



U.S. Department
of Transportation
Federal Highway
Administration

Memorandum

Subject: Interagency Agreement BLM/FHWA

Date: December 15, 1982

From: Barry F. Morehead, Division Administrator
Juneau, Alaska

Reply to
Attn of: HRW-AK

410.7

To: Mr. John Simpson, Director
Standards & Technical Services
ADOT/PF, Juneau, Alaska

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Attached is a copy of an Interagency Agreement (I.A.) signed by the Bureau of Land Management's Director July 1, 1982, and the Federal Highway Administrator July 27, 1982. This agreement will supersede the Memorandum of Understanding (M.O.U.) between the Alaska State Office's BLM, Alaska Division FHWA and Alaska DOT/PF for appropriating public domain for highway purposes. The I.A. also replaces BLM regulations concerning the granting of right of way to State agencies found in 43 CFR 2820. This revocation of regulations was published in September 28, 1982, Federal Register as a notice of final rulemaking.

The provisions of the I.A. are very similar to the M.O.U. The intent of the I.A. is to bring about consistency in procedures utilized by the BLM and Forest Service in authorizing use of public lands. It is also intended to reduce BLM's involvement with State highway departments to the extent possible, instead to focus on FHWA as the administering agency.

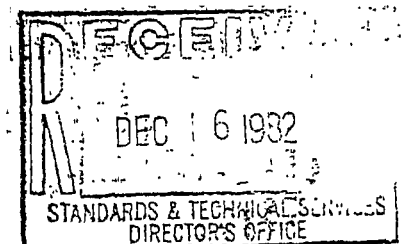
Section III.A. provides for FHWA to notify BLM of contemplated projects and arranging a meeting between BLM and the State. To do this we will need to be notified as early as possible of projects involving BLM administered property. A more efficient alternative would be for DOT/PF to notify BLM directly as was established in the M.O.U.

Also attached is a format of a highway easement deed affecting BLM lands that was approved by FHWA and BLM in November. This is the format that should be followed when applying for rights of way. We have modified the format somewhat for material sources. A copy of the modification is also attached.

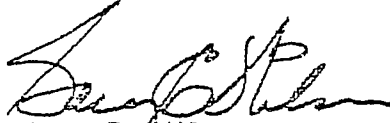
BLM has expressed two concerns to us regarding their lack of involvement in the new process.

1. If the land has been selected by a native corporation, comments from them must be included with the application or BLM will not issue a letter of consent.

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RIGHT OF WAY



2. It will be the State's responsibility to insure the grant is entered on the BLM status sheets. Without this entry no reservation will be made in the conveyance to a selecting native corporation.



By: Gary E. Wilson
Division Right of Way Officer

Attachment

AA 851-IA2-40.
INTERAGENCY AGREEMENT

Bureau of Land Management
and
Federal Highway Administration

I. Purpose. This Interagency Agreement provides procedures by which the Secretary of Transportation acting through the Federal Highway Administration (FHWA) may appropriate public lands for highway rights-of-way and sources of materials for the Federal-aid Highway System and those classes of highways provided for in Chapter 2, 23 U.S.C. The lands appropriated are for use by the States for highways and/or highway material purposes. The appropriation is subject to conditions the Secretary of the Interior acting through the Bureau of Land Management (BLM) may deem necessary for adequate protection and utilization of the public land and protection of the public interest.

II. Authority.

- A. The Federal Land Policy and Management Act of 1976, 90 Stat. 2766, 43 U.S.C. 1737.
- B. The Act of August 27, 1958, as amended, 23 U.S.C., Sections 107(d) and 317.

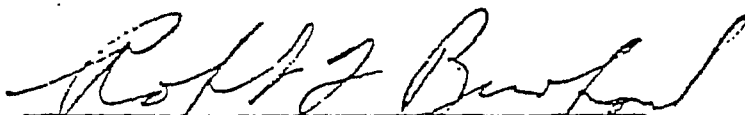
III. Procedures. BLM and FHWA recognize the need for streamlined procedures by which the FHWA may appropriate BLM-administered public lands for highway and highway materials for the Federal-aid System and those classes of highways provided for in Chapter 2, 23 U.S.C. To accelerate the appropriation process, FHWA and BLM agree to the following procedures:

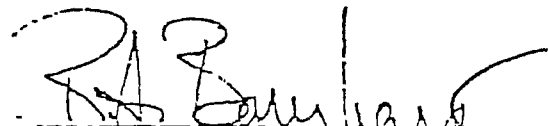
- A. FHWA will notify BLM, as far in advance as possible, of any highway project being contemplated and arrange a meeting with the BLM authorized officer and the participating State agency to discuss the proposed project to ascertain whether or not the appropriation of the lands for highway or highway materials is consistent with BLM resource management programs and develop a plan of action to complete the appropriation within a reasonable time.
- B. It will be the responsibility of FHWA to comply with the National Environmental Policy Act and other legal requirements in arriving at its determination that the lands are necessary for the project.

