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STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

DIVISION OF COMMUNITY PLANNING

JAY S. HAMMOND, GOVERNOR

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Municipal Lands Trust Program
511 West Fourth Avenue
Anchorage, Alaska 99501
September 20, 1977

Honorable Jay S. Hammond
Governor of Alaska
Pouch A
Juneau, Alaska 99811

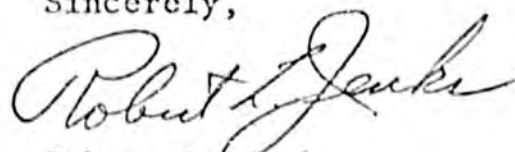
Dear Governor Hammond:

Commissioner McAnerney has asked me to provide you and the others mentioned below with an information copy of the enclosed Statement of Trust Philosophy and an Assessment of Principles and Primary Policy Issues relating to community expansion land conveyances to the State in trust under the Alaska Native Claims Settlement Act (ANCSA) and Alaska Statutes 44.47.150.

While this Statement is not a substitute for formal regulations or a firm departmental policy regarding this vital village program, it will be used as stated therein as a basis upon which regulations will be formally proposed and adopted over the next several months. We believe this narrative format of soliciting conceptual input will save several draftings of these regulations. Further, it is designed to be an educational tool to explain the complex mechanisms of this important section of ANCSA which will affect so many communities in the state.

We look forward to receiving comments from many interested parties, both inside and outside state government. Besides the copies being sent to each ANCSA corporation and affected communities, copies also are being sent to each state legislator, the Congressional delegation from Alaska, affected state agencies and program supervisors, the Attorney General, and the Federal-State Land Use Planning Commission for Alaska.

Sincerely,



Robert L. Jenks
Municipal Lands Trustee

RLJ/
enclosure

✓ cc: as stated herein.

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

JAY S. HAMMOND, GOVERNOR

DIVISION OF COMMUNITY PLANNING

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511 W. Fourth Avenue
Anchorage, Alaska 99501
August 29, 1977

MUNICIPAL LANDS TRUST PROGRAM

A PRELIMINARY STATEMENT OF TRUST PHILOSOPHY

AND

AN ASSESSMENT OF PRINCIPLES AND PRIMARY POLICY ISSUES

By: Robert L. Jenks
Municipal Lands Trustee

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MUNICIPAL LANDS TRUST PROGRAM
A PRELIMINARY STATEMENT OF TRUST PHILOSOPHY

AND

AN ASSESSMENT OF PRINCIPLES AND PRIMARY POLICY ISSUES

By: Robert L. Jenks
Municipal Lands Trustee

PURPOSE

This paper deals with the program of community expansion lands to be conveyed by about 100 village corporations to the State in trust where no first or second class city exists in the Native village. The paper is designed to fill four purposes.

One purpose is to provide the Commissioner and staff of the Department, and the Attorney General, my initial perception of the nature and scope of the trust program. It summarizes considerable discussion and research, and differentiates this trusteeship from ordinary line programs of the State of Alaska.

A second purpose is to inform outside parties having an interest in the Municipal Lands Trust Program of these preliminary views, through wide-spread distribution of this paper. Parties having interest in this program who will receive copies include: approximately 100 Native Village Corporations, approximately 100 traditional Village Councils, the 24 profit and non-profit regional corporations, AFN and ANF leadership, and the Alaska Native Land Managers Association. It will be offered to Tundra Times and ANF Management Report for publication of excerpts.

Thirdly, involvement and participation by all interested parties is necessary to insure that the trust program be practical and acceptable. This outside input is invited as a structured part of the Municipal Lands Trust program, and is not intended merely to be an incidental follow-up. This paper provides a format for these parties to base such involvement and input.

The fourth and final purpose is that it might serve as a temporary guide for program development and the basis for developing formal regulation proposals, subject to input received from others. This preliminary paper will not substitute for formal review procedures of regulation proposals as prescribed by law, nor is it a formal departmental expression of policy in lieu of regulations.

BACKGROUND

The Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, provided, among other things, that approximately 200 native villages in Alaska would form corporations to receive title to land. 22 million acres were selected by these village corporations in 1974. Generally, the pattern of lands selected commenced with the village situs and progressed outward in several directions for a maximum distance of about 15 miles. The total acreage selected by each village (excepting in Southeast) ranged from 69,120 to over 161,280 acres, with most entitlements being either 69,120 or 92,160 acres (108 and 144 square miles respectively). In Southeast, villages selected 23,040 acres (36 square miles).

In about one-half of the villages and prior to ANCSA, the federal government had made residential and business land titles available to occupants under the townsite laws. For the remaining half, Congress required village corporations under ANCSA Section 14(c)(1), upon receiving title to the village situs, to convey comparable occupied town lots to village occupants without consideration.

To facilitate title conveyance of these lots to the occupants, the cost of their subdivisional survey will be borne by the United States. 43CFR 2650.5-4(b). When these land transfers are completed, the situation will be roughly equivalent in all villages; that is, residents will have title to the land occupied by their homes and businesses, regardless of whether they received them earlier through operation of the federal townsite laws or from village corporations as a result of ANCSA. All other eligible occupancies specified by ANCSA Section 14(c)(1) and (2), including subsistence campsites, are subject to reconveyance by village corporations, regardless of any prior federal townsite.

