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**-SUBPART 2568-ALASKA NATIVE ALLOTMENTS  
FOR CERTAIN VIETNAM VETERANS**

**PURPOSE**

**2568.10 What Alaska Native allotment benefits are available to certain Vietnam veterans?**

An allotment of one or two parcels of Federal land in Alaska of up to 160 acres total under the Native Allotment Act of 1906 (34 Stat. 197).

**AUTHORITY**

**2568.20 What is the legal authority for these allotments?**

The Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq. (ANCSA), as amended. Section 432 of Public Law 105-276, the Appropriations Act for the Departments of Veterans Affairs and Housing and Urban Development for fiscal year 1999, which amended ANCSA by adding section 41. The Native Allotment Act of 1906, 34 Stat. 197, as amended, 42 Stat. 415 and 70 Stat. 954, 43 U.S.C. 270-1 through 270-3 (1970), repealed with a savings provision by section 18 of ANCSA, 43 U.S.C. 1617. The regulations implementing the Native Allotment Act of 1906, 43 CFR Subpart 2561, are applicable to Vietnam Veteran Native Allotments and are incorporated herein to the extent the regulations at 43 CFR Subpart 2561 are not inconsistent with section 41 of ANCSA or any regulation set out in this Subpart.

**DEFINITIONS**

**2568.30 What terms do I need to know to understand these regulations?**

*Alaska Native* is defined in the Native Allotment Act of 1906 as amended by the Act of August 2, 1956, 70 Stat. 954.

*Allotment* has the same meaning as it has in the regulations implementing the Native Allotment Act of 1906 at 43 CFR 2561.0-5(b).

*Campsite* is an area of land regularly used by individuals, families, or groups for subsistence, recreation, cultural or other purposes and generally recognized as a campsite by area users.

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*Conservation System Unit (CSU)* has the same meaning as it has under Sec. 102(4) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA), 16 U.S.C. 3102(4).

*Personal Representative* is an individual appointed to act in that capacity for or on behalf of the estate of a decedent by a state court of competent jurisdiction.

*Regional Corporation* has the same meaning as it has under Section 3(g) of ANCSA, 43 U.S.C. 1602(g).

*Regional Director* means the Alaska Regional Director of the National Park Service or the Regional Director of the U.S. Fish and Wildlife Service, Region 7.

*State Director* means the Alaska State Director of the Bureau of Land Management.

*Segregation* means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land laws, including the mineral laws, pursuant to the exercise by the Secretary of regulatory authority for the orderly administration of the public lands.

*Veteran* has the same meaning as it has in 38 U.S.C. 101, paragraph 2.

*Village Corporation* has the same meaning as it has under Section 3(j) of ANCSA, 43 U.S.C. 1602(j).

*Village withdrawal* means land withdrawn under Section 11(a)(1) of ANCSA for selection by a Village Corporation.

*Withdrawn* or *withdrawal* means withholding an area of federal land from settlement, sale, location, or entry under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program.

## INFORMATION COLLECTION

### 2568.40 Will BLM collect information from the public?

Yes. BLM will collect certain information from applicants in order to determine whether or

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not they qualify for allotments under this subpart. Each applicant must file an application form with BLM that describes the land for which he/she is applying and gives the details of the use and occupancy of the land.

#### WHO IS QUALIFIED

#### **2568.50 What qualifications do I need to be eligible for an allotment?**

To qualify for an allotment you must :

- (a) Have been eligible for an allotment under the Native Allotment Act as it was in effect before December 18, 1971
- (b) Be a veteran who served at least six months within the period from January 1, 1969, to June 2, 1971, or enlisted or was drafted within the period from June 3, 1971, to December 2, 1971
- (c) not already have received conveyance or approval of an allotment (however, an allotment interest received by inheritance, devise, gift, or purchase does not disqualify you from applying), and
- (d) not have a pending Native allotment application on October 21, 1998.

