Illustration 27
(VI.A.)

H-2561-1 - NATIVE ALLOTMENTS
Form for Requesting Survey

Office Code ([ ])
Serial No. [ ]
Parcel/Tracts [ ]
3P Yes( ) No ( )
Survey Year [ ]
Window No. [ ]
Exclusion Yes ( ) No ( )

Memorandum

To: DSD for Cadastral Survey (920)

From: Chief, Branch of [Appropriate Branch Name], ([Office Code])

Subject: Request for Survey

A review of the application, field report, and other information contained in the case file indicates that the applicant has used that land in a consistent manner or met the requirements of ANILCA. Therefore, it is recommended that Native allotment [serial no., parcel, if any] be surveyed. For the metes and bounds description of this claim, please see below.

Case type: 2561 [75.09 if exclusion survey for Fanny Barr case]

Applicant: [include address, if known - indicate if applicant is deceased]

Description: [ ]

Acreage: [ ]

IC'd/Patented to Native Corporation: ( )

TA'd to State: ( )

Patented to State: ( )

Adjudicator: [ ] Telephone Extension: [ ]

Remarks:

1850n

Illustration 28
(X.B.)

H-2561-1 - NATIVE ALLOTMENTS
Form for Information on Deceased Applicant

_____ (2561)
(96__)

Memorandum

To: Case File _____

From: _____, Land Law Examiner

Subject: Native Allotment Applicant Deceased

This memorandum confirms that the Bureau of Land Management has reviewed a copy of the death certificate (State file no. _____) for the applicant in the above-referenced case.

The data pertinent to adjudication of the Native allotment application is given below and was taken from the death certificate.

Applicant Name _____
First Middle Last

Date of Birth: _____

Date of Death: _____

_____ _____
Date Land Law Examiner

H-2561-1 - NATIVE ALLOTMENTS
1956 Amendment to 1906 Act

Public Law 931 CHAPTER 891

AN ACT

August 2, 1956
[H. R. 11696]

To authorize the conveyance of homestead allotments to Indians, Aleuts, or Eskimos in Alaska.

Alaska.
Homestead allotments to Indians or Eskimos.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Act of May 17, 1906 (34 Stat. 197; 48 U. S. C. 357), is hereby amended—

(a) by inserting after the word "Indian" in the first sentence thereof the following: ", Aleut";

(b) by inserting before the word "nonmineral" in the first sentence thereof the following: "vacant, unappropriated, and unreserved";

(c) by inserting after the word "Alaska" the first time it appears in the first sentence thereof the following: ", or, subject to the provisions of the Act of March 8, 1922 (42 Stat. 415, 48 U. S. C. 376–377), vacant, unappropriated, and unreserved land in Alaska that may be valuable for coal, oil, or gas deposits,";

Conveyance of title.

(d) by striking the period after the first sentence thereof and adding the following: ": *Provided*, That any Indian, Aleut, or Eskimo who receives an allotment under this Act, or his heirs, is authorized to convey by deed, with the approval of the Secretary of the Interior, the title to the land so allotted, and such conveyance shall vest in the purchaser a complete title to the land which shall be subject to restrictions against alienation and taxation only if the purchaser is an Indian, Aleut, or Eskimo native of Alaska who the Secretary determines is unable to manage the land without the protection of the United States and the conveyance provides for a continuance of such restrictions."; and

(e) by adding two new sections as follows:

Allotments in national forests.

"SEC. 2. Allotments in national forests may be made under this Act if founded on occupancy of the land prior to the establishment of the particular forest or if the Secretary of Agriculture certifies that the land in an application for an allotment is chiefly valuable for agricultural or grazing purposes.

Proof of occupancy.

"SEC. 3. No allotment shall be made to any person under this Act until said person has made proof satisfactory to the Secretary of the Interior of substantially continuous use and occupancy of the land for a period of five years."

Approved August 2, 1956.

H-2561-1 - NATIVE ALLOTMENTS
Secretarial Policy, 6/6/73

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20210

June 6, 1973

JUN 8 1973

Memorandum

To: Director, Bureau of Land Management

From: Assistant Secretary--Land and Water Resources

Subject: Memorandum establishing procedures for processing of Alaska Native Allotment Applications

Several questions have been raised concerning the policies to be followed in processing these allotments. Some of the questions which have been raised are the result of the failure to recognize that most of the criteria in the regulations are taken directly from the 1906 Act and therefore we are obligated to adhere to these criteria. Other questions are the result of the recognition that the final decision to grant a Native allotment to a qualified Native applicant on lands that are available for allotment is a decision that is discretionary with the Secretary. The following guidelines will address both types of questions. These guidelines should cover most of the cases but additional guidelines may be provided as needed. Particular attention should be paid to those guidelines that deal with the quality of evidence which is satisfactory to the Secretary.

PREADJUDICATION GUIDELINES:

Qualifications of applicant:

1. Must have been certified to be a Qualified Native, by the BIA.

2. Must reside in Alaska.

3. Must be the head of a family or 21 years of age at time of filing.

H-2561-1 - NATIVE ALLOTMENTS
Secretarial Policy, 6/6/73

Application:

1. Must have been pending before BIA or BLM on December 18, 1971, as evidenced by time stamp or other certification.

2. Amendments to application.

All amendments to allotment applications must be closely scrutinized. The applicant has the burden of proof to establish that the information originally provided was an honest error. Amendments which result in the relocation of the allotment will not be accepted unless it clearly appears that the original description arose from the inability to properly identify the tract on protraction diagrams. Amendments which are designed to claim the commencement of the use and occupancy at an earlier point in time must also be carefully examined and the applicant must establish the reason for the error, his good faith in making the correction, and the applicant must present clear and convincing evidence of the actual use and occupancy at the earlier point in time.

Land Status:

1. Allotments cannot be granted for lands which are not available for disposal because of their status as reserved or appropriated lands at the time of the filing.

2. Adjustment in the land description contained in the application is permissible to resolve conflicting claims to land, provided the revised description does not include lands in addition to the lands described in the conflicting applications.

FIELD EXAMINATION GUIDELINES:

1. Substantiating testimony is considered supporting evidence and is not in itself, sufficient evidence of "use and occupancy" to warrant approval of a certificate of allotment.

2. Corners of the allotment must be clearly marked and posted.

H-2561-1 - NATIVE ALLOTMENTS
Secretarial Policy, 6/6/73

3. Use and occupancy evidence --

On-the-ground BLM examination must verify the applicants claim with actual substantial physical evidence such as:

a. Dwelling

b. Campsite -- evidence of tent or temporary shelter, fire pits, cleared area

c. Fish wheel

d. Dock or boat landing

e. Trails

4. Native Community Use --

Allotment filings that are in conflict with areas of prior Native Community Use must be denied.

5. Acreage limitation --

Acreage granted must not exceed 160 acres. The field examination report will clearly describe the areas of use and occupancy. These areas will be clearly delineated on a sketch map with supporting photos. Recommendations will be made as to the area of actual use and occupancy to be delineated by subsequent land survey of the area to be conveyed.

6. Mineral in character lands --

Lands that are mineral in character (except coal, oil, or gas lands) can not be conveyed. During field examination, lands should be examined to establish whether they have sufficient values including sand and gravel, to be considered mineral in character.

NATIONAL AND PUBLIC NEEDS:

Approval of a Native allotment application is strictly discretionary with the Secretary. National and public needs must be identified and weighed in relation to the use and occupancy by the applicant. No allotment application will be rejected on the basis of national or public need without prior concurrence of the Director.

H-2561-1 - NATIVE ALLOTMENTS
Secretarial Policy, 6/6/73

ADJUDICATION ACTIONS:

As a matter of practice, where it is determined that the allotment application should be rejected, BLM should issue a preliminary decision "holding the application for rejection." The decision must allow 30 days for the applicant to submit evidence (1) to prove his use and occupancy of the land, or (2) to satisfy other requirements that have not been met. If no evidence is submitted, or if it is found that the evidence is still not satisfactory to meet requirements of law and regulations, a final decision will be issued. That decision is subject to the right of appeal to the Board of Land Appeals.

[signed] Jack O. Horton

H-2561-1 - NATIVE ALLOTMENTS
Secretarial Policy, 10/18/73

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 18 1973

Memorandum

To: Director, Bureau of Land Management

From: Assistant Secretary - Land and Water Resources

Subject: Adjudication of Pending Alaska Native Allotment Applications

The pendency of the numerous Native allotment applications has provided the Department an opportunity to receive and review comments from individual Natives, native groups, counsel for various Natives, and others interested in the expeditious and fair handling of these applications. These comments have pointed out many areas of concern in the practical administration of the Native Allotment Act and its application to the many varied factual situations which exist in these pending applications. The following are conclusions relative to the interpretation to be given by the Bureau of Land Management and its adjudicators to the Native Allotment Act and the regulations issued pursuant to said act. To the extent these conclusions serve as assistance in the adjudication of the pending applications, they supersede any previous interpretational guidelines issued by this office. These conclusions relate only to Native Allotment applications pending before the Department on December 18, 1971.

PREADJUDICATION GUIDELINES:

Pending Before the Department on December 18, 1971

This phrase is interpreted as meaning that an application for a Native allotment must have been on file in any bureau, division, or agency of the Department of the Interior on or before December 18, 1971. The Department has no authority to consider any application not filed with any bureau, division, or agency of the Department of the Interior on or before said date. Evidence of pendency before the Department of the Interior on or before December 18, 1971, shall be satisfied by any bureau, agency or division time

stamp, the affidavit of any bureau, division or agency officer that he received said application on or before December 18, 1971, and may also include an affidavit executed by the area director of BIA stating that all applications transferred to BLM from BIA were filed with BIA on or before December 18, 1971.

Qualifications of Applicants

1. Must have been certified to be a qualified Native by the BIA. If the applicant is not an enrolled Alaska Native, further evidence of his qualification should be required.

2. Must be a citizen of the United States and a resident of Alaska.

3. Must be the head of a family or 21 years of age only at the time that the allotment is granted. Therefore, an applicant may be under 21 years of age or not the head of a family before or at the date his application was filed with the Department.

Use and Occupancy of Withdrawn or Reserved Lands

Vacant, unappropriated and unreserved land in Alaska is available for allotment under the Native Allotment Act. With respect to reserved or withdrawn land, if a Native has completed the five-year period of statutory substantial use and occupancy prior to the effective date of the withdrawal or reservation, the withdrawal may be revoked and the allotment granted.

As examples of application of the above, note the following:

1. Where a Native has initiated and completed substantial use and occupancy of the land for five years prior to the withdrawal or reservation, the allotment may be granted, even though the land is still withdrawn at the time of application.

2. Where a Native has not completed the five-year period of statutory use and occupancy of lands prior to the effective date of a withdrawal or reservation of the lands, the allotment application should be rejected.

FIELD EXAMINATION GUIDELINES:

1. Field examinations should take into consideration Native traditional and customary occupancy of land and the way of life of the Native people.

2. Field examiners will accept affidavits from persons claiming knowledge of Native use and occupancy of land being examined and may seek BIA assistance in obtaining such information.

3. In making a determination that a Native has completed five years of substantial use and occupancy, the existence of any of the following evidence may be considered:

   a. House or cabin.

   b. Food cache.

   c. Camp site--evidence of tent, tent frame or temporary shelter, fire pits, cleared area.

   d. Fish wheel.

   e. Dock or boat landing.

   f. Evidence of fishing, hunting and trapping such as fish drying racks, etc.

   g. Reindeer headquarters and corrals.

   h. Evidence of berry picking, gathering of wild roots, greens and other wild foods.

   i. Other evidence of use should be considered such as animal bones, meat racks, fur caches, stretch boards, sledge dog spots, any sheds or holes, and pits or spots that show human use and occupancy.

Substantial use and occupancy cannot be defined in any more detail than in the regulations.1/ It will depend largely

1/ Section 2561.0-5(a) of the Regulations provides: 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. Such use and occupancy must be substantial possession and use of the land, at least potentially exclusive of others, and not merely intermittent use.

upon the mode of living of the Native. Use and occupancy by an Aleut or an Indian may not be the same as by an Eskimo. Therefore, the customs of the applicant must be considered and applied to the findings to arrive at a conclusion as to whether the land is being used as claimed. Customs of the Natives must be correlated with the physical findings -- improvements, vegetation, evidence of use, climate, and resources on the land, particularly with reference to the claimed use.

The field report must contain an adequate description of the land, its improvements, and observed uses to verify the claimed use. This description should be supported by sketch maps and photos. The field report should clearly describe the areas of use and occupancy.

Native Community Use

Allotment filings that are in conflict with areas of prior Native community use must be denied. The determination of whether an individual applicant's use was exclusive is a factual one which should be answered by soliciting affidavits and testimony from village inhabitants and others with knowledge of the situation.

Acreage Limitation

Acreage granted must not exceed 160 acres. However, a single allotment may consist of several tracts which need not be contiguous to each other.

In areas where the rectangular survey pattern is appropriate, i.e., where lands are surveyed or protraction diagrams exist, an allotment may be in terms of 40-acre legal subdivisions and survey lots on the basis that substantially continuous use and occupancy of a significant portion of such smallest legal subdivision shall normally entitle the applicant to the full subdivision, absent conflicting claims.

Mineral Lands

No mineral land (except land believed to be valuable for coal, oil and gas) shall be available for Native allotments. In determining whether land is mineral, it is not essential that there be an actual discovery of mineral on the land. It is sufficient to show only that known conditions are such as reasonably to engender the belief that

the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end. Such belief may be predicated upon geological conditions, discoveries of minerals in adjacent lands, and other observable external conditions upon which prudent and experienced men are accustomed to act.

In determining whether land is mineral, it must be understood that sand and gravel are minerals. Consequently, if deposits of sand and gravel meeting the test described above are found in any tract of land, that tract must be determined to be mineral land.

Amendments to Application

All amendments to allotment applications must be closely scrutinized. Amendments which result in the relocation of the allotment will not be accepted unless it appears that the original description arose from the inability to properly identify the site on protraction diagrams. Amendments which are designed to claim the commencement of the use and occupancy at an earlier point in time must also be carefully examined and the applicant must establish the reason for the error, his good faith in making the correction, and the applicant must present convincing evidence of the actual use and occupancy at the earlier point in time.

ADJUDICATION ACTIONS:

In all adjudications, the existing regulations relative to Native Allotment applications and prior departmental final decisions concerning the Native Allotment Act are to be controlling where pertinent.

Where it is determined that the allotment application should be rejected, BLM, shall, prior to issuing a final decision thereon, allow the applicant thirty days to submit additional proof of occupancy or satisfy other requirements. The copy of any thirty-day notice to said applicant, and final decision on any Native allotment application, shall also be given to the BIA agency concerned.

If no evidence is submitted, or if it is found that the evidence is still not satisfactory to meet requirements of the law and regulations, a final decision will be issued. That decision is subject to the right of appeal to the Board of Land Appeals.

H-2561-1 - NATIVE ALLOTMENTS
Secretarial Policy, 9/5/74

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 5 1974

Memorandum

To: Director, Bureau of Land Management (BLM)

From: Assistant Secretary, Land and Water Resources

Subject: Guidelines for Processing Pending Alaska Native Allotment Applications

The following steps will be implemented immediately for processing pending Native allotment applications. These steps supplement and, where necessary, supersede the October 18, 1973, guidelines. These guidelines apply to all applications where the decision and final Departmental action has not been completed prior to June 20, 1974.

1. The applicant, either the village council or village corporation, whichever you consider more appropriate, and the appropriate regional corporation will be notified 30 days in advance of planned field examinations. This notification will request the applicant or his designee to be present and accompany the BLM field examiner. If neither of them are available, the village council or corporation will be asked to designate a representative to accompany the field examiner. The field report should fully document the efforts made to contact the applicant and solicit his participation. Field reports should reflect that all sources to verify the applicant's claimed use have been examined.

2. An interpreter will be used by BLM whenever a language or communication problem exists in working with the Natives.

3. BLM field examiners and all other BLM personnel involved in the investigation and adjudication of Alaska Native allotments will participate in training sessions to thoroughly acquaint them with the added procedures and assure that they are aware of the problems associated with processing Native allotment applications and these supplemental guidelines. BLM will incorporate sessions into its annual training program for adjudicators to expand their knowledge of Native use of the land claimed and the Natives' traditional way of life. The Bureau of Indian Affairs (BIA), and representative Native organizations, will be invited to "conduct" these sessions.

H-2561-1 - NATIVE ALLOTMENTS
Secretarial Policy, 9/5/74

Memo to Director, BLM from A/S, Land and Water Res., Subj.: Guidelines for Processing Pending Alaska Native Allotment Applications

4. Where it is determined that the allotment application does not meet the necessary requirements of use and occupancy prior to issuing a final decision thereon, the BLM shall allow the applicant sixty (60) days to submit additional evidence of compliance.

5. In cases where the allotment applicant has died, extensions of the 60-day period to submit additional evidence by the heirs will be liberally granted.

6. Copies of all field examiners' reports will be provided the allotment applicant, the regional corporation, and the BIA Agency where the land is located for all cases, where notice for the applicant to submit additional evidence is required. The field report will accompany the 60-day notice.

7. Copies of all correspondence to an applicant will be sent to the regional corporation where the land is located.

8. BLM will provide a more simply worded straightforward statement to the applicant along with all official notices and decisions.

9. In considering evidence of use and occupancy, sworn statements by witnesses who have firsthand knowledge of the facts will be given substantial weight on the matters to which they testify. You are directed to send the enclosed suggested guidelines for witness statements to all regional corporations and other involved interests. These guidelines are to be used for the preparation of affidavits until affidavit forms are approved by the Office of Management and Budget (OMB) and distributed.

10. A Native advisor will be stationed in each of the BLM District Offices in Alaska to assist in evaluating and assessing the Natives' claimed use of the land.

Enclosure

H-2561-1 - NATIVE ALLOTMENTS
Secretarial Policy, 9/5/74

SUGGESTED GUIDELINES FOR STATEMENT OF WITNESS

NATIVE ALLOTMENT APPLICATIONS

Each witness should be advised so that he/she clearly understands that the information he/she furnishes is in the form of a signed, sworn affidavit and that any false information could be punishable by a fine, a prison sentence, or both. The witness should furnish all the information within his/her knowledge and need not try to give statements about every point listed below unless he/she knows about them.

1. The statement should identify the name of the applicant and, if known, the case file number of the application.
2. The witness must clearly identify himself/herself, give his/her place of residence, and the length of time he/she has resided at that place. Witness should also indicate his/her relationship to the applicant - whether friend, neighbor, relative, or stranger.
3. The witness should explain the extent of his/her personal knowledge of the land under application, and what knowledge he/she has of the applicant's use of the land. Was this knowledge acquired by having seen the applicant on the land, or from what other persons may have told him/her?
4. Describe the location of the land for which the statement is being made. The witness may attach to the statement a map showing the location of the land. However, the witness should describe the

location of the land in a manner that clearly shows that the land described is the land in question.

5. Witness should state what improvements he/she knows are on the land claimed, and should describe these improvements.
6. Witness should state when the land was used by the applicant. If possible, he/she should state the month or months the land was used each year.
7. The statement should also tell how and for what purposes the land was used during each period of the year.
8. The statement should tell how long the land claimed has been used. The witness should state which year the applicant first used the land, so far as he/she personally knows.
9. Witness should state whether the land was used every year, and if not, why not.
10. So far as the witness knows, he/she should state when the applicant stopped using the land, if that is the case.
11. If the applicant used the land before the witness had personal knowledge of such use, the statement should so indicate.
12. How old was the applicant when he/she used the land? When the applicant used the land, did he/she have a family, and what relationship were such persons to the applicant?
13. Witness should indicate whether the land is being used by anyone else, and, if so, by whom, when, and for what purpose.

14. If the land is being used by someone other than the allotment applicant, what is the relationship of these users to the applicant? (Are they relatives, neighbors, friends, or strangers?)
15. If the land is being used by someone other than the allotment applicant, did the user or users know that the land was being claimed as a Native allotment?
16. If the land is being used by someone other than the allotment applicant, does the applicant know about this use, and has the applicant objected to such use?
17. The statement should conclude with a statement that the facts given above are true to the best of his/her knowledge and belief, knowing and understanding that any false answer or statement could result in a fine, prison sentence, or both.
18. The statement should be signed by the witness in the presence of a notary public or postmaster, who should attest to the signing and affix his/her seal or postmark.
19. If no notary public or postmaster is available, the witness may certify the statement by stating the date and place of execution, the fact that no notary public or other official authorized to administer oaths is available, and the following: "I certify under penalty of perjury that the foregoing is true and accurate."

H-2561-1 - NATIVE ALLOTMENTS
ANILCA Section 905

PUBLIC LAW 96-487—DEC. 2, 1980 94 STAT. 2435

ALASKA NATIVE ALLOTMENTS

Sec. 905. (a)(1) 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 either land that was unreserved on December 13, 1968, or land within the National Petroleum Reserve—Alaska (then identified as Naval Petroleum Reserve No. 4) are hereby approved on the one hundred and eightieth day following the effective date of this Act, except where provided otherwise by paragraph (3), (4), (5), or (6) of this subsection, or where the land description of the allotment must be adjusted pursuant to subsection (b) of this section, in which cases approval pursuant to the terms of this subsection shall be effective at the time the adjustment becomes final. The Secretary shall cause allotments approved pursuant to this section to be surveyed and shall issue trust certificates therefor.

43 USC 1634.

43 USC 270-1—270-3.

(2) All applications approved pursuant to this section shall be subject to the provisions of the Act of March 8, 1922 (43 U.S.C. 270-11).

Applicability.

(3) 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, requiring that land allotted under said Act be nonmineral: *Provided*, That "nonmineral", as that term is used in such Act, is defined to include land valuable for deposits of sand or gravel.

"Nonmineral."

(4) 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, or where an allotment application describes land which has been patented or deeded to the State of Alaska or 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 from those lands made available for selection by section 11(a)(2) of the Act by any Native Village certified as eligible pursuant to section 11(b) of such Act, paragraph (1) of this subsection and subsection (d) of this section shall not apply and 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.

43 USC 1610.

43 USC 270-1—270-3.
43 USC 1601 note.

(5) Paragraph (1) of this subsection and subsection (d) shall not apply and 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; or

(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; or

(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.

(6) Paragraph (1) of this subsection and subsection (d) shall not apply to any application pending before the Department of the Interior on or before December 18, 1971, which was knowingly and voluntarily relinquished by the applicant thereafter.

Conflicting allotment applications.

(b) 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 in so doing, consistent with other existing rights, if any, may expand or alter the applied-for allotment boundaries or increase or decrease acreage in one or more of the allotment applications to achieve an adjustment which, to the extent practicable, is consistent with prior use of the allotted land and is beneficial to the affected parties: *Provided*, That the Secretary shall, to the extent feasible, implement an adjustment proposed by the affected parties: *Provided further*, That the Secretary's decision concerning adjustment of conflicting land descriptions shall be final and unreviewable in all cases in which the reduction, if any, of the affected allottee's claim is less than 30 percent of the acreage contained in the parcel originally described and the adjustment does not exclude from the allotment improvements claimed by the allottee: *Provided further*, That where an allotment application describes more than one hundred and sixty acres, the Secretary shall at any time prior to or during survey reduce the acreage to one hundred and sixty acres and shall attempt to accomplish said reduction in the manner least detrimental to the applicant.

Amended land descriptions.

(c) An allotment applicant may amend the land description contained in his or her application if said description designates land other than that which the applicant intended to claim at the time of application and if the description as amended describes the land originally intended to be claimed. If the allotment application is amended, this section shall operate to approve the application or to require its adjudication, as the case may be, with reference to the amended land description only: *Provided*, That the Secretary shall notify the State of Alaska and all interested parties, as shown by the records of the Department of the Interior, of the intended correction of the allotment's location, and any such party shall have until the one hundred and eightieth day following the effective date of this Act or sixty days following mailing of the notice, whichever is later, to file with the Department of the Interior a protest as provided in subsection (a)(5) of this section, which protest, if timely, shall be deemed filed within one hundred and eighty days of the effective date of this Act notwithstanding the actual date of filing: *Provided further*, That the Secretary may require that all allotment applications designating land in a specified area be amended, if at all, prior to a date certain, which date shall be calculated to allow for orderly adoption of a plan of survey for the specified area, and the Secretary shall mail notification of the final date for amendment to each affected allotment applicant, and shall provide such other notice as the Secretary deems appropriate, at least sixty days prior to said date: *Provided further*,

H-2561-1 - NATIVE ALLOTMENTS
ANILCA Section 905

That 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.

(d) Where the land described in an allotment application pending before the Department of the Interior on or before December 18, 1971 (or such an application as adjusted or amended pursuant to subsection (b) or (c) of this section), was on that date withdrawn, reserved, or classified for powersite or power-project purposes, notwithstanding such withdrawal, reservation, or classification the described land shall be deemed vacant, unappropriated, and unreserved within the meaning of the Act of May 17, 1906, as amended, and, as such, shall be subject to adjudication or approval pursuant to the terms of this section: *Provided, however,* That if the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), as amended, or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress, the foregoing provision shall not apply and the allotment application shall be adjudicated pursuant to the Act of May 17, 1906, as amended: *Provided further,* That where the allotment applicant commenced use of the land after its withdrawal or classification for powersite purposes, the allotment shall be made subject to the right of reentry provided the United States by section 24 of the Federal Power Act, as amended: *Provided further,* That any right of reentry reserved in a certificate of allotment pursuant to this section shall expire twenty years after the effective date of this Act if at that time the allotted land is not subject to a license or an application for a license under part I of the Federal Power Act, as amended, or actually utilized or being developed for a purpose authorized by that Act, as amended, or other Act of Congress.

43 USC 270-1—270-3.

41 Stat. 1063.
16 USC 791a.

16 USC 818.

16 USC 791a.

(e) Prior to issuing a certificate for an allotment subject to this section, the Secretary shall identify and adjudicate any record entry or application for title made under an Act other than the Alaska Native Claims Settlement Act, the Alaska Statehood Act, or the Act of May 17, 1906, as amended, which entry or application claims land also described in the allotment application, and shall determine whether such entry or application represents a valid existing right to which the allotment application is subject. Nothing in this section shall be construed to affect rights, if any, acquired by actual use of the described land prior to its withdrawal or classification, or as affecting national forest lands.

43 USC 1601 note. 48 USC note prec. 21. 43 USC 270-1—270-3.

H-2561-1 - NATIVE ALLOTMENTS
Memo, Regional Solicitor, Legislative Approval of Native Allotments

United States Department of the Interior

OFFICE OF THE SOLICITOR
ANCHORAGE REGION
510 L Street, Suite 408
Anchorage, Alaska 99501

IN REPLY REFER T

March 10, 1981

Memorandum

To: Chief, Branch of Lands & Minerals Management

From: Regional Solicitor

Subject: Legislative Approval of Native Allotments

A good deal of confusion has been generated by section 905 of the Alaska National Interest Lands Conservation Act (ANILCA) PL 96-487 December 2, 1980, 94 Stat. 2371, regarding the concept of "legislative approval."

Section 905(a)(1) of ANILCA provides that "subject to valid existing rights " certain applications for Native allotments "pending before the Department on or before December 18, 1971" are "hereby approved on the one hundred and eightieth day" after enactment. Subsection (e) provides that "prior to issuing a certificate for allotment subject to this section, the Secretary shall identify and adjudicate any record entry" in conflict with the allotment.

This memo addresses the following questions raised by this section:

1) What does legislative approval mean?
2) What are the criteria for legislative approval?
3) What further adjudication is required?
4) What cases are deemed "pending on or before December 18, 1971?"
5) What if an application meets the criteria for legislative approval but the land has been conveyed by mistake to a third party?

H-2561-1 - NATIVE ALLOTMENTS
Memo, Regional Solicitor, Legislative Approval of Native Allotments

1. What is Legislative Approval?

The concept of legislative approval appears to have been borrowed from the concept of a legislative conveyance or "Congressional grant."

> "Congressional grants were from time to time made to states, railroads, municipal bodies, and individuals. Those acts which are in words of present grant are not only laws, but also conveyances, and pass title of themselves, without patent or other act of the government. A patent subsequently issued for land so granted is merely documentary evidence of the previous passage of title rather than a conveyance." Patton on Titles §290 (2nd Ed. 1957).

Such congressional grants were very common in the early days of the Republic. See Morris v. Whitney 95 US 551, 24 L. Ed. 456 (1877). Legislative conveyances are found in several sections of ANILCA. Section 1437 provides that upon election within 180 days "there is hereby conveyed to and vested in each village corporation. . . all of the right, title, and interest of the United States" in the core township, or former reserve. Section 1437(c) provides that appropriate documents of conveyance will be issued by the secretary "as soon as possible. . . but title shall be deemed to have passed on the date of" the election.

Under Section 1437 title passes by law upon the corporations election, not by patent or interim conveyance, even though such documents will still be issued.

Legislative approval has a similar effect: Approval, and the rights it carries, occurs by operation of law on June 1, 1981 not by administrative

decision or issuance of a certificate of allotment. The Senate Committee report accompanying HR 39 states:

> "The statutory approval implemented by section 905 is intended to summarily approve allotments in all cases where no countervailing interest requires full adjudication" . Rept 96-413, November 14, 1979, p.238.

Even before ANILCA it was unclear whether an Alaskan Native's title was in trust or a restricted fee. An early Solicitor's Opinion, Charlie George 44 L D 113 (1915), characterized it as a trust deed. The Alaska Native Claims Settlement Act, 43 USC 1601 et seq (ANCSA) implies however that legal title is in the Native by refering to the document which is issued as a "patent" 43 USC 1617(a). The Interior Board of Land Appeals recently reviewed the situation and concluded that Native allotments in Alaska are restricted fees and not held in trust. State of Alaska 45 IBLA 318 (1980). However, ANILCA muddied the water again by calling the document a "trust certificate" in section 905(a)(1). This was probably inadvertent. I do not believe ANILCA intended to change the nature of Native ownership for those allotments which are legislatively approved. Therefore I agree with IBLA that a Native allotment is a restricted fee. Either way however title passes upon legislative approval, be it equitable title or legal title.

2) What Are The Criteria For Legislative Approval?

In order to qualify for legislative approval an application must meet

the following statutory requirements. The application must:

1. Have been pending before the Department on or before December 18, 1971.

2. Not have been knowingly voluntarily relinquished.

In addition, the application must describe land which:

3. Is in NPRA, or was not reserved on December 13, 1968.

4. Was not patented or deeded to the State of Alaska.

5. Was not validly selected or T.A'd or confirmed to the state before December 18, 1971, and not withdraw pursuant to 11(a) (1) (A) of ANCSA.

6. It is not a National Park or Monument established on or before December 2, 1980 unless it is in an ANCSA section 11(a)(1) withdrawal.

7. Is not a power site reserve in which a project is licensed or which is presently utilized for power generation.

In addition, by June 1, 1980 the application must not have been:

8. Determined to describe land with mineral values, or

9. Validly protested.

An application which meets all nine of these criteria is "legislatively approved" on June 1, 1981. This does not mean that the Department or the public will know on June 1, 1981 which applications have been approved. There are a number of reasons why it may take some time before a complete list of such applications can be compiled. Disputes over such things as whether a protest was valid, whether a power project is licensed or is utilized for generating electricity may have to be resolved first.

The important point about legislative conveyances is that the interest

passes even though there may be no public record or document of title to evidence it.

3. What Further Adjudication is Required?

Three steps must be taken after "legislative approval" but before a certificate can be issued:

1) The claim must be surveyed to confirm the location
2) Conflicts of record must be adjudicated
3) Boundaries of overlapping allotments must be adjusted

Additional problems may surface at this time. For example the survey may show that the land occupied by the appellant is not where the application said it was, but in fact is in an area for which legislative approval is precluded. What then? Is the application still approved because it "describes land" which meets all the criteria, and should that "described land" be surveyed, monumented and referenced in the certificate even though it is not the land used, occupied, or intended to be claimed?

Section 905(c) allows the applicant to amend the land description if it "designates land other than that which the applicant intended to claim. In the above hypothetical the applicant can, by amending, get the land he intended but only after adjudication, not by legislative approval. But if he prefers to avoid adjudication and take the land mistakenly

described it seems to me that he can do so. The surveyor's job is to monument the land described not to check for evidence of occupancy. The clear intent of section 905 is to "summarily approve" those applications which meet the criteria. An administrative finding of use and occupancy is preempted, in favor or a statutory presumption that the allegations in the application are true. Whether or not the described land was the land intended to be claimed is left to the applicant, not a federal surveyor, field examiner, or adjudicator.

This does not mean that the surveyor has no discretion. There will be cases where the land description covers more than 160 acres, or where it references a physcial feature as being in one section which turns out on survey to be in another. Surveyors are frequently called upon to resolve such questions in the course of field surveys. The BLM Manual of Survey Instructions contains rather detailed guidelines for doing so, and in many cases gives the surveyor considerable lattitude. The courts have generally, from the earliest days, declined to interfere. In Haydel v. Dufresue 17 How. 23. 30 (1855) the Surpeme Court said:

> "These officers [Federal surveyors] were bound to act accordingly to their best judjment. . . nor could the courts of justice interfere to control their acts, if they were honestly performed. . .
>
> [G]reat confusion and litigation would ensue if the judicial tribunals. . . were permitted to over throw the public surveys on no other ground than an opinion that they could have the work in the field better done. . ."

It is difficult to imagine how a survey could be accomplished without some discretion in the surveyor to resolve conflicts in the land description. I find no basis to conclude that Congress intended to preclude this type of survey judjment.

If the Native allotment applicant elects to amend his land description to place or leave it in an area which meets all the criteria for legislative approval, an additional criteria arises, namely that the new location is the land "originally intended to be claimed." This like questions of powersites being licensed will require a determination by BLM prior to a certificate being issued.

The adjudication of conflicts of record (Section 905(e)) may be something of a catch 22. If a homesteader and a legislatively approved Native allotment both cover the same 160 acres the validity of the homestead entry may depend on whether the land was occupied by the Native at the time of the homesteader's entry. Therefore even though the Native allotment application is legislatively approved the Native may be required to establish his prior occupancy. If the Native fails to establish prior occupancy then the homestead will be determined to be "a valid existing right to which the allotment application is subject" Section 905(e). What then? Do we issue the allotment certificate "subject to a valid homestead entry"? Or do we issue a homestead patent and reject the allotment application notwithstanding that it was "legislatively approved"? This dilemma will not arise if the homesteader files a protest by June 1, 1981. If he does not, I believe the homestead patent and no allotment should be issued since an allotment certificate subject to a valid homestead entry is nonsense.

If the homestead entry is also legislatively approved under section 1328 the situation is even crazier since that section is intended to prohibit

adjudication of the homestead. Under Section 1328(d) conflicts of record consisting of Native allotment claims are not to be adjudicated. Theoretically it may be possible that two applications for the same land can both receive legislative approval. We will address this question when and if it arises.

4. What Cases are "Pending" on or Before December 18, 1971?

Does the legislative approval of section 905 apply potentially to all allotment applications that were ever filed with the Department including those that were rejected and closed years ago. Cases were closed for reasons such as the same native filed for more than one 160 acre parcel.

A literal reading of section 905(a) suggests that it might cover all applications ever filed. However, to construe section 905 as approving applications in cases where, for example, the same applicant field multiple applications would be contrary to the legislative intent to "summarily approve allotments in all cases where no countervailing interest requires full adjudication." S. Rep. No. 413, 96th Cong. 1st Sess, 238 (1979). Statutes should not be construed to negate their intent. US v. Brauerman 373 US 405 (1963).

The Supreme Court has "repeatedly warned against the dangers of an approach to statutory construction which confines itself to the bare words of a statute." Lynch v. Overholser 369 US 705 (1962). "Literalness may strangle meaning." Utah Junk C. v. Porter 328 US 39 (1945). The Senate Report supra clarifies the scope of section 905:

H-2561-1 - NATIVE ALLOTMENTS
Memo, Regional Solicitor, Legislative Approval of Native Allotments

> An amendment in Section 905 clarifies that the purview of the section includes all Alaska Native allotment applications which were pending before the Department of the Interior on "or before" December 18, 1971. The amendment clarifies that applications which were erroneously rejected by the Secretary prior to December 18, 1971 without an opportunity for hearing shall be approved or adjudicated by the Secretary pursuant to the terms of the section.

