SB 105

<TARGET><BILL>SB 105</BILL><SUBJECT>SB 105</SUBJECT><COMM>SRES28</COMM></TARGET>

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/22/14

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 2/28/14

Resources Committee considered SENATE BILL NO. 105

SB 105-QUITCLAIM LAND TO UNITED STATES

"An Act requiring the state to quitclaim to the federal government land or an interest in land that was wrongfully or erroneously conveyed to the state by the federal government."

and recommends:

[ ] be **replaced** with **CS** _____ (_____) *[ ] Same Title [ ] New Title*

[ ] adopt **previous CS** _____ (_____) *[ ] Same Title [ ] New Title*

[ ] attached amendment(s)

[ ] adopt _____Letter of Intent

[ ] further referral to _____Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DNR		✓		1

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	MICCICHE	✓			
	Bishop	✓			
Anna J. Fairclough	FAIRCLOUGH				✓
	DYSON	✓			
CHAIR:	Giesse l	✓			

Alaska State Legislature

Senate Majority Leader

Judiciary Committee
Chairman
In-State Energy Committee
Co-Chair
State Affairs Committee
Joint Armed Services Committee
Legislative Council
Rules Committee

Senator John Coghill

Session Address:
State Capitol, Room 119
Juneau, AK 99801-1182
(907) 465-3719
Fax (907-465-3258

Interim Address:
1292 Sadler Way, Suite 340
Fairbanks, AK 99701
(907) 451-2997
Fax (907) 451-3526
877-465-3719

www.aksenate.org

Date: February 17, 2014

To: Senator Cathy Giessel, Chair
Senate Resources Committee

From: Senator John Coghill

Re: Request to Schedule SB 105 for Hearing

I am requesting a hearing in Senate Resources Committee for SB 105, *"An Act requiring the state to quitclaim to the federal government land or an interest in land that was wrongfully or erroneously conveyed to the state by the federal government"* at your earliest convenience.

I am attaching the backup information for the bill.

Thank you for your cooperation.

Alaska State Legislature

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SPONSOR STATEMENT
Quitclaim Deed for Native Allotments

43 U.S. CODE § 1635 - STATE SELECTIONS AND CONVEYANCES (c) Prior tentative approvals:

> "(1) All tentative approvals of State of Alaska land selections pursuant to the Alaska Statehood Act are hereby confirmed, subject only to valid existing rights and Native selection rights under the Alaska Native Claims Settlement Act…"

The Alaska Native Allotment Act of 1906, enacted on May 17, 1906, permitted individual Alaska Natives to acquire title to up to 160 acres of land. **A native allotment is a valid existing right** to title that has been through the certification process with BIA.

Currently, when the federal government has "wrongfully or erroneously" conveyed land to the state because there was a prior, legitimate claim to the land, the director of the Division of Lands is not required to make right and quitclaim deed the land back to the federal government so BLM can deed the land to the person who filed the allotment claim or his or her surviving family members.

There will be a few cases where there will be extenuating circumstances that would prevent the State from righting a wrong but they must be clearly unsolvable, such as native allotments that are situated along the TAPS.

There are over 200 individual native allotments acquired under the Native Allotment Act of 1906 that have erroneously been titled to the State of Alaska by BLM. These allotments have been well documented and verified by BLM. My native allotment bill would require DNR title native allotment lands to BLM when the land has been "wrongfully or erroneously" conveyed to the state, enabling BLM to grant fee simple title to the native allotments owners or their surviving relatives.

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Quitclaim Deed for Native Allotments

SECTIONAL

Section 1. Powers and duties of the director of the Division of Lands by mandating he or she quitclaim deeds *"land or an interest in land to the federal government after a determination that the land or the interest in land was wrongfully or erroneously conveyed by the federal government to the state."* Currently that director has permissive authority to do so when land was wrongfully or erroneously conveyed to the state.

Sec. 2. Exempts lands quitclaimed under Section 1 from AS 38.05.125, reservation of subsurface resource rights to the State of Alaska. This would allow for mineral rights to titled owners of native allotments.

Sec. 3. Exempts the new provision pertaining to quitclaim deed to the federal government from AS 38.05.125, restriction on sale, lease or other disposals of agricultural land. This eliminates the limitation on use of such land to agricultural use.

Sec. 4. AS 38.05.035 makes quitclaim deeds to the federal government when the land was wrongfully or erroneously conveyed to the state a permissive actions. This statute is repealed and the quitclaim deed becomes mandatory under Section 1.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: SB 105
Fiscal Note Number:
() Publish Date:

Identifier: SB105-DNR-MLW-2-22-14
Title: QUITCLAIM LAND TO UNITED STATES
Sponsor: COGHILL
Requester: Senate Resources

Department: Department of Natural Resources
Appropriation: Land & Water Resources
Allocation: Mining, Land & Water
OMB Component Number: 3002

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2015**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Personal Services	***		***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	***	**0.0**	***	***	***	***	***

Fund Source (Operating Only)

None							
Total	***	**0.0**	***	***	***	***	***

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues	***		***	***	***	***	***

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed? N/A

Why this fiscal note differs from previous version:

Initial Version

Prepared By: Wyn Menefee, Chief of Operations Phone: (907)269-8501
Division: Mining, Land and Water Date: 02/22/2014 12:00 PM
Approved By: Joe Balash, Commissioner Date: 02/22/14
Agency: Department of Natural Resources

FISCAL NOTE ANALYSIS

STATE OF ALASKA **BILL NO.** SB105
2014 LEGISLATIVE SESSION

Analysis

SB 105 makes the provision mandatory for the state to quitclaim land or an interest in land to the federal government after a determination that the land or the interest in the land was wrongfully or erroneously conveyed by the federal government to the state by repealing AS 38.05.035(b)(9) in Section 4 and adding the provision under AS 38.05.035(a)(14) in Section 1.

Section 2 removes the ability for the state to put any standard reservation language found in AS 38.05.125(a) on reconveyances under AS 38.05.035(a)(14). The state will not be able to reserve any of the mineral estate, including hydrocarbons, or any rights to reach the mineral estate through the surface estate.

Section 3 removes the ability for the state to put any agricultural covenants on these reconveyances under AS 38.05.035(a)(14).

The Department of Natural Resources (DNR) does not anticipate needing additional resources to make the required conveyances. However, there may be indeterminate costs associated with defending any breach of contract claims the state has to defend in situations where the state may have encumbered the land with leases, easements or contracts but the federal government does not accept those encumbrances. There may be an indeterminate potential revenue loss where the state may have leased the mineral estate, including hydrocarbons, or collects fees from authorized improvements on these lands, because at reconveyance the state can not reserve out those rights.

Understanding Land Status Differentiations
Allotment Application (Aguilar cases) vs conveyed allotments and ANCSA lands—
Seeking Legislative Solution to Aguilar Cases

Pending allotment applications, due to erroneously conveyed allotment parcels to the State of Alaska, must be resolved after languishing for decades, sometimes nearly 100 years. A legislative solution to convey these parcels to their rightful owners must move forward.

Allotment titles can be subject to RS2477 access if evidence demonstrates this access pre-dates use by the allotment applicant. Less than 5% of the pending allotment cases have trails on them.

This issue has nothing to do with recent RS2477 cases.

Conveyed land parcels: certificated Native allotments and ANCSA lands

Certificated Native allotments have been conveyed to the allotment owner, governed by certain statutes and regulations pertaining to trust responsibilities. The title may contain provisions for access under RS2477.

If there are issues of trespass, it is the responsibility of the trustee to protect the allotment owner. Recent cases, such as the Purdy's in Chicken, demonstrate that trust responsibility (see TCC white paper RS 2477 claims to access Native allotments and ANCSA lands).

ANCSA land is provided to regional and village corporations through the 1971 Alaska Native Claims Settlement Act. Provisions for access include section 17(b) easements and RS 2477.

Access to lands to these lands, whether a certificated through federal provisions pertain to CONVEYED, TITLED land.

Purdy and Ahtna are recent cases dealing with access (see TCC RS-2477 claims to access Native allotments and ANCSA Lands)—in both, ample access has been granted.

<u>RS2477 --Background</u>

RS 2477 refers to access through statute 2477, originally enacted as Section 8 of the Mining Act of 1866 granting right-of-ways for the construction of highways over public lands. The act was repealed in 1976 with enactment of Federal Land Policy and Management Act (FLPMA). Pre-existing RS-2477 claims were not affected by the FLPMA repeal.

NATIVE ALLOTMENT ADJUDICATIONS

STATISTICS AND PROCESSES

Statistics

Total completed reviews

Total number of allotments adjudicated by BLM to date on all lands	~16,030

BLM's remaining application parcels

BLM's remaining unresolved native allotment application parcels	303
Number of these parcels involving lands never owned by the State	49
Number of these parcels involving lands owned by the State, but not yet submitted by BLM to DNR for review	58
Number of parcels submitted to DNR and under State review/subject to State decisions	196

DNR's reviews and adjudications

Number of parcels that have not yet been adjudicated (of the 196 submitted by BLM to DNR for review)	100
Number of parcels that the State has determined it cannot reconvey	96

Narrative Description

According to BLM's statistics, approximately 16,030 native allotment parcels have been sought in various locations across the state with BLM between January 1, 1906 and today. Of this total, BLM has a remaining 303 parcels to adjudicate statewide. Some of these unresolved allotment parcels do not involve state lands – i.e., the applied-for lands are still in federal ownership, or affect other landowners besides the State.

Most of BLM's remaining 303 parcels involve land that is no longer in federal ownership and has been transferred to the State as part of the statehood entitlement. Unfortunately, the State originally received these lands unaware of potential entitlements, so conflicts have arisen in some cases.

Native allotment parcels involving state land are handled between BLM and DNR – if a native allottee has a potential claim for land that the federal government has transferred to the State, BLM seeks reconveyance, by Quit Claim Deed (QCD), from the State back to the federal government. The State then adjudicates the request to determine if it is able to

return the land to BLM (for eventual conveyance to the allottee). The presumption is that land should be returned if it can be.

Currently, BLM has about 196 unresolved parcels that it has submitted to DNR for review.[1] For potential allotments on such land to be valid, the allottee's use must pre-date the State's selection. The State seeks to ensure that the application and adjudication by BLM is correct, and then that there are not conditions that prevent the State from returning the land (i.e., the State has not transferred the land to another party, or fixtures, easements, or other construction do not occupy the land).

In addition to the 196 unresolved parcels that BLM has referred to the State, there are approximately 54 parcels have been QCD'd to BLM. This means that these applicants received or will receive the parcels[2] that they applied for, and are finally resolved.

Approximately 100 of these 196 unresolved parcels referred to DNR are being actively reviewed, and are at various stages of the review and reconveyance process with DNR, BIA, and/or BLM. Ultimately, the State may QCD these parcels to BLM for conveyance to an allottee, or it may be unable to reconvey once adjudication and review has been completed.

Approximately 96 of these 196 unresolved parcels the State has been unable to reconvey and has denied.[3] There are a number of complex, fact specific reasons for these decisions not to reconvey, but they often feature scenarios where the State has transferred valuable interests in the applied for lands to other third parties since the State acquired interest, or where the Legislature has designated the land should be retained for special uses, or where the lands have already been conveyed to a third party. (See attached maps for examples).

Of the 96 parcels that have not been reconveyed:

- 29 are part of Legislatively Designated Areas (LDAs). Typically LDAs include legislative restrictions on DNR's authority to transfer any land within the area.
- 12 have not had the final releases signed by the necessary parties.[4]
- 29 have significant defects with the application and/or BLM's adjudication (i.e., the State is aware of evidence of use or lack of use that was not considered by BLM).[5]

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[1] This number may still increase. While the statutory authority for individuals to make applications has expired, federal errors and omissions mean that petitions to open closed cases are still coming to BLM. Consequently, the number of parcels at any particular stage of the process is in flux as DNR receives then processes the parcels.

[2] Or substantial portions of the parcels that they have acknowledged as acceptable.

[3] Because these cases have not been finally resolved to the satisfaction of the applicant, BLM considers them open and counts them in the 303 'active' parcels statistic. If these applicants select alternate parcels their cases will be finally resolved.

[4] For the QCD to be finalized, the allottee applicant, or *ALL* of their heirs and devises, have to sign releases accepting the application has been satisfied and the land is satisfactory. When allottees have not signed these agreements for approximately 6 months, they are deemed rejected and the State releases the hold on the land. However, extensions to this six month period are liberally granted if requested. Typically, a given allotment parcel will be held for a year or two years to gather the needed releases.

- 26 have third party ownership interests (i.e., public easements and infrastructure cross the parcel, or a municipality or bona fide purchaser third party has received title through municipal entitlements or land sales).

These 96 denied parcels are now eligible for the alternate parcel program if the applicant would like to pursue that option.

There are also native allotment parcels that involve State land that BLM has not yet transferred to the State for state review, which BLM has estimated to number 58. When these parcels are provided to the State, they will increase the total number of unresolved parcels the State has received (currently ~196) and the number of cases receiving active state review (currently ~100). They will also eventually increase the number QCD'd back to BLM (currently ~54) or the number denied for reconveyance and eligible for alternate parcel selection (currently ~96).

Of note, the Tanana Chiefs Conference (TCC) recently provided a document showing that there may be approximately 264 allotment application parcels currently outstanding.[6] Discussion with BLM has indicated that they have 303 parcels remaining to adjudicate, involving all affected land owners and applicants throughout the State. (TCC's 264 thus should be a large subset of the 303 if BLM's statistics are accurate). Approximately 49 of BLM's 303 unresolved parcels do not affect the State (i.e., they occupy federal land or land that has never been owned by the State). As discussed are approximately another 58 of the 303 that, while they may affect state lands, BLM has not provided to DNR for review and which may include examples provided by TCC.

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[5] Technically, BLM may re-adjudicate these parcels, conduct further review, and request that the State review them again. While these parcels are typically considered closed by the State, they *could* be reopened.

[6] TCC does not represent all potential applicants, thus the discrepancy between BLM's 303 active parcels statistic and TCC's 264. Some of the parcels TCC has raised may not involve State lands at all and require purely federal adjudications.

474 F.Supp. 840
(Cite as: 474 F.Supp. 840)

C

United States District Court, D. Alaska.
Ethel AGUILAR, Elmer Hotch, Ester Hotch, Donald Hotch, Smith J. Katzeek, Sr., Larry Jacquot and Henry Jacquot, Individually and on behalf of all others similarly situated, Plaintiffs,
v.
UNITED STATES of America, Defendant.

No. A76-271 Civil.
July 31, 1979.

Alaska natives brought action challenging Department of Interior's rejection of their allotment applications without a hearing on ground that the subject land had been conveyed to the State of Alaska. Cross motions for summary judgment were filed, as was motion to vacate class certification. The District Court, von der Heydt, Chief Judge, held that: (1) use and occupancy prior to state selection gave the native claimants "preference right" under Alaska Native Allotment Act; (2) fact that plaintiffs did not file an application for allotment until after the land was selected by the state did not eliminate the "preference right" protection given their prior use and occupancy; (3) Government's decision not to recover the land before it held a hearing to determine the facts was arbitrary and capricious; and (4) if defendant had mistakenly or wrongfully conveyed land to the State of Alaska to which plaintiffs had a superior claim, it was the responsibility of the defendant to recover that land.

Motion to vacate denied; defendant's motion for summary judgment denied; plaintiffs' motion for partial summary judgment granted and case was remanded with instructions.

West Headnotes

[1] **United States 393 ⚿105**

393 United States
393VIII Claims Against United States
393k105 k. Claims Under Indian Treaties or Statutes for Relief of Indians. Most Cited Cases

Where Alaska natives used and occupied land prior to selection thereof by the state, such use and occupancy gave the natives "preference right" under the Alaska Native Allotment Act, and, thus, the United States had no authority to convey such lands to the state. Alaska Native Allotment Act, 43 U.S.C. (1970 Ed.) §§ 270–1 to 270–3; Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.

[2] **Public Lands 317 ⚿63**

317 Public Lands
317II Survey and Disposal of Lands of United States
317II(G) Grants to States for Internal Improvements
317k63 k. Lands Included in Grant. Most Cited Cases

Until passage of the Alaska **Native** Claims Settlement Act, land occupied by **natives** was not available for state selection. Alaska **Native** Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.

[3] **Indians 209 ⚿165**

209 Indians
209IV Real Property
209k161 **Allotment** or Partition
209k165 k. Preferential Rights. Most Cited

Cases
(Formerly 209k13(4))

Alaska **Native Allotment** Act grants to qualified applicants a preference right to the **allotment** of land occupied by such applicant. Alaska **Native Allotment** Act, 43 U.S.C. (1970 Ed.) §§ 270–1 to 270–3.

[4] **Indians 209 ⚿165**

209 Indians
209IV Real Property
209k161 **Allotment** or Partition
209k165 k. Preferential Rights. Most Cited Cases
(Formerly 209k13(4))

Fact that Alaska **natives** did not file for an **allotment** until after the land had been selected by the state did not eliminate the protection given their prior use and occupancy as a preferential right under the Alaska **Native Allotment** Act. Alaska **Native Allotment** Act, 43 U.S.C. (1970 Ed.) §§ 270–1 to 270–3; Alaska **Native** Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.

