



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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BUREAU OF LAND MANAGEMENT
ANCHORAGE, ALASKA

Instruction Memorandum
Expires 9/30/85

To: DM's and DSD's

From: State Director, Alaska

Subject: Rights-of-Way Reservation on Native Allotments

We have previously taken the position that Native Allotment Certificates are subject to granted rights-of-way (Ominibus Act roads, other roads, trails, power and telephone lines, etc.). Not so clear has been how to handle roads and trails used by the public which are not covered by a grant.

The enclosed December 22, 1983 opinion by the Regional Solicitor states that a Certificate should be subject to these routes also. The principles involved, as explained in the opinion, are that the part of the allotment use which is not "potentially exclusive of others" is a less than full fee interest. It is important to remember that such reservation is based on the lack of exclusive use by the applicant, and not on an adjudicated R.S. 2477 right-of-way.

The following procedures apply to all pending Native allotments which require adjudication; exclusive use is not a criterion for legislative approval.

As stated in the opinion, it will be necessary for BLM to determine the date of use and occupancy of the allotment relative to the use of the road or trail. District reports on the results of field checks, conflict resolution, or even the initial field exam, should continue to address the existence of roads and trails across allotments which predate the use and occupancy. Notification that a publicly used road or trail exists may also come from sources outside BLM.

It will also be necessary to establish a width for each road or trail to which the Certificate is made subject. In the absence of good reason for greater width, which must be justified in

the report, the maximum width used will be as specified in the ANCSA easement regulations 43 CFR 2650.4-7(b)(2); i.e.

| | |
|----------------|----------------------------------|
| Foot Trails | Actual use not to exceed 25 feet |
| ATV, 4X4 use | Actual use not to exceed 50 feet |
| Existing roads | Actual use not to exceed 60 feet |

Amendment of applications which exclude land occupied by a foot or ATV trail should normally not be allowed in order to avoid a narrow strip of Federally owned land within the allotment. Allotments crossed by roads may be amended to exclude these wider rights-of-way as provided in Sec. 905(c) of ANILCA.

Each certificate of allotment which includes a public road or trail which predates the applicant's use and occupancy will contain the following language:

Subject to the continued right of public access across the non-exclusive use (trail) (road) not to exceed _____ feet in width as shown on U.S. Survey _____.

The approval letter should cite the date of use by the public in relation to the date of use and occupancy and also the type of use shown by the evidence. The Request for Survey will clearly state that such public use roads or trails are to be identified on the plat of survey.

2 Enclosures

Encl. 1 - Sol Opinion Dec. 22, 1983

Encl. 2 - BLM Manual 2801.24B

Distribution:

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