

MEMORANDUM OF UNDERSTANDING

between
The Bureau of Land Management, Alaska
The National Park Service, Alaska Region
and
The U.S. Fish and Wildlife Service, Region 7

I. Purpose

The purpose of this Memorandum of Understanding is to clarify the procedures to be used in determining which agency will administer certain ANCSA 17(b) easements, the process for administering those easements, and for the termination of easements.

II. Background

Section 17(b) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1616(b), authorizes the reservation of public easements on lands conveyed to Native regional and village corporations. Department Manual 601 DM 4 (September 11, 1984) establishes procedures for the administration of easements under the jurisdiction of the Department of the Interior. It provides that an easement reserved pursuant to Section 17(b) of ANCSA shall be administered by the Department of the Interior agency whose land is accessed by the easement.

To date approximately 2,050 easements have been reserved under the authority of ANCSA. Present estimates are that the Bureau of Land Management (BLM) will administer forty-eight percent (48%) of the easements, twenty-two percent (22%) will be administered by the U.S. Fish and Wildlife Service (F&WS), and three percent will be administered by the National Park Service (NPS). The remaining twenty-seven percent (27%) are, or may be, administered by non-Interior agencies such as the U.S. Forest Service, the U.S. Coast Guard, Federal Aviation Administration, U.S. Air Force, U.S. Navy, the State of Alaska, a borough, or municipal government.

III. Authority

- Alaska Native Claims Settlement Act (ANCSA) - 43 U.S.C. 1616(b).
- Alaska National Interest Lands Conservation Act (ANILCA) - 16 U.S.C. 3101
- Federal Land Policy [and] Management Act of 1976 (FLPMA) - 43 U.S.C. 1701, et seq.
- Fish and Wildlife Act of 1956 - 16 U.S.C. 742a - 742j, as amended.
- National Wildlife Refuge System Administration Act of 1966 - 16 U.S.C. 668dd-668ee, as amended.
- National Park Service Organic Act of 1916 - 16 USC 1, as amended.

IV. Definitions

The following definitions apply to this document:

Conformance: The process by which a reserved easement is conformed to the legal criteria set out at 43 CFR 2650.4-7, if necessary and appropriate (Generally these are conveyances made prior to the promulgation of the current regulations of 1976 [1978] and in such cases there are often specific easement conformance agreements with the affected ANCSA corporation).

Conservation System Unit: A Conservation System Unit (CSU) is any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or a National Forest Monument, including existing units, units established, designated, or expanded by or under the provisions of ANILCA, additions to such units, and any such units established, designated, or expanded hereafter.

Determination of Administration: The procedure used to ascertain which agency has responsibility for administration of an easement reserved under Section 17(b) of ANCSA.

Easement: A non-possessory interest in land, reserved under Section 17(b) of ANCSA, which allows for public use of specifically identified sites or routes for public access across lands conveyed to Native regional and village corporations.

Transfer of Administration: The procedure by which an agency having administrative responsibility for a 17(b) easement may transfer its responsibility to another Federal agency, the State of Alaska, a borough, or municipal government.

Termination: A release to the servient landowner of the easement interest held by the United States.

V. Determination of Administration:

- A. Easements reserved within the exterior boundaries of a CSU shall be administered by the agency managing the CSU.
- B. Easements that access a CSU shall be administered by the agency managing the CSU.
- C. Easements accessing private lands and not within the boundaries of a CSU or accessing a CSU shall be administered by the BLM, until administration is assumed by another agency or the easement is terminated.
- D. Easements accessing State lands and not within the boundaries of a CSU are eligible for administration by the State.
- E. If an easement accesses lands managed by more than one agency, the agency having the largest land area accessed by the easement shall be responsible for administration of the entire easement.
- F. BLM shall conform easements in accordance with the current regulations and applicable easement agreements, prior to the determination of administration of the easement.
- G. The BLM shall recommend the appropriate administering agency (except for easements within a CSU), and shall notify that agency in writing of the easement determination. Upon concurrence by the affected agency, the Bureau will effect transfer of administration of the easement, by noting the public land record and forwarding a copy of the easement case file to the affected agency. Agency notification shall include those items specified in Departmental Manual 601 DM 4.3A.