Whether or not a federal townsite existed in a Native village prior to ANCSA, Congress provided also, that every village corporation must convey title to yet another category of land; i.e., "the remaining improved land on which the native village is located, and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and land for other foreseeable community needs." These lands must be transferred to the appropriate Municipal Corporation where one exists, or otherwise to the "State in trust for any Municipal

Corporation established in the Native village in the future."

In either case, the amount of lands to be transferred to the Municipal Corporation, or in trust, shall be no less than 1,280 acres (2 square miles). ANCSA Sec. 14(c)(3).^{1/}

Presently, about 100, or half, of the villages authorized to make land selections are incorporated as first or second class cities. These cities will receive title to the community expansion lands in their own right. No qualifying municipality exists in the remaining half, requiring conveyance of these land titles to the State in trust for any municipality which may be established in these Native villages in the future. (The exact number of villages involved in each category presently is uncertain due mostly to litigation involving the federal government's determinations of the eligibility of certain villages to select land under ANCSA).

It is this State trust responsibility which is being addressed by this Preliminary Statement of Philosophy and Assessment of Principles and Primary Policy Issues.

DISTINGUISHING BETWEEN STATE AS TRUSTEE AND STATE AS SOVEREIGN

Extra-ordinary relationships and policies exist with respect to community expansion lands conveyed to the State in trust. This arises from the language of ANCSA Section 14(c)(3) establishing a trust, the acceptance

^{1/}

See Appendix A (top half) at the end of this paper for the entire wording of ANCSA Section 14(c)(3).

of the trust by the state legislature in AS 44.47.150,^{2/} and the expectations of rural peoples of Alaska affected by the land trust.

While the sovereign powers of the state over political subdivisions could color the trustee role, the state is expected in this program to assume a constructive "trust" role by the Congress, the legislature, and affected rural peoples. The Commissioner and the undersigned fully agree that adoption of legal trust principles should be an underlying policy of the Municipal Lands Trust program. As trustee, the State should not acquire title to, nor administer, the community expansion (municipal) lands in the 100 or so villages for its own sovereign use and benefit. Rather, the lands should be conveyed and administered "in trust" for any Municipal Corporation established in the native village in the future.

With respect to lands conveyed in trust under ANCSA Section 14(c)(3), the legislature has defined the term "Municipal Corporation" as including "only first and second class cities incorporated under the laws of the state." AS 44.47.150(g). Defining applicable municipal corporations might seem to be an amendment of the basic trust document which would be an action a trustee normally is not permitted to take. Usually, only the settlor, or creator of a trust, may amend a trust document. However, a reasonable interpretation might be that the legislature can act properly as a sovereign with plenary powers over (future) political subdivisions, rather than as trustee, when it defines the powers of municipal corporations under its jurisdiction.

^{2/}

See Appendix A (bottom half), at the end of this paper for the entire wording of AS 44.47.150.

PRINCIPLES OF TRUSTEESHIP: A DISCUSSION

A trust involves certain well-defined obligations. The Trust Document normally spells out the duties and relationships of each party in the trust relationship, including a clear identification of each party and the property to be held and/or managed in trust. Over the years, court cases also have refined the extent of certain duties, obligations, and rights of different parties to a trust.

Trust Document: Creation Of The Trust: Settlor

Section 14(c)(3) of ANCSA constitutes the basic Trust Document. The United States, as holder of title to the lands prior to their conveyance to the Village Corporations, acted as Settlor, or creator of the trust. When selected land is conveyed to the village corporations, the United States will insert in each patent a requirement that mandatory reconveyances specified in Section 14(c) be made by each Village Corporation, including the community expansion (municipal) lands being discussed.

"Interim" Trustee Role of Village Corporations

All lands selected by village corporations, with the exception of those selected under Section 19 (lands in former reserves selected by villages which did not receive any portion of the Alaska Native Fund monies), are subject to these Section 14(c) reconveyance requirements. As written, ANCSA seems not to permit any other exceptions. Thus, each Village Corporation, in effect, has been charged with the responsibility of

being an Interim Trustee over this land until this transfer of property is completed. A village corporation receives title to community expansion lands in trust for further reconveyance to a municipality or to the State in trust. See item #7 (page 20), for more discussion of this interim trust obligation.

Acceptance Of Trust Responsibility by State.

State acceptance of the trust responsibilities was accomplished in 1975 with the enactment of AS 44.47.150. Responsibility for the trust program was placed by the legislature upon the Commissioner of the Department of Community and Regional Affairs.

Identity of Trustee Of Lands Held In Trust

The basic trust document, ANCSA Section 14(c)(3), provides for conveyance of title ... "to the State in trust for any Municipal Corporation established in the Native Village in the future,..." Adding the sense of AS 44.47.150, the Trustee can be defined with respect to each village affected, as:

"The State of Alaska in trust for any first or second class city
incorporated under the laws of the state which may be established
in the Native village of _____
in the future." (name of village)

I recommend that title to community expansion (municipal trust) lands conveyed to the State in trust under Section 14(c)(3) be granted, accepted, and

administered in accordance with the above definition of the trustee.

