

**OVERVIEW**

**INDIAN**

**LAW &**

**STATE/  
TRIBAL**

# Indian Law Issues

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# INDIAN LAW BRIEFING

## Joint Meeting of the House State Affairs and Judiciary Committees

February 12, 2001

Department of Law presentation by:

Attorney General Bruce Botelho  
Deputy Attorney General (Civil) Barbara Ritchie  
Deputy Attorney General (Criminal) Cynthia Cooper  
Chief Assistant Attorney General D. Rebecca Snow

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- Administrative Order No. 186
- Draft State-Tribal Millennium Agreement

# Indian Civil Rights Act

25 § 1302

INDIANS

## § 1302. Constitutional rights

No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

(As amended Pub.L. 99-570, Title IV, § 4217, Oct. 27, 1986, 100 Stat. 3207-146.)

### HISTORICAL AND STATUTORY NOTES

#### 1986 Amendment

Par. (7). Pub.L. 99-570, § 4217, substituted "for a term of one year and a fine of \$5,000" for "for a term of six months or a fine of \$500".

#### Enhancement of Ability of Tribal Governments to Prevent Traffic of Illegal Narcotics

Section 4217 of Pub.L. 99-570 provided in part that amendment of par. (7) of this section

was "To enhance the ability of tribal governments to prevent and penalize the traffic of illegal narcotics in Indian reservations".

#### Legislative History

For legislative history and purpose of Pub.L. 99-570 see 1986 U.S. Code Cong. and Adm. News, p. 5393.

#### Federal Forms

11 Federal Procedural Forms L Ed, Indians and Indian Affairs § 41:135.

### WEST'S FEDERAL PRACTICE MANUAL

Reverse discrimination, see West's Federal Administrative Practice § 15573.

### LAW REVIEW AND JOURNAL COMMENTARIES

Bothersome need for asymmetry in any federally dictated rule of recognition for the enforcement of money judgments across Indian reservation boundaries. Robert Laurence, 27 Conn. L.Rev. 979 (1995).

EPA and Indian Reservations: Justice Stevens' Factual Approach. Peter W. Sly, 20 *Envtl.L.Rep.* 10429 (1990).

Fighting over Indian children: The uses and abuses of jurisdictional ambiguity. Barbara Ann Atwood, 36 *UCLA L.Rev.* 1051 (1989).

Geographically-based and membership-based views of Indian tribal sovereignty: The Supreme Court's changing vision. Allison v. Dusias, 55 *U.Pitt.L.Rev.* 1 (1993).

Memory and misrepresentation: Representing Crazy Horse. Nell Jessup Newton, 27 *Conn.L.Rev.* 1003 (1995).

Quest for a principled theory of tribal sovereignty: Fueling the fires of tribal/state conflict. N. Bruce Duthu, 21 *Vt.L.Rev.* 47 (1996).

Sentencing and cultural differences: Banishment of the American Indian robbers. Note, 20 *J. Marshall L.Rev.* 239 (1995).

Supreme Court removal of Tribal Court jurisdiction over crimes by and against Reservation Indians. (1984-1985) 20 *New Eng.L.Rev.* 247.

The status of Indian tribes in American law today. Honorable William C. Canby, Jr., 62 *Wash.L.Rev.* 1 (1987).

## STATE-TRIBAL RELATIONS TEAM

### A Short History of the Federal Recognition of Tribes in Alaska and the Evolution of the State's Position

Prepared by Alaska Department of Law, 2000

Federally recognized tribes are independent political entities with inherent powers of self-government subject to the plenary power of Congress. The power to recognize tribes and to regulate the scope of their powers is exclusively federal.

Until recently there was great uncertainty about the status of Alaska Tribes. When Governor Knowles assumed office the Alaska Supreme Court had only accepted the federally recognized status of Metlakatla through its 1977 decision in *Atkinson v. Haldane*. The *Atkinson* decision adopted the U.S. Supreme Court's rule that once the political branches of the federal government have recognized a tribe, both federal and state courts must do the same. This rule has been in place since 1865 and reflects the U.S. Constitution's commitment of Indian affairs to the federal government through the "Indian Commerce Clause," U.S. CONST. art. I, § 8, cl. 3.

While it has long been clear that tribal status determinations are within the sole authority of the federal government, the federal government was not clear with respect to Alaska Tribes until the mid-Nineties. It was not until 1978 that the Interior Department developed regulations governing the tribal recognition process. In 1979, when Interior published its first list of tribes, no Alaska Tribes were included. Throughout the eighties, Interior's lists treated Alaska Native entities in a confusing and conflicting manner. The 1988 list, for example, included ANCSA corporations that clearly were not tribes. In early 1993, Interior Solicitor Sansonetti issued a comprehensive legal opinion that specifically declined to identify which Alaska entities qualified as tribes. Against this backdrop, and in the absence of unequivocal recognition by the federal government, the State was unwilling to accept assertions of tribal status.

Then, in October of 1993, the Interior Department issued a new tribal entities list. The list's preamble set out the confusing history of prior efforts to list Alaska Tribes and claimed that the new list was intended to "eliminate any doubt" that the Native communities listed enjoy the "same status as tribes in the contiguous 48 states." This executive branch recognition of Alaska Tribes was the first in a series of clarifying federal actions.

The next clarifying action was the enactment, with the support of the Alaska delegation, of the Federally Recognized Indian Tribe List Act of 1994. Through the Act, Congress confirmed the Interior Department's 1993 list, restored the Central Council of Tlingit and Haida Tribes to it, and specifically acknowledged the "government-to-government relationship between the United States and other federally recognized Alaska Native tribes."

Finally, in 1995, on the strength of Interior's 1993 and 1995 lists and Congress' 1994 List Act, federal district court Judge Russel Holland recognized the tribal status of the Native Village of Fort Yukon. It was clear that Judge Holland's decision was equally applicable to all Alaska Tribes appearing on the Secretary's list.

At this point, Governor Knowles concluded that it was no longer appropriate to contest the status of Alaska's federally recognized Tribes. All three branches of the federal government had spoken on this uniquely federal law question. At the Governor's direction, the Department of Law did not appeal Judge Holland's tribal status ruling. The Knowles administration has since respected and supported the federal recognition of Alaska Tribes.

Though Governor Knowles was sharply criticized for accepting the tribal status of Fort Yukon, that position was by then firmly grounded in the law. Just as ANCSA reflected Congress' intent that ANCSA lands would not constitute Indian country as finally determined by the United States Supreme Court in the *Venetie* case, so the List Act confirmed Congress' intent that Interior's list would be conclusive of tribal status.

After *Venetie*, the Knowles administration supported the authority of tribal courts to adjudicate the custody of member children in the landmark *John v. Baker* case. The Alaska Supreme Court agreed with the State's arguments and, in so doing, also settled state law on the question of tribal status. The

court, including the two dissenting justices, held that it was obliged to defer to the federal government's recognition of Alaska tribes.

Even before the John v. Baker decision came down in September of 1999, the State filed another brief in the Alaska Supreme Court supporting the federal recognition of Alaska Tribes. Through its friend of the court brief the State urged reversal of the lower court's refusal to recognize the tribal status of the Native Village of Mekoryuk and, by extension, all Tribes on Interior's list. Though the legal debate over the status of Alaska tribes should be over, legal challenges persist. In addition to the Mekoryuk case, one of the parties to John v. Baker has sought review of the Alaska Supreme Court's decision in the U.S. Supreme Court. The State supported the respondent's opposition to that effort through another friend of the court brief.

In the meantime, Governor Knowles is implementing the Rural Governance Commission's recommendation that the State formally acknowledge the federally recognized status of Alaska tribes. On January 7, 2000, the Governor appointed a cabinet level negotiating team to undertake government-to-government negotiations with representatives of Alaska's federally recognized tribes. The Governor has said that he hopes the negotiations will forge "an enduring and positive relationship between the state and the tribes."

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**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****INDIAN ENTITIES RECOGNIZED AND ELIGIBLE TO RECEIVE SERVICES FROM THE UNITED STATES BUREAU OF INDIAN AFFAIRS****AGENCY:** Bureau of Indian Affairs.**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the current list of tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103-454; 108 Stat. 4791, 4792).

**FOR FURTHER INFORMATION CONTACT:** Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, MS-4631-MIB, 1849 C Street, NW, Washington, D.C. 20240. Telephone number: (202) 208-2475.

**SUPPLEMENTARY INFORMATION:** This notice is published in exercise of authority delegated to the Assistant Secretary - Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below are lists of federally acknowledged tribes in the contiguous 48 states and in Alaska. The list is updated from the last such list published in October 23, 1997 (62 FR 55270), to include name changes or corrections. There have been no new tribal entities added to the list. The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

**NATIVE ENTITIES WITHIN THE STATE OF ALASKA RECOGNIZED AND ELIGIBLE TO RECEIVE SERVICES FROM THE UNITED STATES BUREAU OF INDIAN AFFAIRS**

**[FOR INDIAN TRIBAL ENTITIES WITHIN THE CONTIGUOUS 48 STATES CLICK HERE](#)**

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**A**

- Village of Afognak
- Native Village of Akhiok
- Akiachak Native Community
- Akiak Native Community
- Native Village of Akutan
- Village of Alakanuk
- Alatna Village
- Native Village of Aleknagik
- Algaaciq Native Village (St. Mary's)
- Allakaket Village
- Native Village of Ambler
- Village of Anaktuvuk Pass
- Yupiit of Andreefski
- Angoon Community Association
- Village of Aniak
- Anvik Village
- Arctic Village (See Native Village of Venetie Tribal Government)
- Native Village of Atka
- Asa'carsarmiut Tribe (formerly Native Village of Mountain Village)
- Atqasuk Village (Atkasook)
- Village of Atmautluak

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**B**

- Native Village of Barrow Inupiat Traditional Government (formerly Native Village of Barrow)
- Beaver Village
- Native Village of Belkofski
- Village of Bill Moore's Slough
- Birch Creek Tribe (formerly listed as Birch Creek Village)
- Native Village of Brevig Mission
- Native Village of Buckland

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**C**

- Native Village of Cantwell
- Native Village of Chanega (aka Chenega)
- Chalkyitsik Village
- Village of Chefornak
- Chevak Native Village
- Chickaloon Native Village
- Native Village of Chignik
- Native Village of Chignik Lagoon
- Chignik Lake Village

- Chilkat Indian Village (Klukwan)
- Chilkoot Indian Association (Haines)
- Chinik Eskimo Community (Golovin)
- Native Village of Chistochina
- Native Village of Chitina
- Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
- Chuloonawick Native Village
- Circle Native Community
- Village of Clark's Point
- Native Village of Council
- Craig Community Association
- Village of Crooked Creek
- Curyung Tribal Council (formerly Native Village of Dillingham)

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#### D

- Native Village of Deering
- Native Village of Diomedea (aka Inalik)
- Village of Dot Lake
- Douglas Indian Association

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#### E

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#### G

- Native Village of Gakona

- Galena Village (aka Louden Village)
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- Native Village of Goodnews Bay
- Organized Village of Grayling (aka Holikachuk)
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#### H

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- Holy Cross Village
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- Hughes Village
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- Hydaburg Cooperative Association

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#### I

- Igiugig Village
- Village of Iliamna
- Inupiat Community of the Arctic Slope
- Iqurmuit Traditional Council (formerly Native Village of Russian Mission)
- Ivanoff Bay Village

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#### K

- Kaguyak Village
- Organized Village of Kake
- Kaktovik Village (aka Barter Island)
- Village of Kalskag
- Village of Kaltag
- Native Village of Kanatak
- Native Village of Karluk
- Organized Village of Kasaan
- Native Village of Kasigluk
- Kenaitze Indian Tribe
- Ketchikan Indian Corporation
- Native Village of Kiana
- Agdaagux Tribe of King Cove
- King Island Native Community
- Native Village of Kipnuk
- Native Village of Kivalina

- Klawock Cooperative Association
- Native Village of Kluti Kaah (aka Copper Center)
- Knik Tribe
- Native Village of Kobuk
- Kokhanok Village
- New Koliganek Village Council (formerly Koliganek Village)
- Native Village of Kongiganak
- Village of Kotlik
- Native Village of Kotzebue
- Native Village of Koyuk
- Koyukuk Native Village
- Organized Village of Kwethluk
- Native Village of Kwigillingok
- Native Village of Kwinhagak (aka Quinhagak)
- Native Village of Larsen Bay
- Levelock Village
- Lesnoi Village (aka Woody Island)
- Lime Village
- Village of Lower Kalskag

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#### L

- Native Village of Larsen Bay
- Levelock Village
- Lesnoi Village (aka Woody Island)
- Lime Village
- Village of Lower Kalskag

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#### M

- Manley Hot Springs Village
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- Native Village of Marshall (aka Fortuna Ledge)
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- Mentasta Traditional Council (formerly Mentasta Lake Village)
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#### N

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- Native Village of Napakiak
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- New Stuyahok Village
- Newhalen Village
- Newtok Village
- Native Village of Nightmute
- Nikolai Village
- Native Village of Nikolski
- Ninilchik Village
- Native Village of Noatak
- Nome Eskimo Community
- Nondalton Village
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- Northway Village
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#### O

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#### P

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- Pedro Bay Village
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- Native Village of Pitka's Point
- Platinum Traditional Village
- Native Village of Point Hope
- Native Village of Point Lay
- Native Village of Port Graham
- Native Village of Port Heiden
- Native Village of Port Lions

- Portage Creek Village (aka Ohgsenakale)
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#### Q

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#### R

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#### S

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- Native Village of Shaktoolik
- Native Village of Sheldon's Point
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#### T

- Takotna Village
- Native Village of Tanacross

- Native Village of Tanana
- Native Village of Tatitlek
- Native Village of Tazlina
- Telida Village
- Native Village of Teller
- Native Village of Tetlin
- Central Council of the Tlingit & Haida Indian Tribes
- Traditional Village of Togiak
- Tuluksak Native Community
- Native Village of Tuntutuliak
- Native Village of Tununak
- Twin Hills Village
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U

- Ugashik Village
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Y

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March 3, 2000

(Sgnd) Kevin Gover

Date

Assistant Secretary - Indian Affairs

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# NEWS

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U.S. DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

FOR IMMEDIATE RELEASE  
January 3, 2001

CONTACT: Marilyn Heiman  
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202-208-3710

### **Assistant Secretary Gover Reaffirms Federal Trust Relationship for the King Salmon Tribe and Shoonaq' Tribe of Kodiak in Alaska and the Lower Lake Rancheria in California**

#### **Action Corrects Oversight to Federally Recognized Tribes List**

Assistant Secretary – Indian Affairs Kevin Gover has reaffirmed the federal trust relationship between the United States and the King Salmon Tribe and the Shoonaq' Tribe in Alaska and the Lower Lake Rancheria in California after finding that their government-to-government relationship with the U.S. has never been severed. "The King Salmon Tribe, the Shoonaq' Tribe of Kodiak, and the Lower Lake Rancheria have been officially overlooked for many years by the Bureau of Indian Affairs even though their government-to-government relationship with the United States was never terminated," Gover stated in his finding dated December 29, 2000, "I am pleased to correct this egregious oversight."

Due to administrative error, the BIA had for several years failed to place the three tribes on the list of federally recognized tribes it is required to publish annually in the Federal Register under the Federally Recognized Indian Tribes List Act (Pub. L. 103-454, 108 Stat. 4791, 4792). The list, entitled "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs," was last published on March 13, 2000.

The Assistant Secretary found that the King Salmon Tribe of Alaska has existed and maintained a continuous Indian community from historic times, and that present-day tribal members are descendants of a group that had been forced to leave an earlier homesite destroyed during an eruption of Mount Katmai.

The Assistant Secretary also found that the Shoonaq' Tribe of Kodiak, Alaska, has maintained a continuous political organization since European contact, that the Council of the Shoonaq' Tribe of Alaska has governed the historical Native community in and around the contemporary community of Kodiak, and that no other tribe has claimed the territory or the tribe's membership. Congress acknowledged Kodiak as an historic Native village possessing claims to aboriginal title in the Alaska Native Claims Settlement Act (ANCSA). In 1987, the Kodiak Tribal Council learned it had not been included on a list of federally recognized tribes

published by the BIA in the Federal Register and requested the Secretary of the Interior to correct the list.

In the case of the Lower Lake Rancheria of California, the Assistant Secretary found that the tribe had not been made subject to the Rancheria Act (Pub. L. 85-671, 72 Stat. 619, as amended by Pub. L. 88-419, 78 Stat. 390), by which Congress terminated the federal government's trust responsibility for dozens of California tribes during the 1950s, and that its tribal status has been continuously maintained by tribal members to the present day.

With the Assistant Secretary's action the number of federally recognized tribes now stands at 561, which also includes two tribes recognized under H.R. 5528, the Omnibus Indian Advancement Act (Pub. L. 106-568, 114 Stat. 2868) signed by President Clinton on December 28, 2000. The Loyal Shawnee Tribe of Oklahoma, which since 1869 has been a culturally and linguistically separate entity within the Cherokee Nation of Oklahoma, was accorded federal recognition as an independent tribe. The Graton Rancheria of California, which had been terminated by the Rancheria Act, was restored to federal recognition status.

Contact information for the three reaffirmed tribes: The King Salmon Village Council, P.O. Box 68, King Salmon, Alaska 99613-0068, the Honorable Ralph Angasan, Sr., President; The Shoonaq' Tribe of Kodiak, 713 East Rezanof Drive "B", Kodiak, Alaska 99615, the Honorable Kenneth Parker, Chairman; and The Lower Lake Rancheria, 131 Lincoln Street, Healdsburg, California 95448, the Honorable Daniel D. Beltran, Chairman.

For more information, contact Marilyn Heiman, Special Assistant to the Secretary for Alaska, U.S. Department of the Interior, at (907) 271-5485, fax: (907) 271-4102, or Nedra Darling, Director, Office of Public Affairs, Bureau of Indian Affairs, at (202) 208-3710, fax: (202) 501-1516.

-BIA-

2. Review of a Department of Energy remedial order:

*Amount in controversy*

\$0-9,999. (18 CFR 381.303(b)): \$100.  
\$10,000-29,999. (18 CFR 381.303(b)): \$600.  
\$30,000 or more. (18 CFR 381.303(a)): \$23,010.

3. Review of a Department of Energy denial of adjustment:

*Amount in controversy*

\$0-9,999. (18 CFR 381.304(b)): \$100.  
\$10,000-29,999. (18 CFR 381.304(b)): \$600.  
\$30,000 or more. (18 CFR 381.304(a)): \$12,060.

4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a)): \$4,520.

**Fees Applicable to Natural Gas Pipelines**

1. Pipeline certificate applications pursuant to 18 CFR 284.22. (18 CFR 381.207(b)): \$1,000.

**Fees Applicable to Cogenerators and Small Power Producers**

1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a)): \$13,550.
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a)): \$15,340.
3. Applications for exempt wholesale generator status. (18 CFR 381.801): \$1,310.

**List of Subjects in 18 CFR Part 381**

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Thomas R. Herlihy,

*Executive Director and Chief Financial Officer.*

In consideration of the foregoing, the Commission amends Part 381, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

**PART 381—FEES**

1. The authority citation for Part 381 continues to read as follows:

Authority: 15 U.S.C. 717-717w; 16 U.S.C. 791-828c, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85.

**§ 381.302 [Amended]**

2. In § 381.302, paragraph (a) is amended by removing "\$14,710" and inserting "\$15,760" in its place.

**§ 381.303 [Amended]**

3. In § 381.303, paragraph (a) is amended by removing "\$21,470" and inserting "\$23,010" in its place.

**§ 381.304 [Amended]**

4. In § 381.304, paragraph (a) is amended by removing "\$11,260" and inserting "\$12,060" in its place.

**§ 381.305 [Amended]**

5. In § 381.305, paragraph (a) is amended by removing "\$4,220" and inserting "\$4,520" in its place.

**§ 381.403 [Amended]**

6. Section 381.403 is amended by removing "\$7,320" and inserting "\$7,840" in its place.

**§ 381.505 [Amended]**

7. In § 381.505, paragraph (a) is amended by removing "\$12,650" and inserting "\$13,550" in its place and by removing "\$14,320" and inserting "\$15,340" in its place.

**§ 381.801 [Amended]**

8. Section 381.801 is amended by removing "\$1,530" and inserting "\$1,310" in its place.

[FR Doc. 01-1149 Filed 1-12-01; 8:45 am]  
BILLING CODE 6717-01-M

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Part 151**

RIN 1076-AD90

**Acquisition of Title to Land in Trust**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

**SUMMARY:** This rule revises and clarifies the procedures used by Indian tribes and individuals to request the Secretary of the Interior to acquire title to land into trust on their behalf. It describes the criteria that the Secretary will use in determining whether to exercise his or her authority to accept title to land to be held in trust for the benefit of Indian tribes and individuals. This rule also describes the procedure for mandatory acquisitions of title and establishes a process to address the difficulties encountered by Indian tribes which have no reservation, have no trust land or have trust land the character of which renders it incapable of being developed.