#### **2568.51 What if a qualified Native veteran is deceased?**

The personal representative of an eligible decedent may apply for an allotment, for the benefit of the decedent's heirs, if within the period from January 1, 1969, to December 31, 1971, the decedent was killed in action, was wounded in action and later died as a direct consequence of that wound, as determined by the Department of Veterans Affairs, or died while a prisoner of war. The decedent must have met all other requirements for a Native allotment.

Along with the application for allotment, the individual filing the application must present proof of appointment as personal representative by a court of competent jurisdiction or proof that an action for such an appointment has been commenced. An appointment of personal representative made at any time after the eligible decedent's death will be accepted, even if that appointment was prior to the enactment of section 41 of ANCSA. In cases where the action for a personal representative has been commenced but no appointment has been made, proof of appointment as personal representative must be filed with BLM within a reasonable period of time, not to exceed 18 months after the deadline for filing an application. Failure to file proof of appointment as personal representative within the time allowed will result in rejection of an application filed by an individual claiming to be a personal representative.

If a determination of heirs is made as part of a state court proceeding for appointment of

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personal representative, that determination may be submitted for consideration as part of the Department of the Interior probate in the event the allotment application is approved.

### **APPLYING FOR AN ALLOTMENT**

#### **2568.60 If I am qualified for an allotment, when can I apply?**

If you are qualified, you can apply any time during the 18 months after the effective date of these regulations.

#### **2568.61 Where do I file my application?**

You must file your application with the BLM Alaska State Office at 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599.

#### **2568.62 Do I have to file my application in person?**

No. You may file your application in person at the BLM Alaska State Office in Anchorage or you can mail it to that office at the address given in 2568.61. Applications will not be considered timely filed unless they are postmarked by the deadline indicated at 2568.60 and received in the proper office within 20 calendar days. BLM will not accept fax or e-mail applications.

#### **2568.63 Do I need to fill out a special application form?**

Yes. You must complete form no. \_\_\_\_\_, "Alaska Native Vietnam Veteran Allotment Application."

#### **2568.64 Do I need to file anything else with my application?**

(a) You must also file:

- (1) Certificate of Indian Blood (from the Bureau of Indian Affairs)
- (2) Department of Defense (DD) Form 214 "Certificate of Release or Discharge from Active Duty" or other documentation from the Department of Defense to verify military service, and
- (3) a map sufficient to locate on the ground the land for which you are applying (for example, you may use U.S. Geological Survey maps)

(b) You are also encouraged to file:

Supporting evidence to show your use and occupancy of the land for which you

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are applying. You are required to prove by a preponderance of the evidence that, for at least five years, you used and occupied the land. In order to partially satisfy this requirement, you are encouraged to supplement your application with supporting evidence which may include photographs and notarized statements from knowledgeable witnesses describing when and how you used your claimed allotment. See 2568.73 for more guidance on evidence which may help to show your use and occupancy.

**2568.65 If I do not include Department of Defense verification of qualifying military service and a Certificate of Indian Blood when I file my application with BLM, what will happen?**

If either document is missing when you file the application, BLM will ask you to submit the missing document(s). BLM will not process the application until you file the necessary documents.

**2568.66 If BLM finds errors in my application, will I be given a chance to correct them?**

Yes. Applications filed during the 18-month filing period and found to contain correctable errors will, once corrected, be considered timely filed. BLM will send you a notice advising you of the existence of a correctable error and giving you at least 60 days to correct the identified error. If you fail to make the correction within the time given BLM will reject your application.

**2568.67 Do I need to pay any fees when I file my application?**

No.

**2568.68 Do I have to post the land in my application on the ground?**

Yes. You must post all corners on the ground with your name and address before you file your application.

**2568.69 How do I describe the land on the application form?**

You are required to give an adequate legal description, estimate the number of acres in each parcel, and provide a map as indicated at 2568.64.

**2568.70 Will my application segregate the land for which I am applying from other**

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**applications or land actions?**

The filing of an application with a sufficient description to identify the lands shall segregate those lands.

**2568.71 Are there any rules about the number and size of parcels?**

Yes. You may apply for one or two parcels, but if you apply for two parcels the two combined cannot total more than 160 acres. You may apply for less than 160 acres. Each parcel must be reasonably compact in form.