[5] **Indians 209 ⚿165**

209 Indians
209IV Real Property
209k161 **Allotment** or Partition
209k165 k. Preferential Rights. Most Cited Cases
(Formerly 209k13(4))

Preference right granted Alaskan **natives** under the Alaska **Native Allotment** Act is very similar to the right of preemption frequently granted white settlors who occupied public lands on the American frontier before the lands were surveyed and therefore were not available for sale. Alaska **Native Allotment** Act, 43 U.S.C. (1970 Ed.) §§ 270–1 to 270–3.

[6] **Indians 209 ⚿162**

209 Indians
209IV Real Property
209k161 **Allotment** or Partition
209k162 k. In General. Most Cited Cases
(Formerly 209k13(1))

Indians 209 ⚿171

209 Indians
209IV Real Property
209k171 k. Alaska **Native** Claims Settlement. Most Cited Cases
(Formerly 209k13(1))

Potential conflict between provision of Alaska **Native** Claims Settlement Act governing extinguishment of aboriginal **title** and provision saving any application for an **allotment** pending before Department of Interior on December 18, 1971 created an ambiguity in ANCSA that was to be resolved in favor of **native** claimants. Alaska **Native** Claims Settlement Act, §§ 4, 4(a), 18(a), 43 U.S.C.A. §§ 1603, 1603(a), 1617(a).

[7] **Indians 209 ⚿119**

209 Indians
209I In General
209k119 k. Status and Disabilities of Indians in General. Most Cited Cases
(Formerly 209k6.2, 209k6(1), 209k6)

In its relationship with native Americans the Government owes a special duty analogous to those of a trustee; such exacting fiduciary standards apply to the federal Government in its conduct toward Alaskan natives. Alaska Native Allotment Act, 43 U.S.C. (1970 Ed.) §§ 270–1 to 270–3; Alaska Native Claims

Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.

[8] **Indians 209 ⚿165**

209 Indians
209IV Real Property
209k161 Allotment or Partition
209k165 k. Preferential Rights. Most Cited Cases
(Formerly 209k13(4))

The "preference right" given Alaskan natives under Alaska Native Allotment Act gives qualified applicants first choice in the land included in a pending allotment application; if through an adjudication an applicant can establish the facts which he alleges would establish his right to allotment he has an equitable interest in such allotment. Alaska Native Allotment Act, 43 U.S.C. (1970 Ed.) §§ 270–1 to 270–3; Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.

[9] **Indians 209 ⚿152**

209 Indians
209IV Real Property
209k152 k. Land Held in Trust in General. Most Cited Cases
(Formerly 209k10)

Protection of Indian property rights is an area where the trust responsibility of the federal Government has its greatest force.

[10] **Constitutional Law 92 ⚿3522**

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)4 Government Property, Facilities, and Funds
92k3522 k. Sale or Lease in General. Most Cited Cases
(Formerly 92k250.4)

United States 393 ⚿105

393 United States
393VIII Claims Against United States
393k105 k. Claims Under Indian Treaties or Statutes for Relief of Indians. Most Cited Cases

Department of Interior's decision not to recover lands which were selected by the State of Alaska but which allegedly were subject to "preference rights" of Alaska natives based on prior use and occupancy, without holding a hearing to determine the facts, was arbitrary and capricious; rejection of allotment applications without a fact-finding hearing was a violation of natives' rights to due process. Alaska Native Allotment Act, 43 U.S.C. (1970 Ed.) §§ 270–1 to 270–3; U.S.C.A.Const. Amends. 5, 14.

[11] **Public Lands 317 ⚿63**

317 Public Lands
317II Survey and Disposal of Lands of United States
317II(G) Grants to States for Internal Improvements
317k63 k. Lands Included in Grant. Most Cited Cases

If the United States mistakenly or wrongfully conveyed land to the State of Alaska to which Alaska natives had a "preference right" under Alaska Native Allotment Act based on use and occupancy prior to state selection, it was responsibility of the federal Government to recover that land. Alaska Native Allotment Act, 43 U.S.C. (1970 Ed.) §§ 270–1 to 270–3.

***841** Luther A. Granquist, Gregory M. O'Leary, Alaska Legal Services Corp., Anchorage, Alaska, for

474 F.Supp. 840
(Cite as: 474 F.Supp. 840)

plaintiffs.

Stephen Cooper, Asst. U. S. Atty., Fairbanks, Alaska, Alexander O. Bryner, U. S. Atty., Anchorage, Alaska, for defendants.

Barbara J. Miracle, Asst. Atty. Gen., Anchorage, Alaska, for State of Alaska amicus curiae.

MEMORANDUM AND ORDER

VON DER HEYDT, Chief Judge.

THIS CAUSE comes before the court on plaintiffs' motion for partial summary *842 judgment and for a remand to the Department of Interior, defendant's motion for summary judgment and for an order vacating the class certification.

The plaintiffs in this case are Alaskan Natives who have made timely applications to the U.S. Department of Interior for an allotment under the Alaska Native Allotment Act (May 17, 1906, 34 Stat. 197, as amended Aug. 2, 1956, Ch. 891, 70 Stat. 954; former 43 U.S.C. ss 270-1-270-3, repealed but with a savings clause for applications pending on December 18, 1971, by P.L. 92-203, 85 Stat. 70). In Ethel **Aguilar**, 15 IBLA 30 (1974), the Interior Board of Land Appeals affirmed the rejection of their **allotment** applications without a hearing because the land they claim for the **allotment** has already been conveyed to the State of Alaska. The plaintiffs claim that the use and occupancy upon which their **allotments** applications are based commenced prior to the conveyance of the land to the State of Alaska.

The court has previously certified a class under Fed.R.Civ.P. 23(a) and (b)(2) as follows:

> All Alaska **Native allotment** applicants each of whom commenced use of the land for which he or she applied prior to the filing with the Department of Interior of an application for conveyance of the same land to the State of Alaska and whose allotment application was or will be rejected, in whole or part, because the land described therein was conveyed to the State of Alaska prior to adjudication of the **allotment** application.

The defendant has moved to vacate this class but the court finds no merit in the grounds cited by defendant. Oral argument has been requested but in view of the extensive briefs and in order to expedite the business of the court oral argument is denied. Local Rule 5(C)(1). In order to decide these motions the court must determine what kind of interest an Alaskan **Native Allotment** applicant has in his claim that he uses and occupies, and what the responsibility of the federal government is to protect that interest.

I. The Interest of the **Allotment** Claimants in the Land Conveyed to the State

The Alaska **Native Allotment** Act of 1906 was the first statute passed which allowed the **Natives** of Alaska to perfect their **title** to the land occupied and used by them. United States v. Atlantic Richfield Co., 435 F.Supp. 1009, 1015 (D. Alaska 1977). The Committee on Public Lands described to the House of Representatives how the land used and occupied by Alaskan Natives could be selected by others and cause them to be dispossessed because no legal means existed to secure their rights:

> The necessity for this legislation arises from the fact that Indians in Alaska are not confined to reservations as they are in the several States and Territories of the United States, but they live in villages and small settlements along the streams where they have their little homes upon land to which they have no title, nor can they obtain title under existing laws. It does not signify that because an Alaska Indian has lived for many years in the same hut and reared a family there that he is to continue in peaceable possession of what he has always regarded his home. Some one who regards that particular spot as a desirable location for a home can file upon it for a homestead, and the Indian or Eskimo, as the case

> may be, is forced to move and give way to his white brother.

H.R.Rep.No.3295, 59th Cong., 1st Sess. (1906). In order to remedy this problem the Congress passed the Alaska Native Allotment Act which

> authorized the Secretary "in his discretion and under such rules as he may prescribe" (s 270-1) to allot up to 160 acres of vacant, unappropriated, and unreserved land in Alaska to any qualified Alaska Native. To qualify, the Native applicant must make "proof satisfactory to the Secretary . . . of substantially continuous use and occupancy of the land for a period of five years." (s 270-3) The Secretary's regulations construe the Act to allow for customary and seasonal patterns of use and occupancy,*843 but require that there must be actual possession and use, potentially exclusive of others, and not merely intermittent use. 43 C.F.R. s 2561.0-5(a). Thus, an applicant can meet the required qualifications by showing seasonal use of the claimed land, potentially exclusive of others, for five consecutive years for such customary purposes as hunting, fishing, or berry picking.

Pence v. Kleppe, 529 F.2d 135, 137 (9th Cir. 1976). The Allotment Act states "Any person qualified for an allotment as aforesaid shall have the Preference right to secure by allotment the nonmineral land occupied by him not exceeding one hundred and sixty acres. (emphasis added). 34 Stat. 197, (former 43 U.S.C. s 270-1).

The Ninth Circuit Court of Appeals interpreted the legislative history of the Act to mean "that the Native applicants here have a sufficient property interest to warrant due process protection . . . This is a clear indication that Congress intended to create or to recognize rights in Alaska Natives to the land that they occupy for the statutory period, and not, as the Secretary contends, merely a hope that the government will give them the land." Pence v. Kleppe, 529 F.2d at 141-42.

[1] The plaintiffs contend that their use and occupancy prior to the state selections reserved the land from selection by the state, and therefore that the United States had no authority to convey the lands claimed by the Native allotment applicants to the State. This court finds that the "preference right" granted by the Native Allotment Act, the relevant case law, and the decisions of the Department of Interior support the claims of the plaintiffs.

[2][3] Until the passage of the Alaska Native Claims Settlement Act, land occupied by Natives was not available for state selection. State of Alaska v. Udall, 420 F.2d 938 (9th Cir. 1969), Cert. denied 397 U.S. 1076, 90 S.Ct. 1522, 25 L.Ed.2d 811 (1970). But these plaintiffs need not rely on a naked aboriginal **title**. The **Native Allotment** Act grants to qualified applicants a preference right to the **allotment** of land occupied by such applicants. Herbert H. Hilscher, 67 I.D. 410 (1960). "Conveyance of land in derogation of a Congressional directive to respect and protect **Native** occupancy would be void and legally ineffective to extinguish aboriginal **title**." United States v. Atlantic Richfield Co., 435 F.Supp. 1009 at 1020 n. 45.

In Cramer v. United States, 261 U.S. 219, 43 S.Ct. 342, 67 L.Ed. 622 (1923), the United States on behalf of three Indians in California brought suit to cancel a portion of a patent issued by the United States to the Central Pacific Railway Company because that land was occupied and used by the Indians and therefore could not validly be conveyed to the railroad. The Court held that the Indians' pre-existing right of possession excepted the lands occupied by the Indians from the grant to the railroad. The discussion of the government policy involved and the Interior Department cases upholding it is very instructive in the instant case and will be quoted at length:

> Unquestionably it has been the policy of the Federal Government from the beginning to respect

the Indian right of occupancy, which could only be interfered with or determined by the United States. Beecher v. Wetherby, 95 U.S. 517, 525 (24 L.Ed. 440); Minnesota v. Hitchcock, 185 U.S. 373, 385 (, 22 S.Ct. 650, 46 L.Ed. 954). It is true that this policy has had in view the original nomadic tribal occupancy, but it is likewise true that in its essential spirit it applies to individual Indian occupancy as well; and the reasons for maintaining it in the latter case would seem to be no less cogent, since such occupancy being of a fixed character lends support to another well understood policy, namely, that of inducing the Indian to forsake his wandering habits and adopt those of civilized life. That such individual occupancy is entitled to protection finds strong support in various rulings of the Interior Department, to which in land matters this Court has always given much weight. Midway Co. v. Eaton, 183 U.S. 602, 609 (22 S.Ct. 261, 46 L.Ed. 347); ***844**Hastings & Dakota R. R. Co. v. Whitney, 132 U.S. 357, 366 (, 10 S.Ct. 112, 33 L.Ed. 363). That department has exercised its authority by issuing instructions from time to time to its local officers to protect the holdings of non-reservation Indians against the efforts of white men to dispossess them. See 3 L.D. 371; 6 L.D. 341; 32 L.D. 382. In Poisal v. Fitzgerald, 15 L.D. 19, the right of occupancy of an individual Indian was upheld as against an attempted homestead entry by a white man. In State of Wisconsin, 19 L.D. 518, there had been granted to the State certain swamp lands within an Indian reservation, but the right of Indian occupancy was upheld, although the grant in terms was not subject thereto. In Ma-Gee-See v. Johnson, 30 L.D. 125, Johnson had made an entry under s 2289, Rev.Stats., which applied to "unappropriated public lands." It appeared that at the time of the entry and for some time thereafter the land had been in the possession and use of the plaintiff, an Indian. It was held that under the circumstances the land was not unappropriated within the meaning of the statute, and therefore not open to entry. In Schumacher v. State of Washington, 33 L.D. 454, 456, certain lands claimed by the State under a school grant, were occupied and had been been improved by an Indian living apart from his tribe, but application for allotment had not been made until after the State had sold the land. It was held that the grant to the State did not attach under the provision excepting lands "otherwise disposed of by or under authority of an act of Congress." Secretary Hitchcock, in deciding the case, said:

"It is true that the Indian did not give notice of his intention to apply for an allotment of this land until after the State had made disposal thereof, but the purchaser at such sale was bound to take notice of the actual possession of the lands by the Indian if, as alleged, he was openly and notoriously in possession thereof at and prior to the alleged sale, and that the act did not limit the time within which application for allotment should be made."

Congress itself, in apparent recognition of possible individual Indian possession, has in several of the state enabling acts required the incoming State to disclaim all right and title to lands "owned or Held by any Indian or Indian tribes." See 25 Stat. 676, c. 180, s 4, par. 2; 28 Stat. 107, c. 138, s 3, par. 2.

The action of these individual Indians in abandoning their nomadic habits and attaching themselves to a definite locality, reclaiming, cultivating and improving the soil and establishing fixed homes thereon was in harmony with the well understood desire of the Government which we have mentioned: To hold that by so doing they acquired no possessory rights to which the Government would accord protection, would be contrary to the whole spirit of the traditional American policy toward these dependent wards of the nation.

Cramer v. United States, 261 U.S. at 227-29, 43 S.Ct. at 344. While some of the language in this deci-

sion is unfortunately paternalistic, the legal principles announced in Cramer would appear to have even more force when applied to a right of occupancy protected by the Native Allotment Act of 1906. No statute or treaty protected the right of occupancy litigated in Cramer while the right of occupancy of these plaintiffs is explicitly given a preference under the Native Allotment Act. See also Minnesota v. Hitchcock, 185 U.S. 373, 388-92, 22 S.Ct. 650, 46 L.Ed. 954 (1902) (a grant to Minnesota from the United States was held not to include Indian land protected by treaty but not formally set aside as an Indian reservation). Leavenworth, Lawrence and Galveston Railroad v. United States, 92 U.S. 733, 23 L.Ed. 634 (1876) (a grant to Kansas from the United States for the purpose of building a railroad was held not to include Indian land protected by treaty stipulations). While the two cases just cited involved Indian lands protected by treaty, there is no apparent reason why less protection should be given to lands of Native Alaskans that are protected by a statute such as the Allotment Act.

***845** [4][5] The fact that these Natives did not file an application for an allotment until after the land was selected by the State does not eliminate the protection given their right of use and occupancy. The departmental decisions and rules regarding allotment rights are in some respects similar to those governing settlement and homestead. Herbert H. Hilscher, 67 I.D. at 414. The preference right granted Alaskan Natives under the allotment act is very similar to the right of preemption frequently granted white settlers who occupied public lands on the American frontier before the lands were surveyed and therefore were not available for sale. The right of preemption gave the settlers first chance to purchase the land. Shepley v. Cowan, 91 U.S. 330, 23 L.Ed. 424 (1875) involved a dispute between state selection rights and a settler's pre-emption rights. The plaintiff based his claim on a patent received from the State of Missouri and the defendant based his claim on a patent issued by the United States to a settler claiming pre-emption rights. The Court noted that as against each other (in the instant case the right of Alaska as against the allotment applicants), "the first in time in the commencement of proceedings for the acquisition of the title, when the same are regularly followed up, is deemed to be first in right." Shepley v. Cowan, 91 U.S. at 338. But the Court earlier in its opinion had held that the first initiatory act for a pre-emption settlement takes effect at settlement. "Thus the patent upon a State selection takes effect as of the time When the selection is made and reported to the land-office; and the patent upon a pre-emption settlement takes effect From the time of the settlement as disclosed in the declaratory statement or proofs of the settler to the register of the local land-office." Shepley v. Cowan, 91 U.S. at 337 (emphasis added). The Court held that the patent based upon the pre-emption right was superior. In much the same way the preference right of the Alaskan Natives in this case was acquired upon their first use and occupancy of the land. See also Stockley v. United States, 260 U.S. 532, 544, 43 S.Ct. 186, 189, 67 L.Ed. 390 (1923) (A homestead claim that was not yet patented was held a valid existing right excepted from a Presidential withdrawal order because, "(t)he effect of a preliminary homestead entry is to confer upon the entryman an exclusive right of possession, which continues so long as the entryman complies in good faith with the requirements of the homestead law.")

