial No. (SC-2)
	)	
Contestee	)	

I do not believe that my Alaska Native Allotment application should be rejected, or rejected in part.

I disagree with the allegations in paragraph 6 of the Complaint.

I would like a hearing to tell my side of the story about how and when I used my land.

I request a hearing in _____
(Name of village or city where you want the hearing.)

Signed_____
(Applicant's signature)

Date: _____

If you want a hearing, this Answer sheet must be mailed within 30 days to the BLM office named above; a self-addressed envelope is provided. No stamp is needed.

Hard copy 0031c

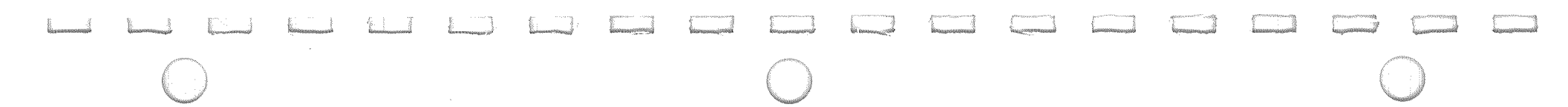


Illustration 22
(V.D.1.)

H-2561-1 - NATIVE ALLOTMENTS
Form 1850-1, Sample for Government Contest

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

TRANSMITTAL OF CONTEST OR OTHER PROCEEDING FOR HEARING

To:
Administrative Law Judge
Office of Hearings and Appeals
U.S. Department of the Interior
6433 Federal Building
Salt Lake City, Utah 84138
(City and State)

The proceeding identified herein and in the accompanying official records is transmitted to you for hearing and de sion, pursuant to the rules of practice (43 CFR, Part 4) and/or other governing authority.

1. Parties
Contestant(s) or Protestant(s)
United States through
Bureau of Land Management

vs. Contestee(s) or Respondent(s)
Joanna Kerr
c/o Alaska Legal Services Corporation
550 West Eighth Ave., Suite 200
Anchorage, Alaska 99501

2. Kind of proceeding Native Allotment hearing pursuant to court order issued in Pence v. Kleppe

3. Contest or other number(s)
Native Allotment A-062351

State Alaska | Number(s)

4. Date proceeding commenced
Answer timely filed August 3, 1984

5. Number of claims, entries, or leases involved
two

6. Lands are located in T. 29 N., R. 5 W., Sec. 28 Seward Meridian, along the Parks Highway north of Talkeetna, Alaska

7. Suggested place for hearing
☐ County seat
☒ Other (explain in remarks) Anchorage, Ala

8. Date for hearing
at earliest possible date

9. Filing of motion by Government, if a party, for preh ing conference
☐ Is anticipated
☒ Is not anticipated

10. Costs to BLM (applies only to BLM contests)
☐ Are reimbursable
☒ Are not reimbursable

11. Remarks Earliest possible date for hearing is requested because both the contestee and the claimant of Headquarters Site A-062191 in conflict are elderly women in their late 70's and the conflict has existed for 20 years.
Contestee requests hearing be held in Anchorage, Alaska.
To be notified of any action taken:
Bureau of Indian Affairs
Realty Office
P.O. Box 100120
Anchorage, Alaska 99510

Ms. Mary Carey
Star Route C, Box 90
Willow, Alaska 99688

Date AUG 20 1984

Signature /s/ Mary Jane Clawson
Mary Jane Clawson
Chief, Branch of Lands

Copy to: Assistant Director (300)
Regional Solicitor
701 C Street, Box 34
Anchorage, Alaska 99513

Attachments: Related Official Files
A-062351 (file for administrative law judge)

Illustration 23
(V.D.2.)

H-2561-1 - NATIVE ALLOTMENTS
Form 1850-1, Sample for Private Contest

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

TRANSMITTAL OF CONTEST OR OTHER PROCEEDING FOR HEARING

To:
Administrative Law Judge
Office of Hearings and Appeals
U.S. Department of the Interior
6433 Federal Building
Salt Lake City, Utah 84138
(City and State)

The proceeding identified herein and in the accompanying official records is transmitted to you for hearing and decision, pursuant to the rules of practice (43 CFR. Part 4) and/or other governing authority.

