BLM FORM LETTER BACKFIRES

Confusion Over Native Allotments VS Primary Place of Residence

By JACQUELINE GLASGOW
Staff Writer

A department of the Interior letter has backfired, leaving Alaska Natives confused and government officials swamped by requests for explanations.

In January of this year, a form letter was sent out by the Bureau of Land Management. The letter was to explain the choice between filing for a Native Allotment or filing for a "primary place of residence".

The letter also notified Alaska Natives that they could not file for both and gave them two squares in which to mark their choice.

Far from clarifying the issue, the letter resulted in mass confusion, incomplete information, and general alarm on the part of many Native people who have been sweating out the processing of the allotments.

The first reaction of most Native people receiving the letter was that they would lose their allotment or that by keeping it, they would lose other benefits under the Land Claims Act, such as ownership of other lands within village withdrawals.

It appears that this is not necessarily the case and legal heads within the regional corporations are objecting strongly to the misleading choice presented in the letter.

Tanana Chiefs have advised all of their people to withhold making any decision until the federal regulations are firmly fixed. Alaska Legal Service has also advised applicants to simply wait and check nothing on the form letter until further investigation of the consequences.

If there is no response to the BLM letter, the allotment will continue to be processed and the applicant has until Dec. 18 of this year to make a choice for "primary place of residence."

"A person could file a "primary place of residence" outside of the village withdrawals and if they enroll in a village, still have another piece of property — a business site, a part-time home, a tool shed, even," said Jim Donahue, of the Fairbanks' BIA Realty office, "within the village. They could have a legitimate filing in BOTH places."

The acreage for both primary place of residence filings and for Native Allotments must come from the 2 million acre Special Purpose Grant in the Land Claims Settlement Act.

Out of this 2 million acres

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will also come the acreage chosen for historical sites and native cemeteries, as well as for incorporated Native groups, in particular groups from Sitka, Kenai, Juneau, and Kodiak.

What happens if there isn't enough land in the 2 million acre withdrawal to satisfy all the allotments, the primary place of residence applications, and the other uses?

"Nobody really knows what will happen if there isn't enough land," said Donahue. "Each person was asked to give their priorities as to how it would allocate the 2 million acres if there wasn't enough to go around."

Tanana Chiefs' Land Department commented, "They know and we know that there isn't going to be enough acreage to go around."

Under the Native Allotment Act of 1906, the applicant is to receive the amount for which they have applied, in most cases the 160 acre maximum.

The Subsequent Land Claims Act of 1971 revoked the Allotment Act and only those who had filed for an allotment BEFORE December 18, 1971 would be eligible for patent upon approval.

Unlike Native allotments, "primary place of residence" applications may be filed up to December 18, 1973. It must be filed on lands outside a village withdrawal and need not necessarily disqualify any Native person from receiving a townsite for another residence, business site, or fish camp, within the village lands.

There is no certainty that those who opt to file a "primary place of residence" will receive a full 160 acres. Final regulations defining "primary place of residence" have not yet been formulated, and the indication is only that it will be for land "up to 160 acres".

It is interesting to note that the applicant for a "primary place of residence" receives only the surface estate. The regional corporation receives the subsurface estate or in other words, the mineral rights.

Native Allotments may not be filed on mineral lands, with the exception of leasable minerals which then belong to the federal government. A field survey is made to determine whether or not the government feels the land contains minerals. If not, title is granted.

Land acquired under Native Allotment is granted a "restricted title" and cannot be sold, mortgaged, leased, or deeded without the approval of the Secretary of the Interior. One advantage is that so long as the status of the land remains restricted, it is not taxable by state or local authorities.

Under "primary place of residence", the undeveloped land would not be taxed until Dec. 19, 1991, but if developed, becomes immediately subject to local taxes.

It is clear from these few examples that the option between Native Allotment and "primary place of residence" is a highly complex one and should be thoroughly investigated before a choice is made.

The Department seems to be loosening up in its concept of "primary place of residence", said Donahue. The life style of of Native people frequently utilizes more than one residence due to hunting and fishing activities and summer and winter employment patterns.

While the "primary place of residence" concept requires that a dwelling must exist on the site, Donahue cited a case where a man and woman near Northway had lived 30 years in a tent.

In that case, he said, their land could have been designated a "primary place of residence". Incredible as it sounded, everyone in the area verified that they lived there year-round.

Both BLM and the BIA advised anyone with questions about the status of their allotment and the advantages or disadvantages of changing to a "primary place of residence" filing to come in and go over the file thoroughly.

Applicants are also advised to consult the regional corporations for advice on making the choice.

Some of the present confusion might have been avoided if Washington D.C. had listened to its local advisors.

"Both BLM in the field and BIA in the field recommended holding off on the letter at this time," said one local government official. "You're going to confuse people," they said.

But according to government sources, the order to mail the letters came directly from the Secretary's office, whose position was that under terms of the Act, he had an obligation to inform Allotment applicants of the option to file a "primary place of residence".

The letter went out. The other half of the mystery is: Who determined who got a letter?

Many who received the form letter had allotment applications pending, but people whose application had been turned down for various reasons years ago also received the letter, and a few who had never filed for an allotment at all.

The letter issued by the Department instructs the applicant to apply "to the appropriate BLM office (Anchorage or Fairbanks) on or before December 18, 1973." However, Bowman Hinkley of the Fairbanks BLM office said his office has been referring applicants to the BIA.

Jim Donahue of the BIA's Realty office said while they had a flood of enquires following the letter, only three people had come in and definitely said they wanted to file a "primary place of residence".

Since there were no forms available, he said, "We had them write out in their own hand that they are interested in filing for primary place of residence. And we are waiting for BLM to make up the forms."

As in everything connected with the Land Claims Settlement Act, there are no clear-cut simple answers. The regulations have to be read and re-read, negotiated and re-negotiated, interpreted and re-interpreted, and even then the individual Alaska Native may not be sure where he stands.