**DATES:** Effective February 15, 2001.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this rule should be directed to: Terry Virden, Director, Office of Trust Responsibilities, Mail Stop: 4513-MIB, 1849 C Street NW., Washington, DC 20240; telephone: 202-208-5831; electronic mail: TerryVirden@BIA.GOV.

**SUPPLEMENTARY INFORMATION:** The regulation makes more clear the process that is followed by the Secretary in the

exercise of this discretionary authority. The regulation also makes clear that we will follow a process which reflects (1) a presumption in favor of the acquisition of trust title when an application involves title to lands located inside the boundaries of a reservation ("on-reservation lands"), and (2) a more demanding standard for the acquisition of title when the application involves title to lands located outside the boundaries of a reservation ("off-reservation lands"). The delineation of these differing processes will better enable the Secretary to carry out the responsibility for assisting Indian tribes in re-establishing jurisdiction over land located within their own reservations. It also creates a framework that more adequately addresses concerns non-Indian governments may have about the potential ramifications of placing off-reservation lands into trust.

This regulation also describes the procedure for mandatory acquisitions of title. The general statutory authority giving the Secretary discretion to acquire title to lands in trust is found in section 5 of the Indian Reorganization Act (IRA) of 1934, 25 U.S.C. 465. Occasionally, Congress enacts more narrow legislation granting the Secretary discretionary authority to acquire title to land into trust for some specific purpose. Acquisitions of trust title under the IRA and other more narrow statutes that grant discretionary authority to the Secretary are referred to as "discretionary acquisitions" of title. Mandatory acquisitions of title are those that Congress has directed the Secretary to complete by removing any discretion in the administrative decision making process. The processing of these mandated acquisitions has not always been well-understood. The rule identifies the types of acquisitions that we consider mandatory and defines the process by which we acquire the title.

Finally, this regulation establishes a process to address the unique difficulties encountered by Indian tribes which have no reservations, have no trust land or have trust land the character of which renders it incapable of being developed. The process enables such tribes to designate a "Tribal Land Acquisition Area" (TLAA) in which it plans to acquire land. The TLAA requires approval of the Secretary and, when approved, will enable the tribe to acquire title to the lands within the TLAA into trust under the on-reservation provision of this regulation for a prescribed period of time.

On April 12, 1999, the proposed rule for the acquisition of title to land in trust was published in the *Federal*

Register (Vol. 64, No. 69, pages 17574-17588). The initial deadline for receipt of comments was July 12, 1999, but extensions to the comment period were granted to allow additional time for comments on the proposed rule. The comment period expired on December 29, 1999. Comments were received from a wide variety of Indian tribes and individuals, tribal groups, local and state governments and other interested groups and individuals. The development of this final rule making was achieved through formal consultation on the record with affected tribal governments. A panel discussion meeting with federal, state and local governments, Indian tribes and various organizations was held in Washington, DC in May, 1999. Panel members included persons from California Indian Lands Office, attorneys representing various tribal and municipal clients, Minority Staff Director and Counsel of House Resources Committee for Indian Affairs, Majority Staff Director of Senate Committee on Indian Affairs, two tribal chairpersons, Deputy Attorney General of South Dakota and National Association of Convenience Stores. In addition, in accordance with the government-to-government relationship with Indian tribes, formal consultations were held throughout the United States during the comment period to explain and provide interested parties with an opportunity to understand and comment on the final rule. Five nationwide consultation meetings with Indian tribes and individuals were conducted during the comment period. These meetings were held in Albuquerque, New Mexico in May 1999; St. Paul, Minnesota in May 1999; Sacramento, California in June 1999; Mesa, Arizona in June 1999 and Portland, Oregon in August 1999. In total, comments were received from 342 Indian tribes, 335 individuals, 65 state and local governments, 9 congressional offices and 7 federal agencies. Tribal participation was also achieved by consultation with the National Congress of American Indians (NCAI) for its member tribes. NCAI established a working group to assist in the development of the comments on the proposed regulations.

This notice is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs pursuant to Part 290, Chapter 8, of the Departmental Manual.

#### Summary of Regulations and Comments Received

The following narrative and discussion of comments is keyed to specific subparts of the rule.

#### Subpart A—Purpose, Definitions, General

##### *Summary of Subpart*

This subpart addresses the purpose and scope of the regulation and provides interpretation for the key terms of the regulation. Subpart A also addresses the types of transactions affecting this regulation, how to apply to have title to land placed in trust, how requests are processed, what occurs after a decision is made on a request, when title to land attains trust status and the taking of fractional interests of land into trust.

##### *Comments*

Comments were received regarding the implementation of the proposed regulation, with some comments requesting that the rule be withdrawn. The suggestion was not accepted because the Secretary must ensure that his authority over the acquisition of title to land into trust is implemented in an orderly and fair manner.

There were several comments concerning the definition of "reservation." One suggestion was that term the "reservation" should be defined the same as the statutory term "Indian country." Another suggestion was that the definition of "reservation" should remain the same as in the existing regulation. Other comments suggested that "reservation" include a provision for Pueblo grant lands, others suggested that it include hunting and fishing treaty areas. The comments were duly considered and accepted to clarify that Pueblo lands within the exterior boundaries of lands granted or confirmed to, or acquired by, the Pueblo as reported by the Pueblo Lands Board under section 2 of the Act of June 7, 1924, ch. 331, 43 Stat. 636, plus any other lands reserved, set aside, or held in trust by the United States for the use of the Pueblo or its members are reservation lands for purposes of this regulation. Also, the term "reservation" is clarified to include lands created by federal agreement, Secretarial proclamation or final judicial determination. Further, the term "reservation" is clarified to include lands established by Executive or Secretarial proclamation in the State of Oklahoma. These changes to the definition of reservation appear in § 151.2 of the rule.

There were many comments suggesting that lands contiguous to a reservation should be treated as on-reservation acquisitions. To define contiguous lands as on-reservation lands would enable applicants to use the less burdensome process which reflects a presumption in favor of the acquisition of trust title to on-reservation lands. The comments were considered but rejected and the rule remains as proposed that land(s) contiguous to reservation land will be treated as off-reservation acquisitions for purposes of this regulation, although because of their proximity to an existing reservation, the tribe will receive more favorable consideration than if the lands were more remote.

There were several comments regarding the type of acquisition transactions covered by the regulation. Comments suggested that only those acquisitions of title from fee simple to trust or restricted fee to trust or exchanges involving fee simple to trust should be governed by this regulation. The proposed rule included trust to trust, restricted fee to restricted fee, restricted fee to trust and land exchange acquisitions. The comments have been accepted and the rule is amended in § 151.3 to provide that the requirements of the rule only apply to conveyances from fee simple to trust, fee simple to restricted fee and land exchanges involving fee simple land. The rationale for excluding the other types of acquisitions from the regulation is that trust to trust and restricted fee to restricted fee, restricted fee to trust and land exchanges not involving fee land do not have an impact on the local governments because these lands are not already under their jurisdiction. We accepted the comments and have revised § 151.3(b) of the regulation to exclude these transfers.

There were comments suggesting that the final rule should establish special treatment for government-to-government trust transfers, because these lands already are exempt from local taxation and jurisdiction and because the federal transfer process involves similar criteria as the Part 151 process, and requiring another regulatory review would be duplicative and burdensome. These comments were accepted and § 151.3(b) has been amended to exempt federal agency transfers of title of land from one federal agency to the BIA or tribe.

There were numerous comments suggesting that a time frame should be established for issuance of a decision to accept title to land in trust. The comments were accepted and the rule amended to provide that the applicant will be notified when an application is

complete. Once an applicant is notified that their application is complete, the BIA will issue a decision on the request within 120 working days. Subsection (f) has been added to § 151.5 to reflect this change.

There were several comments seeking clarification regarding the treatment of applications that are pending when the regulation becomes final. The comments were considered and the regulation now provides a definition of "Complete application" in § 151.2. A new subsection (e) is added to § 151.5 that establishes the standard for a request to be considered a complete application. Applications that satisfy the definition of complete application at the time this rule becomes final, will be processed under the previous rule. If it is determined that an application is not complete at the time the rule becomes final, the application will be processed in accordance with the requirements of this rule.

There were several comments concerning the authority to take land into trust in Alaska. The preamble to the proposed rule addressed in some detail the question of whether to continue the bar in the existing regulations to the acquisition of trust title in land in Alaska (other than for the Metlakatla Indian Community or its members). See 64 FR 17577-78 (1999). As the discussion there indicated, the Department had earlier received, and invited public comment on (See 60 FR 1956(1995)), a petition by Native groups in Alaska which requested that the Department initiate a rulemaking to remove the prohibition in the regulations on taking Alaska land into trust. That discussion also noted that the Associate Solicitor for Indian Affairs had concluded, in a brief September 15, 1978 Opinion, that the Alaska Native Claims Settlement Act (ANSCA) precluded the Secretary from taking land into trust for Natives in Alaska (except for Metlakatla).

The Solicitor has considered the comments and legal arguments submitted by Alaska Native governments and groups and by the State of Alaska and two leaders of the Alaska State Legislature on whether the 1978 Opinion accurately states the law. The Solicitor has concluded that there is substantial doubt about the validity of the conclusion reached in the 1978 Opinion. Among other things, the Associate Solicitor found "significant" that in 1976 Congress repealed section 2 of the Indian Reorganization Act (IRA). That section had extended certain provisions of the IRA to Alaska, and had given the Secretary the authority to designate certain lands in Alaska as

Indian reservations. See 43 U.S.C. 704(a), 90 Stat. 2743, repealing 49 Stat. 1250, 25 U.S.C. 496. The 1978 Opinion gave little weight to the fact that Congress has not repealed section 5 of the IRA, which is the generic authority by which the Secretary takes Indian land into trust, and which Congress expressly extended to Alaska in 1936. See 25 U.S.C. 473a. The failure of Congress to repeal that section, when it was repealing others affecting Indian status in Alaska, five years after Congress enacted the Alaska Native Claims Settlement Act, raises a serious question as to whether the authority to take land into trust in Alaska still exists. Accordingly, the Solicitor has signed a brief memorandum rescinding the 1978 Opinion.

At the same time, the position of the Department has long been, as a matter of law and policy, that Alaska Native lands ought not to be taken in trust. Therefore, the Department has determined that the prohibition in the existing regulations on taking Alaska lands into trust (other than Metlakatla) ought to remain in place for a period of three years during which time the Department will consider the legal and policy issues involved in determining whether the Department ought to remove the prohibition on taking Alaska lands into trust. If the Department determines that the prohibition on taking lands into trust in Alaska should be lifted, notice and comment will be provided.

#### Subpart B—Discretionary Acquisitions of Title On-Reservation

##### Summary of Subpart

This subpart describes the information that must be included in a request involving land located inside a reservation boundary or an approved TLAA. This subpart also establishes the criteria that will be used to evaluate requests for the acquisition of title to lands located inside the reservation or an approved TLAA. Further, this subpart defines the consent needed of the recognized governing body when an Indian tribe or individual acquires land inside another tribe's reservation or approved TLAA.

##### Comments

One comment suggested that the regulation require applicants to address potential impacts to local governments when the land being acquired is located on-reservation. The comment was rejected because state and local governments already are invited to submit comments on a proposed acquisition and may address such

impacts in their comments. One comment suggested that the final rule clarify the distinction between on-reservation and off-reservation land. We believe the regulation already clearly defines the terms of "reservation" and "TLAA" which are used for on-reservation acquisitions. There were a few comments concerning appropriate land use of a proposed acquisition. Comments suggested that the rule should require clarification of anticipated future uses after acquisition in trust, describe how appropriate use will be enforced and propose strict criteria for future uses of the land. These comments were rejected because the IRA allows Indian tribes to manage and control their lands in accordance with tribal policy. Therefore, the regulation provides that anticipated future uses are those identified that are reasonably foreseeable and achievable. There were a few comments suggesting that the regulation should allow acquisitions for cultural, religious, or ceremonial uses. The proposed regulation continues the existing practice of accepting applications for the acquisition of title to lands in trust for these purposes. There were comments suggesting that the Secretary more thoroughly consider the impact on the state and local governments by the taking of title to land into trust, loss of tax revenue, and that he resolve jurisdictional issues and impact to municipal and local services prior to deciding to take land into trust. The regulation provides state and local governments with the opportunity to comment on potential impacts of the proposed acquisition, and the Secretary may fully consider the potential impacts prior to making a decision to take title to land into trust.

There were numerous comments suggesting that the final rule should require objective standards for the Secretary to use in making decisions to take on-reservation land into trust. The comments were accepted and the regulation has been amended to provide clearer standards to evaluate on-reservation requests. Section 151.10 is amended to provide that once an application is complete, we will accept title to land into trust on-reservation or inside a TLAA if the application facilitates tribal self-determination, economic development, Indian housing, land consolidation or natural resource protection. We will deny applications to accept on-reservation lands in trust if the acquisition will result in severe negative impact to the environment or severe harm to the local government. Evidence of such harm must be clear



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

**RECEIVED**

JAN 30 2001

Attorney General's Office  
Juneau

JAN 16 2001

## Memorandum

To: Assistant Secretary - Indian Affairs

From: Solicitor *[Signature]*

Subject: Rescinding the September 15, 1978, Opinion of the Associate Solicitor for Indian Affairs entitled "Trust Land for the Natives of Venetie and Arctic Village"

In the referenced Opinion, the Associate Solicitor for Indian Affairs concluded that the Alaska Native Claims Settlement Act (ANCSA) precludes the Secretary from taking land in trust for Alaska Natives except for members of the Metlakatla Indian Community. On April 12, 1999, the Department published proposed amendments to the regulations found at 25 C.F.R. Part 151, which govern the Secretary's authority to take land into trust. 64 Fed. Reg. 17574. The preamble to the proposed rule observed that the regulatory bar to the acquisition of trust lands in Alaska in the original version of the Part 151 regulations was predicated upon the 1978 Opinion. It acknowledged that "there is a credible legal argument that ANCSA did not supersede the Secretary's authority to take land into trust in Alaska" under the Indian Reorganization Act. *Id.* at 17577-78. It also noted that the Secretary had been petitioned to undertake a rulemaking to remove the prohibition on taking land in trust in Alaska. *Ibid.* See also 60 Fed. Reg. 1956 (1995). The preamble invited comments on these issues.

Comments and legal arguments have been submitted by Alaska Native governments and groups and by the State of Alaska and two leaders of the Alaska State Legislature on whether the Associate Solicitor's Opinion accurately states the law. After considering those comments, I have concluded that there is substantial doubt about the validity of the conclusion reached in the 1978 Opinion. Among other things, the Associate Solicitor found "significant" that in 1976 Congress repealed section 2 of the Indian Reorganization Act (IRA). That section had extended certain provisions of the IRA to Alaska, and had given the Secretary the authority to designate certain lands in Alaska as Indian reservations. See 43 U.S.C. § 704(a), 90 Stat. 2743, repealing 49 Stat. 1250, 25 U.S.C. § 496. The 1978 Opinion gave little weight to the fact that Congress had not repealed section 5 of the IRA, which is the generic authority by which the Secretary takes Indian land into trust, and which Congress expressly extended to Alaska in 1936. See 25 U.S.C. § 473a. The failure of Congress to repeal that section, when it was repealing others affecting Indian status in Alaska, five years after Congress enacted the Alaska Native Claims Settlement Act in 1971, raises a serious question as to whether the authority to take land into trust in Alaska still exists.

The Department has, in its final Part 151 regulations being published today, decided in its sound discretion to continue in place the bar against taking Native land in Alaska into trust (other than Metlakatla). 25 C.F.R. § 151.3(c). The preamble to these regulations expresses the Department's determination to continue this prohibition in place for three years, "during which time the Department will consider the legal and policy issues involved in determining whether the Department ought to remove the prohibition," and to provide notice and an opportunity to comment on any decision to remove it. Because of my substantial doubt about the validity of the conclusion in the 1978 Opinion, and in order to clear the record so as not to encumber future discussions over whether the Secretary can, as a matter of law, and should, as a matter of policy, consider taking Native land in Alaska into trust, I am hereby rescinding the Associate Solicitor's 1978 Opinion.

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# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

F.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
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September 8, 1999

Terry Virden, Director  
Office of Trust Responsibilities  
Bureau of Indian Affairs  
Department of the Interior  
MS-4513-MIB  
1849 C Street N. W.  
Washington, D.C. 20240

VIA FAX TO 202-219-1065  
Hard copy to follow

Re: Comments of the State of Alaska regarding proposed regulations retaining the prohibition against the acceptance of lands in trust in Alaska

Dear Director Virden:

On April 12, 1999, the Department of the Interior formally solicited comments regarding proposed regulations that, among other things, would continue the existing federal policy barring the Secretary of the Interior from acquiring title to land in Alaska in trust, except for the Metlakatla Indian Community or its members. 64 Fed. Reg. 17574 - 17578 (1999). In addition, in 1995, three Alaska tribes filed a petition asking that the regulatory prohibition be removed. 60 Fed. Reg. 1956 (1995). The Department requested comments regarding the continued validity of a 1978 opinion of the Associate Solicitor holding that the Alaska Native Claims Settlement Act (ANCSA) precluded the Secretary from taking lands in Alaska (except Metlakatla) into trust. *See Opinion of Assoc. Solicitor, Trust Lands for Natives of Venetie and Arctic Village*, Sept. 15, 1978. Specifically, the Department requested comments regarding the continued validity of the Associate Solicitor's opinion and issues raised in the petition in light of the Supreme Court's recent decision in *Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 118 S. Ct. 948 (1998). The State of Alaska respectfully submits the following comments.

Terry Virden, Director  
Re: Proposed trust land regulations

September 8, 1999  
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It is Alaska's view that the Associate Solicitor's Opinion is strongly supported by the law and is correct. The Supreme Court's recent decision in *Venetie* confirms the continued validity of the Associate Solicitor's opinion.

1. The Associate Solicitor's opinion correctly concludes that ANCSA prohibits the Secretary from accepting land in trust.

In his opinion, Associate Solicitor Thomas W. Fredericks observed that in adopting ANCSA, Congress intended to "permanently remove all Native lands in Alaska from trust status." Op. at 1. The Associate Solicitor correctly noted Congress' policy in adopting ANCSA:

The settlement should be accomplished . . . without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges.

*Id.*, quoting ANCSA, § 2(b). The Associate Solicitor reasoned that the policy goals, substantive provisions and legislative history of ANCSA preclude the restoration of former reservations, reservations that had been extinguished by ANCSA, to trust status. Op. at 2. Finally, the Associate Solicitor concluded that Congress' repeal, by section 704 of the Federal Land Policy and Management Act of 1976, of the Secretary's authority to designate certain lands in Alaska as reservations, confirms congressional intent to prohibit the acquisition of land in trust, notwithstanding the omission of language amending section 5 of the Indian Reorganization Act (IRA).<sup>1</sup>

Alaska agrees with the Associate Solicitor's reasoning and conclusions. Congress' express desire not to create any reservation system or lengthy wardship or trusteeship, to extinguish all reservations in Alaska save one, and to repeal all authority of the Secretary to designate new reservations in Alaska, all belie any intent to preserve the authority of the Secretary to acquire Alaska land in trust. In short, the adoption of regulations permitting the acquisition of title to Indian land in trust in Alaska would contravene the clear intent of Congress in adopting ANCSA, and the Associate Solicitor's opinion is, therefore, well grounded in the law.

---

<sup>1</sup> In general language applicable nationwide, section 5 of the IRA authorizes the Secretary to acquire title to lands for Indians in trust. 25 U.S.C. § 465.

2. The Supreme Court's *Venetie* decision confirms the validity of the associate solicitor's opinion.

In *Venetie* the Supreme Court ruled that lands conveyed under ANCSA to Native groups do not constitute Indian country under the "dependent Indian community" provision of 18 U.S.C. § 1151. The Court ruled that the lands that the tribes received under ANCSA had not been "validly set apart for the use of the Indians as such, nor are they under the superintendence of the federal government." 118 S. Ct. at 955.

In reaching this conclusion, the Court reasoned that by revoking all reservations in Alaska, whether created by legislation or the Executive, Congress had "departed from its traditional practice of setting aside Indian lands." *Id.* Perhaps even more significantly, the Court ruled that "ANCSA ended federal supervision over the Tribe's lands," and that Congress had "stated explicitly that ANCSA's settlement provisions were intended to avoid a lengthy wardship or trusteeship." *Id.* at 955 - 956 (emphasis added) (internal quotations omitted).