The State in trust, through the Municipal Lands Trust program, is an institutional trusteeship, differing from the personal trusteeship found in federal (BLM) townsite trust administration. The Commissioner of the Department of Community and Regional Affairs has been designated to administer the trust; and this writer, being appointed to the position of "Municipal Lands Trustee", is a surrogate trustee or agent of the Commissioner, and is subject to the Commissioner's direction and supervision.

The term "municipal lands" in the program name and job title seems appropriate even though the identical term is not found in ANCSA Section 14(c)(3). ANCSA requires that "community expansion" lands be conveyed in trust to the State for later reconveyance to a future municipality in the Native village, hence they are actually "municipal" lands. Where a first or second class city (municipality) already exists so that no trusteeship is required, the comparable lands become "municipal" lands immediately upon conveyance by a village corporation.

Principle of Undivided Loyalty: Relationship of Trustee to Beneficiaries and Others.

In administering the Municipal Lands Trust Program, the Commissioner and Municipal Lands Trustee assume roles somewhat different from those found in administering usual State agency programs. In law, a trustee is one who takes and holds title to trust property solely for the benefit of another. A standard law text (Corpus Juris Secundum), states that a

trustee owes to the beneficiaries of a trust the duty of undivided loyalty, and he must not be guided or influenced by personal interests of a third party. So it is the duty of a trustee not to accept any position or enter into any relation, or do any act inconsistent with the interests of the beneficiary; that is, he must refrain from doing those things which would tend to interfere with the exercise of a wholly disinterested and independent judgement; and he cannot assume a position inconsistent with, or in opposition to, his trust. He cannot serve two masters with antagonistic interests.

90 CJS Trusts 247.

The rule of undivided loyalty is one of uncompromising rigidity; and no amount of good faith on the part of the trustee can overcome a breach of trust which would result from the existence of divided loyalty.

ibid.

Accordingly, actions, regulations, and policies of the Commissioner, Municipal Lands Trustee, and any other staff involved in administration of these trust lands should reflect at all times the best interests of the beneficiaries, avoid potential conflicts of interest with other parties, and do all things reasonably necessary to avoid any breach of trust in connection with these duties. Such policy seems fully consistent with the terms of acceptance of the trust by the legislature as expressed by AS 44.47.150.

Beneficiaries Of Lands Held In Trust.

Just as the basic Trust Document (ANCSA Section 14(c)(3)) defines the Trustee, it also defines the Beneficiaries, as follows: "any Municipal

Corporation established in the Native village in the future..." Adding the sense of AS 44.47.150, each Beneficiary presently is defined by law as:

"Any first or second class city established in the Native village in the future."

Since it is a future first or second class city that is beneficiary of the trust, it seems instructive to consult the legal text on general property rights of municipalities. Specific laws passed by the Alaska legislature (representing the sovereign powers of the State over municipalities) can modify these general rules; Alaskan municipalities presently have been given rather broad powers regarding municipally owned lands.

All property owned by a municipality is public property in the broadest sense. Municipal corporations hold all property in a fiduciary capacity, for the use and benefit of its citizens, in the sense that all powers of such a corporation are held in trust for public use. 63 CJS MUNICIPAL CORPORATIONS 950.

Municipal property is not the private property of the residents of the municipality on the theory that the municipality is a trustee holding the legal title for the benefit of the inhabitants, and the persons who are taxpayers or members of the public do not have any private interest in the funds and property of a municipal corporation. ibid. It follows, then, that community expansion lands held in trust for a

future first or second class city are for the ultimate general welfare of all future inhabitants of the village.

"Appropriate Village Entity", and Resident Village Citizens,
are Quasi-Co-Trustees with the State.

From the foregoing discussion, it is apparent that the Trustee and resident citizens of the Native Village as represented by the "appropriate village entity" as defined by AS 44.47.150(b), have a joint obligation to manage the trust lands for the village "public" much as would a city government under the same circumstances. The power to pre-approve certain Trustee actions carries with it an obligation to see that the lands are managed consistent with the long-term best interests of that Native community; the trust lands are not merely "private" lands of the present village residents. In this sense, then, the resident citizens collectively can be considered as Co-trustees with the state. Working together, they and the trustee should be certain that appropriate lands and assets can be turned over to the future city at the proper time.

WHAT LANDS MAKE UP THE TRUST (CORPUS)?

Corpus of the trust refers to that property which is to be placed in trust and managed by the trustee for the benefit of the beneficiaries.

Nature of Title Held.

The trust document, ANCSA Section 14(c)(3), specifies title to be conveyed in trust shall be the "surface estate." ANCSA provides, generally,

that the Regional Corporations will own the corresponding subsurface estate. Whether certain resources such as gravel are part of the surface or the sub-surface estate is presently in litigation. Whether any powers of village corporations conferred by ANCSA Section 14(f) to grant consent to explore, develop, or remove minerals from the subsurface estate in village lands are transferred along with the land titles reconveyed to Municipal Corporations and to the State in trust, also is a legal matter which has not been determined.

Type of Property to be Conveyed in Trust

The Trust Document, specifies that the land to be conveyed in trust shall be "the improved land on which the Native village is located" (which remains after conveyances have been made under Sections 14(c)(1) and (2), "and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable needs", subject to a minimum acreage requirement. ANCSA Section 14(c)(3). See item #13 on page 22 for philosophy on listing land-use categories of land to be conveyed in trust.