VI. Administration

If an easement administered by an agency accesses lands managed by another agency or agencies, the administering agency shall consult the affected agency or agencies at least 30 days prior to taking any action that significantly affects use of the easement except in the case of emergency actions necessary for protection of life or property. This requirement to consult shall not be construed as requiring consent.

VII. Transfer of Administration

A. An agency with responsibility for administration of an easement may transfer administration of that easement to another Federal agency, the State of Alaska, a borough, or municipal government only if such a transfer is in the best interest of the United States, is otherwise authorized by law and the public will be guaranteed reasonably necessary public access. Transfer of administration shall be in accordance with Departmental Manual 601 DM 4.4A and B.

B. If an agency proposes to transfer administration of all or part of an easement, that agency will effect the transfer, then notify BLM in writing so that the public land record (easement file) can be noted. Any available updated plats or maps should be included by the transferring agency as part of the notification to BLM.

C. In cases where administration of an easement is transferred to the State, borough, or municipality, the easement holder remains the United States. The Federal agency transferring administration remains responsible for assuring the easement is managed in accordance with existing regulations and the Departmental Manual 601.

VIII. Termination of Administration

A. In accordance with Departmental Manual 601 D.M.4.4C and the Code of Federal Regulations, 43 C.F.R. 2650.4-7(a)(13), if an agency determines that an easement under its administration is no longer necessary for public use or governmental function, the Regional Director of the agency shall advise the BLM State Director in writing of its intention to terminate the easement. The notice shall be supported with documentation that:

- 1. the easement is no longer necessary for public access or governmental function; or
- 2. an alternative easement has been offered by the servient landowner; or
- 3. termination is required by law.

B. The agency with administrative responsibility for the easement shall issue a notice of proposed action (termination of the easement) with a comment period of a minimum of 30 days, to the servient landowner and interested parties.

C. Upon completion of the comment period the administering agency shall make the decision on the disposition of the easement. A copy of the decision to terminate an easement will be forwarded to the BLM, who will issue an appealable decision to terminate all or any portion of the easement.

D. If no appeal is filed, the BLM will process the request for termination of the easement, release all interest to the servient landowner, note the easement records, and close the case file.

E. If the decision is appealed, the responsible Department of the Interior agency will assist the Regional Solicitor's office in responding to the appeal. Appeals are decided by the Interior Board of Land Appeals (IBLA).

1. Upon receiving a decision from the IBLA, the BLM will notify the requesting agency in writing of the IBLA decision. If the decision is favorable, BLM will continue processing termination of the easement. If the decision is not favorable, BLM will document the easement file as to the IBLA decision and the easement will continue to be administered by the original agency.

F. No easement accessing isolated tracts of public land shall be terminated solely because of the absence of proof of public use. Public easements which have been reserved to guarantee international treaty obligations shall not be terminated unless the Secretary determines that the reasons for such easements no longer justify the reservation.

IX. General Provisions

A. Expenditure of Appropriated Funds

All performance in response to this MOU is subject to the availability of appropriated funds and existing statutory authority.

B. Termination of Agreement

This MOU may be terminated by any of the parties to the agreement upon giving ninety (90) days advance written notice to the other parties, providing that the notice allows sufficient time for an orderly completion of work in progress.

C. Reviews

This MOU will be reviewed every three (3) years to determine if changes should be made.

D. Changes

Renegotiation of any part of this MOU may be initiated at any time by any party to this MOU. Changes in the provisions of this MOU may be made only if all parties agree to the changes, the changes are put in writing, and added as an addendum to this MOU.

E. Limitations

Nothing in this agreement is to be construed as superceding or usurping existing laws, regulations, or agency responsibilities.

IN WITNESS THEREOF, the parties have executed this Memorandum of Understanding as of the last date written below.

**State Director, Alaska
Bureau of Land Management**

signed _____
Signature

12/6/1988
Date

**Regional Director, Alaska
U.S. Fish and Wildlife Service**

signed _____
Signature

12/12/1988
Date

**Regional Director, Alaska
National Park Service**

signed _____

Signature

12/7/1988
Date

Last updated: 05-30-2008

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