

LAND

CLAIMS

SETTLEMENT

# NEWS RELEASE

BUREAU OF LAND MANAGEMENT - ALASKA  
DEPARTMENT OF THE INTERIOR



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FOR ADDITIONAL INFORMATION CONTACT:

Art Kennedy  
Chief, Public Affairs  
Bureau of Land Management  
555 Cordova Street  
Anchorage, Alaska 99501

## BLM ALASKA STATE DIRECTOR GIVEN AUTHORITY TO DECIDE ON PUBLIC RIGHT-OF-WAY NEEDS ON LANDS CONVEYED TO ALASKA NATIVES

The Alaska State Director of the Interior Department's Bureau of Land Management has been given authority to determine local public needs for rights-of-way across lands being transferred to Alaska Natives and Native Corporations under the Alaska Native Claims Settlement Act, Secretary of the Interior Thomas S. Kleppe said today.

The policies on land easements regarding access, passage, and potential use set forth in the Secretary's Order are designed to protect the public's interest in land conveyed to Alaskan Natives and Native Corporations, while avoiding undue interference with the Natives' use of the land. Reservation of easements for transportation of energy and natural resources are not covered in this Order and will be dealt with in a separate Secretarial Order.

The Secretarial Order deals with public needs for rights-of-way across lands being conveyed to natives for access, transportation, communication, utilities and recreation. In granting easements, the State Director must consider public needs, the effect an easement may have on Native lifestyles

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and subsistence needs, possible environmental effects, and other factors.

The easements will assure the public's right of access to State and Federal lands, to bodies of water including the sea, and other resources of public value. Easements will not be required where other reasonable access is available.

The Secretarial Order was signed on February 5, 1976, and became effective upon signature.

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ORDER NO. 2982

Subject: Reservation of Local Easements Pursuant to Section 17(b)  
of the Alaska Native Claims Settlement Act (ANCSA)

Section 1. Purpose. The purpose of this order is (a) to establish policy, guidelines, and procedures for reserving local public easements in the State of Alaska pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708), and (b) to delegate to the State Director, Bureau of Land Management, Alaska, the authority of the Secretary of the Interior to determine which local public easements are necessary and to reserve such easements for public use.

Section 2. Delegation of Authority. The State Director, Bureau of Land Management, Alaska, is hereby delegated the authority to determine which local public easements are necessary and to reserve such easements for public use, pursuant to the policy, guidelines, procedures, and limitations within this order.

Section 3. Scope. This order deals with local public easements. Local public easements include all public easements other than easements to be used in interregional or interstate commerce for the transportation of energy, fuels, or natural resources, or for interregional or interstate communications systems.

Instructions for the reservation of easements for interregional or interstate transportation of energy, fuels, or natural resources, and for interregional or interstate communication systems shall be promulgated separately.

Section 4. Policy. The local easement policies herein set forth will be applied to protect the public interest in land conveyed to Natives and Native corporations pursuant to the Alaska Native Claims Settlement Act and to meet the requirements of public law.

Local public easements will be reserved for public and governmental uses. Local easements in behalf of the general public for recreation, access, transportation, utilities, airports, and aircraft landing sites will be reserved only on the basis of present existing use with the following exceptions: (1) The reservation of a continuous shoreline easement extending 25 feet above mean high tide along the marine coastline of the State; and (2) the reservation of easements to assure present and future access to all public lands and resources. These exceptions describe the only local easements in behalf of the general public to be reserved for other than present existing uses. Scenic easements will not be reserved. Periodic linear and site easements for recreation purposes on rivers and streams and site easements on lakes will be reserved only to the extent necessary to provide continued public use of areas having highly significant present recreational use.

Whenever it is determined that an easement will adequately serve a governmental need in lieu of retention of title to the land pursuant to section 3(e)(1) of the ANCSA, an easement will be reserved to (a) protect existing uses, or (b) protect presently planned uses.

Easements will be precisely located whenever possible except in those instances where this would result in a substantial delay in the issuance of conveyances. Local public easements, especially existing transportation and utility easements, will be located in close proximity wherever possible. For this purpose, corridors carefully delineated in accordance with 43 CFR 2650.4-7(b)(4) may be used to permit the subsequent identification of the precise location of each easement.

Local easement corridors will be specifically identified as to location, size, and use in terms of the public easements to be contained therein.

Local easement corridors may be delineated by aliquot parts or by other means necessary to accommodate the easements. When the specific identification and definite location of all the easements within a corridor are made, those portions of the corridor reservation not used by the easements will be relinquished.

