



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Alaska State Office
222 W. 7th Avenue, #13
Anchorage, Alaska 99513-7599
<http://www.ak.blm.gov>

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August 30, 2004

Instruction Memorandum No. AK 2004-042
Expires: 9/30/2005

To: DSDs, FMs, and M-AFS

From: State Director

Subject: Processing of the State of Alaska's Applications for Recordable Disclaimers of Interest for Lands Underlying Potentially Navigable Waters

This Instruction Memorandum (IM) sets forth the procedures the BLM will follow when processing the State's application for a disclaimer of interest for those lands underlying potentially navigable waters. The State asserts title to these lands under the Equal Footing Doctrine and the Submerged Lands Act of 1953. The BLM is using their authority under Section 315 of the Federal Land Policy and Management Act (FLPMA), and guidelines set forth by the corresponding regulations, 43 CFR 1864, to process these claims.

A "recordable disclaimer of interest" is a document that affirms the United States does not claim an interest in specific lands – it is prepared in such a way that will meet local requirements so that it may be "recorded" – hence the "recordable" disclaimer of interest

If you have questions, please contact Callie Webber, Realty Specialist, at (907) 271-3167.

Signed
George P. Oviatt
Associate State Director

Authenticated
Rodney Harvey
Records Manager

Attachment:
Recordable Disclaimer of Interest Process (3 pp)

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I. Information Sharing

The BLM will meet with the State of Alaska to assist in the preparation of the draft application. Discussion topics will include:

1. What is known about the waterway;
2. Potential sources of information;
3. Real or potential controversial issues; and
4. Identification of appropriate federal agencies, Native Corporations, other principal upland owners, and known interested parties.

The BLM will also contact and/or meet with those affected federal agencies, informing them of the State's intent to file on waterbodies within or adjacent to a Conservation System Unit. The BLM will share relevant information from that meeting with the State and other agencies. In addition, the BLM will request the agencies to identify or provide relevant sources of information which the State may consider in preparing its draft application. The agencies will be requested to provide this information within 30 days prior to the pre-application meeting.¹

II. Pre-Application Meeting

The BLM will host the pre-application meeting once the State's draft application and supporting documents are ready for review. All participants will receive a copy of the State's draft application and supporting evidence upon notice of the pre-application meeting. Notice will include a minimum of 30 days review time.²

1. As each particular case is unique, discussion will be guided by the application and the submitted factual information. Federal agencies should be prepared to discuss the reservation or withdrawal information of the unit at the time of statehood.
2. Determine the level of outreach efforts necessary to:
 - inform land managers, upland owners, and other interested parties of the State's application for a disclaimer;

¹ These deadlines will serve as a guide, and may be adjusted to accommodate special circumstances.

² *Ibid.*

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- solicit review and comment upon the factual evidence supporting the State's navigability claims;
 - provide interested parties an opportunity to ask questions regarding the scope and effects of recordable disclaimers; and
 - identify all known interested parties.
3. BLM may provide preliminary time and cost estimates, however, these are decision documents, and will be determined and prepared after application submission.

III. Application Requirements

The applicant is required to submit all information necessary for the BLM to make a decision on the application. Any request to waive a specific requirement will be reviewed on its own merits, and any decision to waive such a requirement will be made on a case-by-case basis. Many of these requests will be discussed at the pre-application meetings. Each application shall include (43CFR1864.1-2(c)):

1. The applicant's contact information;
2. \$100 application fee;
3. Map and current land status information;³
4. Legal description;
5. Evidence of notification to known interested parties,⁴
6. A statement concerning the nature and extent of the cloud on the title, and the reasons the applicant believes the record title interest of the United States in the applied for lands has terminated by operation of law or is otherwise invalid;
7. All documents which show to the satisfaction of the authorized officer the applicant's title to the lands (including any available documents or title evidence, such as historical and current maps, photographs, and water movement data).⁵

The BLM will review the State's application, analyze the evidence submitted, and prepare a draft summary report,⁶ with recommendations.

IV. Public Notice/Review Application & Supporting Evidence

The BLM will publish notice of the State's application in the Federal Register at least ninety (90) days prior to issuance of a decision on the State's application for a disclaimer of interest.

³ The BLM will conduct a review of specific BLM land status information as part of the summary report.

⁴ Interested parties will include principal upland owners and those requesting to review applications pertaining to a specific water body or conservation system unit.

⁵ Besides the State's navigability reports, documentation may include the following BLM documents: conveyance documents, previous navigability reports (e.g. "Regional Navigability Reports") and determinations.

⁶ The summary report will be posted on the BLM-Alaska website upon the publication of notice in the Federal Register.

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At the BLM's request and direction, the State will publish notice of its application for a disclaimer of interest in a local newspaper(s) once a week for three consecutive weeks during the Federal Register notice period. The State will provide proof of publication.

Both notices will direct interested parties to the BLM-Alaska's website where they may review the State's application, supporting evidence, and the BLM's draft summary report. Published comment periods will be determined on a case-by-case basis. At minimum, a thirty (30) day comment period will be provided.⁷ It is during this comment period that the federal land managers, upland owners, and other interested parties should submit their formal position regarding the State's application. If there is a compelling reason, the BLM may extend those periods.

The BLM will not issue a decision until the 90-day notice period has expired. If, during the notice period, the BLM receives factual evidence that would significantly alter the preliminary findings, the BLM will share that information with the State, affected federal agencies, and possibly other interested parties prior to finalizing the summary report and recommendations.

V. Decision

After the summary report and recommendations are finalized, the BLM will issue a decision on the State's application for a recordable disclaimer of interest⁸. The decision may include one or more of the following:⁹

- Accept – the United States affirms it has no interest, and will issue a recordable disclaimer of interest.
- Deny – the United States declares it does have an interest in the lands under application, and will not issue a recordable disclaimer of interest.
- Reject – there is not enough evidence to accept or deny the State's application.

The decision is sent to the State. Copies of the decision are sent to known interested parties (including federal agencies and Native Corporations). If applicable, the recordable disclaimer of interest is issued to the State. The decision is posted on the BLM-Alaska Website.

⁷ These deadlines will serve as a guide, and may be adjusted to accommodate special circumstances.

⁸ The recordable disclaimer of interest is a document by which the United States affirms it has no interest in specific lands.

⁹ The BLM reserves the option to suspend an application, or part thereof, however, we do not expect to utilize this option except in rare instances.