- C. FHWA shall submit to the authorized officer of BLM a written request for appropriation, accompanied by a map showing the location of lands it desires to appropriate, a statement of its determination that the lands are necessary for the project, a copy of the environmental assessment, and/or a copy of the environmental impact statement.
- D. The authorized officer of the BLM, after receipt of the request and attachments, shall review the material and, within a period of four months, notify FHWA, in writing, either (a) that the appropriation would be contrary to the public interest or inconsistent with the purposes for which the public lands or materials are being managed or (b) that BLM is in agreement with the appropriation subject to conditions of adequate protection and utilization of the public lands. If within a period of four months, the Bureau of Land Management has not responded, in writing, to the request for appropriation, such lands may be considered appropriated by FHWA and transferred to the State for right-of-way purposes as requested.
- E. Disagreement to the appropriation will be in the form of a letter, from BLM to FHWA, clearly stating the reasons why such an appropriation would be contrary to the public interest or inconsistent with the purposes for which the public lands or materials are being managed.
- F. Agreement to the appropriation will be in the form of a "Letter of Consent" which clearly states the conditions under which the agreement is given. These conditions involve the following:
1. Resolution of existing valid claims and use authorizations.
 2. Granting authority to FHWA within the appropriation is limited to rights-of-way for the Federal-aid Highway System and those classes of highways provided for in Chapter 2, 23 U.S.C.
 3. BLM retains the authority to grant additional right-of-way uses within and across the appropriated highway or material site right-of-way. Such additional uses include, but are not limited to, transportation and utility systems for water, power, communications, oil and gas, or any other facilities which are in the public interest, are not directly associated with highway use, operation and related highway purposes, and are not inconsistent with Title 23 of the U.S. Code. The FHWA shall be consulted prior to the issuance of such authorizations.

4. The appropriation will automatically terminate if construction is not started within ten (10) years or sooner if agreed upon.
 5. Conditions providing for development and use of the adjacent public lands, such as, reasonable access and signing.
 6. Conditions protecting the adjacent public lands from right-of-way construction and maintenance activities which may cause off right-of-way adverse effects, such as, wildfire, chemical control of vegetation and animals, runoff drainage and revegetation with non-native species.
- G. FHWA, when transferring the highway right-of-way or highway material appropriation to the State, will make it subject to BLM's conditions as contained in the "Letter of Consent". FHWA will administer these conditions. BLM will work with or through FHWA when they observe non-compliance to the appropriation "Letter of Consent" conditions.
- H. When the need for the appropriation no longer exists and the State has reasonably rehabilitated the area to protect the public and environment, FHWA will notify BLM in writing. Upon receipt of this notice and acceptance of the rehabilitation, the lands appropriated shall revert to the BLM.
- I. A copy of the right-of-way use document from FHWA to the respective State shall be furnished to the BLM authorized officer.
- J. Amendments to or modifications of this Interagency Agreement may be initiated by either party, but shall not become effective or binding until agreed upon by both parties.

IV. Tenure. This document shall become effective upon the revocation of 43 CFR 2820-Roads and Highways and shall remain in effect unless terminated by mutual agreement or one agency after giving the other agency thirty (30) days prior written notice.


Director, Bureau of Land Management


Administrator, Federal
Highway Administration

7/1/82

Date

JUL 27 1982

Date

Since December 8, 1974, the now canceled regulations at 43 CFR 2821.6 (1979 Edition) required the person wishing to secure an additional right-of-way within the Title 23 appropriations to make application to the BLM for the R/W. This requirement has been continued under the Interagency Agreement. At present, only BLM has the authority to authorize additional R/W uses within Title 23 appropriations.

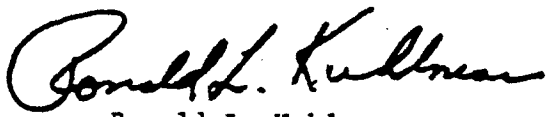
2. Section 317 of Title 23 authorizes the appropriation of material sites for highway purposes. This section reads in part:

". . . (A) a source of materials for the construction and maintenance of any such highway"

This language has the effect of limiting the use of the materials site for highway purposes. It further limits the use of the materials to the specific highway project for which the appropriation is made. The holder of the appropriation is not authorized to sell or permit free use of materials by third parties. The now canceled regulations at 43 CFR 2821.0-3(b)(1) and the Interagency Agreement do not modify this limitation.

3. Some highways now a part of the Interstate and Defense System, Federal aid primary system, or Federal-aid secondary system, which are now under State or local control and jurisdiction, may have been initially constructed by the United States as part of a Federal highway or road system covered by Chapter 2 of Title 23. The R/W and material sites for these highways were appropriated under Sections 107 or 317 of Title 23. When control and jurisdiction over these highways were transferred to the State or local body, the conveyance instrument may have assigned an interest in land different than that usually appropriated under Title 23. In these instances, the provisions of the specific conveyance instrument will control.

Enclosed is a copy of Interagency Agreement, AA 851-IA2-40, for your future use. If there are any questions, please contact the Director (330) at FTS 343-5441.



Ronald L. Kuhlman
Deputy Director for Lands and Renewable Resources
Acting

1 Enclosure:

Encl. 1 - Interagency Agreement, AA 851-IA2-40, between the BLM and FHWA
(3 p)