As the Associate Solicitor correctly concluded in 1978, a reading of section 5 of the IRA in a way that authorizes the Secretary to acquire trust title to land in Alaska would undermine the fundamental policy goals of ANCSA, contravene the essential holding in *Venetie*, and permit the Secretary to "undo" what Congress has already done. Authorizing the Secretary to acquire lands in trust is categorically contrary to the congressional policy of ending federal supervision over Native lands in Alaska.

3. ANCSA Supercedes Section 5 of the IRA as Applied to Alaska.

The claim that the Secretary retains authority to acquire title to lands in Alaska in trust is incorrect for the following additional reason. Where a potential statutory conflict exists, statutes must, nevertheless, be construed to give effect to the will of Congress. *Negonsott v. Samuels*, 507 U.S. 99, 113 S. Ct. 1119 (1992). Section 5 of the IRA, as applied to Alaska, was enacted in 1936. 48 Stat. 985. By contrast, the substantive and policy provisions of ANCSA, enacted in 1971, constitute the most recent congressional directive regarding the status of Native lands in Alaska. Furthermore, ANCSA's specific statutory declarations concerning the treatment of lands in Alaska must control over a potentially conflicting provision of the IRA that addresses the Secretary's general authority to take land into trust status. *Hellon & Assocs., Inc. v. Phoenix Resort Corp.*, 458 F.2d 295 (9<sup>th</sup> Cir. 1992) (later and more specific statute normally controls over

Terry Virden, Director  
Re: Proposed trust land regulations

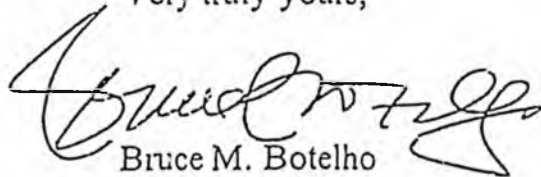
September 8, 1999  
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earlier more general statute where statutes are inconsistent). Any other interpretation would promote the perpetuation of a "wardship" or "trusteeship" over lands, in clear contravention to the will of Congress specifically and more recently expressed in ANCSA.

The foregoing compels the conclusion that ANCSA must be read to control over a potentially conflicting reading of section 5 of the IRA. The adoption of regulations permitting the Secretary to acquire title to land in Alaska in trust would necessarily be contrary to the essential policy goals and substantive provisions of ANCSA, Congress' most recent directive regarding the status of Alaska Native lands.

Accordingly, the April 12, 1999, proposed regulations correctly adhere to the Department's longstanding policy against taking Native land in Alaska into trust other than for the Metlakatla Indian Community and its members.

Very truly yours,



Bruce M. Botelho  
Attorney General

cc: John Katz

Public Law 280 (Criminal)

**§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country**

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska .....	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indi-

State or Territory of	Indian country affected
	ans in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended
California .....	All Indian country within the State
Minnesota.....	All Indian country within the State, except the Red Lake Reservation
Nebraska.....	All Indian country within the State
Oregon.....	All Indian country within the State, except the Warm Springs Reservation
Wisconsin.....	All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

(Added Aug. 15, 1953, c. 505, § 2, 67 Stat. 588, and amended Aug. 24, 1954, c. 910, § 1, 68 Stat. 795; Aug. 8, 1958, Pub.L. 85-615, § 1, 72 Stat. 545; Nov. 25, 1970, Pub.L. 91-523, §§ 1, 2, 84 Stat. 1358.)

**HISTORICAL AND STATUTORY NOTES**

**Revision Notes and Legislative Reports**  
1953 Acts. Senate Report No. 699. see 1953 U.S. Code Cong. and Adm. News, p. 2409.

1954 Acts. Senate Report No. 2223. see 1954 U.S. Code Cong. and Adm. News, p. 3171.

1958 Acts. Senate Report No. 1872. see 1958 U.S. Code Cong. and Adm. News, p. 3347.

1970 Acts. House Report No. 91-1545. see 1970 U.S. Code Cong. and Adm. News, p. 4783.

**Amendments**

1970 Amendments. Subsec. (a). Pub.L. 91-523, § 1, substituted provisions relat-

ing to the jurisdiction of the State of Alaska over offenses by or against Indians in the Indian country, for provisions relating to the jurisdiction of the Territory of Alaska over offenses by or against Indians in the Indian country.

Subsec. (c). Pub.L. 91-523, § 2, added "as areas over which the several States have exclusive jurisdiction" following "subsection (a) of this section".

1958 Amendments. Subsec. (a). Pub.L. 85-615 gave Alaska jurisdiction over offenses committed by or against Indians in all Indian country within the Territory of Alaska.

1954 Amendments. Subsec. (a). Act Aug. 24, 1954 brought the Menominee Tribe within the provisions of this section.

#### Admission of Alaska as State

Admission of Alaska into the Union was accomplished Jan. 3, 1959 upon issuance of Proc.No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c. 16, as required by sections 1 and 8(c) of Pub.L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

#### Amendment of State Constitutions to Remove Legal Impediment; Effective Date

For amendments of State Constitutions to remove legal impediments and effective date thereof, see section 6 of Act Aug. 15, 1953, set out as a note under section

1360 of Title 28, Judiciary and Judicial Procedure.

#### Consent of United States to Other States to Assume Jurisdiction

Act Aug. 15, 1953, c. 505, § 7, 67 Stat. 590, which gave consent of the United States to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this section and section 1360 of Title 28, to assume jurisdiction at such time and in such manner as the people of the State shall, by legislative action, obligate and bind the State to assumption thereof, was repealed by section 403(b) of Pub.L. 90-284, Title IV, Apr. 11, 1968, 82 Stat. 79, such repeal not to affect any cession of jurisdiction made pursuant to such section prior to its repeal.

### CROSS REFERENCES

Oregon, civil and criminal jurisdiction over reservation of Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, see 25 USCA § 714c.

Reassumption by any Indian tribe of jurisdiction over child custody proceedings, see 25 USCA § 1918.

Retrocession of criminal jurisdiction by State, see 25 USCA § 1323.

#### State of—

Arizona criminal and civil jurisdiction over Pascua Yaqui Tribe Trust lands, see 25 USCA § 1300f.

Florida criminal and civil jurisdiction over Miccosukee Tribe Trust lands, see 25 USCA § 1747.

Oregon criminal and civil jurisdiction over Siletz Tribe reservation, see 25 USCA § 711e.

Texas criminal and civil jurisdiction over Kickapoo Band Trust lands, see 25 USCA § 1300b-15.

### LIBRARY REFERENCES

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Indians, see C.J.S. §§ 160-162.

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#### Law Review and Journal Commentaries

Adjudication in Indian country: The confusing parameters of state, federal, and tribal jurisdiction. Laurie Reynolds, 38 Wm. & Mary L.Rev. 539 (1997).

Control of the reservation environment: Tribal primacy, federal delegation, and the limits of state intrusion. Judith V. Royster and Rory SnowArrow Fausett, 64 Wash.L.Rev. 581 (1989).

Fighting over Indian children: The uses and abuses of jurisdictional ambiguity. Barbara Ann Atwood, 36 UCLA L.Rev. 1051 (1989).

Geographically-based and membership-based views of Indian tribal sovereignty: the Supreme Court's changing vision. Allison M. Dussias, 55 U.Pitt.L.Rev. 1 (1993).

Marshalling past and present: Colonialism, constitutionalism, and interpretation in federal Indian law. Philip P. Frickey, 107 Harv.L.Rev. 381 (1993).

Public Law 280 (Civil)

§ 1360. State civil jurisdiction in actions to which Indians are parties

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

<i>State of</i>	<i>Indian country affected</i>
Alaska .....	All Indian country within the State
California .....	All Indian country within the State
Minnesota .....	All Indian country within the State, except the Red Lake Reservation
Nebraska .....	All Indian country within the State
Oregon .....	All Indian country within the State, except the Warm Springs Reservation
Wisconsin .....	All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or commu-

nity that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

(Added Aug. 15, 1953, c. 505, § 4, 67 Stat. 589, and amended Aug. 24, 1954, c. 910, § 2, 68 Stat. 795; Aug. 8, 1958, Pub.L. 85-615, § 2, 72 Stat. 545; Nov. 6, 1978, Pub.L. 95-598, Title II, § 239, 92 Stat. 2668; July 10, 1984, Pub.L. 98-353, Title I, § 110, 98 Stat. 342.)

#### HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports  
1953 Acts. Senate Report No. 699, see 1953 U.S. Code Cong. and Adm. News, p. 2409.

1954 Acts. Senate Report No. 2223, see 1954 U.S. Code Cong. and Adm. News, p. 3171.

1958 Acts. Senate Report No. 1872, see 1958 U.S. Code Cong. and Adm. News, p. 3347.

1984 Acts. Statements by Legislative Leaders, see 1984 U.S. Code Cong. and Adm. News, p. 576.

#### Codifications

Subsec. (a) of this section was amended by Pub.L. 95-598, Title II, § 239, Nov. 6, 1978, 92 Stat. 2668, effective June 28, 1984, pursuant to Pub.L. 95-598, Title IV, § 402(b), Nov. 6, 1978, 92 Stat. 2682, as amended by Pub.L. 98-249, § 1(a), Mar. 31, 1984, 98 Stat. 116; Pub.L. 98-271, § 1(a), Apr. 30, 1984, 98 Stat. 163; Pub.L. 98-299, § 1(a), May 25, 1984, 98 Stat. 214; Pub.L. 98-325, § 1(a), June 20, 1984, 98 Stat. 268, set out as an Effective Dates note preceding section 101 of Title 11, Bankruptcy, by substituting "Alaska . . . . All Indian country within the State" for "Alaska . . . . All Indian country within the Territory".

Section 402(b) of Pub.L. 95-598 was amended by section 113 of Pub.L. 98-353

by substituting "shall not be effective" for "shall take effect on June 28, 1984", thereby eliminating the amendment by section 239 of Pub.L. 95-598, effective June 27, 1984, pursuant to section 122(c) of Pub.L. 98-353, set out as an Effective Dates note under section 151 of this title.

Section 121(a) of Pub.L. 98-353 directed that section 402(b) of Pub.L. 95-598 be amended by substituting "the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984 [i.e. July 10, 1984]" for "June 28, 1984". This amendment was not executed in view of the prior amendment to section 402(b) of Pub.L. 95-598 by section 113 of Pub.L. 98-353.

#### Amendments

1984 Amendments. Subsec. (a). Pub.L. 98-353, § 110(1), struck out "or Territories" following "Each of the States".

Pub.L. 98-353, § 110(2), struck out "or Territory" following "of the State", "such State" in two places, and "elsewhere within the State" respectively, and substituted "State of" for "State or Territory of".

Pub.L. 98-353, § 110(3), substituted "Alaska . . . . All Indian country within the State" for "Alaska . . . . All Indian country within the Territory".

1978 Amendments. Subsec. (a). Pub.L. 95-598 directed the amendment of subsec. (a) by substituting in the item relating to Alaska "within the State" for "within the Territory", which amendment did not become effective pursuant to section 402(b) of Pub.L. 95-598, as amended, set out as an Effective Dates note preceding section 101 of Title 11, Bankruptcy. See codifications note under this section.

1958 Amendments. Subsec. (a). Pub.L. 85-615 gave Alaska jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in all Indian country within the Territory of Alaska.

1954 Amendments. Subsec. (a). Act Aug. 24, 1954 brought the Menominee Tribe within the provisions of this section.

#### Effective Dates

1984 Acts. Amendment by Pub.L. 98-353 effective July 10, 1984, see section 122(a) of Pub.L. 98-353, set out as a note under section 151 of this title.

#### Admission of Alaska as State

Admission of Alaska into the Union was accomplished Jan. 3, 1959 upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub.L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding former section 21 of Title 48, Territories and Insular Possessions.

#### Amendment of State Constitutions to Remove Legal Impediment; Effective Date

Section 6 of Act Aug. 15, 1953, provided that: "Notwithstanding the provisions

of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act [adding section 1360 of this title and section 1162 of Title 18]: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be."

#### Consent of United States to Other States to Assume Jurisdiction

Act Aug. 15, 1953, c. 505, § 7, 67 Stat. 590, which gave consent of the United States to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this section and section 1162 of Title 18, Crimes and Criminal Procedure, to assume jurisdiction at such time and in such manner as the people of the State shall, by legislative action, obligate and bind the State to assumption thereof, was repealed by section 403(b) of Pub.L. 90-284, Title IV, Apr. 11, 1968, 82 Stat. 79, such repeal not to affect any cession of jurisdiction made pursuant to such section prior to its repeal.

Retrocession by State of jurisdiction acquired by State pursuant to section 7 of Act Aug. 15, 1953, prior to its repeal, see section 1323 of Title 25, Indians.

### CROSS REFERENCES

Lack of jurisdiction by State regarding matters to which this section is applicable upon transfer to or acquisition of lands by United States—

Miccosukee tribe, see 25 USCA § 1747.

Seminole tribe, see 25 USCA § 1772d.

Reassumption of jurisdiction over child custody proceedings by Indian tribe, see 25 USCA § 1918.

#### Reservations—

Confederated tribes of Coos, Cower Umpqua and Siuslaw, see 25 USCA § 714e.

Coquille Indian tribe, see 25 USCA § 715d.

Cow Creek Bank of Umpqua tribe, see 25 USCA § 713f.

Hoopa Valley and Yurok Indians, see 25 USCA § 1300i-1.

Klamath tribe, see 25 USCA § 566a.

Pascua Yaqui tribe, see 25 USCA § 1300f.

Siletz tribe, see 25 USCA § 711e.

Retrocession of jurisdiction acquired by State under this section, see 25 USCA § 1323.



TONY KNOWLES  
GOVERNOR

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

September 29, 2000

ADMINISTRATIVE ORDER NO. 186

I, Tony Knowles, Governor of the State of Alaska, under the authority granted by art. III of the Alaska Constitution, hereby establish by this Order the policy of the State of Alaska on Tribes and their Tribal governments (hereinafter referred to as "Tribes").

The recognition of Tribes is a function of the federal government. The federal recognition of Tribes arises out of the special relationship between the United States and Tribes. Tribes can be federally recognized as having Tribal status by Congressional Act, executive action, or judicial determination.

Tribes existed in Alaska before the formation of the United States and the State of Alaska. The existence of Tribes in Alaska, and their inherent sovereignty, has been recognized by all three branches of the federal government.

The State of Alaska recognizes the important contribution Alaska's Tribes make to the citizens of Alaska. The State of Alaska recognizes that funds generated by the Tribes represent a large positive economic and social impact on the entire state and its citizens. The State of Alaska recognizes and values the revenue and services that Alaska's Tribes contribute to the state's economic and social well-being by virtue of their direct Tribal authority and responsibility for the delivery of social, economic, cultural, and other programs and services.

It is of paramount importance to all residents of Alaska to foster a constructive and harmonious relationship between the Tribal and State governments. The State of Alaska must work together with Tribal governments to develop mutual respect for the rights, responsibilities, and interests of all parties. The relationship between our governmental structures can only be built through trust and mutual respect.

Tribes Exist in Alaska

This Order is intended to make clear for all State and federal agencies, the courts, the Tribes, and the public that the State of Alaska recognizes and respects the governmental status of the federally recognized Tribes within the boundaries of Alaska.

I hereby acknowledge the legal and political existence of the federally recognized Tribes within the boundaries of Alaska. I further acknowledge the legal authority of the federal government to recognize the existence and governmental status of Tribes in Alaska. It is also the policy of the State of Alaska to acknowledge any additional Tribes in Alaska that may be recognized by the federal government in the future.

#### The State of Alaska's Relationship with Tribes

I declare that it is the commitment and policy of the State of Alaska, consistent with the Constitutions of the United States and the State of Alaska, to work on a government-to-government basis with Alaska's sovereign Tribes, which deserve the recognition and respect accorded to other governments. The State of Alaska has a long-standing commitment to local self-government that is rooted in the belief that the best and most effective solutions to local problems are those that are conceived locally.

The State recognizes the value in establishing a comprehensive and mutually respectful State-Tribal relations policy in an effort to promote and enhance Tribal self-government, economic development, a clean and healthy environment, and social, cultural, spiritual, and racial diversity. The State is committed to working with Tribes to further strengthen Alaska's ability to meet the needs of Alaska's communities and families.

In December 1999, I invited the Tribes of Alaska to enter into a government-to-government dialogue with the State for the purpose of establishing a framework for ongoing State-Tribal relations. This dialogue shall be consistent with voluntary ongoing consultation and the principles of self-determination and self-governance of each Tribe.

The principles set out in this Order shall be the foundation upon which State government officials, at all levels, will work with Tribal representatives to build a framework for promoting mutually respectful State-Tribal relations, protocol, and policy.

This Order supersedes and revokes Administrative Order No. 125, dated August 16, 1991.

This Order takes effect immediately.

Dated at Anchorage, Alaska, this 29th day of September, 2000.

S/S Tony Knowles  
Tony Knowles  
Governor

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[Administrative Orders 151-present](#) | [Contact the Governor](#) | [Webmaster](#) | [State of Alaska](#)

12/12/2000 DRAFT  
MILLENNIUM AGREEMENT

Between the  
FEDERALLY RECOGNIZED SOVEREIGN TRIBES OF ALASKA  
and the  
STATE OF ALASKA

**I. PREAMBLE**

1. Tribes exist in Alaska. Since time immemorial, indigenous peoples have lived on their land in organized societies and distinct traditional cultures with their own forms of autonomous sovereign government that predate the United States and the State of Alaska.

2. This AGREEMENT, dated \_\_\_\_\_, 2001, is executed between each of the federally recognized sovereign Tribes of Alaska that are signatory to this AGREEMENT (hereinafter the "Tribes"), through their Tribal Governments, and the State of Alaska, through its Governor, in order to better achieve mutual goals through an improved relationship between their governments. This AGREEMENT provides a framework for the establishment of lasting government-to-government relationships and an implementation procedure to assure that such relationships are constructive and meaningful and further enhance cooperation between the parties.

3. Each party to this AGREEMENT acknowledges the sovereignty of the others. The parties share particular respect for the values and cultures of Alaska's indigenous peoples. Further, the parties share a desire for an agreement between the State of Alaska and the Tribes that reflects full government-to-government relationships.

4. The parties desire that this AGREEMENT between the Tribes and the State of Alaska be strong enough to withstand the test of time and ensure fair treatment of both the Tribes and the State of Alaska.

## **II. PARTIES**

5. The parties to this AGREEMENT are the State of Alaska and the Tribes.

6. As of the date of this AGREEMENT, there are 227 federally recognized Tribes in the State of Alaska. Each Tribe is a unique government with different management and decision-making structures and distinct customs, traditions, practices, and values.

7. The State of Alaska is organized into three branches of government: executive, legislative, and judicial. The executive branch is divided into principal departments under the authority of the Governor.

## **III. GUIDING PRINCIPLES**

8. The following guiding principles shall facilitate the development of government-to-government relationships between the Tribes and the State of Alaska:

- (a) The Tribes have the right to self-governance and self-determination. The Tribes have the right to determine their own political structures and to select their Tribal representatives in accordance with their respective Tribal constitutions, customs, traditions, or laws.
- (b) The government-to-government relationships between the State of Alaska and the Tribes shall be predicated on equal dignity, mutual respect, and free and informed consent.

- (c) As a matter of courtesy between governments, the State of Alaska and the Tribes agree to inform one another, at the earliest opportunity, of matters or proposed actions that may significantly affect the other.
- (d) The parties have the right to determine their own relationships in a spirit of peaceful co-existence, mutual respect, and understanding.
- (e) In the exercise of their respective political authority, the parties will respect fundamental human rights and freedoms.

#### IV. PURPOSES

9. This AGREEMENT confirms the commitment by the parties to overcome any and all impediments to a more constructive dialogue and to implement government-to-government relationships. The objectives of this AGREEMENT include (1) enhancing and improving communication between the parties, (2) facilitating the resolution of issues to avoid potentially adverse effects on any party, and (3) working toward greater public recognition, respect, and support for Tribal self-governance and self-determination.

10 This AGREEMENT is intended to build confidence among the parties in the government-to-government relationships by outlining a process for its implementation. It is also intended to solidify such relationships within the respective political structures of the parties. The parties will strive to reinforce the government-to-government relationships through consultation and agreement on matters of mutual concern.

11. The parties commit to the full implementation, effectiveness, and permanence of this AGREEMENT. The parties further commit, through these government-to-government relationships, to provide more efficient, improved, and beneficial services to all Alaskans and, in particular, to Tribal Members/Citizens. This

AGREEMENT provides the foundation and framework for further and more specific agreements between two or more of the parties outlining methods, mechanisms, and policies to address and resolve matters of concern to the Tribes.