Two departmental decisions also support the position of the plaintiffs in this case. In Yakutat and Southern Railway v. Setuck Harry, Heir of Setuck Jim, 48 I.D. 362 (1921) it was held that actual occupancy and use of a tract of land by an Alaskan Native prior to its inclusion in the Tongass National Forest confers upon the occupant a preference right to a Native Allotment, although the application for the allotment was filed subsequent to the proclamation creating the National Forest. In a more recent decision of the Interior Board of Land Appeals it was held that the use and occupancy of an allotment applicant would preclude State selection under the Statehood Act even though the application for the allotment was filed after the tentative approval of the State selection. Lucy S.

Ahvakana, 3 IBLA 342 (1971). The foregoing cases convince this court that the plaintiffs are correct in their contention that land in an allotment claim used and occupied for subsistence purposes by an Alaskan Native was not available for conveyance to the State of Alaska.

[6] The State of Alaska as Amicus has argued that the contention of the plaintiffs is foreclosed by this court's decision in United States v. Atlantic Richfield Co., 435 F.Supp. 1009 (D. Alaska 1977) which held that s 4(a) of the Alaska **Native** Claims Settlement Act, 43 U.S.C. s 1603(a), extinguished all claims based upon aboriginal **title** at conveyance or tentative approval of conveyance to the State of Alaska. None of the principles announced in this decision disturb that decision because the claims of the plaintiffs are not based upon aboriginal **title** but are based on the first preference given these **Natives** by the **Allotment** Act passed in 1906. Rather than extinguishing ***846** the claims of plaintiffs, ANCSA repealed the **Allotment** Act but provided "any application for an **allotment** that is pending before the Department of the Interior on December 18, 1971, may, at the option of the **Native** applicant, be approved . . .", s 18(a), U.S.C. s 1617(a). Acceptance of the State's argument would mean that what the Congress saved in s 18(a) it had already extinguished by s 4. It would create the anomalous situation where Natives who happened to use and occupy land conveyed to the State had their allotment rights taken away, while Natives living on federal land had their allotment preserved. The State or the defendants have referred to no part of the legislative history of ANCSA that would support such an act of discrimination on the part of the Congress. At most the potential conflict between s 4 and s 18(a) creates an ambiguity in ANCSA that must be resolved in favor of the Natives. Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89, 39 S.Ct. 40, 63 L.Ed. 138 (1918), Bryan v. Itasca Co., 426 U.S. 373, 392-93, 96 S.Ct. 2102, 38 L.Ed.2d 710 (1976); Alaska Public Easement Defense Fund v. Andrus, 435 F.Supp. 664, 671 (D. Alaska 1977).

The claims of these plaintiffs are in no way comparable to the amorphous trespass claims asserted in the ARCO case. No applicant for a Native allotment can receive more than 160 acres and no Native who does not already have an application pending before the Department of Interior as of December 18, 1971, could benefit from this decision.

II. The Federal Government's Responsibility to Recover Lands Wrongfully Conveyed to the State

The defendant has refused to adjudicate the plaintiffs' applications so that it can determine the validity of their allotment claims. The Department of Interior only made an informal investigation and determined that the conveyances to the State were valid. The existence or sufficiency of the plaintiffs' use and occupancy cannot be determined on a motion for summary judgment. But the rights of the plaintiffs likewise cannot be determined without a formal adjudication under Pence v. Kleppe, 529 F.2d 135, 137 (9th Cir. 1976).

[7] In its relationship with Native Americans the government owes a special duty analogous to those of a trustee. Heckman v. United States, 224 U.S. 413, 32 S.Ct. 424, 56 L.Ed. 820 (1912); Seminole Nation v. United States, 316 U.S. 286, 62 S.Ct. 1049, 86 L.Ed. 1480 (1942); Morton v. Ruiz, 415 U.S. 199, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974). These "exacting fiduciary standards" apply to the federal government in its conduct toward Alaskan Natives. Alaska Pacific Fisheries v. United States, 249 U.S. 53, 39 S.Ct. 208, 63 L.Ed. 474 (1918); Aleut Community of St. Paul Island v. United States, 480 F.2d 831, 202 Ct.Cl. 182 (1973); Adams v. Vance, 187 U.S.App.D.C. 41, 44 n. 3, 570 F.2d 950, 953 n. 3 (1978); People of Togiak v. United States, 470 F.Supp. 423 (D.D.C.1979); Eric v. Secretary of HUD, 464 F.Supp. 44 (D. Alaska 1978).

[8][9] In the previous section of this opinion the court has identified the statutorily protected interests

which the plaintiffs have in the land which they use and occupy. The "preference right" gives qualified applicants first choice in the land included in a pending application. If through an adjudication the plaintiffs can establish the facts which they allege which would establish their right to an allotment, they would have an equitable interest in their allotment. The protection of Indian property rights is an area where the trust responsibility has its greatest force. Seminole Nation v. United States, 316 U.S. 286, 62 S.Ct. 1049, 86 L.Ed. 1480 (1942), Pyramid Lake Paiute Tribe of Indians v. Morton, 354 F.Supp. 252 (D.D.C.1953). While the government in this litigation has not denied its trust responsibility, it evidently takes the position that it no longer has to act because it has already given away the land claimed by the plaintiffs. But this is clearly circular reasoning.

The Department of Interior refuses to hold adjudicatory hearings which the plaintiffs contend would establish that the United States wrongfully or mistakenly conveyed the disputed allotments to the State *847 of Alaska. The Department has contended that it has no responsibility to recover the lands because there was no mistake in the conveyance. But it then refuses to hold hearings required by Pence v. Kleppe that would determine whether a mistake was made on the ground that it no longer has jurisdiction since the land has already been conveyed to the state.

This court agrees with Administrative Law Judge Burski who dissented in a recent decision of the Interior Board of Land Appeals dealing with the same issue. He said:

> Moreover, under the decisions of the Ninth Circuit Court of Appeals in Pence v. Kleppe, 592 F.2d 135 (1976), and this Board in Donald Peters, 26 IBLA 235 (1976), no Native allotment application can be rejected on the basis of a disputed issue of fact without notice and an opportunity for hearing. It is true that where a decision to reject a Native allotment is premised on a purely legal determinant no hearing is required. But I must admit difficulty in following the logic of a procedure which rejects an allotment application on the basis of an issued patent where the correctness of the issuance of the patent is disputed, without ever affording the Native allotment applicant an opportunity to show his entitlement.
>
> If this Department has erroneously issued the patent to the State in derogation of the appellant's rights, it seems only elementary justice that the Department should bear the economic burdens attendant to a suit to cancel the patent. A hearing is essential before the Department can make an informed judgment as to the merits of the appellant's application. Accordingly, I would reverse the decision below rejecting the Native allotment application, order the State Office to hold further action on the application in abeyance and direct the State of Alaska to bring a contest against the allotment applicant. Should the State of Alaska decline, I would recommend that the Solicitor's Office undertake discussions with the Justice Department with a view towards the initiation of suit to cancel (the patents), to the extent of the conflict between the patents and the allotment application.

Berthyn Jane Baker, 41 IBLA 239 (1979) (Judge Burski dissenting).

[10][11] The defendant's decision not to recover the land without first holding a hearing to determine the facts is arbitrary and capricious. The defendant's rejection of the plaintiffs' allotment applications without a fact-finding hearing is a violation of the plaintiffs' rights to due process under Pence. If the defendant has mistakenly or wrongfully conveyed land to the State of Alaska to which plaintiffs have a superior claim, it is the responsibility of the defendant to recover that land. United States v. Cramer, 261 U.S. 219, 43 S.Ct. 342, 67 L.Ed. 622 (1923); Heckman v. United States, 224 U.S. 413, 32 S.Ct. 424, 56 L.Ed. 820 (1912); Joint Tribal Council of Passamaquoddy

Tribe v. Morton, 528 F.2d 370 (1st Cir. 1975).

Accordingly IT IS ORDERED:

1. THAT defendant's motion to vacate class certification is denied.

2. THAT defendant's motion for summary judgment is denied.

3. THAT plaintiffs' motion for partial summary judgment and remand to the Department of Interior is granted.

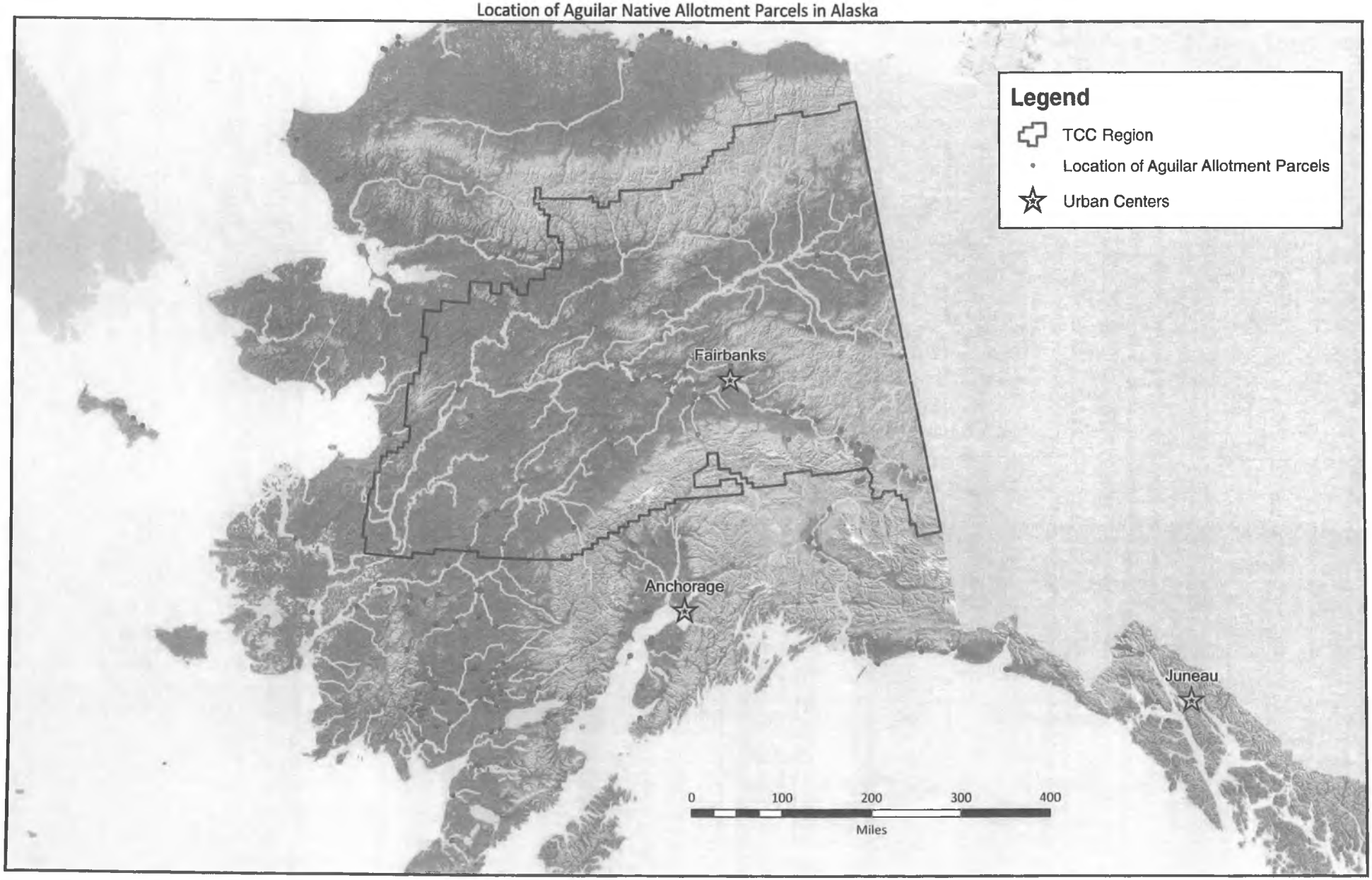
4. THAT the plaintiffs' cases are remanded to the Department of Interior with instructions to adjudicate their substantive claims of entitlement pursuant to all applicable procedures.

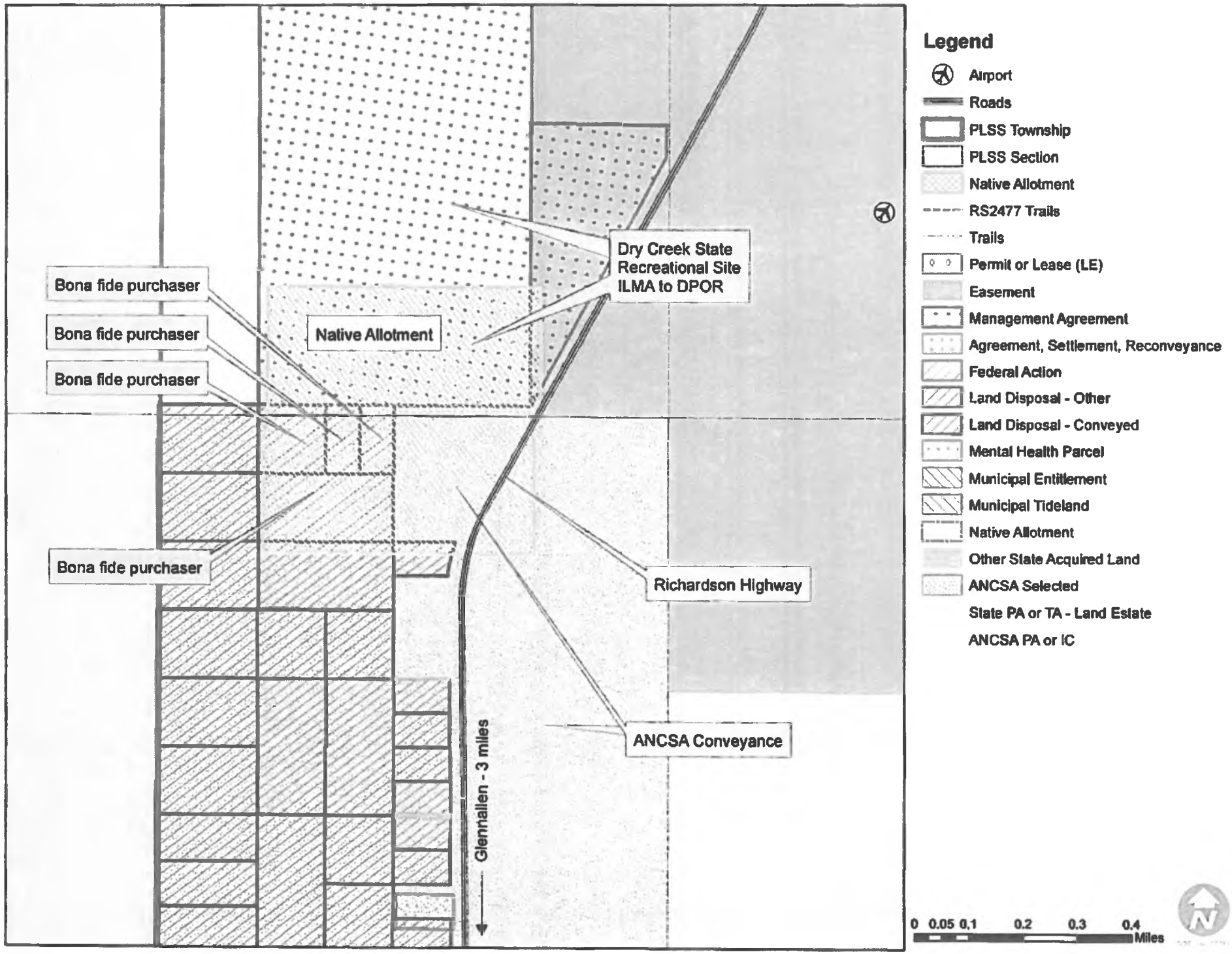
5. THAT the Clerk may prepare an appropriate final judgment form.

