

EASEMENT IDENTIFICATION

- Authority (Sec 17(b) of Alaska Native Claims Settlement Act ANCSA)

Easements will be reserved to provide access to and from public lands and waters. Associated site easements for overnight camping and changes in modes of transportation will also be reserved. (regulations: 43 CFR 2650.4-7)

- Process

Division of Conveyances

- ~Identifies lands to be conveyed, requests easements

District

- ~Request nomination of easements from the public, interest groups, other agencies and the State

- ~Considers all nominations & prepares a Notice identifying easements proposed to be reserved (90 day comment period)

- ~Considers comments

- ~Issues draft Final easement recommendation

- ~Conducts village meeting (if needed)

- ~Issues Final easement recommendation (memo)

Division of Conveyances

- ~Incorporates easements as reservations in Conveyance document

Easements become retained Federal interests on private land

Easement Management

Locate on-the-ground

Brush and construct

Mark or Sign

Maintain

Monitor use

Acquisition of easements

Donations/Terminations or MOU's to fix on-the-ground problems

EASEMENT CONFORMANCE

HISTORY

- BLM began conveying lands in 1975
- Native Corporations filed lawsuit challenging our Easement policy
- Conveyance activity stopped
- Easement Agreements entered into by some Corporations and DOI
 - ~ Allowed conveyance to continue with reservation of easements pursuant to existing guidelines, pending outcome of the litigation. We would terminate easements which the court found improper, and the Corporations would donate easements that could have been reserved had current regulations been in effect at the time of conveyance.
- Court decision in favor of the Corporations (1977)
- BLM issued new regulations (November 27, 1978)

SITUATION

- Need to review all conveyances issued subject to the easement agreements
- Terminate illegal easements
- Get donations of easements in lieu of those terminated

PROCESS

- Issue Notice of Intent to Conform
 - ~ Published in newspaper
 - ~ Comment period
- Review comments
- Prepare Draft Easement Memo
 - ~ List, with justification, all easements to be retained, terminated and donated
- Prepare Conformance Decision
- Prepare Grant of Easement
 - ~ Get Corporation signature and resolution
 - ~ Preliminary and final title evidence
 - Purchased from Title Company
 - ~ Solicitor preliminary and final title opinions
 - ~ Field exam to complete Certificate of Inspection and Possession
 - ~ Record Grant of Easement
- Prepare and sign the Release of Interest to terminate easements

PATENT EASEMENT REVIEW

SITUATION

- Lands conveyed by Interim Conveyance (IC)
- Survey completed
- Confirmatory Patent

PROCESS

Division of Conveyances

- ~Identifies IC's that have been surveyed and ready for Confirmatory Patent

District

- ~Reviews easement casefile
- ~Reviews survey plats
- ~Identifies all easements that have been terminated and/or donated
- ~Execute Memorandum of Understanding, with Native Corporation, if minor easement location adjustments are necessary
- ~Prepares Patent Easement Memorandum
 - *Lists all easements to be reserved in the Confirmatory Patent
 - *Describes easements according to survey description

Division of Conveyances

- ~Incorporates easements as reservations in Patent

ANCSA EASEMENTS

Bureau of Land Management Alaska

Easement Process

Section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 and 43 CFR 2650.4-7 authorize the identification and reservation of public easements across Native-selected lands which are reasonably necessary to guarantee access to publicly owned lands or major waterways; guarantee international treaty obligations; or provide access to present existing Federal, State, or municipal corporation sites.

The first step in the easement process is to identify the lands to be conveyed and request the District Office to review them and identify any easements to be reserved to the United States in an easement memorandum (EM). No lands may be approved for conveyance to the village corporation which have not been included in an EM. To do so would deprive interested parties of the opportunity for input in the easement process.

The District Office will review the lands and identify easements to be reserved. All affected parties (Native, State, Federal or other individuals) will be provided the opportunity to review the proposed easement recommendations and, where possible, resolve any conflicts prior to issuing the EM.

The easements identified in the EM are included in an appealable decision that is published in the Federal Register and a local Newspaper. Upon the conclusion of the appeal period, the conveyance document is issued with the reservation of any Sec. 17(b) easements that had been identified in the decision.

What follows is the principal content of the easement regulations issued November 27, 1978 by the Secretary of the Interior. Although we hope it is useful to the reader in knowing what easements may and may not be reserved, this guide should not be considered a substitute for the regulations. Copies of the regulations may be obtained by letter or phone from the Alaska State Office of the Bureau of Land Management in Anchorage or any other BLM Alaska office.

