

Memorandum of Agreement

The State of Alaska, acting through the undersigned authorized official of the Alaska Department of Natural Resources (DNR), and the Bureau of Land Management (BLM), acting through the undersigned authorized official (hereinafter "the parties"), enter into the following agreement regarding the determination of whether a land feature in a navigable water body in Alaska existed on the date of Alaska statehood, January 3, 1959.

WHEREAS, pre-statehood United States Geological Survey quadrangle maps (USGS quads), based on aerial photography, are frequently the most contemporaneous evidence of geographic features in existence prior to Alaska statehood;

WHEREAS, in many instances there are no additional aerial photographs of the area under consideration until decades after the date of Alaska statehood;

WHEREAS, other than occasional aerial photography, there is often no other evidence regarding land features in navigable water bodies since the date of Alaska statehood until a cadastral survey is performed by the BLM for purposes of issuing a patent;

WHEREAS, disputes and differences of opinions exist between the parties; and

WHEREAS, the State of Alaska has filed an administrative appeal to the Interior Board of Land Appeals, State of Alaska, IBLA 2007-180, to challenge the BLM's action in regard to certain land features the State contends were emerged islands and hence State land;

NOW THEREFORE, the parties agree to the following:

A. Scope

This Agreement applies to determinations made by BLM regarding the ownership of geographic features that have emerged from the submerged lands beneath a water body 1) determined to have been navigable at the time of statehood, and 2) the submerged lands were not reserved to the United States in such a way as to defeat passage to the State at statehood, and 3) the submerged lands vested in the State on the date of statehood.

The parties acknowledge that ownership of emerged islands depends on ownership of the submerged lands. Islands determined to have emerged from the bed of said water bodies after the date of statehood will not be available for patent until an administrative navigability determination has been made.

Applicable determinations made pursuant to Section D of this agreement include:

1. Surveyed islands in water bodies administratively determined to be navigable;

2. Islands pending survey in water bodies administratively determined to be navigable; and
 3. Islands, surveyed or pending survey, in water bodies that require no administrative navigability determination under law, or for which no administrative navigability determination has been made.
- B. The consequences of such a determination are as follows:
1. An island determined to have emerged from the bed of a navigable water body after the date of statehood is deemed to belong to the State of Alaska and not, therefore, Federal land available for disposal;
 2. An island determined to have existed prior to the date of statehood, where no showing can be made that the island was completely eroded away after the date of statehood, is deemed to belong to the United States and therefore available for disposal;
 3. A sandbar or gravel bar determined to have emerged from the bed of a navigable water body after the date of statehood is deemed to belong to the State of Alaska and not, therefore, Federal land available for disposal.
- C. Definitions
1. Island: An upland area that is surrounded by water when the water body is at a stage known as the ordinary high water mark (OHWM).
 2. Sandbar/Gravel bar: A ridge or narrow shoal of sand or gravel formed in a river or along a shore by the action of currents; generally construed to be at or below OHWM and therefore part of the submerged bed.
 3. Geographic feature: lands, whether island or sandbar, existing in or formed from the bed of a navigable water body.
 4. Emerged Island: An island as defined by this Agreement that emerged from the bed of a navigable water body after the date of statehood.
 5. Vegetated: Having mature terrestrial vegetation (as distinguished from aquatic vegetation).
- D. Criteria and procedures for use in determining whether a geographic feature in a navigable water body is an emerged island:
1. Where features shown on a pre-statehood USGS quad and a cadastral survey plat based on post-statehood hydrographic data agree as to the

location of geographic features, the existence of a geographic feature as Federal upland will be considered confirmed.

2. An island on a BLM survey plat that pre-statehood evidence shows partially overlaps with one or more disconnected and unvegetated geographic features in the same area, although not the exact same shape or location, will confirm that the platted feature is an emerged island.
3. Pre-statehood aerial photography, primarily the photography used to compile the USGS quads, will be treated as controlling on the question of whether a feature in a navigable water body is a pre-statehood island or sandbar, unless other evidence indicates otherwise.
4. Evidence that can be used to show that a geographic feature is incorrectly depicted on pre-statehood USGS quads or that a contrary condition actually existed on the date of Alaska statehood includes, but is not limited to:
 - a. Aerial photographs taken prior to the date of Alaska statehood that show a feature in a navigable water body was vegetated will be accepted by the parties as sufficient evidence that the feature was an island prior to statehood;
 - b. Aerial photographs used for the compilation of the pre-statehood USGS quads that show a geographic feature was mapped in error (e.g., a feature was placed in the wrong location or a feature was inexplicably omitted from the quads);
 - c. Evidence sufficient to establish the OHWM of a depicted feature can be used to show a feature is an island, above OHWM, or a sandbar, below OHWM, in existence at the time of Alaska statehood; and
 - d. Any other evidence, such as personal knowledge set out in an affidavit, photographs which can be tied to a particular feature in a navigable water body, or written historical accounts, can be used to support a finding that a particular feature was a sandbar or island at the time of Alaska statehood.
5. The BLM has established a process that allows DNR and other interested or potentially affected parties, an opportunity to comment on BLM's administrative determination that a particular geographic feature is or is not an emerged island and to bring an administrative appeal in regard to such determination.