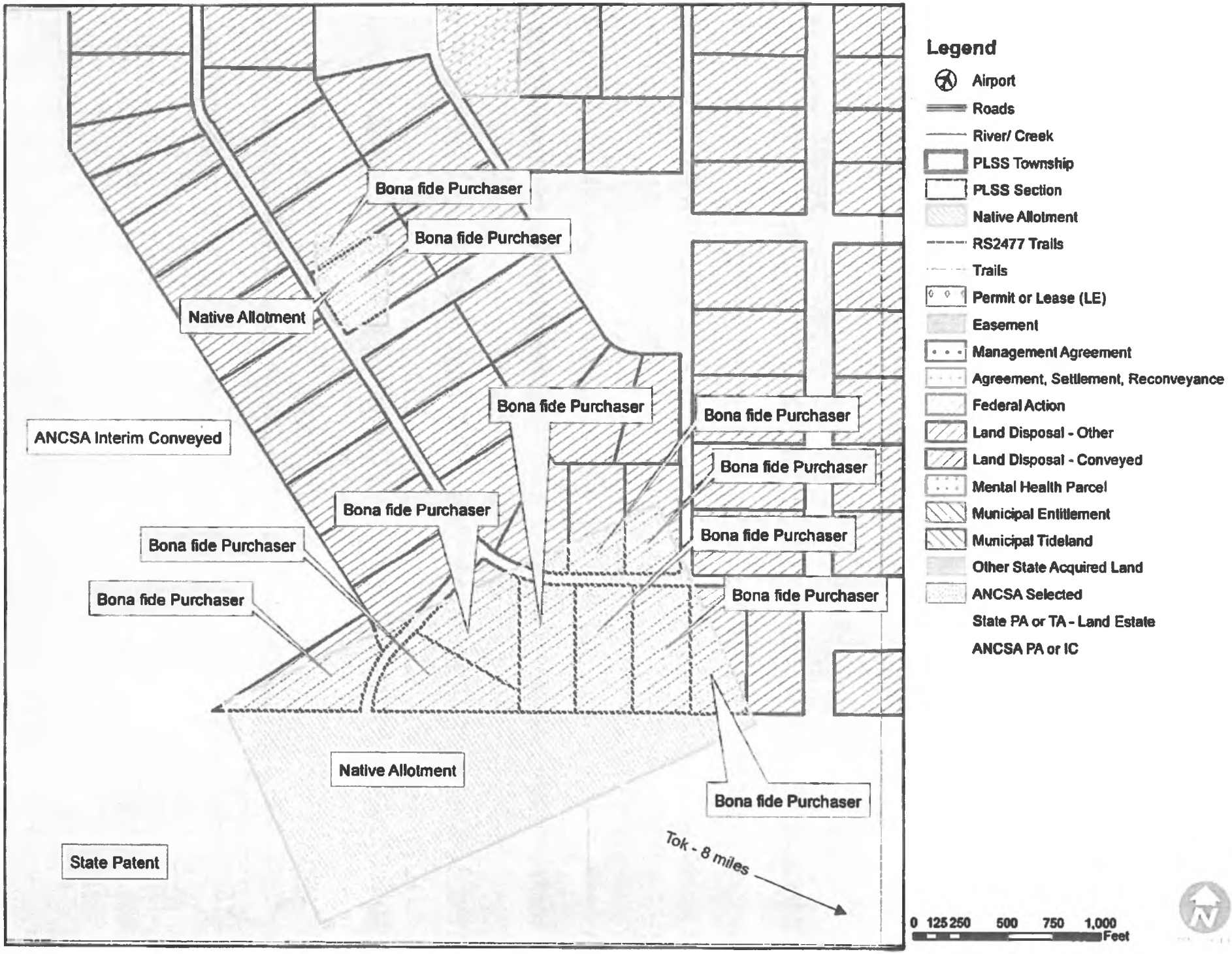
D.C.Alaska, 1979.
Aguilar v. U.S.
474 F.Supp. 840

END OF DOCUMENT

Location of Aguilar Native Allotment Parcels in Alaska




Bona fide purchaser
Bona fide purchaser
Bona fide purchaser
Bona fide purchaser
Native Allotment
Dry Creek State Recreational Site ILMA to DPOR
Richardson Highway
ANCSA Conveyance
Glennallen - 3 miles
Legend
Airport
Roads
PLSS Township
PLSS Section
Native Allotment
RS2477 Trails
Trails
Permit or Lease (LE)
Easement
Management Agreement
Agreement, Settlement, Reconveyance
Federal Action
Land Disposal - Other
Land Disposal - Conveyed
Mental Health Parcel
Municipal Entitlement
Municipal Tideland
Native Allotment
Other State Acquired Land
ANCSA Selected
State PA or TA - Land Estate
ANCSA PA or IC
0 0.05 0.1 0.2 0.3 0.4
Miles
N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Bona fide Purchaser
Native Allotment
Bona fide Purchaser
Bona fide Purchaser
ANCSA Interim Conveyed
Bona fide Purchaser
Bona fide Purchaser
Bona fide Purchaser
Bona fide Purchaser
Bona fide Purchaser
Native Allotment
Bona fide Purchaser
State Patent
Tok - 8 miles
Legend
Airport
Roads
River/ Creek
PLSS Township
PLSS Section
Native Allotment
RS2477 Trails
Trails
Permit or Lease (LE)
Easement
Management Agreement
Agreement, Settlement, Reconveyance
Federal Action
Land Disposal - Other
Land Disposal - Conveyed
Mental Health Parcel
Municipal Entitlement
Municipal Tideland
Other State Acquired Land
ANCSA Selected
State PA or TA - Land Estate
ANCSA PA or IC
0 125 250 500 750 1,000
Feet
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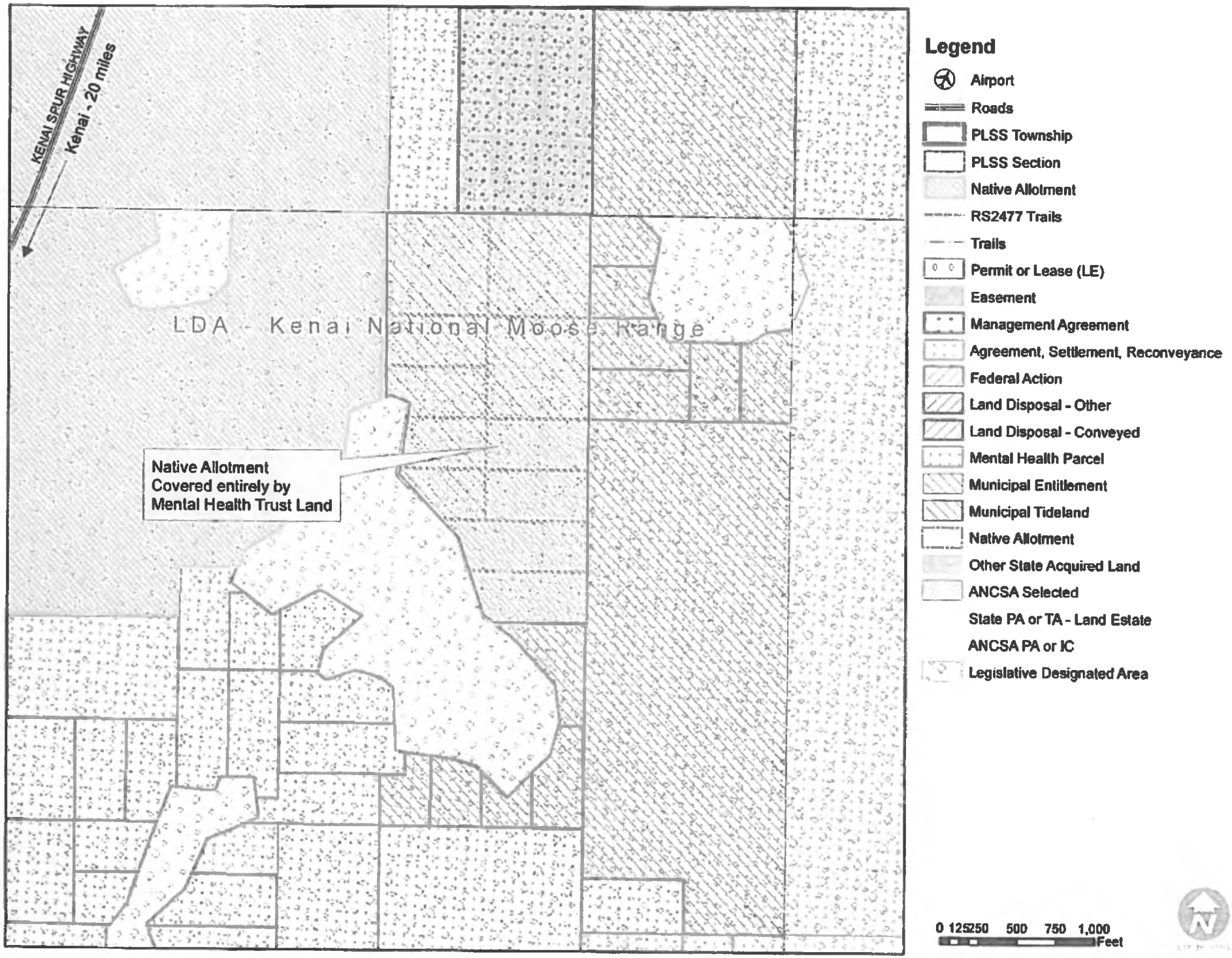
KENAI SPUR HIGHWAY
Kenai - 20 miles
LDA - Kenai National Moose Range
Native Allotment
Covered entirely by
Mental Health Trust Land
Legend
Airport
Roads
PLSS Township
PLSS Section
Native Allotment
RS2477 Trails
Trails
Permit or Lease (LE)
Easement
Management Agreement
Agreement, Settlement, Reconveyance
Federal Action
Land Disposal - Other
Land Disposal - Conveyed
Mental Health Parcel
Municipal Entitlement
Municipal Tideland
Native Allotment
Other State Acquired Land
ANCSA Selected
State PA or TA - Land Estate
ANCSA PA or IC
Legislative Designated Area
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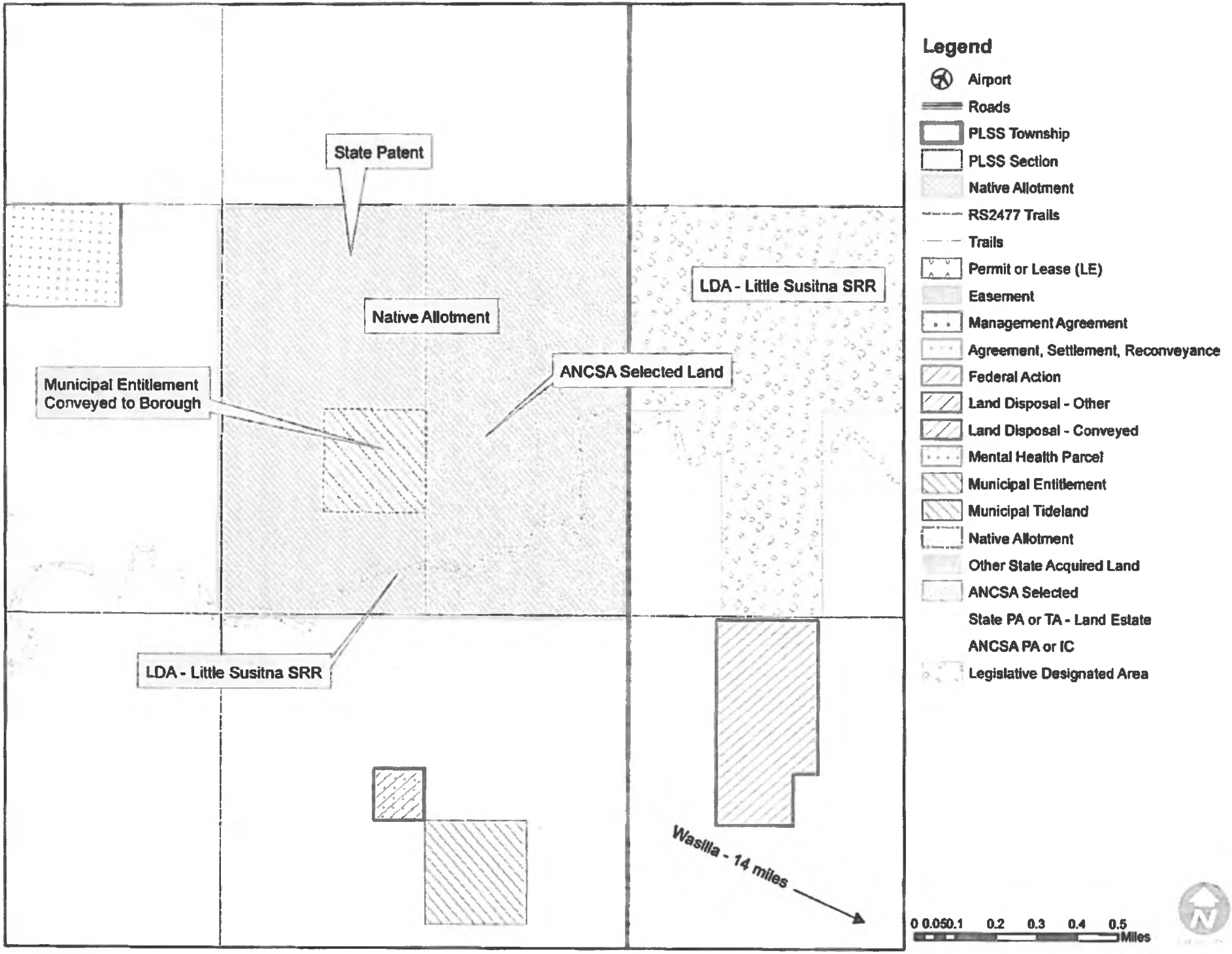
Feet


State Patent
Native Allotment
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ANCSA Selected Land
Municipal Entitlement
Conveyed to Borough
LDA - Little Susitna SRR
Wasilla - 14 miles
Legend
Airport
Roads
PLSS Township
PLSS Section
Native Allotment
RS2477 Trails
Trails
Permit or Lease (LE)
Easement
Management Agreement
Agreement, Settlement, Reconveyance
Federal Action
Land Disposal - Other
Land Disposal - Conveyed
Mental Health Parcel
Municipal Entitlement
Municipal Tideland
Native Allotment
Other State Acquired Land
ANCSA Selected
State PA or TA - Land Estate
ANCSA PA or IC
Legislative Designated Area
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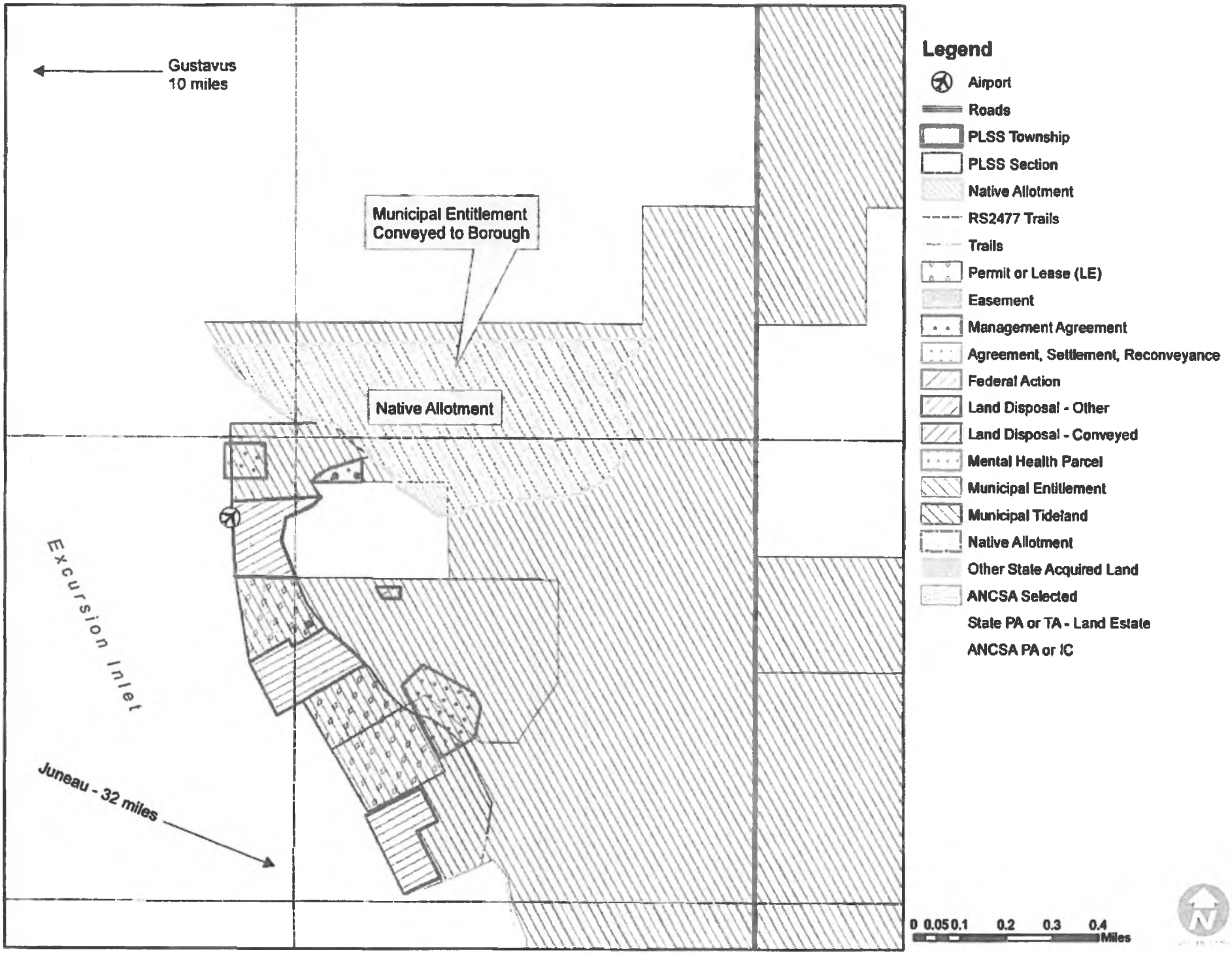
Gustavus
10 miles
Municipal Entitlement
Conveyed to Borough
Native Allotment
Excursion Inlet
Juneau - 32 miles
Legend
Airport
Roads
PLSS Township
PLSS Section
Native Allotment
RS2477 Trails
Trails
Permit or Lease (LE)
Easement
Management Agreement
Agreement, Settlement, Reconveyance
Federal Action
Land Disposal - Other
Land Disposal - Conveyed
Mental Health Parcel
Municipal Entitlement
Municipal Tideland
Native Allotment
Other State Acquired Land
ANCSA Selected
State PA or TA - Land Estate
ANCSA PA or IC
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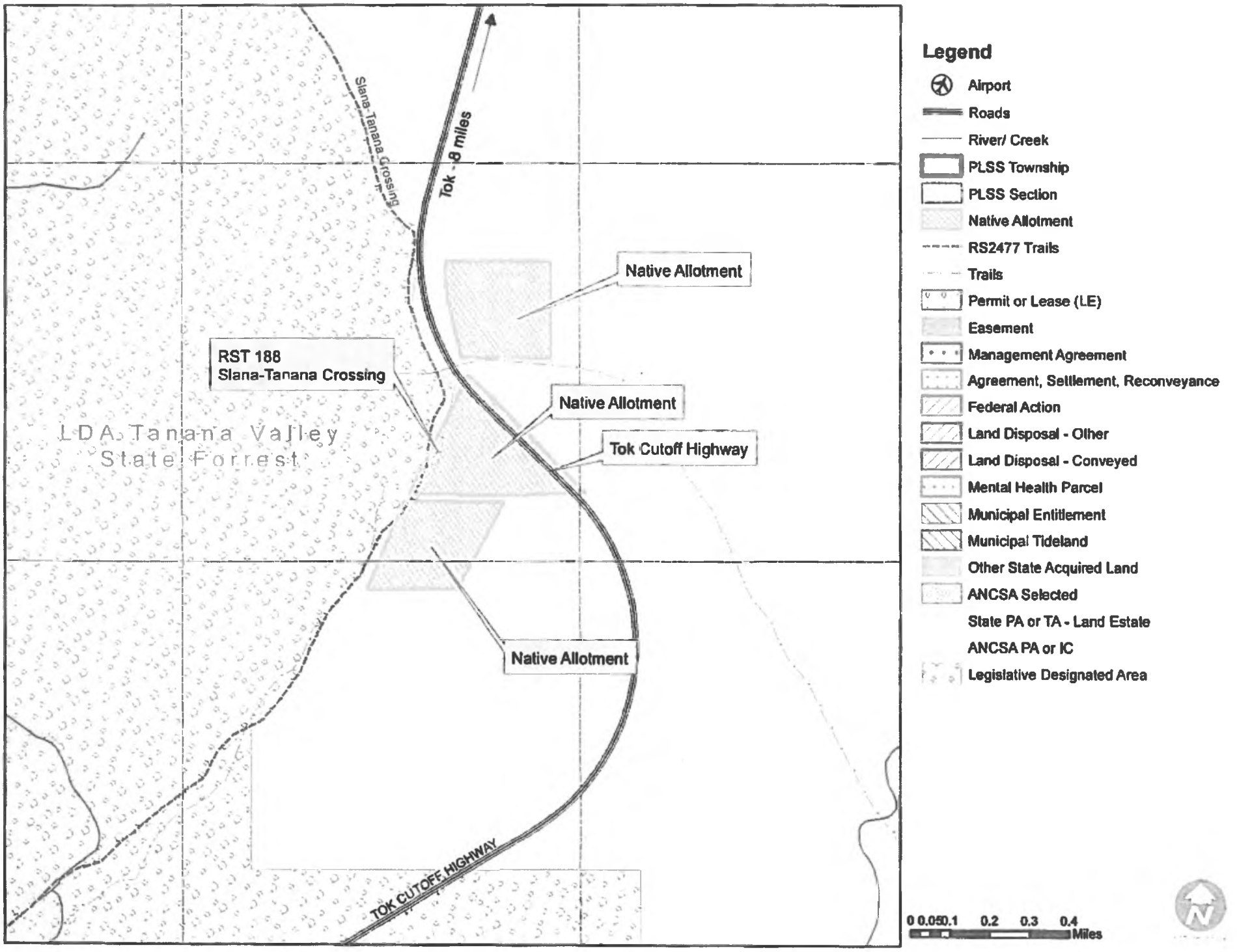
Slana-Tanana Crossing
Tok - 8 miles
Native Allotment
RST 188
Slana-Tanana Crossing
Native Allotment
LDA Tanana Valley
State Forrest
Tok Cutoff Highway
Native Allotment
TOK CUTOFF HIGHWAY
Legend
Airport
Roads
River/ Creek
PLSS Township
PLSS Section
Native Allotment
RS2477 Trails
Trails
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Municipal Tideland
Other State Acquired Land
ANCSA Selected
State PA or TA - Land Estate
ANCSA PA or IC
Legislative Designated Area
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TANANA CHIEFS CONFERENCE

