



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY - 4 1984

Honorable John F. Seiberling
Chairman, Subcommittee on Public Lands
and National Parks
Committee on Interior and Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Seiberling:

This is in reply to your March 30, 1984, letter regarding certain activities being undertaken by the Bureau of Land Management (BLM) in accordance with the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 et seq.), and the Alaska Railroad Transfer Act of 1982 (ARTA) (45 U.S.C. 1201 et seq.).

The letter requested information on four specific issues related to the adjudication by BLM of village corporation claims under ANCSA and ARTA. The requested information is enclosed.

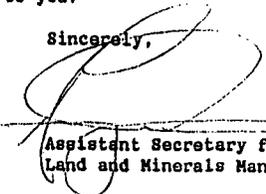
In addition, you indicated that you had received reports suggesting that, in view of the statutory deadline for the State of Alaska to exercise its option to purchase the railroad, BLM may not be giving adequate priority attention to the adjudication of the village corporations' claims. In that regard, we note that BLM has been very responsive to the requirements of ARTA. Within a month of passage of that Act, BLM had established an Alaska Railroad staff and had started work on a description of real property for the Alaska Railroad Transfer Report that is required by Section 605(a) of ARTA (45 U.S.C. 1204(a)). This project was completed well ahead of schedule. In addition, BLM immediately began planning for the survey of the railroad which is required by Section 606(b)(2) of ARTA (45 U.S.C. 1205(b)(2)). Field work for the survey of the centerline of the railroad was completed in the fall of 1983 using advanced inertial survey techniques which were developed by BLM specifically for the transfer project.

In addition, BLM has been requested to prepare the documents to be used by the Secretary of Transportation to transfer the Alaska Railroad to the State. The preparation of the documents is on schedule and it is anticipated that they will be delivered to the Secretary of Transportation on or before August 1, 1984. This will allow transfer of the railroad to the State by September 30, 1984, if the State exercises its option to purchase the railroad. The BLM is also in the final planning stage for the survey of railroad lands required by Section 606(b)(2) of ARTA (45 U.S.C. 1205(b)(2)). Approximately half of the railroad lands will be surveyed during the 1984 field season, and the remainder will be completed during the 1985 field season.

The Department of the Interior will continue to provide all necessary support to insure the expeditious transfer of the railroad to the State and will complete all of its responsibilities on or ahead of the deadlines established in ARTA.

We trust the enclosed information is helpful to you.

Sincerely,



Assistant Secretary for
Land and Minerals Management

Enclosure

Request 1: A list of the village corporations whose claims to ownership (pursuant to the Alaska Native Claims Settlement Act) of lands held by the Alaska Railroad are currently being adjudicated by the BLM, as required by the Alaska Native Claims Settlement Act and the Alaska Railroad Transfer Act. (At the hearing, you indicated that BLM is currently adjudicating all such claims, encompassing 28 parcels.)

Response: A review of BLM records indicates that only 27 parcels have been claimed by village corporations. The village corporations and the number of parcels claimed by each corporation are as follows (closest town or village is indicated in parentheses):

	Number of Parcels
Tozitna, Limited (Tanana)	1
Deloycheet, Inc. (Holy Cross)	1
Toghotthele, Corporation (Nenana)	11
Knikatnu, Inc. (Knik)	1
Eklutnu, Inc. (Eklutna)	12
AHTNA, Inc. (Cantwell)	1

Request 2: The BLM work plan for completing these adjudications and the status of each such adjudication, including, if possible, an estimated time for issuance of opinions in each case.

Response: The procedure used by BLM is detailed at 43 CFR 2655 (Appendix A). Notices were delivered to the Alaska Railroad on December 8, 1983. These notices require that the railroad provide information on actual use of all parcels during the village selection period from December 18, 1971, through December 18, 1974. The notice provided a 90-day response period. The railroad asked for and received a 60-day extension. All information must be submitted to BLM no later than May 7, 1984. No information has been received to date.

Following receipt of the railroad information, BLM will forward all documents to the affected village and regional corporations and the State of Alaska. These parties will also have 90 days plus an extension of up to 60 days for comment. The BLM expects to receive all comments by the end of October and will have all decision documents completed by December 1, 1984.

Request 3: An explanation of what (if any) procedural or other problems BLM may have encountered that may delay expeditious completion of the adjudications.

Response: The BLM has not encountered or identified any problems that may delay the completion of the adjudications.

Request 4: An explanation of how and by whom any still-pending adjudications will be handled in the event that not all are completed at such time as the State of Alaska might exercise its option to purchase the railroad, including a statement as to whether the Department of the Interior is of the opinion that under the relevant statutes the BLM will retain its responsibility to complete any such pending adjudications, regardless of any such decision by the State.

Response: Section 606(b)(2) of ARTA (45 U.S.C. 1205(b)(2)) provides that the Secretary of the Interior shall have the continuing jurisdiction and duty to adjudicate unresolved claims of valid existing rights pursuant to applicable law and ARTA. Thus, BLM would retain its responsibility to complete pending adjudications regardless of the State of Alaska's decision concerning the purchase of the railroad.