The explanation limits the application of section 905 to those closed cases which were erroneously rejected without an opportunity for a hearing.

Even before ANILCA became law the Department had initiated a review of the roughly 2500 cases closed prior to 1976 to determine, prusuant to the ruling in Pence v. Kleppe 529 F 2nd 135 (9th Cir. 1976), which cases had been erroneously closed without an opportunity for a hearing on factual issues that might be in dispute. In this review cases closed for legal reasons need not be reopened notwithstanding that possible factual issues also exist. Pence v. Andrus (Pence II) 586 F.2nd 733 (9th Cir. 1978). Specifically cases where no proof of use and occupancy was presented within the 6 year statutory life of the entry and cases where no mineral waiver was filed, were determined not to have been erroneously closed. They are not being reopened for a factual hearing. This position was also approved by the Federal District Court in Aguilar v. Kleppe 474 F. Supp. 240 (D. Alaska 1979) saying "It is true that when a decision to reject a Native allotment is premised on a purely legal determinant no hearing is required."

The legislative history of section 905 discussed above indicates that

such cases are not within the scope of that section. Only those closed cases that are being reopened because they were erroneously closed come within the scope of section 905.

5. Allotment Application legislatively Approved But Conveyed by Mistake to Third Party

Unfortunately we have several cases where land occupied by Natives and claimed as an allotment was conveyed by mistake to third parties. Frequently this results from inaccurate land descriptions; sometimes because the allotment application was filed after the conveyance; and sometimes simply from oversight. Pursuant to the court's ruling in Aguilar v. Kleppe 474 F. Supp. 840 (D. Alaska, 1979) the Department in such cases is required to determine whether it "has mistakenly or wrongly conveyed land. . . to which [allotment applicants] have a superior claim. [If so] it is the responsibility of the defendant to recover that land." Id. at 847. The case was remanded to the Department "to adjudicate the substantive claims of entitlement. . ." Id.

Section 905 of ANILCA may present another catch 22 in these situations. That section is intended to preclude adjudication and "summarily approve" cases which meet the statutory criteria. Yet whether an allotment application is a superior claim to that of the present owner may depend on an adjudication of the allotment application. If the allotment is protested it will, of course, have tobe adjudicated. But even if it is not protested, if the conveyance was before June 1, 1981, I believe the allotment will have to be adjudicated before the Department can determine whether it can recover the land.

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I do not believe that Congress can legislatively convey land the United States does not own, even though the prior conveyance may have been "mistaken or wrongful."

Where the "wrongful" conveyance occurs after June 1, 1981 it is probably void as to any land claimed as a Native allotment where the allotment application meets the criteria for legislative approval.

John M. Allen
Regional Solicitor

cc: Assoc. Sol. E & R
Assoc. Sol. IA
Assoc. Sol. C & W
Area Director BIA, Juneau

H-2561-1 - NATIVE ALLOTMENTS
Allotment MOU with BIA, IM AK 79-160

IN REPLY REFER TO

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
701 "C" Street, Box 13
Anchorage, Alaska 99513

2561 (932)

Orig
File
(MU)

March 16, 1979

Instruction Memorandum No. AK-79-160
Expires 9/30/80

To: DM's, Division Chiefs

From: State Director

Subject: Native Allotment Memorandum of Understanding

Enclosed is a copy of the subject memo, BLM Agreement No. AK-950-AG9-323, and copies of background information.

The primary provisions are that (1) jurisdiction over Native allotments passes from BLM to BIA on the date that Lands and Minerals Operations (941) advises the applicant that his/her application has been approved and survey requested, even though a Certificate of Allotment has not been issued, and (2) that BLM and BIA will coordinate where less than fee applications involve both approved allotments and adjacent public lands, including unapproved allotments.

Any questions or actions relating to approved allotments should be referred to the BIA Agency Superintendant having jurisdiction over the allotment. Note that BIA has offered to assist in any trespass action we may take on unapproved allotments.

We have suggested to Northwest Pipeline that in addition to securing permits from BLM on unapproved allotments, they should contact BIA with respect to any rights, other than to the land, which the applicant may have. Similiar requests should be made of other applicants.

Clair E. Tuttle

Associate

Enclosures

Distribution:
Director (412) 2 cys
D-DSC (D-531) 3 cys

CONSERVE AMERICA'S ENERGY

H-2561-1 - NATIVE ALLOTMENTS
Allotment MOU with BIA, IM AK 79-160

BLM Agreement No.
AK-950-AG9-323

MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE BUREAU OF LAND MANAGEMENT (BLM) AND THE BUREAU OF INDIAN AFFAIRS (BIA) ON DIVISION OF RESPONSIBILITIES FOR NATIVE ALLOTMENTS

A. Purpose

The purpose of this MOU is to establish jurisdictional responsibilities for approved Native allotments and pending allotment applications.

B. Background

The Native Allotment Act of May 17, 1906 (34 Stat. 197), as amended, authorized the Secretary of the Interior, in his discretion, to allot not to exceed 160 acres of land to Alaska Natives. Few applied for land until the late 1960's. During the period 1970-71, about 8500 applications were filed. The Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971 (85 Stat. 688), as amended, repealed the allotment act but recognized those applications still pending before the Department of the Interior. Thus there was created a heavy backlog of filings, involving an estimated 21,000 separate parcels of land. To comply with section 14(h)(6) of ANCSA, an allotment application is officially considered to be approved when survey is requested, even though the Certificate of Allotment does not issue until the survey is approved. The number of approved allotments is becoming significant.

Coupled with the Secretary's responsibility for protection of allotted or applied for lands from encroachment by others (43 CFR 2561.0-2) is the increasing state wide economic activity and the resultant reports of alleged trespass on these lands. Thus far, neither BLM nor BIA has been able to react adequately.

The following legal and policy considerations have emerged in connection with these problems:

1. The Regional Solicitor ruled that either Bureau could legally initiate trespass action (opinion of April 19, 1977).

2. The BIA has been assigned responsibility to approve relinquishments (Secretarial letter to Senator Stevens).

3. An Administrative Law Judge ruling states that a probatable estate is created when BLM approves an allotment and so states in writing.

4. The BLM suggested that BIA should assume trespass responsibilities on approved allotments (SD's February 22, 1977 memo to Regional Solicitor).

5. The BIA Area Director feels that, pursuant to the general authority over Indian matters in 25 USC 2, BIA has administrative responsibility over approved Native allotments (memo to Commissioner of Indian Affairs of April 27, 1977).

6. The Associate Solicitor, Indian Affairs agrees with No. 5 above although indicating that the Secretary must make the ultimate jurisdictional decision (Opinion of October 2, 1978).

C. Responsibilities

The State Director, BLM and Area Director, BIA agree to the following division of responsibilities for approved Native allotments and pending Native allotment applications:

BUREAU OF LAND MANAGEMENT:

1. The BLM will coordinate the adjudication of allotment applications with BIA.

2. The BLM will continue to issue letters to the applicant when an allotment is approved.

3. The BLM will survey and issue Certificates of Allotment for all approved allotments as expeditiously as possible.

4. The BLM will retain administrative jurisdiction, including trespass abatement and the granting of less than fee interests, over lands included in pending Native allotment applications.

5. The BLM will coordinate with BIA when processing applications for less-than fee interests where any such application involves both an approved allotment and adjoining lands under BLM jurisdiction, including pending allotment applications.

BUREAU OF INDIAN AFFAIRS:

1. The BIA will assume all trust responsibility for tenure and management of approved allotments effective on the date of BLM's approval letter. This will include the granting of rights of way pursuant to 25 CFR 161, approval of leases and permits pursuant to 25 CFR 131, performance of probate functions pursuant to 43 CFR 4, subpart D, the abatement of trespass, exchanges pursuant to 25 CFR 121, and other actions as appropriate. Sales will not be made.

H-2561-1 - NATIVE ALLOTMENTS
Allotment MOU with BIA, IM AK 79-160

2. The BIA will approve or disapprove all relinquishments of pending allotment applications.

3. The BIA will coordinate with BLM when processing an application for less than fee interests where any such application involves both an approved allotment and adjoining public lands under BLM jurisdiction, including pending allotment applications.

D. Effective Date, Termination

This agreement shall become effective upon the date subscribed by the last signatory, and shall remain in effect until terminated by either Bureau upon 90 days written notice. Amendments may be proposed by either Bureau and shall become effective upon joint agreement.

Area Director,
Bureau of Indian Affairs

20 February 1979
Date

State Director,
Bureau of Land Management

18 JAN 1979
Date

H-2561-1 - NATIVE ALLOTMENTS
Allotment MOU with BIA, IM AK 79-160

MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN THE BUREAU OF LAND MANAGEMENT (BLM)
AND THE BUREAU OF INDIAN AFFAIRS (BIA)
ON DIVISION OF RESPONSIBILITIES FOR NATIVE ALLOTMENTS

A. Purpose

The purpose of this amendment is to clarify jurisdictional responsibilities for approved Native allotments and pending allotment applications as outlined in the original agreement, AK-950-AG8-323.

BLM Agreement No. AK-950-AG8-323, MOU, is hereby amended as follows:

C. Responsibilities

BUREAU OF LAND MANAGEMENT

4. The BLM will retain administrative jurisdiction, including all types of trespass abatement and the granting of less than fee interests, over lands included in pending Native allotment applications.

6. The provisions for wildfire protection will continue as outlined in the "Cooperative Fire Control Agreement between the Bureau of Indian Affairs and the Bureau of Land Management," AK-950-AG8-327, dated April 10, 1979, or any subsequent modification of the Fire Control Agreement.

BUREAU OF INDIAN AFFAIRS

1. The BIA will assume all trust responsibility for tenure and management of approved allotments effective on the date of BLM's approval letter. This will include the granting of rights-of-way pursuant to 25 CFR 161, approval of leases and permits pursuant to 25 CFR 131, performance of probate function pursuant to 43 CFR 4, subpart D, the abatement of trespass, exchanges pursuant to 25 CFR 121, forestry activities pursuant to 25 CFR 141, and other actions as appropriate. Land sales will not be made.

D. Effective Date. Termination

This amendment shall become effective upon the date subscribed by the last signatory, and shall remain in effect until terminated by either Bureau upon 90 days written notice.

Area Director,
Bureau of Indian Affairs

12/26/79
Date

State Director,
Bureau of Land Management

1/16/80
Date

H-2561-1 - NATIVE ALLOTMENTS
IM AK 80-2, Trespass on Pending Native Allotments

United States Department of the Interior

2561/9230 (932)

BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

October 3, 1979

Instruction Memorandum No. AK-80-2
Expires 9/30/80

To: DM's

From: State Director

Subject: Trespass on Pending Native Allotments

Pursuant to the Memorandum of Understanding (BLM agreement AK-950-AG9-123) between the Bureau of Indian Affairs (BIA) and the Bureau of Land Management (BLM), BIA has the trust responsibility for approved Native allotments and BLM has administrative jurisdiction over unapproved allotment applications. BIA also has the authority, concurrently with BLM, to protect pending Native allotments from the encroachment of others.

BIA will be investigating pending allotments for trespass and will follow the procedures in BLM Manual 9230. Findings will be reported to the District Managers.

BLM personnel should also be alert for trespass on allotments while making field examinations of allotments or other examinations near allotments. Where trespass is discovered on an allotment, notification will be made to the BIA agency for the area in which the land is located, as well as making the BLM trespass report. Joint trespass investigations should be made where feasible.

Please cooperate with BIA to the fullest extent possible consistent with funding limitations and priority commitments in the investigation and resolution of trespass on pending Native allotment applications.

Glenn E. Whitlock

Associate

Distribution
Director (855) 2 cys
D-DSC (D-559A) 3 cys

H-2561-1 - NATIVE ALLOTMENTS
IM AK 85-305, Notification of Native Allotment Activity

United States Department of the Interior

BUREAU OF LAND MANAGEMENT 2561 (960)

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

June 4, 1985

Instruction Memorandum No. AK-85-305
Expires: 9/30/86

To: DM's, DSD's, SC's

From: State Director, Alaska

Subject: Notification of Native Allotment Activity

During the past several months, we have had requests from land managers of government agencies and Native corporations for additional notice of pending activity during the processing of Native allotments. We have agreed to provide the additional notice as outlined below. This notification will be made in all cases where BLM is not the surface manager of the lands surrounding the Native allotment.

1. Allotments Rejected on Legal Issues:
   When case is closed, notify surrounding surface owner or selecting applicant, BIA ~~area~~ agency office, and legal counsel of record.

2. Allotments Legislatively Approved:
   Notify surrounding surface owner or selecting applicant, BIA ~~area~~ agency office, and legal counsel of record when:
   a. Field check is scheduled. (District function)
   b. Approval is granted.
   c. Field survey is scheduled. (Cadastral function)
   d. Conformance is requested (with copy of plat).
   e. Certificate is issued. (Original and copy of certificate sent to BIA; they record and send to allottee.)

3. Allotments Adjudicated Under 1906 Act:
   Notify surrounding surface owner or selecting applicant, BIA agency office, and legal counsel of record when:
   a. Field examination is scheduled. (District function)
   b. Field report completed; applies to recent ones (by a form letter to be developed). If the field report has been completed prior to the 1985 field season, notify the surrounding owner or selecting applicant when adjudication begins (by another form letter to be developed or by copy of request for additional evidence).
   c. Approval is granted or government contest complaint is issued.
   d. Field Survey is scheduled. (Cadastral function)
   e. Conformance is requested (with copy of plat).
   f. Certificate is issued. (Original and copy of certificate sent to BIA; they record and send to allottee.)
   g. Approval decision is appealed or allotment is contested after approval decision. Notification will be made pursuant to the procedures detailed in 43 CFR, Part 4.

4. Allotment Cases Closed Without Issuance of Certificate:
   Notify surrounding surface owner or selecting applicant, BIA agency office, and legal counsel of record.

Unless otherwise specified, the notification will be the function of the Native Allotment Section in the State Office or Fairbanks District Office.

When any notification is accomplished by an appealable decision, the parties mentioned above must be served by certified mail. All other notices may be sent by regular mail.

Following are the addresses to be used when sending notices to applicable parties.

ANCSA Village and Regional Corporations

Contact the Branch of ANCSA Adjudication (961) if current mailing address needs verification.

State of Alaska
Department of Natural Resources
State Interest Determinations
Pouch 7-005
Anchorage, Alaska 99510

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IM AK 85-305, Notification of Native Allotment Activity

National Park Service
Associate Director for Operations
2525 Gambell
Anchorage, Alaska 99503

U.S. Fish and Wildlife Service
Chief, Division of Realty
1011 East Tudor Road
Anchorage, Alaska 99503

Regional Forester
Chief, Division of Lands
Attn: James Calvin
Box 1628
Juneau, Alaska 99802

BUREAU OF INDIAN AFFAIRS AND CONTRACTORS OFFICES:

Anchorage agency maintains official files for Native allotments in the following Regions:

AHTNA, Inc.
Bristol Bay Native Corporation
Koniag, Inc.
Chugach Natives, Inc.
Cook Inlet Region, Inc.
Aleut Corporation

Bureau of Indian Affairs
Realty Office
P.O. Box 100120
Anchorage, Alaska 99510-0120

CALISTA Both the Bethel Agency and Association of Village Council Presidents (AVCP) are to receive notification.

Bureau of Indian Affairs
Realty Office
Box 347
Bethel, Alaska 99559

Association of Village
Council Presidents
Realty Office
P.O. Box 219
Bethel, Alaska 99559

DOYON and ARCTIC SLOPE REGIONAL CORPORATION Both the Fairbanks Agency and the Tanana Chiefs Conference (TCC) are to receive notification.

Bureau of Indian Affairs
Realty Office
U.S. Federal Building
and Courthouse
Box 16, 101 12th Avenue
Fairbanks, Alaska 99701

Tanana Chiefs Conference
Realty Office
122 ~~201~~ First Avenue
Fairbanks, Alaska 99701

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IM AK 85-305, Notification of Native Allotment Activity

BERING STRAITS and NANA Official files are maintained by the Nome Agency for both Regions.

Bureau of Indian Affairs
Realty Office
Box 1108
Nome, Alaska 99762

SEALASKA Notification pertaining to Native allotments in this Region are to be sent to the BIA field agency and Tlingit-Haida Central Council.

Bureau of Indian Affairs
Realty Office
P.O. Box 3-8000
Juneau, Alaska 99802-1219

Tlingit-Haida Central Council
Realty Office
One Sealaska Plaza, Suite 200
Juneau, Alaska 99801

ALASKA LEGAL SERVICES CORPORATION OFFICES:

STATE WIDE: 550 W. 8th Avenue, Suite 300
Anchorage, Alaska 99501

AREA OFFICES: 550 W. 8th Avenue, Suite 200
ANCHORAGE, Alaska 99501

P.O. Box 309
BARROW, Alaska 99723

P.O. Box 248
BETHEL, Alaska 99559

P.O. Box 181
DILLINGHAM, Alaska 99576

763 Seventh Avenue
FAIRBANKS, Alaska 99701

419 Sixth Street, Suite 322
JUNEAU, Alaska 99801

326 Center, Suite 204
KODIAK, Alaska 99615

301 NBA Building
KETCHIKAN, Alaska 99901

H-2561-1 - NATIVE ALLOTMENTS
IM AK 85-305, Notification of Native Allotment Activity

P.O. Box 316
KOTZEBUE, Alaska 99752

P.O. Box 40
NOME, Alaska 99762

P.O. Box 103
UNALASKA, Alaska 99685

Distribution:
D(311) Room 3653
D-DSC (D-240)

Fred Wolf
Associate State Director

H-2561-1 - NATIVE ALLOTMENTS
Regional Solicitor's Opinion, Reconstructed Native Allotment Applications

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION
IN REPLY REFER TO:
701 C Street, Box 34
Anchorage, Alaska 99513

October 1, 1985

MEMORANDUM

TO: State Director
ASO, BLM

ATTN: Deputy State Director
Division of Conveyances (960)

FROM: Deputy Regional Solicitor
Alaska Region

SUBJECT: Reconstructed Native Allotment Applications

We have reviewed 28 Native Allotment case files submitted for our review due to the absence of any copy of a timely filed application. Based on our review, we have concluded that most of these cases should be treated and processed as timely filed applications.

In reaching this decision, we have developed and utilized the following standard:

1) To be timely, a Native Allotment application must have been filed with an agency of the Department of the Interior[1/] by December 18, 1971, due to the repeal of the Native Allotment Act by section 19 of the Alaska Native Claims Settlement Act (ANCSA), 43 USC § 1618;

2) 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) ("If appellant had timely filed an application with BIA which was lost, he should be given an opportunity to reconstruct his original application"); and

3) In order to treat an application as being timely filed and to allow reconstruction, there must be sufficient objective, documentary proof which must include a federal agency document showing timely receipt; allegations of timely filing without such proof are not sufficient.

1/ Hence, for purposes of BLM allowing reconstruction of Native Allotments, filing with a non-federal entity is not sufficient and individuals making such claims must utilize the Barr procedures.

Based on this standard, we have determined that the following 25 cases should be treated as timely filed:

1) Marjorie Jordon, AA-47907
2) Mabel Nielsen, AA-51859
3) Vida Wik, AA-46963
4) Mary Ellen Israelson, AA-46964
5) Delores J. Smith, AA-51870
6) Leon Sacaloff, AA-51869
7) Urban Petterson, AA-51867
8) Alfred Ivanoff, AA-51864
9) Alfred Wik AA-51863
10) George Pederson, AA-51862
11) Helen Dolchak (deceased), AA-51861
12) Rudolf Wilson, AA-51858
13) Nellie Callahan, AA-51856
14) Annie Spracher, AA-50507
15) Glenn Kooly, AA-50505
16) Joann Warren, AA-50503
17) Carol Dolan, AA-51857
18) Harold Wik, AA-49961
19) Nadia Showalter (deceased), AA-49959
20) Samual Holstrom, AA-49958
21) Albert Baktuit, AA-49957
22) Edward Grenhalgh, AA-52566
23) Julia Albrite, AA-50584
24) Robert Green, AA-50582
25) Clifford Dolchak, AA-50508

We have also determined that the following three cases should not be considered timely filed due to the failure to meet the standard articulated above:

1) Linda Anelon, AA-53142
2) June Degnan, AA-54599
3) James Gilman, AA-55612[2/]

A flow chart, showing our more detailed analysis of each of these 28 cases, is also attached in hopes it will help to further clarify our views and assist you in implementing our legal conclusions.

Since many of the 25 cases we have found to be timely filed are on land no longer in federal ownership, it will

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[2/] Mr. Gilman appears to fall in the Barr class.

be necessary to apply Aquilar procedures in numerous instances. In processing such cases, BLM is to stop the process when it is found that the land has been reconveyed by the original patentee. Instead, the BLM should act in accordance with the further guidelines we will provide as soon as possible, on the problem of subsequent conveyances of land claimed as a Native Allotment.

If you have questions on any portion of this memorandum, including our decision on a particular case, or if you need further assistance in applying the standard we have articulated, please let us know.

Dennis J. Hopewell

Enclosure: Handwritten flow chart

cc: (with enclosure)
Chief, Branch of Lands, ASO, BLM (965)
Chief, Branch of Adjudication, FDO, BLM (020)
Chief, Branch of Lands, ADO, BLM (010)
Chief, Section of Native Allotment, ASO, BLM (965)
Chief, Section of Conveyances, FDO, BLM (020)
Paralegal, ASO, BLM (960)
Director, Trust Services, JAO, BIA
Realty Officer, Anchorage Agency, BIA

H-2561-1 - NATIVE ALLOTMENTS
Regional Solicitor's Opinion, Reconstructed Native Allotment Applications

APPLICANT	CASE NO.	EVIDENCE OF TIMELY FILING	RECOMMEND
① Gordon, Maryone	AA-47907	1- Memo of 12-15-72 fr. BIA listing allotment as filed prior to 12-18-71 & pending at BIA [the latter assertion is incorrect] 2- Letter from BIA Realty Spec. of 5-21-71 returning applications - listed this one as being on patented land 3- '82 letter fr. BIA saying it was error to return the applications on 5-21-71 4- affidavit of applicant saying she timely filed	DAI-1
② Anelon, Linda	AA-5342	1- affidavit of foster care mtr saying Linda & brother applied 2- affidavit of brother saying they applied together 3- brother's application found in '81 [4- no BIA certificate of timely filing or other BIA records]	DAI-110
③ Nielson, Mabel	AA-51859	1- Letter fr. BIA saying that applic. was received prior to May 71 but improperly returned on 5-21-71 'cuz for patented land [2- is on list in Gordon file, AA-47907 - certified as timely filed]	DAI-190

H-2561-1 - NATIVE ALLOTMENTS
Regional Solicitor's Opinion, Reconstructed Native Allotment Applications

APPLICANT	CASE NO.	EVIDENCE OF TIMELY FILING	RECOMMEND
④ Wilk, ~~Hera~~ Vida	AA-46963	1-BIA letter of 10-30-81 saying applic. was originally filed prior to 12-18-71 2-BIA Realty Spec letter of 5-21-71 returning application cuz on patented land 3-BIA certification that applic. pending prior 12-18-71	AL/GFO
⑤ Dorcas, Mary Ellen	AA-46964	Entirely w/i Capt. Cook Recreation Area - State land 1-BIA letter of 12-29-81 saying applic. filed prior to 12-18-71 2&3-same as 2&3 above	AL/GFO
⑥ ~~Allsberg~~, ~~Dora~~ Smith, Delores J.	AA-~~51868~~ 51870	-same as 2&3 above- -BIA letter 3-28-83 -saying timely filed & ~~improp~~ improperly in '71 [land claimed as parcel A-unavailable since 1921]	AL/GFO
⑦ Lacaloff, Leon	AA-51869	same as above (1,3,4,5&6)-patented land	AL/GFO
⑧ Petterson, Urban R (deceased)	AA-51867	same as above -patented land	AL/GFO
⑨ Swanoff, Alfred	AA-51864	-same as above-patented land	AL-GFO

H-2561-1 - NATIVE ALLOTMENTS
Regional Solicitor's Opinion, Reconstructed Native Allotment Applications

APPLICANT	CASE NO.	EVIDENCE OF TIMELY FILING	REC
(10) Wik, Alfred	AA-51863	same as above - collected land	Yes
(11) Pederson, George	AA-51862	- same	Yes
(12) Dolchok, Helen (deceased	AA-51861	same	Yes
(13) Wilson, Rudolf	AA-51858	same	Yes
(14) Dolan, Carol	AA-51857	same	Yes
(15) Callahan, Nellie	AA-51856	same	Yes
(16) Donachen Nellie	AA-50507	same	Yes
(17) Kooly, Glenn	AA-50505	same	Yes
(18) Wickersham Joann	AA-50503	same	Yes

H-2561-1 - NATIVE ALLOTMENTS
Regional Solicitor's Opinion, Reconstructed Native Allotment Applications

APPLICANT	CASE NO.	EVIDENCE OF TIMELY FILING	RECOMMEND
(19) Wit, Harold	AA-49961	same as above-	DH-yes
(20) Shewalla Nadia (deceased	AA-49959	same	DH-yes
(21) Ebbsmm, Samuel	AA-49958	same	DH-yes
(22) Battist Albert	AA-49957	-same [considerable impression of interest apparent in this one] + purported copy of unsigned original applic for 1970 certificate from applicant to the BIA that the land was unoccupied & that he had posted & marked it	DH-yes
(23) Green-Haley, Edward	AA-52566	same as other Tenai Penn cases above.	DH-yes
(24) Albrite, Julia	AA-50584	1-'62 applic. w. no legal description or map 2-BIA ltr of 6-21-62 to applicant asking for location of allotment	DH-yes
(25) Green, Robert	AA-50582	-same as Albrite, above, plus -'84 legal description with supporting witness statements [Land in Yukon-Delta NWR]	DH-yes

H-2561-1 - NATIVE ALLOTMENTS
Regional Solicitor's Opinion, Reconstructed Native Allotment Applications

APPLICANT	CASE NO.	EVIDENCE OF TIMELY FILING	RECOMMEND
(26) Adchok Clifford	AA-50508	1-BIA letter of 1-5-71 to applicant stating that they'd prepared applic for 110 acres at Long Lake in Apr. '69- 2-3 letters in '69 fr applicant making changes of description 3-Letter of 4-28-69 fr. BIA saying applic prepared for 110 acres at Pelé Bay & asking him for proof of posting & marking corners 4-original application lost-reconstructed is for 135 acres on Pelé Bay	DH-yes but not for 110 acres
(27) Kaiman, Gene	AA-54599	1-affidavits of applicant & mother saying land staked & application mailed [no BIA documentation]	DH-no
(28) Gilman, James	AA-55612	1-BIA memo of 3-27-85 saying application filed w. BIA on 12-9-70 but lost by BIA 2-RuralCAP transmittal to BIA dated 12-7-70 - handwritten note says "no received"	DH-NO-memo is a can case

H-2561-1 - NATIVE ALLOTMENTS
Letters from and to Tom Hawkins, State DNR, re: Relocated Allotments

F-17139 (2561)
(960)

JUL 23 1985

Mr. Tom Hawkins
Director
Division of Land and Water Management
Department of Natural Resources
555 Cordova Street
Pouch 7-005
Anchorage, Alaska 99510

Dear Mr. Hawkins:

In response to your May 17, 1985, letter on Native allotment location amendments, we have reviewed all the recent background material and agree with the need for clarification. Our undated letter received by the State on April 26, 1985, should be considered rescinded.

The use of the term "relocation" in the context herein discussed may be inappropriate, even though that will be the end result. In any event, your understanding of the procedures described in your February 20, 1985, letter is correct. Upon receipt of an amendment application under 905(c) we will issue a notice to all interested parties of that fact.

If we have made a preliminary determination that the allotment may be legislatively approved, the notice will allow 60 days for the submission of any comments to BLM on our acceptance or rejection of the amendment as well as the filing of a protest by the State pursuant to Sec. 905(a)(5). The comments may include any other information bearing on the final disposition of the allotment. We will then issue an appealable decision covering the protest, if any, the amendment and final disposition of the allotment.

If our preliminary determination is that the amendment requires full adjudication of the relocated allotment, the same 60 day notice will be issued calling for any information relative to the amendment. This will be followed by an appealable decision covering acceptance or rejection of the amendment and, if appropriate, offering the right of private contest to those with a record interest in the subject land.

H-2561-1 - NATIVE ALLOTMENTS
Letters from and to Tom Hawkins, State DNR, re: Relocated Allotments

Should the amended location fall on non-Federal (TA'd, IC'd or patented) land, the Aguilar or general title recovery procedures would apply.

In the case of Margaret John, we will consider the information heretofor submitted and issue an appealable decision as described above.

Sincerely yours,

/s/ Robert W. Arndorfer

Deputy State Director for
Conveyance Management

cc:
DSD (965)

FDO (020)

H-2561-1 - NATIVE ALLOTMENTS
Letters from and to Tom Hawkins, State DNR, re: Relocated Allotments

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

555 CORDOVA STREET
POUCH 7-005
ANCHORAGE, ALASKA 99510-7005
PHONE: (907) 276-2653

May 17, 1985

Robert W. Arndorfer
Deputy State Director
for Conveyance Management
U.S. Bureau of Land Management
Alaska State Office
701 "C" Street, Box 13
Anchorage, Alaska 99513

Re: BLM Procedures in Relocating Native Allotments

Dear Mr. Arndorfer:

In response to your recent letter concerning BLM procedures for relocating Native allotments, there seems to be a basic misunderstanding between BLM, the state, and IBLA. As I understand your position, BLM makes an initial decision whether to allow an allotment applicant to amend the land description in his or her application. This decision is made by BLM without input from potentially interested parties. Then, if BLM's decision is to allow the amendment, interested parties are given an opportunity to submit ANILCA section 905(a)(5) protests to the relocated application. However, at no time may interested parties challenge BLM's decision to allow the applicant to amend the land description.

The state feels that IBLA's February 8, 1985 order dismissing the state's appeal in the Margaret John relocation reflects IBLA's belief that BLM, as part of its approval process, does review challenges to the act of amending the land description. Your recent letter to me seems to be at odds with IBLA's order.

As indicated in the attached Request for Reconsideration, the state is asking IBLA to reconsider its dismissal of the state's appeal in Margaret John, in light of your letter. We are taking this action, first because we feel that the state's interests have been harmed by BLM's decision to allow Ms. John to amend her application, and second, because we are concerned about forever losing our right to appeal BLM's decision to allow the amendment to the land description if we do not appeal this decision promptly. The discrepancy between IBLA and BLM regarding the procedures to be followed in these cases is the cause of this concern.

H-2561-1 - NATIVE ALLOTMENTS
Letters from and to Tom Hawkins, State DNR, re: Relocated Allotments

Robert W. Arndorfer
May 17, 1985
Page 2

If, after reviewing the state's Request for Reconsideration, you feel that the state's interests in these cases can be protected through either present or modified procedures, please let me know.

Sincerely,

Tom Hawkins

Tom Hawkins
Director

H-2561-1 - NATIVE ALLOTMENTS
Letter, Secretary Andrus to Senator Stevens, BIA to Approve Allotment Relinquishments

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 12 1977

RECEIVED
ANCHORAGE AK.

Honorable Ted Stevens
United States Senate
Washington, D.C. 20510

Dear Ted:

Thank you for your letter of June 1, 1977, concerning the possible confusion between the Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA) over the authority to approve relinquishments of Native allotment applications.

The confusion has resulted from the absence of clear directives, either in the statutes or in the implementing departmental regulations, for either the BIA or BLM to approve relinquishments of Native allotments. Under the circumstances, I believe it is properly the responsibility of the Commissioner of Indian Affairs and his staff to approve relinquishments of allotment applications. Accordingly, I have asked the Commissioner of Indian Affairs to assume responsibility for approving such relinquishments in the future and to give immediate consideration to the relinquishments required for the airports at Sheldon's Point and Lime Village.

If we can be of further assistance to you, please do not hesitate to call on us.

Sincerely,

SECRETARY

H-2561-1 - NATIVE ALLOTMENTS
Stipulations of Settlement, Fanny Barr v. U.S.

United States Attorney
United States Department of Justice
Federal Building and U.S. Courthouse
Room C-252, Mail Box 9
701 "C" Street
Anchorage, Alaska 99513
907-271-5071

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

FANNY BARR, et al., Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	CIVIL NO. A76-160 STIPULATION OF SETTLEMENT

I

This lawsuit raises the legal issue whether several hundred Native allotment applications were filed with the Department of the Interior prior to the statutory deadline of December 18, 1971. A plaintiff class has been certified comprised of all persons who submitted allotment applications to RuralCAP prior to the statutory deadline but whose application was not forwarded to the Interior Department.

The land in question is scattered throughout rural Alaska. The factual basis on which the complex legal issues of apparent or implied authority will be resolved will involve extensive testimony from rural Alaskan residents around the State.

The lawsuit, by raising the possibility that rights exist in land that cannot presently be identified creates a possible cloud on all federal conveyances, which will linger until this lawsuit is resolved.

Recognizing that the disputed issues are complex and difficult, and that many of the class members acted in the good faith belief that they had done all required of them to obtain title to the land for which they had applied, the

parties, through their legal representatives, have arrived at a fair and reasonable compromise. The intent of this stipulation of settlement is to resolve once and for all the complex legal issues raised herein.

II

As soon as possible after this agreement is approved, the following notice will be published in the Anchorage Daily News, The Fairbanks News Minor, the Juneau Empire, and the Tundra Times and broadcast once a week for three successive weeks over stations KDLG in Dillingham, KYUK in Bethel, KICY in Nome, KOTZ in Kotzebue, and KJNP in North Pole.

> Alaska Natives whose application for a Native allotment was not filed by RuralCAP before the deadline of December 18, 1971, may get their land after all, because of a lawsuit brought by Alaska Legal Services on their behalf.
>
> If you can answer yes to all three questions below, you should send your name and address to: Fanny Barr Class, c/o Clerk, U.S. District Court, Federal Building, Anchorage, Alaska 99513, your letter must be received on or before _____*, 1982.
>
> 1. I filled out an application for a Native allotment and gave it to the RuralCAP worker, before December 18, 1971, but, to my knowledge, it was not delivered to the United States Government.
>
> 2. I am eligible for an allotment.
>
> 3. I am prepared to testify to these matters under oath and being fully aware of the penalties against perjury.
>
> Your letter must be received on or before _____*, 1982 to have it considered. Describe in your letter, as best you can, where the land you are claiming is located.

III

In addition, the following letter will be sent by Alaska Legal Services to all persons who ALSC has reason to believe might meet the criteria of paragraph 4 hereof:

*insert date 45 days from court approval

H-2561-1 - NATIVE ALLOTMENTS
Stipulations of Settlement, Fanny Barr v. U.S.

Dear Mr./Mrs._____

We are trying to identify all those Alaska Natives who filled out an application for a Native allotment and gave it to a RuralCAP representative before December 18, 1971, but whose application was not filed by RuralCAP before that date. If you are claiming to be such a person and can answer "yes" to all three questions below, you might be entitled to the allotment you applied for but only if you send your name and address to Fanny Barr Class, c/o Clerk, U.S. District Court, Federal Building, Anchorage, Alaska 99513. Your letter must be received on or before _____,* 1982.

1. I filled out an application for a Native allotment and gave it to the RuralCAP worker, before December 18, 1971, but, to my knowledge, it was not delivered to the United States Government.

2. I am eligible for an allotment.

3. I am prepared to testify to these matters under oath and being fully aware of the penalties against perjury.

Your letter must be received on or before _____,* 1982 to have it considered. Describe in your letter, as best you can, where the land you are claiming is located.