A consortium of 42 members, working in unity to advance Alaska Native Self-Determination

Re-conveyance of Alaska Native Allotments by State of Alaska (Aguilar cases)

FACT SHEET

1. Numerous Alaska Native allotments were erroneously conveyed by the federal government to the State of Alaska. These are referred to as Aguilar cases.
   - Allotment applications were lost or improperly closed. BLM was not aware of valid allotment claim when conveying parcels to the state.
   - BLM then closed these cases systematically once land was selected by the state. The Aguilar case reversed this practice, directing BLM to recover title to these valid existing cases, re-opening dozens of cases.
   - Current Aguilar cases are approximately 300, most in the Tanana Chiefs and Bristol Bay regions.

2. A legislative solution is sought to re-convey title to BLM, for ultimate conveyance to rightful owner.

3. State of Alaska accepted land title subject to valid existing rights. A native allotment is a valid existing right.

4. The State of Alaska has over-selected lands for their remaining entitlement of 5 million acres. The Alaska Lands Acceleration Act limits over-selection to 25% of remaining entitlement, putting the state in a position where it needs to relinquish nearly 10 million acres of over-selection.
   - Allotment acreage sought under quit claim is less than 48,000 acres.

5. Allotment applications are decades-old, some nearly 100 years old. It is time to settle and convey to private ownership.

6. Re-conveyance by the state is negotiated and if a trail existed before the applicant's use and occupancy began, then the trail is subject within conveyance documents.

Land Status Differentiations:

- ❖ Aguilar cases are UNCONVEYED valid allotment applications.
- ❖ Conveyed allotments are trust property with the federal government and many have RS2477 rights of way.
- ❖ ANCSA lands have separate provisions for access under federal law.

TANANA CHIEFS CONFERENCE

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RS-2477 claims to access Native allotments and ANCSA lands

Issue: There is concern that Native entities are blocking access over certain Native allotments and ANCSA lands. **This not the case**. The issue is the State of Alaska's use of RS-2477 in an arbitrary manner on Native-owned lands, including "spur" trails not approved by law.

Extensive damage from unauthorized use on RS-2477 trails beyond the intent of access has resulted, including in the recent Purdy case. The Purdys recognize the trails reserved in their land deeds (certificates of allotments) but not additional "spur" access. In the Klutina case, Ahtna is not blocking access rather they acknowledge access by 17(b) easements reserved by the federal government under ANCSA.

RS-2477 Background: Revised Statute 2477 was originally enacted as Section 8 of the Mining Act of 1866 granting right-of-ways for the construction of highways over public lands. The act was repealed in 1976 with enactment of Federal Land Policy and Management Act (FLPMA). Pre-existing RS-2477 claims were not affected by the FLPMA repeal.

Purdy Case: Sisters Agnes and Anne Purdy, Native allotment owners in Chicken, were sued by the State of Alaska in 2013. The State wanted to acquire "quiet title" by condemning portions of land where RS-2477 trails crossed the allotment. Previous to the State filing suit, TCC Realty Program placed "No Trespassing" signs at "spur" trail heads, because extra trails are not recognized as legal access. The Federal District Court found that the State could not sue the allottees for the following reasons: the allotments are trust or restricted lands; the United States is an indispensable party to the State's claim again the Native allotment; the U.S. has not waived its sovereign immunity; the Court lacks subject matter jurisdiction; and the claims by the State have been dismissed. The primary trails reserved in their (Purdys) title documents are recognized as valid access, but additional "spur" offshoot trails are not.

Ahtna-Klutina Case: Ahtna recognizes and allows public access over their lands through 17(b) easements (60 feet wide) as reserved by the Federal government; however, Ahtna does not recognize the State of Alaska claims for RS-2477 easements (100 feet wide) over the same trails. Ahtna is litigating with the State over 26 miles of undeveloped road that begins at the Richardson Highway and ends at the outlet of Klutina Lake – known as the Brenwick-Craig Road. In 2007, the State widened several miles of the road, cutting trees, and removing one of Ahtna's permit fee stations, as an "unauthorized encroachment" on its claimed easement. There was an attempt at mediation, but the State claimed more area, such as "spur" and secondary easements off of the originally claimed primary trail to Klutina Lake. Ahtna is now sponsoring legislation to vacate, or remove the RS-2477 claim, and recognize the federal 17(b) easement.

Excessive access claims on Native allotments and damages: Through the use of RS-2477, the State claims access for a 100 foot wide trail, and asserts uses for future highway development. With the Purdy allotments, the State was claiming 17.5 acres and 6.4 acres in excess of the original RS-2477 trail reservation. The pending settlement for damages by a local miner in the periphery of the RS 2477 trail across the Purdy allotment acknowledges excessive use of primary access trails.

TANANA CHIEFS CONFERENCE

A consortium of 42 members, working in unity to advance Alaska Native Self-Determination

Understanding Land Status Differentiations

Allotment Application (Aguilar cases) vs conveyed allotments and ANCSA lands—
Seeking Legislative Solution to Aguilar Cases

Pending allotment applications, due to erroneously conveyed allotment parcels to the State of Alaska, must be resolved after languishing for decades, sometimes nearly 100 years. A legislative solution to convey these parcels to their rightful owners must move forward.

Allotment titles can be subject to RS2477 access if evidence demonstrates this access pre-dates use by the allotment applicant. Less than 5% of the pending allotment cases have trails on them.

This issue has nothing to do with recent RS2477 cases.

Conveyed land parcels: certificated Native allotments and ANCSA lands

Certificated Native allotments have been conveyed to the allotment owner, governed by certain statutes and regulations pertaining to trust responsibilities. The title may contain provisions for access under RS2477.

If there are issues of trespass, it is the responsibility of the trustee to protect the allotment owner. Recent cases, such as the Purdy's in Chicken, demonstrate that trust responsibility (see TCC white paper RS 2477 claims to access Native allotments and ANCSA lands).

ANCSA land is provided to regional and village corporations through the 1971 Alaska Native Claims Settlement Act. Provisions for access include section 17(b) easements and RS 2477.

Access to lands to these lands, whether a certificated through federal provisions pertain to CONVEYED, TITLED land.

Purdy and Ahtna are recent cases dealing with access (see TCC RS-2477 claims to access Native allotments and ANCSA Lands)—in both, ample access has been granted.

<u>RS2477 –Background</u>

RS 2477 refers to access through statute 2477, originally enacted as Section 8 of the Mining Act of 1866 granting right-of-ways for the construction of highways over public lands. The act was repealed in 1976 with enactment of Federal Land Policy and Management Act (FLPMA). Pre-existing RS-2477 claims were not affected by the FLPMA repeal.

ALASKA FEDERATION OF NATIVES, INC.
2013 ANNUAL CONVENTION
RESOLUTION 13-26

TITLE: A RESOLUTION SUPPORTING LEGISLATION TO CHANGE STATE LAW REQUIRING THE DEPARTMENT OF NATURAL RESOURCES TO RECONVEY LAND FOR VALID PENDING NATIVE ALLOTMENTS

WHEREAS: The Alaska Federation of Natives (AFN) is the largest statewide Native organization in Alaska and its membership includes 118 federally-recognized tribes, 133 village corporations, 13 regional corporations, and 11 regional nonprofit and tribal consortiums that contract and run federal and state programs; and

WHEREAS: The mission of AFN is to enhance and promote the cultural, economic, and political voice of the entire Alaska Native community; and

WHEREAS: Valid claims are pending, many dating over 40 years, and whereby these allotments were erroneously conveyed to the State of Alaska, Department of Natural Resources (DNR) by the U.S. Department of the Interior, Bureau of Land Management (BLM); and

WHEREAS: To return the allotment land, the State DNR follows state law; and

WHEREAS: The state law currently allows the DNR to refuse to give back Native allotment land; and

WHEREAS: A bill has been drafted by Senator John Coghill requiring the State to quitclaim to the federal government land or an interest in land that was wrongfully or erroneously conveyed to the State by the federal government; and

WHEREAS: The recent Memorandum of Understanding (MOU) between the State of Alaska and BLM allows the State DNR to continue to refuse to give back the allotment land and provides an overall distraction to the original, rightful claim, ignoring the traditional and cultural use of the land which provides the basis.

NOW THEREFORE BE IT RESOLVED by the delegates to the 2013 Annual Convention of the Alaska Federation of Natives Inc., the Alaska State Legislature is urged to change the law and require that Native allotment land conveyed to the state be reconvened back to the BLM for ultimate transfer to the rightful allotment claimant

BE IT FURTHER RESOLVED that this resolution shall be the policy of AFN until it is withdrawn or modified by subsequent resolution.

SUBMITTED BY:	TANANA CHIEFS CONFERENCE
COMMITTEE ACTION:	DO PASS
CONVENTION ACTION:	PASS

INUPIAT COMMUNITY of the ARCTIC SLOPE

an IRA Regional Tribal Government

P.O. Box 934 • Barrow, Alaska 99723
Ph: (907) 852-4227 1-888-788-4227 Fax: (907) 852-2449

RESOLUTION 2013-05

A Resolution In Support Of Amending Alaska State Statute AS 38.05.035 To Require The State Department Of Natural Resources To Reconvey Land For Pending Native Allotments

WHEREAS: The Inupiat Community of the Arctic Slope (ICAS) is a federally recognized Native tribe of Inupiat Eskimos under the Indian Reorganization Act of 1934, a Regional Tribal Government, as amended, whose governing body is the ICAS Executive Board with representatives from all eight Inupiat tribal councils in the North Slope Borough of Alaska; and

WHEREAS: ICAS Regional Tribal Council (ICAS Executive Board) is the governing body of ICAS and is responsible for protecting the interests of its tribal members and its rights of self-governance; and

WHEREAS: The Inupiat Community of the Arctic Slope Executive Board (ICAS) met on July 11, 2013 and resolved to request the Legislature of the State of Alaska to amend AS 38.05.035; and

WHEREAS: The ICAS Executive Board represents 8 Tribes and approximately 10,000 Alaska citizens, some having allotments that have been pending for at least forty years simply because the allotments are on land erroneously conveyed to the State of Alaska; and

WHEREAS: Amending AS 38.05.035 is necessary because the existing statute allows the State Department of Natural Resources to either refuse to reconvey allotment land or substantially delay the reconveyance of such land; and

WHEREAS: There are approximately 301 pending allotments on land mistakenly or erroneously conveyed to the state and more are expected; and

WHEREAS: This problem arose due to no fault of the allotment applicants; instead BLM conveyed the land to the state before Alaska Natives were informed of their right to file for allotments on land they used for subsistence purposes. Once Alaska Natives learned of this right, approximately 10,000 allotment applications were filed throughout Alaska but some of the land applied for had already been conveyed to the state; and

WHEREAS: Laws governing Native allotments require the applicants to have used the land before the state selected it. If use did not begin before state selection, the allotment application was not valid and was closed. Thus, all pending allotments were used before the state selected it. This situation was the subject of a federal court lawsuit, Aguilar v. United States, 474 F. Supp 840 (D. Alaska 1979), in which the court directed the U.S. Department of the Interior (DOI) to process allotment applications for land already conveyed to the state and also stated DOI was responsible to get the allotment land back; and

NOW THEREFORE BE IT RESOLVED: that the ICAS Executive Board requests the Alaska State Legislature to introduce legislation to amend AS 38.05.035 in order to require reconveyance of land for pending Native allotments.

CERTIFICATION:
I, the undersigned hereby certify that the Inupiat Community of the Arctic Slope of 13 members of whom 10 were present at this meeting held on this 11 day of July, 2013, and the resolution attachment was adopted by a vote 10 for, 0 against and 0 abstaining.

APPROVE: ✓ **AGAINST:** _____

George Olemaun, President — 7/11/13 Date

Doreen Ahgeak, Secretary — 7/11/13 Date

"WHERE THE TWO RIVERS MEET"

TANANA TRIBAL COUNCIL

PO Box 130, Tanana, AK 99777

Phone: (907) 366-7160 or 7170 Fax: (907) 366-7195

Tanana Tribal Council

RESOLUTION No. 2013-18

June 26th, 2013

TITLE: A RESOLUTION IN SUPPORT OF AMENDING ALASKA STATE STATUTE AS 38.05.035 TO REQUIRE THE STATE DEPARTMENT OF NATURAL RESOURCES TO RECONVEY LAND FOR PENDING NATIVE ALLOTMENTS

WHEREAS: The Tanana Tribal Council met on June 20th, 2013 and resolved to request the Legislature of the State of Alaska to amend AS 38.05.035;

WHEREAS: The Tanana Tribal Council represents 390 Alaska citizens, some having allotments that have been pending for at least forty years simply because the allotments are on land erroneously conveyed to the State of Alaska;

WHEREAS: Amending AS 38.05.035 is necessary because the existing statute allows the State Department of Natural Resources to either refuse to reconvey allotment land or substantially delay the reconveyance of such land;

WHEREAS: There are approximately 301 pending allotments on land mistakenly or erroneously conveyed to the state and more are expected;

WHEREAS: This problem arose due to no fault of the allotment applicants; instead BLM conveyed the land to the state before Alaska Natives were informed of their right to file for allotments on land they used for subsistence purposes. Once Alaska Natives learned of this right, approximately 10,000 allotment applications were filed throughout Alaska but some of the land applied for had already been conveyed to the state;

WHEREAS: Laws governing Native allotments require the applicants to have used the land before the state selected it. If use did not begin before state selection, the allotment application was not valid and was closed. Thus, all pending allotments were used before the state selected it. This situation was the subject of a federal court lawsuit, Aguilar v. United States, 474 F. Supp 840 (D. Alaska 1979), in which the court directed the U.S. Department of the Interior (DOI) to process allotment applications for land already conveyed to the state and also stated DOI was responsible to get the allotment land back.