12. In furthering the objective of positive government-to-government relationships, the State of Alaska acknowledges that:

- (a) Each Tribe has its own independent form of government and exercises inherent sovereign authority;
- (b) Actions undertaken by the State of Alaska in relation to the Tribes must be implemented in an informed and sensitive manner, respectful of Tribal sovereignty and Alaska Native traditional and cultural values, beliefs, and principles; and
- (c) The development of strong, reliable government-to-government relationships between the State of Alaska and the Tribes will be beneficial to all Alaskans.

13. In furthering the objective of positive government-to-government relationships, the Tribes acknowledge that:

- (a) The State of Alaska operates under the authority given by the United States Constitution, the Alaska Constitution, and state laws and regulations;
- (b) The State of Alaska has a major responsibility to provide for the health, safety, and welfare of all Alaskans;
- (c) Actions taken by the Tribes that affect or may affect non-Tribal members must be implemented in an informed and sensitive manner, respectful of individual rights; and

- (d) The development of strong, reliable government-to-government relationships between the Tribes and the State of Alaska will benefit all Alaskans.

14. The parties recognize that implementation of this AGREEMENT will require a comprehensive educational effort to promote understanding of the government-to-government relationships within their own governmental organizations and with the general public.

#### **V. IMPLEMENTATION PROCESS AND RESPONSIBILITIES**

15. This AGREEMENT commits the parties to the following tasks:

##### **A. Accountability, Education and Consultation**

16. The parties shall ensure that officials working to resolve issues of mutual concern will act in a manner consistent with the spirit, intent, and purposes of this AGREEMENT. Consultations carried on in application of this AGREEMENT shall be undertaken in good faith and in a form appropriate to the circumstances. In working to resolve these issues of mutual concern, the parties will strive to achieve consensus, agreement or mutual consent.

17. The Governor has designated his chief of staff to be responsible and accountable for the State of Alaska's implementation of this AGREEMENT, including interdepartmental coordination. State department heads are accountable to the Governor through the chief of staff for the related services and activities of their respective departments.

18. The Office of the Governor will assist the chief of staff in implementing this AGREEMENT by providing State department heads with information to educate their employees and constituent groups about the requirements of, and principles for, upholding the government-to-government relationships.

19. Each Tribe also recognizes that a system of responsibility and accountability within its governmental departments is essential to successful implementation of this AGREEMENT, and each Tribe will designate an official to be responsible and accountable for its own implementation of this AGREEMENT.

20. As a component of the system of responsibility and accountability within the State and Tribal governments, the parties will review and evaluate the implementation of the provisions of this AGREEMENT at the annual meeting of the State-Tribal Forum, described in Paragraph 21 below. Authors selected by both the Tribes and the State of Alaska will prepare a management report summarizing this evaluation; the report will include mutually acceptable strategies and agreements to outline tasks, overcome obstacles, and achieve specific goals.

**B. State-Tribal Forum**

21. The parties recognize that there will be a need for ongoing dialogue, at the highest level, between the Tribes and the State of Alaska. Therefore, a permanent State-Tribal Forum will be established to initiate and maintain such dialogue. The State-Tribal Forum shall include Tribal government political leaders or their designees and the Governor or his designee and appropriate cabinet officials. The Governor will invite the participation of representatives from the legislative and judicial branches of state government to enhance their participation in the process of creating government-to-government relationships between the State of Alaska and the Tribes. The State-Tribal Forum will meet at least once annually.

22. At the first State-Tribal Forum following execution of this AGREEMENT, the parties shall establish "working groups" in order to facilitate interdepartmental dialogue and coordination with Tribal government representatives on issues that are relevant to more than one State department or agency. The working groups shall meet at least twice a year and report annually to the Governor and the Tribes at the State-Tribal Forum.

23. The parties to this AGREEMENT will set a date for the first State-Tribal Forum within 60 days of the signing of this AGREEMENT.

**C. Oversight Office, Council, or Commission**

24. The parties recognize the need for a centralized office, council, or commission to oversee Tribal-State relations. The functions of this body shall include, but not be limited to, the following:

- (a) Review, monitor, and recommend policies on issues related to Tribal-State relations;
- (b) Work toward greater understanding, tolerance, sensitivity, and awareness among Alaska's peoples and between Tribal and State government officials and representatives;
- (c) Compile and disseminate information about Tribal and State government services;
- (d) Develop and sponsor programs to inform Tribal Members/Citizens and non-Tribal citizens of the services available to them and to make Tribal needs and concerns known to the public and private agencies whose programs and activities serve or affect them;
- (e) Encourage and support public and private agencies to expand and improve their services for Tribal Members/Citizens;

- (f) Assess effects of state programs on Tribes and Tribal Members/Citizens and make recommendations to the appropriate agencies, as well as periodic follow-up of such agencies and programs;
- (g) Promote increased participation by Tribal Members/Citizens in State government affairs; and
- (h) Report to the Tribes, the Governor, and the Alaska State Legislature on all matters of concern under the AGREEMENT.

25. In order to develop such an office, council, or commission, the parties agree to form a temporary committee for the sole purpose of researching and developing proposals or guidelines for how such a body may be constituted, structured, and governed. The committee will be comprised of no less than four State officials and four Tribal officials. The committee will complete its recommendations within 90 days of the signing of this AGREEMENT. The committee will seek public comment before finalizing its recommendations. The parties agree that efforts will be made to consult with State legislators in order to increase, improve, and enhance legislative participation in Tribal-State relations.

**D. Procedures, Protocols, and Key Contacts**

26. The parties recognize that there is a need to develop mechanisms for ongoing clear, consistent, and direct dialogue between the Tribes and State departments on a variety of issues in order to give full effect to the government-to-government relationships.

27. Cabinet officials, in consultation with Tribal Government leaders or their designees, will establish protocols and procedures within their respective agencies to implement this AGREEMENT. These protocols and procedures should ensure mutual consultation on matters that significantly affect concerned parties. Once these protocols

and procedures have been adopted, all supervisory and management-level employees in State departments shall be informed of their provisions.

28. Tribal governments will work to ensure that their current tribal structures, methods of decision-making, procedures, and relevant tribal personnel are known to the State.

29. Each party shall identify "key contacts" in its respective government for coordination between the State of Alaska and the Tribes to ensure the promotion of dialogue between State departments and the Tribes.

#### **E. Coordination of AGREEMENT Implementation**

30. The parties agree to work with the Alaska Inter-Tribal Council (AI-TC) to provide logistical support, coordination, and facilitation of meetings of the parties.

### **VI. SOVEREIGNTY AND DISCLAIMERS**

31. In executing this AGREEMENT, no party waives any rights, including treaty rights, immunities, sovereign immunities, or jurisdiction it may possess. This AGREEMENT in no way diminishes any rights or protections afforded any persons or entities under tribal, state, federal, or international law. Through the provisions of this AGREEMENT the parties strengthen their collective ability to successfully address and resolve issues of mutual concern. This agreement is a policy directive and does not create legally binding or enforceable rights. By signing this AGREEMENT no party is making an admission, nor may this document be used in any court of law.

32. The government-to-government relationships between the Tribes and the State of Alaska shall in no way alter or diminish the unique relationship that Tribal governments have with the federal government or any other government.

## **VII. RESOLUTION OF DISPUTES AND AMENDMENTS**

33. Conflicts or disputes between parties pertaining to the meaning, interpretation or methodology of this AGREEMENT will be brought before the State-Tribal Forum for resolution.

34. Each Tribe has the right to elevate an issue of importance to any executive decision-making authority of the State of Alaska. The State of Alaska has the right to elevate an issue of importance to any decision-making authority of the Tribe concerned.

35. Any signatory party may propose amendments to this AGREEMENT. Proposed amendments must be presented to the State-Tribal Forum at its next meeting for discussion before circulation to all parties. The party proposing the amendment is responsible for circulating the amendment to all signatories. Each party shall have ninety days from circulation to approve the proposed amendment by resolution or otherwise. The proposed amendment takes effect only if approved by all parties responding.

## **VIII. SIGNATORIES AND PARTICIPATION**

36. The parties encourage Tribes that are not initial signatories to this AGREEMENT to join in as subsequent signatories with full rights of participation in its implementation.

37. A party may withdraw its participation from this AGREEMENT upon 90 days written notice to all other parties to the AGREEMENT.

38. All signatories shall promote respect for and full realization of the provisions of this AGREEMENT. The initial signatory parties have executed this

AGREEMENT on this \_\_\_\_ day of \_\_\_\_\_ 2001, and have agreed to be duly bound by its commitments.

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## STATE-TRIBAL RELATIONS TEAM

At the Alaska Inter-Tribal Council (AI-TC) Convention on December 4, 1999, Governor Knowles invited federally recognized tribes in Alaska to join him in beginning government-to-government discussions. Speaking to delegates at the conference, Knowles challenged tribal leaders to work with his administration to strengthen and define the state's relationship with tribes and raise it to a new level.

### Mission

The goal of the State-Tribal Relations Team (STRT) is to complete an accord, or protocol, establishing a formal relationship between the state and tribes in time for ratification at AI-TC's annual meeting in December 2000. "This is a historic opportunity for us to work together to overcome the challenges facing village Alaska," Knowles said in a letter to Mike Williams, Chairman of the AI-TC.

### Members

Knowles appointed 12 members to his cabinet-level team in January. In February, tribal leaders selected 46 tribal advocates to serve as their representatives in the process.

| [Representatives](#) | [Standing Committees](#) |

### Links

- [Alaska Inter-Tribal Council](#)
- [Rural Governance Commission](#)
- [Federally Recognized Tribes in Alaska](#)
- [Commonwealth North](#)
- ["A Short History of the Federal Recognition of Tribes in Alaska and the Evolution of the State's Position"](#)



*On Sept. 29, Governor Knowles signed a landmark administrative order acknowledging and honoring the 227 federally recognized tribes in Alaska.*

### [Draft Millennium Agreement](#) 12/12/00

This is a draft document and is provided for review and discussion. Comments on this draft agreement are being accepted until Jan. 31, 2001

[Memo from Joe Williams to Tribal Leaders](#)

### [Draft Millennium Agreement](#) 11/02/00

between the Federally Recognized Sovereign Tribes of Alaska and the State of Alaska.

### [Proposed Cleanup of](#) [11/2/2000 Draft Agreement](#)

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**December 2**  
**Fourth Plenary Session,**  
Anchorage Marriott Downtown,  
10:00 a.m  
[Meeting Agenda](#)  
| [past meetings](#) |

**November 3**  
**Progress Made on State-Tribal**  
**Agreement**

**September 29, 2000**  
**Knowles' Order Acknowledges,**  
**Honors Tribes in Alaska**  
view: [press release](#) | [order](#) | [speech](#) | [photos](#)

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### Administrative Order Correspondence

| [09/29/00 Governor Knowles' Response: Tribal Delegation Letter](#)

[09/28/00 Letter from Sen. Murkowski, Sen. Stevens and Congressman Young Regarding Administrative Order](#)

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**STATE-TRIBAL RELATIONS TEAM**

**Letter to Gov. Knowles Regarding Administrative Order**

**Congress of the United States**

Washington, DC 20515

September 28, 2000

Honorable Tony Knowles  
Governor, State of Alaska  
Juneau, Alaska 99801-0001

Dear Governor Knowles:

We have received your letter of September 25 and draft Administrative Order establishing the policy of the State of Alaska on Tribes and their Tribal governments.

The extraordinary implications of the creation of tribal authority and jurisdiction in the State require full and open dialogue through an inclusive, public process. We request that you suspend any further administrative action and allow all Alaskans to participate in a process to review the implications of this proposed order. We also request that you provide us with the Alaska Department of Law's economic and legal analysis of the implications of your Administrative Order.

Thank you for your consideration of these requests.

Sincerely,



Frank Murkowski  
United States Senator



Ted Stevens  
United States  
Senator



Don Young  
Congressman for All  
Alaska

Governor Knowles' Response

-- [www.gov.state.ak.us](http://www.gov.state.ak.us) --

**STATE-TRIBAL RELATIONS TEAM****Gov. Knowles' Tribal Delegation Letter**

**State of Alaska**  
Office of the Governor

September 29, 2000

The Honorable Ted Stevens  
United States Senator  
522 Hart Building  
Washington, DC 20510-0201

The Honorable Don Young  
United States Representative  
2111 Rayburn Building  
Washington, DC 20515-0201

The Honorable Frank Murkowski  
United States Senator  
706 Hart Building  
Washington, DC 20510-0202

Dear Senators Stevens and Murkowski and Representative Young:

I received your letter of September 28 regarding my Administrative Order to improve services to Alaskans through a better working relationship between the State of Alaska and Alaska Tribes. I welcome this opportunity to correct several mistaken impressions.

First, the Administrative Order I will sign later today is the culmination of years of an extensive public process within Alaska, some of which each of you has participated in, and all of which you have been informed about.

You'll recall in 1992 the State of Alaska, the federal government and Alaska Native organizations jointly funded and worked together under the auspices of the Alaska Natives Commission to review, among many subjects, the relationship between state and federal governments and Tribes. The commission held nine public hearings across Alaska, plus additional hearings during the 1992 and 1993 annual conventions of the Alaska Federation of Natives. Representative Young served as an ex-officio member of the commission.

The commission recommended in 1994 (page 77): "The State of Alaska should, through Executive Order or legislative enactment or resolution, recognize the existence of Native tribes in Alaska to clear obstructions to successful implementation of policies and programs affecting predominantly Native areas of the state."

To build on that important work, in 1998 I appointed the Commission on Rural Governance and Empowerment to undertake a thorough review of the relationship between the state and tribes. This commission, funded by the Governor's Office and which included 22 prominent

Alaskans from urban and rural communities and ex-officio representation by legislators and members of your staff, visited 32 towns and villages across our state to hear from Alaskans. Each of you received a copy of that report.

The first among the commission's major recommendations (page 15) titled "Formally Acknowledge and Accept Tribes" states: "The State of Alaska should acknowledge and accept the fact that tribes exist and that tribal governments are legitimate and valued governmental entities that facilitate self-governance and deliver services." It continues to recommend a draft Administrative Order.

Taking the commission's recommendation to heart, last December I proposed to the Alaska Inter-Tribal Council a public process of government-to-government discussions between the state and Tribes. This nearly year-long process has involved numerous public meetings and discussions across Alaska and received broad media coverage. It helped produce the Administration Order I will sign later today.

This extensive public hearing process involved consultation, participation and nearly universal support by numerous local, state, and federal agencies and elected officials, business and civic leaders, and citizens all across this state. Such broad public participation is unprecedented in Alaska public policy deliberation.

Building a more productive relationship with Alaska Tribes is widely supported by Alaskans. Commonwealth North's recent Urban-Rural study recommended recognition of Tribes as an important step in bridging an urban-rural divide.

Your second mistaken impression regards "the creation of tribal authority." In fact, my Administrative Order acknowledges actions previously taken by the federal government and creates no new tribal authority. The federal government has that sole authority.

As you'll recall, all three branches of the federal government have acted to recognize tribes. Six years ago, then Assistant Secretary for Indian Affairs Ada Deer recognized 227 Alaska tribes on behalf of the executive branch. Congress affirmed this with the Federally Recognized Indian Tribe List Act of 1994, a measure each of you voted for. Senator Murkowski amended that Act to include the Central Council of Tlingit and Haida Indian Tribes of Alaska. I understand Representative Young is currently pursuing legislation to add two additional tribes to that list.

The federal courts recognized Tribes with a 1995 ruling by Judge H. Russel Holland. And in an historic reversal of its previous position, the Alaska Supreme Court last fall in the "John v. Baker" case, also acknowledged the status of federally recognized Tribes.

Since I have been Governor, my Administration has relied on Tribes and tribal organizations to provide vital services to Alaskans. The economic power of Tribes is considerable. At least half a billion dollars in federal funds alone flow through Alaska Tribes each year, creating many jobs in both urban and rural Alaska.

Senator Stevens recognized the vital role Alaska tribes play in our state when he told AFN's national forum at the Smithsonian in Washington, D.C., last September: "The presence of tribes in Alaska is a unifying event. Tribes add mortar to the bricks that constitute the foundation of everyday life."

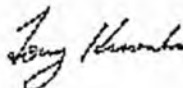
Finally, permit me to remind you that a State Administrative Order serves to set a direction for state government. In this case, I am directing state agencies how to better work with federally recognized tribes to improve the delivery of services to Alaskans. As it explicitly stated in the Administrative Order, this work shall be "consistent with the Constitutions of the United States and the State of Alaska."

State Administrative Orders can be revised by governors, so I welcome any of your further participation in this extensive public process as we work together to improve the relationship between the State of Alaska and Alaska Tribes.

As I told a large and enthusiastic meeting of Tribal officials in Saxman Wednesday evening, I believe this Order and a meaningful relationship with Alaska Tribes, carried out with good will and mutual respect, can bring about new opportunities for many Alaska families.

Beginning with your federal recognition of Alaska's 227 tribes and now with my State Administrative Order, it will stand the test of time for all Alaskans.

Sincerely,



Tony Knowles  
Governor

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**OFFICE OF THE GOVERNOR**  
**Press Releases****STATE-TRIBAL RELATIONS WORKING GROUP**

November 3, 2000

Release 00275

**PROGRESS MADE ON STATE-TRIBAL AGREEMENT**  
*Draft Of Agreement To Be Posted on Web Page*

Joe Williams II, president of the Organized Village of Saxman, and Attorney General Bruce Botelho, co-chair of the State-Tribal Relations Team (STRT), announced today that substantial progress had been made on a proposed agreement between the State of Alaska and Alaska's Tribes at a meeting in Kenai that concluded Thursday evening.

The agreement is intended to provide a framework for state agencies and tribes to work together on a government-to-government basis. The draft document will be circulated to tribes and state officials for comments and made available on the STRT web page; the STRT co-chairs expect that work on the document will be completed at a meeting of the group currently scheduled for Dec. 2 in Anchorage.

"I'm really excited about the draft agreement and about the progress it represents for Alaska's tribal governments," said Joe Williams. "The state, under the leadership of Gov. Knowles, has recognized the importance and role of Alaska's tribes, as well as their governmental status. We are now close to completing an agreement that will shape the way tribes and the state interact for years to come, an agreement that will impact how our children, and our children's children, live their lives. These are historic times, and I am honored to be a part of them."

Attorney General Botelho echoed Williams' comments and added, "It has not been an easy process to develop this draft agreement-but none of us expected it would be. Working out the framework of a government-to-government relationship is a tough assignment, but every minute we've put in has been well worth it. Each side has come to a new appreciation of the other, we have made new friends, and we have developed a basis of mutual respect and understanding that will serve Alaska well in the long run."

The draft document, dated 11/02/00 and marked "For Discussion Purposes Only," will be available on the STRT webpage, <http://www.gov.state.ak.us/STRT/index.html>.

##

**Contact:**

For more information on the State-Tribal Relations Team contact Chrystal Smith, Office of the Attorney General at 907-465-2132.

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## STATE-TRIBAL RELATIONS TEAM

### Memo from Joe Williams to Tribal Leaders

**To:** All Leaders of Tribal Nations in Alaska  
**Fr:** Joe Williams, Chairman of Tribal-State Relations Negotiation Team  
**Re:** Request for Comments on Unified Draft of Tribal-State Millennium Agreement  
**Dt:** December 15, 2000

Please find attached a proposed draft for the Alaska Tribal-State Millennium Agreement. As you know, this proposed agreement is intended to build on the Governor's Administrative Order recognizing the sovereignty of Alaska's Tribes, and improve communication, cooperation and government-to-government relations between the Tribal Governments and the State. Representatives of the State and the Tribes met on December 11th and 12th of this week, and have tentatively agreed to this unified draft. This is not the final document, there will be one more round of tribal comments and an opportunity for negotiating further changes. The following is the process and schedule for how this proposed Agreement will move forward:

1) All comments and suggestions should be forwarded in writing to Dorene Mack-Webb at the Alaska Inter-Tribal Council by January 31, 2000.

Dorene Mack-Webb	Phone: 907-563-9334
Alaska Inter-Tribal Council	Fax: 907/563-9337
431 W. 7th Avenue, Suite 201	Toll Free: 888/560-AITC
Anchorage, AK 99501	E-mail: dmack@aitc.org

2) The comments will be compiled, forwarded to the tribal drafting team, and considered at the 5th Plenary Session of the State-Tribal Relations Team which has been tentatively scheduled for February 8 & 9, 2001, location to be announced.

3) The February 8 & 9 meeting will be the final opportunity for changing the language of the agreement. After this meeting, the final version will be sent out to all Tribes for review, and a signing ceremony will be scheduled in either February or March. At the signing ceremony, Tribes that wish to do so will have the opportunity to sign the agreement.