1. Parties
Contestant(s) or Protestant(s): William B. Torgramsen and Rosemary Ludvick
vs. Contestee(s) or Respondent(s): Heirs and Devisees of Carl G. Carlson

2. Kind of proceeding: Private Contest against Native Allotment (Act of 1906, 34 Stat. 197)
3. Contest or other number(s): AA-7941
State: Alaska
Number(s): AA-7941
4. Date proceeding commenced: 7/26/83
5. Number of claims, entries, or leases involved: one
6. Lands are located in: 3rd Judicial District, Anchorage, Alaska 99501
7. Suggested place for hearing
— County seat
— Other (explain in remarks): X Sand Point, Alas
8. Date for hearing: as schedule permits
9. Filing of motion by Government, if a party, for prehearing conference
— Is anticipated
X Is not anticipated
10. Costs to BLM (applies only to BLM contests)
— Are reimbursable
— Are not reimbursable

11. Remarks
Contestee requests hearing be held in Sand Point, Alaska.

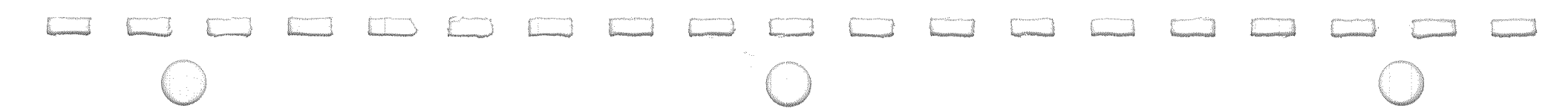
To be notified of any action taken:
Craig J. Tillery, Esquire
Phillip R. Volland, Esquire
Reese, Rice and Volland, P.C.
211 H Street
Anchorage, Alaska 99501
(counsel for contestants)
and
David P. Wolf, Esquire
Keane, Copeland, Landye, Bennett and
420 L Street, Suite 302
Anchorage, Alaska 99501
(counsel for contestee)

Date: DEC
Signature: /s/ Mary Jane Clawson
Chief, Branch of Lands

Copy to: Assistant Director (300)
Regional Solicitor
701 C Street Box 34
Anchorage, Alaska 99513

Attachments: Related Official Files
Native allotment case file for Administ
Law Judge

(Instructions on reverse)
Form 1850-1 (March 1



H-2561-1 - NATIVE ALLOTMENTS
Standard Notice for Closing Case
(Glossary 601a)

Card a

(SC-1) (2561)
(96(SC-2))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE

(SC-3) [applicant's name]	:	(SC-4)
(SC-3 [address c/o attorney if	:	Native Allotment
(SC-3 represented; BIA if deceased]	:	Application

Case Closed

This is to notify you that the application (SC-5 y/n)["y"=for Parcel #'s] referenced above has been closed without conveyance and has been removed from the records of the Bureau of Land Management.

(SC-6 3/4/6/7/8)

Option 3= Ann Johnson
Chief, Branch of Calista Adjudication
Option 4= Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication
Option 6= Mary Jane Piggott
Chief, Branch of Southwest Adjudication
Option 7= Terry R. Hassett
Chief, Branch of KCS Adjudication
Option 8= Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

H-2561-1 - NATIVE ALLOTMENTS
Standard Notice for Closing Case
(Glossary 601a)

Copy furnished to:

(SC-7) [applicant, if represented by an attorney]

(SC-8) [interested parties]

State of Alaska
Department of Natural Resources
Division of Land and Water Management
State Interest Determinations Unit
P.O. Box 107005
Anchorage, Alaska 99510-7005

Bureau of Indian Affairs
Alaska Title Services Center (ATSC)
1675 C Street
Anchorage, Alaska 99501-5198
(certified true copy)

Area Forester
Branch of Natural Resources
Bureau of Indian Affairs
P.O. Box 3-8000
Juneau, Alaska 99802

cc:
(SC-9) [BLM District Office]

Hard copy 0601c

H-2561-1 - NATIVE ALLOTMENTS
Standard Conformance to Survey Notice
(Glossary 602a)

Card a

(SC-1) (2561)
96(SC-2))

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOTICE

(SC-3)[applicant's name]	:	(SC-4)
(SC-3)[address]	:	Native Allotment
(SC-3)	:	Application

Conformance to Plat of Survey

The lands in (SC-5 y/n)[if "y"=Parcel (What parcel) of] your allotment application have been surveyed and are now described as:

(SC-6)[land description]

Containing (SC-7) acres, as shown on the plat of survey (SC-8 1/2) ["1"=accepted] ["2"=officially filed] on (SC-9).

(SC-10 y/n) [To be used if no final date to amend notice has been sent.] ["y"=
If this survey does not contain all the improvements originally intended to be on this parcel, please advise us in writing within 60 days from receipt of this notice. Any claim that the surveyed location is different than the intended location must be clearly supported by evidence of the error. Pursuant to Sec. 905(c) of the Alaska National Interest Lands Conservation Act of December 2, 1980, you cannot change the location of the allotment after the expiration of the 60 days allowed in this notice.