NOW THEREFORE BE IT RESOLVED that the Tanana Tribal Council requests the Alaska State Legislature to introduce legislation to amend AS 38.05.035 in order to require reconveyance of land for pending Native allotments.

BY: Carl J. Sommer

TANANA TRIBAL COUNCIL PRESIDENT

Maniilaq Association

P.O. Box 256
Kotzebue, Alaska 99752
(907) 442-3311

Maniilaq Association

Resolution #13-03

TITLE: A RESOLUTION IN SUPPORT OF AMENDING ALASKA STATE STATUTE AS 38.05.035 TO REQUIRE THE STATE DEPARTMENT OF NATURAL RESOURCES TO RECONVEY LAND FOR PENDING NATIVE ALLOTMENTS

WHEREAS: The Maniilaq Board of Directors met on July 11, 2013 and resolved to request the Legislature of the State of Alaska to amend AS 38.05.035;

WHEREAS: The Maniilaq Board of Directors represents 12 Tribes and approximately 7,000 Alaska citizens, some having allotments that have been pending for at least forty years simply because the allotments are on land erroneously conveyed to the State of Alaska;

WHEREAS: Amending AS 38.05.035 is necessary because the existing statute allows the State Department of Natural Resources to either refuse to reconvey allotment land or substantially delay the reconveyance of such land;

WHEREAS: There are approximately 301 pending allotments on land mistakenly or erroneously conveyed to the state and more are expected;

WHEREAS: This problem arose due to no fault of the allotment applicants; instead BLM conveyed the land to the state before Alaska Natives were informed of their right to file for allotments on land they used for subsistence purposes. Once Alaska Natives learned of this right, approximately 10,000 allotment applications were filed throughout Alaska but some of the land applied for had already been conveyed to the state;

WHEREAS: Laws governing Native allotments require the applicants to have used the land before the state selected it. If use did not begin before state selection, the allotment application was not valid and was closed. Thus, all pending allotments were used before the state selected it. This situation was the subject of a federal court lawsuit, Aguilar v. United States, 474 F. Supp 840 (D. Alaska 1979), in which the court directed the U.S. Department of the Interior (DOI) to process allotment applications for land already conveyed to the state and also stated DOI was responsible to get the allotment land back.

NOW THEREFORE BE IT RESOLVED that the Maniilaq Board of Directors requests the Alaska State Legislature to introduce legislation to amend AS 38.05.035 in order to require reconveyance of land for pending Native allotments.

THIS RESOLUTION WAS ADOPTED AT A REGULAR MEETING OF THE MANIILAQ BOARD OF DIRECTORS ON JULY 11, 2013.

IN WITNESS THERETO:

GUY ADAMS, CHAIRMAN — DATE 10/24/13

ATTEST:

PAULA OCTUCK, BOARD SECRETARY — DATE 08/01/2013

Central Council
Tlingit and Haida
Indian Tribes of Alaska

CENTRAL COUNCIL
Tlingit and Haida Indian Tribes of Alaska
ANDREW P. HOPE BUILDING
320 West Willoughby Avenue • Suite 300
Juneau, Alaska 99801-1726

Executive Council of the Central Council
TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA

Resolution EC/ 13-44

Title: Support to Amend Alaska Statute 38.05.035

WHEREAS, Central Council Tlingit and Haida Indian Tribes of Alaska (Central Council) is a federally recognized tribe of more than 28,000 tribal citizens worldwide; and

WHEREAS, amending Alaska Statute 38.05.035 is necessary because the existing statute allows the State Department of Natural Resources to either refuse to reconvey allotment land or substantially delay the reconveyance of such land; and

WHEREAS, there are approximately 301 pending allotments on land mistakenly or erroneously conveyed to the state with more expected; and

WHEREAS, problems arose due to no fault of the allotment applicants, the Bureau of Land Management (BLM) conveyed the land to the state prior to Alaska Natives being informed of their right to file for allotments on land they used for subsistence purposes. Once Alaska Natives learned of this right, approximately 10,000 allotment applications were filed throughout Alaska but some of the land applied for had already been conveyed to the state.

WHEREAS, laws governing Native Allotments require the applicants to have used the land before the state selected it. If use did not begin before state selection, the allotment application was not valid and was closed. All pending allotments were used before the state selected it. This situation was the subject of a federal court lawsuit, Aguilar v. United States, 474 F. Supp 840 (D. Alaska 1979), in which the court directed the U.S. Department of the Interior (DOI) to process allotment applications for land already conveyed to the state and also stated DOI was responsible to get the allotment land back.

NOW THEREFORE BE IT RESOLVED, the Executive Council hereby authorizes the Central Council to support the introduction of legislation to amend AS 38.05.035 in order to require the reconveyance of land for pending Native allotments.

ADOPTED this 2nd day of November 2013, by the Executive Council of the Central Council of Tlingit and Haida Indian Tribes of Alaska, by a vote of 5 yeas, 0 nays, 0 abstentions and 1 absence.

CERTIFY

President Edward K. Thomas

ATTEST

Tribal Secretary Harold Houston, Sr.

TANANA CHIEFS CONFERENCE
Executive Board of Directors
Resolution No. 2013 – 09

A RESOLUTION IN SUPPORT OF AMENDING ALASKA STATE STATUTE AS 38.05.035 TO REQUIRE THE STATE DEPARTMENT OF NATURAL RESOURCES TO RECONVEY LAND FOR PENDING NATIVE ALLOTMENTS

WHEREAS, The Tanana Chiefs Executive Board met on 6/11, 2013 and resolved to request the Legislature of the State of Alaska to amend AS 38.05.035:

WHEREAS, The Tanana Chiefs Executive Board represents 42 Tribes and 12,800 Alaska citizens, some having allotments that have been pending for at least forty years simply because the allotments are on land erroneously conveyed to the State of Alaska;

WHEREAS, Amending AS 38.05.035 is necessary because the existing statute allows the State Department of Natural Resources to either refuse to reconvey allotment land or substantially delay the reconveyance of such land;

WHEREAS, There are approximately 301 pending allotments on land mistakenly or erroneously conveyed to the State and more are expected;

WHEREAS, This problem arose due to no fault of the allotment applicants; instead the U.S. Department of Interior conveyed the land to the state before Alaska Natives were informed of their right to file for allotments on land they used for subsistence purposes. Once Alaska Natives learned of this right, approximately 10,000 allotment applications were filed throughout Alaska but some of the land applied for had already been conveyed to the state;

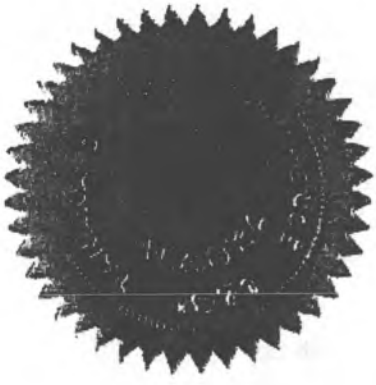
WHEREAS, Laws governing Native allotments require the applicants to have used the land before the state selected it. If use did not begin before the state selection, the allotment application was not valid and was closed. Thus, all pending allotments were used before the state selected it. This situation was the subject of a federal court lawsuit, Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979), in which the court directed the U.S. Department of the Interior (DOI) to process allotment applications for land already conveyed to the state and also stated DOI was responsible to get the allotment land back.

NOW THEREFORE BE IT RESOLVED that the Tanana Chiefs Conference Executive Board requests the Alaska State Legislature to introduce

legislation to amend AS 38.05.035 in order to require reconveyance of land for pending Native allotments.

CERTIFICATION

I hereby certify that this resolution was duly passed by the Tanana Chiefs Conference Executive Board of Directors on 6/11, 2013 at Fairbanks, Alaska and a quorum was duly established.



Pat McCarty

Pat McCarty, Secretary/Treasurer

NATIVE VILLAGE OF BARROW
INUPIAT TRADITIONAL GOVERNMENT

RESOLUTION 2013-18

A Resolution In Support Of Amending Alaska State Statute AS 38.05.035

WHEREAS: The Native Village of Barrow (NVB) is a federally recognized Native Tribe of Inupiat Eskimo under the Indian Reorganization Act of 1934, a Regional Tribal Government, as amended, whose governing body is the NVB Executive Board with representatives from the Village of Barrow in Barrow Alaska, and

WHEREAS: NVB Tribal Council is the governing body of Native Village of Barrow and is responsible for protecting the interests of its tribal members and its rights of self-governance; and

WHEREAS: amending AS 38.05.035 is necessary because the existing statute allows the State Department of Natural Resources to either refuse to re-convey allotment land or substantially delay the re-conveyance of such land ; and

WHEREAS: there are approximately 301 pending Native Allotments on land mistakenly or erroneously conveyed to the state and more are expected; and

WHEREAS: This problem arose due to no fault of the allotment applicants; instead BLM conveyed the land to the state before Alaska Natives were informed of their right to file for allotments on land they used for subsistence purposes. Once Alaska Natives learned of this right, approximately 10,000 allotment applications were filed throughout Alaska but some of the land applied for had already been conveyed to the state; and

WHEREAS: laws governing native Allotment require the applicants to have used the land before the state selection. If use did not begin before state selection, the allotment application was not valid and was closed. Thus all pending allotments were used before the state selection. This situation was the subject of a federal court lawsuit, Aguilar v. United States, 474 F Supp 840 (D. Alaska 1979), in which the court directed the U.S. Department of the Interior (DOI) to process allotment applications for land already conveyed to the state and also stated DOI was responsible to get the allotment land back; and

NOW THEREFORE BE IT RESOLVED: that the NVB Executive Board requests the Alaska State Legislature to introduce legislation to amend AS 38.05.035 in order to require re-conveyance of land for pending Native Allotments.

With a Consensus:

Adopted this 17 **day** December, **2013.**

APPROVED:		**DISAPPROVED:**	
Thomas Olemaun,	President	Thomas Olemaun,	President
Dorothy Edwardsen,	Vice President	**Dorothy Edwardsen,**	Vice President
Marjorie Solomon,	Treasurer	Marjorie Solomon.	Treasurer
Fannie Suvlu,	Secretary	**Fannie Suvlu**	**Secretary**
Doreen Ahgeak,	Sgt.-At-Arms	Doreen Ahgeak,	Sgt.At – Arms
Doreen Lampe	Member	Doreen Lampe	Member
George Olemaun	Member	George Olemaun	Member

CHILKAT INDIAN VILLAGE
"Yoo ga ee yax s'waa."
An Indian Reorganization Act Village
Under Act of Congress June 15th, 1935
32 Chilkat Ave. Klukwan, Alaska 99827
HC60 Box 2207 Haines, Alaska 99827
Phone: 907-767-5505
Fax: 907-767-5518
klukwan@chilkat-nsn.gov

RESOLUTION 2013 - 13

A RESOLUTION IN SUPPORT OF AMENDING ALASKA STATE STATUTE AS 38.05.035 TO REQUIRE THE STATE DEPARTMENT OF NATURAL RESOURCES TO RECONVEY LAND FOR PENDING NATIVE ALLOTMENTS

WHEREAS; the Chilkat Indian Village Tribe has been in existence since time & immemorial; and

WHEREAS; the Chilkat Indian Village Council has the responsibility to aid needy members and to protect the general welfare and security of members of the Village; and

WHEREAS; the Chilkat Indian Village Council met on November, 2013 and resolved to request the Legislature of the State of Alaska to amend AS 38.05.035;

WHEREAS; the Chilkat Indian Village Council represents 1 Tribe and 261 tribal members, some having allotments that have been pending for at least forty years simply because the allotments are on land erroneously conveyed to the State of Alaska;

WHEREAS; amending AS 38.05.035 is necessary because the existing statute allows the State Department of Natural Resources to either refuse to reconvey allotment land or substantially delay the reconveyance of such land;

WHEREAS; there are approximately 301 pending allotments on land mistakenly or erroneously conveyed to the state and more are expected;

WHEREAS; This problem arose due to no fault of the allotment applicants; instead BLM conveyed the land to the state before Alaska Natives were informed of their right to file for allotments on land they used for subsistence purposes. Once Alaska Natives learned of this right, approximately 10,000 allotment applications were filed throughout Alaska but some of the land applied for had already been conveyed to the state;

WHEREAS; Laws governing Native allotments require the applicants to have used the land before the state selected it. If use did not begin before state selection, the allotment application was not valid and was closed. Thus, all pending

allotments were used before the state selected it. This situation was the subject of a federal court lawsuit, Aguilar v. United States. 474 F. Supp 840 (D. Alaska 1979), in which the court directed the U.S. Department of the Interior (DOI) to process allotment applications for land already conveyed to the state and also stated DOI was responsible to get the allotment land back.

NOW THEREFORE BE IT RESOLVED that the Chilkat Indian Village Council requests the Alaska State Legislature to introduce legislation to amend AS 38.05.035 in order to require reconveyance of land for pending Native allotments.

CERTIFICATION: This certifies that the foregoing resolution of the Chilkat Indian Village of Klukwan, Alaska was adopted. The Chilkat Indian Village Council is made up of seven members with a quorum of 5 established. The foregoing resolution was adopted on this 22nd day of November, 2013, by a vote of 5 in favor, 0 opposed, 2 absent, & 0 abstaining.

Jones P. Hotch Jr., Tribal President

Brian D. Willard, Tribal Secretary

TANANA CHIEFS CONFERENCE

A consortium of 42 members, working in unity to advance Alaska Native Self-Determination

RS-2477 claims to access Native allotments and ANCSA lands

Issue: There is concern that Native entities are blocking access over certain Native allotments and ANCSA lands. **This not the case.** The issue is the State of Alaska's use of RS-2477 in an arbitrary manner on Native-owned lands, including "spur" trails not approved by law.

Extensive damage from unauthorized use on RS-2477 trails beyond the intent of access has resulted, including in the recent Purdy case. The Purdys recognize the trails reserved in their land deeds (certificates of allotments) but not additional "spur" access. In the Klutina case, Ahtna is not blocking access rather they acknowledge access by 17(b) easements reserved by the federal government under ANCSA.

RS-2477 Background: Revised Statute 2477 was originally enacted as Section 8 of the Mining Act of 1866 granting right-of-ways for the construction of highways over public lands. The act was repealed in 1976 with enactment of Federal Land Policy and Management Act (FLPMA). Pre-existing RS-2477 claims were not affected by the FLPMA repeal.

Purdy Case: Sisters Agnes and Anne Purdy, Native allotment owners in Chicken, were sued by the State of Alaska in 2013. The State wanted to acquire "quiet title" by condemning portions of land where RS-2477 trails crossed the allotment. Previous to the State filing suit, TCC Realty Program placed "No Trespassing" signs at "spur" trail heads, because extra trails are not recognized as legal access. The Federal District Court found that the State could not sue the allottees for the following reasons: the allotments are trust or restricted lands; the United States is an indispensable party to the State's claim again the Native allotment; the U.S. has not waived its sovereign immunity; the Court lacks subject matter jurisdiction; and the claims by the State have been dismissed. The primary trails reserved in their (Purdys) title documents are recognized as valid access, but additional "spur" offshoot trails are not.

Ahtna-Klutina Case: Ahtna recognizes and allows public access over their lands through 17(b) easements (60 feet wide) as reserved by the Federal government; however, Ahtna does not recognize the State of Alaska claims for RS-2477 easements (100 feet wide) over the same trails. Ahtna is litigating with the State over 26 miles of undeveloped road that begins at the Richardson Highway and ends at the outlet of Klutina Lake – known as the Brenwick-Craig Road. In 2007, the State widened several miles of the road, cutting trees, and removing one of Ahtna's permit fee stations, as an "unauthorized encroachment" on its claimed easement. There was an attempt at mediation, but the State claimed more area, such as "spur" and secondary easements off of the originally claimed primary trail to Klutina Lake. Ahtna is now sponsoring legislation to vacate, or remove the RS-2477 claim, and recognize the federal 17(b) easement.

Excessive access claims on Native allotments and damages: Through the use of RS-2477, the State claims access for a 100 foot wide trail, and asserts uses for future highway development. With the Purdy allotments, the State was claiming 17.5 acres and 6.4 acres in excess of the original RS-2477 trail reservation. The pending settlement for damages by a local miner in the periphery of the RS 2477 trail across the Purdy allotment acknowledges excessive use of primary access trails.

