

DM-F (200)

April 2, 1973

SD

In reply refer to:
2561/2650.8 (932)

Easement Form for Native Allotments

Your reference:
(200)

Since Neil Bassett's February 23 trip to Fairbanks, we have been aware of the form Elliot Lowe designed for signature by a Native allotment applicant which would "authorize" insertion of easement reservations in Certificates of Allotment. While we knew such a form had no legal standing we did not, at the time, choose to make any official judgment. Since then, we have been contacted orally and in writing by Bill Mattice, the Regional Solicitor, and the Planning Commission Executive Director (copies enclosed). Before Ted Bingham's letter arrived, Carl Jergum, as Acting District Manager, had been requested by phone to see that use of the form was discontinued.

The letter of February 7 from Tom Dean to Riley Morry (copy enclosed) presents a new and totally illegal situation. There is no authority in law or regulation to threaten to reject allotment applications for failure of the applicant to sign the subject easement form.

Accordingly, you are requested to contact Anaktuvuk Pass and any other village which might have been given the same information and clarify the situation.

As you are aware from our memo of October 24, 1972, on easements across Native allotments, we asked whether we could reserve easements such as Tom's letter proposes. We still don't know, but an applicant's authorization will not supersede that which may be authorized or prohibited by law.

Bill Mattice's memo was discussed with him during the ANCSA regulations meeting, and a formal response will not be made. We have replied to the Planning Commission.

~~XXXXXX~~

Enclosures 4

- Encl. 1 - cy memo dated 2/22/73
- Encl. 2 - cy memo dated 3/16/73
- Encl. 3 - cy ltr dated 2/7/73
- Encl. 4 - cy ltr dated 2/15/73

NRBassett:em 4/2/73

EN-A, EN-F

July 13, 1972

SD

In reply refer to:
2050 (932)

Native Allotments - ANCSA

Your reference:
(100)(200)

About two months ago a memo, dated May 3, was circulated which summarized a phone conversation with Ted Dingham. One item concerned staking of Native allotments and indicated that lack of staking was cause for rejection. Such is not the case.

An allotment application should be rejected if lack of staking together with evidence of failure to use and occupy is found; if the claim is not staked but there is evidence of use and occupancy, or none can be found to the contrary, there are no supportable grounds for rejection. The last 4,000-5,000 applications, for which Assistant Secretary Leesch waived part of BIA's certification, are probably not staked. Also, it will be impossible to differentiate between failure to stake and claims that stakes have been pulled up.

We have a memo (copy enclosed) from the Division of Lands and Realty confirming that rights-of-way may not be reserved across valid allotments without the consent of the Native. This view apparently depends on adjudicative principles relating to date of occupancy versus date of the right-of-way. However, during recent discussions with Jack Lerts, PSC Right-of-Way Specialist, it was agreed that the matter will be pursued further, in addition to requests for opinions already submitted to the Regional Solicitor.

In the meantime, be sure that field reports identify all existing and potential rights-of-way. A system should be devised to consolidate such information in a place other than in the field report. Perhaps this can be discussed during the Fairbanks training session next week.

/s/ James C. Jensen

Acting

Enclosure 1

Encl. 1 - Cy. memo dated 6/27/72

cc:

LCM (931) w/cy incoming

Chief Adj. (931) "

ALUPC "

HRBassett:mn 7/18/72

State Office
555 Cordova Street
Anchorage, Alaska 99501

May 30, 1972

Memorandum

To: Regional Solicitor, U.S. Department of the Interior,
Anchorage, Alaska

From: State Director

Subject: Reservations in Native Allotment Certificate

By memo of July 9, 1970 and follow-up of January 26, 1972 we asked about certain statutory reservations which ought to be included in Allotment Certificates but were apparently precluded by Associate Solicitor Bradshaw's November 16, 1959 opinion.

From informal discussions between Bob Mothershead and Neil Bassett, we understand that our initial request was forwarded to Washington with comments and objections to Bradshaw's opinion. This memo is to request appropriate action to expedite an answer from the Solicitor.

The AICSA conference committee obviously recognized the need to reserve access rights-of-way through large blocks of land to be conveyed to villages and regions (Sec. 17(b)(3)). They failed to consider the 9,000 Native allotment applications pending before the Department which involve the conveyance of about 1.3 million acres. Some allotments will be scattered and of little consequence in affecting access. Many, however, will be clustered and will therefore block access, as will some individual allotments.

In the current absence of statutory authority to reserve rights-of-way in allotment certificates, a reversal of Bradshaw's opinion will give us little except to reserve rights-of-way of record. Should his opinion hold, it is critical to the Planning Commission's work and BLN's operations to know what public access rights exist and how to handle them legally.

CC: DM-A (100)
ALUPC DM-F (200)
Dir. (320)

Acting

NRBassett:nm 5/30/72

Director

October 24, 1972

SD, Alaska

In reply refer to:
1362/2800 (932)

Public Rights-of-Way Across Alaska Native
Allotments

Your reference:
(100)

Since the inception of ANCSA we have been greatly concerned that no provision was made for public access across the more than one million scattered acres of land which will be transferred under the 1906 allotment act. Hundreds of allotments lie across water courses which have historically provided access into subsistence and recreational areas by both Natives and non-Natives. Many more lie across traditional upland access routes (roads and trails) for the same purpose. Where a row of allotments occupies the only topographically feasible access route, any one of the allottees or transferees could close such access routes.