In the event that the State exercises its option to purchase the railroad while some claims are pending adjudication, the Secretary of Transportation, pursuant to Section 604(b)(1)(C) of ARTA (45 U.S.C. 1203(b)(1)(c)), will deliver to the State, on the date that the Alaska Railroad is transferred to the State, an exclusive license. The license would grant the State the right to use those properties of the Alaska Railroad that are not otherwise conveyed under the Act on the date of transfer because they are subject to the pending resolution of claims of valid existing rights. As specified in Section 604(b)(4) of ARTA (45 U.S.C. 1203(b)(4)), such a license shall terminate upon conveyance of the involved parcel.

Chapter II—Bureau of Land Management

§ 2655.1

ceive for itself and its members the other benefits under the Act.

(b) The election of a village to acquire title to the reserve lands shall be exercised in the manner provided by its articles of incorporation. However when two or more villages are located on the same reserve there must be a special election to acquire title to the reserve lands. A majority vote of all the stockholders or members of all corporations located on the reserve is required to acquire title to the reserve lands. For the purpose of this paragraph the stockholders or members shall be determined on the basis of the roll of village residents proposed to be promulgated under 25 CFR Part 43h.7. The regional corporation or village corporations or any member or stockholder of the village corporations involved may request that the election be observed by the Bureau of Indian Affairs.

(c) The results of any election by a village corporation or corporations to acquire title to the reserve lands shall be certified by such village corporation or corporations as being in conformity with the articles of incorporation and by-laws of the village corporation or corporations.

§ 2654.2 Application procedures.

(a) If the corporation or corporations elect to take title to the reserve lands, submission to the Secretary of the certificate of election will constitute an application to acquire title to those lands.

(b) If the village corporation or corporations do not elect to take the reserve lands, they shall apply for their land selections pursuant to Subpart 2651 of this chapter.

§ 2654.3 Conveyances.

(a) Conveyances under this subpart are subject to the provisions of section 14(g) of the act, as provided by § 2650.4 of this chapter.

(b) Conveyances under this subpart to two or more village corporations will be made to them as tenants-in-common, having undivided interests proportionate to the number of their respective members or stockholders determined on the basis of the final

roll promulgated by the Secretary pursuant to section 5 of the Act.

Subpart 2655—Federal Installations

AUTHORITY: Alaska Claims Settlement Act of 1971 (43 U.S.C. 1601 et seq.).

SOURCE: 45 FR 70206, Oct. 22, 1980, unless otherwise noted.

§ 2655.0-3 Authority.

Section 3(e)(1) of the act provides that the Secretary shall determine the smallest practicable tract enclosing land actually used in connection with the administration of Federal installations in Alaska.

§ 2655.0-5 Definitions.

As used in this subpart, the term:

(a) "Holding agency" means any Federal agency claiming use of a tract of land subject to these regulations.

(b) "Appropriate selection period" means the statutory or regulatory period within which the lands were available for Native selection under the act.

(c) "State Director" means the Director, Alaska State Office, Bureau of Land Management.

§ 2655.1 Lands subject to determination.

(a) Holding agency lands located within areas withdrawn by sections 11(a)(1), 16(a), or 16(d) of the act and subsequently selected by a village or regional corporation under sections 12 or 16, or selected by the regional corporation under sections 12 or 16, or selected by the regional corporation for southeast Alaska in accordance with section 14(h)(8)(B) are subject to a determination made under this subpart.

(b) Lands in the National Park System, lands withdrawn or reserved for national defense purposes and those former Indian reserves elected under section 19 of the act are not subject to a determination under section 3(e)(1) of the act or this subpart. Lands withdrawn under section 11(a)(3) or 14(h), except 14(h)(8)(B), of the act do not include lands withdrawn or otherwise appropriated by a Federal agency and, therefore, are not subject to a determination under section 3(e)(1) of the act or this subpart.

§ 2655.2

§ 2655.2 Criteria for determinations.

Land subject to determination under section 3(e)(1) of the act will be subject to conveyance to Native corporations if they are determined to be public lands under this subpart. If the lands are determined not to be public lands, they will be retained by the holding agency. The Bureau of Land Management shall determine:

(a) Nature and time of use.

(1) If the holding agency used the lands for a purpose directly and necessarily connected with the Federal agency as of December 18, 1971; and

(2) If use was continuous, taking into account the type of use, throughout the appropriate selection period; and

(3) If the function of the holding agency is similar to that of the Federal agency using the lands as of December 18, 1971.

(b) Specifications for area to be retained by Federal agency.

(1) Area shall be no larger than reasonably necessary to support the agency's use.

(2) Tracts shall be described by U.S. Survey (or portion thereof), smallest aliquot part, metes and bounds or protraction diagram, as appropriate.