My name is Tom Hoseth. I am the Realty officer at the Bristol Bay Native Association. BBNA represents 32 federally recognized tribes. I have worked in the BBNA Realty department since 1986.

The Alaska Native Allotment Act of 1906 gave Alaska Natives the right to obtain legal title up to 160 acres of land that they used.

The Alaska Native Claims Settlement Act was passed in Dec of 1971. Sixteen months or so, before the Act passed, the word was out that ANCSA would repeal the allotment act. Approximately 13,000 Native Allotment applications were filed during this period. However, ANCSA did not repeal the pending applications.

Initially the BLM rejected the allotment applications if the land was located on land already selected by the State. This continued up until 1979 when in the case of Aquilar v.s. United States, the federal court ordered the BLM to process the applications. The court ruled that the Alaskan Native Settlement Act provides a preference right, defeating all subsequent claims to the same land. There are several Interior Board of Land Appeals decisions that support that this preference right begins on the date that land is first used and occupied by the applicant. No matter what date an allotment application is filed

Therefore, the current rule is, an allotment applicant is entitled to the land applied for if their use began before the State selected the land.

After decades of adjudication, there are over 300 "Aguilar" allotments where the land has not been re-conveyed to the BLM so that title can be conveyed to the allotment applicants. This is due to the position DNR has taken in regard to reconveyances. DNR refers to A.S. 38.05.035 (a) which states that the decision to reconvey or not reconvey state land is at the discretion of DNR. This discretion has been delegated to the Chief, Realty Services Section. The chief has declined to reconvey many Aguilar allotments. Because of these declines, the BLM admits that they have set aside these cases for many years. In the Aguilar case, the court ruled that it is the responsibility of the Department of Interior to recover title and bear the burden to do so.

In an attempt to resolve certain Aguilar allotments that have been set aside, in late Sept. 2013 the State and BLM announced a MOA which offers the optional relocation of certain Native allotment parcels from lands that were conveyed in error to the State, onto other State selected lands. In early Dec. 2013, the BLM provided maps of 8 million acres the State opened up for relocations. BBNA has prepared a more detailed map for the BB region.

I believe, along with other service providers, that the relocation option will not resolve the Aguilar allotment cases because:

1.) Only certain cases will be offered the option.
2.) The allotment applicants will not want to relocate, with the exception of a few.

Senate Bill 105 offers a solution to resolve all Aguilar allotments that were determined valid by the BLM. The bill will amend the A.S. 38. 05.035 (a) to require the State to reconvey the land back to BLM upon the BLM's determination that a Native allotment was used and occupied prior to the State selection.

In conclusion, once the reconveyances are completed, Alaska will be in compliance with the Statehood Act, Alaska's Constitution, the federal court order in Aguilar v.s. United States and the Alaska Native Allotment Act.

Furthermore, the Dept of Interior will not have to sue the state, which will save a large amount of time and resources.

Finally, I would like to go on record, supporting Senate Bill 105 and would also like to thank Senator Coghill for sponsoring the bill.

Thank you

Sheila Neketa
BBNA Land Management Services
PO Box 310
Dillingham, AK 99576

Good Morning Ladies and Gentlemen. I would like to thank you for giving me the opportunity to speak to you to show my support of Senate Bill 105.

I have been working with Native allotments for eight and a half years. According to a BLM document received there are about 301 pending Native allotments throughout Alaska. Forty three valid Aguilar allotments are located within the boundaries of the Bristol Bay service provider area.

This means BBNA LMS works with the applicants and or heirs with the BIA, BLM and the DNR in an attempt to obtain title to the land. BLM will determine whether or not land is to be found valid under the provisions of Aguilar; BLM will request DNR return the land to BLM. The state will then follow its generalized land conveyance policy before the valid Aguilar allotment can be conveyed.

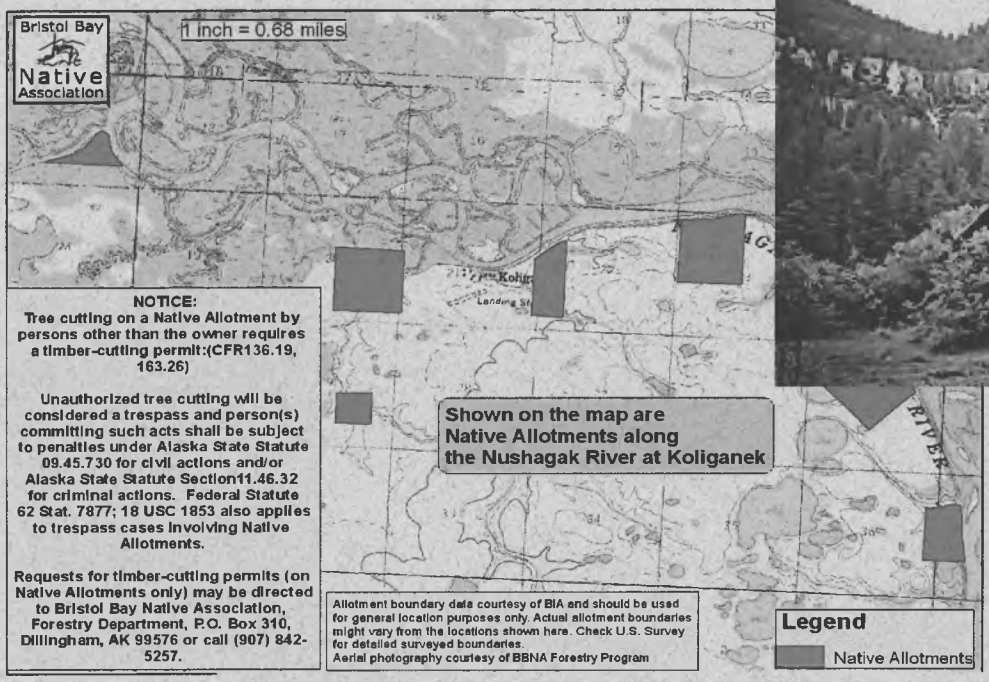
Please note this process can be very lengthy and requires the Native allotment applicant or heirs to be in agreement. In my experience several of the valid Aguilar Native allotment applicants and/or their heirs die before a certificate is ever issued.

A compelling case in our region is the case of John Alexie who is 83 years old. The applicant while waiting for the title to the land died. The heirs have done everything the DNR has asked but DNR ended up declining to recognize the valid Aguilar allotment. Senate Bill 105 will assist valid Aguilar allotments be returned to BLM which will assist Native allotment applicants who have been waiting for sometimes 80 years to receive title to the land for which the applied for.

Once again I'd like to thank Senator Coghill for supporting this bill and this committee for hearing me.

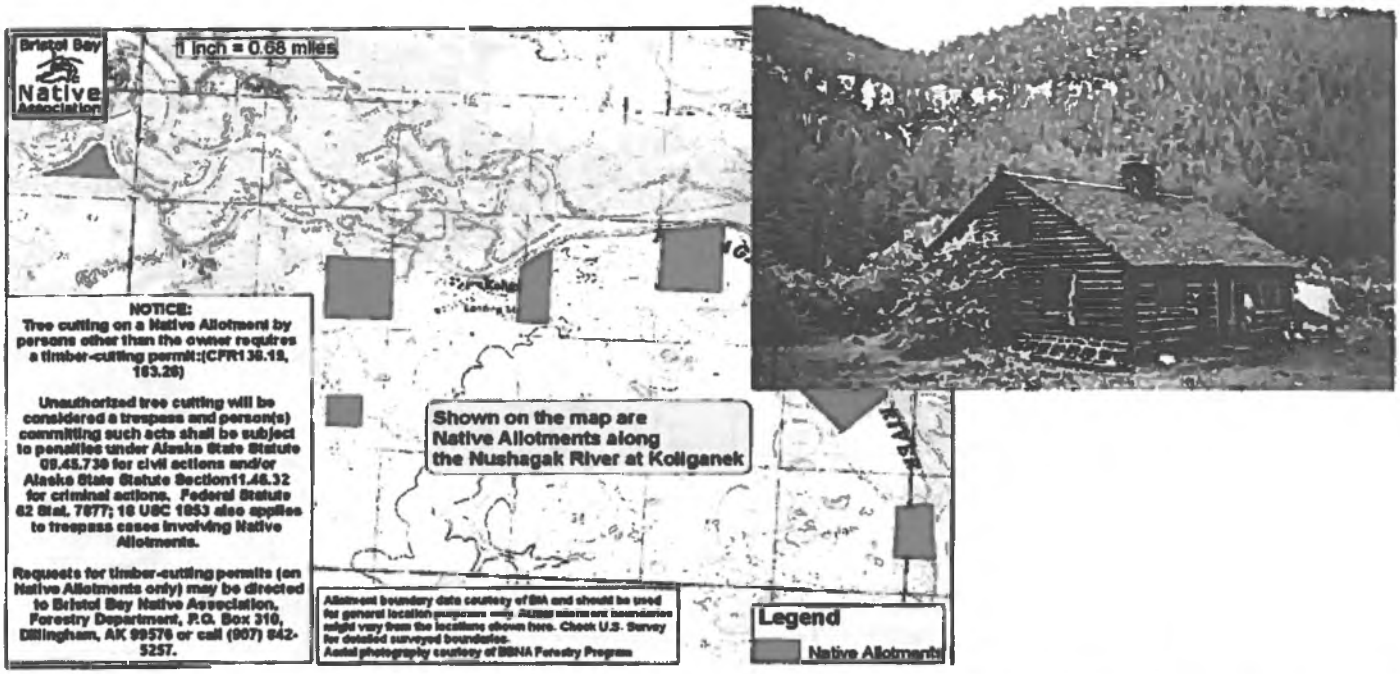
My name is Lucy Weedman , heir to the late John Alexie who is my grandfather. At the age of 53 he had applied for his native allotment, with affidavits from two well respected individuals of the community confirming that my late grandfather had been using said selected property since 1930, which is a total of 83 years of documentation of use by my grandfather. Between the ages of 10-12 years old, my grandfather brought me to his property. Four to six years later when I started traveling up to my grandfather's property, I didn't realize that property was the property I would be inheriting. My daughter was entering her preteen years, when I learned about said property I was inheriting. My grandfather had waited for the title to be transferred to him but it never happened. Thirty two to thirty three years later we three heirs, my aunt, my sister and I received one notice after another from the State of Alaska, DNR and each heir complied with the different conditions they stipulated on us but yet they still went back and pulled it back from us, which angered each of us heirs. Eighty plus years and this was going on for about half of that time. My grandfather expected a title and to date we as heirs have not received title to the property. We, the heirs of John Alexie are all very strongly in support of SB105, which would give land back to BLM to convey back to John Alexie's heirs, my aunt, my sister, and I.

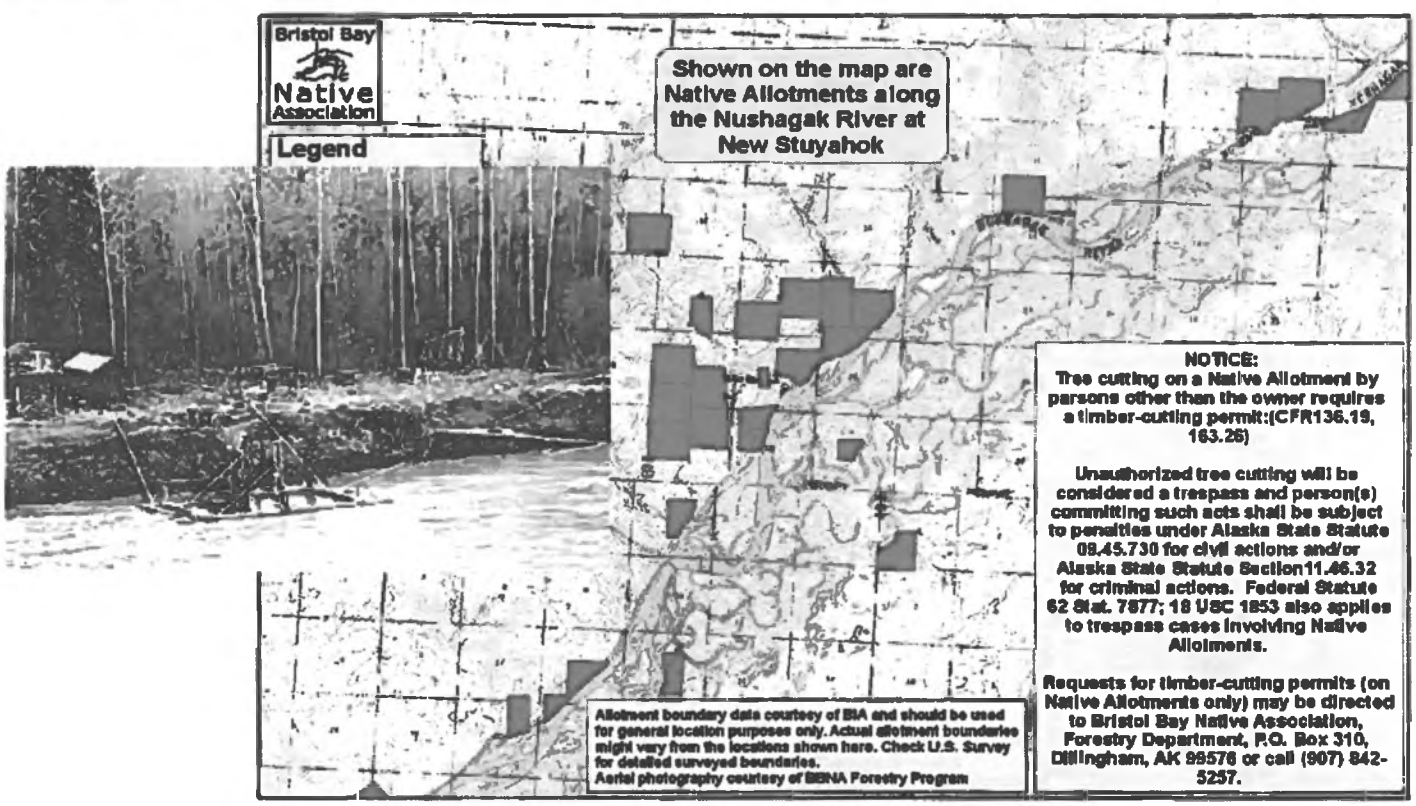
SB 105 - NATIVE ALLOTMENTS



Sponsored by Senator John Coghill
February 26, 2014

SB 105 - NATIVE ALLOTMENTS





Sponsored by Senator John Coghill
February 26, 2014

SB 105 – Alaska Native Allotments

INDEX

1

Alaska State Legislature

Senate Majority Leader

Judiciary Committee
Chairman
In-State Energy Committee
Co-Chair
State Affairs Committee
Joint Armed Services Committee
Legislative Council
Rules Committee

Senator John Coghill

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SPONSOR STATEMENT
Quitclaim Deed for Native Allotments

43 U.S. CODE § 1635 - STATE SELECTIONS AND CONVEYANCES (c) Prior tentative approvals:

> "(1) All tentative approvals of State of Alaska land selections pursuant to the Alaska Statehood Act are hereby confirmed, subject only to valid existing rights and Native selection rights under the Alaska Native Claims Settlement Act…"

The Alaska Native Allotment Act of 1906, enacted on May 17, 1906, permitted individual Alaska Natives to acquire title to up to 160 acres of land. **A native allotment is a valid existing right** to title that has been through the certification process with BIA.

Currently, when the federal government has "wrongfully or erroneously" conveyed land to the state because there was a prior, legitimate claim to the land, the director of the Division of Lands is not required to make right and quitclaim deed the land back to the federal government so BLM can deed the land to the person who filed the allotment claim or his or her surviving family members.

There will be a few cases where there will be extenuating circumstances that would prevent the State from righting a wrong but they must be clearly unsolvable, such as native allotments that are situated along the TAPS.

There are over 200 individual native allotments acquired under the Native Allotment Act of 1906 that have erroneously been titled to the State of Alaska by BLM. These allotments have been well documented and verified by BLM. My native allotment bill would require DNR title native allotment lands to BLM when the land has been "wrongfully or erroneously" conveyed to the state, enabling BLM to grant fee simple title to the native allotments owners or their surviving relatives.