Sincerely,

ALSC

IV

This settlement agreement will be binding only if no more than 325 persons apply for class membership by the 45th day after this agreement is approved by the Court. The Settlement Agreement is further contingent upon the Court signing the parties proposed "Order Approving Class Action Settlement and Directing Entry of Judgment of Dismissal," attached hereto as Exhibit A. In addition if the United States becomes involved in a lawsuit raising the issue whether any application by a class member was timely filed

or challenging in any way this settlement or the allotment review process set forth in paragraph 6, the parties will not be bound by this settlement as to any class members whose allotment applications have not at that time been approved by the Secretary of the Interior.

V

All applications for Native allotment submitted to RuralCAP by members of plaintiff class will be deemed timely filed with the Department of the Interior; provided, however, that if upon survey it is determined that the land described in such application has been previously conveyed by the United States to any person, entity, or the State of Alaska, the United States shall not be bound to, nor will it initiate any court action to set aside said conveyance or recover said land. In such a case the applicant may seek any available remedy to establish his or her rights to the land, except through a lawsuit involving the United States. No person will be eligible for plaintiff class membership who did not apply by the 45th day after this agreement is approved by the Court.

VI

Upon notification that this agreement has become binding, and that issues of fact exist as to eligibility for class membership, the court will receive evidence and make findings as to eligibility of each applicant. In order to be determined eligible for class membership, each applicant must sign the "Consent to Adjudication" form set forth below. Refusal to sign will preclude a determination of eligibility.

CONSENT TO ADJUDICATION AND LIMITED WAIVER

I hereby agree that, if I am determined to be a member of the plaintiff class in Barr v. United States, A76-160 Civil (USDC Alaska), and if my application qualifies

for legislative approval pursuant to Section 905 of the Alaska National Interests Land Conservation Act (ANILCA) a protest period similar to that provided for in that section shall commence on the date a list of potential class members with my name on it is published. If a protest is filed within the period by a person or entity who could have protested under Section 905(a)(5) of ANILCA, or if the land I claim has been conveyed to any third party, I agree to quit-claim to the United States any interest I may have in the land so that my application may be adjudicated, and to abide with any final decision (including appropriate judicial review) rendered. If upon survey it is determined that the land described in such application has been previously conveyed by the United States to any person, entity, or the State of Alaska, the United States shall not be bound to, nor will it initiate any court action to set aside said conveyance or reissue said land. I hereby waive any right I may have to compel such action or to any compensation or other relief from the United States.

VII

As soon as possible after _____*, 1982, a list (or successive lists) of potential class members for which adequate land descriptions are available shall be published under the following caption:

> This is a listing of persons whose applications for Native allotments may be deemed timely filed pursuant to a settlement agreement in Fanny Barr et al. v. United States, A76-160 Civil (USDC Alaska) signed on _____. These applications may qualify for legislative approval under Section 905 of the Alaska National Interest Lands Conservation Act unless a protest is filed, as provided for in that section by _____**, 1982.

**Insert date which is 6 months after publication.

VIII

Upon approval of this settlement, this lawsuit will be dimissed with prejudice. All parties hereto waive the right of appeal of the Court's determination of eligibility of class members.

IX

The State of Alaska and other parties, by their signature hereto, agree that allotment applications deemed timely filed pursuant to this settlement agreement which describe land to which legal or equitable title has vested in the State of Alaska pursuant to the Alaska Statehood Act, shall be adjudicated pursuant to the requirements of the Act of May 17, 1906. Such adjudication, if any, shall be made pursuant to procedures developed by the Department of the Interior in consultation with counsel for plaintiffs and for the State of Alaska. Should it be finally determined after such an adjudication as described above (including any appeal), that the applicant has met the requirements of the Act of May 17, 1906, the State of Alaska shall quitclaim such land to the Federal government, and the quitclaimed acreage shall be credited to the State's entitlement under Section 6(b) of the Alaska Statehood Act.

The provisions of this paragraph shall be binding on the State of Alaska only if the State is required to quitclaim land described in 15 or fewer allotment applications. Should the State withdraw from this settlement pursuant to the terms of the preceding provision, the United States will not be bound by this settlement as to any class members whose allotment applications have not at that time been approved by the Secretary of the Interior.

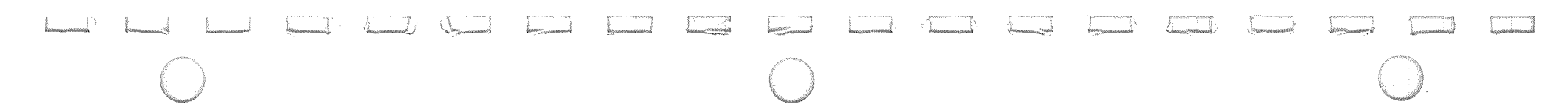
H-2561-1 - NATIVE ALLOTMENTS
Stipulations of Settlement, Fanny Barr v. U.S.

This agreement is signed on Aug 3, 1982
by the legal representative of the parties:

For the United States
MICHAEL R. SPAAN
United States Attorney

For Plaintiff Class
CRAIG J. TILLERY
Alaska Legal Services

For the State of Alaska
CLAIRE STEFFENS
Office of Attorney General
State of Alaska



H-2561-1 - NATIVE ALLOTMENTS
Stipulations on Class Eligibility, Barr

FILED
JAN 09 1985
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By ____ Dep.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

FANNY BARR, et al., Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	CIVIL NO. A76-160 STIPULATION REGARDING PROCEDURES FOR DETERMINATION OF CLASS ELIGIBILITY

On October 8, 1982, the Court entered its judgment approving the settlement in Barr v. United States. Paragraph five of the judgment states that the Court, upon motion of the parties, will "develop procedures to receive evidence and to make findings as to whether each applicant is eligible for class membership." The purpose of this stipulation is to set forth procedures agreed upon by the parties, through their legal representatives, for determination of class eligibility.

1. Pursuant to paragraph VII of the Stipulation of Settlement, filed August 3, 1982, partial lists of potential class members were published on January 5, 1984, and November 1, 1984. Pursuant to paragraph VI of the Stipulation of Settlement, the Court will also receive evidence and make findings as to eligibility of each applicant. A notice of the time period for submitting evidence of class eligibility of those listed in the first two publications shall be published on or before January 31, 1985. The notice shall state:

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
ADMINISTRATIVE AND STATEWIDE OFFICE
880 WEST 9TH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501
(907) 276-0252

NOTICE
(Fanny Barr Class Membership Eligibility)

NOTICE IS HEREBY GIVEN that interested persons shall have the opportunity to submit evidence regarding the eligibility of certain potential class members in Fanny Barr v. United States, A76-160 Civil (USDC Alaska). Partial lists of the names, serial numbers, and land descriptions of potential Barr class members were published on January 5, 1984, and November 1, 1984. Copies of the publications are available at the Bureau of Land Management, 701 "C" Street, Anchorage, Alaska 99513.

In accordance with court order of January 10, 1985, any person who has evidence that a potential class member is not eligible for class membership may submit that evidence with the Bureau of Land Management. The requirements for class eligibility are as follows: (1) the applicant gave a Native allotment application to a RuralCAP worker before December 18, 1971, and the application was not delivered to the United States government; (2) the applicant is a full or mixed-blood Native and 21 years of age; (3) the applicant has not already received a Native allotment; (4) the applicant sent a letter to the court before November 22, 1982; and (5) the applicant submitted a consent to adjudication and limited waiver to BLM. Any evidence submitted pursuant to this notice must relate to one or more of the above requirements.

All evidence regarding class eligibility of the previously published list of potential class members must be received by the Bureau of Land Management at the above address by April 30, 1985.

2. The time period for submitting evidence as to the eligibility of potential class members whose names have not yet been published pursuant to paragraph VII of the Stipulation of Settlement will be imposed when their names are published. The publication will notify interested persons of the right to file protests under Section 905 of the Alaska National Interest Lands Conservation Act, and/or evidence regarding class eligibility.

The time periods for filing protests and evidence will run simultaneously and will close on the 180th day from the date of the first publication of that notice.

3. Evidence regarding class eligibility must relate to whether the potential class member meets the requirements for class membership. The requirements for class eligibility are as follows: (1) the applicant gave a Native allotment application to a RuralCAP worker before December 18, 1971, and the application was not delivered to the United States government; (2) the applicant is a full or mixed-blood Native and 21 years of age; (3) the applicant has not already received a Native allotment; (4) the applicant sent a letter to the court before November 22, 1982; and (5) the applicant submitted a consent to adjudication and limited waiver to BLM. Any evidence submitted pursuant to this notice must relate to one or more of the above requirements.

4. After the period for receiving evidence of class eligibility has expired, the United States and the State of Alaska shall have 30 days to examine any evidence submitted to determine which potential class members from the published list they want to challenge. A list of names to be challenged shall be served on plaintiffs within said 30 day period. Persons whose names were on the published list and who were not challenged by a party within 30 days shall be deemed class members.

5. All challenged applicants for class membership will be referred to a hearing for resolution of class eligibility. An Administrative Law Judge from the Office of Hearings and Appeals,

H-2561-1 - NATIVE ALLOTMENTS
Stipulations on Class Eligibility, Barr

Hearings Division, United States Department of the Interior, a Master appointed by the Court shall preside at the hearing. The location of the hearing shall be decided upon by the Administrative Law Judge or Master. A decision on class eligibility shall be made by the Administrative Law Judge or Master immediately upon conclusion of the hearing. A party dissatisfied with the decision of the Administrative Law Judge or Master shall have thirty days in which to appeal to the Court.

6. Applicants who sent a letter to the Court on or before November 22, 1982, pursuant to the Stipulation of Settlement, but who do not qualify for class membership, can be withdrawn from further consideration on their class eligibility by Stipulation of the parties.

7. This agreement is signed by the legal representatives of the parties.

DATE: Jan 9, 1985 — For the United States

DATE: January 9 1985 — For the Plaintiff Class

DATE: January 8, 1985 — For the State of Alaska

FILED
JAN 10 1985
UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
DATE: Jan 10 1985 Deputy

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

cc: Fleurant, AK LEGAL SVCS
US ATTORNEY
Malchick, ASST AG

H-2561-1 - NATIVE ALLOTMENTS
List of Core Townships

Region - Aleut Serial No. AA-8181 Entitlement 12(c)- 0 14(h)(8)- 53,383.24

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	*Reallocation 12(b)
Akutan	Akutan Corporation	AA-6647-A-C	70S, 112W, SM	92,160	
Atka	Atxam Corporation	AA-6649-A-E	92S, 176W, SM	92,160	
Belkofski	Belkofski Corporation	AA-6650-A, B	59S, 84W, SM	69,120	
False Pass	False Pass Corporation	AA-6666-A-C	61S, 94W, SM	69,120	
King Cove	The King Cove Corporation	AA-6675-A-C	59S, 86W, SM	115,200	
Nelson Lagoon	Nelson Lagoon Corporation	AA-6681-A-B	48S, 77W, SM	69,120	
Nikolski	Chaluka Corporation	AA-6684-A, B	83, 84S; 136W, SM	69,120	
Pauloff Harbor	Sanak Corporation	AA-6689-A	66S, 90W, SM	69,120	
St. George	St.George Tanaq Corporation	AA-6696-A-E	41S, 129W, SM	115,200	
St. Paul	Tanadgusix Corporation	AA-6697-A-F	38S; 131, 132W, SM	138,240	
Sand Point	Shumagin Corporation	AA-6699-A-E	56S, 73W, SM	138,240	
Unalaska	Qunalashka Corporation	AA-6709-A-G	73S, 118W, SM	115,200	
Unga	Unga Corporation	AA-6710-A-C	58S, 74W, SM	69,120	

* Final reallocations not received from Region.

Region - Arctic Slope Serial No. F-19148 Entitlement 12(c)- 4,011,728.72 14(h)(8)- 62,119.84

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	Reallocation 12(b)
Anaktuvuk Pass	Nunamiut Corporation, Inc.	F-14829-A, B	15S, 2E, UM	92,160	
Atkasook	Atkasook Corporation	F-14823-A	13N, 21W, UM	69,120	
Barrow	Ukpeagvik Inupiat Corporation	F-14836-A	22, 23N; 18W, UM	161,280	48,130
Kaktovik	Kaktovik Inupiat Corporation	F-14870-A, B	9N, 33, 34E, UM	92,160	
Nooiksut	Kuugpik Corporation, Inc.	F-14909-A	12N, 4E, UM	115,200	8,493
Point Hope	Tigara Corporation	F-14921-A	34N, 35W, KM	138,240	
Point Lay	Cully Corporation, Inc.	F-14922-A	8N, 48W, UM	69,120	18,415
Wainwright	Olgoonik Corporation, Inc.	F-14954-A	15N, 32W, UM	115,200	44,625

H-2561-1 - NATIVE ALLOTMENTS
List of Core Townships

Region - Calista — Serial No. AA-8099 — Entitlement 12(c)- 0 — 14(h)(8)- 213,533.07

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	Reallocation 12(b)
Akiachak	Akiachak, Limited	F-14023-A	10N, 69W, SM	115,200	14,591
Akiak	Kokarmuit Corporation	F-14024-A	9, 10N; 67W, SM	115,200	9,273
Alakanuk	Alakanuk Native Corporation	F-14025-A	30N, 82W, SM	138,240	20,525
Andreafsky	Nerklikmute Native Corporation	F-14030-A	23N, 76W, SM	69,120	3,691
Aniak	The Kuskokwim Corporation	F-14031-A	17N, 57W, SM	115,200	10,987
Atmautluak	Atmautluak, Limited	F-14035-A	9N, 73W, SM	92,160	5,270
Bethel	Bethel Native Corporation	F-14038-A	8N, 71W, SM	161,280	75,815
Bill Moores Slough	Kongiklomuit Yuita Corp.	F-14039-A	33N, 76W, SM	69,120	2,021
Chefornak	Chefarnrmute, Inc.	F-14040-A	1N, 86W, SM	92,160	7,120
Chevak	Chevak Company	F-14049-A	17N, 90W, SM	138,240	18,591
Chuloonawik	Chuloonawik Corporation	F-19671-A	32N, 80W, SM	69,120	1,186
Crooked Creek	The Kuskokwim Corporation	F-14990-A	21N, 48W, SM	92,160	5,581
Eek	Iqfijouq Company	F-14854-A	2N, 73W, SM	115,200	8,790
Emmonak	Emmonak Corporation	F-14855-A	31N, 81W, SM	138,240	21,908
Georgetown	The Kuskokwim Corporation	F-14860-A	21N, 46W, SM	69,120	1,977
Goodnews Bay	Kuitsarak Incorporated	F-14862-A	12S, 73W, SM	115,200	7,801
Hamilton	Nunapitllurag Corporation	F-14864-A	32N, 78W, SM	69,120	1,530
Hooper Bay	Sea Lion Corporation	F-14866-A	17N, 93W, SM	161,280	27,381
Kalskag	The Kuskokwim Corporation	F-14871-A	17N, 61W, SM	92,160	6,988
Kasigluk	Kasigluk Incorporated	F-14873-A	9N, 75W, SM	115,200	13,580
Kipnuk	Kuskaktlik Limited	F-14875-A	3S, 86W, SM	115,200	15,778
Kongiganek	Qemirtalet Coast Corporation	F-14878-A	2S, 79W, SM	115,200	10,859
Kotlik	Kotlik Yupik Corporation	F-14879-A	28S, 26W, KRM	115,200	9,669
Kwethluk	Kwethluk Incorporated	F-14883-A	8N, 69W, SM	138,240	19,777

H-2561-1 - NATIVE ALLOTMENTS
List of Core Townships

Region - Calista Serial No. AA-8099 (CONT'D)

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	Reallocation 12(b)
Kwigillingok	Kwik Incorporated	F-14884-A	3, 4S; 81W, SM	115,200	10,864
Lime Village	Lime Village Company	F-14887-A	16N, 34W, SM	69,120	1,142
Lower Kalskag	The Kuskokwim Corporation	F-14888-A	16N, 62W, SM	92,160	7,383
Marshall	Maserculiq Incorporated	F-14892-A	21N, 78W, SM	115,200	9,466
Nekoryuk	Nima Corporation	F-14895-A	3, 4N, 97W, SM	115,200	13,448
Mt. Village	Azachorok, Inc.	F-14898-A	23N, 79W, SM	138,240	21,448
Napaimute	The Kuskokwim Corporation	F-14900-A	17N, 52W, SM	69,120	1,889
Napaktiak	Napaktiak Corporation	F-14901-A	7N, 72W, SM	115,200	11,427
Napaskiak	Napaskiak Corporation	F-14902-A	7N, 71W, SM	115,200	9,681
Newtok	Newtok Corporation	F-14904-A	10N, 87W, SM	92,160	5,537
Nightmute	NGTA, Incorporated	F-14905-A	5N, 88W, SM	69,120	4,351
Nunapitchuk	Nunapitchuk Limited	F-14914-A	9N, 74W, SM	115,200	14,284
Nhogamiut	OHOG, Incorporated	F-14915-A	17N, 69W, SM	69,120	1,899
Oscarville	Oscarville Native Corporation	F-14916-A	7N, 71W, SM	69,120	2,329
Paimiut	Paimiut Corporation	AA-9014-A	19N, 91W, SM	69,120	1,899
Pilot Station	Pilot Station Native Corporation	F-14918-A	21N, 74W, SM	115,200	14,152
Pitkas Point	Pitkas Point Native Corporation	F-14919-A	22, 23N; 76W, SM	69,120	3,911
Platinum	ARVIQ Incorporated	F-14920-A	13S, 75W, SM	69,120	2,988
Quinhagak	Qanirtuug Incorporated	F-14885-A	6S, 74W, SM	115,200	15,287
Red Devil	The Kuskokwim Corporation	F-14924-A	20N, 44W, SM	69,120	1,638
Russian Mission (k)	The Kuskokwim Corporation	F-14926-A	17N, 65W, SM	92,160	5,010
Russian Mission (y)	Russian Mission Native Corporation	F-14927-A	20N, 66W, SM	92,160	5,581
St. Mary's	St. Mary's Native Corporation	F-14937-A	23N, 76W, SM	115,200	13,053
Salmon Bay	Askinuk Corporation	F-14929-A	20N, 90W, SM	92,160	8,438

H-2561-1 - NATIVE ALLOTMENTS
List of Core Townships

Region - Calista Serial No. AA-8099 (CONT'D)

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	Reallocation 12(b)
Sheldon Point	Swan Lake Corporation	F-14933-A	28N, 84W, SM	92,160	5,757
Sleetmute	The Kuskokwim Corporation	F-14936-A	19N, 44W, SM	92,160	7,207
Stony River	The Kuskokwim Corporation	F-14941-A	20N, 40W, SM	69,120	3,603
Toksook Bay	Nunakauiak Yupik Corporation	F-14948-A	5N, 90W, SM	115,200	12,306
Tuluksak	Tulkisarmute Incorporated	F-14949-A	12N, 66W, SM	92,160	8,043
Tuntutuliak	Tuntutuliak Land Limited	F-14950-A	3N, 77W, SM	115,200	9,273
Tununak	Tununrmiut Rinit Corporation	F-14951-A	6N, 91W, SM	115,200	13,089
Umkumiute	Umkumiute Limited	F-19558-A	5N, 91W, SM	69,120	1,186

Group	Serial No.	Entitlement (14h2)
Nagamut	AA-9902	6,080
Nunivak	AA-9798	4,160, Ineligible (closed)

Region - Bering Straits Serial No. AA-10686, F-19149 Entitlement 12(c)- 0 14(h)(8)- 109,895.48

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	Reallocation 12(b)
Brevig Mission	Brevig Mission Native Corporation	F-14841-A-D	2S, 38W, KM	92,160	8,320
Council	Council Native Corporation	F-19525-A-C	7S, 25W, KM	69,120	7,040
Golovin	Golovin Native Corporation	F-14861-A-B	11S, 22W, KM	92,160	8,960
Inalik	Inalik Native Corporation	F-14869, A, B, D	4N, 49W, KM	92,160	7,680
King Island	King Island Native Corporation	F-19573-A-C	6S, 46, 47W, KM	115,200	9,600
Koyuk	Koyuk Native Corporation	F-14881-A-D	6S, 12W, KM	92,160	8,960
Marys Igloo	Marys Igloo Native Corporation	F-14881-A-D	4S, 31W, KM	92,160	7,680
Nome	Sitnasuak Native Corporation	F-14908-A-C	11S; 33, 34W, KM	161,280	42,880
St. Michael	St. Michael Native Corporation	F-14930-A-D	23S; 17, 18W, KM	115,200	10,240
Shaktoolik	Shaktoolik Native Corporation	F-14932-A-E	13S, 13W, KM	115,200	9,600

H-2561-1 - NATIVE ALLOTMENTS
List of Core Townships

egion - Bering Straits Serial No. AA-10686, F-19149 (CONT'D)

illage	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	Reallocation 12(b)
hishmaref	Shishmaref Native Corporation	F-14934-A-C	10N, 35W, KM	115,200	9,600
olomon	Solomon Native Corporation	F-19578-A	11S, 27W, KM	69,120	0
tebbins	Stebbins Native Corporation	F-14939-A-B	23S, 19W, KM	115,200	10,880
eller	Teller Native Corporation	F-14946-A-B	3S; 37, 38W, KM	115,200	10,880
nalakleet	Unalakleet Native Corporation	F-14952-A-B	18,19S; 11W, KM	161,280	20,480
ales	Wales Native Corporation	F-14955-A-D	2, 3N; 4W, KM	92,160	8,960
hite Mountain	White Mountain Native Corporation	F-14956-A-B	9S, 24W, KM	115,200	9,600

roup	Serial No.	Entitlement (14h2)
aycock	F-21868	6,720

egion - Bristol Bay Serial No. AA-8097 Entitlement 12(c)- 0 14(h)(8)- 87,784.39

illage	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	Reallocation 12(b)
leknagik	Aleknagik Natives Limited	AA-6648-A	10S; 8E, 8W, SM	115,200	3,140
hignik	Far West, Incorporated	AA-6652-A-J	4S, 8W, SM	115,200	3,886
hignik Lagoon	Chignik Lagoon Native Corporation	AA-6654-A-G	4S, 9W, SM	92,160	3,306
hignik Lake	Chignik River Limited	AA-6655-A-H	4S, 6W, SM	92,160	7,801
larks Point	Saguyak, Incorporated	AA-6657-A-H	1S, 6W, SM	92,160	18,788
illingham	Choggiung, Limited	AA-6659-A-J	13S; 5E,6W, SM	161,280	3,545.21
egik	Becharof Corporation	AA-6660-A-K	16S, 6W, SM	92,160	2,310
uk	Choggiung, Limited	AA-6662-A-K	16S, 6W, SM	69,120	7,189
wok	Ekwok Native Limited	AA-6663-A-J	9,10S; 4W, SM	92,160	1,522
giung	Igiugig Native Corporation	AA-6669-A-K	10S, 3W, SM	69,120	503
liamna	Illiamna Natives Limited	AA-6670-A-H	5S, 3W, SM	69,120	2,839
aneff Bay	Bay View, Inc.	AA-6671-A-G	4S, 6W, SM	69,120	12,412

Region - Chugach | Serial No. AA-8096 | Entitlement 12(c)- 338,666.88 | 14(h)(8)- 33,449.85

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	Reallocation 12(b)
Chenega	The Chenega Corporation	AA-8446-A-B	2N, 8E, SM	69,120	6,972.61
English Bay	The English Bay Corporation	AA-6664-A-E	9S, 16W, SM	69,120	7,288.22
Eyak	The Eyak Corporation	AA-8447-A-E	15S, 3W, CM	115,200	33,530.11
Port Graham	The Port Graham Corporation	AA-6695-A-D	9, 10S; 15W, SM	92,160	19,482.33
Tatitlek	The Tatitlek Corporation	AA-6703-A-F	11, 12S; 8W, CM	115,200	22,845.79

Group	Serial No.	Entitlement (14h2)
Grouse Creek	AA-11203	6,720

Region - Cook Inlet | Serial No. AA-8098, AA-11153 | Entitlement 12(c)- **33.15 townships | 14(h)(8)- **3.58 townships

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	Reallocation 12(b)
Chickaloon	Chickaloon Moose Creek Native Assn.	AA-8489-A, B	20N, 6E, SM	66,739/61,651*	
Eklutna	Eklutna, Inc.	AA-6661-A-H	16N; 1E, 1W, SM	92,160	
Knik	Knikatnu, Inc.	AA-8485-A-C	16N, 3W, SM	55,217*	
Ninilchik	Ninilchik Natives Association,Inc.	AA-6686-B, D (AA-6686-A & C closed)	1, 2S; 14W, SM	115,200	
Salamatof	Salamatof Native Association, Inc.	AA-6698-D	6N, 12W, SM	76,229*	
Seldovia	Seldovia Native Association, Inc.	AA-6701-A-G	8S, 14W, SM	115,200	
Tyonek	The Tyonek Native Corporation	AA-6707-A-F	11, 12N 10W; 11N, 11W, SM	115,200	

Group	Serial No.	Entitlement (14h2)
Alexander Creek	AA-58239	
Caswell	AA-10552	7,680
Gold Creek/Susitna	AA-11160	3,840
Montana Creek	AA-10553	7,680
Point Possession	AA-11128	4,480

*Adjusted entitlement pursuant to the Lake Clark Land Trade Agreement, Sec. 12(a)(3) of P.L. 94-204, and Sec. 4(a) of P.L. 94-456.

**Adjusted entitlement pursuant to Sec. 12(b) of P.L. 94-204, as amended.

H-2561-1 - NATIVE ALLOTMENTS
List of Core Townships

Region - Bristol Bay Serial No. AA-8097 (CONT'D)

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	Reallocation 12(b)
Kokhanok	Alaska Peninsula Corporation	AA-6673-A-L	8S, 32W, SM	92,160	9,648
Koliganek	Koliganek Natives Limited	AA-6676-A-L	8S, 47W, SM	92,160	3,910
Levelock	Levelock Natives Limited	AA-6678-A-K	12S, 45W, SM	92,160	4,611
Manokotak	Manokotak Natives Limited	AA-6679-A-K	14S, 59W, SM	115,200	10,420
Naknek	Paug-Vik Incorporated, Limited	AA-6680-A-J	16, 17S; 46W; 16, 17S;47W, SM	115,200	13,590
Newhalen	Alaska Peninsula Corporation	AA-6683-A-L	8S, 47W, SM	69,120	1,920
New Stuyahok	Stuyahok Limited	AA-6683-A-L	8S, 47W, SM	115,200	3,742
Nondalton	Kijik Corporation	AA-6686-A-D	2S, 32W, SM	115,200	11,450
Pedro Bay	Pedro Bay Corporation	AA-6690-A-D	4S, 28W, SM	92,160	4,848
Perryville	Oceanside Corporation	AA-6691-A-I	49S, 64W, SM	92,160	1,766
Pilot Point	Pilot Point Native Corporation	AA-6692-A-M	30S, 51W, SM	92,160	7,819
Portage Creek	Choggiung Limited	AA-6717-A-I	15S, 51W, SM	69,120	72,704.79
Port Heiden	Alaska Peninsula Corporation	AA-6693-A-M	30S, 59W, SM	69,120	0
South Naknek	Alaska Peninsula Corporation	AA-6747-A-M	17S, 46W, SM	92,160	0
Togiak	Togiak Natives Limited	AA-6705-A-M	13S, 67W, SM	138,240	19,253
Twin Hills	Twin Hills Native Corporation	AA-6706-A-E	13S, 66W, SM	69,120	838
Ugashik	Alaska Peninsula Corporation	AA-6708-A-I	31S, 50W, SM	69,120	598

Group	Serial No.	Entitlement (14h2)
Olsonville	AA-10538	7,680
Port Alsworth	AA-11157	2,240
Savonski	AA-11139	2,560

H-2561-1 – NATIVE ALLOTMENTS
List of Core Townships

Region - AHTNA Serial No. AA-8184 Entitlement 12(c)- 992,030.93 14(h)(8)- 17,312.60

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	*Reallocation 12(b)
Cantwell	AHTNA, Inc.	F-14844-A	17S, 7W, FM	69,120	
Chistochina	AHTNA, Inc.	AA-6656-A	9N, 4E, CM	69,120	
Chitina	Chitina Native Corporation	AA-6653-A, B	3, 4S, 5E, CM	115,200	
Copper Center	AHTNA, Inc.	AA-6658-A	2N; 1E, 1W, CM	115,200	
Gakona	AHTNA, Inc.	AA-6666-A, B	6N, 1E, CM	69,120	
Gulkana	AHTNA, Inc.	AA-6667-A-C	6N, 1W, CM	92,160	
Mentasta Lake	AHTNA, Inc.	AA-6716-A-C	13N; 8, 9E, CM	69,120	
Tazlina	AHTNA, Inc.	AA-6704-A, B	3N, 1W, CM	92,160	

Group	Serial No.	Entitlement (14h2)
**Little Lake Louise	AA-10537	1,600
**Lower Tonsina	AA-10553	1,280
**Nabesna	AA-11140	1,280
**Slana	AA-10536	7,040
**Twin Lakes	AA-10437	2,240

*Final reallocations not received from Region.

**Eligibility on appeal in civil court.

Region - Koniag Serial No. AA-8182 Entitlement 12(c)- 0 14(h)(8)- *53,407.37

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	**Reallocation 12(b)
Afognak	Afognak Native Corporation	AA-6645-A, B	25S; 21, 22W, SM	138,240	
Akhiok	Akhiok-Kaguyak, Inc.	AA-6646-A	37S, 31W, SM	69,120	
Anton Larson Bay	Anton-Larson, Inc.	AA-8640-A, B		*	
Ayakulik	Ayakulik, Inc.	AA-8482-A	34S, 33W, SM	442*	
Bells Flat	Bells Flats Natives, Inc.	AA-8459-A		*	
Kaguyak	Akhiok-Kaguyak, Inc.	AA-6672-A, B	38S, 29W, SM	69,120	
Kagluk	Koniag, Inc.	AA-6674-A	30S, 32W, SM	92,160	
Lar[illegible] Bay	Koniag, Inc.	AA-6677-A, B	[illegible]S, 29W, SM	116,280	

Region - Koniag Serial No. AA-8102 (CONT'D)

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	**Reallocation 12(b)
Litnik	Litnik, Inc.	AA-8490-A, B		*	
Old Harbor	Old Harbor Native Corporation	AA-6687-A	34S, 25W, SM	115,200	
Ouzinkie	Ouzinkie Native Corporation	AA-6688-A, B	26S, 20W, SM	115,200	
Port Lions	Afognak Natives Corporation	AA-6694-A	26, 27S; 22W, SM	92,160	
Port William	Shuyak, Inc.	AA-8461-A, B	19S, 20W, SM	*	
Uganik	Uganik Natives Inc.	AA-8492-A, B	27, 28S; 26W, SM	743.13*	
Uyak	Uyak Natives Inc.	AA-6711-A, B	29S; 29, 30W, SM	383*	
Woody Island	Lesnoi, Inc.	AA-8448-A-B	27, 28S; 19W, SM	115,200	

Group	Serial No.	Entitlement (14h2)
***Anton Larson	AA-9685	2,280
***Bells Flats	AA-9692	4,880
***Litnik	AA-9684	2,240
***Uganik	AA-9693	4,880

*Koniag Region: Total 12(a) conveyances affected by P.L. 96-487, Sec. 1427. Uyak, Uganik and Ayakulik to receive 1 square mile (acreage charged will be actual acres). Anton Larsen, Bells Flats, Litnik and Port Williams to receive acreage only under the Afognak Joint Venture.

**Reallocation by agreement and selections. Selections in deficiency withdrawal relinquished pursuant to ANILCA Sec. 1427.

***Deemed eligible as village pursuant to Sec. 1427 of ANILCA. No group entitlement.

Region - NANA Serial No. F-19154, F-21870 Entitlement 12(c)- 746,130.60 14(h)(8)- 78,049.82

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	Reallocation 12(b)
Ambler	NANA	F-14828-A-L	20N, 5E, KM	92,160	*
Buckland	NANA	F-14842-A-K	7N, 12W, KM	92,160	*
Deering	NANA	F-14851-A-N	8N, 19W, KM	92,160	*
Kiana	NANA	F-14874-A-K	18N, 8W, KM	115,200	*
Kivalina	NANA	F-14876-A-N	27N, 26W, KM	92,160	*
Kobuk	NANA	F-14877-A-E	17, 18N; 9E, KM	69,120	*

Region - NANA Serial No. F-19154, F-21870 (CONT.)

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	Reallocation 12(b)
Kotzebue	Kikiktagruk Inupiat Corporation	F-14888-A, C-K	17N, 18W, KM	161,280	3,104
Noatak	NANA	F-14987-A-M	26N, 19W, KM	115,200	*
Noorvik	NANA	F-14910-A-K	17N, 18W, KM	138,240	*
Selawik	NANA	F-14930-A-M	14N, 6W, KM	138,240	*
Shungnak	NANA	F-14935-A-J	17N, 8E, KM	92,160	*

*No specific reallocation of acreage due to merger with regional corporation.