**Changes:** You will find that there have been some minor grammatical, syntax and organizational changes from the previously distributed draft. There are few other substantive changes. In paragraph #3, the word "respects" has been changed to "acknowledges." In paragraph #16, the consultation requirement has been spelled out more clearly. In paragraph #35, the amendment process has been modified. However, we would encourage you to review this new draft in its entirety.

**Background:** To place this proposed agreement in context, this draft agreement should be understood both as the historic opportunity that it presents and the limited purposes that it intends to achieve. First, the draft agreement is intended to build on the Administrative Order #186 signed by Governor Knowles on Sept. 29, 2000 that directed state agencies and officials to "recognize and respect" the 227 federally recognized tribes in Alaska. The agreement moves the State and the Tribes further along this new course toward a mutually respectful government-to-government relationship. There is a great need for coordination to address issues such as economic development, the decline of subsistence fisheries, and basic services such as education, health care, transportation and law enforcement. Tribal governments and the state have common interests in addressing these issues, and the draft Agreement sets up a government-to-government relationship and the communications mechanisms for working together through a more constructive dialogue.

However, it is clear to all that tribal governments and the state also have many areas of disagreement and that these disagreements will continue indefinitely into the future, to be resolved through litigation, legislation, and other means. So, the areas of agreement addressed in the proposed Agreement boil down to a very narrow range. This agreement only sets up the assumption of mutual respect and a framework for future communications. It does not intend to address any substantive issues at this time.

Those are to be addressed in the future through the framework of this proposed Agreement.

The "disclaimers" section of the agreement is found in Section VI, and is very clearly designed to limit the scope of the agreement. The proposed Millennium Agreement is not a legal agreement, and does not attempt to establish any kind of a legal relationship between the state government and tribal governments. It is only a policy, like a friendly understanding between neighbors, and does not create any legally binding or enforceable rights. The disclaimers section is very thorough stating that the agreement does not affect any legal rights and may not be used in a court of law, and is very important to protect the legal rights of both the Tribes and the State.

It is important to note that the Agreement drafting committee does not have the power to produce a document that is binding on the tribal governments of Alaska. The draft is being circulated to all tribal governments in Alaska for comments and for changes. When the final discussions and negotiations have occurred, those Tribal governments that want to be part of the Agreement may sign it. Those governments that do not wish to participate in the Agreement do not have to sign it, and will be in no way be a party to the Agreement if they choose not to participate.

Paragraph three of the draft Agreement states:

Each party to the AGREEMENT acknowledges the sovereignty of the others. The parties share particular respect for the values and cultures of Alaska's indigenous peoples. Further, the parties share a desire for an agreement between the State of Alaska and the Tribes that reflects full government-to-government relationships.

Many tribal leaders have insisted that the State of Alaska must recognize and respect the sovereignty of Alaska's tribes. Governor Tony Knowles has similarly insisted that the Tribes also acknowledge that the State has sovereign governmental authority, before entering into a "government-to-government" relationship. Paragraph #3, quoted above, is intended to provide a statement of mutual acknowledgment of the powers of sovereign authority that are held by the Tribes and by the State. The State has been very clear that such an acknowledgment is a necessary basis for entering into a "government-to-government" relationship. This statement is a bare acknowledgment, simply acknowledging that the State and the Tribes have some powers of sovereignty, without arguing the extent and limitations that exist on those powers.

It must be noted that some tribal leaders in the drafting group have raised a concern that recognizing the sovereignty of the State of Alaska may threaten the sovereignty of the Tribes. Certainly, it is a matter for each sovereign Tribal Government to determine whether it wishes to acknowledge that the State of Alaska possesses sovereign governmental authority. Please remember this is a policy agreement only, that does not have any legal effects. We have received legal opinions that this language does not pose any legal threat to the independent and inherent sovereignty of an indigenous Nation, and in fact, this statement of mutual government-to-government respect for sovereignty will serve to reinforce the recognition of the independent sovereignty of Alaska's tribal governments. Please contact Dorene Mack at AITC if you are interested in more information on this topic.

Conclusion - The drafting committee recommends the attached draft to all Tribal Nations in Alaska for their review. It is our great hope that this process will lead to a stabilized and improved relationship with the State, improved coordination in the provision of governmental services to our people, and most importantly, an increased respect and recognition of the sovereignty of all of our Tribal Nations. We look forward to receiving your comments and suggestions, and the further discussion at the 5th Plenary Session.

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## STATE-TRIBAL RELATIONS TEAM

### Tribal Representatives

To contact a tribal representative, please contact:

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Gilda Shelikoff, *False Pass Tribal Council*

E. Ingrid Cumberlandge, *Qagan Tayagungin Tribe of Sand Point*

O. Patricia Lekanoff-Gregory, *Qawalangin Tribe of Unalaska*

Boris Mercurief (alternate), *Saint George Traditional Council*

### Arctic Slope Tribes

Arnold Brower Jr., *Inupiat Community of Arctic Slope*

Susie Akootchook, *Kaktovik Tribal Council*

Elsie Itta, *Native Village of Barrow*

Patsy Aamodt (alternate), *Arctic Slope Native Association*

### Bering Straits Tribes

Robert Keith, *Native Village of Ellim*

Simeon Bekoalook, *Kawerak, Inc.*

### Bristol Bay Tribes

Neils Anderson Jr., *Curyung Native Village Council*

Norman Anderson, *Naknek Native Village*

Moses Kritz, *Traditional Council of Togiak*

Miriam Olson, *Aleknagik Traditional Council*

Roy Matsuno, *Ugashik Traditional Council*

### Chugach Tribes

Gary Kompkoff, *Tatitlek Village IRA Council*

Elenore McMullen, *Port Graham Village Council*

Carol Ann Kompkoff, *Chenega Bay IRA Council*

Robert Henrichs, *Native Village of Eyak*

### Cook Inlet Tribes

Stephanie Thompson, *Alexander Creek*

Lee Stephan, *Eklutna Native Village*

Fred Elsaas, *Seldovia Village Tribe*

Robert Fulton, *Kenaitze Indian Tribe*

Rosalie Tepp, *Kenaitze Indian Tribe*

James Showalter, *Kenaitze Indian Tribe*

Gary Harrison, *Chickaloon Village Tribal Council*

Don Kashevaroff (alternate), *Seldovia Village Tribe*

### Copper River Tribes

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Ken Johns, *Copper River Native Association*

Shirley Miller, *Copper River Native Association*

Martin Finnissand, *Chitina Traditional Council*

Brenda Rebne, *AHTNA, Inc.*

Faye Ewan, *Klutl-Kaah Native Village*

Eleanor Dementi (alternate), *Cantwell Native Village Council*

### Interior Tribes

Randy Mayo, *Stevens Village IRA*

Agnes Tony, *Nikolai Edzeno Traditional Council*

William Miller, *Dot Lake Village Council*

Woodie Salmon, *Chalkyitsik Village Council*

Minnie Kanter, *Shageluk Traditional Council*

Michael Stickman, *Nulato Tribal Council*

Patrick Saylor, *Healy Lake Traditional Council*

Howard Mermelstein (alternate), *Healy Lake Traditional Council*

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**State Co-Chair: Bruce Botelho, Attorney General**

- Karen Perdue  
*Commissioner, Dept. of Health & Social Services*
- Frank Rue  
*Commissioner, Dept. of Fish & Game*
- Deborah Sedwick  
*Commissioner, Dept. of Community & Economic Develop*
- Donna Goldsmith  
*Assistant Attorney General, Dept. of Law*
- Bernice Joseph  
*Deputy Commissioner, Dept. of Community & Economic Development*
- Barbara Ritchie  
*Deputy Attorney General, Civil Division, Dept. of Law*
- Glenn Godfrey  
*Commissioner, Dept. of Public Safety*
- Mary Pete  
*Director, Division of Subsistence, Dept. of Fish and Game*
- Andy Ebona  
*Special Staff Assistant for Rural Affairs, Governor's Office*

Assisting the team will be:

- Jim Ayers *Governor's Chief of Staff*
- Will Mayo *Governor's Senior Rural Policy Advisor*
- John Katz *Governor's Director of State/Federal Relations  
Special Counsel, Washington, DC Office*

### | Press Release |

Knowles Names Cabinet Level Team To Negotiate W

**Kodiak Tribes**

- Margaret Roberts, *Kodiak Tribal Council*
- Paul Panamarioff, *Ouzinkie Tribal Council*
- Julie Knagin, *Native Village of Afognak*
- Andy Teuber Jr., *Leisnoi Village*
- Alicia Lynn Reft (alternate), *Karluk IRA Tribal Council*
- Helen Harris (alternate), *Port Lions Traditional Council*

**Northwest Arctic Tribes**

- Dennis Tiepelman, *Native Village of Kotzebue*
- Joe Ballot, *Native Village of Selawik*
- Virginia Commack, *Ambler Traditional Council*

**Southeast Tribes**

- Lee Clayton, *Chilkoot Indian Association*
- Bert Adams, *Yakutat Tlingit Tribe*
- Joe Williams, *Organized Village of Saxman*
- Stephanie Rainwater-Sande (alternate), *Ketchikan Indian Corp.*

**Yukon/ Kuskokwim Tribes**

- Willie Kasayulie, *Akiachak Native Community*
- Billy Charles (alternate), *Calista/AVCP*

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Joe Williams II, Tribal Advocates Team  
Bruce Botelho, State Team

**Accord Drafting Committee:**

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Willie Kasayulie, Co-Chair  
Lee Clayton  
Faye Ewan  
Gary Harrison  
Bernice Joseph  
Bill Miller  
Karen Perdue  
Barbara Ritchie  
Lee Stephan  
Rosalie Tepp  
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**ACHIEVING  
ALASKA NATIVE  
SELF-GOVERNANCE**

*Toward Implementation of the Alaska  
Natives Commission Report*

*Final Report - AFN Version*

*May 1999*

*Stephen Cornell  
Jonathan Taylor  
Kenneth Grant  
THE ECONOMICS RESOURCE GROUP, INC.*

*Victor Fischer  
Thomas Morehouse  
THE INSTITUTE OF SOCIAL AND ECONOMIC RESEARCH,  
UNIVERSITY OF ALASKA, ANCHORAGE*

## Preface

---

Four years ago, the Alaska Natives Commission noted that “a common theme” in the hearings it conducted with Native people over the preceding two years was “the need for Alaska Native villages—‘tribes’ in the federal terminology—to regain governmental control of their own communities and to exercise authority” in areas ranging from subsistence resources to criminal justice to social programs. The theme, in other words, was self-governance: the freedom and ability of Native peoples to control their own affairs and determine their own futures.

To follow up on the Commission’s report and to pursue its implementation, the Alaska Federation of Natives in 1998 engaged the Economics Resource Group, Inc. (Stephen Cornell, Jonathan Taylor, Kenneth Grant) and the Institute of Social and Economic Research of the University of Alaska Anchorage (Victor Fischer, Thomas Morehouse) to examine Native self-governance in Alaska. The objective was to explore the range of options available to Alaska Natives as means of furthering self-determination and participation in decision making. This included, for example, an evaluation of existing and emerging institutions being utilized by Alaska Natives in developing the capacity for greater and more efficient self-governance.

Since the Alaska Native community has initiated its own process of setting goals and developing recommendations to the Congress, this AFN version of the ERG/ISER September 1998 Final Report eliminates the authors’ specific recommendations. Aside from this change in the last section, the analysis and conclusions are those of the authors.

Julie Kitka, President  
Alaska Federation of Natives

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## **EXECUTIVE SUMMARY**

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### **Principal Findings and Conclusions**

Renewed attention recently has been focused on Alaska's Native communities. News accounts, government reports, and academic studies make it clear that Native communities continue to struggle with serious socioeconomic problems despite extensive federal and state programs designed to address them. The public debates arising out of the U. S. Supreme Court's decision in the *Venette* case,<sup>1</sup> the formation of the governor's Rural Governance Commission (not to mention previous commissions), and continuing subsistence conflicts highlight unresolved questions about what Native, state, and federal institutions should do to address the problems of village Alaska. Finally, the recent Alaska Inter-Tribal Council (AITC)-Rural Alaska Community Action Program (RurAL CAP) Conference of Tribes and the subsequent march, rally, and declaration illustrate continuing Native resolve to address the problems themselves. Clearly there is consensus that Native problems need urgent attention, but there is less agreement on what is to be done.

A central issue in this debate concerns Native self-governance. Can Native self-governance do a better job of dealing with Native problems than non-Native efforts have done? What should be the extent of such governance? What forms should it take?

This report considers these and related questions. By picking up where the Alaska Natives Commission left off and examining Native situations and Native actions in Canada, the lower forty-eight states, and Alaska, it attempts to further the debate about the future of Native self-governance. The report is based on an extensive review of available materials on the current political, economic, and social situation of Alaska Natives, on our own research on Alaska Native self-governance, and on existing studies of indigenous peoples and self-governance elsewhere in the United States and Canada.

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<sup>1</sup> For a discussion of the legal implications of the U.S. Supreme Court decision, see Appendix D.

Among our central conclusions:

1. **Native self-governance is an essential ingredient in overcoming poverty and related social problems in rural Alaska.**

Without real powers of self-determination, Native communities are condemned to be either wards or victims of other institutions trying to either improve or exploit the Native situation. This is unlikely to produce sustained positive change. Nowhere in the history of Indian policy has sustained, successful economic development or sustained improvement in Indian welfare been achieved by communities whose decisions, resources, and internal affairs are substantially controlled by outside decision-makers. In asserting governing powers today, Native communities argue a principle that has found confirmation around the world: we who bear the consequences of decisions about our fate should be the ones making those decisions.

2. **Alaska's current approach to Native governance, while it offers some useful opportunities to Native communities, undermines their ability to deal effectively with their own problems and to develop their resources in ways that improve the socioeconomic conditions of rural Alaska.**

The current structure of self-governance in Alaska offers Natives a variety of institutional models to work with and has some benefits for Native communities. But it fragments responsibility and power among multiple governing units; tends to concentrate decision-making power and control over resources at regional and state levels, undermining rural development efforts and distorting accountability; provides inadequate fiscal support for local self-government; and otherwise constrains Native ability to effectively govern their communities and deal with their problems themselves.

3. **Alaska's Native peoples are currently engaged in a variety of resourceful and determined efforts to take control of their affairs and resources and use that control to solve their problems.**

The most promising Native political developments in Alaska today are happening at the village and sub-regional levels. The movement for tribal self-governance has produced a remarkable array of new governing strategies and institutions. From village-regional relations in the Northwest Arctic region to municipal-tribal government consolidation in Quinhagak to tribal consortia in the Yukon Flats and elsewhere, a number of Native communities are inventing solutions to their problems. Their efforts contain important lessons for all of rural Alaska and provide a number of self-governance options for Alaska's Natives to consider.

**4. These self-governance efforts deserve close attention and support.**

The self-governance efforts being made by Native communities often suffer from inadequate financial resources; from the hostility of existing non-Native institutions and even, at times, from the hostility of Native institutions as well; from internal design and capacity problems; and from the difficulties of effectively communicating models, experience, and ideas across rural Alaska. These problems have to be overcome if these crucial efforts are to realize their full potential. This will require support at regional, state, and federal levels.

**5. Certain key considerations should be taken into account in the effort to improve Native self-governance.**

As Native communities either work within the current system or experiment with new strategies and models, they have to take certain considerations into account. Among those considerations are: which institutional strategies (current or new) actually advance self-determination, which ones have legitimacy with the relevant Native community, which ones not only put Natives in control of their affairs but can deliver *effective* governance, and which ones best fit Native capabilities and resources?

**6. There are concrete changes that can be made at all levels—village, regional, state, federal—that could benefit not only Native communities, but the state as a whole.**

A number of actions can be taken at all governing levels to improve Native self-governance and, thereby, the socioeconomic conditions of rural Alaska. These range from improving the financial management and judicial capabilities of villages to state recognition of tribal status, from federal efforts to facilitate land transfers between Native corporations and tribal governments to regional support for the rural economic development efforts of tribes. Sustained improvement in the situation of rural Alaska will require the reconsideration of some long-established institutions and basic assumptions. But the benefits to Natives and to the state can be substantial.

## **Overview of the Report**

The report that follows is divided into six sections.

**Section I:** The opening section provides an overview of the general argument for self-governance. It draws upon existing empirical research on both Native and non-Native communities to highlight the relationship between self-determination and socioeconomic welfare. It offers empirical and analytical evidence for the assertion that self-governance is a necessary (though not sufficient) condition for creating healthier and more prosperous Native societies. It identifies some key strategic questions confronting Alaskan Natives as they move forward on the path toward greater self-governance.

This section is intended particularly for public officials, tribal leaders, and others interested in the analytical foundations of this report and in the underlying logic of self-governance.

**Section II:** This section describes the forms, powers, and limits of the various institutions under which Native communities in rural Alaska currently operate. This includes both those institutions typically associated with governance, such as tribal councils and various forms of state governing entities such as municipalities, as well as those institutions which may not typically be thought of as governing entities but which in fact exert at least some discretionary political control over Native resources and welfare, such as regional corporations and co-management agreements.

This section is intended to provide a concise but detailed overview of how Native self-governance is currently exercised in Alaska for those readers who may not be familiar with the Native political and legal situation, as well as a reference for readers interested in particular institutions or their powers and limitations.

**Section III:** This section briefly presents some of the benefits and limitations of the current system of Native governance. By stepping back from the complex political structure described in Section II, it evaluates the strengths and weaknesses of that structure and the opportunities and constraints Natives face as they attempt to develop their own capacities for self-governance and their ability to deal effectively with social and economic problems.

The section is intended for those persons, Native and non-Native, who are interested in a general assessment of the existing political system and in how it promotes or hinders Native self-governance.

**Section IV:** Section IV is a compilation of eleven case studies in Native self-governance drawn from Alaska, Canada, and the lower forty-eight states. While many more such cases could be included, the intention was to illustrate the diverse array of strategies undertaken and outcomes achieved by Native communities dealing with issues related to self-governance. These solutions include governmental reorganizations, the formation of tribal courts, the creation of natural resource management systems, and other mechanisms for enhancing self-governance. None of these cases is intended to represent a "best" model for Alaska, but taken together, they not only illustrate the promising and resourceful self-governance efforts some Native communities are making, but include models or lessons that other communities can adopt or learn from.

This section is intended primarily for those individuals, including Native leaders and tribal officials, working to develop greater Native political and/or institutional self-governing capacity and hoping to identify promising self-governance strategies. It also should be of interest to those readers seeking a broader view of the scope of self-governance efforts currently being undertaken by Alaska Natives, American Indians, and Canadian First Nations.

**Section V:** This section lays out the criteria we believe matter in the choice or formation of Native governing institutions and relationships. It discusses in more detail the strategic considerations faced by Alaska Natives (and other public officials) as they attempt to move from the current situation as described in Section II toward greater and more effective Native self-governance.

This section is intended to be used by Native leaders and public officials actively working to expand effective tribal decision-making and governing capacities.

**Section VI:** The report concludes by presenting a list of actions that we believe should be taken at village, regional, state, and federal levels to enhance Native self-governance and improve the socioeconomic conditions of rural Alaska. Some of these actions are modest; some are comprehensive and ambitious. Some are actions already underway to some degree or in some places; others are new. We believe that, taken together, they constitute a program for political and socioeconomic change that will benefit not only Native peoples in Alaska but the state as a whole.

If you would like a copy of the entire  
report, please see the Judiciary Committee  
Aide, Heather Nobrega.

**COMMONWEALTH NORTH**

**Urban Rural Unity Study**  
**"U. R. US"**

**September 2000**

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### ***Why is Commonwealth North doing this report?***

For over 10,000 years, people have made their homes in Alaska. Today Alaska's people are diverse in history and heritage and in their ways of living. This diversity is a great strength. But in recent years misunderstandings and conflicts have frayed the economic, political, and social fabric of our State. This is costly for all Alaskans.

Conflicts between urban and rural populations have existed in all cultures throughout history, and they continue to exist both in Alaska and in the Lower 48. In Alaska these conflicts are especially divisive, partially as a result of land ownership patterns and a dependency on government for economic activity. The formal government structure does not easily accommodate the needs and traditions of Alaska's rural population. Competition for the allocation of the State's fiscal resources results in increasing resentment on all sides. As Alaska's population increases and continues to become more mobile, pressure increases also on our natural resources, especially fish and game.

Commonwealth North is a statewide organization with both rural and urban members. Its mission is to address issues of importance to the whole state. Alaska cannot progress in the future if the tensions between urban and rural Alaska are not recognized and resolved. Commonwealth North has undertaken this report to encourage insight and understanding, and to help lead the way to a unified vision of Alaska's future.

