



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Alaska State Office  
222 West Seventh Avenue, #13  
Anchorage, Alaska 99513-7504  
<http://www.blm.gov/ak>

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December 9, 2010

Instruction Memorandum No. AK-2010-005  
Expires: 09/30/2012

**To:** Native Allotment Adjudicators

**From:** DSD, Alaska Lands

**Subject:** Scope and Effect of Section 305 of Alaska Land Transfer Acceleration Act (ALTAA)

**Program Area:** Native Allotment Title Recovery Program

**Purpose:** To provide guidance regarding identification and proper processing of Native Allotment applications which are subject to the provisions of Section 305 of ALTAA.

**Background:** Section 305 of ALTAA provides that we are no longer allowed to sue on behalf of the applicant to recover title if the current landowner refuses to voluntarily reconvey lands involved in a Native allotment application “that is reinstated or reconstructed” after December 10, 2004. In the past, it has been suggested that Sec. 305 requires us to immediately reject the application and close the case whenever a landowner indicates that it will refuse to reconvey. It has also been asserted that Sec. 305 applies to all cases where a formal decision either to reinstate a case, or to accept a reconstructed case as timely filed, did not become final before December 10, 2004. Neither is correct.

**Policy/Action:** In order to avoid giving a newly restrictive law a retroactive effect, ALTAA’s December 10, 2004 cut-off should be applied to the date the reconstruction or reinstatement request is first filed, and not to some later date that we could control, such as the date the request was, or is, granted. In other words, if the “received” date on the request is before December 10, 2004, we will still refer the case to the DOJ if reconveyance is refused, but if it is after that date, we will simply deny the request to reinstate or reconstruct, express our condolences to the applicant, and close the case. The same date analysis would apply to a decision whether or not to make the allotment subject to rights and interests arising after commencement of use and occupancy.

Even when ALTAA Section 305 does apply, it does NOT excuse us from following our

established due process (i.e., Aguilar) procedures merely because the landowner indicates a refusal to reconvey. On the contrary, we must complete investigation of the merits of the claim, including, if necessary, an Aguilar hearing, and make a finding regarding its validity, even if we know for certain that the landowner will refuse to reconvey when asked, and because of Sec. 305, we won't be able to sue for title.

There are several good reasons for this policy, including (1) the landowner could change its mind, (2) we have a responsibility to the applicant to leave them in the best position possible to pursue title on their own, should they chose to do so, and (3) the Constitution does not allow us to deny due process when a private property interest is at stake.

Once the landowner finally refuses a request for voluntary reconveyance, the application should not be rejected, but instead only the request to reinstate or reconstruct should be denied, the file should be closed without action, citing Section 305, and the applicant so notified. That way, we avoid having to reject an application we have already found valid, and in the event that the landowner later changes its mind or a court orders reconveyance, we can reopen the case without having to vacate a prior rejection decision.

**Timeframe:** Effective Immediately.

**Budget Impact:** Negligible

**Manual/Handbook Sections Affected:** Aguilar and Title Recovery Handbook for Native Allotments, Chapter II, Subchapter L.

**Coordination:** AK 960 and SOL.

**Contact:** Jim Szender, (907) 271-4687.

Signed by:  
Ramona Chinn  
Deputy State Director; Division of Alaska Lands

Authenticated by:  
Anita R. Jette  
Records Specialist