Region - Doyon Serial Nos. AA-8103, AA-11156, F-19155, F-21901, F-21902, F-21903, F-21904, F-21905, F-21906 Entitlement 12(c)- 8,356,571.96 14(h)(8)- 146,623.81

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	Reallocation 12(b)
Alatna	K'eyitl'ets'ina, Limited	F-14826-A, B	20N, 24W, FM	69,120	
Allakaket	K'eyitl'ets'ina, Limited	F-14827-A, B	20N, 24W, FM	92,160	
Anvik	Ingalik, Incorporated	F-14832-A, B	30N, 58W, SM	92,160	63
Beaver	Beaver Kwit'chin Corporation	F-14837-A	18N, 2E, FM	92,160	44,565
Birch Creek	Tihteet'Ait, Inc.	F-14840-A, B	17N, 9E, FM	69,120	63,482
Chalkyitsik	Chalkyitsik Native Corporation	F-14846-A, B	21N; 1B, 19E, FM	69,120	22,670
Circle	Danzhit Hanlaii Corporation	F-14989-A, B	12N, 18E, FM	92,160	23,822
Dot Lake	Dot Lake Native Corporation	F-14852-A, B	22N, 7E, CM	69,120	
Eagle	Hungwitchin Corporation	F-14853-A, B	1S, 33E, FM	92,160	
Evansville	Evansville, Inc.	F-19328-A, B	24N, 18W, FM	69,120	
Ft. Yukon	Gwitchyaazhee Corporation	F-14857-A, B	20N; 11, 12E, FM	161,280	53,199
Galena	Gana-a'Yoo, Limited	F-14858-A, B	9S, 10E, KM	115,200	
Grayling	Nee-Yea-Lingde Corporation	F-14863-A, B	32N, 58W; 33N, 57W, SM	92,160	
Healy Lake	Mendas Cha-ag Native Corporation	F-19329-A, B	1B, 11S; 15E, FM	69,120	

H-2561-1 - NATIVE ALLOTMENTS
List of Core Townships

Region - Doyon

Serial Nos. AA-8103, AA-11156, (CONT.)
F-19155, F-21901, F-21902, F-21903, F-21904,
F-21905, F-21906

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 12(a)	Reallocation 12(b)
Holy Cross	Deloycheet, Inc.	F-14865-A, B	24N, 67W, SM	138,240	487
Hughes	K'oyitl'ots'ina, Limited	F-14867-A, B	8N, 22E, KM	69,120	
Huslia	K'oyitl'ots'ina, Limited	F-14868-A, B	4N, 12E, KM	115,200	
Naltag	Gana-a'Yoo, Limited	F-14872-A, B	13S, 1E, K.	115,200	
Nyukuk	Gana-a'Yoo, Limited	F-14882-A, B	7S, 6E, KM	92,160	
McGrath	MTNT, Limited	F-14889-A	33N, 33W, SM	92,160	
Nunley Hot Springs	Bean Ridge Corporation	F-14891-A, B	2N, 15W, FM	69,120	
Minto	Seth-de-ya-ah Corporation	F-14897-A-C	4N, 9W, FM	115,200	
Nenana	Toghottele Corporation	F-14903-A-F	4S, 8W, FM	138,240	
Nikolai	MTNT, Limited	F-14906-A	28, 29S; 23, 24E, KM	69,120	
Northway	Northway Natives, Inc.	F-14912-A, B	14N, 18E, CM	115,200	
Nulato	Gana'a'Yoo Limited	F-14913-A, B	9S, 4E, KM	115,200	141
Nunapart	Baan O Yael Kon Corporation	F-14923-A, B	8N, 13W, FM	92,160	
Ruby	Dineega Corporation	F-14925-A, B	9S, 17E, KM	115,200	
Shageluk	Zho-tse, Inc.	F-14931-A, B	38N, 55W, SM	92,160	
Stevens Village	Dinyea Corporation	F-14940-A-V	14N, 7W, FM	92,160	19,617
Takotna	MTNT, Limited	F-14942-A	34N, 36W, SM	69,120	
Tanacross	Tanacross Incorporated	F-14943-A, B	18, 19N; 11E, CM	92,160	
Tanana	Tozitna, Limited	F-14944-A, B	4N, 22W, FM	138,240	
Telida	MTNT, Limited	F-14945-A	24S, 29E, KM	69,120	

Group	Serial No.	Entitlement (14h2)
Birch Creek/Kantishna	F-22918	3,200
Minyon Village	F-22448	5,760
Nicken	F-22976	4,480
Beacons Landing	AA-11718	1,280
Flat	AA-11719	1,920
Okrines	F-22977	2,880

H-2561-1 - NATIVE ALLOTMENTS
List of Core Townships

Group	Serial No.	Entitlement (14h2)
Medfra	AA-12377	2,560
Minchumina	AA-11184	2,240
Wiseman	F-19749	5,760

Region - Sealaska Serial No. AA-8100 Entitlement 12(c)- 0 14(h)(8)- 267,249.86

Village	Corporate Name	Serial Nos.	Core Township	Entitlement 16(b)
Angoon	Kootznoowoo, Inc.	AA-6978-A-C	58S, 67E, CM	23,040
Craig	Shan-Seet Incorporated	AA-6769-A-B	74S, 81E, CM	23,040
Hoonah	Huna Totem Corporation	AA-6980-A-C	43S, 61E, CM	23,040
Hydaburg	Haida Corporation	AA-6981-A-C	77S; 83, 84E, CM	23,040
Kake	Kake Tribal Corporation	AA-6982-A-B	56S, 72E, CM	23,040
Kasaan	Kavilco Incorporated	AA-6983-A-B	73S, 86E, CM	23,040
Klawock	Klawock Heenya Corporation	AA-6984-A-B	73S, 81E, CM	23,040
Klukwan (village and reserve)	Klukwan, Inc.	AA-6985-B	none	*23,040
Saxman	Cape Fox Corporation	AA-6986-A-C	7S, 76S; 91E, CM	23,040
Yakutat	Yak-Tak Kwaan Incorporated	AA-6987-A-B	27S; 33, 34E, CM	23,040

Group	Serial No.	Entitlement (14h2)
Knight Island	AA-11847	4,800 - closed - 11/7/86

*ANCSA Sec. 16(d)

1737g

H-2561-1 - NATIVE ALLOTMENTS
Regional Solicitor's Opinion, Procedures for Determining and Dealing with Third Party Purchases of Land Claimed as a Native Allotment

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION
701 C Street, Box 34
Anchorage, Alaska 99513

IN REPLY REFER TO

January 27, 1986

MEMORANDUM

TO: State Director
Alaska State Office
Bureau of Land Management

FROM: Deputy Regional Solicitor
Alaska Region

SUBJECT: Procedures for Determining and Dealing with Third Party Purchasers of Land Claimed as a Native Allotment

I.

BACKGROUND AND SHORT ANSWER

There has been a continuing need for definitive legal advice on how BLM should process Native allotment applications when it appears that a third party currently owns part or all of the land claimed as the allotment. The situation arises when the original patentee, generally the State of Alaska or a Native corporation, has conveyed land it received from the United States pursuant to a land disposal program or by direct sale. Stipulated procedures agreed to by the court in Aguilar v. United States, Civ. No. A76-271 (USDC Alas.), copy attached, clearly apply to recovery of title from the original patentee and can be utilized in cases where there has been a further conveyance to a third party.[1] The difficulty encountered is balancing the fiduciary responsibility to safeguard valid Native allotment claims against the more general public consideration of not unduly clouding the title of private individuals.

1/ A recent court decision has clarified that the Aguilar procedures are general in nature and are not limited to lands conveyed to the State of Alaska. State of Alaska v. 13.90 Acres of Land, Civ. No. F83-037, Memorandum and Order (USDC, Alas. Dec. 23, 1985), p 7.

In this regard, our legal research establishes that the existence of a bona fide purchaser (BFP) of the land is a legal bar to the recovery of title even if the original conveyance was erroneous due to the existence of a valid Native allotment claim. For purposes of this opinion, a BFP is defined as a person who acquired title from the original patentee and who cannot be charged with either actual or constructive knowledge[2] of a prior Native allotment or occupancy claim to the land. Thus, if there was no visible evidence of prior Native use of the land and the current owner had no other actual or constructive notice of a possible Native claim at the time the land was conveyed by the original patentee, the owner has a defense to any action brought by the United States to recover title. Conversely, if the facts show the current owner knew the land was subject to an allotment claim, the United States would be able to meet its responsibility to the Alaska Native by pursuing a suit to recover title. While, in some cases, facts establishing that the third party landowner is or is not a BFP may already be of record with BLM, general procedures are needed for determining these facts and to provide the judicially mandated opportunity to present oral evidence. Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976). As will be discussed in more detail below, we think that the Aguilar procedures are sufficient for determining the existence of a BFP.[3]

2/ Constructive notice is anything that would cause a reasonable person to inquire further.. However, if further inquiry is made and no prior or adverse claim to the land is found, the purchaser cannot be charged with constructive notice.

3/ These issues are further complicated at this time by several Interior Board of Land Appeals (IBLA) decisions which hold that the conveyance of land out of federal ownership prevents reinstatement and further consideration of Native allotment claims. Kenai Native Association, Inc., 87 IBLA 58 (1985); and Peter Andrews, Sr. (On Reconsideration), 83 IBLA 344 (1984). These decisions are, however, presently pending further IBLA review in Heirs of William Lisbourne, IBLA 83-873, and this opinion will be modified, if necessary, to reflect any changes which may be required as a result of any future decision in the Lisbourne case.

II.

ANALYSIS

A.

The BFP Defense

A long line of cases establish that the United States cannot recover title based on fraud or error in the original conveyance where the land is now owned by a BFP. Utah v. United States, 284 U.S. 534 (1931); United States v. Poland, 251 U.S. 221 (1919); United States v. Detroit Timber and Lumber Company, 200 U.S. 321 (1905); United States v. Eaton Shale Company, 433 F.Supp. 1256 (D. Colo. 1977); United States v. Demmon, 72 F.Supp. 336 (D. Mont. 1947); and 73A CJS § 146, p. 610. This defense has been applied to suits to recover title to Indian lands. United States v. Debell, 227 F. 760 (8th Cir. 1915); Bisek v. Bellanger, 5 F.2d 994 (D. Minn. 1925); Nixon v. Johnson, 409 P.2d 405 (Idaho 1965); and 42 CJS Indians § 60, pp. 753-754. Also see, United States v. Minnesota, 270 U.S. 181 (1925). A particularly good statement of the BFP rule is:

> Because Eaton has clearly established the fact that it was a bona fide purchaser, the patent would be unassailable even if it were originally acquired by fraud (not the case here). Colorado Coal Mining Company v. United States, 123 U.S. 307, 8 S.Ct. 131, 31 L.Ed. 182 (1887). No action by the government lies against bona fide purchasers of a patent. United States v. Kolenl, 226 F. 180 (8th Cir. 1915). The title of a bona fide purchaser of patented lands is superior to the equitable title of the government to avoid the patent and the underlying title for fraud or mistake in its issuance. United States v. Detroit, 200 U.S. 321, 26 S.Ct. 282, 50 L.Ed. 499 (1906).

United States v. Eaton Shale Company, supra, 1268.

B.

Aquilar Procedures

The Aquilar stipulation provides useful and adequate procedures for determining and dealing with BFPs. Paragraph 14,

in fact, appears to require application of the stipulation to third parties. That paragraph requires notice to third parties once they are identified. In any event, the existence of a BFP cannot be satisfactorily determined without providing adequate notice and evidence gathering procedures such as those established by the Aguilar stipulation.[4]

Our view of how this should work is that the third party purchaser would receive the same procedural rights given to the State of Alaska. (Paragraph 14 of the Aguilar Stipulation). This means that if it appears from BLM records that a third party is potentially a BFP, the notice to the allotment applicant will advise the applicant of that possibility and request evidence on that issue as well as any other relevant issues. (Paragraph 3). The third party would, of course, be sent a copy of that notice. Depending on the applicant's response, BLM would next: (1) give notice to all concerned parties, including any third parties, that the allotment may be valid and allow 90 days for submission of comments or evidence (paragraph 4); or (2) conduct an informal hearing to gather more evidence from any affected party who wishes to participate in the hearing (paragraph 6). The informal hearing would include all issues relating to the validity of the Native allotment including a third party's status as a BFP. If BLM ultimately found that there is a BFP, it would issue a decision rejecting the portion of the allotment affected by the BFP's claim and stating that no referral for litigation to cancel title would be made. (Paragraph 6). This office can provide whatever assistance is necessary to aid BLM in determining the existence of a BFP. If, on the other hand, BLM finds the allotment is valid and any third party is not a BFP, it will refer the case to this office for settlement or formal referral to the Department of Justice for litigation to recover title. (Paragraphs 8 and 9).

4/ Two additional, practical reasons for including the BFP determination as part of the regular Aguilar proceedings are that in many cases the BFP claim will only impact part of the allotment claim, and in other instances the BFP issue will become moot by a finding that the whole allotment claim should be rejected.

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Regional Solicitor's Opinion, Procedures for Determining and Dealing with Third Party Purchases of Land Claimed as a Native Allotment

III.

CONCLUSION

In sum, it is our opinion that where it is determined through application of the Aguilar procedures that there is a BFP, no suit to annul the patent will be filed and the Native allotment application must be rejected in whole or in part for that reason.

Dennis J. Hopewell

Attachment: Aguilar Stipulation

cc: Director, Div. of Trust Services, BIA, JAO
Chief, Native Allotment Section, BLM, ASO (965)
Chief, Adjudication Unit, BLM, FDO (242)

H-2561-1 - NATIVE ALLOTMENTS
Regional Solicitor's Opinion, Criteria for Determining Bona Fide Purchasers

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION
701 C Street, Box 34
Anchorage, Alaska 99513

IN REPLY REFER TO:

BLM.AK.0838

Your ref:
2561 (968)

May 1, 1987

MEMORANDUM

TO: State Director
Bureau of Land Management
Alaska State Office

FROM: Deputy Regional Solicitor
Alaska Region

SUBJECT: Criteria For Determining Bona Fide Purchasers

INTRODUCTION

You have requested a legal opinion clarifying and further explaining the criteria for determining if a current owner of land claimed as a Native allotment[1] is a bona fide purchaser (hereinafter "BFP"). The question arises in the context of applying the Aguilar procedures[2] for determining whether the United States should seek to recover title to land described in a timely filed Native allotment application which is not presently federal land. In this regard, we have previously advised you that the existence of a BFP is a defense to a suit to recover title.[3]

1/ Act of May 17, 1906 (34 Stat. 197), as amended (42 Stat. 415 and 70 Stat 954), and codified at 43 U.S.C. §§ 270-1 to 270-3 (1970), repealed, with a savings provision , by section 18 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617.

2/ These are the Stipulated Procedures for Implementation of Order approved by the court to implement the decision in Aguilar v. United States, 474 F.Supp. 840 (D. Alas. 1979).

3/ Memorandum, Deputy Regional Solicitor, Alaska Region to State Director, BLM, Alaska State Office, dated January 27, 1986 and attached as Addendum 1.

A BFP is generally defined as "one who buys realty in good faith for valuable consideration and without knowledge (actual or implied) of outstanding claims in third parties."[4] By its very definition, there are three main components of a BFP, namely: 1) good faith; 2) lack of constructive or actual knowledge; and 3) payment of valuable consideration. It is also implicit that there must be at least three parties before there can be a BFP. Good faith is seldom a significant element and is self defining. The other two criteria concerning knowledge and consideration, however, warrant further explanation.

BACKGROUND

Before addressing specific criteria it may aid your understanding to have some background on the genesis of the BFP defense. It was originally a defense that developed in regards to the transfer of such personal properties as merchantable goods and commercial papers (stock, etc.).[5] The defense developed in large part to not only protect good faith purchasers from unexpected losses but to also encourage and facilitate the commercial transfer of property.[6] In its most rudimentary form, the BFP defense protects a buyer who purchases property from someone whose title to that property is subject to attack and perhaps can be voided.[7] The classic example is: A acquires title to B's property by fraud; as long as A holds title B can sue to set that title aside due to the fraud; but if C buys the property from A, B cannot recover the property from C if C bought it in good faith, without knowledge of the fraud, and paid valuable consideration.[8] In the Aguilar context, the BFP defense arises when the United States unknowingly or erroneously conveys land validly claimed as a

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4/ Powell, The Law of Real Property, Vol. 6A (1986), ¶ 904[2](c).

5/ See, Boyer, Survey of Property (3rd Ed.), 712-716; Browder, Basic Property Law (3rd Ed.), 872-877.

6/ Powell, supra, n.4; Browder, supra, n.5.

7/ Boyer, supra, n.5.

8/ Id.

Native allotment to a patentee such as the State, a homesteader or a Native corporation and the patentee transfers it to a third party. Before a transfer, the United States can always bring suit against the patentee to recover title. If the patentee has transferred the land, however, the possibility exists that the new owner is a BFP who has a defense if the United States brings a suit to recover title.

BFP CRITERIA

The issue of lack of knowledge (of the possible title defect or claim by someone else) is the most difficult element to establish in the BFP defense. "The absence of actual or imputed knowledge is crucial to the preservation of the bona fide purchaser shield cutting off the rights and equities of third parties. Thus, a purchaser who has any form of notice is not a bona fide purchaser entitled to protection . . . [footnotes omitted]."[9] Accordingly, we have previously advised you that a subsequent purchaser would be charged with constructive knowledge of anything that would cause a reasonable person to inquire further,[10] e.g. existence of or evidence of former improvements,[11] and recordation.[12] At one extreme, actual occupancy of the allotment would always give rise to adequate notice to defeat a BFP defense since, even if there was not actual knowledge, constructive knowledge would exist because an examination of the land would have revealed the occupancy. At the other extreme, where there is no visible evidence of Native use, and no record of the claim which the purchaser should have reviewed, there would be no apparent constructive notice and actual knowledge would have to be proved to defeat the BFP defense.

9/ Powell, supra, n.4.

10/ Memorandum, supra, n.3.

11/ United States v. Flynn and Orock, 88 I.D. 373; 53 IBLA 208 (1981).

12/ Powell, supra, n.4.

The requirement of valuable consideration is also not a hard and fast, clear cut rule. Consideration in general consists of an act (such as payment of money), forbearance (such as a waiver of rights or a claim), or a promise (to perform some act in the future).[13] It is not all limited to the payment of money. To be valuable consideration it does not have to be a fair market value payment.[14] Valuable consideration must be worth something, but it can be of limited or even nominal value.[15] While even inadequate consideration is generally considered valuable consideration, when it comes to such equitable defenses as the BFP defense, grossly inadequate consideration may be taken as corroborative evidence that the new owner did have knowledge of either a defect in title or a third party claim to the land.[16] An example of this would be the gift or sale for a few dollars of valuable property to a family member which is not sufficiently at arms length to establish a BFP defense.[17] It is, however, always a case specific factual question and in some instances intra family transfers based solely on love and affection can qualify for the BFP defense.[18] In this regard, we have no difficulty in concluding that conveyances to municipalities and boroughs under Alaska's municipal land entitlement laws, land exchanges between the patentee and a third party, or sales for less than full fair market value, constitute valuable consideration for purposes of the BFP defense.

CONCLUSION

Since the BFP defense, by the very nature of its elements, is always a case specific factual matter, it is not possible to list categories of parties who either are or are not

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13/ Simpson, Contracts (2nd. Ed.), § 52, p. 80.

14/ Id., § 54, pp. 86, 87.

15/ Id.; Vol. 1, Williston on Contracts (3rd Ed.), § 115, pp. 454-461.

16/ Id.

17/ Davis v. Mullis, 296 F.Supp. 1345 (S.D. GA. 1969).

18/ Vol. 1, Corbin on Contracts, § 131, pp. 560-562.

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Regional Solicitor's Opinion, Criteria for Determining
Bona Fide Purchasers

BFPs. Original patentees, however, can never assert a BFP defense because such a defense is inapplicable in litigation between the party who conveyed the land and the party who took conveyance to the land. Thus, the State of Alaska, homesteaders, Native Corporations, mineral patentees, the University of Alaska, and all other parties who derive their title directly from the United States cannot be BFPs. Any party acquiring property from the patentee is a potential BFP if the elements of that defense are proved. Therefore, boroughs and municipalities, as well as purchasers of either the whole fee interest or rights-of-way, can be BFPs if they meet all the criteria of the BFP defense. No one is categorically a BFP. Rather, any party who has acquired property from the original patentee is a potential BFP. A case specific factual determination is always necessary to decide if a party actually qualifies for the BFP defense.

Dennis J. Hopewell

Attachment: Addendum 1

cc:(w/attach.)
Allotment Coordinator, BIA
P.O. Box 100120
Anchorage, AK 99510-0120

H-2561-1 - NATIVE ALLOTMENTS
Stipulations, Ethel Aguilar v. U.S.

Aguilar Stipulations

Stipulated Procedures for Implementation of Order

Docket No. A76-271 Civil U.S. District Court, Alaska Ordered February 9, 1983

The parties by and through their attorneys stipulate, subject to the Order of the Court, to the following procedures to implement the Order of the Court dated July 31, 1979, that the Department of the Interior adjudicate the substantive claims of the plaintiffs to land patented to the State.

1. The Bureau of Land Management (BLM) will review each allotment application file to determine whether there are any legal defects in the application. Legally defective applications which are incapable of being corrected will be rejected, and rejection by the authorized BLM official shall be final for the Department.

2. Where an applicant whose application is not rejected pursuant to paragraph 1 of this stipulation is deceased, the Office of Hearings and Appeals will determine the applicant's heirs before BLM proceeds.

3. Where the merits of the application turn on whether the applicant's use and occupancy predate the commencement of the rights of the State, the BLM will examine the file. The examination, and all further proceedings until a federal court action to cancel the State's patent is initiated, shall be for investigatory purposes only and shall not constitute an administrative agency adjudication of the rights of third parties. If the application and contents of the file indicate that the applicant's use and occupancy began after the rights of the State arose, the BLM will inform the applicant by letter of the date of commencement of the State's rights and that the application will be rejected unless the applicant files an affidavit within ninety days alleging, with particularity, specific use prior to the date on which the rights of the State arose.

4. If the application and contents in the file indicate that use and occupancy began before the State's rights arose, or if an affidavit to that effect is received pursuant to section 3 of this stipulation, the BLM will send a letter to the applicant informing the applicant that based upon the file, it appears that the application may be found valid. The letter will invite any additional evidence such as witness statements and photographs, which the applicant may wish to present to bolster the claim. At the same time, the BLM will send a letter to the State stating that it appears that the application may be found valid and inviting any evidence or comments the State may have to dispute the claim of the applicant. Both the State and the applicant will have ninety days to respond.

5. If, either because no comments or evidence are received questioning or disputing the claim of the applicant or, if on the basis of the case file and comments and evidence received, the BLM concludes that the application is valid, the BLM will find the application valid and refer the matter to the Solicitor's Office for settlement or referral to the Department of Justice.

6. If the BLM concludes that the applicant has failed to provide sufficient proof of entitlement, the BLM will conduct a hearing. The applicant will be notified of the hearing date and the reasons for the proposed rejection. The hearing will be informal with a designated BLM decision-maker as the presiding officer. The

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Stipulations, Ethel Aguilar v. U.S.

presiding officer may ask questions, and the applicant and the State shall have the opportunity to present evidence and cross-examine witnesses. The hearing will be taped, but not necessarily transcribed by BLM. Based on evidence presented at the hearing or contained in the case file, the BLM presiding officer will make a decision to reject or refer the claim to the Solicitor's Office, which decision shall be final for the Department, provided that the hearing examiner may not rely on any matter not admitted in evidence at the hearing to reject an application.

7. The BLM shall have discretion to order a field report before a hearing, in order to gather evidence or to more accurately determine the location. All parties referenced in paragraph 13 of this Stipulation shall be notified of the field exam, given the opportunity to be present, and provided a copy of the report.

8. The Solicitor's Office will attempt to settle the allotment claims referred to it by BLM, by requesting a quitclaim of the land from the State.

9. If settlement is not possible the matter will be referred to the Department of Justice with a recommendation that suit to cancel patent be instituted. Nothing in this stipulation or in the procedure which it establishes in any way affects the descretion of the Attorney General of the United States with respect to any such recommendation. The parties referenced in paragraph 13 of this Stipulation shall be notified of the referral.

10. If at any time the State wishes to quitclaim all of its interest in the land and tenders a valid and appropriate deed, the United States shall accept the quitclaim and issue an allotment to the applicant, and the acreage shall be credited to the State entitlement under which the lands were originally conveyed. Provided, this paragraph shall not apply to any application which would be determined invalid for legal defects as described in paragraph 1.

11. If at any time the State is willing to convey a portion of the allotment, or the entire allotment subject to reservations, in settlement of the applicant's claim and tenders a valid and appropriate deed, the Solicitor's Office will forward the offer to the applicant and coordinate the settlement. Counseling for the applicant will be available from the BIA. Provided, this paragraph shall not apply to any application which would be determined invalid for legal defects as described in paragraph 1.

12. If after counseling, the applicant wishes to accept the settlement, a settlement agreement will be drawn up and submitted to the Court for approval. Acreage received by the applicant shall be credited to the State entitlement under which the lands were originally conveyed.

13. Copies of all notices sent to the applicant will be sent to Alaska Legal Services, applicant's private counsel, if any, the Bureau of Indian Affairs, and the State.

14. If at any point the BLM becomes aware of the identity of a third party claiming an interest in the land, whether independently or through purported conveyance by the State, it shall afford the third party the same notice and procedural rights as those afforded the State under this stipulation.

H-2561-1 - NATIVE ALLOTMENTS

Federal Register Notice, June 4, 1981, Allotments that may be Valuable for Minerals

Federal Register / Vol. 46, No. 107 / Thursday, June 4, 1981 / Notices

Native Allotments Act of May 17, 1906; Land Described in Native Allotment Applications That May Be Valuable for Minerals; Decision

May 27, 1981.

Section 905(a)(3) of the Alaska National Interest Lands Conservation Act of December 2, 1980, provides that allotment applications will not be legislatively approved if they describe land which the Secretary determines may be valuable for minerals. The deadline for such determinations is June 1, 1981.

Pursuant to the authority delegated to me, I hereby determine on behalf of the Secretary that the following Native Allotment applications describe land that may be valuable for minerals, excluding coal, oil and gas.

The applicants have been or will be notified of this decision.

F-17154	F-18802
F-17117	F-18817
F-17144	F-18814
F-17734	AA-7128
F-17146	AA-7123
F-17161	AA-7192
F-17162	AA-7216
F-17167	AA-7230
F-17166	AA-7276
F-17452	AA-7286
F-17128	AA-7291
F-17143	AA-7292
F-17123	AA-7296
F-17142	AA-7298
F-14262	AA-7446
F-13882	AA-7455
F-14782	AA-7470
F-13839	AA-7305
F-17813	AA-7308
F-11828	AA-7315
F-17738	AA-7324
F-13812	AA-7325
F-13813	AA-7326
F-18813	AA-7347
F-18272	AA-7380
F-18888	AA-7612
F-14282	AA-7646
F-13888	AA-7648
F-18428	AA-7707
F-18868	AA-7807
F-19208	AA-7822
F-17348	AA-7824
F-18838	AA-7832
F-17487	AA-7836
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	F-[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
F-14123	F-[illegible]

F-13880	F-17828
F-12848	F-17840
F-12292	F-17731
F-12384	F-17738
F-12882	F-17748
F-12884	F-17771
F-13881	F-17774
F-13188	F-17773
F-13301	F-17782
F-13308	F-17783
F-13431	F-17790
F-13432	F-17873
F-13343	F-17877
F-13348	F-17878
F-13822	F-18133
F-13880	F-18220
F-13787	F-18244
F-13733	F-18245
F-13794	F-18282
F-13840	F-18287
F-14088	F-18288
F-14087	F-18280
F-14199	F-18300
F-14246	F-18442
F-13788	F-18808
F-13773	F-18848
F-13874	F-18872
F-13873	F-18873
F-16838	F-17244
F-16816	F-18288
F-16346	F-17173
F-16334	F-171287
F-16382	AA-7328
F-16385	F-17108
F-16389	A-07384
F-16423	A-067123
F-16428	A-04487
F-16427	A-05746
F-16446	A-02882
F-16811	AA-4819
F-16812	AA-4812
F-16818	AA-64782
F-16846	A-04489
F-16828	AA-66818
F-16867	A-012488
F-16882	A-012482
F-16898	A-012491
F-16860	A-012480
F-17723	A-012323
F-17028	AA-4886
F-17027	A-02388
F-17833	

Curtis V. McVee,
State Director.

[FR Doc. [illegible] Filed [illegible] 8:45 am]
BILLING CODE [illegible]

See original list submitted to the Federal Register attached.

H-2561-1 - NATIVE ALLOTMENTS
Federal Register Notice, June 4, 1981, Allotments that may be Valuable for Minerals

2561 (941)

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

NATIVE ALLOTMENTS
Act of May 17, 1906

MAY 27 1981

DECISION

Land Described in Native Allotment Applications
That May Be Valuable for Minerals

Section 905(a)(3) of the Alaska National Interest Lands Conservation Act of December 2, 1980, provides that allotment applications will not be legislatively approved if they describe land which the Secretary determines may be valuable for minerals. The deadline for such determinations is June 1, 1981.

Pursuant to the authority delegated to me, I hereby determine on behalf of the Secretary that the following Native Allotment applications describe land that may be valuable for minerals, excluding coal, oil and gas.

The applicants have been or will be notified of this decision.

F-17154	F-17117
F-17144	F-17754
F-17146	F-17141
F-17162	F-17147

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F-17165	F-17452
F-17116	F-17143
F-17155	F-17142
F-14352	F-15032
F-14782	F-15559
F-17013	F-11935
F-17750	F-15012
F-15013	F-18013
F-18272	F-18663
F-14382	F-13989
F-18439	F-18593
F-19006	F-17048
F-18550	F-17487
F-19057	F-18219
F-18400	F-17913
F-15986	F-17595
F-14125	F-18962
F-18917	F-16514
AA-7118	AA-7129
AA-7192	AA-7218
AA-7259	AA-7276
AA-7282	AA-7291
AA-7293	AA-7298
AA-7305	AA-7446
AA-7455	AA-7479

H-2561-1 - NATIVE ALLOTMENTS

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AA-7505	AA-7508
AA-7515	AA-7524
AA-7525	AA-7538
AA-7547	AA-7556
AA-7612	AA-7644
AA-7646	AA-7747
AA-7807	AA-7823
AA-7824	AA-7920
AA-7936	F-530
F-560	F-575
F-1267	F-1640
F-2680	F-7569
F-11659	F-12049
F-12292	F-12554
F-12582	F-13054
F-13061	F-13188
F-13361	F-13363
F-13431	F-13432
F-13543	F-13549
F-13622	F-13696
F-13707	F-13755
F-13794	F-13849
F-14000	F-14027
F-14199	F-14346
F-15760	F-15770

H-2561-1 - NATIVE ALLOTMENTS

Federal Register Notice, June 4, 1981, Allotments that may be Valuable for Minerals

F-15874	F-15875
F-16210	F-16248
F-16345	F-16354
F-16362	F-16365
F-16386	F-16423
F-16426	F-16427
F-16446	F-16511
F-16512	F-16515
F-16645	F-16926
F-16927	F-16952
F-16968	F-16969
F-17025	F-17026
F-17027	F-17635
F-17636	F-17646
F-17731	F-17739
F-17748	F-17771
F-17774	F-17775
F-17782	F-17783
F-17790	F-17874
F-17877	F-17878
F-18133	F-18206
F-18244	F-18245
F-18262	F-18297
F-18368	F-18398
F-18399	F-18442

H-2561-1 - NATIVE ALLOTMENTS

Federal Register Notice, June 4, 1981, Allotments that may be Valuable for Minerals

F-18500	F-18545
F-18572	F-18573
F-17244	F-19368
F-17175	F-17921
AA-7528	F-17108
A-07584	A-057129
A-04897	A-01746
A-02902	AA-5615
AA-5612	A-04612
A-04490	AA-05618
A-012490	A-012492
A-012491	A-012489
A-012820	AA-6565
A-02888	

/s/ CURTIS V. McVEE

Curtis V. McVee
State Director

USER GUIDE TO AAIMRS NATIVE ALLOTMENT ACTION CODE DICTIONARY

1. The dictionary is set up alphabeticlly as to the nomenclature. For cross reference, see the attached numerical print-out for both 2561 and 7509 case types.

   Critical Use of Parcels Involved
   We are coding by Parcel whenever individual parcels are affected by action.

   Status Code
   Present category of status
   (See status code list attached)

   Responsibility
   The office responsible for coding into the system.
   (ADJ = Adjudication)
   (DIST = District)

   Definitions and/or Remarks
   Expansion of nomenclature and/or use of action code.

2. Status codes indicate Active; Active, no adjudication required; Inactive; Closed. These should reflect the file's present category.

3. No new action codes are anticipated at this time, however, a need for a new action code could arise and will be added as necessary. If you care to check for an updated code list, key: ACN CASE 256100 or ACN CASE 007509 and press ENTER into a terminal for a current read out.

4. Parcel X is a fictitious parcel created to aid in the Patent Plan Process. It will only be used to identify the newly reinstated or reopened part of a whole parcel for purposes of tracking its progress. SITUATION: If acreage was reduced and surveyed or certificated, then the reinstated or reopened portion needs a separate identification for tracking it in the AAIMRS system. The X Y Z parcel designation (assuming no more than 3 reinstatements/reopenings would be in the same case file) is only used in the history portion of the case file abstract. The land description will not carry the X Y Z designation. If reinstated or reopened lands result in eventual certification, parcel X Y or Z will not be a part of the land description on the Certificate.

First usage of parcel X will be by first action, i.e., field report or survey requested. This must be followed by Remarks: "Parcel X for computer purposes only to designate reinstated/reopened portion of allotment (or parcel _____) not included in original Certificate (or survey)."

BRIEF EXAMPLE OF USAGE:

124	application received	023	X	supplmntl fld rpt rqstd
113	certificate issued	729	X	supplmntl fld rpt apprvd
099	case closed - title trsf	327	X	survey requested
388	reinstated/reopened	326	X	survey plat filed
092	appl notified of reinst	113		certificate issued
575	reinst/relocate notice	099		case closed - title trsf

Action Code	Nomenclature	Critical Use if Parcels Involved	Responsibility	Status Code	Definitions and/or Remarks
562	Acre Charge: 14(h)6	Yes	ADJ	N/A	Used to identify NA's approved prior to 12/18/75 for acreage control on ANCSA 14(h) selections. Updated for parcel count in 1986. DO NOT REMOVE.
563	Acre charge/part: 14(h)6	Yes	ADJ	N/A	" " " " " "
103	Additional Evidence Received	Yes	ADJ	00	104 used, e.g., 60-day letter asking for additional evidence; 103 used to show requested evidence received. Also use when witness statements are requested and received, or when a use and occupancy form is received.
104	Additional Evidence Requested	Yes	ADJ	00	
114	Amended/Corrected Application Received	Yes	ADJ	00	Self explanatory. Note this code is for applications only, not for amended/corrected descriptions (action codes 374 and 375).
374	Amended/Corrected Description Received	Yes	ADJ	00	Self explanatory. Note these codes are for descriptions only; not for amended/corrected applications (action code 114).
375	Amended/Corrected Description Requested	Yes	ADJ	00	Self Explanatory. See code 374 above.
545	Amendment Request Denied	Yes	ADJ	00	Self Explanatory. See code 374 above.

Action Code	Nomenclature	Critical Use if Parcels Involved	Responsibility	Status Code	Definitions and/or Remarks
120	Appeal Filed	Yes	ADJ	27	Self Explanatory
119	Appeal Dismissed	Yes	ADJ	00	Should be used when IBLA or BLM dismisses an appeal.
039	Applicant Deceased	No	ADJ	00	Use date applicant actually deceased. Obtain date from death certificate.
092	Applicant Notified of Reinstatement	Yes	ADJ	00	An important action code. This is used in conjunction with 388 - reinstated/reopened, so we know how many applicants have been notified.
372	Application Combined	No	ADJ	00/88	Use "remarks" to show serial number of the case combined (usually the junior case is combined with the senior case). Note appropriate remarks on both abstracts concerned, e. g., A-063896 combined with A-051690, and vice versa. Use status code 88 on junior (closed) case only.
124	Application Received	Yes	Receiving	00	Application/Use and Occupancy form. Fanny Barr Class applications also.
540	Application in Litigation	Yes	Receiving	00	540 is to be used for all litigation.
665	Approved ANILCA	Yes	ADJ	00	Legislative approvals only.

Action Code	Nomenclature	Critical Use if Parcels Involved	Responsibility	Status Code	Definitions and/or Remarks
666	Approved 1906 Act	Yes	ADJ	00	Approval under 1906 Act only (those adjudicated for use and occupancy).
098	Audited/Not Locked	Yes	ADJ	00	This action code is being used to track the Patent Plan Process by survey year - ie: 08/09/1900 indicates planned survey in calendar year 1989. Use in conjunction with code 100 locking file history.
100	Audited to date-locked	No	ADJ	00	Show Date audited - this locks the history.
142	BIA Report Requested	Yes	ADJ	30	Self Explanatory. (See 653 - conflict resolve req.)
141	BIA Report Received	Yes	ADJ	00	Self Explanatory
099	Case Closed/ Title Transferred	No	ADJ	87	Use 099 only for case closure; for parcel closure, use 113 (certificate issue) or 718 (parcel not conveyed).
146	Case Closed/ No Conveyance	No	ADJ	80	Use only when none of the lands in the case file are conveyed. If multi parcels, each parcel must show 718 action code (parcel not conveyed).
165	Case file sent to IBLA	Yes	Paralegal	27	Self Explanatory (use with 120 - appeal filed)

Action Code	Nomenclature	Critical Use if Parcels Involved	Responsibility	Status Code	Definitions and/or Remarks
113	Certificate Issued	Yes	ADJ	00 (87, only if entire case is certificated)	Self explanatory. Use of a parcel letter will automatically indicate a "split" certificate situation.
371	Closed-New Serial	No	ADJ	80	Helps to trigger information on multiple filings, for example, Statutory Life/Non-Receipt of Mineral Waiver. Use "remarks" to cross reference all filings by the same applicant.
696	Consent Adj/lmtd waiver	Yes	ADJ	00	Consent to adjudicate/limited waiver form must be submitted and signed before Fanny Barr class file can be processed.
653	Conflict Resolve Requested	Yes	ADJ	23	Conflict resolution letter to applicant and BIA.
178	Contest Complaint Answered	Yes	ADJ	20	This is an important code to use in conjunction with code 180, contest complaint filed/government and 181, contest complaint filed/private.
179	Contest Complaint Dismissed	Yes	ADJ	00	This code to be used after case has been to ALJ or if private contest does not meet regulatory requirements, as applicable.