### ***What does Commonwealth North hope to accomplish with the report?***

Commonwealth North hopes this report will contribute to an ongoing process of bringing Alaskans together. We want to help build awareness and understanding of our differences and to encourage recognition of shared goals and needs. The report is not intended, in itself, to provide solutions to today's urban-rural tensions but to encourage cooperation and mutual respect and to propose a shared vision for the future. The report is not a rigorous academic product but a hands-on, grass roots look at Alaska – who we are, where we are going, and where we should be going. We hope this report will be one step in the process of developing a vision for Alaska's future that can be shared by all Alaskans.

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## Executive Summary

### *What are the most significant issues?*

To achieve a unified vision for Alaska's future, we believe the main issues that must be addressed are: (1) economic survival and development, (2) quality, delivery and control of local services, and (3) access to fish and game. The body of this report discusses each of these issues in detail, using the next decade as our basic frame of reference. Each section of the report includes descriptions of some specific real world "success stories" as illustrations that some communities already are making progress toward a resolution of these issues.

In examination of these issues, certain broad needs emerged that must be dealt with in order to develop a full partnership between "urban" and "rural" Alaska:

- The need for cross-cultural understanding through enhanced personal contact and education of both urban and rural viewpoints.
- The need for cross-cultural understanding of how essential subsistence hunting and fishing is to rural Alaskans, and yet how important hunting and fishing is to urban Alaskans.
- The need for recognition that local decisions are best made by local people at the community level and may be influenced or implemented by municipal and tribal governments.
- The need to encourage communities in their efforts to promote meaningful economic development and career opportunities for their citizens.
- The need for statesmanship and leadership with a statewide (not just regional) perspective, in both the public and private sectors.
- The need for state and local funding mechanisms to be equitable and sustainable.
- The absolutely essential need to create and maintain an effective education system for its economic as well as social benefits.
- The need to require meaningful instruction in Alaska history for every student.
- The need to make access to utilities, transportation, justice, health care and modern high-speed telecommunications available throughout the state.

### *What would the ideal look like?*

Utopia is not achievable, but it is possible to achieve a more harmonious Alaska that honors and respects the diversity of its people and recognizes the many areas where urban and rural interests coincide. Many assume that our cultures in Alaska are exactly alike and expect Natives to behave like urban Alaskans. There are two components to the perception gap. Many do not realize what we have in common. At the same time many are not aware of the real differences between Native and urban cultures. Alaska has an

opportunity to create a unique society that draws upon both the traditions of Alaska's Native peoples as well as our nation's historical system of state and local government. In this unique society:

- We envision a future with rural and urban Alaska working together for the good of the whole state, regardless of how "urban" and "rural" may be defined.
- We envision a future where rural and urban Alaskans work together to assure that internal development, value-added businesses, local micro-business, logistical infrastructure, and support industries are encouraged and enhanced for the long-term economic, political, and social benefit of the whole state.
- We envision a future where responsible political leaders consider both the good of the whole state as well as the interests of particular neighborhoods or districts or population groups, and where citizens take an active role in the decision making process.
- We envision a future where all Alaskans have access to an effective local government structure in some form that provides a means for exercising local influence on important issues.
- We envision a future where our commonly owned resources are managed for the common good of all Alaska's people.
- We envision a future where all Alaska's people respect and care about each other.

A basic element of the envisioned social and economic partnership between urban and rural Alaska is recognition of people's right to support their families in the manner they choose and in the location of their choice. For this reason, one of the goals is to encourage the economic viability of the smaller "rural" locations in Alaska and to maintain the diversity of cultures and lifestyles in the state. Likewise, an equally important goal is to foster understanding of the economic, political, and social inter-dependence of rural and urban Alaska, so that all Alaskans truly understand that Alaska's future depends on cooperation between urban and rural Alaska.

Building and maintaining this partnership will require communication, understanding, respect, and identification of mutually agreed goals and expectations. This report suggests what some of those goals should be and suggests processes for moving in this direction – toward a unified vision of an effective partnership between urban and rural Alaska.

### *What is "rural" and what is "urban"?*

The tensions that divide Alaskans appear to be primarily between urban Alaska and rural Alaska. In shorthand terms, "urban" Alaska is seen by some as representing a cash economy, formalized government structure, ready access to public services, competitive individualism, and an increasingly multicultural non-Native heritage; "rural" Alaska is seen by some as representing a subsistence economy, informal traditional governance, inadequate access to public services, communal decision-making, and a substantial Native heritage.

In fact, there are no generally accepted definitions of "urban" and "rural," and the terms have different meanings depending on the purpose for which they are used – for example, access to fish and game,

legislative apportionment, or allocation of public funds. Common definitions are based on a variety of characteristics including population size, extent of road or rail access to population centers, type of local government structure, means of livelihood, and predominant language. This report does not rely on any particular definition; it uses the terms “urban” and “rural” simply as loose groupings of similar interests and circumstances – not in any technical or legal sense.

(For other definitions, see the Commonwealth North web site [www.commonwealthnorth.org](http://www.commonwealthnorth.org) Urban Rural Unity Study section.)

### *How did we get to this stage in urban-rural relationships?*

Statehood and the discovery of oil in the mid-twentieth century were the catalytic events that produced both today’s conflicts and the means to resolve them. The origins, however, of the relationship between indigenous Alaskans and other peoples date back to European and Russian exploration in the eighteenth century. In more recent times, over the course of the twentieth century, the size and distribution of Alaska communities and the character of the Alaska economy have changed dramatically. In the nineteenth century, before the Gold Rush, most Alaska communities were small villages established by Native people in places limited by the reachable subsistence resources. With the Gold Rush at the end of the nineteenth century, many people from other parts of the nation ventured into interior Alaska, and the urban centers of today – Anchorage, Fairbanks, and Juneau – had their beginnings.

Unlike the Native people in villages at that time, the new arrivals were almost totally dependent on a cash economy. Exporting goods and services generated the economic life of their communities. They sold fish, gold, copper and other natural resources to the outside world; they provided transportation, territorial government, health care, education, tourism and other services that were paid for by sources outside the community.

As elsewhere, the efficiency of these new cash-dependent communities was enhanced by size because of economies of scale. In contrast, for a subsistence community, larger size can be a disadvantage; more people in the community mean more competition for the subsistence resources in the area.

These patterns of settlement and community size – a few growing urban centers and larger numbers of small subsistence villages – are found throughout the world. Today, the distinction between cash and subsistence communities is eroding. In even the smallest village, cash is now essential to survival and necessary to subsistence. Snow-machines and all-terrain vehicles have replaced dogsleds; hunting and fishing require ammunition and gasoline. Rural communities now contribute significantly to the growth and strength of Alaska’s larger cash economy through commercial fishing and other activities that export goods and services. ANCSA Native corporations own and operate Alaska lands and businesses that generate great wealth.

Still, the broad outlines of the historical pattern remain. Alaska has a few large, urban communities with economies that bring new money into the state and generate growth, and there are many small villages where it is difficult to earn a cash income, and where distance and the absence of economies of scale significantly increase the costs of goods and services that require cash. At the same time, natural resources that are extracted from rural Alaska feed the urban economies of the State, and frequently do not contribute directly to the local economies where the resources originated.

Past population patterns have shifted dramatically. Today, perhaps under forty percent of the people who live in Alaska were born here; and forty two percent of the people in Alaska live in Anchorage.

During the last half of the twentieth century, these changes were accelerated by a series of major events that affected the ownership and control of land, money and political power in the state. In terms of land status and ownership, Alaska remained a frontier – a public domain, a vast federally owned commons – until well into the second half of the twentieth century. This was all changed by three major federal land laws starting with the Alaska Statehood Act of 1959, gaining momentum with the passage of the Alaska Native Claims Settlement Act (ANCSA) in 1971, and culminating in 1980 with the passage of the Alaska National Interest Lands Conservation Act (ANILCA).

In the two decades between 1959 and 1980, Alaska's land was changed from "open range" to many different ownerships. This was not an easy process, and it has left participants on all sides of the struggle with a sense that they had lost ground. Once all groups – Native people, developers, and conservationists – had felt, rightly or wrongly, that all of Alaska was open to them. Now limits have been imposed on all.

The State land selections following statehood and the discovery of oil at Prudhoe Bay were the motivators for the redistribution of land ownership brought about by ANCSA. The State needed to be able to assure clear title to the land, so that the oil companies would proceed with development. Alaska's Native people emerged from the land allocation struggle with ownership of much of the habitable land – rich in subsistence resources along rivers and coastlines, with money and, very significantly, with regional and statewide corporate structures through which they could exercise political and economic power.

For a while, rural Alaska was a powerful force in the Legislature through the "Bush" caucus that was allied with Fairbanks. More recently, however, other developments have resulted in a decline in rural power in the Legislature. In the 1960's and early 1970's, a series of federal and state court cases required that the Alaska State Legislature be reapportioned based solely on population (including the military population). As a result of this change, the rural, primarily Native, areas of the state lost significant political power.

At the same time, numerous new opportunities for Native leadership were developing within the ANCSA Native corporations, both the regional corporations and their non-profit arms, and within the general business community. The availability of these opportunities may have diverted potential Native political leaders from the political arena, further weakening the rural voice in the state Legislature.

In addition to these long-term historical developments, Alaska – like the rest of the world – is being affected by the significant changes in technology, communications, education and transportation that are occurring globally. These changes are causing major structural shifts in Alaska society.

The following detailed sections of this report attempt to provide a framework for further discussion and analysis to help create a more unified Alaska.

## I. What are the issues?

### A. Access to fish and game

One of the major flash points in the urban/rural divide has been subsistence. Despite a presumed majority approval of the Alaska population in general, the Legislature has failed to allow Alaskans to vote to adopt a constitutional amendment that would bring Alaska law in compliance with federal law. This resistance goes back to 1990 and includes five special sessions and two regular sessions of the Legislature. Many rural and urban citizens are upset that a small minority of legislators can prevent a test of the popular will on this subject. Whether it is through constitutional amendment, or through other means, resolving priorities in access to fish and game, along with related management issues, is central to bridging the urban/rural divide.

#### 1. Many Uses, Many Users.

*Wherever occurring in the natural state, fish, wildlife, and waters are reserved to the people for common use. – Alaska Constitution, Article VIII, Section 3.*

Alaska's fish and wildlife resources are prized by Alaskans, treasured by the nation and renowned throughout the world. Alaskans and others use these resources in a wide variety of ways.

Through fishing and hunting both urban and rural Alaskans use fish and game for personal consumption and recreation and to carry on individual, family and community traditions. The commercial fishing industry is of great economic importance and provides employment to large numbers of rural and urban Alaskans and others from outside the state. Thousands of people from other states and countries around the world come to Alaska to hunt and fish for sport and recreation, and many Alaskans are employed guiding, outfitting and transporting these visitors. Other visitors enjoy simply viewing and photographing Alaska's wildlife and their natural surroundings.

Sound management of Alaska's fish and game resources is essential to preserve the quality of life all Alaskans revere and enjoy and to sustain our commercial fishing, guiding and tourism industries.

Historically, lack of management or poor management has had disastrous impacts on our fish and game resources. Commercial whaling in the 19<sup>th</sup> century drove the whales in Alaska waters to near extinction, and devastated the Native people that depended on these marine mammals for survival. In the 20<sup>th</sup> century commercial fish traps wiped out abundant salmon runs in many Alaska rivers. Gaining control of fish and wildlife management was a major reason Alaskans sought and won Statehood.

Until recent years the availability of fish and game resources to satisfy the hunting and fishing needs of all was taken for granted. Now many changes including improvements in air and surface transportation, better equipment for hunting and fishing, increased population in both rural and urban Alaska, greater affluence and increased leisure time and the growing popularity of Alaska as a tourist destination have combined to put great pressure on these resources. Every fishing season seems to bring reports of salmon run failures in one area or another. Rural and urban hunters report moose and caribou declines and demand predator control. Local conflicts erupt as expanding hunting and fishing ranges overlap. No longer is any part of Alaska truly remote.

## 2. Subsistence

*Protecting subsistence is the top priority of rural Alaskans. Harvesting and consuming fish, game and other natural foods and resources for subsistence is the cornerstone of life in rural Alaska. These resources have great nutritional, economic, cultural and spiritual importance to rural Alaskans. Rural Alaskans see political opposition to a rural subsistence preference as an attack on their traditions and culture. Unless the issue is promptly resolved by the State, a complete federal fish and game management takeover will widen the gulf between rural and urban Alaska, even though it may be welcomed by rural Alaskans as necessary to preserve their subsistence rights.*

– Final Report to the Governor, Alaska Commission on Rural Governance and Empowerment, pp. 12-13 (June, 1999).

The native people of Alaska lived off the land by hunting, fishing and gathering for centuries prior to contact with the outside world. In the Russian colonial period some Alaska Natives were forced into the commercial fur trade, but the indigenous cultures remained largely intact. After the purchase of Alaska the United States periodically acknowledged the existence of aboriginal rights and claims but for over one hundred years failed to define or attempt to resolve them.

In 1971 the Alaska Native Claims Settlement Act (ANCSA) settled the land ownership claims of Alaska's native people and formally extinguished aboriginal hunting and fishing rights. In doing so, however, Congress directed the U.S. Secretary of the Interior to take any action necessary to protect the subsistence needs of the native people. Achieving this goal led to the passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. Title VIII of ANILCA, choosing race-neutral terminology, established a preference for subsistence uses of wild renewable resources by rural Alaska residents.

ANILCA's administrative scheme required the State to provide for the subsistence uses of rural Alaskans with a priority over other uses and a network of regional advisory councils. So long as the State adhered to the subsistence priority it would be permitted to manage fish and game on all federal lands in Alaska. However, if the State departed from the subsistence priority for rural residents then ANILCA provided that the federal government would take over regulation and management on all federal lands.

In 1978 the State enacted legislation establishing a general subsistence preference. A ballot measure seeking to repeal that statute was defeated by a wide margin in 1982. In 1986, to comply with ANILCA, the State's subsistence statute was amended to limit the preference to rural residents. However, in 1989 the Alaska Supreme Court ruled in *McDowell v. State* that this statute violated the Alaska Constitution.

Since then the subsistence debate has raged in the political, legislative and judicial arenas with great intensity and has become a major component of Alaska's rural-urban conflict. Federal agencies took over management of fish and game on federal lands in Alaska starting in 1990 with game, and in 1999 with fish. Federal courts have ruled that the State is not in compliance with ANILCA. Efforts to place a rural subsistence preference amendment to the Alaska Constitution on the ballot have been repeatedly stymied in the Legislature even though public opinion surveys consistently show that Alaskans favor such an amendment. In the *Katie John* case, federal regulatory power was extended to

most navigable waters as well as federal lands in Alaska. Federal takeover deadlines were repeatedly set, and then extended, but eventually the deadline passed without State compliance with ANILCA.

On October 1, 1999, the Federal Subsistence Board – formed by the U.S. Fish and Wildlife Service, the National Park Service, the Bureau of Land Management, the Bureau of Indian Affairs and the U.S. Department of Agriculture Forest Service – initiated expanded management of subsistence fisheries on 60% of Alaska's lakes and rivers. In addition, the Federal Subsistence Board manages game on 200 million acres of federal land in Alaska, nearly one-half of Alaska's land mass.

Subsistence and sport users combined consume only about 3% of the fish harvested annually in Alaska, but a majority of the wildlife. Regardless of the use patterns, recent surveys have shown that most Alaskans support a rural subsistence priority. However, failure of the state to bring itself into compliance with federal law will lead to vastly more difficult conflicts in the future.

### ***3. Dual Management and Beyond.***

With the federal takeover, a system of dual management of fish and wildlife resources has emerged which will add both complexity and confusion for managers and the public. State and federal systems have different goals. The State system seeks to balance a wide variety of user interests, including commercial, sport, personal use, subsistence, and conservation in making allocations, while the Federal Subsistence Board's primary objectives are protection of subsistence and conservation. Each will conduct research and have its own organizational structure, programs and regulation-making process. Each will develop relationships with user groups focusing on their differing objectives. Federal managers, for example, have made a commitment to work with tribal organizations, Alaska Native organizations and regional advisory councils, groups not now directly involved in the State's management system.

Many in rural Alaska welcome the federal takeover because of the federal commitment to protect subsistence. In many areas federal managers have encouraged greater participation by local user groups and organizations in management decisions and have directed more financial resources to this effort than the State ever did. Experience with federal management, including co-management arrangements involving non-governmental organizations dealing with specialized areas and species such as whaling, walrus and migratory birds, has proven successful in rural Alaska. Rural Alaskans, particularly Alaska Natives, may not want to return to State management without a clear commitment by the State to continue many features of the federal management system.

Most of Alaska is public land, but private landowners are increasingly limiting access of hunters and fishermen to their land. Several native corporations, who hold hundreds of thousands of acres of rural land, have begun fee-based permitting systems or have closed their land to non-shareholders. If private land is not available for hunting and fishing, user pressure on public land will increase.

#### ***B. Educational issues***

Education is a natural concern of parents and society throughout the world. In Alaska, the topic of education contributes to the urban/rural divide through a host of problems and symptoms, but more importantly, offers some clear opportunities for bridging the divide, offering hope for the future, and stimulating the economy.

Unfortunately, the mainstream educational system frequently does not meet the needs of village or urban employment, nor prepare students for transition to college. Inconsistent community and parental involvement frequently cannot fill the gaps. Also, in rural areas, transient teachers do not have a stake in local communities. In general, not enough teachers come from, or stay, in rural Alaska. Even finding enough regular and special education teachers is a difficult task, not made any easier because of lack of housing in rural areas.

The lack of mandated teaching of Alaska history has added to the divide because most students have little understanding of how modern Alaska developed, or the legal and cultural underpinnings of Alaska society.

While more money is spent per capita in rural areas than in urban areas, the high cost of providing education in rural areas creates a perception of unequal funding for rural schools compared to urban districts. Two years ago, SB 36 was a lightning rod of concern for rural areas in that it raised the specter of equal dollar state allocation per student despite much higher costs in rural areas. It was one of the aggravating factors for the current divide.

State retention of federal dollars may be an issue. Formulas may be negative to rural Alaska. Furthermore, a general lack of local bonding capacity in most rural areas offers no local funding alternative other than state or federal dollars. State requirements for school district report cards are perceived as a waste of time in both urban and rural districts.

Requirements for facility maintenance and operations are almost impossible to achieve in rural areas because costs of utilities, transportation and building supplies are so high. An upcoming wave of maintenance needs will soon be apparent as the large number of schools built in the aftermath of the Molly Hootch decision reach a point where they will need major maintenance. Despite these obvious and predictable needs, there are no local or state programs for regular maintenance. Some inappropriate building models aggravate the situation.

Despite these problems, some innovative Bush education delivery models exist and provide high graduation rates, with a high percentage of students taking post-secondary education. Some model Bush school districts actually have better high school graduation rates and post-secondary attendance than the Anchorage School District.

### ***C. Health services issues:***

Access to health care, both physical access and financial access, is the name of the game. It is the central issue in providing health care in both Bush and urban areas. Since Alaska has no county or state hospital system, a patchwork quilt of delivery and funding systems has evolved, with attendant high administrative costs. With increased preferred provider organizations (PPOs) and systematization in urban health care, urban health care is becoming more like Native health systems.

Alaska is served with a combination of Indian health sources, Medicare, Medicaid, private insurance and private cash. There is no formal health safety net, nor formal non-Native health care in rural areas. Perhaps fifty non-Native small communities have no health care at all. However, the federal government assumes responsibility for Native health care. Native villages of over 25 people have some kind of health care, with the quality and variety of health services increasing as the size of the community increases. All is not bleak in that innovative systems and modern facilities have improved the level of care in recent years.

Nevertheless, unique problems exist in rural areas that need to be addressed. Dental care is a major problem, much worse than in urban areas. Sanitation is substandard. Perhaps one-third of people in rural areas, or 20,000 to 25,000 people, do not have toilets, which creates a higher incidence of illness. Extremely high construction and operating costs for sewer and water systems has been a major impediment. Also, substance abuse care and behavioral health care is spotty in rural areas, as the federal government has pushed that obligation onto the state. Similarly, urban areas have existing or potential well and septic problems which will become worse as their populations grow.

#### ***D. Public safety issues***

A host of public safety issues contribute to the divide. Many of these issues pertain to both rural and urban areas, while some are more specific.

General concerns are an overcrowded correctional system, with many inmates out of state, away from their family support systems that could assist them in resuming normal lives. Longer mandatory sentences create ever-upward costs, as both more and older prisoners need care. Treatment and prevention measures that can actually prevent crime and save money are widely perceived as being "soft on crime." A specific example is treatment and prevention of Fetal Alcohol Syndrome (FAS), and Fetal Alcohol Effect (FAE) which have been shown to be the cause of much criminal behavior.

