

## 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. Departmental 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 serving lands under other Federal agency administration shall be the responsibility of that agency.

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, and three percent (3%) will be administered by the National Park Service. The remaining twenty-seven percent (27%) are, or may be, administered by non-Interior agencies such as the

U.S. Forest Service (FS), 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 [and] Lands Conservation Act (ANILCA) 16 U.S.C. 3101.
- Federal Land Policy Management Act of 1976 (FLPMA) - 43 U.S.C. 1701, et seq
- National Forest Roads and Trails Act (P.L. 88-657) 78 Stat. 1089, as amended, 16 U.S.C. 532-538.
- National Traffic and Autovehicle Safety Act of 1966, as amended, 15 U.S.C. 1381, et seq.
- Highway Safety Act of 1966, as amended, 23 U.S.C. 401, et seq.

**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 1978 and in such cases the village corporations signed agreements accepting title while the easement issue was in litigation.)

**Conservation System Unit:** A Conservation System Unit (CSU) is any unit in Alaska of the National Park Service, 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 for public access and governmental purposes within the exterior boundaries of a National Forest shall be administered by the FS and the BLM shall acknowledge that administration in writing.
- B. Easements that access a National Forest shall be administered by the FS unless transferred to another governmental agency as provided for in this agreement.
- C. Easements not within the boundaries of a National Forest or accessing a National Forest but accessing private lands shall be administered by the BLM, until administration is assumed by another agency or the easement is terminated.
- D. Easements accessing State lands and within the boundaries of a National Forest are eligible for administration by the State.
- E. BLM shall conform easements in accordance with the current regulations and applicable easement agreements, prior to the determination of administration of the easement.
- F. If an easement accesses lands managed by more than one agency, the agency having the largest land area accessed by the easement or by mutual agreement of agencies involved shall be responsible for administration of the entire easement.
- G. The BLM shall recommend the appropriate administering agency and shall notify the agency in writing of the easement determination. Notification shall include the easement identification number, Federal unit accessed, the servient landowner's name and mailing address, the size, length and acreage of the easement, authorized uses and a map depicting the easement. Upon concurrence of the agency, the BLM shall effect transfer of administration of an easement by noting the public land record, notifying the servient land owner, and forwarding a copy of the easement case file to the agency.
- H. The FS, Regional Forester shall maintain necessary maps or other appropriate reference materials which display the location of, and authorized uses for each easement under its administration. This information shall be available in the office which has direct administration of the lands which are accessed by the easement. The Alaska State Office, BLM, shall also maintain records of all easements. The FS is responsible for providing timely copies of any changes on 17(b) easements under their administration to the BLM

for the updating of their records.

## VI. Administration

A. If an easement administered by FS accesses lands managed by another agency or agencies, the FS 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.

B. The FS has the right to remove and use vegetal materials and common varieties of soil, sand, gravel, and stone within the easement, at no cost, to the extent necessary for the development or management of the particular easement, except as limited by specific negotiated agreements with the servient owner(s). Vegetal materials and common varieties of soil, sand, gravel, and stone not necessary for the development or management of the particular easement remain the property of the servient owner. However, nothing in this Memorandum of Understanding gives or shall be considered to give an easement user the right to appropriate vegetal or mineral materials.

C. Any use authorization granted for an activity on publicly owned land may include the necessary authorization for the appropriate use of the accessing public easements. The authorization shall not allow uses which are not provided for in the easement reservation. If authorization is required to construct and use a reserved easement, the administering agency may grant such authority.

D. Prior to on-the-ground activities such as locating, marking or developing an easement by the FS, the servient owner(s) will be consulted.

E. The physical location of an easement under FS administration may be adjusted through donation, exchange or acquisition. The purpose of adjustment would be to rectify a usability problem or to accommodate the servient owner's development of the lands and shall be made only after the FS and servient owner agree to the adjustment. Such adjustments shall be reduced to writing, forwarded to BLM for a preliminary and final title opinion by the Regional Solicitor, recorded, and documentation of the above (including corrected easement maps) provided to the BLM for noting of the public land records.

F. An easement is a property interest which may be exchanged. An easement may be exchanged if an acceptable alternate easement or benefit is offered by the servient landowner(s).

## VII. Transfer of Administration

A. The FS may transfer administration of any 17(b) easement under their administration 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 as determined by the FS, is otherwise authorized by law and the public will be guaranteed reasonably necessary public access.

B. The FS may, under appropriate authority, negotiate the transfer of its administration of any easement to any appropriate unit of Federal or State government. Upon acceptance of transfer, the FS shall notify the BLM State Director of the action and provide BLM with a signed copy of the agreement so that the public land record (easement file) can be noted. Any available updated plats or maps should be included by the FS as part of the notification to BLM. The FS shall continue to maintain a record of the easement and make the information available to the public.

C. Prior to transferring administration of an easement to the State of Alaska, a borough or municipal government, the agency shall make the transfer document available to the servient owner(s) for inspection and comment for a period of not less than 30 days prior to execution of the transfer.

D. In cases where administration of an easement is transferred to the State, borough, or municipality, the easement holder remains the United States. The FS remains responsible for assuring the easement is managed in accordance with existing regulations and this Memorandum of Understanding.

## VIII. Termination of Administration

A. In accordance with the Code of Federal Regulations, 43 CFR 2650.4-7(a)(13), if the FS determines that an easement under its administration is no longer necessary for public use or governmental function, the Regional Forester of the FS shall advise the BLM State Director in writing of its intention to terminate the easement and request the BLM State Director either assume administration of the easement or concur in FS initiation of proceedings to relinquish the easement to the servient land owner. 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. Upon receiving concurrence, the FS shall issue a notice of proposed action (termination of the easement) with a comment period and an opportunity for a hearing for a minimum of 30 days, to the servient landowner and interested parties. If it is determined that a hearing is deemed necessary the FS will conduct a hearing.

C. Upon completion of either the comment period or the hearing the FS shall make the decision on the disposition of the easement. A copy of the decision to terminate an easement and supporting documentation will be forwarded to the BLM who will issue and publish 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 FS and the BLM 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 FS 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 FS or as determined by the IBLA decision.

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 either 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 five (5) years to determine if changes should be made.

D. Changes

Renegotiation of any part of this MOU may be initiated at any time by either party to this MOU. Changes in the provisions of this MOU may be made only if both 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 WHEREOF, the parties have executed this Memorandum of Understanding as of the last date written below.

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

signed  
Signature

08/14/1990  
Date

**Regional Forester  
U.S. Forest Service**

signed  
Signature

09/04/1990  
Date

Last updated: 05-30-2008

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