Acreage to be Conveyed

The amount to be conveyed in trust "shall be no less than 1,280 acres". ANCSA Section 14(c)(3). This is equal to two square miles.

Based on settlements already reached between several cities and their respective village corporations, and expressions by a substantial

number of village residents and councils where the State will have trust responsibilities, it appears that the 1,280 acre conveyance is not apt to be greatly exceeded except in unusual circumstances where foreseeable needs may require the conveyance of a greater acreage.

WHEN DO TRUST RESPONSIBILITIES AND ACTIVITIES BEGIN?

The State's responsibilities as the trustee created by ANCSA began when it accepted those responsibilities in 1975 with the passage of AS 44.47.150. The nature of these responsibilities can best be expressed in terms of appropriate trustee activities related to identifying lands to be placed into trust, and the management of those lands.

Philosophically, this can be approached from two points of view; (1) when is the earliest time that trust activities can occur, and (2) when is the latest time permitted under law.

Trust activities already have begun. Responses have been made to urgent needs and requests from several villages needing title to land for public uses such as schools, power easements, HUD housing, and a sewer lagoon. The approach used where the federal government has not yet issued patent or Interim Conveyance (I.C.) to selected lands is what I call "conveyance by promissary note". A Contractual Agreement is executed voluntarily by the parties (Village Corporation and State in trust), backed up by appropriate resolutions of the Village Corporation Board of Directors, and the traditional council where this is an appropriate village entity. The Regional Corporation also certifies

it was given opportunity to review and render advice per ANCSA Section 14(c)(5).

These Agreements provide that the land involved will be part of a future 14(c)(3) conveyance to the State in trust, and that it will be accepted by the State in trust. The Council resolutions concur with the desirability of devoting that parcel to the specific purpose. The trustee gives written assurance to the entity developing the land that an appropriate permit, lease, deed, etc. will be issued to it upon receipt of title by reconveyance from the corporation. As an umbrella over the whole transaction, each party joins in requesting that BLM grant an authorizing temporary permit or lease for the specified use until title is conveyed to the corporation. At that time, the promises to convey made by each party to the Agreements will be carried out.

This cumbersome process is necessitated by the unfortunate delays in granting title by BLM, but it sets the foundation for permanent and equitable long term solutions. Each party becomes involved, and each different interest is recognized and protected.

Carrying this concept further, comprehensive Agreements between the village corporation and the State in trust defining the entire parcel(s) to be conveyed and accepted may be made prior to the time BLM transfers the land title to the corporation by IC or patent, if the corporation and the community desire such action. Several village corporations have begun such discussions. Others located within municipalities already have entered into written Agreements with their appropriate First or Second Class City for all the land to be conveyed, with the blessings of the Regional Corporation.

In several regions, there is a strong expression by village corporation boards to get this major decision settled so they can finish their Interim Trusteeship over these lands and get on with other important tasks. Where this is the voluntary wish of the corporation, the State in trust can, and should enter into such early comprehensive agreements. (However, administrative regulations first should be completed and adopted before they are signed by the State in trust. This is scheduled for early 1978).

The latest deadline for actual re-conveyance of community expansion lands to a municipality or the State in trust is, by statute, the receipt of patent to the land by the village corporation. ANCSA 14(c). Before BLM grants patent, however, the corporation must, in virtually every instance present BLM with a Plan of Survey for BLM to use as a guide for surveying the parcels to be re-conveyed under Section 14(c), including the community expansion lands.

Involvement in the Plan of Survey by the State in trust along with the village corporation, is essential, and represents the latest time when activities of the State in trust would begin. The survey plan will constitute a form of acceptance by the Trustee of the 14(c)(3) lands.

Time-wise, there is no statutory deadline when the Plan of Survey must be prepared. However, Village Corporations generally desire to develop the Plan of Survey promptly because, in most instances, individuals authorized to receive tracts under 14(c)(1) cannot get title to their homes, etc. from the corporations without this same Plan of Survey being completed and approved by all parties. Responsibilities of the State in trust in the event of extensive delay or refusal of a corporation to develop a plan

of survey or to convey lands under Section 14(c)(3) are discussed later in this paper.

In summary, the State's trust responsibilities already exist. The State in trust may enter into its program activities now on a village-by-village basis if desired by a particular village corporation. Ordinarily, trust activities will begin by discussing and reaching an agreement with village corporations as to the identity of lands to be conveyed in trust, the trustee representing the interests of any future city to be established in the Native village. This process will be described later. If desired by all parties, an interest in these lands then can be transferred to the State in trust by Contractual Agreement. Actual title can be conveyed to the State in trust when the corporation has received Interim Conveyance from BLM. The ultimate deadline for conveyance to the State in trust is receipt of patent by the Corporation. However, trust activities of the trustee would, in most cases, begin earlier than issuance of patent by BLM, with involvement in the Plan of Survey upon which surveys will be executed so that patent can be granted.

TRUSTEE PARTICIPATION IN IDENTIFYING MUNICIPAL TRUST LANDS.

The Trust Document (ANCSA) is silent as to what party or parties have responsibility to identify community expansion lands, other than to impose a clear duty upon village corporations to make such conveyances to Municipal Corporations or to the State in trust.

Lands to be conveyed to municipalities or placed in trust in nearly every instance require prior survey for purposes of identification and property description. Upon presentment of a proper Approved Plan of

Survey, the Bureau of Land Management will conduct such a survey.