A tension between centralization and decentralization is evidenced by problematic reimbursement of state costs for administering local offenses. In rural areas, just as with health care, access to the justice and court system is a problem. Physical distances, high costs, and cultural differences make "equal justice for all" difficult in rural areas. Funding cuts have reduced the successful VPSO (Village Public Safety Officer) program.

#### ***E. Governance and sovereignty***

Overall, it appears that governance and sovereignty issues are more of a Bush concern than in urban areas. This is because municipalities have an established relationship with the state and have their own tax base. Rural Alaskans view the state government like Anchorage views the federal government – cold, distant, hidden, and controlling.

At first blush this area seems fraught for conflict. However, after seeing several real-world success stories of cooperation between municipal governments and tribes, the potential for broader application of these successes seems quite promising.

In both urban and rural Alaska, municipal government has been under severe strain since oil money has started to run low. Inconsistent and conflicting funding sources have driven decisions as opposed to logic and real needs. There is concern over the sustainability of funding for municipalities now, and potentially for tribes in the future if federal funding sources lessen.

Tribal governments are a reality in Bush Alaska. However, there is a general lack of understanding of the legal status of tribes among the non-Native populace. Currently 226 communities have federally recognized tribal governments. While tribal governance is a political situation, it need not be a racial situation, as some communities have demonstrated.

## *F Economic survival and development*

There is a huge disparity in cash income between the urban and rural areas of the state. This is masked to some extent by the very substantial unmeasured economic contributions of the subsistence lifestyle. The fact remains that the traditional mix of cash and subsistence economies in rural Alaska is shifting to an ever-increasing reliance on cash.

It has become increasingly apparent that the Alaska economy has slipped substantially in recent years when compared to other states. Key statistics such as average annual per capita income have fallen from near the top, to the middle of the pack. To some extent this has been hidden by a relative decline in the traditionally higher cost of living in Alaska. However, the rural areas of the state continue to experience extraordinarily high living costs, and the relative drop in income has hit rural areas hard.

The unemployment rate in rural Alaska is extraordinarily high – in the 50% range in some communities. Even factoring in the (again unmeasured) role played by subsistence activities, rural unemployment levels would be politically unsupportable in urban areas. These high unemployment rates do not include “discouraged” workers who have given up trying to find a job and therefore do not get counted as unemployed. Too many areas of the state depend heavily on transfer payments, enhancing the already pervasive Alaska entitlement mentality (which affects rural and urban equally).

Partly as a result of transfer payment dependency, many villages have a sense that key economic decisions are imposed on them from Juneau. A somewhat analogous situation exists in cities that have seen big cuts in revenue sharing. To mitigate these hard feelings, as well as to get the most value for money spent, funding decisions must include the people affected, whether urban or rural. Additionally, in rural areas economic development must incorporate key elements of Native culture to be truly effective in the long run.

These factors combine to help foster a level of social dysfunction that is intolerable for a civilized society. All Alaskans deserve certain choices and opportunities, and above all, hope for the future. As of now, this does not exist for many of our people.

### *The economies of rural and urban Alaska are highly interdependent*

It is hard to overemphasize the interdependence of rural and urban economies. In August of this year, a study was presented to the Greater Fairbanks Chamber of Commerce by Information Insights, Inc. The following examples highlight the importance of rural and Native contributions to the Fairbanks economy: 1. The payroll of Alaska Native organizations in Fairbanks equals the payroll of the University of Alaska Fairbanks. 2. Purchasing by Alaska Native organizations in Fairbanks equals 90% of UAF plus the Fort Knox mine. 3. Alaska Native corporations and subsidiaries in Fairbanks represent 12% of area jobs, 12% of area payroll (including military), 4,130 direct and indirect jobs, \$57 million in local purchasing and \$206 million total economic impact.

## II. What will happen if we do nothing? ---

### *A. Access to fish and game*

Alaska has already lost the power to manage fish and wildlife on federal lands and most navigable waterways in the state by failing to adopt a Constitutional Amendment to recognize a subsistence priority for rural Alaskans. The dual management system put in place October 1, 1999 will continue to operate and, despite the best intentions of managers and policy-makers on both sides to cooperate with each other, the differing objectives and constituencies of each system will lead to increasing incongruities between them.

Conflicts between the two systems will inevitably arise, particularly in areas where federal lands and waters and both subsistence and non-subsistence users are in close proximity, such as the Copper River region, the Kenai Peninsula and Southeast Alaska.

Public pressure on the resources will increase as the population continues to grow in both rural and urban Alaska, more visitors come to hunt and fish, technology enables more users to penetrate the most remote areas, and private land becomes unavailable. Conservation and planning will become increasingly important, but may become increasingly difficult for the dual management systems to carry out.

Competition and conflict between users and between users and managers will increase in the future. As a result of the dual management system the rules and regulations governing our fish and wildlife resources will become more complicated and confusing. Litigation and judicial rule making will continue to play a significant role in management and allocation of these resources. Conservation and comprehensive management and planning will likely suffer.

### *B. Education*

With no action, a host of educational problems will remain unresolved or begin to surface. Buildings will continue to deteriorate, causing some schools to close. Without adequate maintenance, the repair and replacement bill will become so huge as to be unpayable.

More lawsuits over programs and funding will further consume diminishing resources. There will be a descending spiral of suspicion and mistrust between rural and urban areas. Lower test scores may negatively affect federal funding. Additionally, some districts will be out of compliance with the mandate to spend a certain percentage on facilities versus instruction.

Parents will send kids away from home in an attempt to secure a more broadened education. If educational delivery is not based on outcomes that have tangible benefit to students, the number of students not graduating will increase. Money will be spent without a corresponding tie to outcomes. Students will not have the skills to obtain technical jobs, nor will they have the "life skills" necessary to support themselves as adults.

Parents will increasingly use alternative educational delivery systems, such as home schooling, private schools, correspondence courses, and even some Internet classes. Some aspects of these systems are positive, but the opportunity to make friends and develop social skills will be lost.

Alaska society and overall quality of life will decline as the number of poorly educated people increase. Funding penalties for not meeting standards will aggravate the situation. Finally, Alaska will lose economic opportunities, as an increasingly knowledge based global economy passes us by.

### ***C. Health services***

The costs of doing nothing are high. Working poor will go without adequate care. Families will deteriorate and people will have poorer health. Health care administration costs will remain high, as will the costs of health service itself. The ripple effect of other social and judicial costs will continue unmitigated.

As health care in rural areas deteriorates, the need for adequate care will drive migration to urban areas. Children's poor health will affect their educational development. In such an environment, it will become increasingly harder to attract health care professionals. Economic development will be constrained by the impacts of an unhealthy work force.

### ***D. Public safety***

Overcrowding of prisons and jails will continue. Law enforcement will be able to follow up only on more and more serious crimes. Avoiding preventive measures will result in higher dollar costs to the state, as well as higher societal costs and worse public safety.

More people in prison out of the state means they do not have any local support systems to help them improve and become productive members of society. More and more lawsuits will develop about the correctional system as conditions deteriorate. We will see earlier releases of worse prisoners as the court system tries to follow court-mandated guidelines on overcrowding. While both urban and rural areas will be affected, smaller communities will be affected disproportionately, since they have no established public safety infrastructure to fall back upon.

### ***E. Governance and sovereignty***

Local people will continue to find their own solutions. Those that do not will find themselves in a nebulous situation only partly governed by the state and applicable state agencies. Unfortunately, good ideas and governmental models will not spread as rapidly as they could with support, encouragement and idea sharing mechanisms. Many citizens will continue to not understand tribes, and worry about the potential costs of maintaining tribal governments. Polarization will increase between urban and rural Alaska.

### ***F. Economic survival and development***

Areas of conflict between urban and rural Alaska will grow as squabbles intensify over diminishing resources.

A consensus has emerged amongst economists familiar with the Alaska economy that our downhill slide in both urban and rural income will continue unchecked if effective action is not taken. This inevitably will lead to a lowered standard of living. Migration out of smaller communities will continue and even accelerate. We will lose our "best and brightest" to other locales offering more opportunity. There will be increasing pressure for the Federal government to assert control over Alaska issues.

The high costs – financial as well as social – of communities which do not offer healthy economic futures for their citizens will become increasingly apparent. Hope for the future will be lost.

### III. What would a positive resolution look like and mean to Alaska?

#### A. Access to fish and game

Although influenced by modern technology and economic change, the centuries-old subsistence culture of Alaska's Native people continues to flourish in rural Alaska today.

Thousands of rural Alaskans are actively engaged in subsistence and their right to do so is protected by federal law.

All Alaskans should recognize the continuing vitality and importance of subsistence and celebrate the ability of this state and its people to accommodate both a modern Western society and traditional indigenous cultures.

The outcome of such a positive resolution for Alaska might resemble an image described by Alaskan naturalist Margaret Murie:

*My prayer is that Alaska will not lose the heart-nourishing friendliness of her youth – that her people will always care for one another; her towns remain friendly and not completely ruled by the dollar – and that her great wild places will remain great and wild and free, where wolf and caribou, wolverine and grizzly bear, and all the Arctic blossoms may live on in the delicate balance which supported them long before impetuous man appeared in the North.*  
—“The Need for Wilderness,” published in  
Minus 31 and the Wind Blowing, p. 90 (A.P.U. Press, 1980).

Although Ms. Murie was writing about the importance of wilderness, her words apply equally well to a future time in Alaska when the subsistence needs of rural Alaskans have been protected; Alaska has regained control over the fish and wildlife within her borders; and all Alaskans, rural and urban, have seen beyond their differences and learned to respect and appreciate each other.

#### B. Education

School districts could select or devise models that fit the needs of the students in their areas. The state would fund education at a consistent and adequate level to provide optimum facility support and instruction delivery. Partnerships between business, community organizations and schools would develop new ways of delivering education. Dollars will be spent effectively.

Graduation rates and work readiness would increase, resulting in economic competitiveness to attract more high-paying industry. We will have a higher

### SUCCESS STORIES

These stories are offered as examples of how specific activities have successfully addressed concerns raised in this report. This is a very limited list—the reader is encouraged to consider and submit his or her own examples.

#### Access to Fish and Game

**Alaska Eskimo Whaling Commission (AEWC)** was born in 1977 when the International Whaling Commission banned bowhead whaling, which threatened the extinction of the Inupiat whaling culture. The AEWC filed a lawsuit challenging the ban. Within a year, the IWC reversed itself and established a whaling quota for Inupiat whaling, and entered into a Cooperative Agreement with the National Oceanic and Atmospheric Administration (“NOAA”) for enforcement of whaling quotas and assist inspection and reporting on the whale harvest. This is probably the first time since before the American Revolution that Native Americans had been direct participants in the international negotiations affecting their rights.

## SUCCESS STORIES

### Education

The Chugach School District has established a community based "Crib to Crypt" approach to education that recognizes support needed for an individual's entire life cycle. It surveyed businesses on skills students need then established an "outcome based" curricula. The district sets clear expectations of students, teachers and parents with measurable goals.

White Mountain High School sent a high school team to the National Ocean Sciences Bowl held the past three years in Seward, one of the few small schools competing with large high schools from Anchorage, Juneau, and the Kenai Peninsula. This year, a team of young women placed first in their research on salmon management and second overall behind a Juneau High School team.

paid better-educated work force. Well-educated workers can help ensure a continued strong military presence.

Alaskans will be better prepared for a changing world, more well rounded and self-sufficient. More job opportunities will be available for all residents once they are qualified. Self-sufficiency will reduce the need for state or federal subsidies, and gives people mobility – they can choose where they want to work.

Learning Alaska history will give us a better understanding of each other and build a better sense of community. Education will allow diversity to thrive in a modern world and avoid creating an underclass that is shut out of economic, social and political opportunities.

### C. Health services

Alaska's population will be healthier. Healthier people will improve economic development and attract businesses. Less administrative dollars spent will give us better value. People will have a more positive outlook as a rural and urban health safety net will cover the essentials of people's physical and psychiatric needs.

### D. Public safety

Intervention will occur before people harm themselves and society. With adequate safety officers spread around the state, people will be responded to quicker. The public will understand that intervention and prevention saves money. Long-term savings will result from healthier people with reduced FAS/FAE. Suicide rates will be reduced.

With a reduced prison population prisoners will be closer to the support structure of their family and community. Larger cities will run and control their own jails. In rural areas, where appropriate, tribal councils might have a direct role in certain local correctional and court services. Citizens will understand the provisions of and the protections provided all citizens by the U.S. and State constitutions.

Local communities will be able to make and enforce alcohol ban decisions. The state can partner and share with local tribes for public safety services. Elder counseling can provide for better diversion of children and keep them out of trouble.

### *E. Governance and sovereignty*

A mosaic of relationships will evolve that work for local people. Jobs will be created and economies developed. Local resources will be used better in a more integrated fashion. More development will occur that is wanted by local people and that can be financially sustainable in the long run.

Combined municipal and tribal governance could treat all citizens fairly and equally. There will be maximum local self-government with a more constructive working and financial relationship with the state. Effective, cooperative rural governance need not be at the expense of urban communities. In fact, better use of resources should benefit everyone.

The result could be a more harmonious relationship between citizens that will foster a sustainable economic base, which can help maintain a rural lifestyle. Sound local working relationships will result in a better use of people and money. There will be more knowledge of sound local rural governance among urban people. We will have an environment where diversity and local choice can thrive, stimulating leadership in each community.

### *F. Economic survival and development*

A positive resolution must address two broad issues – arresting the state's slide in overall economic performance, and extending this healthy economy to every region. Ideally, Alaska will regain its position as a leader in economic opportunity for its citizens.

A positive resolution will have strong components of communication and cooperation. The urban-rural divide is not a single issue – it is a mix of issues that have taken time to develop. In addition, the divide manifests itself in different ways, at different times and in different contexts. So, a positive resolution to the divide cannot be imagined as a solution to a single issue. Instead, a positive resolution will have to evolve with the issues and take on different forms as conditions warrant. A positive resolution can include the continuation of Native cultural traditions.

It would be a positive development for Federal and state development dollars to be simple to apply for, coordinated (therefore more effective) and directed to meeting needs and desires locally identified and supported. Some communities desire no more than basic infrastructure such as sewer and water, and otherwise to be left alone. Others want to mine coal, harvest trees, or encourage tourism. Ideally, unwarranted federal oversight will accommodate local realities; self-determination with common sense environmental control should supercede political mandate.

Twenty-five years ago Alaska was a vibrant, optimistic land for many, if not all. Pipeline construction had begun. People came from all over to build their future, and that of Alaska.

## **SUCCESS STORIES**

### **Health Services**

**Telemedicine Council** is coordinating private and federal telemedicine projects to avoid duplication and increase efficiency. It is rapidly expanding rural access to medical professionals and expanding the ability of health aides to deliver more effective care.

**Maniiliq**, a tribal organization, has delivered health care and social services for over 30 years in the Northwest Arctic. It demonstrates these services can be contracted efficiently and effectively at the local level, which also provides more diverse work opportunities.

## **SUCCESS STORIES**

### **Public Safety**

The Bethel Cultural Navigator pilot program helps people unfamiliar with the court system to understand judicial processes and make more informed decisions. The Navigator is enhanced by the usage of both prominent languages Yupik and English.

Alcohol "local option" laws allow communities to regulate importation of alcohol or prohibit its importation entirely. Most communities implementing "local option" experience a dramatic reduction in alcohol related problems.

Rural communities were energized by transcending events such as the recent passage of ANCSA. Today the atmosphere is very different, and the deepening chasm between the urban and rural areas is only one symptom of a broader malaise.

A positive resolution will simply mean we can recapture that past sense of shared optimism and faith in the future. It means once again enjoying rising income levels for all areas of the state. Above all, it will mean reducing the high degree of mutual suspicion between the two major cultures which share Alaska.

## IV. What needs to be done to achieve a positive outcome?

### A. Access to fish and game

Find a way for Alaska to reconcile the subsistence-based culture of rural Alaska with the general interest of all in using the fish and wildlife resources of our State.

Share information about the meaning and importance of subsistence in contemporary society through the schools, by cultural exchanges, and within and between our communities.

Resolve state/federal management differences by passage of a constitutional amendment to provide for a rural preference, development of co-management systems, and cross-cultural exchange of information about the meaning and importance of subsistence and recreational hunting and fishing.

Develop co-management systems involving federal and state managers, tribes, non-governmental organizations, interested users and the general public.

Reduce competition and conflict between users and place management emphasis on conserving and enhancing our fish and wildlife resources, and preserving the balance of nature while respecting the need for sustainable harvest levels.

### B. Education

Bringing legislators to villages will help them understand the situation. Emphasize useful vocational and technical training, not just college preparation. Teach Alaska history, starting with prehistory, and include the roles and perspectives of the diverse cultures that make up our current society. Unions can work closer with vocational-technical schools. Better coordination of trade schools such as the Alaska Vocational Technical Center in Seward, the Heavy Equipment Operators, private trade schools, and the U of A will prevent overlapping services and duplication. More partnerships between schools and businesses will also help. Junior Achievement activities could be expanded to rural Alaska.

Reform and change can be brought about by students, teachers and parents sharing a vision and objectives. Comprehensive plans that include evaluations and incentives have been shown to work. The Chugach School District and the "Success by Six" programs are examples. However, these types of programs need the involvement of educators, family and community. It is a "crib to crypt" involvement. Also, opportunities exist

## SUCCESS STORIES

### Governance and Sovereignty

**Northwest Arctic Borough** planning and zoning code encouraged the establishment of local planning committees in borough villages. The Borough also developed new relationships with the U.S. Army Corps of Engineers and federal agencies to provide sewer and water systems and other village infrastructure.

**Quinhagak** combined the resources of the tribe and city government to reduce duplicative administrative costs and combined resources to develop infrastructure to benefit the community.

### Economic survival and development

Development of human capital

The **Alaska Native Heritage Center** is a focus of pride and ongoing understanding of culture, as well as a significant tourism attraction.

**Charter College** fills a technical and practical niche in the overall educational needs of the state by serving 1,100 students a year with a mixture of liberal arts and information technology.

Economic leadership of Alaska is now starting to include and respect Native participation.

## SUCCESS STORIES

### Creative public agencies

The **Denali Commission and the U.S. Department of Agriculture** are leading a move towards a broader vision of cooperation between federal, state, local and government groups.

The **\$180 million Power Cost Equalization trust fund** from the sale of the four dam pool is a major step towards restructuring energy costs in the Bush.

**Ted Stevens Anchorage International Airport** has greatly improved its infrastructure in support of the growth of air cargo. The airport has become a significant logistical center, a major employer and economic engine in the economy, and one of the largest air cargo airports in the country.

**Alaska Housing Finance Corporation** Increased rural loans can be attributed to a national-award winning program that provides less restrictive financing and lower interest rates, homeownership education, one-step construction lending, and a partnership with lenders, and innovative partnerships with the eleven regional housing authorities statewide.

to make military service attractive to youth by creating a Bush veteran network to provide support for young military candidates.

There is a need to educate and involve parents on the benefits and challenges of college. PTAs and school advisory boards should emphasize parental involvement, not just fund raising activities. We need to focus on outcomes and results, not just dollars or programs. The more we can share best practices, the better. Teachers and administrators need flexibility to be able to implement more creative alternatives.

A modern high-speed telecommunication infrastructure can bridge the digital divide, and offer multiple benefits for education, health, safety and administration. The University of Alaska needs to produce more rural and special Ed teachers. Perhaps offering stipends or scholarships for potential rural teachers will encourage more to serve in rural areas

Multipurpose school buildings can secure multiple sources of operations and maintenance funding by combining education, health, public safety, teacher housing, sanitation, water, washateria, and meeting rooms. More thorough use of total life cycle cost accounting in construction design and funding decisions will avoid building too many buildings that we cannot maintain. For any given amount of capital dollars, we should build less, and build better to last longer with less maintenance.

### C. Health services

We need a commitment to improve health care in Alaska through a combination of better legislative process, more federal dollars, better use of state dollars, and creative partnering on economic development projects. The governor, legislature and business leaders need to lead citizens through exposure and education about the savings and benefits of sound health programs. A commitment to Healthy People 2010 standards will create a statewide obligation to bring all Alaskans to nationally defined minimum levels of health care.

Multipurpose use of facilities with sewer, water and telecommunication will provide economies of scale and multiple funding sources. This will help reduce the large capital expenditures necessary to provide basic sewer and water systems throughout Alaska. To have water piped everywhere would cost about one billion dollars. A more minimal level of coverage would cost about \$600 million. In addition, a small village water system costs about \$100,000 per year to operate. Furthermore, increasing population is creating the need for more sewer and water facilities in urban areas. Creating a combined system of ongoing sustainable funding combining local, state, federal and private monies will meet these large needs.

