

MEMORANDUM

State of Alaska Department of Transportation & Public Facilities

All Regional Chief R/W Agents
(See Distribution List Below)

DATE: November 26, 1984

FILE NO. 2900

TELEPHONE NO. 465-2985

FROM: Jack T. Bodine, Chief 
Right of Way & Land Acquisition
Standards & Technical Services

SUBJECT: Native Allotments


Attached is a draft acquisition procedure prepared by the Federal Highway Administration and Bureau of Indian Affairs for our use.

Please implement this procedure when acquiring native allotments.

Distribution

Harold Cameron, Regional Chief R/W Agent, Northern Region
James Sandberg, Regional Chief R/W Agent, Central Region
Hugh Williams, Regional Chief R/W Agent, Southeastern Region

Attachment

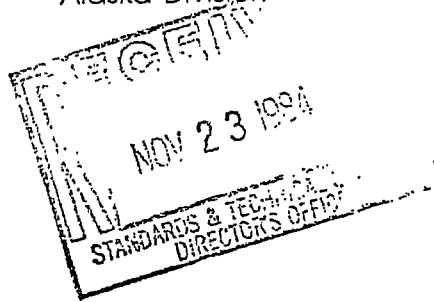
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U.S. Department
of Transportation
**Federal Highway
Administration**

November 20, 1984

Alaska Division



P.O. Box 1648
Juneau, Alaska 99802

HRW-AK
410

John J. Simpson, Director
Standards and Technical Services
Alaska DOT&PF
Juneau, Alaska

Dear Mr. Simpson:

During the October right-of-way meeting held in your office, one of the critical problem areas discussed by the three Regional Right-of-Way Directors was dealing with the BIA on Native allotments. Following this meeting, we met with BIA personnel and drafted acquisition procedures. We have received concurrence from the Juneau Area Director on the majority of the procedures and therefore, are suggesting them to you as a possible means of expediting the acquisition of Native lands.

Native allotments are a unique type of land grant made by the Federal Government under a series of statutes. The distinguishing characteristic of allotments is their status as "trust" or "restricted" lands, i.e. lands for which Federal approval must be obtained before the allottee may sell or alienate title.

There are three basic categories of allotments (there are also further refinements of these categories that are not essential for discussion here):

1. Pending Allotments

This is the lowest form of allotment. Title is still vested in the Federal Government as public domain, however, the Federal Government has been notified that there is a claim or application. Concurrence for the acquisition of these must be obtained from the Bureau of Land Management, the allottee and BIA. If concurrence or a letter of non-objection can be obtained from the allottee and the BIA, appropriation and transfer procedures under USC 23, Section 317 may be instituted.

2. Approved Allotments

These applications have been acknowledged as legitimate, however, field reviews such as survey, title check, etc. is lacking. There are six to eight thousand Native allotments in Alaska in the approved category. The Alaska DOT&PF may acquire

rights-of-way across these allotments by negotiation with the allottee and approval of the BIA.

3. Certificate of Allotment

This is the highest form of private ownership of allotment. Essentially it is restricted fee title. The allottee may sell or dispose of his/her allotment but only with approval of the Federal Government, which has been delegated to the BIA. There are approximately 1,200 certificated allotments in Alaska.

BIA has contracted with local Native corporations referred to as P. L. 93.638 Realty Contractors, such as Tanana Chiefs, Association of Village Council Presidents, and the Central Council Tlingit-Haida Indian Tribes of Alaska, to provide advisory services in place of the BIA Field Office in certain areas. These corporations provide advise only to the allottees. They have no approval authority as far as the acquisition of right-of-way is concerned.

The following is the recommended procedure for acquiring right-of-way over allotted lands:

1. Contact both the allottee and the local agency office during the design stages of the project so that mutual concerns can be considered at an early stage.
2. Notify the local BIA office and/or the P. L. 93-638 Realty Contractor that the allottee will be contacted regarding the acquisition of right-of-way. Request that a representative of BIA, or the contractor, accompany the appraiser on the inspection of the property and contact with the allottee.
3. Following DOT&PF establishment of fair market value, forward a copy of the appraisal and the fair market value determination to the Juneau Area Office of the BIA. BIA is responsible for establishing their own fair market value of any proposed acquisition or allotments or restricted town site lots. The BIA may consider an appraisal from the State of Alaska or an acceptable fee appraiser in its establishment of the approved fair market value. If the BIA appraisal staff certifies that the State appraisal is acceptable under Federal Standards, it will be approved for agency negotiations. If not, BIA appraisers may either request further information from the State or schedule the property for appraisal by the BIA.
4. BIA would appreciate a completed application for the right-of

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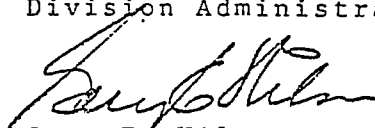
way when the appraisal is submitted. BIA feels that their personnel will not be able to adequately perform their counseling responsibilities unless they have an understanding of the proposed project and the overall effect on the restricted property.

5. Following approval by BIA of the appraisal, DOT&PF should request a representative to accompany the negotiator when he or she contacts the allottee to present the offer of fair market value.
6. If the allottee consents to the acquisition, secure his/her signature on BIA form JAO 84-1 "Consent of Owners".
7. Forward form JAO 84-1 with the offer letter to the BIA agency office which has jurisdiction for transmittal to the Area Director.
8. If the allottee does not consent, determine where the differences of opinion are and attempt to resolve them. If they can be resolved, proceed with steps 5 and 6 above.
9. If agreement can not be reached, proceed with condemnation in Federal District Court, regardless of the type of allotment.

We hope these procedures will be of benefit to the Department and clear up the questions that were raised during the October meeting.

Sincerely yours,

Barry F. Morehead
Division Administrator


By: Gary E. Wilson
Division Right-of-Way Officer