Before a survey is authorized, however, BLM requires assurances that the parties to receive title from the village corporation under Section 14(c) have reached agreement with the corporation and with each other as to how the lands are to be surveyed and reconveyed. If the Approved Plan of Survey is incomplete or if conflicts are not resolved, any extra survey costs needed to accomplish mandatory conveyances appear to be the responsibility of the village corporation. 43 CFR 2650.5-4.

In parallel conveyances of community expansion lands to existing first and second class cities, a broad consensus is developing that the Municipal Corporations and the Village Corporations have a joint, bilateral, and cooperative role in negotiating a settlement of lands which will be surveyed by the Bureau of Land Management and subsequently transferred from the Village Corporation to the Municipal Corporation. Disagreement which cannot be overcome likely would require settlement through litigation between these two parties. (Of course, in any settlement prior to December 18, 1981, the appropriate Regional Corporation also must be given opportunity by the Village Corporation to review and render advice on this matter, according to common interpretations of ANCSA Section 14(c)(5)). Neither the State in trust nor existing municipalities appear to have a one-sided "selection" right, and for this reason, I recommend that the term "select" be avoided in reference to these lands.

In villages where community expansion lands are to be conveyed to the State in trust, the manner in which specific community expansion lands should be identified is open to interpretation. Do the village corporations

in this instance have a unilateral role not found in villages where a municipality exists? I think not. A conveyance made by a village corporation as Grantor also must have a corresponding Grantee to accept the title. Thus, the State in trust, as Grantee, seems to have a legitimate role in identifying and accepting lands to be conveyed in trust. BLM has indicated that they will not make those determinations, and that they look to the State in trust to be a party to the Approved Plan of Survey as an indication that agreement on the parcel(s) to be surveyed and conveyed has been reached.

In my opinion, the State as trustee, after reaching agreement with a village corporation, is the appropriate entity to indicate concurrence on the formal Plan of Survey on behalf of the Beneficiary (a future first or second class city in the Native village). In villages where no Municipal Corporation exists, there is no other authorized legal entity to sign the survey plan with respect to 14(c)(3) community expansion lands. Even though in most villages, community and corporation leadership is identical, Village Corporations cannot properly represent both Grantor and Grantee as this would involve a potential conflict of interest between economic and community interests. Also, some corporation shareholders live outside each village, and some residents in most villages are not shareholders of that village corporation (such as Natives born after December 18, 1971, Natives enrolled elsewhere, and non-Natives).

A PLAN FOR IDENTIFYING MUNICIPAL TRUST LANDS.

Summarizing points made earlier in this paper, and adding to them, a plan for agreeing upon what lands to survey and reconvey to the State

in trust might follow the ideas listed here:

1. The Municipal Lands Trust program of the State should be conducted in a manner which recognizes a fiduciary responsibility to "any first or second class city established in the Native village in the future" (the beneficiary). This responsibility includes participating with the village corporation and residents of the village to identify the lands to be placed in trust.
- 2) The grant of 14(c)(3) community expansion lands by the village corporation as Grantor requires a corresponding acceptance by the State in trust as Grantee to complete the transaction.
- 3) BLM indicates that the Plan of Survey which instructs them how to survey various categories of 14(c) lands will provide that the State in trust, or an appropriate municipality, be a signatory party, indicating acceptance of the tract(s) delineated for survey and re-conveyance by the village corporation.
- 4) Even before the Corporation receives title from BLM, if a community and its village corporation desire, portions or all of a village's trust lands may be identified for ultimate transfer to the State in trust through a negotiated Agreement. This procedure is not required by law, but is designed especially to meet urgent community needs, such as HUD Housing, PHS facilities, school construction, etc. Under this procedure, the Trustee (with the concurrence of an appropriate village entity) can agree to the future transfer of an appropriate property interest to the agency involved, and joins with other parties in petitioning BLM to issue temporary rights thereto.

5) Even if there is no urgent community need for facilities requiring immediate identification of the lands to be surveyed and reconveyed to the State in trust, it may make good sense in many instances to arrive at a decision on the lands to be conveyed into trust at an early time before it is otherwise required. At any rate, an agreement between the village corporation and the Trustee should occur promptly after BLM issues I.C. to the land in connection with development and approval of the Plan of Survey.

6) When a corporation does receive I.C. from BLM, title to the Section 14(c)(3) lands then may be re-conveyed immediately to the State in trust if agreement has been reached; this also will be identified on the Plan of Survey, so it may be surveyed and properly described in terms of a legal survey in a corrective deed, following later issuance of a patent by BLM.

7) Because of the way Section 14(c) is written, village corporations probably would be within their rights if they wish to postpone actual conveyance of these lands to the State in trust until they receive a "patent" from BLM to the selected land, following survey by BLM. Meanwhile, however, they have an Interim Trustee responsibility for the lands involved. If lands necessary and appropriate for purposes listed in Section 14(c)(3) were devoted to other purposes by a village corporation rather than being conveyed to a municipality or to the State in trust, it might constitute a breach of trust of its interim trust duty. Development of the Plan of Survey within a reasonable time following receipt of Interim Conveyance constitutes the latest practicable time for making decisions concerning the identification of these lands, although it can be done earlier.