Access and travel challenges remain, as does the need to get health care professionals and medical information out to rural areas and patients and medical information in from rural areas. Fortunately, cost saving opportunities abound. Billing consortiums comprised of groupings of villages have proven efficient to achieve economies of scale, while avoiding the bureaucratic problems of BRUs (Budget Request Units). Maniiliq is an example. Head Start demonstrates the savings of good vs. bad health care. Telemedicine is on the verge of making a major impact. A residency system in Alaska hospitals, with rural internships, would provide needed services while economically training doctors who will have greater knowledge of statewide medical needs. Wherever possible, decisions should be as local as possible, with participation and consultation of the local communities involved.

#### *D. Public safety*

With some type of police in each village – VPSO or tribal – adequate treatment and intervention can be available throughout Alaska. Locally decentralized intervention, prevention, parole and probation can both save money and provide better service.

Creative and cost effective use of technology is an opportunity. Affordable Internet access will lead to cost savings and service enhancements. A current example is electronic monitoring of probation and parole anywhere there is an Internet connection that lets people remain closer to their family and homes. Public education can show citizens that prevention saves money and is the cheapest long-term solution. One example is FAS/FAE programs that reduce parental drinking. Adequately funded alcohol treatment and prevention programs save money in the long run.

Other needs are shared facilities and resources between local organizations, flexibility in administration of program services in small villages, fine tuning state and tribal alcohol control, and adequate funding of public defenders.

#### *E. Governance and sovereignty*

Existing and future success stories and models need to be shared as broadly as possible to make choices easier for others in the future. There is a need to publicize success stories both in rural areas for practical application, and in urban areas for better understanding of what is happening statewide. Maintaining and focusing the state Division of Governmental Coordination to cultivate and share successes is critical.

Cooperative agreements between cities, the state, boroughs, the federal government and tribes have been shown to work. This can include cross-

## **SUCCESS STORIES**

### **Entrepreneurial private businesses**

The **Red Dog** mine demonstrates the benefits of combining regional Native initiative, Outside natural resource skills, and state facilitated financing.

**Allen Marine** in Sitka identified an unserved market and created a boat building industry from scratch.

**GCI** introduced a new level of competition and an entrepreneurial approach to telecommunications that have benefited all Alaskans.

### **Successful Native organizations**

**Regional Native corporations** have become the dominant locally controlled business organizations in Alaska, many of which have diversified with an eye on the bottom line while maintaining shareholder sensitivity.

The combination of several village corporations into **sub-regional management corporations** set an example of regional cooperation and economies of scale, such as the Kuskokwim Corporation, MTNT and Gana A' Yoo.

deputization of troopers and VPSOs (Village Public Safety Officers) to enforce municipal, state, federal and tribal laws.

Teaching Alaska history in schools, including Native corporate and tribal history and ANCSA and ANILCA is a theme that has surfaced repeatedly. Understanding ourselves and how we got to where we are is critical to looking at each other with understanding and appreciation. This can be reinforced by encouraging existing groups that have strong constituencies to work together, including Native, business, civic, cultural and community organizations.

### ***F. Economic survival and development***

There are no easy answers to this question, but common themes emerge. If the issue of economic survival and development is a complex one for the entire state, it is even more intractable for village Alaska, particularly for those communities that do not have a sound current economic basis for their existence. There are however, some factors that can be the foundation for community viability.

A key piece is a quality education for all residents. A quality education creates economic opportunities in both urban and rural Alaska and is increasingly important in a knowledge based world. Studies conclusively show the economic benefit of expenditures for education. Education should be related to the needs of the community. This can be accomplished in a number of ways: suggestions include more focused vocational training in high schools to provide young people with skills appropriate to the jobs available in their community, and improving the university system - especially in cooperation with the business sector. Community colleges can provide this link in rural Alaska; the colleges in Barrow and Galena have been cited as examples of educational institutions that seek to meet community needs.

Economic activity depends on basic infrastructure, historically either provided directly by government or heavily supported. Transportation access and affordable energy are essential needs. Enhanced telecommunications and high-speed Internet access are an emerging part of the foundation for economic survival in rural Alaska. These technologies overcome the distance barrier and reduce the cost of providing many services in small communities. They enable rural school districts to provide more specialized courses and training, enable more effective rural health care and can open global markets for locally produced goods.

A viable community must have an adequate number of jobs and income sources to survive. However, many communities do not have a strong economic base to generate these jobs. The Internet offers one possible way to generate jobs by exporting locally produced goods and services. However, it is likely the number of people that work outside the community must increase for some communities to survive. By exporting their labor community residents generate additional jobs and income.

Businesses located in urban Alaska can assist rural Alaska by developing work patterns that are compatible with subsistence, and developing workforce training programs that stress partnering and cooperation, with the participation of rural residents.

Subsistence is a fundamental piece of the economy of rural Alaska. The time spent in subsistence activities is productive and generates goods that would require a substantial amount of a household's cash income if similar goods were purchased. The value of subsistence is not captured in current statistics. Household income in rural Alaska is lower than in urban Alaska, but the value of subsis-

tence goods or the value of the goods purchased if subsistence activities were not undertaken are not counted in household income. In a similar manner, subsistence activities are not counted as employment in current statistics. This creates a false impression of idleness in rural Alaska when, in actuality, subsistence is very labor intensive. A broader definition of employment that includes subsistence might be useful to present a more accurate picture of economic activity in rural Alaska. If the definition cannot be changed, then efforts should be made to foster a greater awareness of the positive value of subsistence.

One critical piece of the foundation for economic survival in Alaska is leadership. This extends from the governor and the state legislature to community leaders, such as locally elected officials and business people. At the state level, we must acknowledge the challenge of being an owner state, and use state resources in a manner that best meets the needs of the entire state. Too often, state officials are seen as being anti-rural, biased towards programs and expenditures that benefit urban Alaska. In a number of ways local leadership appears to be a key issue in villages that have succeeded. A study should be conducted to document what was done to achieve these successes, as well as what produced the quality leadership that is apparent.

A positive resolution may include exchange programs that involve people of all ages. Anchorage has sister cities in other countries - perhaps communities in Anchorage and other urban centers should have sister communities in rural parts of the state. Residents of sister communities could host each other for different events and begin to know each other, fostering cooperation and communication between urban and rural residents. Building on a comment made at the meeting with various mayors, the leaders of the sister cities could meet on a regular basis to discuss mutual and opposing goals and objectives. At a minimum, this sort of interaction would send a signal that people really do want the divide to dissolve.

Now that we have a better idea of the issues, concerns and conflicts, it is clear there are no simple answers. Alaska will travel many creative roads, which will need to be repaved time and again. Resolution can be achieved by connecting urban and rural Alaska emotionally, fostered by an understanding of how much urban and rural areas are mutually dependant. Much time has been spent on what rural Alaska needs to do, but not enough on how we all will suffer economically should the impasse of the divide continue. Just as urban Alaska needs to understand the benefits of a vital and healthy rural economy, rural areas needs to understand how thriving urban areas round out the economic and social structure of our state. Resolution is a two-way street. We have much to learn from each other.

## V. Conclusions

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While there is no immediate or simple solution to this problem, there are many things that have been done that work and show that progress can be made. If nothing is done, the federal government or the courts will make decisions for us. This study is just a start and supports diversity not just for itself, but also for the benefits it provides everyone. Just as the invisible hand of capitalism benefits the total through the pursuit of individual economic ends, diversity benefits the whole by fostering an environment where each person is free to pursue his or her own lifestyle. The vision of Commonwealth North is to: "Lead Alaskans to adopt economic, social, educational, political and cultural policies that provide the fulfilling, prosperous lifestyle of their choice." This report is an attempt to go in that direction.

Despite the best plans we may make, Alaska has repeatedly been affected by major external events, or, "Wild Cards." Past examples are the fur trade, the Gold Rush, World War II, the discovery and development of oil, and the Exxon Valdez. Potential major events include a gas pipeline or gas-to-liquids, a dramatic shift in world energy prices, development of western Alaska coal, or a national missile defense system. Whatever the nature of these "Wild Cards," we need to exert maximum control over our own destiny in those areas we can influence.

With a problem as large as the urban rural divide, we know that not everyone will be satisfied, and that not everything can be done at once. We need to make choices and prioritize. While there is a tendency for any limiting mechanism to be feared, despised or appreciated depending on benefits received, we must understand that resource need to be allocated. But allocations must be through fair, equitable methods that are open, understood and lead by people who relate results to the needs of people. We hope that Arliss Sturgulewski's words will ring true: "Familiarity breeds empathy."

## VI. Action items for Commonwealth North

The objective of this report is to address the common interests and differences which exist between urban and rural Alaska and to explore ways in which Alaskans can build a vision to bridge those issues in an atmosphere of understanding and mutual respect.

Many suggestions are embedded in this report. Many other excellent ideas and success stories have come to our attention and are worthy of consideration, deliberation and action. We encourage people close to a good idea to embrace it and become part of the solution.

Commonwealth North itself will make a commitment to the following six action items. When deciding what action to take, we took into consideration the following three criteria:

1. It is doable within a year, or at least a good start is possible within a year.
2. It is specific and actionable, not something general like "develop better leadership statewide."
3. It is something Commonwealth North can influence.

Commonwealth North hopes to cooperatively and collaboratively work with or through all appropriate parties to accomplish these action items.

### Action Items:

1. **Explore a solution to the subsistence gridlock.** This could include, but not be limited to, passage of a constitutional amendment to provide for a rural preference, development of co-management systems, and cross-cultural exchange of information about the meaning and importance of subsistence and recreational hunting and fishing.
2. **Consider the inauguration of an annual "Commonwealth North Summit" that would share a wide range of best practices on public policy issues.** The focus would be on success stories and things that work in the real world. It could be organized around "Commonwealth concepts" and include urban/rural, public/private, Native and non-Native organizations, the Governor and Commissioners, the Alaska Congressional Delegation, Legislators, federal agency executives, Alaska Regional Development Organization representatives and other public and private sector leaders. The first year would emphasize issues raised in the U.R.US report.
3. **Seek mandated Alaska history at the high school level as a state graduation requirement for all Alaska students.** This does not necessarily imply a one-size-fits-all approach, but does require meaningful history education as determined by local authorities.
4. **Survey legislators and candidates as to their opinions on urban/rural issues.** Share results of the survey with Commonwealth North members and the public.
5. **Encourage and support the formation of sister schools** as a way to establish relationships and increased understanding between urban and rural students, their families and community.
6. **Explore developing a regularly scheduled statewide call-in radio show** that would promote continued dialogue and communication among all Alaskans. This show would initially focus on urban/rural issues, but would evolve into dealing with broader public policy issues.

## VIII. Appendix

### A. *The Board's Charge to the Committee (approved January 11, 2000)*

#### 1. Question to be addressed:

How can Alaska effectively address the increasing tension between its urban and rural populations?

- This study topic proceeds from the view that there is an increasing tension between urban and rural Alaska. This urban and rural tension will result in lasting harm to Alaska's interests if it is not effectively and promptly addressed.
- A division between urban and rural interests is common in many states, based upon differences in population, economic base, wealth, and political power.
- In Alaska, these "ordinary" urban/rural differences are even more pronounced by racial, cultural, economic, financial and legal factors, and by the actions of different elements of society and government.
- Alaska cannot progress in the future if the rural, predominantly Native population is alienated from the urban, predominantly non-Native population.
- Commonwealth North addresses issues of importance to the state. There are few other political issues as important to the state, and to the promises of Statehood for the whole state, as this. A major part of the impact of this study is in simply recognizing the importance of the issue, and the necessity of finding mutual human respect and understanding.

#### 2. Scope of study:

The intention of this study is twofold:

a) To state the obligations and interests of both the State of Alaska and its people on this issue, including:

- Recognition of common interests between urban and rural Alaska.
- Recognition of the differences between urban and rural Alaska, and the forces that divide Alaskans.
- A vision of Alaska's future in which the benefits of statehood are available to all in appropriate measure, in which the existence of natural and inherent differences between urban and rural interests are generally accepted, and in which the strong common interest of all Alaskans in mutually acceptable solutions is recognized.
- A vision to bridge the issues that divide urban and rural Alaska.

b) To identify issues that divide Alaskans.

- This process will occur for the participants in the study group, and the outcome is intended to serve as a template for other Alaskans who wish to engage in addressing these issues.
- As an example, the study group should consider transporting its members (and as many of the CWN Board and membership as it can accommodate) on one or more fact finding trips to rural Alaska, to foster understanding of the needs of rural residents, and to enhance an understanding of our commonality as human beings, and of our mutual interests as Alaskans.
- Without proposing detailed solutions, this study will also seek to enumerate some of the major issues of dispute between urban and rural Alaska, and to outline some of the implications of various proposals to address these issues, and to explore some alternatives.

### **3. Nature of report to be issued (Technical, Analytical, or Opinion)**

This report will analyze the issues, identify a process for addressing issues, and find guiding principles for the benefit of the State. The study group's goal of fostering understanding and mutual respect will also be served by exposure of its members to the diversity of Alaska, and thus an important part of the value of the report will be to describe this process.

### **4. Conflict of interest standards**

It is intended that persons with interests in the outcome of the study will be members of the study group and will participate in its deliberations. Study group leaders should request that study group members identify their interests relative to specific points they advocate.

### **5. Measure of success**

This study group will be successful if it identifies the interests of the State in resolving urban/rural differences and promotes understanding of and respect for the differences and commonalities between rural and urban Alaska.

## ***B. Study Group participants***

**Co-chairs: Janie Leask, Rick Mystrom**

**Executive Summary co-chairs: Mark Copeland, Susan Mason**

Beverly Beeton, Bailey "Cal" Calvin, Joe Donahue, John Doyle, Janet McCabe, Shauna Nebeker, Stephen Sheaffer, Joette Stora, Jake Wells

**Quality, delivery and control of local services co-chairs: Eleanor Andrews, David Case**

Sarah Barton, Judith Bittner, Lt. Gen. Thomas Case, John Copeland, Jeff Jessee, Cheryl McKay

**Economic survival and development co-chairs: Jonathan Kumin, Vicki Otte**

Richard Barnes, Eric Britten, Patrick Burden, Milton Byrd, Lt. Gen. Thomas Case, Betty Emerick, Hart Hodges, Grant Hunter, Jewel Jones, Nancy King, Steve Lindbeck, Katelyn Markley, Jay Page, Robert Poe Jr., Susan Ruddy, Jeff Staser, John Walsh, Tim Wiepking

**Access to fish and game co-chairs: Chris Cooke, Theresa Williams**  
Bob Congdon, Dawn Dinwoodie, Joe Donahue, John Doyle, Carol Heyman, David Kester

**Members at large**

Curt Achberger, Jason Evans, Mano Frey, Scott Goldsmith, Michael Mills, Dutch Overly, James Shill, Stephen Walsh

**Hartig Fellow: Chris Buchholdt**

**Editor: Duane Heyman**

**C. Commonwealth North Board of Directors, Officers and Staff:**

**Officers:**

Nancy Bear Usera, President  
Eleanor Andrews, Vice President  
Joe Griffith, Vice President  
Jonathan Kumin, Vice President  
Janie Leask, Secretary  
Jo-Li Sellin, Treasurer  
James D. Linxwiler, Past President

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James F. Branch  
Richard Campbell  
Mano Frey  
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Edward Lee Gorsuch  
Walter J. Hickel  
Max Hodel  
Karen L. Hunt  
Marc Langland  
Loren H. Lounsbury  
Jeff B. Lowenfels  
Susan Wright Mason  
Kevin Meyers  
Rick Mystrom  
Randy Newcomer  
Matthew Nicolai  
Morton Plumb, Jr.  
Susan Ruddy  
William Sheffield  
William J. Tobin  
James Yarmon

**Executive Director:**

Duane Heyman

**Staff:**

Denali Daniels, Communications and Events Coordinator  
Karen Williamson, Membership and Administrative Coordinator  
Kari Zenor, Special Projects  
Carla Chesbro, Bookkeeper

***D. Organizations working on the urban/rural divide:***

- 1) Alaska Christian Coalition
- 2) Alaska Common Ground
- 3) Alaska Federation of Natives
- 4) Alaska Humanities Forum
  - Alaska 20/20
  - Rural Urban Update (newsletter)
  - Urban/Rural Youth Program
- 5) Alaska Inter-Tribal Council
- 6) Alaska Municipal League
- 7) Alaska Native Heritage Center
- 8) Alaska Native Professional Association
- 9) Alaska State Chamber of Commerce Legislative Outreach Program
- 10) Alaska Women's Environmental Network can pair people up for rural visits
- 11) Alaskans Listening to Alaskans About Subsistence  
(Cynthia Monroe, Friends)
- 12) Anchorage Chamber of Commerce Rural Partnership Committee
- 13) ANCSA CEOs
- 14) Bridge Builders
- 15) Bringing Alaskans Together (BAT)
- 16) Commonwealth North Urban Rural Unity Study
- 17) Cook Inlet Tribal Council school web site under development
- 18) Denali Commission
- 19) Fairbanks Chamber of Commerce
- 20) First United Methodist Church monthly meetings
- 21) Healing Racism in Anchorage
- 22) Native American Rights Fund
- 23) UAA Native Student Services
- 24) United Way
  - Schools Curriculum Committee
  - Connecting Youth
  - Rural Affairs Task Force

## ***E. Resource people***

### **Executive Summary**

Perry Eaton  
Arliss Sturgulewski

### **Quality, Delivery and Control of Local Services**

Rich De Lorenzo, Superintendent, Chugach School District  
Don Evans, President, Education Resources, Inc.  
Dana Fabe, Justice, Alaska Supreme Court  
Chuck Greene, former Northwest Arctic Borough Mayor  
Margaret Pugh, Commissioner, Dept. of Corrections  
Jim Sanders, Regional Office Supervisor, DCED, MRAD  
Mike Sheldon, Petersburg Tribal Environmental Protection Agency  
Paul Sherry, CEO, Alaska Native Tribal Health Consortium  
Ted Smith, Mayor of Petersburg  
Frank Stein, former Northwest Arctic Borough Planning Director  
Alex Tatum, Educational Consultant

### **Economic Survival and Development**

Neil Fried, Economist, Alaska Dept. of Labor  
Mike Harper, President/CEO, Kuskokwim Corp.  
Carl Propes, CEO, MTNT, Ltd.  
Tom Harris, CEO, Alaska Village Initiatives

### **Access to Fish and Game**

Tom Boyd, Asst. Regional Director, Subsistence Management, USFWS  
Jeff Nelson, Lands Manager, Kuskokwim Corp.  
Mary Pete, Director of the Subsistence Division, State of Alaska  
Frank Rue, Commissioner, Department of Fish and Game  
Rob Bosworth, Deputy Commissioner, Department of Fish and Game  
Carl Rosier, Outdoor Council  
Dick Bishop, Outdoor Council

## *F. Questionnaire summaries*

### Tabulation of responses to the U.R. US questionnaire

Number of surveys tallied: 60

Categories:        Business Sector/Individuals – 15  
                      Native Group Affiliation – 13  
                      Education – 5  
                      Mayors/Government – 27

#### Highlights:

- 59/60 Agree there is a divide
- Top three issues: funding, subsistence, and cultural understanding
- Doing nothing: the divide will increasingly result in a fragmented Alaska discouraging economic growth. Lack of communication and mutual understanding will result in social and cultural clashes.
- All seek a positive resolution
- Positive resolutions: partnerships, inclusive processes, and cultural education

#### Comments:

While the survey does not indicate a unified solution or complete strategy for achieving partnership and inclusive processes, there is general agreement that the vitality of rural Alaska provides gain for urban areas.

Finally, understanding and appreciating cultural diversity is offered as key for reducing the divide and will help resolve the subsistence issue. To this end programs of cultural exchange and education are suggested solutions.

## *G. Alaska Time Line*

Visit the Commonwealth North web site [www.commonwealthnorth.org](http://www.commonwealthnorth.org) Urban Rural Unity Study section for a comprehensive time line of Alaska history.

For further information on the

## **Urban Rural Unity Study**

**"U. R. US"**

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The following articles can be made available to you at your request (barring copyright law):

Indian County and the Inherent Tribal Authority: Will They Survive ANCSA?, Marilyn J. Ward Ford, Alaska Law Review, 1997.

A Revisionist History of Indian Country, Joseph D. Matal, Alaska Law Review, 1997.

Alaska v. Native Village of Venetie: Statutory Construction or Judicial Usurpation? Why History Counts, Donald Craig Mitchell, Alaska Law Review, 1997.