(3) Tracts may include:

(i) Improved lands;

(ii) Buffer zone surrounding improved lands as is reasonably necessary for purposes such as safety measures, maintenance, security, erosion control, noise protection and drainage;

(iii) Unimproved lands used for storage;

(iv) Lands containing gravel or other materials used in direct connection with the agency's purpose and not used simply as a source of revenue or services. The extent of the areas reserved as a source of materials will be the area disturbed but not depleted as of the date of the end of the appropriate selection period; and

(v) Lands used by a non-governmental entity or private person for a use that has a direct, necessary and substantial connection to the purpose of the holding agency but shall not include lands from which proceeds of the lease, permit, contract, or other means are used primarily to derive revenue.

Title 43—Public Lands: Interior

(c) Interest to be retained by Federal agency.

(1) Generally, full fee title to the tract shall be retained; however, where the tract is used primarily for access, electronic, light or visibility clear zones or right-of-way, an easement may be reserved in lieu of full fee title where the State Director determines that an easement affords sufficient protection, that an easement is customary for the particular use and that it would further the objectives of the act.

(2) Easements reserved in lieu of full fee title shall be reserved under the provisions of section 17(b) of the act and § 2650.4-7 of this title.

§ 2655.3 Determination procedures.

(a) The State Director shall make the determination pursuant to the provisions in this subpart. Where sufficient information has not already been provided, the State Director shall issue written notice to any Federal agency which the Bureau of Land Management has reason to believe might be a holding agency. The written notice shall provide that the information requested be furnished in triplicate to the State Director within 90 days from the receipt of the notice. Upon receipt of information the State Director will promptly provide affected Native corporations with copies of the documents. Upon adequate and justifiable showing as to the need for an extension by the holding agency, the State Director may grant a time extension up to 60 days to provide the information requested in this subpart.

(b) The information to be provided by the holding agency shall include the following for each tract which is subject to determination:

(1) The function and scope of the installation;

(2) A plottable legal description of the lands used;

(3) A list of structures or other alterations to the character of lands and their function, their location on the tract, and date of construction;

(4) A description of the use and function of any unaltered lands;

(5) A list of any rights, interests or permitted uses the agency has granted

Chapter II—Bureau of Land Management

§ 2655.4

to others, including other Federal agencies, along with dates of issuance and expiration and copies of any relevant documents;

(6) If available, site plans, drawings and annotated aerial photographs delineating the boundaries of the installation and locations of the areas used; and

(7) A narrative explanation stating when Federal use of each area began; what use was being made of the lands as of December 18, 1971; whether any action has taken place between December 18, 1971, and the end of the appropriate selection period that would reduce the area needed, and the date this action occurred.

(c) The State Director shall request comments from the selecting Native corporation relating to the identification of lands requiring a determination. The period for comment by the Native corporation shall be as provided for the agency in § 2655.3(a) of this title, but shall commence from the date of receipt of the latest copy of the holding agency's submission.

(d) The holding agency has the burden of proof in proceedings before the State Director under this subpart. A determination of the lands to be retained by the holding agency under section 3(e) of the act and this subpart shall be made based on the information available in the case file. If the holding agency fails to present adequate information on which to base a determination, all lands selected shall be approved for conveyance to the selecting Native corporation.

(e) The results of the determination shall be incorporated into appropriate decision documents.

§ 2655.4 Adverse decisions.

(a) Any decision adverse to the holding agency or Native corporation shall become final unless appealed to the Board of Land Appeals in accordance with 43 CFR Part 4, Subpart E. If a decision is appealed, the Secretary may take personal jurisdiction over the matter in accordance with 43 CFR 4.5. In the case of appeals from affected Federal agencies, the Secretary may take jurisdiction upon written request from the appropriate cabinet level official. The requesting official,

the State Director and any affected Native corporation shall be notified in writing of the Secretary's decision regarding the request for Secretarial jurisdiction and the reasons for the decision shall be communicated in writing to the requesting agency and any other parties to the appeal.

(b) When an appeal to a decision to issue a conveyance is made by a holding agency or a Native corporation on the basis that the Bureau of Land Management neglected to make a determination pursuant to section 3(e)(1) of the act, the matter shall be remanded by the Board of Land Appeals to the Bureau of Land Management for a determination pursuant to section 3(e)(1) of the act and these regulations: *Provided*, That the holding agency or Native corporation has reasonably satisfied the Board that its claim is not frivolous.

Group 2700—Disposition; Sales

NOTE: The information collection requirements contained in Part 2740 of Group 2700 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0012. The information is being collected to permit the authorized officer to determine if disposition of public lands should be made for recreation and public purposes. The information will be used to make this determination. A response is required to obtain a benefit.

[48 FR 40889, Sept. 12, 1983]

PART 2710—SALES—FEDERAL LAND POLICY AND MANAGEMENT ACT

Subpart 2710—Sales—General Provisions

Sec.

- 2710.0-1 Purpose.
- 2710.0-2 Objective.
- 2710.0-3 Authority.
- 2710.0-5 Definitions.
- 2710.0-6 Policy.
- 2710.0-8 Lands subject to sale.

Subpart 2711—Sales—Procedures

- 2711.1 Initiation of sale.
- 2711.1-1 Identification of tracts by land use planning.
- 2711.1-2 Notice of realty action.
- 2711.1-3 Sales requiring grazing permit or lease cancellations.