8) The State Municipal Lands Trust program should act with respect to the trust lands, much as would an imaginary city council and mayor. Great weight should be given by the Trustee to the views of the resident citizens of the Native village during the process of identifying, with the village corporation, which lands should be conveyed in trust. The trustee has a duty to be responsive both to the present needs of the village and to foreseeable needs of any future city which may be established there.

9) In order to insure this responsiveness, the views of the same "appropriate entity such as the traditional council, a village meeting or a village referendum" specified in AS 44.47.150(b), should be obtained and its recommendations recorded by resolution and placed in the files of the department prior to accepting the grant of lands from the village corporation.

10) The "appropriate village entity" should be encouraged to obtain outside technical information and analysis to assist it in making recommendations to the trustee. (The Division of Community Planning, for example, has staff and programs to provide technical assistance upon request of the village entity).

11) The trustee, acting as a fiduciary, also should obtain outside technical information and advice when deemed appropriate, and share such information and advice with the "appropriate village entity".

12) While a village corporation could take an extreme position of offering lands for community expansion which are wholly unsatisfactory to the residents of the village or a first or second class city established

in the Native village in the future, on a "take it or leave it" basis, it is quite unlikely to occur. If it did, or if a corporation refused altogether to convey lands pursuant to Section 14(c)(3), it appears to be a duty of the trustee to litigate the issue, if it otherwise cannot be resolved by negotiation or arbitration. However, good faith negotiation between the parties will resolve every case without litigation, in my view. Section 14(c)(3) land is community land; the State in trust has a duty to represent and advocate long-term, public interests of the community. Valid community interests will tend to solidify behind reasonable and appropriate settlements of 14(c)(3) lands if all parties representing villages recognize that these lands are their community lands, not the State's. Each community can best determine for itself which lands are most appropriate for community use.

13) No attempt should be made by the State in trust to prepare a uniform or sample list of land-use categories which should be included in the tract or tracts conveyed in trust. Needs of various communities vary greatly. Any such list would hamper common-sense decisions which otherwise will evolve through honest, good-faith negotiation. Technical advice obtained by the village entity and/or the trustee can be expected to raise for consideration land-use issues which might otherwise be overlooked. As a matter of principle it seems appropriate that the lands conveyed be those essential for present and future public, community uses which normally are associated with cities, rather than those which primarily are of income producing nature.

14) Nothing in the law appears to dictate the shape or configuration of all the lands to be conveyed in trust. As appropriate, the conveyance

could consist of a single tract, or more than one tract. In some instances the corporation might retain one or more tracts within a larger block conveyed in trust, provided the overall common-sense effect does not violate the definition of lands to be conveyed in trust as stated in ANCSA Section 14(c)(3). Such tracts, if retained and productively improved by the corporation, or made available by the corporation for other private development, might benefit the community and contribute to the well-being of present and future residents more than would inclusion thereof to the State in trust for a future city. This concept best can be identified locally. Merely because a certain parcel of land may be suitable as a site for expansion of a community, does not necessarily mean that its conveyance to the State in trust is necessary for community expansion. ANCSA Section 14(c)(3) requires reconveyance only of lands necessary for community expansion.

15) The duties of the trustee should include making timely reports to the village residents with respect to their trust lands, in addition to the annual fiscal reports required by AS 44.47.150(d).

16) The trustee staff should become personally familiar with the land and residents of villages where trust responsibilities exist, by traveling to the villages as much as practicable, and consulting often with village people and their leaders.

ON BEING RESPONSIVE TO COMMUNITY NEEDS CONCERNING EXPANSION LANDS

It is intended that the Municipal Lands Trust program be highly responsive to the needs of the communities involved in the trust. A village should

not find it necessary to incorporate as a city only for the purpose of obtaining control of these community expansion lands. If incorporation occurs, it should be for other valid reasons.

If this kind of responsiveness is achieved, it will result from good-faith efforts and cooperation of the rural people involved, (whose participation is essential), and the Trustee staff. This responsiveness can be concentrated through efforts in two broad areas: (a) program activities of the trustee, and (b) participation and involvement by community residents and leaders.

Here are some examples of planned trustee activities: personal village visits by the Municipal Lands Trustee at least once a year (and more frequently when the level of decision-making activity requires), technical assistance visits by others as requested by the community and the trustee, periodic information letters, and annual and special written reports. One such special report could be made to the rural trust villages summarizing the comments received during the initial trustee village visits this fall, and their possible affect on proposed regulations. Always, the trustee will try to keep an open ear to oral and written requests and comments from village residents.

Different villages may need different solutions to their community expansion land problems; what will work in one village should not be forced on another if it does not fit equally well. The statutory requirement that pre-approval resolutions by an appropriate village entity be obtained before the trustee takes certain land actions, will be honored in good faith.

Village entities will be encouraged to develop long-term plans for trust

lands as an aid both to the community and the trustee in knowing what land activities are expected and appropriate. Technical assistance to help in this effort may be arranged through the trustee at the request of the appropriate village entity.

Subdivisional surveys of trust land parcels likely will be required in some villages to make trust land available for authorized purposes; a State budget request by the Municipal Lands Trust program already has been made to establish and fund a Revolving Survey Fund next year. If approved, very low-cost additions probably can be added to basic BLM contractual subdivisional surveys. This would allow lots to be available for lease or sale as appropriate when the village entity has identified them as being required to meet community needs. These survey costs could be included in the price of the lots and recovered as the lots are made available, thus replenishing the fund for later use in that village or elsewhere.