Action Code	Nomenclature	Critical Use if Parcels Involved	Responsibility	Status Code	Definitions and/or Remarks
180	Contest Complaint Filed/Government	Yes	ADJ	20	All of these contest codes are important. They are to be entered into the computer as the actions occur.
181	Contest Complaint Filed/Private	Yes	ADJ	20	" " " " " "
161	Contest Sent/ Administrative Law Judge	Yes	ADJ	20	" " " " " "
361	Decision Affirmed	Yes	ADJ	00	This code, along with 369, 365 and 188 (below), is used to code the results of IBLA/ALJ decisions. The nomenclature does not always apply directly to NA decisions; choose the one that is most representative.
369	Decision Modified	Yes	ADJ	00	This can also be used when BLM modifies a decision (See 361, Decision Affirmed).
365	Decision Remanded for further action	Yes	ADJ	00	See 361, Decision Affirmed (above)
188	Decision Vacated	Yes	ADJ	00	This can also be used when BLM vacates a decision. See 361, Decision Affirmed (above).

Action Code	Nomenclature	Critical Use if Parcels Involved	Responsibility	Status Code	Definitions and/or Remarks
576	Decision - Contest/ Appeal 90/day	Yes	ADJ	00	1906 Approval letter, allowing 60-day time frame for a private contest and a 30-day appeal period commencing at end of 60-day contest period.
025	Determined Mineral in Character	Yes	DIST	00	025 and 026 are self explanatory; 025 should eventually be accompanied by 125, rejected. These codes refer to minerals other than coal, oil and gas. Any reference to mineral in character reports as to sand and gravel are of no significance since ANILCA.
026	Determined Non-Mineral in Character	Yes	DIST	00	
042	Exclusion Survey Requested	Yes	ADJ	03	Normally, surveys are requested only after approval. However, to meet area survey needs, exclusion surveys are requested.
555	Fanny Barr Class Petition	No	ADJ	03	Must be filed before 11/22/82 or not eligible for class membership.
578	Fanny Barr Publication	No	ADJ	03	Use when published. Date for final date of protest to be entered into "remarks".
003	Field Examination Completed	Yes	DIST	00	Date field exam completed in the field.

Action Code	Nomenclature	Critical Use if Parcels Involved	Responsibility	Status Code	Definitions and/or Remarks
009	Field Report Approved	Yes	DIST	00	Approved by delegated authority. Do not use for supplemented field reports - that code is 729 - suppl. fld rpt apprvd.
210	Field Report Requested	Yes	ADJ	24/25*	Self explanatory *See status code listing
222	Hearing Held	Yes	ADJ	00	Self Explanatory
223	Hearing Ordered	Yes	ADJ	20	Self Explanatory
389	Hearing Requested	Yes	ADJ	00	Self Explanatory
656	Lands Conveyed - TA'd Title Recovery Required	Yes	ADJ	38	Applies only to lands which have been TA'd to the State. Use the date of the TA. Identifies potential title recovery.
654	Lands Conveyed - IC'd Title Recovery Required	Yes	ADJ	38	Applies only to lands which have been IC'd to Village or Regional Corporations. Use the date of IC. Identifies potential title recovery.
655	Lands Conveyed - Patented Title Recovery Required	Yes	ADJ	38	Applies only to patented lands. These are Aguilar types and are adjudicated per court imposed stipulations. Use the date of the patent. Identifies potential title recovery.

Action Code	Nomenclature	Critical Use if Parcels Involved	Responsibility	Status Code	Definitions and/or Remarks
010	Mineral Exam Requested	Yes	ADJ	24/25*	Refers only to minerals (other than coal, oil, gas, sand and gravel) mineral-in-character examinations. *See status code listing.
014	Mineral Report Approved	Yes	DIST	00	Approval of above report(s).
253	Mineral Reservation Decision Issued	Yes	ADJ	00	Only used when leasable minerals (coal, oil, gas) reservation decisions are sent to the applicant.
342	Mineral Report Requested	Yes	ADJ	00	To be used anytime a leasable or locatable mineral classification report is requested from the District, U.S.G.S, etc.
090	Mineral Report Received W/Value (leasable)	Yes	ADJ	00	To be used, as appropriate, on any mineral classification report for leasable minerals.
091	Mineral Report Received W-O/Val (leasable)	Yes	ADJ	00	To be used, as appropriate, on any mineral classification report for leasable minerals.
089	Mineral Report Received W-O/Val (locatable)	Yes	ADJ	00	To be used, as appropriate, on any mineral classification report for locatable minerals.
088	Mineral Report Received W/Value (locatable)	Yes	ADJ	00	To be used, as appropriate, on any mineral classification report for locatable minerals.

Action Code	Nomenclature	Critical Use if Parcels Involved	Responsibility	Status Code	Definitions and/or Remarks
177	Non-Receipt of Mineral Waiver	Yes	ADJ	90	Prior to the early 1960's an actual form requesting mineral waiver was sent to the applicants upon receipt of evidence that leasable minerals were present. These forms had to be signed, witnessed and returned to BLM within 30 days. If they were not received, the case was closed. Codes 321 and 177 share status code 90.
XXX	PARCEL X	X	ADJ	00	See explanation at beginning of dictionary.
718	Parcel not conveyed	Yes	ADJ	00	Use whenever a single parcel is properly rejected (125) or relinquished (311) to show closure date for that parcel.
298	Protest Dismissed	Yes	ADJ	00	When filed as a result of Sec. 905(a)(5) of ANILCA, it activates adjudication under 1906 Act. Verify all 3 codes. (298-299 & 266)
299	Protest Filed	Yes	ADJ	00	
266	Protest Withdrawn	Yes	ADJ	00	
151	Quitclaim Deed Received	Yes	ADJ	00	To be used in all title recovery situations. Use date of recordation. This gives us authority to reconvey to applcnt.
283	Reinstatement Petition denied	Yes	ADJ	03	Self Explanatory

Action Code	Nomenclature	Critical Use if Parcels Involved	Responsibility	Status Code	Definitions and/or Remarks
284	Reinstatement Petition filed	Yes	ADJ	03	Self Explanatory
575	Reinstate/Relocate 60-day	Yes	ADJ	03	If a parcel is reinstated or relocated, use to notify all interested parties of record. Allows 60 days to protest per Sec. 905(a)(5) of ANILCA. Note: For a time, policy allowed a 90-day protest period.
388	Reinstated/Reopened	Yes	ADJ	00	Self Explanatory (if 146 - case closed - no conveyance was used, remove 146 from history when case or parcel is reinstated)
125	Rejected	Yes	ADJ	82 *Use only when entire file is rejected	Use this code for all decisions rejecting a Native allotment parcel and/or entire application. When decision is final use codes 718 or 146.
126	Rejected in Part	Yes	ADJ	00	Should not be used unless it is only part of a parcel that is being rejected.
734	Rejection Action Pending	Yes	ADJ	03	Disqualification used for patent plan process tracking during audit. Since survey will not be requested, this code will keep the serial number from showing up until proper rejection can take place.

Action Code	Nomenclature	Critical Use if Parcels Involved	Responsibility	Status Code	Definitions and/or Remarks
311	Relinquishment Filed	Yes	ADJ	00	Secretary of Interior memo dated 7/12/77 required that all relinquishments would be accepted only if authorized by BIA. The memo of understanding (MOU) between BLM & BIA (dtd 2/79) confirms this. Prior to the 7/77 date we review on a case-by-case basis.
312	Relinquishment Filed in Part	Yes	ADJ	00	Should only be used if it is a relinquishment of a portion of a parcel or application which only has one parcel. (Code 311 rule applies here too.)
535	Review Complete Mini-3	Yes	ADJ	00	Used to track how many cases/parcels were reviewed during Mini-3 project. Will be eliminated from history when audit completed on all files.
321	Statutory Life Expired	Yes	ADJ	90	Used per 1956 amendment to 1906 Act when BIA certification of use and occupancy not timely filed. See Code 177, Non-Receipt of Mineral Waiver, which shares Status Code 90.
729	Supplemental Field Report Approved	Yes	DIST	00	Date suppl field exam is signed (see 009).
024	Supplemental Field Report Completed	Yes	DIST	00	Self Explanatory

Action Code	Nomenclature	Critical Use if Parcels Involved	Responsibility	Status Code	Definitions and/or Remarks
023	Supplemental Field Report Requested	Yes	ADJ	24/25*	Should only be used where a field report has already been accomplished and it has to be supplemented follow with 024 & 729. *See status code listing.
108	Survey Conformance Issued	Yes	ADJ	07	Enter when applicant is notified that survey plat has been filed.
107	Survey Conformance Received	Yes	ADJ	07	Enter if conformance received - becomes conformed automatically after 30 days (or per specific document timeframe requirement).
326	Survey Plat Filed	Yes	T&LS	00	Proceed to 108 survey conformance document. Use date shown on plat as officially filed date.
327	Survey Requested	Yes	ADJ	00/21	Should not be confused with code 042-exclusion survey requested. Use Status Code 21 only when survey has been requested on all parcels. When all of the parcels have had survey requested and one or more parcel requires title recovery, use status code 38.
572	Survey Request Returned to Adj.	Yes	CAD	00	Returns the request to adjudication for correction.
577	Survey Request Resubmitted	Yes	ADJ	00/21	Resubmitted to Cadastral Survey Office.

Action Code	Nomenclature	Critical Use if Parcels Involved	Responsibility	Status Code	Definitions and/or Remarks
494	Title Accepted by U.S.	Yes	ADJ	07	Enter when QCD is acceptable with all legal and factual problems cleared, and the Inspection and Possession Certificate is completed.
657	Title Recovery	Yes	ADJ	38	Enter when adjudicative process commenced. (Use date of 90-day letter or date Agreement on Survey of Inholding is sent.)

NOTE:
Action codes 043 thru 063 are used strictly by Cadastral Survey staff. They show survey progress information in Native allotment ABSTRACT history.

ALLOWABLE ACTIONS FOR 256100 ALASKA NATIVE ALLOTMENTS

003 FIELD EXAM COMPLETED
009 FIELD REPORT APPROVED
010 MINERAL EXAM REQUESTED
014 MINERAL EXAM RPT APPRVED
023 SUPPLMNTL FLD RPT RQSTD
024 SUPPLMNTL FLD RPT CMPLTD
025 DET MIN IN CHARACTER
026 DET NON-MIN IN CHARACTER
039 APPLICANT DECEASED
042 EXCLUSION SURVEY REQSTD
043 SPECIAL INSTR. APPROVED
044 1ST AMENDED SPECIAL INST
045 2ND AMENDED SPECIAL INST
046 1ST SUPPL SPECIAL INSTR
047 2ND SUPPL SPECIAL INSTR
048 3RD SUPPL SPECIAL INSTR
049 4TH SUPPL SPECIAL INSTR
050 5TH SUPPL SPECIAL INSTR
051 ASSIGNED TO SURVEYOR
052 FIELD SURVEY COMMENCED
053 FIELD SURVEY COMPLETED
054 DRAFT NOTES WRITTEN
055 RETURNED TO FIELD
056 CRITICAL REVIEW MADE
057 FINAL NOTES TYPED
058 PLAT DRAFTED
059 FINAL REVIEW MADE
060 DELIVERED FOR ACCEPTANCE
061 MODIFICATION REQUIRED
062 PLATS/NOTES ACCPT DIV CH
063 PLATS RCVD FROM MICRFILM
069 AGRMT SVYD INHLDNG RQSTD
070 AGRMT SVYD INHLDNG RCVD
088 MIN RPT RCVD W/VAL LOC
089 MIN RPT RCVD W-O/VAL LOC
090 MIN RPT RCVD W/VAL LSE
091 MIN RPT RCVD W-O/VAL LSE
092 APPL NOTIFIED OF REINST
095 AUDITED FOR CONVERSION
096 NOTICE FINAL DATE AMD
098 AUDITED NOT LOCKED
099 CASE CLOSED - TITLE TRSF
100 AUDITED TO DATE LOCKED
103 ADDTNL EVIDENCE RECEIVED
104 ADDTNL EVIDENCE REQUIRED
108 SRVY CONFORMANCE NOTICE
113 CERTIFICATE ISSUED
114 AMENDED/CRRCTD APLN RCVD
119 APPEAL DISMISSED
120 APPEAL FILED
122 EXTENSION REQUEST FILED
124 APPLICATION RECEIVED
125 REJECTED
126 REJECTED IN PART
141 BIA REPORT RECEIVED
142 BIA REPORT REQUESTED
146 CASE CLOSED-NO CONVEYNCE
151 QUIT CLAIM DEED RECEIVED
155 RECONSIDRTN REQST DENIED
161 CONTEST SENT ADM LAW JDG
165 CASEFILE SENT TO IBLA
166 CASEFILE SENT TO REG SOL
169 CASEFILE RET FR IBLA
177 NON-RECEIPT MIN WAIVER
178 CONTEST COMPLNT ANSWERED
179 CONTEST COMPLNT DISMSSD
180 CONTEST FILED-GOVT
181 CONTEST FILED - PRIVATE
188 DECISION VACATED
203 EXTENSION APPROVED
210 FIELD REPORT REQUESTED
222 HEARING HELD
223 HEARING ORDERED
253 MINERAL RES DEC ISSUED
266 PROTEST WITHDRAWN
283 REINST PET DENIED
284 REINST PET FILED
294 NAVIGABILITY REPORT RQST
296 NAVIGABILITY REPORT RCVD
298 PROTEST DISMISSED
299 PROTEST FILED
311 RELINQUISHMENT FILED
312 RELNQSHMNT IN PART FILED
317 REG SOL OPINION RQSTD
321 STATUTORY LIFE EXPIRED
326 SURVEY APPRV PLAT FILED
327 SURVEY REQUESTED
342 MINERAL REPORT RQSTD
361 DECISION AFFIRMED
363 DEC AFFRMD AS MODIFIED
365 DEC REMAND FURTHER ACTN
366 DEC REVERSED & REMANDED
369 DECISION MODIFIED
370 DECISION VACATED IN PART
371 CLOSED-NEW SERIAL # ISSD
372 APPLICATION COMBINED
374 AMENDED/CRRCTD DESC RCVD
375 AMENDED/CRRCTD DESC RQST
388 REINSTATED/REOPENED
389 HEARING REQUESTED
441 RECONSIDERATION RQSTD
487 REMAND REQUESTED
488 EXTENSION DENIED
491 LITIGATION COMPLETED
492 REG SOL OPINION RCVD
494 TITLE ACCEPTED BY U.S.
540 APPL IN LITIGATION
545 AMENDMENT REQUEST DENIED
555 F BARR CLASS PETITION
562 ACRE CHARGE: 14 (H) 6
563 ACRE CHARGE/PART:14 (H)6
572 SRVY REQ RETURNED TO ADJ
575 REINST/RELOCATE NOTICE
576 DEC-CONTEST/APEAL 90/DAY
577 SRVY RQST RESUBMITTED

ALASKA NATIVE ALLOTMENTS

ALLOWABLE ACTIONS FOR 256100

578 FANNY BARR PUBLICATION
653 CONFLICT RESOLVE REQST
654 LND CONV/IC-TLT RCVY REQ
655 LND CONV/PA-TLT RCVY REQ
656 LND CONV/TA-TLT RCVY REQ
657 TITLE RECOVERY COMMENCED
665 APPROVED ANILCA
666 APPROVED 1906 ACT
696 CONSENT ADJ/LMTD WAIVER
718 PARCEL NOT CONVEYED
729 SUPPLMNTL FLD RPT APPRVD
734 REJECTION ACTION PENDING
736 RECONSIDERATION GRANTED
737 ORDER ISSUED
738 ALJ DEC/ORDER APPEALED
739 ALJ - ISSUED ORDER
740 ALJ - ISSUED DEC

ALLOWABLE ACTIONS FOR 007509 AK NATIVE ALLOT LITIGATN

003 FIELD EXAM COMPLETED
009 FIELD REPORT APPROVED
010 MINERAL EXAM REQUESTED
014 MINERAL EXAM RPT APPRVED
023 SUPPLMNTL FLD RPT RQSTD
024 SUPPLMNTL FLD RPT CMPLTD
025 DET MIN IN CHARACTER
026 DET NON-MIN IN CHARACTER
039 APPLICANT DECEASED
042 EXCLUSION SURVEY REQSTD
043 SPECIAL INSTR. APPROVED
044 1ST AMENDED SPECIAL INST
045 2ND AMENDED SPECIAL INST
046 1ST SUPPL SPECIAL INSTR
047 2ND SUPPL SPECIAL INSTR
048 3RD SUPPL SPECIAL INSTR
049 4TH SUPPL SPECIAL INSTR
050 5TH SUPPL SPECIAL INSTR
051 ASSIGNED TO SURVEYOR
052 FIELD SURVEY COMMENCED
053 FIELD SURVEY COMPLETED
054 DRAFT NOTES WRITTEN
055 RETURNED TO FIELD
056 CRITICAL REVIEW MADE
057 FINAL NOTES TYPED
058 PLAT DRAFTED
059 FINAL REVIEW MADE
060 DELIVERED FOR ACCEPTANCE
061 MODIFICATION REQUIRED
062 PLATS/NOTES ACCPT DIV CH
063 PLATS RCVD FROM MICRFILM
088 MIN RPT RCVD W/VAL LOC
089 MIN RPT RCVD W-O/VAL LOC
090 MIN RPT RCVD W/VAL LSE
091 MIN RPT RCVD W-O/VAL LSE
095 AUDITED FOR CONVERSION
096 NOTICE FINAL DATE AMD
098 AUDITED NOT LOCKED
103 ADDTNL EVIDENCE RECEIVED
104 ADDTNL EVIDENCE REQUIRED
108 SRVY CONFORMANCE NOTICE
114 AMENDED/CRRCTD APLN RCVD
124 APPLICATION RECEIVED
141 BIA REPORT RECEIVED
142 BIA REPORT REQUESTED
146 CASE CLOSED-NO CONVEYNCE
165 CASEFILE SENT TO IBLA
210 FIELD REPORT REQUESTED
266 PROTEST WITHDRAWN
294 NAVIGABILITY REPORT RQST
296 NAVIGABILITY REPORT RCVD
298 PROTEST DISMISSED
299 PROTEST FILED
311 RELINQUISHMENT FILED
312 RELNQSHMNT IN PART FILED
326 SURVEY APPRV PLAT FILED
342 MINERAL REPORT RQSTD
372 APPLICATION COMBINED
374 AMENDED/CRRCTD DESC RCVD
375 AMENDED/CRRCTD DESC RQST
555 F BARR CLASS PETITION
572 SRVY REQ RETURNED TO ADJ
575 REINST/RELOCATE NOTICE
577 SRVY RQST RESUBMITTED
578 FANNY BARR PUBLICATION
653 CONFLICT RESOLVE REQST
654 LND CONV/IC-TLT RCVY REQ
655 LND CONV/PA-TLT RCVY REQ
656 LND CONV/TA-TLT RCVY REQ
696 CONSENT ADJ/LMTD WAIVER
729 SUPPLMNTL FLD RPT APPRVD
734 REJECTION ACTION PENDING

STATUS CODES GENERALLY USED FOR NATIVE ALLOTMENTS

ACTIVE STATUS CODES

CODE	DESCRIPTION
00	Active
03	Awaiting Adjudication
07	Awaits Patent Issuance

ACTIVE, NO ADJUDICATION REQUIRED

CODE	DESCRIPTION
20	Active, No Adj Reqd
21	Awaiting Survey
22	Needs Additional Survey
23	Conflict Resolution
24*	District Action / ANC
25*	District Action / FBX
26	Awaits Applicant Action
27	Awaiting Appeal Outcome
30	Other Agency Action
38	Awaits Title Recovery

INACTIVE/CLOSED STATUS CODES

CODE	DESCRIPTION
50	Inactive

CODE	DESCRIPTION
80	Closed
82	Rejected
84	Relinquished
87	Conveyed
88	Combined
89	Serialized in Error
90	Stat Life/Mineral Waiver

*Does not reflect new organizational boundaries. Use when any district action is required.

H-2561-1 - NATIVE ALLOTMENTS
IM AK 77-76, Field Examination of Cultural Resources by Realty Personnel

United States Department of the Interior 6230 (933)
BUREAU OF LAND MANAGEMENT
State Office
555 Cordova Street
Anchorage, Alaska 99501

RECEIVED
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March 25, 1977

Instruction Memorandum No. AK-77-76
Expires 12/31/77

To: DM's

From: SD

Subject: Field Examination of Cultural Resources by Realty Personnel

In recent months some confusion has arisen over cultural resources as these resources relate to field examinations and inventory reporting. The underlying concerns can be framed around two questions: 1) how are cultural values identified in the field, and (2) once cultural sites are located in the field, what are the procedures for appropriate recordation and disposition of the data? The first question will be deferred until May 1977, at which time an awareness session for field examiners will provide coverage of identification of cultural resources. The present memo will address the second concern.

In all field examinations by realty personnel, when paleontological, prehistoric, historic, or contemporary cultural values are encountered, an Antiquities Site Inventory form (6230-2) shall be prepared. These forms should be available from the area managers or district archaeologists. Since, in most cases, the staff archaeologist or historian will not be returning to cultural resource sites identified in the field examinations, it is imperative that the 6230-2 forms be accurate and comprehensive. Future inventory and research will rely heavily on these data. It is most important that the aliquot designations and narratives of site locations be amplified by sketch maps and photographs (if appropriate), and that any significant features of the site (for example, hearths, arrowhead caches, log construction, etc.) be drawn. If at all possible, the Geographic Coordinate System (latitude/longitude) should be provided to facilitate transfer of data to the Alaska Heritage Resource Survey (AHRS) automated files. The enclosed 6230-2 form exemplifies the detail that would be desirable.

The resource area should retain for its case files a copy of the completed 6230-2 form, and forward the original to the appropriate district office. The district office will keep the original and submit two copies of the 6230-2 form to the State Office, which will retain a copy for its records and send a copy to the Alaska Division of Parks.

H-2561-1 - NATIVE ALLOTMENTS
IM AK 77-76, Field Examination of Cultural Resources by Realty Personnel

It is our policy to support the Alaska Division of Parks Heritage Resource Survey, the principal statewide inventory file for cultural resources. Survey staff from that office will transfer necessary 6230-2 data to their automated files, assign a survey key number to each site, and return the form to the State Office. Accordingly, the State Office will transmit assigned site numbers to the district office. Each time additional data on a particular site become available, the 6230-2 should be updated and the data transmission procedure described above should be followed.

Each district should establish a master map of sites within its jurisdiction. Any sites for which a 6230-2 form is prepared should be plotted on a 1:63,360 U.S.G.S. quadrangle map. Sites discovered in areas where only 1:250,000 scale maps are available should be designated on status plats. Need specific procedure for records.

Periodically, the Alaska Division of Parks provides us with updated printouts of all AHRS entries. The Branch of Automatic Data Processing routinely obtains a copy of the survey tape master file each time the survey is updated. This information is in the BLM computer, and plot-outs of any desired scale are available for the Bureau's internal use upon request.

Acting

Enclosure

Distribution
Director (412) 2 cys
D-DSC (D-531) 3 cys
Div. of Technical Services (941)

H-2561-1 - NATIVE ALLOTMENTS
IM AK.77-76, Field Examination of Cultural Resources by Realty Personnel

Form 6210-2 (June 1968)
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

ANTIQUITIES SITE INVENTORY

☑ Archeological ☐ Paleontological ☐ Historic

1. Site number	2. Type of site
	house pit + grave

3. State	County	District	4. Map reference
Ak	—	Fairbanks	Selawik C-3

5. Location
2 mils North of the village of Selawik on an unnamed body of water (see attached maps)

Section	Township	Range	Meridian
8	14N	6W	KRIII

6. Land ownership status	7. Other site designations
Native Allotment	—

8. Cultural affiliation; Geologic Age and/or formation; dates of use
Unknown - Arctic (Bessie Ballot) - [illegible] of local Eskimo ancestors

9. Site description, position, surrounding terrain, and importance
3 house pits overgrown by vegetation
2 exposed grave sites (wooden caskets)

10. Area of occupation	11. Present condition
≈1 acre	very overgrown by veg.
12. Photo numbers	graves are exposed + some damage by weather is evident

13. Informants and references
Bessie Ballot
Selawik, Ak 99770

14. Recorded by	Date
H. A. Brownell	8-20-76

H-2561-1 - NATIVE ALLOTMENTS

IM AK 77-76, Field Examination of Cultural Resources by Realty Personnel

15 Sketch and/or remarks

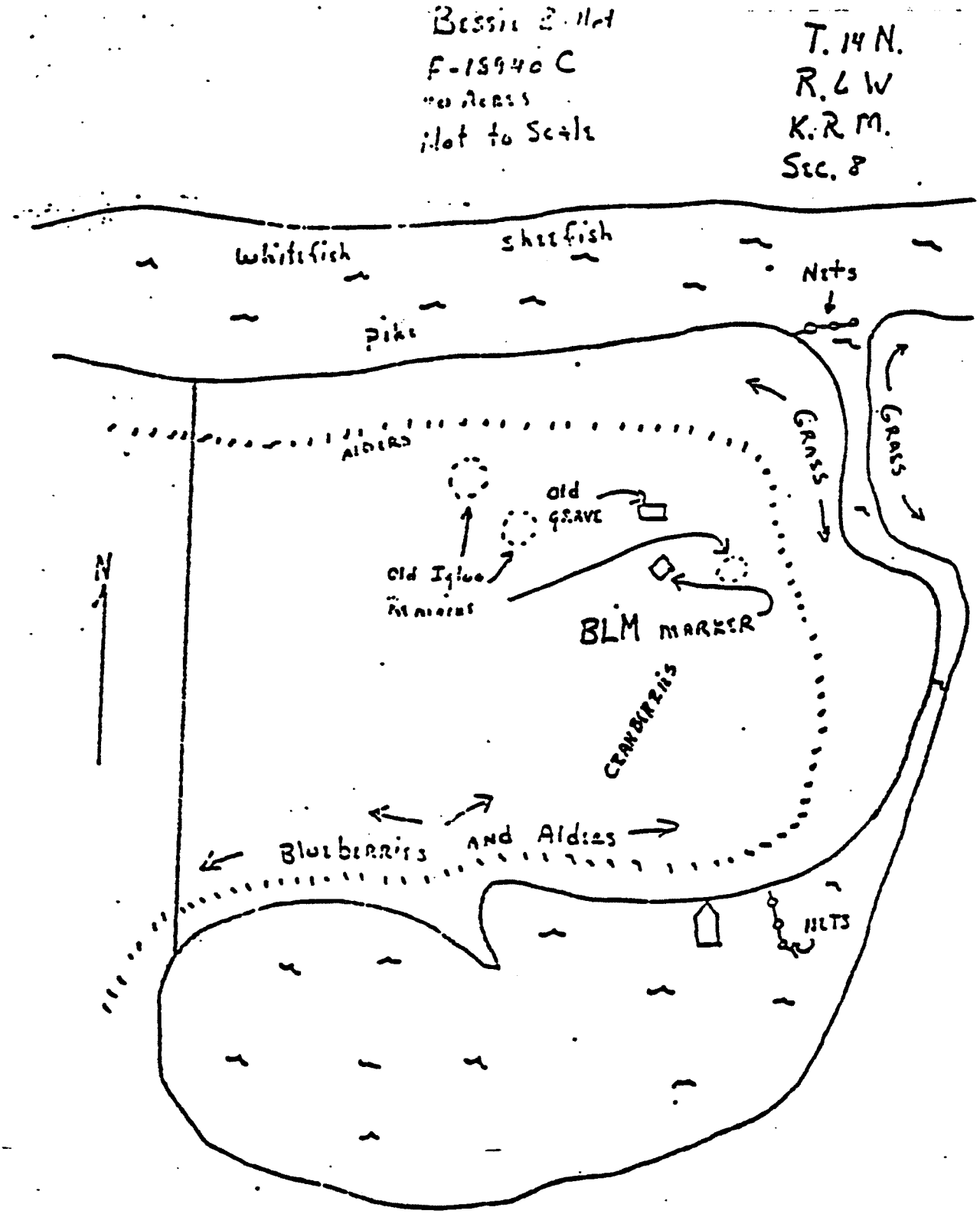
EVALUATION

16. Does site have recreation value? ☐ Yes ☐ No If "yes," has the Recreation Inventory Form 6110-3 been completed? ☐ Yes ☐ No

17. Does site have sufficient value to justify preservation and/or development? ☐ Yes ☐ No If "yes," specify type of preservation or development.

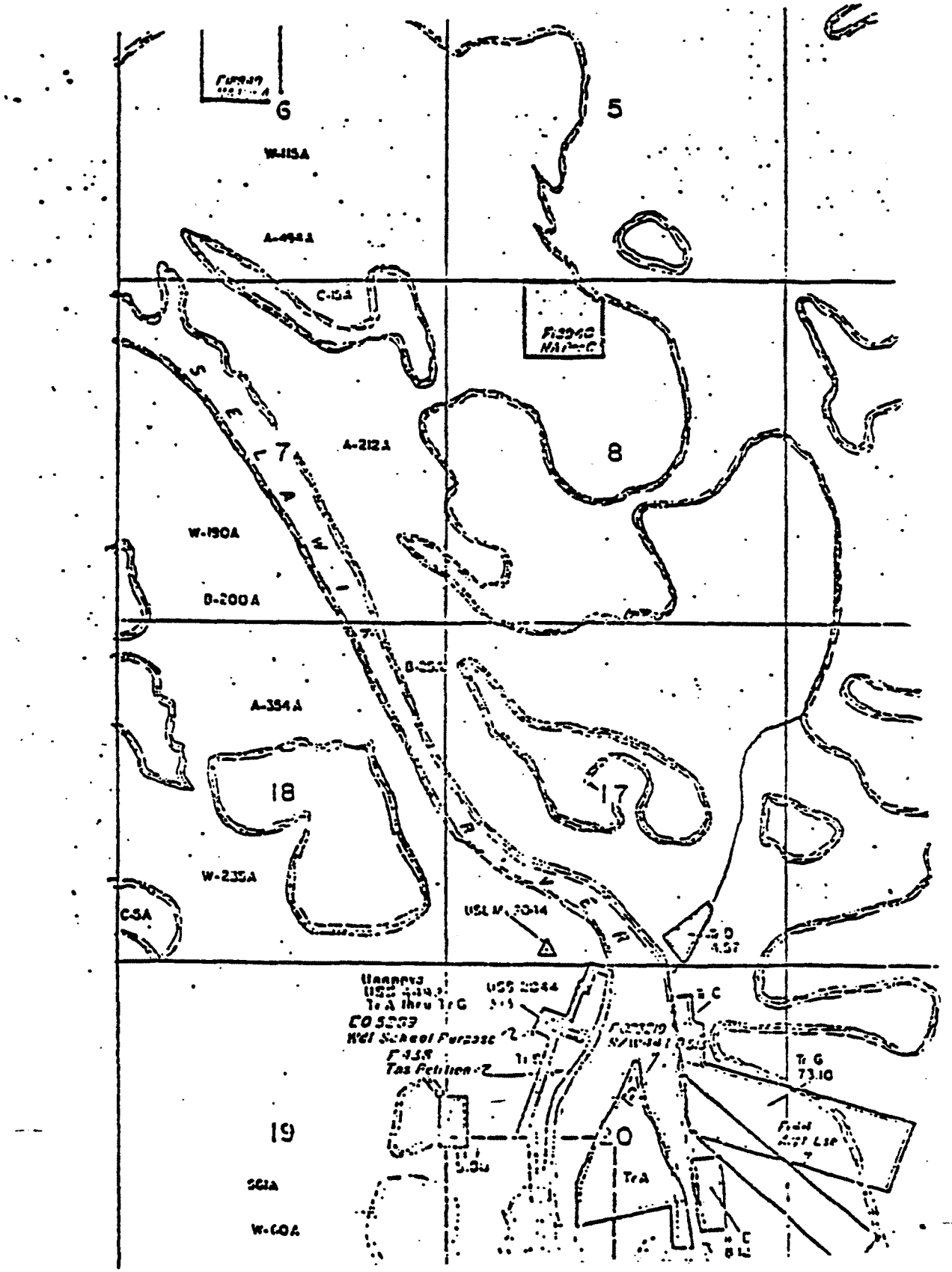
18. Reviewed by (Signature of District Manager) | Date

H-2561-1 - NATIVE ALLOTMENTS
IM AK 77-76, Field Examination of Cultural Resources by Realty Personnel

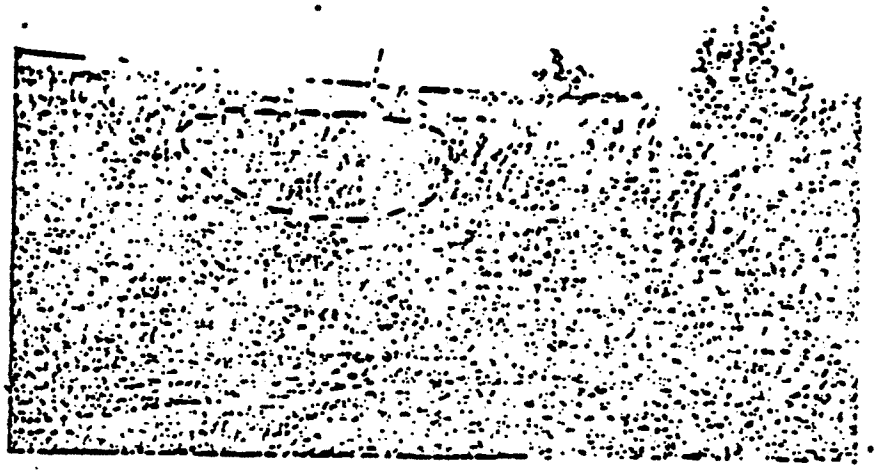


H-2561-1 - NATIVE ALLOTMENTS

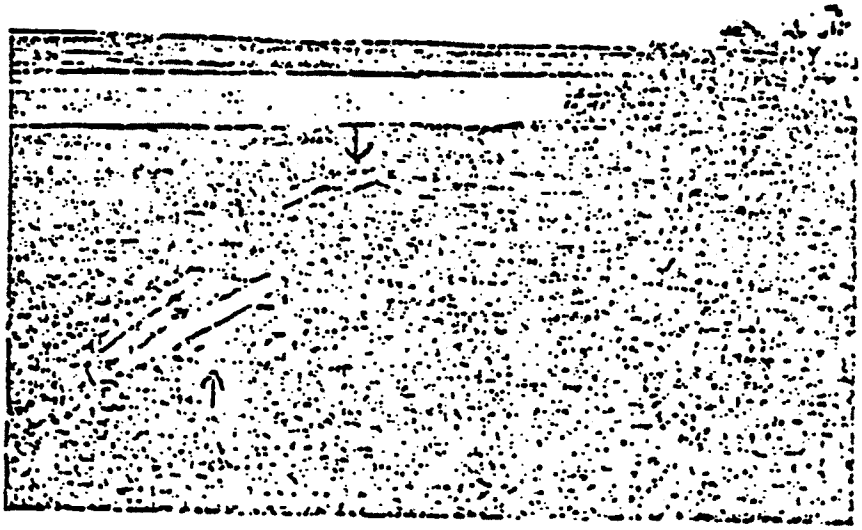
IM AK 77-76, Field Examination of Cultural Resources by Realty Personnel



H-2561-1 - NATIVE ALLOTMENTS
IM AK 77-76, Field Examination of Cultural Resources by Realty Personnel



house pit



grave site

H-2561-1 - NATIVE ALLOTMENTS
Secretarial Order 2665 and Amendment 2

1137
Sec'y. O. 2665
10-16-51

OK

Office of the Secretary

[Order 2665]

RIGHTS-OF-WAY FOR HIGHWAYS IN ALASKA

OCTOBER 16, 1951.

SECTION 1. *Purpose.* (a) The purpose of this order is to (1) fix the width of all public highways in Alaska established or maintained under the jurisdiction of the Secretary of the Interior and (2) prescribe a uniform procedure for the establishment of rights-of-way or easements over or across the public lands for such highways. Authority for these actions is contained in section 2 of the act of June 26, 1922 (47 Stat. 446, 43 U. S. C. 211a).