Easement provisions in interim conveyances and patents will identify uses through commonly accepted terminology, e.g., trail or road. When necessary, additional descriptive terms may be added to further

identify uses. All easements shall be reserved to the United States and subject to further regulation thereby.

The term "public easements" will include public use, access, transportation, recreation, communication, and utility easements as may be defined in State or Federal law or through historical usage. The authority granted in ANCSA to reserve public easements will be exercised to protect the public interest, including but not limited to, their right of access to and use of public land and public resources. All conveyances will be made subject to all rights of access preserved under section 17(b)(2) of the ANCSA. Identification and reservation of public easements shall include consideration of the need to assure access to Federal or State lands and resources (including the need to reserve easements for full right of access to the reserved subsurface) or land which is subject to public use.

Special consideration as to the location of such easements will be given to the effect of a proposed easement on Native lifestyle and subsistence needs. The environment and other relevant factors will also be considered. Alternative routes and modes of access will be assessed. All public easements will be periodically reviewed to determine if they continue to be required or if they should be vacated.

It should be noted that the right of the United States to enter lands conveyed to the Natives will be reserved in the patent for cadastral,

geodetic, or other survey purposes. Easements reserved for this purpose will be a general right of entry for such survey purposes along with the right to do all things necessary in connection therewith.

Determinations of easements to be reserved will be made after review of the recommendations of the Federal-State Land Use Planning Commission, other Federal Agencies, the State, the Natives, and the general public. Consideration will be given to requests for easement reservations which are timely submitted to the Bureau of Land Management accompanied by written justification.

Detailed guidelines follow to further assist the State Director in the proper discharge of the Department's responsibility for easement identification and reservation.

Section 5. Guidelines. (a) In identifying appropriate easements, an assessment must be made of the public use or purpose to be accommodated and the type of easement proposed. This order lists situations which form the basis for identification of specific easements to be reserved. However, it is not intended that such examples are all inclusive.

(b) The size of specific easements will be governed by standards set forth in applicable laws and regulations. In the absence of a controlling statute or regulation, the following standards will be

followed as general guidelines, taking into account the purposes for which the easement might be reserved. Standard sizes delineated here may be varied when such a variance is justified by specific conditions.

(1) Roads and trails. The usage of roads and trails will be controlled by applicable State or Federal law or regulation. The usages listed in these guidelines will not be listed in the conveyance either as prohibited or permitted usages of the easement but instead will be used for the purpose of determining the width of the easement to be reserved.

(A) The width of a trail will be 25 feet if the usages to be accommodated are for travel by foot, dogsleds, horseback, small vehicles, and uses of a similar character.

(B) The width of a trail will be 50 feet if the usages to be accommodated are for travel by all-terrain vehicles, track vehicles, 4-wheel drive vehicles, and uses of a similar character in addition to the uses included under (A) above.

(C) The width of a road will be 60 feet if the usages to be accommodated are for travel by automobiles or trucks and similar vehicles within a community.

(D) Major traffic arteries or roads connecting communities or regions will be 100 feet in width.

- (2) Marine coastline. In order to provide public access to and along the marine coastline and use of such shore for purposes such as the beaching of watercraft or aircraft, travel along the shore, recreation, and other similar uses, a continuous linear easement 25 feet in width upland of and parallel to the mean high tide line shall be reserved, subject to the limitations and conditions contained hereafter in subparagraph (c)(2).
- (3) Recreational rivers and streams. To provide for public use of rivers and streams having highly significant present recreational use, easements 25 feet in width shall be reserved along the bank or banks of such rivers and streams. In addition, such reservations on nonnavigable recreational rivers and streams shall include the river or stream bed.
- (4) Campsites and beaching sites. Easements may be reserved for boat and float plane pullout areas upon a shore. Also, easements may be reserved for temporary camping sites upon a shore or along a linear access route or within a reasonable distance of such shore or route. Easements for the beaching of boats and float planes, and temporary campsites shall be one acre, more or less, except where

terrain, sanitation, public safety, or intensity of public use require deviation. When appropriate, access routes to and from such beaching or camping sites shall be provided.

- (5) Other easements. Other easements may be identified, the size of which is not controlled by any applicable law or regulation. The size of such easements for any given purpose may vary from place to place depending upon the particular circumstances. When not controlled by applicable law or regulation or this order, size shall not exceed that which is reasonably necessary for the purposes of the identified easement. A nonexclusive list includes easements for railroad sidings, spurs, and stations; electric or electronic transmission or reception; communication systems; local water, gas, or sewer systems; docks; navigational aids for watercraft or aircraft; aircraft landing sites not covered under section 14(c)(4) of the ANCSA; aviation; and weather stations.