We must honestly encourage, and honorably include, good-faith input by the bush public which is consistent with the legal responsibilities of the trust program. Such a two-way partnership is essential to insure a successful program. Honesty and openness on our part will go a long way in encouraging involvement and acceptance by those served by the trust. Wide distribution of this paper is consistent with this intent.

Prior to drafting proposed regulations which will actually establish the Municipal Lands Trust program operational limits, I expect to visit about 25 villages (about one-fourth of those involved in the trust land program)

to discuss this philosophy and to obtain views as to what the regulations should include. These trips will be scheduled for September and October, 1977. Discussions also will be held with staffs of regional profit and non-profit corporations, and their input requested; also with AFN and ANF leaders. Later the proposed regulations will be broadly circulated for comments before being revised and adopted. A target date for distribution of these proposals is this November or December. After changes are made to reflect appropriate comments and suggestions, hopefully they can be adopted in early 1978. Then the trust program can go ahead on solid footing.

COMMENTS ON BASIC ISSUES

Certain basic issues concerning the trust program have arisen which should be mentioned.

The first issue deals with Native villages which are located in organized Boroughs but are not themselves incorporated as first or second class cities. Would the Borough be a "Municipal Corporation" entitled to receive and administer the 14(c)(3) lands on behalf of such a village? I believe paragraph (g) of AS 44.47.150 is a determination by the legislature, which has sovereign, plenary powers over municipalities, that only first and second class cities are municipal corporations for the purpose of administering 14(c)(3) lands.

The second issue deals with the identity of the recipient of Section 14(c)(3) lands for a Native village not incorporated as a first or second class city, where the lands in question physically are located near that village, but also are located within the jurisdiction of an adjacent or nearby first

or second class city. In some cases, the nearby city may include another village which has ANCSA selection rights of its own. The question raised is --- should the incorporated city receive title to 14(c)(3) land necessary for the expansion of the donating community just because the land falls within its political jurisdiction, (perhaps in addition to receiving lands from its own village corporation), or would the 14(c)(3) land of the first village be conveyed to the State in trust for a future first or second class city which later might be established in the presently unincorporated Native village?

I feel this issue is best approached by recognizing that selections under ANCSA were authorized by an eligibility certification for each Native village. It makes best sense under ANCSA, I think, that community expansion lands located within a selection of 69,120 (or more) acres made by a village certified to so select, be designated for the benefit of that same village, not for another one. Thus, in the example given, since the incorporated city is not located in the first village, the lands probably should be conveyed in trust for a future first or second class city established in that Native village in the future. If the nearby city should annex the village in question, I assume it would then be the city in that village and the lands would be re-conveyed to it by the State in trust. The fact that present policy prohibits incorporation of a separate city in such close proximity to an existing one could be disregarded here. As sovereign, the legislature could amend that policy, could require merger of both areas into one city, or could even dissolve the first. Meanwhile, the State in trust would manage these lands for the ultimate benefit of a city in the donating village.

The third issue deals with determining what is the "appropriate village entity" (see AS 44.47.150(b) for definition: Appendix B) to speak for the citizens of the village and to pre-approve land transfer actions by the trustee. Closely tied in with this is the question of who are residents of some complex communities, especially those along highways. Stated another way, where are the boundaries of those villages? Also, interwoven with these questions is the identity of present residents of any first or second class beneficiary city which later may be established in that Native village. Do all persons living in close proximity to the traditional Native village also constitute a constituency of that future city? Do they properly have sufficient present interest in these affairs to entitle them to participate in a village meeting or village referendum, such as referred to in AS 44.47.150(b)?

I expect the village informational meetings held later this Fall will reveal common-sense answers to this issue. The answers may not be uniform in all village situations. Consensus probably exists, or can be reached, on a local level without a need for the trustee or some other party to make a determination. Possibly in some cases, a local committee acceptable to all factions where impasse is apparent could be formed to offer a solution. This issue will need to be addressed in future regulations; input from the communities offering suggestions on how to satisfactorily resolve it will be helpful and welcome.

The fourth and final issue discussed here concerns structuring the trust program to obtain maximum separation from ordinary line agency programs of the State. Such separation appears necessary so that the Municipal Lands Trust program may operate under a bona-fide trust policy to the

greatest degree possible. It may be more difficult to explain the necessity of this policy to employees of other state agencies than to the trustee program staff.

Acceptance of 14(c)(3) trust lands into the corpus of the trust does not automatically make the land available for purposes desired by other state agencies. AS 44.47.150(b) requires that a pre-approval resolution by the appropriate village entity first must be obtained. A separate transfer document then can be granted by the trustee to make the trust land available to that other agency. In some instances, a reversionary clause might be appropriate to return the property interest to the corpus of the trust or to the future city if the land later were no longer needed for the original purpose.

Arrangements should be made to obtain independent legal advice and representation in the event of actual or potential conflicts of interest occurring between the trust program and other agencies of the state. This might take the form of special counsel appointed by the state attorney general or an independent, outside counsel. Such an arrangement has precedent (See Lassen v Arizona Ex Rel Highway Department, 385 US 458, (1967), involving trust lands in Arizona).