SEC. 2. *Width of public highways.* (a) The width of the public highways in Alaska shall be as follows:

(1) For through roads: The Alaska Highway shall extend 200 feet on each side of the center line thereof. The Richardson Highway, Glenn Highway, Haines Highway, Seward-Anchorage Highway, Anchorage-Lake Spenard Highway and Fairbanks-College Highway shall extend 150 feet on each side of the center line thereof.

(2) For feeder roads: Abbert Road (Kodiak Island), Edgerton Cutoff, Elliott Highway, Seward Peninsula Tram road, Steese Highway, Sterling Highway, Taylor Highway, Northway Junction to Airport Road, Palmer to Matanuska to Wasilla Junction Road, Palmer to Finger Lake to Wasilla Road, Glenn Highway Junction to Fishhook Junction to Wasilla to Knik Road, Slana to Nabesna Road, Kenai Junction to Kenai Road, University to Ester Road, Central to Circle Hot Springs to Portage Creek Road, Manley Hot Springs to Eureka Road, North Fork Boundary to Kantishna Road, Paxson to McKinley Park Road, Sterling Landing to Ophir Road, Iditarod to Flat Road, Dillingham to Wood River Road, Ruby to Long to Poorman Road, Nome to Council Road and Nome to Teller Road shall each extend 100 feet on each side of the center line thereof.

(3) For local roads: All public roads not classified as through roads or feeder roads shall extend 50 feet on each side of the center line thereof.

SEC. 3. *Establishment of rights-of-way or easements.* (a) A reservation for highway purposes covering the lands embraced in the through roads mentioned in section 2 of this order was made by Public Land Order No. 601 of August 10, 1949, as amended by Public Land Order No. 737 of October 16 1951. That order operates as a complete segregation of the land from all forms of appropriation under the public-land laws, including the mining and the mineral leasing laws.

(b) A right-of-way or easement for highway purposes covering the lands embraced in the feeder roads and the local roads equal in extent to the width of such roads as established in section 2 of this order, is hereby established for such roads over and across the public lands.

(c) The reservation mentioned in paragraph (a) and the rights-of-way or easements mentioned in paragraph (b) will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the route of the new construction specifying the type and width of the roads.

SEC. 4. *Road maps to be filed in proper Land Office.* Maps of all public roads in Alaska heretofore or hereafter constructed showing the location of the roads, together with appropriate plans and specifications, will be filed by the Alaska Road Commission in the proper Land Office at the earliest possible date for the information of the public.

OSCAR L. CHAPMAN,
Secretary of the Interior.

[F. R. Doc. 51-12280; Filed, Oct. 18, 1951; 8:46 a. m.]

A57-A10752

H-2561-1 - NATIVE ALLOTMENTS
Secretarial Order 2665 and Amendment 2

1573-1
S.O. 2665
9-15-56

#1139 10:14:1

Office of the Secretary

[Order 2665, Amdt. 2]

ALASKA

RIGHTS-OF-WAY FOR HIGHWAYS

SEPTEMBER 15, 1956.

1. Section 2 (a) (1) is amended by adding to the list of public highways designated as through roads, the Fairbanks-International Airport Road, the Anchorage-Fourth Avenue-Post Road, the Anchorage International Airport Road, the Copper River Highway, the Fairbanks-Nenana Highway, the Denali Highway, the Sterling Highway, the Kenai Spur from Mile 0 to Mile 14, the Palmer-Wasilla-Willow Road, and the Steese Highway from Mile 0 to Fox Junction; by re-designating the Anchorage-Lake Spenard Highway as the Anchorage-Spenard Highway, and by deleting the Fairbanks-College Highway.

2. Section 2 (a) (2) is amended by deleting from the list of feeder roads the Sterling Highway, the University to Ester Road, the Kenai Junction to Kenai Road, the Palmer to Finger Lake to Wasilla Road, the Paxson to McKinley Park Road, and the Steese Highway, from Mile 0 to Fox Junction, and by adding the Kenai Spur from Mile 14 to Mile 31, the Nome-Kougarok Road, and the Nome-Teller Road.

FRED A. SEATON,
Secretary of the Interior.

[F. R. Doc. 56-7883; Filed, Sept. 20, 1956; 8:48 a. m.]

H-2561-1 - NATIVE ALLOTMENTS
Regional Solicitor's Opinion, Rights-of-Way on Allotments

United States Department of the Interior
OFFICE OF THE SOLICITOR
ANCHORAGE REGION
510 L Street, Suite 408
Anchorage, Alaska 99501

IN REPLY REFER

May 21, 1980

MEMORANDUM

To: Acting Area Director
Bureau of Indian Affairs
Juneau

From: David S. Case
Attorney/Advisor

Subject: Rights of Way on Allotments --
R.S. 2477 and Other Access Questions

I. INTRODUCTION

A. Your Requests

Over the last twelve months you have directed three opinion requests to this office regarding access to and across Native allotments. Your first request (dated May 22, 1979) asked about the effect of Native occupancy on the establishment of section line road easements under R.S. 2477.[1/] Your second request (dated July 6, 1979) was for general guidance about the method for assuring access to landlocked Native allotments you had advertised for sale. You also asked if you have to disclose any access problems in your sale advertisement. With respect to R.S. 2477 easements, you asked whether a section line easement for public access would suffice for private access to an otherwise landlocked

1/ The request was entitled "Effect of Statutory Reservations on Native Allotments" and was answered in a memorandum by Dennis Hopewell of this office, dated September 4, 1979. The section line easement question was specifically excluded from that response pending this reply.

allotment. Your final request (dated April 4, 1980) reduced to its essentials, asked whether the Indian right of way laws and regulations apply when the right of way on or through a certified allotment coincides with a surveyed section line easement arguably granted under R.S. 2477.

B. R.S. 2477 in Brief

R.S. 2477 is an 1866 Act "granting" highway rights of way over public lands in the following deceptively simple terms:

> The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted. Act of July 26, 1866, c. 262, sec. 8, 14 Stat. 253.

This act was initially codified as Revised Statute (R.S.) 2477 and later as 43 U.S.C. 932. It was repealed by Section 706(a) of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, PL 94-576, 90 Stat. 2743, 43 U.S.C. 1701, et seq.

Your questions focus on the section line easements appropriated by the Territory and State of Alaska under this federal authorizing legislation. The State statute appropriating the section line easements is codified as Alaska Statute (AS) 19.10.010. However, the the R.S. 2477 grant includes other kinds of rights of way other than those appropriated under this statute. On the other hand, you should note that the R.S. 2477 grant is specifically limited to rights of way over "public lands." The latter point is significant, because it is our opinion that Alaska Native use and occupancy sufficient to qualify for a certificate of allotment is also sufficient to withdraw the land occupied from "public land" status.

Finally, the State's acceptance of the R.S. 2477 grant along section lines has had an on-again, off-again history that must be taken into account when determining whether the easements granted under R.S. 2477 have ever been accepted by the State. Thus, the answers to your questions require some background in the meaning of the term "public lands" and in the history of the application of R.S. 2477 in Alaska. In order to give some direction to that discussion, however, we have provided short answers to each of the questions posed in your opinion requests.

II. SHORT ANSWERS

A. May 22, 1979 Request

We agree with the conclusion expressed at page 2 of your opinion request about the effect of Native use and occupancy on the establishment of a section line easement. However, we would state your conclusion more definitely: If use and occupancy were initiated after survey of the section line, then the section line easement is superior to the allottee's rights and a right of way across the allotment does not require the consent of the allottee or a grant from the United States. If use and occupancy began any time before the survey, then the easement can only be granted with the consent of the allottee and according to the applicable Indian right of way laws.

B. July 6, 1979 Request

We know of no principle requiring you to disclose whether or not there is access to advertised parcels; furthermore, otherwise valid section line easements can be used to provide private access, but they are also open to the public. Under some circumstances, however, easements by necessity can be implied across otherwise unencumbered lands to afford private access to landlocked parcels.

C. April 4, 1980 Request

Whether the Indian right of way laws apply to a Native allotment depends on whether the allottee commenced use and occupancy before or after a section line right of way was appropriated by survey.

III. DISCUSSION

A. R.S. 2477

1. History and Purpose of R.S. 2477

U.S. Supreme Court and Ninth Circuit cases have cast some doubt on whether R.S. 2477 applies in Alaska. A narrow reading of the U.S. Supreme Court's opinion in Central Pacific Railway Co. v. Alameda County, 284 U.S. 463 (1932) and the Ninth Circuit's later decision in U.S. v. Dunn, 478 F.2d 433, 445 (9th Cir. 1973) would indicate that R.S. 2477

was only a recognition of pre-existing rights rather than a grant of new rights. Strictly construed, this interpretation could mean that R.S. 2477 was never applicable to Alaska, since it was enacted in 1866, one year prior to the purchase of the Territory.

The Territorial and State cases, on the other hand, consistently characterize R.S. 2477 as "in effect, a standing offer from the federal government" for the grant of a right of way, Girves v. Kenai Peninsula Borough, 536 P.2d 1221, 1226 (Alaska 1975). Under this interpretation, the right of way has been held to come into existence upon the "acceptance" of the standing offer. See Berger v. Ohlson, 9 Alaska 389 (D. Alaska 1938); Clark v. Taylor, 9 Alaska 298 (D. Alaska 1938); United States v. Rogge, 10 Alaska 130 (D. Alaska 1941); State v. Fowler, 1 Alas. L.J. 7 (April 1963); Hammerly v. Denton, 359 P.2d 121 (Alas. 1961). Given the weight of authority in this jurisdiction and the historical reliance placed upon R.S. 2477 in Alaska as a source of rights of way across the public domain, we are unwilling to conclude that the statute has no applicability to Alaska. We suspect that if the question were squarely presented to the Ninth Circuit Court of Appeals it would agree.

It has been held that R.S. 2477 first became applicable in Alaska by the Organic Act of May 17, 1884, 23 Stat. 24, whereby Alaska first became an organized territory. Section 9 of that Act, among other things, provided that the laws of the United States be extended to the Territory of Alaska, U.S. v. Rogge, 10 Alaska, supra at 147. As noted previously, R.S. 2477 is construed as a standing offer from the federal government for the creation of a right of way, Girves v. Kenai Peninsula Borough, 536 P.2d, supra at 1226. Under this construction, it has been held that the offer can be accepted (and the right of way created) either (1) by a positive act of the state or territory clearly manifesting an intent to accept the offer, Hammerly v. Denton, 359 P.2d, supra at 123.[2/]

2/ Accord: Wilderness Society v. Morton, 479 F.2d 842, 882 (D.C. Cir. 1973), cert. den'd. 411 U.S. 917.

or (2) by public use of the right of way for such a period of time and under such conditions as to prove that the offer has been accepted, id.

Statutory acceptance of the grant, formal expression on the part of public officials of an intention to construct a highway or actual public construction of a highway may all constitute acceptance of the R.S. 2477 grant by the "positive act" of the appropriate public authorities. Thus, in Girves, supra, the Alaska Supreme Court held that AS 19.10.010 (establishing a highway easement along all section lines in the State) was sufficient to establish a right of way along the boundary of plaintiff's homestead coinciding with a surveyed section line. In Wilderness Society v. Morton, 479 F.2d 842 (D.C. Cir. 1973), it was held that the State's application to the Bureau of Land Management to construct a "public highway" from the Yukon River to Prudhoe Bay, along with enabling State legislation, was sufficient to establish an acceptance of the federal grant. In addition, the actual construction or public maintenance of a highway may constitute acceptance. See Moulton v. Irish, 218 P.2d 1053 (Montana 1923), construction of highways; Streter v. Stalnaker, 85 NW 47 (Nebraska 1901), public maintenance and improvement of highways.

Public use (sometimes called "public user") may also constitute acceptance of the grant in the absence of any positive official act. Whether any claimed use constitutes acceptance of the grant, however, is a question of fact to be decided by the court. It appears that continued and consistent use of a right of way across the public lands by even one person with an interest in the lands to which the road gives access may be sufficient to establish public user, State v. Fowler, 1 Alas. L.J., supra at 8 (April 1963). See also Hamerly v. Denton, supra at 125. However, the Alaska Supreme Court has held that mere desultory or occasional use of a road or trail does not create a public highway, id.[3/]

3/ Of course, it is no longer possible to accept the R.S. 2477 grant by any of these methods, because R.S. 2477 was repealed by FLPMA, supra, in 1976.

2. Allotments As "Public Lands"

By its terms, R.S. 2477 is only an offer for a right of way across "public lands." In discussing this term in the context of R.S. 2477, the Alaska Supreme Court has noted:

> The term "public lands" means lands which are open to settlement or other disposition under the land laws of the United States. It does not encompass lands in which the rights of the public have passed and which have become subject to individual rights of a settler. Hammerly v. Denton, supra at 123.

Beginning with the 1884 Organic Act, previously discussed, Congress has specifically provided for the protection of lands used or occupied by Alaska Natives. Section 8 of the Organic Act provided in part:

> That the Indians or other persons in [Alaska] shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress.[4/]

Federal decisions have long recognized the statutory protection afforded Alaska Native use and occupancy. See, e.g., U.S. v. Berrigan, 2 Alaska 442 (D. Alas. 1904); U.S. v. Cadzow, 5 Alaska 125 (D. Alas. 1914). Departmental regulations and policy reinforce the statutes. See, e.g., 43 CFR §§ 2091.1(e), 2091.2-1, 2091.5, 2091.6-3; see also Government Appropriation of Rights-of-Way in Alaska, Opinion of the Associate Solicitor, Public Lands (M-36595, March 15, 1960, copy attached).

In analogous circumstances, the U.S. Supreme Court has consistently recognized that railroad land grants are not to be construed in derogation of Native use and occupancy

4/ Similar provisions appear in the following acts: Act of March 3, 1891, c. 561, 26 Stat. 1095, § 14; Homestead Act of May 14, 1898, c. 299, 30 Stat. 412, § 7; Act of June 6, 1900, c. 786, 31 Stat. 330, § 27.

rights. That is particularly true where those rights have been protected by treaty, Leavenworth L & GR Co. v. United States, 92 U.S. 733 (1875), or specific statutory exceptions, Buttz v. Northern Pacific Railway Co., 119 U.S. 55 (1886). See generally, Bardon v. Northern Pacific Railway Co., 145 U.S. 535, 540-543 (1892). Most significantly, the U.S. Supreme Court has specifically protected rights of individual Native occupancy against competing federal grants even in the absence of any statutory or treaty protections where those rights flow "from a settled government policy." Cramer v. United States, 261 U.S. 219, 229 (1923). Whether from the statutory protection afforded in the 1884 Organic Act and the other legislation specifically noted or from the settled government policy of protecting Alaska Native use and occupancy, we think it is clear that lands used and occupied by individual Alaska Natives are not "public lands" within the meaning of R.S. 2477 and that the R.S. 2477 grant cannot attach during any period of such occupancy.

3. Acts Accepting the R.S. 2477 Grant

(A) Section Line Easements. You have noted that AS 19.10.010 establishes rights of way of varying widths along the section lines in the State. As noted earlier, the Alaska Supreme Court has concluded this statute is a positive official act constituting acceptance of the R.S. 2477 grant, Girves, supra. The Territorial statute accepting the grant was originally enacted on April 6, 1923 (19 SLA 1923), but was subsequently repealed (perhaps inadvertently) on January 18, 1949. Op. Ak. Atty. Gen. No. 7 at 3 (December 18, 1969). The statute was subsequently reenacted in substantially its present form by the 1953 Territorial legislature (Act of March 21, 1953, 35 SLA 1953). Id. Thus, whether a section line easement has attached to Native occupied land must be viewed against the backdrop of the dates of Native occupancy and the dates during which Alaska's acceptance of the grant was in effect. The section line easements could only attach to lands not occupied by Natives between the dates of April 6, 1923, and January 18, 1949, and from March 21, 1953, forward.

Additionally, by the terms of the State statute, the acceptance is dependent on the existence of a "section line." In the Opinion previously noted, the State Attorney General also concluded that for the R.S. 2477 grant to attach under the statute, the "public lands must be surveyed and section lines ascertained," id. at 7. We agree with this conclusion; therefore, you must also determine whether

the lands in question were subject to individual Native use and occupancy on the date the section line was actually surveyed.[5]

(B) Other Official Acts of Acceptance. As noted earlier, other official actions (i.e., construction, repair, dedications, etc.) can constitute official acceptance of the R.S. 2477 grant. Whether such official action has created an R.S. 2477 right of way will have to be determined on a case-by-case basis.

(C) Public User. Rights of way claimed to have been created by public use must also be determined on a case-by-case basis. On the one extreme, an obvious public road established prior to Native use and occupancy would certainly be sufficient to constitute acceptance of the R.S. 2477 grant; see State v. Fowler, 1 Alas. L.J. 7, supra. On the other extreme, it is equally clear that desultory or occasional use of a road or trail by individuals having no interest in the land to which they obtain access is not sufficient to create an R.S. 2477 right of way, Hamerly v. Denton, supra. Whether a given use is sufficient to constitute acceptance of the R.S. 2477 grant, may have to be determined judicially in all but the most obvious cases.

4. Widths

By State statute, section line easements on "public lands" are four rods (66 feet) wide with the section line as a center of the dedicated right of way.[6] Other official

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[5] The Attorney General also concluded that the R.S. 2477 grant attaches on the date the "protracted surveys" were published in the Federal Register. We do not agree with this position; as a practical matter, the protraction diagrams are not a reliable means of ascertaining the correct position of the surveyed section line.

[6] A right of way 100 feet wide is granted between sections of land owned by or acquired from the State. Since Native occupied lands could not fall within this category, section line easements on Native allotments will be confined to the 66 foot width.

acts could conceivably establish larger rights of way. Rights of way established by public user appear to be confined to the width actually used, State v. Fowler, supra.

B. Other Access Questions

1. Obligations To Provide Access

We do not believe either the allottee or the United States is obligated to provide a warranty of access to the purchaser of an allotment. By statute (AS 34.15.030) Alaska has incorporated the common law covenants for title into any deed which by its terms "conveys and warrants" real property to another. Thus, a deed substantially in the statutory form includes implied warranties that at the time of the conveyance the grantor: (1) is lawfully seized of the estate in fee simple and has the right and power to convey the premises; (2) that the premises are free from encumbrances and (3) that he warrants quiet enjoyment of the premises and to defend the title against all persons claiming the premises.

You have advised that you use a special warranty deed to convey restricted Indian lands. As you know, a special warranty deed limits the grantor's obligation to defend only against claims arising through him. It does not require the grantor to defend against claims arising through other persons, 21 CJS "Covenants" § 49. Except as so limited, we believe the deed form you used includes all of the statutory covenants implied by AS 34.15.030. None of these, however, include a covenant of access to the land granted. See generally, Powell on Real Property, ¶ 904, et seq. (1968 edition). Furthermore, AS 34.15.080 specifically provides: "No covenant is implied in a conveyance of real estate, whether the conveyance contains special covenants or not." We interpret this to mean that unless there is a specific covenant of access, the grantor is not obligated to provide it.

2. Easements By Conveyance Or Covenant

In spite of the protection this doctrine affords both the United States and the allottee, we recommend that as a prudent land manager you advise the allottee to provide whatever access it is within his power to provide incident to the sale of an allotment. That is especially true if, as in one case you described to us, the allottee is selling a

portion of the allotment which would be landlocked by the remaining lands of the allottee or others. In these circumstances, we advise you to insure that appropriate access is guaranteed through the allottee's other lands either by convenant or specific grant of easement. See generally, Powell on Real Property, ¶ 407 and 408. See also, 28 CJS Easements, § 23, et seq. Conversely, if the allottee's other lands will be landlocked by conveyance of a portion of the allotment to a third party, the allottee should insure that he is reserved an easement in the lands granted. See 28 CJS Easements, § 29. Under these circumstances, failure to provide or obtain access at the time of conveyance could result in later litigation to establish an easement by necessity.

3. Easements By Necessity

Easements by necessity are implied easements across otherwise unencumbered tracts where necessary to afford access to an otherwise landlocked parcel. See generally, Powell on Real Property, supra, ¶ 410. This doctrine comes into play only where there is a unity of ownership between the dominant and servient parcels at the time the landlocked (i.e., dominant) parcel was severed from the rest of the estate. The doctrine would apply to both examples discussed above where the grantor conveys a portion of the allotment thereby isolating either the land conveyed or the grantor's retained lands. In these circumstances, the courts have construed the intention of the parties to create an easement of necessity across the servient estate to provide access to the landlocked (i.e., dominant) estate.

As applied in this jurisdiction, the doctrine only requires proof of reasonable (as opposed to absolute) necessity in order to imply an easement. U.S. v. Dunn, 478 F.2d 443, 446 (9th Cir. 1973). Although the easement must be something more than a mere "convenience," it is not necessary to show that it is the only means of access to the property. In any event, the determination of whether the easement is a "reasonable necessity" is a fact question which involves considerations of public policy as well as the intent of the parties and the reasonable utilization to be made of the landlocked parcel. See generally, Powell on Real Property, supra, ¶ 410.

The doctrine has also been applied to Indian lands in this jurisdiction, cf. Superior Oil Co. v. United States, 353 F.2d 34 (9th Cir. 1965). The oil company in this case

sought to obtain an easement to move heavy oil drilling equipment across Indian reservation lands in order to drill on lands owned by a mission society and leased to the oil company. The mission society had previously been granted the land by the United States under a statute permitting such grants to religious organizations engaged in mission or school work on Indian reservations. The court concluded that although the mission society had an easement by necessity for mission purposes, the scope of that easement could not be expanded to accommodate the purposes of the oil company. We know of no principle which would preclude an easement of necessity from attaching to lands merely because they are Indian trust or restricted lands where the easement of necessity doctrine is otherwise applicable. See also, U.S. v. Clarke, 529 F.2d 984 (9th Cir. 1976), aff'd _____U.S._____, (No. 78-1693, March 18, 1980).

IV. SUMMARY

This, of necessity, has been a rather wide-ranging opinion dealing with the several general concerns you raised regarding easements across Indian allotments. We will summarize some of our conclusions below for ease of reference.

A. R.S. 2477 Easements

R.S. 2477 easements can be created either by the positive acts of authorized authorities or public user of a right of way across the "public lands." Native used and occupied lands, however, are not "public lands." Therefore, a right of way under R.S. 2477 can only be obtained if, at the time the R.S. 2477 grant is accepted, the lands were not subject to the individual use and occupancy rights of an Alaska Native who has applied for an allotment.

B. Section Line Easements

Whether a section line easement supersedes Native use and occupancy depends on whether the Native use and occupancy preceded either the statutory acceptance or actual survey of the section line easement. If Native use and occupancy began prior to April 6, 1923, or between January 18, 1949, and March 21, 1953, then the easement could not be imposed on those lands by subsequent survey of a section line. If unoccupied lands were surveyed either between April 6, 1923,

and January 18, 1949, or after March 21, 1953, then the section line easement supersedes Native occupancy rights.

C. Guarantees of Access

Although there is no legal requirement to guarantee access to otherwise landlocked allotments, you would be well advised to counsel the allottees to provide access if it is within their power to do so. It is especially important to provide access where there is an initial unity of title in the allottee. Under these circumstances an easement of necessity can be imposed to benefit a landlocked parcel. Providing access at the time of the grant will avoid later confusion and possible litigation.

D. Public or Private Access

You should also be aware that any R.S. 2477 right of access (whether by section line easement or otherwise) predating Native use and occupancy is a right of public access. While it may also permit private individuals to have access to otherwise landlocked parcels, it also permits the public at large to use the right of way. Of course, that does not permit the public to trespass on the allottee's or anybody else's private property.

David S. Case
Attorney/Advisor

Enclosure

cc: Scott Keep, Div. of Indian Affairs, Washington, D.C.
Area Realty Officer, Bureau of Indian Affairs, Juneau

H-2561-1 - NATIVE ALLOTMENTS
Regional Solicitor's Opinion, Rights-of-Way on Allotments

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Solicitor
Washington 25, D. C.

March 15, 1960

M-36595

Memorandum

To: Director, Bureau of Land Management

From: Associate Solicitor, Division of Public Lands

Subject: Appropriation of rights-of-way on public lands for government use

Your office's memorandum of July 9, 1958, called to our attention memoranda dated February 14 and 24 from the Field Solicitor to the Area Administrator, both at Anchorage, which discuss the effect of Federal appropriation of rights-of-way on entries and Indian occupancy claims. We have had additional correspondence with the Field Solicitor on this question.

The courts have zealously protected the rights of those who have made valid entries, locations, and selections on public lands. In Hastings R.R. Co. v. Whitney, 132 U.S. 357, 364 (1889), the court found in favor of an allowed homestead entry against a railroad company claiming under a Congressional grant by the act of July 4, 1860 (14 Stat. 87), stating that

> "So long as it remains a subsisting entry of record, whose legality has been passed for by the land authorities, and their action remains unreversed, it is such an appropriation of the tract as segregates it from the public domain, and therefore precludes it from subsequent grants."

See also Cornelius v. Kessel, 128 U.S. 456 (1888); United States v. North American Co., 253 U.S. 330 (1920); Payne v. Central Pacific R.R. Co., 255 U.S. 228 (1921).

The Department also has long recognized the vesting of rights by those holding allowed entries, for example, against later Government withdrawals of public lands. Op. Atty. Gen., 1 L.D. 30 (1881); Nathais Ebert, 14 L.D. 589 (1892); Instructions, June 6, 1905 (33 L.D. 607, 608). In the cases of May C. Sands, 34 L.D. 653 (1906) and John L. Maney, 35 L.D. 250 (1906), cited in the Field Solicitor's memorandum, the withdrawal order appears in each case to have preceded allowance of the entry. The former case held that an entry is a contractual right against the Government. We find no clear basis moreover for the suggested distinction between "specific" and "general" reclamation withdrawals. See 43 CFR 230.15; Edward F. Smith, 51 L.D. 454

(1926). Certainly none of the cited decisions hold that the entryman could be deprived of his entry without compensation.

We cannot doubt that an appropriation of lands by a Government agency under the Instructions, January 13, 1916 (44 L.D. 513), would be subject to any valid entry existing at the time of tract appropriation. The Solicitor has said that:

> "In practice the Department has limited its authority to reserve from grants made by patent, road and other rights-of-way constructed with Federal funds to those cases where construction preceded the initiation of the right on which the patent is based. Instructions of August 31, 1915 (44 L.D. 399) and Instructions of January 13, 1916 (44 L.D. 513)."

Opinion of April 23, 1958 (65 I.D. 200, 202).

Surely an allowed entry is such an "initiation of the right" as to protect it from later appropriation by a Government agency without compensation. See Solicitor's Opinion of September 30, 1921 (48 L.D. 459, 462). We find no evidence that the entries involved in either the 1915 or 1916 Instructions preceded the Government appropriation.

The Department's disinclination in the instructions to accept "a mere survey" as "an appropriation of the land to the public use", and urging "staking the area", can hardly be explained except as provision for giving notice to later entrymen that they could only enter the lands subject to the Government's appropriated rights. To be fully consistent with these instructions and the regulations (43 CFR 205.13), we should not encourage Federal agencies to rely on mere filing of a map, without staking the area on the ground sufficiently to evidence an actual appropriation of the land.

The courts have held that a mere settler, who has no allowed entry, has no rights against the Government. Yosemite Valley case, 82 U.S. 77, 87 (1872). Like allowed entries, however, we believe continued Indian occupancy in good faith would receive protection against later appropriations. See A.S. Wadleigh, 13 L.D. 120 (1891). The Congress may of course extinguish the occupancy rights of any Indians. See United States v. Santa Fe Pacific Railroad Co., 314 U.S. 339, 347 (1941); Tee Hit Ton Indians v. United States, 348 U.S. 272 (1955). Indian occupancy rights are otherwise protected against later adverse claims or Government withdrawals. Cramer v. United States, 261 U.S. 219 (1923); Schumacher, 33 L.D. 454 (1905); Departmental Opinion, 56 I.D. 395 (1939).

In the Tee Hit Ton case supra, the Supreme Court held that Congress could by statute refuse to recognize Indian tribal rights of occupancy and disqualify Indians from compensation for the taking of timber under a specific statute providing for such timber cutting. The case did not hold that a Federal agency could ignore actual occupancy by an Indian, or group of Indians, without specific provision

H-2561-1 - NATIVE ALLOTMENTS
Regional Solicitor's Opinion, Rights-of-Way on Allotments

therefor by Congress. Whether or not the Indian interest is by law compensable, the Department's position, protecting lawful Indian occupancy, is clear. Solicitor's Opinion, 53 I.D. 481, 489 (1931); Associate Solicitor's Opinion, M-36539, November 19, 1958.

We recognize the additional acuteness of the problem in Alaska since the repeal of the act of July 24, 1947 (43 U.S.C., sec. 321d) by Section 21(d)(7) of the Alaska Omnibus Act of June 25, 1959 (73 Stat. 146). See Associate Solicitor Memorandum, December 23, 1959, to Regional Solicitor at Juneau. However, the needs of Government agencies should not override the necessity for giving entrymen and Indian occupants every protection afforded them by previous judicial and administrative rulings in the absence of contrary legislation. The Field Solicitor's memoranda of February 14 and February 24, 1958, to the extent that they are inconsistent with this opinion, should not be followed.

(Sgd) C. R. Bradshaw

C. R. Bradshaw
Associate Solicitor
Division of Public Lands

H-2561-1 - NATIVE ALLOTMENTS
IM AK 84-10, Issuance of Allotment Certificates on a Parcel Basis

United States Department of the Interior

2561 (932

BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

October 6, 1983

Instruction Memorandum No. AK 84-10
Expires 9/30/84

To: DM-F and DSD for Conveyances

From: State Director, Alaska

Subject: Issuance of Allotment Certificates on a Parcel Basis

It has been decided that in order to expedite the processing of Native Allotments, we will issue allotment certificates for each parcel as the surveys are received.

There should be no problem with this procedure provided that supplementary certificates are issued in accordance with the Regional solicitor's opinion datad September 14, 1973. A copy of this opinion is enclosed.

Enclosure (1)
Solicitor's Opinion 9/14/73

Distribution:
D-DSC (D-558A)

Fred Wolf
Acting

H-2561-1 - NATIVE ALLOTMENTS
IM AK 84-10, Issuance of Allotment Certificates on a Parcel Basis

IN REPLY REFER TO

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
Anchorage Region
P. O. Box 166
Anchorage, Alaska 99510

September 14, 1973

Memorandum

To: State Director, Bureau of Land Mangement, Alaska

From: Regional Solicitor, Anchorage

Subject: Amendatory or Supplementary Certificate of Allotment

This is in response to your memorandum of July 11, 1973 - refer 2561 (931), requesting instruction as to the proper procedures for issuing "amendatory" or "supplementary" allotment certificates in those cases where an allottee received an allotment prior to the amendment of regulations in 1965 and is now applying for additional lands. Your memorandum also asks whether the new certificates should include the acreage for which the previous certificate was issued as well as the additional acreage. These cases involve applications for additional land that were pending on December 1971, and the applicants have exercised their options to take their additional allotments pursuant to Section 18(a) of the Alaska Native Claims Settlement Act of 1971. (43 USC sec. 1617).

Before considering your questions, it is suggested that extreme care be exercised in determining whether the BIA has authorized any conveyance of the original allotment in the interim period.

The Amended Allotment Certificate (Form 1860-2) should include the legal description of acreage in the original allotment and the date of approval as well as the description of the additional acreage and its date of approval. Similarly, the Amended Native Allotment (Form 4-203) should reflect the same legal descriptions and dates of approval. For example, in the case file referred to this office (Moses Thomas - F-024778) the Amended Allotment Certificate approved on June 8, 1973, should contain a legal description of the 4.88 acres initially allotted and the approval date of August 21, 1964, in addition to the information regarding the additional land contained in said certificate.

H-2561-1 - NATIVE ALLOTMENTS
IM AK 84-10, Issuance of Allotment Certificates on a Parcel Basis

Procedures for amending Allotment Certificates may be implemented and procedures for amending patents are not applicable on the basis that an allotment under the Native Allotment Act of 1906 (25 USC. sec. 331 et. seq.) creates a perpetual reservation in the allottee and his heirs of the land, but conveys no title. Charlie George Et. Al., 41 L.D. 113 (1915).

We trust that the above will assist you in processing those allotments involving additional lands. If you have further questions, please advise.

Robert E. Price

Enclosure
BLM Case File F-024778

H-2561-1 - NATIVE ALLOTMENTS
IM AK 86-349, Conveyance Agreement with the State of Alaska

IN REPLY REFER TO
2650 (960)

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

August 25, 1986

Instruction Memorandum No. AK 86-349
Expires: 09/30/87

To: DM's, DSD's, SC's

From: State Director, Alaska

Subject: Conveyance Agreement with the State of Alaska

Attached is an August 19, 1986, agreement which provides a mechanism for resolving several problems which have developed over the past several years.

Section I. A and III. C provide a solution to the mining claim issue. Until this agreement was signed, procedures for land conveyance required exclusion of a buffer zone around Federal mining claims from conveyances to the State. In many cases, the land excluded contained State mining claims. This precluded exercise of the State preference right as well as mining operations.

Future conveyances to the State will not exclude any land surrounding Federal mining claims although the claim itself will be excluded to protect the rights of the claimholder. This means that the boundary of State owned land and the boundary of the Federal claim will be the same with no intervening Federal land. There will be no Federal legal barrier between the miner and the operation of State statute and regulation.

The State of Alaska has furnished a partial list of lands with State mining claims and the BLM has agreed to process the conveyances on a priority basis. We are working with the State to identify additional priorities.

This agreement eliminates the need to perform most exclusion surveys for Federal mining claims in order to patent land to the State. The section or sections containing unpatented mining claims will be excluded from the patent. At such time as the claims either go to patent or are abandoned, the remaining land in the section can be patented.

Section V will take care of most problems with inholdings that appear in a different location when surveyed than they were platted at the time of Tentative Approval. Instead of formal title recovery procedures a simple conformance to survey process has been negotiated.

We are negotiating similar procedures for use in Native conveyances.

Robert N. Randolph
Deputy State Director
for Conveyance Management

Attachment
1 - Agreement Regarding Conveyances to the State of Alaska (8 pgs)

H-2561-1 - NATIVE ALLOTMENTS
IM AK 86-349, Conveyance Agreement with the State of Alaska

AGREEMENT REGARDING CONVEYANCES TO THE STATE OF ALASKA

This agreement is made and entered into by and between the State of Alaska, Department of Natural Resources (hereinafter State) pursuant to Alaska Statute(s) 38.05.020 and 38.05.035 and the United States Department of the Interior, Bureau of Land Management (hereinafter BLM) pursuant to Sections 307 and 316 of the Federal Land Policy and Management Act (43 USC 1737 and 1746). The purpose of this agreement is to clarify the methods and processes to be used by the State and BLM to reduce the number of administrative actions needed to recover title.

Whereas, Sec. 906(c) of the Alaska National Interest Lands Conservation Act (ANILCA) 43 USC 1635(c), confirms that all right, title and interest of the United States in and to lands described in a tentative approval vested in the State of Alaska as of the date of tentative approval subject only to valid existing rights and Native selection rights under the Alaska Native Claims Settlement Act; and

Whereas, the State desires to receive quality title from the BLM in tentative approval documents which identify all exclusions with certainty prior to survey; and

Whereas, both the BLM and State recognize that the depiction of the exclusions as shown on the BLM records at the time of tentative approval is only an approximate graphic representation of the actual location of exclusions; and

Whereas, both the BLM and State recognize that the graphic depiction of the exclusions may appear to shift between the time of tentative approval and the approval/acceptance of the official plat of survey, even if the actual on-the-ground location has not moved; and

Whereas, the actual location of the township boundaries and the exclusions within townships will be determined at the time of survey and will be properly depicted on the approved/accepted plat of survey.