Prior to issuance of a patent for an island within an administratively determined navigable water body, where the submerged lands beneath said water body vested in the State on the date of statehood:

- a. The BLM shall issue a notice to DNR and the affected Native corporation(s) transmitting the emerged island determination. The notice will announce that an appealable decision will be issued at a later date incorporating the emerged island determination, and afford DNR and the corporation(s) 45 days to provide comments;
 - b. The BLM will evaluate the comments received and modify the emerged island determination when appropriate;
 - c. After the expiration of the comment period, the decision shall be issued to DNR and the affected Native corporation(s); and
 - d. BLM shall allow DNR to copy island review case files in accordance with existing procedures under the agencies' existing data sharing agreement, Cooperative Agreement No. 2007-18.
6. The BLM records will be noted as follows:
- a. Where State-owned emerged islands have been surveyed and lotted on an approved Federal cadastral survey plat:
 1. An emerged island determination and supporting evidence will be documented in the island review case file;
 2. The BLM master title plat will clearly indicate the emerged island is state land; and
 3. The BLM master title plat will reference the applicable island review case file(s).
 - b. Where State-owned emerged islands have been identified prior to final approval of the Federal cadastral survey plat and the islands have been left unsurveyed:
 1. An emerged island determination and supporting evidence will be documented in both the cadastral survey file and the island review case file;
 2. The approved Federal cadastral survey plat will depict State-owned emerged islands as unsurveyed features in proper geographic relation to surrounding surveyed lands;

3. The approved Federal cadastral survey plat will note unsurveyed islands as lands unavailable for survey and disposal as determined by the Secretary of the Interior; and
4. The remarks column of the BLM master title plat will reference the existence of unsurveyed islands that have emerged after the date of statehood as shown on the approved Federal cadastral survey plat.
7. The party asserting exception(s) to the determination(s) made according to the provisions of this Agreement shall bear the burden of proof and will provide supporting evidence for the exception(s) to the other party.

THE PARTIES FURTHER AGREE, THAT:

1. While not parties to this Agreement, Native corporations and any other party with an affected property interest can also use the procedures and evidentiary standards set out in this Agreement;
2. No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Agreement or to any benefit to arise there from. Nothing, however, shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such corporation or company;
3. This Agreement shall be applied prospectively to future Emerged Island Determinations and cannot be used to require BLM to reopen or reconsider any past decision, notice of which was provided to DNR;
4. This Agreement will remain in effect for 10 years from the date of the last signature below and may be extended for additional 5 year terms by agreement of the parties;
5. This Agreement can be terminated or modified at any time by the mutual written agreement of the parties. The parties shall be obligated to undertake good faith negotiations to resolve any perceived implementation problems during the course of the Agreement. If changes in technology or applicable law so require, the parties will make every reasonable effort to agree to appropriate changes to this Agreement;
6. Consistent with Section D.5, nothing in this Agreement is intended to deprive the parties of any judicial remedy otherwise available to them, or to prevent the use of any otherwise admissible evidence in requesting or opposing such remedy;

7. Following the execution of this Agreement, the parties will file a joint motion to dismiss the State's appeal IBLA No. 2007-180.

E. Authorization to sign

The persons signing below represent that they have legal authority to execute this Agreement on behalf of their respective agencies.

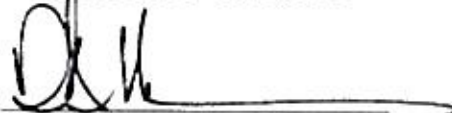
UNITED STATES



ACTING
Thomas Lonnie
State Director
Alaska State Office
Bureau of Land Management

Date: 7-10-08

STATE OF ALASKA



Thomas E. Irwin
Commissioner
Department of Natural Resources
State of Alaska

Date: July 11, 2008