It is our opinion, based on years of experience in Alaska, that unless specific reservations are made in Certificates of Allotment, the public, including the Natives themselves, the United States, and all the other users may be denied rights to use such traditional paths of travel.

To prevent this we propose to give clear notice to allottees and their transferees that the lands are subject to customary public rights-of-way by the following reservations to be recited in Certificates of Allotment:

Reservations and Exceptions

1. Subject to existing rights of the public to use waterways, roads, trails, and all other modes of ingress and egress over and across said land.
2. Standard ditches and canals reservation.
3. Subject to a right-of-way for the public to use that waterway, road, trail (describe access rights known to have existed on the land and which are desired to be clearly protected by a specific patent provision. If possible, describe location and use or purpose, e.g., fishing and hunting, commercial transportation, etc.)
4. Any other specific existing reservation, i.e., grants to others such as power lines, pipelines, telephone lines, etc., which exist at the time of filing of application.

The basic authorities for the general reservations would be 2.S. 2477 for roads and trails, and 43 U.S.C. 931 for waterways. Also affecting this would be section line rights-of-way established by the State of Alaska. The legalities have been discussed with the staffs of two regional solicitor offices.

We discussed this proposal with the Bureau of Indian Affairs Area Director, Morris Thompson, and certain of his staff members. Mr. Thompson does not agree with this approach; his Area Realty Officer is generally in agreement and his Anchorage Agency Realty Officer strongly recommends it based on the long range view.

By using these reservations, we hope to avoid the acquisition problems facing the Bureau in the other States, i.e., buying back rights in the future which we now give away.

The new lands personnel which we acquired this summer have plunged into the job at hand and field reports are flowing to the Land Offices. About 70-80 cases are before the Land Office for final action. It is therefore essential that we finalize the above approach as quickly as possible. To that end we propose to implement the insertion of reservations in Certificates of Allotment in about thirty days unless we hear otherwise from your office.

~~73/ Richard L. Thompson~~
Acting

cc:
Mr. Robert Price
Regional Solicitor
U.S. Dept. of the Interior
Box 166
Anchorage, AK 99510

Director (320)
LOM (931)
Chief, Adj. (931)
ALUPC
DM-A (100)
DM-F (200)
Dir. PSC (P-300)

NREassett:mm 10/24/72

UNITED STATES GOVERNMENT

Memorandum

SEP 13 10 10 AM '72

DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Portland Service Center
P. O. Box 3861
Portland, Oregon 97208

ANCSD AGE AK.

DATE: SEP 13 1972

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SEP 13 1972	
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TO : State Director, Alaska

FROM : Director, PSC

SUBJECT: Reservation of Rights-of-way in Native Allotments

Enclosed is our proposed memo setting out reservations and exceptions which we believe should be used in the certificates.

It is suggested that reservations 1 and 2 be used in all cases. Item 3 should be used where and when the right-of-way desired can be described. This is the best method of assuring access so we urge it be used as often as possible and especially in key access situations. Item 4 is self-explanatory and should be used where applicable.

The word "existing" has been used in the proposed reservations and we feel that it will be the key to our success. Your land examiners should be extremely alert to showing any and all existing paths of travel.

We did not have a copy of your proposed or previously used certificate so you may have to modify our proposed language for uniformity.

'As agreed, no mention of our proposed action regarding the ANCSA has been made in this memo. We will be working on this and contacting you soon.

Upon completion of your review we will appreciate receiving your comments and suggestions.



DRAFT

HEAD
MANAG
MAIL
SEP 15 10 10 AM '72
RECEIVED
AND TORRICE AK

2800

Memorandum

To: Director (100)
From: State Director, Alaska
Subject: Reservation of Rights-of-way in Native Allotments

A serious question arises about the loss of unrestricted ingress and egress for the general public due to the pending Native Allotment claims

It is our opinion that unless specific reservations are made in the certificates, the public, including natives, the United States and all others may be denied rights to use traditional paths of travel.

In an effort to prevent this, we propose to give clear notice to allottees and their transferees that the lands are subject to customary public rights-of-way by the following reservations to be recited in certificates issued:

Reservations and Exceptions

1. Subject to existing rights of the public to use waterways, roads, trails and all other modes of ingress and egress over and across said land;

2. and, there is reserved from the land a right thereon for ditches or canals constructed by the authority of the United States;
3. also, subject to a right-of-way for the public to use that waterway, road, trail (describe access rights known to have existed on the land and which are desired to be clearly protected by a specific patent provision. If possible, describe location and use or purpose, e.g., fishing and hunting, commercial transportation, etc.) Any other specific existing reservation, i.e., grants to others such as power lines, pipelines, telephone lines, etc., which exist at the time of filing of application.

The bulk of these allotments will be under some form of administration by the Bureau of Indian Affairs, therefore, we have met and discussed our proposed right-of-way reservations with them. BIA has assured us that since these rights will also aid the allottees, they will assist us in this effort.

By use of these reservations we hope to avoid some of the acquisition problems facing the Bureau in the lower 48, i.e., we won't have to buy back what we gave away.

Your early approval will help us in getting this massive job done.