Attachment (8 pages)

H-2561-1 - NATIVE ALLOTMENTS
IM AK 86-349, Conveyance Agreement with the State of Alaska

Witnesseth:

The State and BLM agree to the following processes and procedures to achieve the goals of each agency:

I. ADMINISTRATIVE DECISION AND TENTATIVE APPROVAL CONVEYANCE DOCUMENT.

A. The BLM agrees to describe exclusions of land with reference to the specific sections which are affected (see Attachment I). The exclusions will be listed separately one to a line, except for mining claims which will be grouped together with one listing of the sections affected. A computer printout of the mining claim recordation information which will include the acreage of each mining claim will also be attached to the draft tentative approval sent for the State's initial review. Both parties agree that, in certain instances, exceptions to the above format will be needed, but these exceptions shall be mutually agreed upon by both parties prior to tentative approval. An administrative decision and draft tentative approval will be sent for State review prior to issuance of the final tentative approval.

B. The State agrees to review the administrative decision and the draft tentative approval. If the administrative decision requires modification or vacation, the BLM agrees to modify or vacate the decision before the expiration of the appeal period. If no modification or vacation of the administrative decision is necessary, the State shall return the draft tentative approval with comments to BLM within 30 days of receipt of the decision. After the administrative decision becomes final, but prior to the issuance of the final tentative approval, the State's comments will be evaluated and mutually agreed upon prior to the issuance of the final tentative approval. If the comments are found to be unacceptable by BLM, both parties must agree to an acceptable change.

II. SELECTED SURVEYED LAND WITHOUT CONFLICTING EXCLUSIONS.

A. If the selected land is included in an approved/accepted survey and is without conflicting exclusions, the State agrees to forego the issuance of a tentative approval and the land may go directly to patent. In this situation, the BLM shall issue an administrative decision and a draft patent.

B. The State agrees to review the administrative decision and the draft patent. If the administrative decision requires modification or vacation, the BLM agrees to modify or vacate the decision before the expiration of the appeal period. If no modification or vacation of the administrative decision is necessary, the State shall return the draft patent with comments to BLM within 30 days of receipt. After the decision becomes final, but prior to the issuance of the final patent, the State's comments, if any, will be evaluated and mutually agreed upon prior to the issuance of the patent. If the comments are found to be unacceptable by BLM, both parties must agree to an acceptable change.

III. TENTATIVELY APPROVED LAND IS INCLUDED IN AN APPROVED/ACCEPTED SURVEY; EXCLUSIONS DO NOT APPEAR TO MOVE; PROCEED TO PATENT.

A. When tentatively approved land is included in an approved/accepted survey and no exclusions are involved in the patent area, a draft patent will be sent by BLM to the State for a 30-day review. The State will review the draft patent and return its comments within 30 days of receipt of the draft. Comments will be reviewed and incorporated into the final patent. If the comments are found to be unacceptable by BLM, both parties must mutually agree to an acceptable change.

B. When tentatively approved land is included in an approved/accepted survey and exclusions (except as to submerged lands) identified in the tentative approval as a result of survey do not move from the section where identified in the tentative approval or the section depicted on the BLM status plat at the time of conveyance, a draft patent will be sent by BLM to the State. The State will review the draft patent and return its comments within 30 days of receipt of the draft. Comments will be reviewed and incorporated into the final patent. If the comments are found to be unacceptable by BLM, both parties must mutually agree to an acceptable change.

C. Draft patents will exclude the section(s) where the unpatented federal mining claims are located (such exclusions by section(s) shall only be made for mining claims unless otherwise mutually agreed to by both parties).

IV. TENTATIVELY APPROVED LAND IS INCLUDED IN AN APPROVED/ACCEPTED SURVEY; EXCLUSIONS APPEAR TO MOVE.

A. When tentatively approved land is included in an approved/accepted survey and exclusions appear to move out of the sections identified at the time of tentative approval, with the State's concurrence, the patent may exclude land identified as an exclusion in a tentative approval of the same township and grant type, even if there are multiple tentative approvals for one township. With the State's concurrence, the patent may also exclude any land listed as an exclusion in a single tentative approval, even if the tentative approval contains more than one township.

B. The BLM will notify the State of the approved/accepted plat of survey and request by notice the State's concurrence in conforming the title to the plat of survey. At the same time, the BLM shall send a draft patent for review by the State.

C. The notice document (see Attachment II) shall contain:

1. A statement that the notice is issued pursuant to 43 USC 1746.

2. Identification of the exclusions which appear to have moved within the township and/or tentative approval; and

3. A concurrence/non-concurrence signature block for the State.

a. If the State concurs, the State will sign the notice and request that the final patent be issued.

b. If the State does not concur, the State will notify the BLM of the reasons for non-concurrence and:

(1) The State will request BLM to suspend all further action until the conflict can be resolved; or

(2) If the conflict can not be resolved, BLM may request a voluntary reconveyance from the State or litigate to recover title.

H-2561-1 - NATIVE ALLOTMENTS
IM AK 86-349, Conveyance Agreement with the State of Alaska

V. TENTATIVELY APPROVED LAND IS INCLUDED IN AN APPROVED/ACCEPTED SURVEY; EXCLUSIONS NOT PREVIOUSLY IDENTIFIED.

When exclusions were not previously identified within the township and/or tentative approval, formal title recovery procedures must be used.

This agreement will become effective when signed by both parties.

This agreement will remain in effect as written unless it is amended. An amendment shall be in writing and will be signed by both parties.

This agreement will terminate 30 days after written notice is served by either party.

State Director, Alaska
Bureau of Land Management

Aug 19 1986
/Date

Commissioner, State of Alaska
Department of Natural Resources

Aug 19, 1986
/Date

H-2561-1 - NATIVE ALLOTMENTS
IM AK 86-349, Conveyance Agreement with the State of Alaska

Attachment I

Tentative Approval

Exclusion Wording Format

The following described surveyed/unsurveyed lands, which are considered proper for acquisition by the State, are hereby tentatively approved:

T. 8 N., R. 5 W., Fairbanks Meridian, Alaska

Secs. 1 to 24, inclusive;
Sec. 25, the land formerly within mining claim recordation F-44924;
Secs. 26 to 36, inclusive;

Excluding from the lands tentatively approved herein, the following interests of record which are presently shown in the lands described below, subject to conformance to survey:

The Innoko NWR, Secs. 1, 2, 12 and 13;
The Yukon Flats NWR, Sec. 24;
U.S. Survey No. 4156, Sec. 26;
U.S. Survey No. 4476, Secs. 31 and 32;
Mineral Survey No. 2036, Secs. 24, 25 and 26;
Native allotment applications:

F-12971, Sec. 3;
F-13505, Secs. 4 and 9;
F-14227, Parcel D, Secs. 7 and 18;
F-11985, Sec. 8;
F-14227, Parcel C, Secs. 8, 9, 16 and 17;
F-75, Parcel B, Secs. 24 and 25;
F-13730, Sec. 25;

Mineral survey application F-65262 (MS 2447), which includes mining claim recordations F-61496 through F-61514, which appears to be located within Secs. 21, 22, 23 and 25;

Mining claim recordations F-37580 through F-37585, F-52058, F-52059, F-55452 through F-54471, F-61249, F-61250, and F-63466 through F-63707, which appear to be located within Secs. 1, 2, 9 through 16, 21 through 24, 26, 28, 29, 35 and 36.

The lands conveyed contain approximately 17,470 acres.

H-2561-1 - NATIVE ALLOTMENTS
IM AK 86-349, Conveyance Agreement with the State of Alaska

Attachment II

2627 (964)

NOTICE

State of Alaska :
Department of Natural Resources :
Division of Land & Water :
Management :
Land Title Section :
3601 C Street, Suite 960 :
Anchorage, Alaska 99503 :

Conformance to Plat of Survey Requested

By tentative approval(s) dated _____, certain lands within (legal description: T. _____, R. _____, _____ Meridian) were conveyed to the State of Alaska. The plat(s) of survey describing these lands (were/was) (accepted/approved) on _____ and _____.

At the time of tentative approval, the following prior claims of record (were/was) excluded from the tentative approval(s) to the State:

Serial #	Claims of Record	Location

As a result of the survey, these claims of record appear to have moved to the following locations:

Serial #	Claims of Record	New Location

H-2561-1 - NATIVE ALLOTMENTS
IM AK 86-349, Conveyance Agreement with the State of Alaska

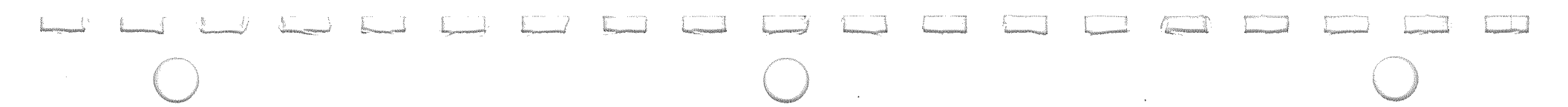
Pursuant to 43 USC 1746, and the "Agreement Regarding Conveyances to the State of Alaska" between the BLM and State dated August 20, 1986, the Bureau of Land Management requests the State's agreement in conforming the State's interest in the lands conveyed by the tentative approval(s) dated _____ to the plat of survey. If the State concurs, please sign below and return it to this office. If the State does not concur, please notify this office of reasons for such non-concurrence.

Chief, Branch of State Adjudication

As a duly authorized official of the State of Alaska, I do hereby concur with the adjustment of the State's title to that shown on the plat(s) of survey described above and request the final patent be issued.

_____ _____

STATE OF ALASKA Date



H-2561-1 - NATIVE ALLOTMENTS
IM AK 88-53, Final Confirming Patent Procedures

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513-0099

IN REPLY REFER TO

2650.72 (963)

December 10, 1987

Instruction Memorandum No. AK 88-53
Expires 9/30/88

To: DSD's, DM's

From: State Director, Alaska

Subject: Final Confirming Patent Procedures

Attached is a copy of the final confirming patent procedures, for use of the Bureau of Land Management in the patenting of lands which have previously been Interim Conveyed to Native corporations pursuant to the Alaska Native Claims Settlement Act of December 18, 1971.

These procedures will be transmitted to the State of Alaska, National Park Service, U.S. Fish and Wildlife Service, U.S.D.A. Forest Service, Bureau of Indian Affairs, Alaska Federation of Natives, Alaska Native Land Managers Association, and to each ANCSA Native Corporation.

Robert W. Arndorfer
DSD for Conveyance Management

1 Attachment
1 - Background (6 pp.)

H-2561-1 - NATIVE ALLOTMENTS
IM AK 88-53, Final Confirming Patent Procedures

This document establishes procedures to be followed in issuing confirming patents for lands conveyed by Interim Conveyance (IC) to Native Corporations. These procedures are separate and apart from those for surveyed lands which need not be IC'd prior to patent.

BACKGROUND

Native corporations receiving land entitlements under the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. * 1601 et seq., were not required to wait for survey to receive title. The Department of the Interior developed, by regulation, a practice of conveying legal title to unsurveyed lands by IC, 43 CFR 2650.0-5(h). This practice was endorsed by Congress in section 1410 of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. *1621(j)(1). Such conveyance was "subject only to confirmation of the boundary descriptions after approval of the survey of the conveyed land", 43 CFR 2650.0-5(h). Of the approximately 34.5 million acres conveyed to Native corporations, only about 5 million acres have been patented. Confirmation of boundaries and acreages for the remaining 31 million acres must still be accomplished. To date, approximately seven patents have been issued, confirming boundaries and acreages of lands which have previously been IC'd.

CONFIRMING PATENT PROCEDURES

A. General

1. When a survey of lands including ANCSA IC's is accepted or approved and officially filed, a confirming patent shall be drafted for lands which have been previously IC'd to a Native corporation.

2. A confirming patent may embrace lands or portions of lands from one or more IC(s) to the same corporation. The IC(s) will be identified by number and issuance date. If available, recording information will also be included.

3. Land within the survey which was selected by that corporation but not previously IC'd may be included in the confirming patent only after the selection has been included in a Decision to Issue Conveyance.

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4. In conjunction with the confirming patent a Notice shall be prepared for all lands to be patented.

5. The Notice will allow sixty (60) days from the date of certified receipt for the patentee corporation and other parties to provide written comments. The Notice will not contain an appeal paragraph or be published in the Federal Register or any newspaper.

6. The Notice will be issued by certified mail to the surface and subsurface landowners, with certified mail copies to the State of Alaska, adjacent landowners, and any additional parties whose interests are known. Adjacent landowners may include cities with two-mile boundary status (ANCSA section 22(l)) and Federal agencies.

7. The Notice will include survey plats, field notes (if survey plats do not contain all information), and Master Title Plats for the lands to be patented, and a draft copy of the confirming patent document.

8. The Notice will note if any lands IC'd to the patentee corporation have subsequently been conveyed back to the United States or if a portion of the estate in the IC'd lands has been conveyed back to the United States (see B.1 and 2, below), state whether or not all necessary agreements concerning survey of inholding, within the IC'd area to be patented have been executed (see C.1 thru 3, below), address topographic shifts (see E.1, below), identify acreage chargeability (see H.1, below), state whether or not easements remain unchanged as a result of easement review(s) (see I.1 thru 4, below), identify reservations relinquished by the United States or changes from IC to Patent, of reservation language (see J.1 thru 3, below), state whether or not navigability determinations made by the Bureau of Land Management prior to issuance of IC(s) remain unchanged (see K.1, below), and explain any clerical corrections from IC to confirming patent such as a correction of a misspelled name or erroneously typed number.

9. The Certificate of Incorporation for the patentee corporation(s) must be current within the anniversary period when issuing the Notice and confirming Patent because it is possible for the corporation to be dissolved shortly after issuance of the certificate for many reasons. If the corporation has not been in good standing, a new certificate of compliance will be required before issuing the Notice and confirming Patent. If the State issues a Certificate of Dissolution, the village corporation and the Regional corporation should be notified and requested to take necessary action to have the village corporation reinstated. The Notice and confirming Patent must be held until a new Certificate of Incorporation is filed. We can issue the conveyance documents up until the time the corporation is actually dissolved.

10. A thirty (30) day Notice will be issued where substantive changes or errors are found regarding the survey or patent issues addressed in the original 60-day Notice. The 30-day Notice will be issued by

certified mail to the surface and subsurface landowners, with certified mail copies to all other parties listed in the original notice.

B. Conveyances by Native Corporation of IC'd Lands

1. The Native corporation may have conveyed some or all of its IC'd lands prior to receipt of its confirming patent. This will not affect the confirming patent except where the land was conveyed back to the United States, in which case the reconveyed land will not be included in the legal description of the confirming patent. Such reconveyance to the United States will be addressed in the Notice. To include such reconveyed lands in the confirming patent could be taken to mean that they are reconveyed to the Native Corporation.

2. If a portion of the estate in the IC'd lands was conveyed back to the United States, that estate will be excepted and reserved in the confirming patent. Such reconveyance will be addressed in the Notice.

C. Inholdings

1. If an inholding was excluded in any IC to the patentee corporation (even if the land was excluded in a different location), the inholding as surveyed, will not be included in the confirming patent. Further, in order to allow conveyance of surveyed tracts of land to private applicants and to eliminate any question of title conflicts, an agreement concerning survey of inholding, will be transmitted to the appropriate Native corporation(s) (surface and subsurface owner) for execution. "Inholdings" means pending applications as well as approved applications and inholdings of record. It is necessary to execute all necessary agreements concerning survey of inholding, within the IC area, prior to Notice.

2. If the inholding was excluded from any prior IC to the patentee corporation, in a location other than where it appears on the plat of survey at the time of patent, the former location of the inholding will be conveyed by the confirming patent to the Native corporation without further adjudication.

3. Where the inholding appears on the plat of survey but was not excluded in any location from any prior IC to the patentee corporation, the confirming patent will include the lands within the inholding to the patentee corporation. If the inholding is determined to be a valid claim that the BLM should have granted, title to the land affected will have to be subsequently recovered by title recovery procedures.

D. State Surveys

1. Surveys made and approved by the State of Alaska may be used as a land description in patents. However, BLM plats of survey must reflect and identify such State surveys.

E. Topography Shifts

1. A major purpose of the Notice, draft confirming Patent and plat of survey to the patentee corporation, is to notify them of possible shifts in significant topography out of or into the sections conveyed. Some shift will occur in almost every case because the protraction diagrams and quadrangle maps on which the selections were made place the townships and sections only in approximate location. The selection, however, is deemed to have been of the surveyed section, not the section as approximated on a quad or other map. In most cases the shift will be minimal or insignificant. However, if there are significant changes in topography between the selection and the conveyance as surveyed, the Department can make certain equitable adjustments in the patent. An example follows:

   (i) Where the sections selected were assumed to include lands along a coastline, but the survey places the coastline in sections the selection map showed off shore, the confirming patent will include those sections containing the coastline. Whether or not the sections selected will also be included will depend on the amount of additional acreage that will be involved, the desires of the patentee corporation, and other affected parties.

   ii) Where a significant topographic feature (river, mouth, inlet, promontory, harbor, etc.) moves outside of a selected section and the adjoining section is available (i.e., withdrawn for Native selection and otherwise unreserved and unappropriated public land), the entire topographic feature may be included in the conveyance with the corporation's consent, and provided other public values or private rights are not affected, and provided it does not result in a conveyance in excess of the patentee's entitlement.

F. Lands for Conveyance

1. The confirming patent will include and charge against entitlements (except in certain specific exchange areas), only "uplands." Uplands are depicted on the plat of survey, and do not include the submerged lands of meandered water bodies.

G. Hydrography

1. Where water lots are shown on plats of survey, a Native corporation may request conformance pursuant to the 1973 Manual of Survey Instructions, as revised by 43 CFR 2650.5-2. Any request for conformance will be forwarded to Cadastral Survey.

H. Acreage Chargeability

1. The Notice will reflect the extent of acreage charged against any entitlement and charged against other acreage limitations in the categories listed below, as applicable under the various ANCSA entitlement categories.

	Prior Patent Acreage	This Patent Acreage	Total remaining entitlement/limitation
a. Valid State Selection limitation			
b. Wildlife Refuge Lands limitation			
c. National Forest Lands limitation			
d. Acreage charged against Sec. _____ (Village or Regional) entitlement			
e. Acreage of subsurface Regional In-lieu entitlement			

The acreage calculation grid as shown is not intended to cover every possible acreage charge. Some discretion must be used by the author of the Notice to address every entitlement or limitation necessary.

2. Acreage to be charged against entitlement for any lands which were previously IC'd and which have been reacquired by the United States, will also be reflected in the Notice.

I. Easements

1. A listing of all easements affecting the lands will be prepared by the appropriate field office for inclusion in the patent. Easements will be described to match the survey description.

2. Any easements which were excepted and reserved in the IC(s) and which have been deleted through the conformance process will not be listed in the confirming patent.

3. Any easements which have been donated to the United States will be excepted and reserved in the confirming patent.

4. Adjustments, realignments, vacation or exchanges of reserved easements, that have been negotiated with the land owner, may be included in the Notice. Final easements resulting from this process will be excepted and reserved in the confirming patent. These changes in easement location would be a means of correcting impassable, disconnecting or duplicative easements that were originally reserved without benefit of field investigation.

J. Reservations

1. All reservations included in the IC(s) will be listed in the confirming patent, except for those which were subsequently vacated by the United States (i.e., ditches and canals, railroad and telegraph lines, right to enter upon lands and survey).

2. Any rights-of-way which should have been listed in the "subject to" portion of the IC but were instead excepted and reserved, will be listed as subject to interests in the confirming patent, with an explanation of the change included in the Notice.

3. Any leases, contracts or permits, to which an IC was made subject to, and which are documented to have expired, will not be included in the confirming patent.

K. Navigability

1. The Notice will state whether or not the navigability determinations made by Bureau of Land Management prior to issuance of IC(s) remain unchanged, (i.e. changes by decision of the Interior Board of Land Appeals or by a court of competent jurisdiction), and that the lateral extent of navigability or tidal influence was clarified by survey.

H-2561-1 - NATIVE ALLOTMENTS
Unsurveyed Allotment Acquisition Procedures (With NPS)

August 11, 1989

UNSURVEYED ALLOTMENT ACQUISITION PROCEDURES

The following procedures will generally apply when a Native allottee considers selling, and the National Park Service (NPS) wishes to acquire an approved allotment which has not yet been surveyed by the Bureau of Land Management (BLM) and there are no other apparent reasons preventing such a sale. These administrative steps pertain to actions among NPS, BLM, and BIA or the BIA Contractor. Each agency and the BIA Contractor will be copied on all transaction related documents.

1. . The agency first contacted by the allottee will notify the participating agencies by memorandum that there is an interest in acquiring land described in a particular approved but unsurveyed Native allotment application. BLM will be requested to provide the status of the allotment application and survey. If the allottee's initial contact is not with the BIA or BIA Contractor they will be advised that BIA approval is required and given the location of the appropriate BIA or BIA Contractor office. NPS will negotiate with the allottee unless directed by the allottee to deal with the BIA, BIA Contractor, or other properly authorized agent. To the extent allowed by federal acquisition law and regulations NPS will cooperate with the allottee in meeting BIA requirements for approval of the sale.

2. The BLM will notify NPS by memorandum of the status of the application. If the application has not yet been approved but a review of the file shows it to be valid, BLM will estimate the date when the approval decision will be issued.

3. After the allotment application is approved, the BIA or BIA Contractor will submit a written request to BLM for a survey waiver and the legal description that will be used in the deed conveying the property to the allottee. At the same time NPS and BIA or the BIA Contractor will coordinate the preparation of an appraisal which meets federal acquisition standards and BIA sales requirements. After an appraisal acceptable to both NPS and BIA is completed and BLM has agreed to waive the survey requirement and prepared the legal description, NPS will prepare an Offer to Sell for submission to the allottee.

4. The legal description prepared by BLM will be used in all subsequent transaction related documents, e.g., Offer to Sell, Preliminary Title Opinion, draft Warranty Deed from allottee back to the U.S., and any other documents requiring a legal description. It is important that all documents use exactly the same legal description.

5. When the allottee signs and returns the Offer to Sell to NPS it will be submitted to the NPS Washington Office for acceptance and funding approval. The BLM and the BIA or BIA Contractor will be notified when the Offer has been accepted by the NPS Washington Office and funding has been approved. At this time

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NPS will normally request a Preliminary Title Opinion (PTO) from the Regional Solicitor, although there may be some circumstances in which it will be necessary to request the PTO prior to preparation of the Offer. When the PTO is issued and curative actions, if any, are completed, a copy will be sent to the BIA or BIA Contractor with a request for BIA or the BIA Contractor to issue a commitment to approve the sale to BLM.

6. BLM will not convey title to the allottee without a survey until it receives documents showing the good faith intention of the parties to complete a sale back to the U.S. The good faith of the parties will be demonstrated to BLM by a copy of the Offer to Sell properly accepted by the NPS and a copy of a "Commitment to Approve Sale" or an approved "Application to Sell" signed by an authorized BIA official.

7. NPS and BIA will request that BLM convey the property to the allottee after all preliminary acquisition procedures necessary to close the transaction have been completed. It is anticipated that reconveyance to the U. S. will be completed as soon as possible after conveyance to the allottee to minimize the risk of unforseen or changed circumstances preventing the sale from closing despite the good faith intentions of the parties.

8. The BLM will deliver the original deed to the BIA, Alaska Title Services Center, in the same manner in which Certificates of Allotment are delivered. A copy of the deed will be sent to the NPS and BIA, or BIA Contractor.

9. An escrow agent, paid by NPS, will be used to close the sales transaction. NPS will notify BIA when the escrow agent has been selected. The BIA will then deposit into escrow a fully executed and approved deed of conveyance to the United States. At the same time the NPS will deposit the purchase price into escrow. The transaction will then be closed in accordance with the escrow instructions.

10. The NPS will send BLM a copy of the notice of closing or escrow closing statement along with a copy of the recorded deed.

11. The BLM will close the Native allotment case (if the entire allotment was conveyed).

12. The NPS will file the conveyance from the Native allottee to the USA with the BLM public room and the plats will be noted showing acquired land.

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Unsurveyed Allotment Acquisition Procedures (With NPS)

SYNOPSIS OF ACQUISITION ACTIONS

1. Allottee contacts U.S. to sell unsurveyed allotment parcel.
2. BIA notified if not initial contact agency.
3. NPS requests allotment status from BLM.
4. BLM advises NPS of allotment status.
5. BIA requests BLM survey waiver and legal description.
6. NPS and BIA cooperate to complete approved appraisal.
7. BLM issues survey waiver and legal description.
8. NPS sends "Offer to Sell Real Property" for the appraised value to allottee for signature.
9. NPS submits signed Offer to headquarters for acceptance.
10. NPS notifies allottee, BIA, and BLM of acceptance.
11. NPS requests Preliminary Title Opinion (PTO) from Solicitor.
12. Solicitor issues PTO.
13. NPS completes title curative actions required by PTO.
14. NPS and BIA request conveyance to allottee by BLM with proof of good faith to complete the sale, e.g., BIA "Commitment to Approve Sale" and NPS accepted "Offer to Sell".
15. BLM conveys allotment by deed to allottee.
16. NPS selects escrow agent.
17. Solicitor approved escrow instructions submitted to escrow agent.
18. NPS delivers purchase price to escrow agent.
19. BIA delivers executed and approved deed from allottee to U.S. into escrow.
20. Escrow agent closes sale in accordance with escrow instructions.

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Unsurveyed Allotment Acquisition Procedures (With NPS)

SYNOPSIS OF ACQUISITION ACTIONS BY AGENCY

BLM:

1. Provide application status report to NPS and BIA.
2. Waive survey requirement.
3. Prepare legal description.
4. Convey title to the allottee.

BIA:

1. Process allottee's application to sell.
2. Request that BLM waive the survey requirement.
3. Appraise the property or review and accept NPS appraisal.
4. Submit appraisal to NPS for review.
5. Request that BLM convey the property to the allottee.
6. Assist the allottee in executing the deed to the U.S.
7. Area Director signs the deed to the U.S.
8. Submit the executed and approved deed into escrow.
9. Submit "Certificate of Title" if required by Regional Solicitor.

NPS:

1. Advise allottee to file an application to sell with BIA.
2. Request status report from BLM.
3. Appraise the property or review and accept BIA appraisal.
4. Submit appraisal to BIA for review.
5. Send "Offer to Sell Real Property" for the appraised value to allottee for signature.
6. Send signed Offer to NPS, WASO, for acceptance.
7. Request Preliminary Title Opinion (PTO) from Regional Solicitor.

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8. Request that BLM convey the property to the allottee.

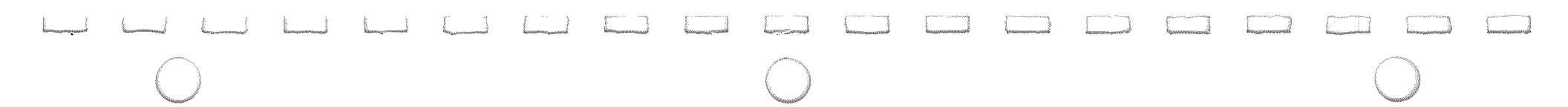
9. Prepare draft deed to U.S. in accordance with PTO.

10. Submit draft deed to BIA for execution by allottee and approval by the Area Director.

11. Order title insurance and request escrow services.

12. Deliver escrow instructions to escrow agent.

13. Deliver purchase price to escrow agent.



H-2561-1 - NATIVE ALLOTMENTS
Regional Solicitor's Opinion, Impact of the Alaska Railroad Transfer Act on Native Allotments

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION
701 C Street, Box 34
Anchorage, Alaska 99513

IN REPLY REFER TO:

July 20, 1983

MEMORANDUM

To: State Director
Bureau of Land Management
Alaska State Office

From: Attorney
Office of the Regional Solicitor
Alaska Region

Subject: Impact of the Alaska Railroad Transfer Act on Native Allotments (960)

INTRODUCTION

You have requested our opinion on various Native allotment issues which have arisen due to passage of the Alaska Railroad Transfer Act of 1982 (ARTA), P.L. 97-468. For Native allotments which encompass a portion of the railroad right-of-way, the following questions require analysis:

1. Can BLM proceed with adjudication of Native allotments not approved prior to the passage of ARTA?

2. Can BLM presently issue Certificates for Native allotments?

3. What affect does ARTA have on Native allotments which were administratively approved, legislatively approved, or certificated prior to passage of ARTA?

SHORT ANSWERS

While each of your questions will be discussed in some depth, concise answers are set out in this paragraph. As a beginning point, BLM has both the authority and the duty to

adjudicate Native allotments. Certificates of Allotment can be issued as long as an appropriate reservation for the railroad right-of-way is made in the Certificate. Previously conveyed and/or approved Native allotments are subject to the exclusive-use easement which must be transferred pursuant to ARTA but, upon transfer, the reservation of a future right-of-way imposed pursuant to 43 U.S.C. 975d will no longer have any viability.

DISCUSSION

I.

Responsibility and Authority to Adjudicate

Section 606(b)(2) of ARTA not only authorizes the Department of the Interior to adjudicate pending Native allotments but requires that the adjudication be completed within three years. In specific, section 606(b)(2) provides:

> The Secretary of the Interior shall have the continuing jurisdiction and duty to adjudicate unresolved claims of valid existing rights pursuant to applicable law and this title. The Secretary of the Interior shall complete the final administrative adjudication required under this subsection not later than three years after the date of enactment of this Act....

The BLM can, consequently, apply its normal procedures to the adjudication of Native allotments potentially encompassing a portion of the Alaska Railroad right-of-way. Where the Native allotment applicant's use and occupancy does not predate the railroad right-of-way, the application can still be granted. While Native allotments are limited to vacant, unappropriated and unreserved lands,[1/] the Alaska Railroad's right-of-way did not appropriate or reserve the fee in such a way as to require exclusion of a strip of land from an allotment. The Alaska Railroad, 65 IBLA 376 (1982).[2/] However, an appropriate

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1/ 43 CFR 2561.0-3.

2/ The Railroad has requested reconsideration of this decision but, unless and until the decision is reversed, it is binding upon the Department of Interior.

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right-of-way reservation must be made in the subsequent conveyance document. 3/ Id. This same conclusion is reached if the potentially exclusive-use criteria set out at 43 CFR 2561.0-5 is applied. Since a Native allotment applicant's use and occupancy of land encompassing a portion of the Alaska Railroad's right-of-way cannot be "potentially exclusive of others," unless it was initiated prior to the Railroad's location of the right-of-way, the right-of-way interest must necessarily be excluded from the allotment.

II.

Issuance of Certificates

Issuance of a Certificate of Allotment, which is the title document for Native allotments, 4/ is also allowed by ARTA. This is most clearly seen in section 606(b)(4)(B) of ARTA where claims of valid existing rights, such as Native allotment applications, are accorded the same protection and treatment as lands already conveyed out of federal ownership. To us, this indicates a congressional recognition that rights to certain land had vested. With Native allotments, rights become vested when the requisite use and occupancy is completed and a timely application is filed. United States v. Donald E. Flynn & Heirs of Henry Orock, 53 IBLA 208 (1981). An even stronger case exists for Native allotments finally approved by the Department prior to passage of ARTA and those Native allotments legislatively approved by section 905 of the Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487 (94 Stat. 2371). As stated in the Regional Solicitor's memorandum of March 10, 1981, " ... title passes upon legislative approval, be it equitable title or legal title."

Authority to convey is also implicit in section 606(b)(2) of ARTA. That section, set out above, mandates that the entire administrative adjudication process be completed within three years. Such a process ordinarily

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3/ The appropriate language for an exclusive-use easement will be set out in the next section.

4/ See, State of Alaska, 45 IBLA 318 which holds that a Certificate of Allotment passes restricted legal title to the allottee.

includes all necessary adjudication work, administrative appeals and issuance of a title document. Thus, it appears that approval and conveyance of lands under valid existing claims was contemplated in ARTA. Section 605(b)(2) which limits disposition of the Railroad's real property to disposals "required by law," does not, however, have direct bearing on the question of BLM's authority to convey. That section applies to transactions by the Department of Transportation and not the BLM. In any case, conveyance to a Native allotment applicant who has vested a right to a particular tract of land is, in our opinion, "required by law."

While issuance of a Certificate of Allotment is, consequently, proper, the Certificate must expressly reserve a site specific right-of-way to the United States for use by the Alaska Railroad of all existing railroad rights-of-way. The Alaska Railroad, supra. Such a railroad reservation is, by its nature, exclusive of competing or inconsistent uses and appears to be the type of exclusive-use easement which section 606(b)(4)(B) of ARTA delineates as the minimum interest to be transferred under ARTA. Since Congress identified the nature of the Railroad's minimum interest in ARTA as an exclusive-use easement, we suggest that your reservation be worded substantially as follows:

> Reserving to the United States an exclusive-use easement for the Alaska Railroad, more particularly described as [give 200-foot width and the appropriate legal description of the railroad right-of-way if one can be obtained].

III.

ARTA's Affect on Previously Conveyed and/or Approved Native Allotments

As already stated, section 606(b)(4)(B) of ARTA provides that if the Alaska Railroad is transferred out of federal ownership, the minimum interest to be conveyed for the railroad right-of-way is an exclusive-use easement. Thus, in every instance where a previously approved or conveyed allotment includes railroad right-of-way, an exclusive-use easement will be transferred and the Native allotment will be subject to the exclusive-use easement even if there is no mention of

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a railroad right-of-way in the approval document or Certificate of Allotment. This is consistent with our view, expressed above, that an allotment applicant could not normally have potentially exclusive use of the railroad right-of-way and would take the allotment subject to the existing right-of-way.

However, the right to an additional right-of-way in the future, pursuant to 43 U.S.C. 975d, dies with the transfer of the Alaska Railroad. Section 615(a)(1) of ARTA specifically repeals 43 U.S.C. 975, et seq. in its entirety and there will, consequently, be no authority for the United States to construct additional railroad rights-of-way in Alaska. In addition, section 509 of ARTA provides that any future right-of-way must be obtained from the current land holder under other applicable laws. For federal lands, the legislative history clarifies that future rights-of-way will be processed under such laws as the Federal Policy and Management Act of 1976, 43 U.S.C. 1701, et seq., and not via use of 43 U.S.C. 975d. Congressional Record, H 10695 (December 21, 1982). Moreover, it is our opinion that the 43 U.S.C. 975d reservations contained in prior conveyances are not transferrable. Thus, if and when the Alaska Railroad is transferred, the 43 U.S.C. 975d reservation will no longer have any viability. Until transfer, BLM should continue to reserve a site specific right-of-way for existing railroad rights-of-way as well as the 43 U.S.C. 975d reservation for future rights-of-way.

CONCLUSION

In summary, it is our opinion that BLM can proceed with adjudication and certification of Native allotments provided a site specific, two-hundred-foot, exclusive-use easement is reserved to the United States for the Alaska Railroad. Previously approved and/or certificated Native allotments are also subject to the exclusive-use easement but, once the Alaska Railroad is transferred, the 43 U.S.C. 975d reservation will no longer be viable.

