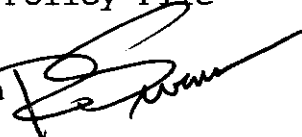


MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES

State of Alaska
DIVISION OF LAND
762-2692

TO: Director's Policy File
92-02

FROM: Ron Swanson 
Director

DATE: October 14, 1991

SUBJECT: Policy for Reconveyance of Native Allotments

BACKGROUND:

Land underlying Native allotments has, at times, been erroneously conveyed to the state. The federal government has authority to litigate against the state to recover title. If a conveyance of land to the state is determined to contain an erroneously conveyed Native allotment it may be treated as if the state had never received title to the Native allotment. The function of reviewing Native allotments on state land to determine if the conveyance to the state was erroneous is now being handled by the regional offices. A consistent policy is needed.

LIMITATIONS:

This policy only applies to land managed by the Division of Land.

LEGAL DEFECTS:

If an allotment application is legally defective because the land was unavailable (withdrawn, etc) at the time the use and occupancy is alleged to have commenced or the application is otherwise defective, BLM will be informed of the defect by the Regional Manager.

WRONGFUL OR ERRONEOUS

If an allotment application does not have a legal defect and is otherwise valid the original conveyance of the land from the United States to the state may be found wrongful or erroneous (11 ACC 67.930) because:

1. The land was subject to a valid private claim of legal or equitable title that predates any state claim; or
2. The land conveyed was not selected by the state or was not available for state selection; or
3. The state's title to the land is otherwise defective.

SIGNIFICANT STATE INTERESTS:

Significant state interests that shall be protected and/or mitigated include:

1. All valid third party interests created by or transferred to the state
2. Any land improved by a state agency
3. All existing roads trails and public use sites
4. Any land designated by the state legislature for a specific use
5. Section line easements
6. Any land for which the state has identified a site specific future use

MITIGATION METHODS:

The following methods will be used to mitigate significant state interests:

1. If the applicant agrees to relinquish fee interests or take title subject to easements, the agreement will be included in the settlement and release.
2. If the state has conveyed the land to a municipality, but the municipality is willing to reconvey directly to the federal government or through the state, it will receive a credit to its municipal entitlement. If the land is not valuable for coal, oil or gas the reconveyance must be made through the state to ensure the state receives its land entitlement acreage credit.
3. Land exchanges may be initiated with third parties other than municipalities to eliminate a conflict with the allotment.

OTHER RESERVATIONS:

The following standard reservations do not need to be reserved if the claim pre-dates any state interest:

1. Surveyed section line easements can be vacated if they do not serve a useful purpose.
2. Easements required by A.S. 38.05.127(a)(2) will not be reserved without proof of both past and present public use.

OTHER:

1. Federal reservations in title will be transferred to state jurisdiction, serialized, and treated as state third party interests.
2. If land is managed by another state agency, that agency will be responsible for negotiating any reservations or relinquishments directly with the applicant. If the agency is unable to reach agreement then it will be responsible for participating in any Aguilar hearings or defending title in any court cases.
3. If agreement can not be reached on reservations or relinquishments, a list of options will be prepared for a decision by the director.