

## Bureau of Land Management, Interior

## § 2655.3

(a) Nature and time of use.

(1) If the holding agency used the lands for a purpose directly and necessarily connected with the Federal agency as of December 18, 1971; and

(2) If use was continuous, taking into account the type of use, throughout the appropriate selection period; and

(3) If the function of the holding agency is similar to that of the Federal agency using the lands as of December 18, 1971.

(b) Specifications for area to be retained by Federal agency.

(1) Area shall be no larger than reasonably necessary to support the agency's use.

(2) Tracts shall be described by U.S. Survey (or portion thereof), smallest aliquot part, metes and bounds or protraction diagram, as appropriate.

(3) Tracts may include:

(i) Improved lands;

(ii) Buffer zone surrounding improved lands as is reasonably necessary for purposes such as safety measures, maintenance, security, erosion control, noise protection and drainage;

(iii) Unimproved lands used for storage;

(iv) Lands containing gravel or other materials used in direct connection with the agency's purpose and not used simply as a source of revenue or services. The extent of the areas reserved as a source of materials will be the area disturbed but not depleted as of the date of the end of the appropriate selection period; and

(v) Lands used by a non-governmental entity or private person for a use that has a direct, necessary and substantial connection to the purpose of the holding agency but shall not include lands from which proceeds of the lease, permit, contract, or other means are used primarily to derive revenue.

(c) Interest to be retained by Federal agency.

(1) Generally, full fee title to the tract shall be retained; however, where the tract is used primarily for access, electronic, light or visibility clear zones or right-of-way, an easement may be reserved in lieu of full fee title where the State Director determines that an easement affords sufficient protection, that an easement is customary

for the particular use and that it would further the objectives of the act.

(2) Easements reserved in lieu of full fee title shall be reserved under the provisions of section 17(b) of the Act and § 2650.4-7 of this title.

### § 2655.3 Determination procedures.

(a) The State Director shall make the determination pursuant to the provisions in this subpart. Where sufficient information has not already been provided, the State Director shall issue written notice to any Federal agency which the Bureau of Land Management has reason to believe might be a holding agency. The written notice shall provide that the information requested be furnished in triplicate to the State Director within 90 days from the receipt of the notice. Upon receipt of information the State Director will promptly provide affected Native corporations with copies of the documents. Upon adequate and justifiable showing as to the need for an extension by the holding agency, the State Director may grant a time extension up to 60 days to provide the information requested in this subpart.

(b) The information to be provided by the holding agency shall include the following for each tract which is subject to determination:

(1) The function and scope of the installation;

(2) A plottable legal description of the lands used;

(3) A list of structures or other alterations to the character of lands and their function, their location on the tract, and date of construction;

(4) A description of the use and function of any unaltered lands;

(5) A list of any rights, interests or permitted uses the agency has granted to others, including other Federal agencies, along with dates of issuance and expiration and copies of any relevant documents;

(6) If available, site plans, drawings and annotated aerial photographs delineating the boundaries of the installation and locations of the areas used; and

(7) A narrative explanation stating when Federal use of each area began; what use was being made of the lands as of December 18, 1971; whether any

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action has taken place between December 18, 1971, and the end of the appropriate selection period that would reduce the area needed, and the date this action occurred.

(c) The State Director shall request comments from the selecting Native corporation relating to the identification of lands requiring a determination. The period for comment by the Native corporation shall be as provided for the agency in paragraph (a) of this section, but shall commence from the date of receipt of the latest copy of the holding agency's submission.

(d) The holding agency has the burden of proof in proceedings before the State Director under this subpart. A determination of the lands to be retained by the holding agency under section 3(e) of the Act and this subpart shall be made based on the information available in the case file. If the holding agency fails to present adequate information on which to base a determination, all lands selected shall be approved for conveyance to the selecting Native corporation.

(e) The results of the determination shall be incorporated into appropriate decision documents.

### § 2655.4 Adverse decisions.

(a) Any decision adverse to the holding agency or Native corporation shall become final unless appealed to the Board of Land Appeals in accordance with 43 CFR part 4, subpart E. If a decision is appealed, the Secretary may take personal jurisdiction over the matter in accordance with 43 CFR 4.5. In the case of appeals from affected Federal agencies, the Secretary may take jurisdiction upon written request from the appropriate cabinet level official. The requesting official, the State Director and any affected Native corporation shall be notified in writing of the Secretary's decision regarding the request for Secretarial jurisdiction and the reasons for the decision shall be communicated in writing to the requesting agency and any other parties to the appeal.

(b) When an appeal to a decision to issue a conveyance is made by a holding agency or a Native corporation on the basis that the Bureau of Land Management neglected to make a deter-

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mination pursuant to section 3(e)(1) of the Act, the matter shall be remanded by the Board of Land Appeals to the Bureau of Land Management for a determination pursuant to section 3(e)(1) of the Act and these regulations: *Provided*, That the holding agency or Native corporation has reasonably satisfied the Board that its claim is not frivolous.

### Group 2700—Disposition; Sales

NOTE: The information collection requirements contained in parts 2720 and 2740 of Group 2700 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0153 and 1004-0012, respectively. The information is being collected to permit the authorized officer to determine if disposition of Federally-owned mineral interests should be made and to determine if disposition of public lands should be made for recreation and public purposes. This information will be used to make these determinations. A response is required to obtain a benefit. (See 51 FR 9657, Mar. 20, 1986)

### PART 2710—SALES: FEDERAL LAND POLICY AND MANAGEMENT ACT

#### Subpart 2710—Sales: General Provisions

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#### Subpart 2711—Sales: Procedures

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2711.5	Conveyance documents.
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AUTHORITY: 43 U.S.C. 1713, 1740.