**2568.72 Does the parcel have to be surveyed before I can receive title to it?**

Yes. If the land for which you apply is surveyed, no additional survey may be required. But if you qualify for unsurveyed land, it must be surveyed before BLM can convey it to you. BLM will survey your allotment at no cost to you or you may have a private survey done at your own expense, as long as it is accepted and approved by BLM.

**2568.73 What do I have to do to establish my use and occupancy of the land for which I am applying?**

You are required to prove by a preponderance of the evidence that, for at least five years, you used and occupied the land for which you are applying. This use must be substantial actual possession and use of the land, and not merely intermittent use. You may satisfy this requirement by accompanying the BLM field examiner to the land for which you are applying and showing physical evidence of your use of the land or by filing supporting evidence which may include photographs and notarized statements from knowledgeable witnesses describing how, when, and how long you used the land.

#### AVAILABLE LANDS

**2568.80 If I qualify for an allotment, what land is available to be conveyed to me?**

You may receive title only to:

(a) land that:

- (1) Currently belongs to the United States,
- (2) Was vacant, unappropriated, and unreserved when you first began to use and occupy it,

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- (3) You started using before December 13, 1968, and
- (4) You used and occupied in a substantially continuous, independent manner, at least potentially exclusive of others, for five or more years, or
- (b) substitute land as identified in 2568.82.

**2568.81 Are there types of land that cannot be conveyed to me even if I qualify and the land is still owned by the United States?**

Yes. You cannot receive an allotment containing any of the following:

- a) land where a Native or non-Native campsite is located, unless you are the primary person using the campsite;
- b) land selected by, but not conveyed to, the State of Alaska under the Alaska Statehood Act or any other legal authority;
- c) land selected by, but not conveyed to a Village or Regional Corporation;
- d) land designated as wilderness by statute;
- e) land acquired by the United States through gift, purchase, or exchange;
- f) land containing a building, permanent structure, or other development owned or controlled by the United States, another unit of government, or a person other than yourself;
- g) land withdrawn or reserved for national defense purposes other than National Petroleum Reserve-Alaska;
- h) National Forest land; and
- i) land selected or claimed, but not conveyed, under a public land law, including but not limited to the following:
  - (1) land within a recorded mining claim;
  - (2) home sites;
  - (3) trade and manufacturing sites;
  - (4) reindeer sites and headquarters sites;
  - (5) cemetery sites.

**2568.82 If I qualify for federal land in one of the categories BLM cannot convey, is there any other way for me to receive an allotment?**

Yes. If you qualify for an allotment on federal land that cannot be conveyed to you, you may choose an alternative allotment from the following land within the boundaries of the same Regional Corporation as the land for which you originally qualified:

- a) land within an original Village withdrawal which was not selected or which was selected and later relinquished or rejected;
- b) land contiguous to the outer boundary of a Village withdrawal, not including land described at 2568.81 or land within a National Park; or



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c) vacant, unappropriated, and unreserved land.

**2568.83 How do I get an alternative allotment if I qualify for federal land in one of the categories BLM cannot convey?**

If you apply for federal land in one of the categories listed in 2568.81, BLM will determine whether you have established qualifying use and occupancy of the parcel and whether you meet the other qualifications for an allotment. If you have met the use and occupancy requirements and the other qualifications, BLM will notify you in writing that you are eligible to choose an alternative allotment from lands described in 2568.82.

You must then post your alternative allotment parcel as described in 2568.68. You must also write or visit the BLM Alaska State Office at 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 and file in writing a signed request for an alternative allotment, together with an adequate legal description of the alternative allotment parcel, an estimate of the number of acres in the alternative parcel, and a map sufficient to locate the parcel on the ground.

**2568.84 Do I have to file my request for an alternative allotment within 18 months of the effective date of these regulations?**

No. The 18-month deadline applies to your original qualifying application under Section 41 of ANCSA. It will be sufficient if you file a signed request in writing as described in 2568.83 and BLM receives that request within 12 months of the date you receive the document notifying you that you are eligible for an alternative allotment.

