

# Easement logjam broken after months of waiting

BY NANCY HARVEY

The Department of Interior announced Monday a series of major policy changes designed to speed up implementation of the Alaska Native Claims Settlement Act.

The announcements come in the wake of nearly a year of discussions between top level Interior officials and representatives of the Alaska Federation of Natives, Inc. and Alaska Native regional corporations.

In a prepared statement issued Monday, Interior Secretary Cecil Andrus said: "This department has dedicated itself to improved administration of the settlement act, beginning with conveyance of land to Native corporations on an accelerated basis. We promised to Congress we would review and untangle the ANCSA issues and get the act moving again. The settlement act is not only vital to Alaska Natives, but its success is crucial to the social, cultural and economic future of the state and the nation."

Since passage of the act in 1971, Native corporations have received less than 10 percent of the 40 million acres they are entitled to under the settlement. The process of conveying lands has been continually complicated by the question of public easements across Native-selected lands.

Last July, Federal District Judge James von der Heydt ruled that the Alaska Native Claims Settlement Act is Native legislation which permits easements to be reserved across Native lands only at certain points to allow access to nearby public lands. Access to Native land is only to be allowed at the discretion of Native landholders, according to von der Heydt's ruling, which declared invalid many of the then-existing Interior Department easement guidelines.

Under the new department policy announced Monday, no continuous coastal easements will be reserved and easements will be placed only on "major" inland rivers, streams and lakes. A "major" waterway will be determined by a three-part test involving significant use of the water for travel, significant commercial use and its overall resource value, including recreation, fisheries and other values.

To meet the test, at least two of three criteria must be satisfied before easements may be reserved along each water body or segment.

On any major water body, coastal or interior, a limited system of easements will be established only for the purpose of permitting normal travel on the waterway or to gain access to or from public lands nearby. Uses on such easements will be reasonable but limited and defined. Secretarial orders to carry out the new guidelines will be issued within 60 days.

Secretary Andrus said the Interior Department would recommend that the Justice Department drop its federal court appeal of the von der Heydt decision if the Natives drop their appeal of parts of the same decision and accept the new easement policies. Andrus reiterated his hope that the state will also accept the new policy.

In a press conference Monday, Assistant Interior Secretary Guy Martin said the department did not seek an answer from AFN in a meeting that morning, but he felt it was a compromise position Alaska Na-

tives were likely to accept.

(At press time, the Tundra Times learned that one corporation, Cook Inlet Region, Inc., had made the decision to drop its appeal in the easement case).

Martin said it is essential for the Department of the Interior to take steps to speed up conveyance of lands to Alaska Natives. Noting that the economic difficulties encountered by the Native corporations are attributable in part to land conveyance problems, Martin said the success of Native corporations is vital to the economic and social growth of Alaska.

"Congress is very disturbed and frustrated at the failure of the Natives to get their lands," Martin continued. "It is a goal of the department to convey the vast bulk of acreage as soon as possible."

Acceptance of the new Interior Dept. policy by the Natives will automatically trigger a process leading to relinquishment by the department of previously reserved easements that are in conflict with the new policies.

Other major decisions announced include:

-Reorganization of the BLM Alaska office to create a new and separate office, reporting to the state director and having responsibility solely to carry out the settlement act, with emphasis

on prompt land conveyance. Martin said the new BLM office should be operational within six weeks.

-Designation of the Alaska Native Claims Appeal Board as the sole administrative appeals board for the settlement act. Rules governing who may appear and who has the burden of proof have been redefined to provide for faster decisions.

-Native selections from federal installation lands as provided in Section 3(e) of the act will be aided by a more active department program to encourage federal owners to identify surplus lands.

-Native selections of cemetery and historical sites will continue under present guidelines but areas open to selection will include some lands previously withdrawn by the secretary

outside of Native withdrawals, including some land in the present administration d-2 proposal. Covenants will be placed on this land to limit its future use to the intended purpose.

-Land exchange policy will strongly favor exchanges for equal value and be limited to exchanges of land rather than selection rights. Exceptions to the equal value standard may be made by the secretary.

-Allocations of selection entitlement among the regional corporations, according to the complex rule of the settlement act, will be carried out under

a new set of policies and procedures designed to speed conveyances and reach the highest entitlements in each area as soon as possible.

-The standards for establishment of Native (groups) will be reviewed and revised in an effort to make them more consistent with the standards for establishing "villages."

AFN President Byron Malott said Native leaders were generally pleased with the department's decisions on easements, but that in some other areas Natives lost out.

PLEASE TURN TO PAGE TWELVE

# ● Easements

## **CONTINUED FROM PAGE THREE**

Three particular areas of concern to Native corporations in the secretarial decision include:

--Section 3(e) of the settlement act dealing with federal installations. AFN feels the act allows for a broader definition of the particular kinds of surplus lands made available for selection by Native corporations.

--Section 14(h) seeking to amend regulations to give Native corporations more latitude for deciding which historical and cemetery sites to select. The secretary chose not to amend the current regulations.

--Interior has decided to charge the bottom of non-navigable waters against the 40 million acres to which the Native corporations are entitled. Malott said Interior had agreed to reconsider this decision at a later date.