ROAD AND TRAIL EASEMENTS

For what purposes may BLM reserve road and trail easements on Native lands?

The BLM may reserve easements on Native lands to allow public access to:

- publicly owned lands
- major waterways and the marine coastline
- communities
- airports or docks
- groups of private holdings
- government installations (unless justified, access shall be limited to government use)

What tests do road and trail easements have to meet to be reserved on Native lands?

- must be "reasonably necessary" to serve one of the purposes described below:
 - a. be reserved only if there is "no reasonable alternative route" across publicly owned lands
 - b. must be limited and non-duplicative
 - c. must be specific as to location use, and size
 - d. must be based upon present existing use defined as being used on December 18, 1976 in the regulations unless:
 1. necessary to guarantee international treaty obligations
 2. the easement is for access to an isolated tract or area of publicly owned lands
 3. a future railroad or road is specifically located and planned for construction within five years.
- if not determined by existing use, must be in

topographically suitable locations

- if adverse impact on Native culture, lifestyle, or subsistence needs, alternatives must be considered
- along marine coastline, may only be reserved for primary route of travel between coastal communities, publicly owned uplands, or communities and publicly owned uplands
- from publicly owned uplands to the marine coastline, only if significant present use has occurred on the public lands below the mean high tide; however, easements may be reserved to isolated public lands from the coastline if there is no other reasonable alternative route
- along major waterways, be reserved only for short portages around obstructions (but this doesn't preclude a trail or road easement which happens to follow the waterway).

OTHER EASEMENTS

For what other purposes may easements be reserved on Native lands?

- for existing utility purposes, such as electricity, water, communications, oil, gas, and sewage
- for future utility purposes only if site specific and actually planned for construction within 5 years of

- the conveyance
- for air, light, or visibility purposes (if required for safety or permit proper use of public improvements)
- to guarantee international treaty obligations
- to implement any agreement between the U.S. and Native corporation

COMBINED EASEMENTS

When should several purposes be combined into a single easement?

- transportation, communications, and utility easements shall be combined where the combination is reasonable considering the primary purposes of the easements.

WIDTHS OF ROAD AND TRAIL EASEMENTS

What are the maximum widths of transportation easements?

The maximum widths of transportation easements are:

- no more than 25 feet for foot travel, dogsleds, and small vehicles
- no more than 50 feet for large all-terrain vehicles
- no more than 60 feet unless the existing road is wider
- 100 feet, unless otherwise

- justified for a proposed road
- 100 feet on each side of the center line for a proposed railroad.

SITE EASEMENTS

For what purposes may BLM reserve site easements on Native lands?

Site easements may be reserved only at:

- a trail head
- along an access route or waterway
- site easements may only be for the following purposes:
 - a. aircraft landing
 - b. boat or vehicle parking temporary camping (no more than 24 hours), and/or
 - d. loading or unloading (no more than 24 hours)

What tests do site easements have to meet to be reserved on Native lands?

- if adverse impact on Native culture, lifestyle or subsistence needs, alternatives must be assessed
- must be limited and non-duplicative
- must be specific as to location, use, and size
- be located on existing sites unless a variance is otherwise justified
- if not determined by existing use, must be in topographically suitable locations
- be no larger than one acre in size unless a variance is

- otherwise justified
 - on the marine coastline, be reserved only at periodic points necessary to facilitate travel on coastal waters or between coastal waters and publicly owned uplands
 - on major waterways, be reserved only at periodic points related to travel on the waterway or travel between the waterway and publicly owned lands
 - be for aircraft landing strips only if they have "present significant use", are a necessary part of a system of access to public lands, and are not suitable for inclusion as part of village reconveyances. Only the area needed for takeoffs, landings, and public safety may be reserved.
 - for future logging sites or similar operations
 - on the beds of major waterways, except where related to road or trail purposes, portaging or changing the mode of travel
 - on the beds of non-major waterways, except when related to road or trail purposes.
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FORBIDDEN EASEMENTS

What easements are forbidden?

No easements shall be reserved:

- for hunting, fishing, or unlimited camping on Native lands
- for scenic or recreation purposes
- simply to reflect patterns of Native use on Native lands
- on the basis of subsistence use of the lands of one village by the residents of another
- for the purpose of protecting Native stockholders from their respective corporations