If we do not hear from you within that time, the allotment application will be considered correctly described by this survey. Any party, other than the applicant, who has concerns regarding the survey, must submit those concerns within 30 days.]

(SC-11 y/n) ["y"=
On (SC-12) you were sent a final date to amend notice (copy attached). Since you did not respond to the notice, the survey is considered correct. However, you have 30 days from the receipt of this notice to notify this office, in writing, if the survey does not include the land shown in the final date to amend notice.]

H-2561-1 - NATIVE ALLOTMENTS
Standard Conformance to Survey Notice
(Glossary 602a)

(SC-13 y/n) [Use if similar statement is not on survey plat.] ["y"=The statement appearing in the next paragraph is now being included in conformance notices. This was requested by the State of Alaska, and is intended to remind you that if your claim includes navigable water, the State owns the lands beneath that water. This is true even if the plat of survey for your claim does not show the water.

Conveyance of the above described property does not purport to include or transfer any interest in submerged lands within the surveyed boundaries, to which the State of Alaska may be entitled under the Equal Footing Doctrine and section 6(m) of the Alaska Statehood Act, P.L. 85-508; notwithstanding the use, location, or absence of meander lines on the relevant survey plat to depict such water bodies.]

(SC-14) Option 3/4/6/7/8

Option 3= Ann Johnson
Chief, Branch of Calista Adjudication

Option 4= Donald E. Runberg
Chief, Branch of Doyon/Northwest Adjudication

Option 6= Mary Jane Piggott
Chief, Branch of Southwest Adjudication

Option 7= Terry R. Hassett
Chief, Branch of KCS Adjudication

Option 8= Ramona Chinn
Chief, Branch of Cook Inlet and Ahtna Adjudication

Enclosures:
Copy of Survey Plat
Copy of Master Title Plat(s)
(SC-15 y/n)["y"=
Copy of Final Date to Amend Notice w/attachments]

Copy furnished to:

State of Alaska
Department of Natural Resources
Division of Land and Water Management
State Interest Determinations Unit
P.O. Box 107005
Anchorage, Alaska 99510-7005
(w/enclosures)

(SC-16)
(w/cy of enclosures)

(SC-17)[applicant, if represented by Attorney]
(w/enclosures)

(SC-18)[interested parties](See Appendix 9 in NA Handbook for list)
(w/enclosures)

H-2561-1 - NATIVE ALLOTMENTS
Standard Conformance to Survey Notice
(Glossary 602a)

cc:

(SC-19)[BLM District office]

(SC-20)[others, as applicable]

Hard copy 0602c

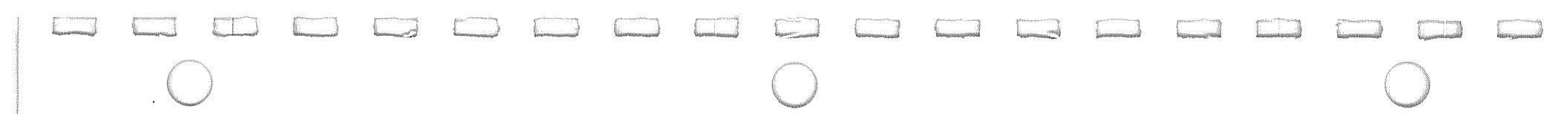


Illustration 26
(II.G.; III.G.3.)

H-2561-1 - NATIVE ALLOTMENTS
Form for Requesting Field Report

Office Code ([ ])
Serial No. [ ]
Parcel/Tract(s) [ ]
3P Yes ( ) No ( )
Survey Year [ ]
Window No. [ ]
Supplemental Yes ( ) No ( )
Conflict Resolution Yes ( ) No ( )

Memorandum

To: District Manager ([Office Code])

From: Chief, Branch of [Appropriate Branch Name], ([Office Code])

Subject: Request for Field Report

An investigation and/or classification report is requested on the application listed below.

/__/ Casefile is to be retained in 960 until needed for field work.

/__/ Casefile attached

Applicant: [include address, if known; indicate if applicant is deceased]

Case Type: 2561

Serial No: [ ]

Land Involved: [ ]

/__/ Minerals classification report indicates potential mineral value other than coal, oil, or gas.

/__/ Application identified on the June 4, 1981, Federal Register list.

/__/ Preadjudication mineral screening not done.

Adjudicator: [ ] Telephone Extension: [ ]

Remarks:

1852n