**2568.85 If the land I used and occupied is within a Conservation System Unit (CSU) can I receive title to it?**

You may receive title to an allotment within a CSU if you qualify for that allotment and the managing agency of the CSU agrees that the allotment is suitable in terms of the purposes for which the CSU was created.

**2568.86 Who will determine if an application for an allotment within a CSU is either suitable or incompatible in terms of the purposes for which the CSU was established?**

The CSU manager will determine whether conveyance of the parcel would be suitable at that location or would be incompatible with the purposes for which the CSU was established.

**2568.87 How will a CSU manager decide if an application is suitable or incompatible?**

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Solely for the purposes of this act, the appropriate CSU manager or the manager's representative will conduct a resource assessment to determine if an application for an allotment would be suitable considering its location and potential impacts on any of the purposes for which the CSU was created. The CSU manager or the manager's representative may accompany the applicant and BLM field examiner on any field exam BLM conducts and will submit a resource assessment to BLM within 18 months of the exam, determining either that the application is suitable at its proposed location or is incompatible with the purposes of the CSU. If no assessment is completed and forwarded to BLM within 18 months, the allotment is presumed to be suitable at that location.

**2568.88 What criteria will be used by a CSU manager to determine if an application is incompatible with the purposes of the CSU?**

Conveying CSU lands out of protected status to private ownership as a Native allotment will impact CSU resources to a variable degree depending largely on the location of the proposed allotment, the natural resources on and near the parcel, and the probable future uses of the parcel. The CSU manager will consider the mission of the agency, the statute or withdrawal order creating the CSU, and the following guidelines when determining whether conveyance of a Native allotment is incompatible with a purpose for which the CSU was established. The CSU manager will consider cumulative impacts on the CSU, its administration, and the purposes for which the CSU was created.

resource values An allotment or group of allotments that would significantly interfere with biological, physical, cultural, scenic, recreational, natural quiet or subsistence values is incompatible.

future uses An allotment or group of allotments that has potential for uses that would significantly interfere with any of the purposes of the CSU is incompatible. An allotment is also incompatible if it would trigger development or improvement of access.

access and administrative sites An allotment that includes part or all of an administrative site or improved access route is incompatible. An allotment that includes an unimproved trail or other access route may also be incompatible.

location of allotment in relationship to other privately owned land An allotment located near an ANCSA village, contiguous with conveyed land, or on an ANCSA selection that the corporation has indicated a willingness to relinquish is likely to be suitable. Isolated inholdings in CSUs are incompatible.

existing plans for the CSU An allotment that interferes with the implementation of the

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CSU management plan is incompatible.

The CSU manager will issue a written decision telling you whether or not the conveyance of your allotment is found to be incompatible with CSU purposes. A copy of the decision will be sent to you.

**2568.89 If my application is determined incompatible, can I disagree with the determination?**

Yes. The applicant or the applicant's legal representative may request reconsideration of a CSU manager's decision by sending a signed request to the CSU manager who made the decision. The request for reconsideration must be postmarked within 45 calendar days of receipt of the decision for which reconsideration is being requested and must be received by the CSU manager within 20 calendar days of the postmark date. The request for reconsideration shall state the BLM case file number of the application and parcel for which reconsideration is being requested, the reason(s) for the reconsideration, and any new information or facts pertinent to the issue(s) raised by the request for reconsideration.

The CSU manager shall notify the applicant of the CSU's decision on the request for reconsideration within 45 calendar days of receipt of the request. This notification shall be in writing, shall state the reasons for the decision, and shall contain a summary of the evidence that was relied upon by the CSU manager. The notification shall also provide information concerning the right to appeal, the official to whom the appeal may be addressed, and the procedures for making an appeal. If a decision on the request for reconsideration is not issued within 45 days, it will automatically be considered to be an appeal and forwarded to the Regional Director or State Director for decision under Sec. 2568.87(d).

An applicant who has received an adverse decision following submission of a request for reconsideration may appeal to the Regional Director or State Director responsible for the CSU in which the applicant's Native allotment claim is located. An appeal must be in writing, it must be postmarked within 45 calendar days of the date of receipt of the decision on the request for reconsideration, and it must be received by the CSU manager within 20 calendar days of the postmark date. The appeal shall state the reason(s) and issue(s) upon which the appeal is based and may contain any additional evidence or arguments to support the appeal.