IN CONCLUSION

This paper intends to establish communication with those involved with and affected by the Municipal Lands Trust program, by identifying issues and setting forth a preliminary philosophy.

It is not the final word. It can be modified, or developed along additional lines.

We ask for comments from all who may be affected by the trust program -- both in the State government and outside. If the trust program is to work properly, these comments are necessary. Please send them as soon as possible so they can be useful in drafting the trustee regulations which will begin about October 15, 1977.

Send comments to:

Robert L. Jenks
Municipal Lands Trustee
Department of Community and
Regional Affairs
511 W. Fourth Avenue
Anchorage, Alaska 99501

OR

Lee McAnerney, Commissioner
Department of Community and
Regional Affairs
Pouch B
Juneau, Alaska 99811

RLJ/ajr

Statement by Commissioner:

This preliminary Statement has been reviewed, and its reproduction and distribution is hereby approved. It is not to be regarded as official policy or regulations, but as a method to solicit comments, input, and suggestions from interested parties. Involvement and participation by interested parties is desired and encouraged.

Based upon this statement and any later modifications resulting from comments by others, proposed regulations governing the State in trust program will be created and distributed. These proposed regulations also will be influenced by input received during the 25 to 30 village meetings, one or more to be scheduled in each regional area in the fall of 1977. After the Proposed Regulations are published and copies distributed to all interested parties of record, (probably in November or December of 1977), further opportunity for comment and input will be provided. Final adoption of basic regulations for the Trustee program presently is planned for early 1978.

Lee McAnerney

Lee McAnerney, Commissioner
Department of Community and
Regional Affairs

29 August 1977

Date

APPENDIX A (TOP HALF)

SECTION 14(c)(3) of the ALASKA NATIVE CLAIMS SETTLEMENT ACT:

(c) Each patent issued pursuant to subsections (a) and (b) shall be subject to the requirements of this subsection. Upon receipt of a patent or patents;

(3) the Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future, title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs: Provided, That the amount of lands to be transferred to the Municipal Corporation or in trust shall be no less than 1,280 acres;

APPENDIX A (BOTTOM HALF)

ALASKA STATUTES 44.47.150:

Sec. 44.47.150. Village land conveyed in trust. (a) The commissioner of the Department of Community and Regional Affairs is designated to accept, administer, and dispose of land conveyed to the state in trust by village corporations under § 14(c)(3) of the Alaska Native Claims Settlement Act (P.L. 92-203, 85 Stat. 703) for the purposes specified in that section.

(b) Transfer of land by sale, lease, right-of-way, easement, or permit, including transfer of surface resources, may be made by the commissioner only after approval of an appropriate village entity such as the traditional council, a village meeting, or a village referendum. Such approval shall be by resolution filed with the department.

(c) Within one complete state fiscal year after the incorporation of a municipality in the village or of a municipality which includes all or part of the village, land acquired under this section shall be conveyed without cost to the municipality, and the municipality shall succeed to all the entrusted interest in the land.

(d) Separate accounts shall be maintained in the name of each village for the land, including the revenues from the land, acquired from each village corporation under this section, and within 90 days of the close of each state fiscal year a statement of the account for each municipality shall be prepared by the commissioner and be made available to the village and to the public upon request.

(e) Upon the conveyance of land to a municipality under this section, the commissioner shall account to the municipality for all profits including interest from the land, and the municipality may then request that the governor submit a request to the legislature for an appropriation for the amount due it.

(f) No title or interest to lands acquired by the department under this section may be acquired by adverse possession or prescription.

(g) For the purposes of this chapter, the term municipality includes only first and second class cities incorporated under the laws of the state. (§ 1 ch 119 SLA 1975)

APPENDIX B

Citations from Title 43, Code of Federal Regulations:

43 CFR 2650.5-4:

SECTION 2650.5-4 VILLAGE SURVEYS, BUREAU OF LAND MANAGEMENT RULES AND REGULATIONS FOR ALASKA NATIVE SELECTIONS

(a) Only the exterior boundaries of contiguous entitlements for each village corporation will be surveyed. Where land within the outer perimeter of a selection is not selected, the boundaries along the area excluded shall be deemed exterior boundaries. The survey will be made after the total acreage entitlement of the village has been selected.

(b) Surveys will be made within the village corporation selections to delineate those tracts required by law to be conveyed by the village corporations pursuant to section 14(c) of the act.

(c)(1) The boundaries of the tracts described in paragraph (b) of this section shall be posted on the ground and shown on a map which has been approved in writing by the affected village corporation and submitted to the Bureau of Land Management. Conflicts arising among potential transferees identified in section 14(c) of the act, or between the village corporation and such transferees, will be resolved prior to submission of the map. Occupied lots to be surveyed will be those which were occupied as of December 18, 1971.

(2) Lands shown by the records of the Bureau of Land Management as not having been conveyed to the village corporation will be excluded by adjustments on the map by the Bureau of Land Management. No surveys shall begin prior to final written approval of the map by the village corporation and the Bureau of Land Management. After such written approval, the map will constitute a plan of survey. Surveys will then be made in accordance with the plan of survey. No further changes will be made to accommodate additional section 14(c) transferees, and no additional survey work desired by the village corporation or municipality within the area covered by the plan of survey or immediately adjacent thereto will be performed by the Secretary.