Dennis J. Hopewell

cc: Area Director, BIA, JAO

bcc: Patent Section (965)
Railroad Project (960)
Chief, Lands Operations (965)
Allotment Coordinator (930)

PROGRAMMATIC AGREEMENT

AMONG

BUREAU OF LAND MANAGEMENT, ALASKA STATE DIRECTOR,

BUREAU OF INDIAN AFFAIRS, JUNEAU AREA DIRECTOR,

ALASKA STATE HISTORIC PRESERVATION OFFICER, AND

ADVISORY COUNCIL ON HISTORIC PRESERVATION

REGARDING ALASKA NATIVE ALLOTMENTS

I. PREAMBLE

Whereas: The Act of May 17, 1906, as amended by the Act of August 2, 1956, authorized the Secretary of the Interior (the Secretary) to allot up to 160 acres to any qualified Alaska Native (Indian, Aleut, or Eskimo) upon proof of the applicant's substantially continuous use and occupancy of the land for a period of five years;

Whereas: The Alaska Native Claims Settlement Act of December 18, 1971, repealed the 1906 act, precluding any new allotment applications after that date but not affecting pending applications;

Whereas: The Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA), legislatively approved pending allotment applications involving lands unreserved as of December 13, 1968, requiring the Secretary only to perform cadastral surveys and to issue allotment certificates therefor;

Whereas: The same ANILCA required the Secretary to adjudicate allotment applications involving certain reserved lands, adjudication being the process of verifying that an applicant meets qualifying criteria for an allotment under the 1906 act as amended, and then, when the Secretary finds that the criteria are met, to perform cadastral surveys and to issue allotment certificates;

Whereas: The Bureau of Land Management (BLM) executes the Secretary's responsibility by adjudicating and approving applications, approval coming automatically upon finding that the qualifying criteria are met, and by performing cadastral surveys and issuing allotment certificates;

Whereas: The Bureau of Indian Affairs (BIA) assumes an administrative role upon BLM's approval of an allotment application, and retains that role after final allotment certification except when the allottee requests and is granted a removal of restrictions;

Whereas: The BIA's administrative role entails approval for proposed capital improvements and developments on, or alienation of interest in, allotments;

Whereas: The BIA, in carrying out this administrative role and as part of its normal duties, observes the requirements of Section 106 of the National Historic Preservation Act prior to approving a change in an allotment's restricted status;

Whereas: The BIA has determined that its approval of an allottee's proposed developments on, or alienation of, an allotment constitutes an undertaking in the sense of Section 106;

Whereas: Regulations of the Advisory Council on Historic Preservation (Council) implementing Section 106 provide that an agency official may elect to fulfill the agency's Section 106 responsibilities for a large or complex undertaking through a Programmatic Agreement, and that a Programmatic Agreement is appropriate when effects on historic properties cannot be fully determined in advance;

Whereas: The BLM and the BIA, in the interests of furthering both the Secretary's broad historic preservation objectives and the intent of the National Historic Preservation Act, have elected as a matter of policy to establish mechanisms through this Programmatic Agreement for sharing information and coordinating efforts before and after application approval and allotment conveyance, to aid and facilitate BIA's future section 106 reviews;

Therefore: The parties to this Programmatic Agreement agree that the procedures set out below provide an adequate system for taking into account historic properties that might be affected by the execution of the Secretary's responsibilities concerning Alaska Native allotments, and that through this Programmatic Agreement the Council has been afforded a reasonable opportunity to comment.

II. PROCEDURAL STIPULATIONS

A. Bureau of Land Management

1. The BLM will proceed with the adjudication of allotment applications. For those found to meet the requirements of law, cadastral surveys will be performed and allotment certificates will be issued.

2. The BLM will notify the BIA when allotment certificates have been issued, and will provide or make available to the BIA any records, maps, and documents which may assist the BIA in observing Section 106 requirements on the allotments. This will include maps that locate significant cultural properties (i.e., National Historic Landmarks, properties included in the National Register of Historic Places, properties determined eligible for the National Register, and other recorded cultural properties thought to qualify for the National Register) relative to allotment locations.

3. The BLM will notify other Federal agencies (National Park Service, Fish and Wildlife Service, Forest Service) when certification of allotments involves land units under their jurisdiction, and will request that these agencies provide or make available to the BIA any additional documentation they may have pertaining to properties identified under stipulation II.A.2.

4. During field visits for survey and adjudication purposes, BLM field crews will identify allotments with surface features indicating the presence of significant cultural properties, and will notify the BIA and the SHPO of their findings. The BLM cultural resource staff will brief the field crews on the identifying characteristics of significant cultural properties by region.

B. Bureau of Indian Affairs

1. Following BLM's issuance of allotment certificates, the BIA will administer restricted allotments. Before approving requests to change allotment restrictions, the BIA will observe Section 106 requirements. This will be done by screening allotments against information described in stipulations II.A.2. and II.A.3., in consultation with the SHPO, and by performing cultural resource surveys when it appears that significant cultural properties may be present. When needed, surveys will be conducted on the ground by professionally qualified cultural resource specialists, following the Secretary's criteria at 42 FR 5382, and will be performed according to the Secretary's "Standards and Guidelines for Archeology and Historic Preservation" found at 48 FR 44716.

2. As necessary to protect significant cultural properties, the BIA will exercise the authority associated with its administrative role, including (a) authority to enter onto an allotment to conduct survey and/or to perform appropriate mitigation of effects, such as recordation or other data recovery, and (b) authority to defer approval of an allottee's proposal until the BIA has completed mitigation. Provisional approval may be given if the allottee agrees to delay steps that could damage cultural properties until mitigation is done. The BIA will defer approval only under extraordinary circumstances, and will not extend deferral more than one year after the need for mitigation is discovered.

3. If the BIA finds that its approval of an allottee's proposed action would have an adverse effect on a significant cultural property, the BIA will develop a plan for avoiding or mitigating the effect and will consult with the SHPO. The BIA's preparation and the SHPO's approval of mitigation plans will be guided by the Comprehensive State Historic Preservation Plan for Alaska.

4. The BIA and the SHPO may elect to consult programmatically on (a) kinds of properties that should ordinarily be found eligible for the National Register, including defining characteristics, and on (b) forms of treatment that would be appropriate for each, including criteria and limitations. The purpose of such consultation and agreement would be to enable the BIA, under mutually specified and limited conditions, to avoid or mitigate potential damage to significant cultural properties by taking appropriate steps, such as relocation of proposed uses or actions, detailed recordation, data recovery, or other appropriate means, during the initial field visit.

5. Identified cultural properties will be evaluated for National Register eligibility on the form or in the format developed in consultation with the SHPO.

6. If the BIA and the SHPO agree that a property is eligible under the National Register criteria, the property will be considered eligible for purposes of this Programmatic Agreement. If the BIA and the SHPO do not agree on a property's eligibility or ineligibility, they will follow the eligibility determination procedures of 36 CFR Part 60.

7. The BIA will submit reports to the SHPO for all survey and mitigation work, including reports when no cultural properties are located or when no effect to a significant cultural property will occur. Reports will follow the Secretary's "Standards and Guidelines for Archeology and Historic Preservation" and supplemental guidelines developed by the SHPO.

8. If artifacts and other material remains are recovered as part of survey or mitigation work, and if it is deemed necessary to conduct analyses or related studies that cannot be completed on site, the BIA will execute a short-term loan agreement with the allottee who owns the materials so that the BIA may remove them from the allotment and retain them for the reasonable and definite time needed to complete analyses or studies. The BIA may also encourage the allottee, at his or her free choice, to make a long-term loan or donation of such materials to the United States, to be held in trust or as United States property at the University of Alaska Museum in Fairbanks, until such time as the appropriate Native Association or Corporation has an adequate curatorial facility for housing and interpreting the materials (see II.D.). The BIA will document any short-term or long-term loan or donation in a legally sufficient manner, providing the allottee with a copy. An allottee's choice not to agree to a long-term loan or donation will not influence the BIA's decision with respect to a requested change in allotment restrictions.

C. State Historic Preservation Officer

1. The SHPO will make available for BIA examination all relevant records of cultural properties, and will actively participate with the BIA in: consideration of survey priorities; evaluation of cultural properties; assessment of potential effect; and determination of appropriate avoidance or mitigation steps.

2. The SHPO will review the BIA's preliminary findings on eligibility, effect, and avoidance or mitigation alternatives, provided that adequate information has been forwarded to the SHPO, and will respond within 30 days after receipt of all pertinent information.

D. All Parties

All parties to this agreement will encourage the establishment of appropriate curatorial facilities by Native Associations or Corporations under Section 1318 of ANILCA or other authorities or policies as may be relevant.

H-2561-1 - NATIVE ALLOTMENTS
Programmatic Agreement Regarding Historic Preservation

III. ADMINISTRATIVE STIPULATIONS

A. Resolution of Disagreements. Should any of the parties to this agreement object to the manner in which it is implemented with reference to a specific allotment parcel or group of parcels, the BIA will consult with the objecting party to resolve the objection. If the BIA determines after such consultation that the objection cannot be resolved, the BIA will forward all documentation relevant to the dispute to the Council. Within 30 days after receipt of all pertinent documentation, the Council will either (1) provide the BIA with recommendations, which the BIA will take into account in reaching a final decision, or (2) notify the BIA that the Council will comment on the action in accordance with 36 CFR 800.6(b).

B. Reports. The BIA will continue its present policy of reporting work done on allotment parcels to the SHPO. This includes submission of both itemized inventory lists summarizing cultural resource survey findings after the close of each field season, and individual parcel reports prior to the start of the next field season. Reports will follow the Secretary's "Standards and Guidelines on Archeology and Historic Preservation."

C. Periodic Review. Based on reports prepared in accordance with stipulation III.B. and other information, the parties to this agreement will periodically review its implementation to determine whether it should be continued, modified, or terminated.

D. Withdrawal from Agreement. Any party to this agreement may withdraw from the agreement by providing 90 days' notice to all other parties, stating the intention to withdraw and the reasons therefor. In the event of a party's withdrawal, the other parties will consult to determine whether the agreement can remain in force, must be modified, or must be terminated.

H-2561-1 - NATIVE ALLOTMENTS
Programmatic Agreement Regarding Historic Preservation

E. Termination of Agreement or Failure to Carry Out Terms. Termination of this agreement, or failure to carry out its terms, will require the BIA to comply with 36 CFR 800.4 through 800.6 with regard to individual allotments.

IV. SIGNATURES

This Programmatic Agreement becomes effective on the date of the last signature below.

2-17-88
State Director, Bureau of Land Management, Alaska (Date)

17 Feb
Area Director, Bureau of Indian Affairs, Juneau Area (Date)

4-4-88
State Historic Preservation Officer, Alaska (Date)

4-15-
Chairman, Advisory Council on Historic Preservation (Date)

H-2561-1 - NATIVE ALLOTMENTS
1906 Checklist

Native Allotment 1906 Checklist

Name:	Serial No:
Current Address:	Parcel:
	Deceased?
	Date of Birth:
	Attorney?
Legal Description:	

Date		Yes	No
	1. Application complete, certified and filed w/BLM?		
	Location map and written description agree?		
	2. Use and occupancy timely filed?		
	Date of claimed use and occupancy		
	3. Use and occupancy predates withdrawals or other segregative applications or classifications?		
	State selection S/N		
	State selection predates NA filing date (60 day right of private contest)		
	Native selection S/N		
	EO or PLO No.		
	Other		
	4. Field Exam Completed?		
	Favorable?		
	Notice for correct location (applicant didn't accompany)?		
	Additional evidence requested (unfavorable or inconclusive field report)?		
	Additional evidence received?		
	Adequate?		
	5. Relocated by field report, amendment, etc.		
	AALMRS and status plat corrected?		
	Relocation notice to State and other parties?		
	New mineral report requested?		
	6. Mineral report on file for current location?		
	Potentially valuable for locatables or leasables other than coal, oil and gas?		
	Applicant notified prior to 6-1-81 or within 180 days of change of location (required if otherwise legislatively approved)		
	Mineral-in-character exam requested?		
	Valuable?		
	Potentially valuable for coal, oil or gas?		
	Mineral reservation decision issued?		

H-2561-1 - NATIVE ALLOTMENTS
1906 Checklist

Native Allotment 1906 Checklist

	7. Relinquished (BIA concur after 7-12-77)?		
	State and other parties notified (if after		
	12-2-80 and not in NPRA)?		
	Reinstatement petition accepted by decision?		
	8. Protest filed?		
	Valid?		
	Dismissed?		
	9. Roads/rights of way/trails, etc.		
	Predates allotment U&O		
	Decision includes "subject to" or reservation?		
	10. Conflicting claims rejected?		
	11. Survey requested?		
	Final date to amend notice sent?		
	Conformed?		
	12. File contains		
	Current/correct abstract?		
	Current plat and HI?		
	TWPALL?		
	Copies of related conveyance documents, PLOs, etc.		

Remarks:

_____ _____

ADJUDICATOR REVIEWER

Verified by: _____

H-2561-1 - NATIVE ALLOTMENTS
Discussion of Legal Defects and Factual Issues Requiring a Hearing

DISCUSSION OF LEGAL DEFECTS
&
FACTUAL ISSUES REQUIRING A HEARING
IN ADJUDICATION OF NATIVE ALLOTMENT APPLICATIONS

Legal defect refers to a situation where an application must be rejected for failure to compiy with a provision of law or regulation. In these cases, there are no material issues of fact (those that would affect the outcome of a case) that can be resolved through an oral hearing and the evidence of record clearly supports the reason(s) for rejection.

To illustrate, if a Native allotment applicant filed an application and alleged commencement of use and occupancy after the lands were withdrawn from entry under the Native Allotment Act and there were no evidence of record disputing the date of filing or the accuracy of the statements, the application would be considered legaily defective and rejected without a hearing. (The only exception would be if the withdrawal were subsequently revoked or modified to open the lands to Native allotment filings, and the applicant timely filed an application and used and occupied the lands at some point in time after the opening.)

Other relatively common legal defects include: (1) failure to file proof of use and occupancy within six years from the date of filing an application (statutory life principle, Native Allotment Handbook, pp. 12-13) 1/; (2) failure to establish use and occupancy prior to a withdrawal or other segregative action by the age of six (Native Allotment Handbook, p. 17); and (3) a determination that the lands under application are valuable for minerals other than coal, oil, or gas (Native Allotment Handbook, pp. 24-25). Please note the qualifying conditions listed for these situations in the Native Allotment Handbook.

A Native allotment applicant must be offered the opportunity for a hearing if an application is proposed for rejection due to insufficient or disputed evidence of use and occupancy. This is because there is no absolute blueprint for compliance with the use and occupancy requirements. It is the opinion of the courts that the facts in these instances are best sorted out and finally determined through the process of oral inquiry. *Pence v. Kleppe*, 529 F.2d 135, 142 (9th Cir. 1976).

1/ Note the exceptions for applications filed prior to December 6, 1958, and the statement of the statutory life principle, Page 2 - Memorandum of Attorney dtd. January 5, 1990, Office of the Regional Solicitor, Alaska Region, Clarification of Opinion Regarding Joseph Jimmie, J-010212 (January 5, 1990). This opinion discusses application of the statutory life rule to *Aguilar* applications and corrects the cutoff date mentioned in the Handbook for the six-year rule from 1964 to 1958. (Recent Handout to 960).

H-2561-1 - NATIVE ALLOTMENTS
Discussion of Legal Defects and Factual Issues Requiring a Hearing

In *Pence, supra,* at page 143, the Court stated:

> Written documents do not allow the trier of fact [decision-maker] to assess the demeaner and attitude of the various witnesses and thereby test their credibility. Finally, written evidence cannot be drawn so as to allow the applicant to frame his argument in a manner that stresses points that appear to be important to the decision-maker. In sum, written testimony is inadequate to satisfy due process when it involves a right as important as the right to be allotted land under the Act.

In contest situations (governed by the provisions of 43 Code of Federal Regulations (CFR) 4.450 and 4.451), or referral to a hearing at the discretion of the Interior Board of Land Appeals (IBLA) (43 CFR 4.415), testimony is given before an Administrative Law Judge and the final decision is appealable to IBLA. *Aguilar* hearings are conducted by a BLM Hearings Officer in accordance with the 1983 *Aguilar* Stipulations and Alaska State Office policy and procedures. *Aguilar* decisions are final for the Department.

The right to hearing is not limited to factual questions related to use and occupancy. For instance, hearings may be required to resolve factual issues related to timely filing, relinquishment or amendment of an application. However, as noted above, an applicant must be granted an opportunity for a hearing prior to any rejection based on insufficient or disputed evidence of use and occupancy. *Pence, supra,* affirms that the applicant's failure to comply with the use and occupancy requirements can never rest on the written record alone [unless the applicant does not exercise the right to hearing, in which case, the charges are taken as admitted and the application is rejected based on the evidence of record (cf. 43 CFR 4.450-7)].

At times, the right to hearing turns on obscure points of law or administrative procedure that adjudicators may not be aware of when evaluating the applications. This usually occurs where no clear precedent or policy has been established to distinguish a situation from others that appear to be almost identical. It is in these circumstances that our attorneys and the Interior Board of Land Appeals actively come into play. Note, for example, the distinction between IBLA's rulings on the issue of timely filing in *Heirs of Linda Anelon,* 101 IBLA 333 (1988) and *June I. Degnan (On Reconsideration),* 111 IBLA 360 (1989) 1/. The Board, in *Heirs of Linda Anelon,* vacated BLM's rejection of the Native allotment application due to failure to timely file and referred the case to the Office of Hearings and Appeals for hearing.

1/ Following petition for reconsideration by the applicant, *Degnan (On Reconsideration)* was set aside by IBLA (Order of January 31, 1990), pending receipt of information that clearly sets forth "the material issue(s) of fact that Degnan contends remains in dispute."

But in *June I. Degnan*, the Board reversed its original decision to refer Degnan's case for hearing on the timely filing issue, noting at page 362:

> In its petition for reconsideration, BLM states that *Anelon* is distinguishable from the instant case because *Anelon* involves specific allegations of an actual filing of a Native allotment application. The most *Degnan* alleges, ... is that an application was mailed. Filing is accomplished when a document is delivered to and received by the proper office; depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f)....
>
> We have examined our decision in *Degnan* in light of the arguments advanced by BLM in its petition and are persuaded that it is appropriate to grant the petition. On reconsideration, we conclude that affidavits of mailing are not a sufficient basis for granting a hearing on the issue of filing and, accordingly, reverse our decision in *Degnan*.

In *Degnan*, the Board invoked the presumption of regularity to support its decision: "Under this rule of law, it is presumed that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing" [emphasis added]. The Board then reasoned that evidence submitted by the applicant may overcome this presumption, but that the evidence submitted by Degnan, consisting primarily of affidavits, was insufficient to support the grant of hearing, because it was not evidence of receipt of the application by the Department. Consequently, there was no material issue of fact to be decided at hearing. The Board affirmed that BLM may reject a claim without a hearing if the validity of the claim hinges on the legal effect of facts of record (in this case, failure to timely file the application).

Degnan and *Anelon* illustrate the complexity of the issues involved with decisions to reject claims for legal defects or refer the cases to hearing. Adjudicators should read both of these decisions and the Regional Solicitor's memorandum 1/ on the *Anelon* case to acquire a complete understanding of the ramifications and context of the decisions. It seems that in the matter of Native allotment law, there is always an exception to what we thought was the rule and that it is sometimes very case specific. In the event you are confronted with a question that is not clearly resolved by your source materials (including IBLA and Court decisions) ask your lead for assistance.

1/ April 4, 1988 Memorandum of Deputy Regional Solicitor, Office of the Regional Solicitor, Alaska Region, IBLA Decision, *Heirs of Linda Anelon*, 101 IBLA 333 (1988).

Note: Since this paper was initially written, IBLA has affirmed (see June Degnan (On Reconsideration), 114 IBLA 373 (1990)) its initial decision in June Degnan, 108 IBLA 282 (1989), concluding that the applicant is entitled to a hearing.

H-2561-1 - NATIVE ALLOTMENTS
Discussion of Legal Defects and Factual Issues Requiring a Hearing

SELECTIVE LIST OF CASES WHICH ADDRESS LEGAL DEFECTS AND THE RIGHT TO HEARING 1/
(Current to March 6, 1990)

Federal Court Decisions

Right to Hearing

Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976) - precedent case.

Pence v. Andrus, 586 F.2d 733 (9th Cir. 1978) - discusses and affirms appropriateness of contest procedures.

Aguilar v. United States, 474 F. Supp. 840 (D. Alas. 1979) - right to hearing where lands have been conveyed out of federal jurisdiction.

Withdrawals

Akootchook v. Clark, 474 F.2d 1316 (9th Cir. 1984) - use and occupancy initiated subsequent to withdrawals for wildlife refuges.

Interior Board of Land Appeals

Timely Filing

June I. Degnan (On Reconsideration), 111 IBLA 360 (1989). [Set aside by IBLA (Order of January 31, 1990) pending review of applicant's pleadings.]

Heirs of Linda Anelon, 101 IBLA 333 (1988).

1/ This list is a selective summary of relevant case law. It does not include all decisions related to legal defects and the right to hearing.

H-2561-1 - NATIVE ALLOTMENTS
Discussion of Legal Defects and Factual Issues Requiring a Hearing

Failure to Predate State Selection

Christine Hansen Monroe, 112 IBLA 181 (1989).

Roselyn Isaacs (On Reconsideration), 53 IBLA 306 (1981).

Helen F. Smith, 15 IBLA 301 (1974).

Failure to Predate Selection Filed by Territory of Alaska

Patrick L. Philpott, 113 IBLA 21 (1990).

Use and Occupancy
(Disputed Issues of Fact)

Pedro Bay Corporation, 88 IBLA 349 (1985).

Use and Occupancy
(Right to Hearing)

State of Alaska, 109 IBLA 339 (1989).

Use and Occupancy
(Contest Directed by IBLA)

State of Alaska, 85 IBLA 196 (1985).
[Charlie Blatchford case - contest directed where there is significant evidence refuting the existence of substantially continuous use and occupancy.] Cf. *State of Alaska,* 113 IBLA 80,84 (1990) which directs contest in a similar situation.

Effect of Prior-Filed Trade and Manufacturing Site Notice of Location on Rights of Native Allotment Applicant

Agnes Mayo Moore (On Judicial Remand), 102 IBLA 147 (1988).

Effect of Segregation of Lands

Ramona Field, 110 IBLA 367 (1989) -
effect of withdrawals.

Harold Ahmasuk, et al., 96 IBLA 42 (1987) -
military reservations.

Roselyn Isaac (On Reconsideration), 53 IBLA 306 (1981) -
initiation of use and occupancy following segregation of lands.

Estate of Guy C. Groat, Jr., Violet Roehl, 46 IBLA 165 (1980) -
segregation of land prior to Native allotment filing.

Andrew Petla, 43 IBLA 186 (1979) -
initiation of use and occupancy following segregation of lands.

Application for Land Claimed by Prior Native Allotment Applicant

Norma E. Richards, 43 IBLA 288 (1979).

Applicant Born After Withdrawal of Lands

Arthur Martin, 41 IBLA 224 (1979).

H-2561-1 - NATIVE ALLOTMENTS
Discussion of Legal Defects and Factual Issues Requiring a Hearing

Applicant Less Than Six Years Old At Time Lands Segregated

Heirs of Doreen Itta, 97 IBLA 261 (1987).

Nicky Nickoli, 43 IBLA 296 (1979).

Floyd L. Anderson, Sr., 41 IBLA 280 (1979).

Lands Valuable for Minerals

Billy Morry, 72 IBLA 13 (1983).

Heirs of Simon Paneak, 55 IBLA 305 (1981).

Edith Szmyd, Beulah Hoth, 50 IBLA 61 (1980).

Cessation of Use (Rejection Without Hearing)

Jonas Ningeok, 109 IBLA 347 (1989).
["Where a Native uses and occupies land but does not file a Native allotment application for such land and thereafter ceases use and occupancy of the land for more than 20 years, during which time the Federal government withdraws the land from appropriation ... a Native allotment application subsequently filed for the land must be rejected."]

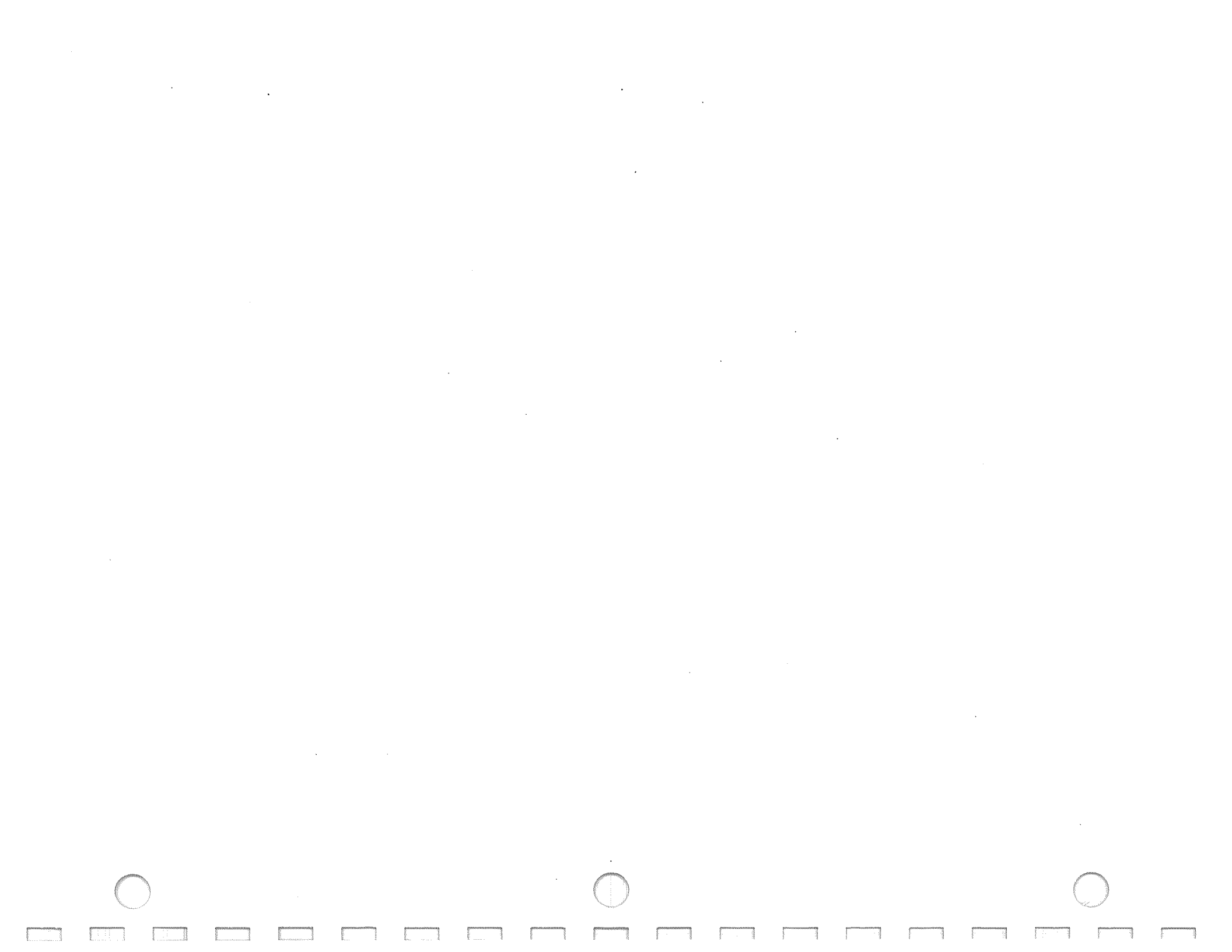
Filing of Evidence of Use and Occupancy (Statutory Life)

Julius F. Pleasant, et al., 5 IBLA 171 (1972).

H-2561-1 - NATIVE ALLOTMENTS
Legislative Approval Checklist

LEGISLATIVE APPROVAL CHECK LIST

	YES	NO
The application must:		
1. Have been pending before the Department on or before December 18, 1971;		
2. Not have been knowingly and voluntarily relinquished.		
In addition, the application must describe land:		
3. in the NPRA (National Petrolium Reserve) or not reserved on December 13, 1968;		
4. not patented or deeded to the State of Alaska or any other party;		
5. not validly selected or TA'd or confirmed to the State on or before December 18, 1971, unless it was withdrawn pursuant to Sec. 11 (a)(1)(A) of ANCSA;		
6. not in a unit of the National Park System established on or before December 2, 1980 unless it is in an ANCSA Sec. 11(a)(1) withdrawal;		
7. not in a power site reserve in which a project is licensed or which is presently utilized for power generation.		
In addition, by June 1, 1980 the application must not have been:		
8. Determined (with notice to the applicant) to describe land with possible mineral values;		
9. Validly protested.		



H-2561-1 - NATIVE ALLOTMENTS
Secretarial Order 3040

941

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

ORDER NO. 3040

Subject: Alaska Native Allotments

Sec. 1 Purpose. The purpose of this order is to rescind the Department's policy, as expressed in an October 18, 1973, memorandum from the Assistant Secretary, Land and Water Resources, to the Director, Bureau of Land Management, that the full five years use and occupancy required under the Alaska Native Allotment Act (Act of May 17, 1906, 34 Stat. 197, as amended, Act of August 2, 1956, 70 Stat. 954, 48 U.S.C. § 357b, recodified as 43 U.S.C. § 270-1) must be completed prior to a withdrawal of the land (hereinafter, the "five-year prior rule").

Sec. 2 Background. a. Prior to the December 18, 1971, passage of the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. § 1601, et seq.) (ANCSA), one method by which Alaska Natives could obtain title to public land was under the Alaska Native Allotment Act. Although, ANCSA expressly repealed the Alaska Native Allotment Act (ANCSA § 18, 43 U.S.C. § 1617), it specifically preserved the several thousand claims pending before the Department as of December 18, 1971.

b. In 1973, the Department adopted the five-year prior rule, which stated: "Vacant, unappropriated and unreserved land in Alaska is available for allotment under the Native Allotment Act. With respect to reserved or withdrawn land, if a Native has completed the five-year period of statutory substantial use and occupancy prior to the effective date of the withdrawal or reservation, the withdrawal may be revoked and the allotment granted." This policy, and restrictive interpretation of requirements of 43 U.S.C. § 270-1, resulted in the denial of many applications. As a further result, several lawsuits have been filed and are pending against the Department.

c. On July 11, 1978, notice was published in the Federal Register (43, Fed. Reg. 29837), inviting comments for 30 days from the date of the notice on a pending Departmental reconsideration of the five-year prior rule. Written responses were received from: Ahtna, Bering Straits, Calista, and NANA regional corporations; the Upper Tanana Development Corporation and the Tanana Chiefs Conference, Inc.; the Alaska Legal Services Corporation; the State Director, Alaska State Office, Bureau of Land Management; and, James F. Vollintine,

Esq., Anchorage. As part of the reconsideration process, all of these responses were reviewed and analyzed. The responses were all rather general in their comments, all highly critical of the five-year prior rule, and all highly supportive of the action taken today in Section 3.

Sec. 3 Policy Decision. a. I have undertaken a review, with the Solicitor, of the five-year prior rule. I have approached the review from the premise that the Alaska Native Allotment Act was an act passed for the benefit of Natives and should, therefore, be liberally construed in favor of Natives. The Act itself does not contain the five-year prior rule as an express requirement. The policy appears to have originated as a result of the exercise of agency discretion. Since it was issued, however, the United States Court of Appeals for the Ninth Circuit has ruled, in Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), that the range of the Department's discretion in dealing with Native allotments is narrower than was previously supposed. Whether or not the five-year prior rule is a proper exercise of the Department's discretion, it is not consistent with my policy, that of liberally construing acts passed for the benefit of Natives.

b. Accordingly, I hereby rescind the five-year prior rule in lieu of a rule which merely requires that the full five years use and occupancy must be completed prior to the granting of the Native allotment application, provided that the applicant has either filed for a Native allotment or commenced use and occupancy prior to a withdrawal of the land.

Sec. 4 Determinations. It is hereby determined that the action contained herein does not require a detailed statement pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332(2)(c), and that this document does not contain a significant regulatory proposal requiring preparation of a regulatory analysis under Executive Order 12044.

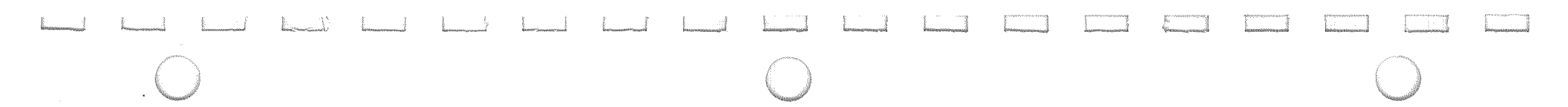
Sec. 5 Applicability. This order is applicable to all applications under the Alaska Native Allotment Act which were pending before the Department on December 18, 1971. Where applications which were rejected because of the policy herein rescinded are now pending before a Federal court, the court will be requested to remand the case to the Department for further action consistent with this Order.

H-2561-1 - NATIVE ALLOTMENTS
Secretarial Order 3040

Sec. 6 Effective Date. This order is effective immediately, and will remain in effect until its conversion to the Code of Federal Regulations. Such conversion will be completed within six months of the date of this order, at which time it will be considered obsolete.

Secretary of the Interior

Date: MAY 25 1979



H-2561-1 - NATIVE ALLOTMENTS
Regional Solicitor's Opinion, Reservation of Omnibus Act Rights-of-Way in Patents and in Native Allotment Certificates

United States Department of the Interior
OFFICE OF THE SOLICITOR
ALASKA REGION
510 L Street, Suite 100
Anchorage, Alaska 99501

COPY

August 23, 1982

MEMORANDUM

To: State Director
Bureau of Land Management
Alaska State Office

From: Attorney
Office of the Regional Solicitor
Alaska Region

Subject: Reservation of Omnibus Act Rights-of-Way in Patents and in Native Allotment Certificates (932)

By memorandum of July 28, 1982, you set out the BLM's view that patents and Native allotment certificates should be made subject to those rights-of-way transferred by Section 21 of the Alaska Omnibus Act, Public Law 86-70 (73 Stat. 141 at 145) and asked for suggestions and comments on the proper wording for such a conveyance provision.

With a few caveats, we agree with your stated view that patents and allotment certificates are subject to rights-of-way conveyed pursuant to the Alaska Omnibus Act. First, while the transfer of the roads was mandated by Section 21 of the Alaska Omnibus Act, the actual transfer was consummated by a quitclaim deed from the Secretary of Commerce dated June 30, 1959. Schedule A of that deed lists the particular roads transferred to the State of Alaska. The widths of the roads vary and are determined by reference to the applicable Departmental land orders (i.e., S.O. 2665 and PLO's 601, 757, and 1613).

Second, the general procedure we are agreeing with in this memorandum pertains only to patents and allotment certificates issued in those cases where the entries or use and occupancy commenced after the 1959 conveyance to the State. The general procedure does not apply to patents or allotment certificates based on entries or use and occupancy predating conveyance of the road. Those situations require a different treatment, as well as a careful factual analysis, and are not encompassed by this memorandum.

MODIFIED— THIS PROC. APPLIES ACROSS THE BOARD TO NATIVE ALLOTMENTS
- PRIOR RIGHTS TO ROADS MUST BE VINDICATED WITH AQUILAR PROCEDURES
DJG

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It should also be noted that, while the Native Allotment Act of May 17, 1906 (34 Stat. 197) does not specifically provide that a Native allotment will be subject to such rights-of-way, if the Native Allottee's use and occupancy did not commence prior to the conveyance of the particular road involved, then that interest in land was already out of Federal ownership and was not available to the Allottee. Thus, we have a unique situation where an interest in the land has been previously conveyed and cannot be part of the Native allotment. Hence, where the use and occupancy started after the conveyance of the road, it would be appropriate to make the allotment certificate subject to the specific road which was conveyed pursuant to the Alaska Omnibus Act.

Accordingly, in those instances where the width of the Omnibus Act road can be determined, we recommend conveyance wording similar to the following:

> An easement for highway purposes, extending (number of feet) each side of the centerline, in the (road name as it appears in Sechdule A of the quitclaim deed) transferred to the State of Alaska by the quitclaim deed dated June 30, 1959, and executed by the Secretary of Commerce pursuant to the authority of the Alaska Omnibus Act, Public Law 86-70 (73 Stat. 141) as to (legal description or road location as to township, range and section as applicable).

Where the width of road cannot be ascertained, you can use the above language by deleting "extending (number of feet) each side of the centerline."

We believe this language sufficiently ties the road to its location and width at the time of the quitclaim deed of June 30, 1959. We certainly agree that any realignments, etc., cannot be recognized in a patent or allotment certificate unless they are covered by additional rights-of-way grants and are otherwise proper. In addition, the language set out above is consistent with that set out in a memorandum of October 16, 1979 from the Chief, Branch of ANCSA Adjudication to all ANCSA Section Chiefs. The only difference in the proposed language is a correction of the referenced date of the quitclaim deed from June 3, 1959 to June 30, 1959.

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If you have further questions or if we can be of further assistance, please let us know.

Dennis J. Hopewell

bcc: Patent Specialist

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