Before a decision is made concerning the appeal the applicant may present oral arguments before the Regional Director or State Director if the Regional Director or State Director judges oral arguments are necessary to clarify issues raised in the written record. The Regional Director or State Director shall notify the appellant in writing of its decision within 45 calendar days of receipt of the appeal unless extended for good cause and the appellant is notified of the

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extension. The decision of the Regional Director or State Director shall constitute the final administrative decision of the Department of the Interior.

**2568.90 If my application is determined incompatible, how do I apply for an alternative allotment?**

Anyone interested in applying for an alternative allotment as a substitute for an allotment determined to be incompatible within a CSU is encouraged to establish early contact with the appropriate CSU manager to discuss resource concerns, potential constraints, and impacts on existing management plans. After consultation, you must post your alternative allotment parcel as described in 2568.68. You must also write or visit the BLM Alaska State Office at 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599, and file in writing a signed request for an alternative allotment, together with an adequate legal description of the alternative parcel, an estimate of the number of acres in the alternative parcel, and a map sufficient to locate the parcel on the ground.

**2568.91 Do I have to file my request for an alternative allotment within 18 months of the effective date of these regulations?**

No. The 18-month deadline applies to your original qualifying application under Section 41 of ANCSA. It will be sufficient if you file a signed request in writing as described in 2568.90 and BLM receives that request within 12 months of the date you receive a decision from a CSU manager advising you that conveyance of your allotment has been determined to be incompatible with CSU purposes or, if you appeal that decision, within 12 months of the date the decision becomes final.

**2568.92 Is there a limit to how much water frontage I can include if I apply for an allotment on a water body?**

Yes, in some cases. You will normally be limited to 160 rods (a half-mile) along the shore of a navigable water body. But if you apply for a parcel of land that extends more than 160 rods along a navigable waterbody, BLM will treat your application as a request to waive the 160-rod limitation, will investigate the facts, and will decide whether to waive it. For purposes of this regulation, we incorporate 43 CFR 2094.

**2568.93 Can I receive an allotment of land that is valuable for minerals?**

You can receive an allotment of land that is valuable for some minerals, but not others. BLM can convey land that is or could be valuable, for coal, oil, or gas, but the title document will reserve these to the United States and the right to extract them. BLM cannot convey land

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valuable for other kinds of minerals such as gold, silver, sand or gravel.

**2568.94 Will I have a chance to disagree if BLM decides my allotment is unavailable because it is valuable for certain kinds of minerals?**

Yes, you can appeal under the provisions of 43 CFR Part 4.

#### **PROOF OF USE AND OCCUPANCY**

**2568.100 Do I have to show that I used and occupied the lands described in my application?**

Yes. You must show that you used and occupied the land for at least five years. You will be asked to explain the details of your use and occupancy on your application form and you may be asked to file statements from people who have personal knowledge of and can verify the use you claim. See 2568.73 for more guidance on evidence which may help to show your use and occupancy.

**2568.101 What happens if BLM decides that I have not submitted enough information to show qualifying use and occupancy?**

BLM will send you a notice advising you that you have not submitted sufficient evidence and will give you a chance to file additional information. You must file your additional information within the time period specified in the notice you receive from BLM.

**2568.102 Under what circumstances will BLM reject my application for reasons other than failure to meet qualifications related to military service or status as an Alaska Native?**

If the land for which you apply is no longer owned by the United States, BLM will send you a decision rejecting your application. You will also receive a rejection decision from BLM if the land for which you apply has been withdrawn since before you were born or if you were five years old or younger at the time the land was withdrawn.

#### **APPEALS**

**2568.110 What can I do if I disagree with any of the decisions that are made about my allotment application?**

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All decisions made about your application, except for the incompatibility determinations described in 2568.87 or determinations by the Veterans Administration, may be appealed to the Interior Board of Land Appeals under 43 CFR Part 4.