(c) This subparagraph includes a nonexclusive series of situations in which easements should be reserved pursuant to the policies enumerated in this order. The right to hunt will not be reserved on any lands conveyed pursuant to ANCSA. However, the availability of hunting on Federal or State lands will be a factor to be considered in reserving other easements hereinafter listed.

(1) Access. Easements for access by the government and the general public shall be reserved across Native lands to Federal and State facilities, resources, lands, and waters, including the ocean. Easements for access by the government and the general public may be reserved, when reasonably necessary, across Native lands to provide access to and from communities, airports, docks, boat and float plane beaching sites, reserved aircraft landing sites, campsites, water transportation routes, groups of private holdings, reserved easements for reservations and developments constituting a public use. All easements shall follow existing routes of travel when possible. Easements for rest areas and temporary camping sites will be reserved when reasonably necessary in conjunction with routes of travel. Whenever there is not an existing route of travel, easements should be reserved in topographically suitable locations.

(2) Marine coastline. (A) The easement along the marine coastline described heretofore in subparagraph (b)(2) will not be reserved if it is determined prior to conveyance that it is impracticable for use by the general public. If it is reserved and is later determined to be impracticable, it will be relinquished.

(B) In the original reservation, deviations from the waterline are permitted when specific conditions so require, e.g., impassable topography or waterfront obstruction.

(C) A marine coastline easement shall be reserved subject to the right of the owner of the servient estate to build upon such easement a facility for public or private purposes, such right to be exercised reasonably and without undue or unnecessary interference with or obstruction of the easement reserved. When access along the marine coastline easement is to be obstructed, the owner of the servient estate will be obligated to convey to the United States an acceptable alternate access route at no cost to the United States, prior to the creation of such obstruction.

(D) Access to the ocean as a public resource will be provided on National Wildlife Refuge System lands in consonance with the rules and regulations of each refuge. Seasonal and/or temporal closures of such access routes may occur when required to protect wildlife values.

(3) Recreational rivers and streams. The easement described in subparagraph (b)(3) heretofore may be reserved when it

is determined that there is highly significant present recreational use of a river or stream for sport fishing, boating, portage, or other water related recreational activities. Highly significant present recreational use on a portion of a river or stream will justify the reservation of linear easements only on that portion where such use actually occurs and not on the entire waterway. When reasonably necessary for general public use and enjoyment of the recreational easement, additional easements may also be reserved for temporary campsites, sanitary facilities, or access to the recreational area.

The determination of highly significant present recreational use will take into account numerous factors. A river or stream need not meet all criteria to be considered as having highly significant present recreational use. The factors to be considered shall include (a) the volume of use (at least several users each year), (b) the variety of recreational experiences, (c) the uniqueness of the experiences (e.g., where trophy-sized fish or a specific species of fish may be caught), or (d) the overall quality of the experiences (e.g., white water canoeing or inspiring scenery).

- (4) Beaching sites. Site easements may be reserved at suitable locations on the bed and shore of lakes, rivers, streams, bays, and the marine coastline when determined to be reasonably

necessary for public travel along water transportation routes or when necessary for use as a boat or floatplane beaching site. Site easements may also be reserved to provide connections from water transportation routes to land transportation routes.

- (5) Lakes. Site easements may be reserved at suitable locations on the bed and shore of lakes for public utilization of the waterbody. Site easements may be reserved on lakes greater than 640 acres in area where reasonably necessary. Site easements will not be reserved where reasonable access can be provided on publicly owned waterfront. Site easements will not be reserved on lakes under 640 acres in area unless such waters have unusual recreational or transportational value for public use.
- (6) Utility, communication, weather, and appurtenant easements. To the extent reasonably necessary, in order to protect present existing uses, easements will be reserved for utility, communication, and weather purposes. Appurtenant easements may also be reserved.
- (7) Aircraft landing sites. Aircraft landing sites which are presently being used but which do not qualify as airports under section 14(c)(4) of the ANCSA may be reserved as are reasonably necessary for public access or safety. Associated space easements may also be reserved.

- (8) Space easements. Space easements may be reserved as needed to insure public safety or to permit proper use of improvements developed for public benefit or use, such as navigational aids or communication sites.
- (9) Agreements. In addition to the foregoing, the State Director is also authorized to reserve any easements necessary to insure protection of international treaty obligations and to implement any agreement entered into between the United States and the Native or Native corporation receiving the conveyance. For example, the agreement of May 14, 1974, related to Naval Petroleum Reserve Number Four, between the United States Department of the Navy and the Arctic Slope Regional Corporation and four Native village corporations, will be incorporated in the appropriate conveyances and the easements necessary to implement said agreement shall be reserved.

Section 6. Procedures. The following administrative procedures are designed to provide an organized method of handling land conveyances and the discretionary aspects of public easement reservations under the Alaska Native Claims Settlement Act (ANCSA). A selection application may be processed in part at any time so that conveyance can be made at the earliest practicable time for those portions having no conflict.

These procedures shall be used as a guide when identifying and reserving public easements and issuing decisions to convey under ANCSA. The identification of public easements to be reserved under section 17(b) of ANCSA shall be conducted concurrently with the processing of other regulatory land selection requirements.

The identification of needed easements will include participation by the Natives, State, Federal Agencies, and others having an interest in easements.

The BLM District Manager shall transmit identified easement needs to the BLM State Director. After reviewing the identified easement needs, the State Director shall determine which easements will be reserved.

The State Director will then notify all parties that participated in the development of the easement needs, including the Natives, the State of Alaska, the Federal-State Land Use Planning Commission, and interested Federal Agencies, as to the proposed easement reservations. This notice shall direct that all comments be sent to the Commission and the State Director.

It is expected that the Commission and the State of Alaska will furnish their recommendations on the proposed easement reservations within the time prescribed by regulations. If a recommendation is not submitted by the Commission or the State within the time period established by regulations, 43 CFR 2650.4-7(d), the State Director may proceed.

The BLM State Director shall review the Commission's recommendations and the comments from other interests. If there are significant differences between the State Director, the recommendations, and the comments from other interests, he may submit the easement reservation question to the Director, BLM, for final determination by the Department of the Interior. Otherwise, he will issue a decision to convey that includes easements that will be reserved and all other terms and conditions relating to conveyance of the land.

The decision to convey shall be served on all parties having a property interest in land affected by the determination. The Alaska Native Claims Appeal Board (ANCAB) will review decisions pursuant to section 17(b)(3) of ANCSA only to determine whether the decision to reserve was arbitrary or capricious.

Where no appeal has been timely filed on decisions to convey or where ANCAB has rendered its decision on an appeal, the BLM State Director may issue the conveyance.

Section 7. Limitations. The actions of the State Director under this delegation shall be subject to supervision and review by the Director, Bureau of Land Management.

Section 8. Effective Date. This order is effective immediately and shall remain in effect until it is amended, superseded, or revoked.

  
Secretary of the Interior

Date: Feb 5, 1946

Prepared for publication in the Federal Register.

WILKINSON, CRAGUN & BARKER

LAW OFFICES

THE OCTAGON BUILDING  
1735 NEW YORK AVENUE, N.W.  
WASHINGTON, D. C. 20006

(202) 833-9800

CABLE ADDRESS

"WILCBAR"

R. ANTHONY ROGERS  
PATRICIA L. BROWN  
WILLIAM R. LOFTUS  
STEPHEN R. BELL  
THOMAS J. BACAS  
FOSTER DEREITZES  
ALAN I. RUBINSTEIN  
JOHN M. FACCIOLA  
PHILIP A. NACKE  
H. MICHAEL SEMLER  
THOMAS E. WILSON  
JERRY R. GOLDSTEIN  
EDWARD M. FOGARTY  
S. STEVEN KARALEKAS  
ROBIN A. FRIEDMAN  
JAMES E. MAGEE  
ROBERT B. MCKENNA, JR.  
JOSEPH P. MARKOSKI  
MICHAEL B. GREEN  
STEVEN C. LAMBERT

ERNEST L. WILKINSON  
JOHN W. CRAGUN (1906-1969)  
GLEN A. WILKINSON  
ROBERT W. BARKER  
CHARLES A. HOBBS  
ANGELO A. IADAROLA  
PAUL S. QUINN  
LEON T. KNAUER  
RICHARD A. BAENEN  
JERRY C. STRAUS  
HERBERT E. MARKS  
PIERRE J. LAFORCE  
FRANCES L. HORN  
GORDON C. COFFMAN

ROSEL H. HYDE  
DONALD C. GORMLEY

*Counsel*

January 29, 1976

John W. Schaeffer  
President  
NANA Regional Corporation, Inc.  
Box 49  
Kotzebue, Alaska 99752

Re: Amendments to Alaska Native Claims  
Settlement Act

Dear John:

Enclosed are several copies of the government's official print of the recently enacted omnibus bill which amended the Settlement Act. We also are sending a copy of the law to each person receiving a copy of this letter.

With best regards,

Sincerely,

WILKINSON, CRAGUN & BARKER

By: Foster De Reitzes

Enclosure

cc: (w/encl.)  
NANA Board  
Lance Anderson  
Al Adams  
John Shively  
Joseph Rudd, Esq.  
Rick Larsen