2

SENATE BILL NO. 105

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY SENATOR COGHILL

Introduced: 1/22/14
Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

"An Act requiring the state to quitclaim to the federal government land or an interest in land that was wrongfully or erroneously conveyed to the state by the federal government."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 38.05.035(a) is amended to read:

(a) The director shall

(1) have general charge and supervision of the division and may exercise the powers specifically delegated to the director; the director may employ and fix the compensation of assistants and employees necessary for the operations of the division; the director is the certifying officer of the division, with the consent of the commissioner, and may approve vouchers for disbursements of money appropriated to the division;

(2) manage, inspect, and control state land and improvements on it belonging to the state and under the jurisdiction of the division;

(3) execute laws, rules, regulations, and orders adopted by the commissioner;

(4) prescribe application procedures and practices for the sale, lease, or other disposition of available land, resources, property, or interest in them;

(5) prescribe fees or service charges, with the consent of the commissioner, for any public service rendered;

(6) under the conditions and limitations imposed by law and the commissioner, issue deeds, leases, or other conveyances disposing of available land, resources, property, or any interests in them;

(7) have jurisdiction over state land, except that land acquired by the Alaska World War II Veterans Board and the Agricultural Loan Board or the departments or agencies succeeding to their respective functions through foreclosure or default; to this end, the director possesses the powers and, with the approval of the commissioner, shall perform the duties necessary to protect the state's rights and interest in state land, including the taking of all necessary action to protect and enforce the state's contractual or other property rights;

(8) maintain the records the commissioner considers necessary, administer oaths, and do all things incidental to the authority imposed; the following records and files shall be kept confidential upon request of the person supplying the information:

(A) the name of the person nominating or applying for the sale, lease, or other disposal of land by competitive bidding;

(B) before the announced time of opening, the names of the bidders and the amounts of the bids;

(C) all geological, geophysical, and engineering data supplied, whether or not concerned with the extraction or development of natural resources;

(D) except as provided in AS 38.05.036, cost data and financial information submitted in support of applications, bonds, leases, and similar items;

(E) applications for rights-of-way or easements;

(F) requests for information or applications by public agencies for land that is being considered for use for a public purpose;

(9) account for the fees, licenses, taxes, or other money received in the administration of this chapter including the sale or leasing of land, identify its [THEIR] source, and promptly transmit it [THEM] to the proper fiscal department after crediting it [THEM] to the proper fund; receipts from land application filing fees and charges for copies of maps and records shall be deposited immediately in the general fund of the state by the director;

(10) select and employ or obtain at reasonable compensation cadastral, appraisal, or other professional personnel the director considers necessary for the proper operation of the division;

(11) be the certifying agent of the state to select, accept, and secure by whatever action is necessary in the name of the state, by deed, sale, gift, devise, judgment, operation of law, or other means any land, of whatever nature or interest, available to the state; and be the certifying agent of the state, to select, accept, or secure by whatever action is necessary in the name of the state any land, or title or interest to land available, granted, or subject to being transferred to the state for any purpose;

(12) on request, furnish records, files, and other information related to the administration of AS 38.05.180 to the Department of Revenue for use in forecasting state revenue under or administering AS 43.55, whether or not those records, files, and other information are required to be kept confidential under (8) of this subsection; in the case of records, files, or other information required to be kept confidential under (8) of this subsection, the Department of Revenue shall maintain the confidentiality that the Department of Natural Resources is required to extend to records, files, and other information under (8) of this subsection;

(13) when reasonably possible, give priority to and expedite the processing of an application for a lease or assignment of a lease of state land for development and operation of a gas storage facility, for a right-of-way to a gas storage facility, for a change to the allocation of production within a unit, and for a permit necessary for the operation of a gas storage facility; in this paragraph, "gas storage

facility" has the meaning given in AS 31.05.032;

(14) quitclaim land or an interest in land to the federal government after a determination that the land or the interest in land was wrongfully or erroneously conveyed by the federal government to the state.

* Sec. 2. AS 38.05.125(b) is amended to read:

(b) The provisions of (a) of this section do not apply to a quitclaim of land or a transfer of an interest in land made under AS 38.05.035(a)(14) [AS 38.05.035(b)(9)].

* Sec. 3. AS 38.05.321(c) is amended to read:

(c) The provisions of this section do not apply to

(1) state land classified as agricultural land that has been selected by a municipality under the provisions of former AS 29.18.190 - 29.18.200 if the selection is an approved selection before April 1, 1978, and is otherwise valid under AS 29.65.050(b) or former AS 29.18.205(b); or

(2) a quitclaim of the interest of the state to the federal government under AS 38.05.035(a)(14) [AS 38.05.035(b)(9)].

* Sec. 4. AS 38.05.035(b)(9) is repealed.

3

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Quitclaim Deed for Native Allotments

SECTIONAL

Section 1. Powers and duties of the director of the Division of Lands by mandating he or she quitclaim deeds *"land or an interest in land to the federal government after a determination that the land or the interest in land was wrongfully or erroneously conveyed by the federal government to the state."* Currently that director has permissive authority to do so when land was wrongfully or erroneously conveyed to the state.

Sec. 2. Exempts lands quitclaimed under Section 1 from AS 38.05.125, reservation of subsurface resource rights to the State of Alaska. This would allow for mineral rights to titled owners of native allotments.

Sec. 3. Exempts the new provision pertaining to quitclaim deed to the federal government from AS 38.05.125, restriction on sale, lease or other disposals of agricultural land. This eliminates the limitation on use of such land to agricultural use.

Sec. 4. AS 38.05.035 makes quitclaim deeds to the federal government when the land was wrongfully or erroneously conveyed to the state a permissive actions. This statute is repealed and the quitclaim deed becomes mandatory under Section 1.

4

TANANA CHIEFS CONFERENCE

A consortium of 42 members, working in unity to advance Alaska Native Self-Determination

Understanding Land Status Differentiations

Allotment Application (Aguilar cases) vs conveyed allotments and ANCSA lands—
Seeking Legislative Solution to Aguilar Cases

Pending allotment applications, due to erroneously conveyed allotment parcels to the State of Alaska, must be resolved after languishing for decades, sometimes nearly 100 years. A legislative solution to convey these parcels to their rightful owners must move forward.

Allotment titles can be subject to RS2477 access if evidence demonstrates this access pre-dates use by the allotment applicant. Less than 5% of the pending allotment cases have trails on them.

This issue has nothing to do with recent RS2477 cases.

Conveyed land parcels: certificated Native allotments and ANCSA lands

Certificated Native allotments have been conveyed to the allotment owner, governed by certain statutes and regulations pertaining to trust responsibilities. The title may contain provisions for access under RS2477.

If there are issues of trespass, it is the responsibility of the trustee to protect the allotment owner. Recent cases, such as the Purdy's in Chicken, demonstrate that trust responsibility (see TCC white paper RS 2477 claims to access Native allotments and ANCSA lands).

ANCSA land is provided to regional and village corporations through the 1971 Alaska Native Claims Settlement Act. Provisions for access include section 17(b) easements and RS 2477.

Access to lands to these lands, whether a certificated through federal provisions pertain to CONVEYED, TITLED land.

Purdy and Ahtna are recent cases dealing with access (see TCC RS-2477 claims to access Native allotments and ANCSA Lands)—in both, ample access has been granted.

RS2477 –Background

RS 2477 refers to access through statute 2477, originally enacted as Section 8 of the Mining Act of 1866 granting right-of-ways for the construction of highways over public lands. The act was repealed in 1976 with enactment of Federal Land Policy and Management Act (FLPMA). Pre-existing RS-2477 claims were not affected by the FLPMA repeal.

TANANA CHIEFS CONFERENCE

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Re-conveyance of Alaska Native Allotments by State of Alaska (Aguilar cases)

FACT SHEET

1. Numerous Alaska Native allotments were erroneously conveyed by the federal government to the State of Alaska. These are referred to as Aguilar cases.
   - Allotment applications were lost or improperly closed. BLM was not aware of valid allotment claim when conveying parcels to the state.
   - BLM then closed these cases systematically once land was selected by the state. The Aguilar case reversed this practice, directing BLM to recover title to these valid existing cases, re-opening dozens of cases.
   - Current Aguilar cases are approximately 300, most in the Tanana Chiefs and Bristol Bay regions.

2. A legislative solution is sought to re-convey title to BLM, for ultimate conveyance to rightful owner.

3. State of Alaska accepted land title subject to valid existing rights. A native allotment is a valid existing right.

4. The State of Alaska has over-selected lands for their remaining entitlement of 5 million acres. The Alaska Lands Acceleration Act limits over-selection to 25% of remaining entitlement, putting the state in a position where it needs to relinquish nearly 10 million acres of over-selection.
   - Allotment acreage sought under quit claim is less than 48,000 acres.

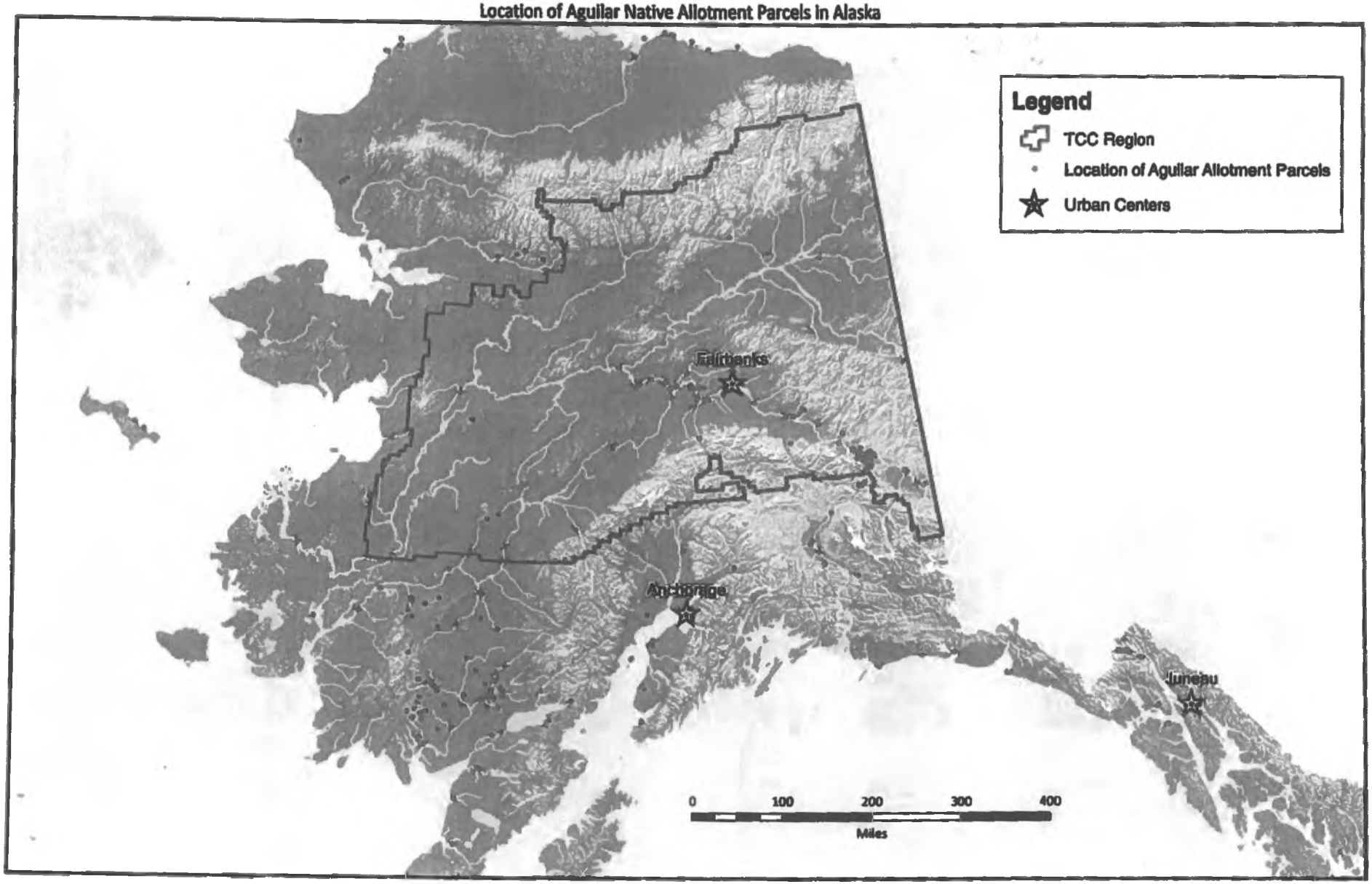
5. Allotment applications are decades-old, some nearly 100 years old. It is time to settle and convey to private ownership.

6. Re-conveyance by the state is negotiated and if a trail existed before the applicant's use and occupancy began, then the trail is subject within conveyance documents.

Land Status Differentiations:

- Aguilar cases are UNCONVEYED valid allotment applications.
- Conveyed allotments are trust property with the federal government and many have RS2477 rights of way.
- ANCSA lands have separate provisions for access under federal law.

Location of Aguilar Native Allotment Parcels in Alaska



TANANA CHIEFS CONFERENCE

A consortium of 42 members, working in unity to advance Alaska Native Self-Determination

RS-2477 claims to access Native allotments and ANCSA lands

Issue: There is concern that Native entities are blocking access over certain Native allotments and ANCSA lands. This not the case. The issue is the State of Alaska's use of RS-2477 in an arbitrary manner on Native-owned lands, including "spur" trails not approved by law.

Extensive damage from unauthorized use on RS-2477 trails beyond the intent of access has resulted, including in the recent Purdy case. The Purdys recognize the trails reserved in their land deeds (certificates of allotments) but not additional "spur" access. In the Klutina case, Ahtna is not blocking access rather they acknowledge access by 17(b) easements reserved by the federal government under ANCSA.

RS-2477 Background: Revised Statute 2477 was originally enacted as Section 8 of the Mining Act of 1866 granting right-of-ways for the construction of highways over public lands. The act was repealed in 1976 with enactment of Federal Land Policy and Management Act (FLPMA). Pre-existing RS-2477 claims were not affected by the FLPMA repeal.

Purdy Case: Sisters Agnes and Anne Purdy, Native allotment owners in Chicken, were sued by the State of Alaska in 2013. The State wanted to acquire "quiet title" by condemning portions of land where RS-2477 trails crossed the allotment. Previous to the State filing suit, TCC Realty Program placed "No Trespassing" signs at "spur" trail heads, because extra trails are not recognized as legal access. The Federal District Court found that the State could not sue the allottees for the following reasons: the allotments are trust or restricted lands; the United States is an indispensable party to the State's claim again the Native allotment; the U.S. has not waived its sovereign immunity; the Court lacks subject matter jurisdiction; and the claims by the State have been dismissed. The primary trails reserved in their (Purdys) title documents are recognized as valid access, but additional "spur" offshoot trails are not.

Ahtna-Klutina Case: Ahtna recognizes and allows public access over their lands through 17(b) easements (60 feet wide) as reserved by the Federal government; however, Ahtna does not recognize the State of Alaska claims for RS-2477 easements (100 feet wide) over the same trails. Ahtna is litigating with the State over 26 miles of undeveloped road that begins at the Richardson Highway and ends at the outlet of Klutina Lake – known as the Brenwick-Craig Road. In 2007, the State widened several miles of the road, cutting trees, and removing one of Ahtna's permit fee stations, as an "unauthorized encroachment" on its claimed easement. There was an attempt at mediation, but the State claimed more area, such as "spur" and secondary easements off of the originally claimed primary trail to Klutina Lake. Ahtna is now sponsoring legislation to vacate, or remove the RS-2477 claim, and recognize the federal 17(b) easement.

Excessive access claims on Native allotments and damages: Through the use of RS-2477, the State claims access for a 100 foot wide trail, and asserts uses for future highway development. With the Purdy allotments, the State was claiming 17.5 acres and 6.4 acres in excess of the original RS-2477 trail reservation. The pending settlement for damages by a local miner in the periphery of the RS 2477 trail across the Purdy allotment acknowledges excessive use of primary access trails.

5

NATIVE ALLOTMENT ADJUDICATIONS

STATISTICS AND PROCESSES

Statistics

Total completed reviews

Total number of allotments adjudicated by BLM to date on all lands	~16,030

BLM's remaining application parcels

BLM's remaining unresolved native allotment application parcels	303
Number of these parcels involving lands never owned by the State	49
Number of these parcels involving lands owned by the State, but not yet submitted by BLM to DNR for review	58
Number of parcels submitted to DNR and under State review/subject to State decisions	196

DNR's reviews and adjudications

Number of parcels that have not yet been adjudicated (of the 196 submitted by BLM to DNR for review)	100
Number of parcels that the State has determined it cannot reconvey	96

Narrative Description

According to BLM's statistics, approximately 16,030 native allotment parcels have been sought in various locations across the state with BLM between January 1, 1906 and today. Of this total, BLM has a remaining 303 parcels to adjudicate statewide. Some of these unresolved allotment parcels do not involve state lands – i.e., the applied-for lands are still in federal ownership, or affect other landowners besides the State.

Most of BLM's remaining 303 parcels involve land that is no longer in federal ownership and has been transferred to the State as part of the statehood entitlement. Unfortunately, the State originally received these lands unaware of potential entitlements, so conflicts have arisen in some cases.

Native allotment parcels involving state land are handled between BLM and DNR – if a native allottee has a potential claim for land that the federal government has transferred to the State, BLM seeks reconveyance, by Quit Claim Deed (QCD), from the State back to the federal government. The State then adjudicates the request to determine if it is able to

return the land to BLM (for eventual conveyance to the allottee). The presumption is that land should be returned if it can be.

Currently, BLM has about 196 unresolved parcels that it has submitted to DNR for review.[1] For potential allotments on such land to be valid, the allottee's use must pre-date the State's selection. The State seeks to ensure that the application and adjudication by BLM is correct, and then that there are not conditions that prevent the State from returning the land (i.e., the State has not transferred the land to another party, or fixtures, easements, or other construction do not occupy the land).

In addition to the 196 unresolved parcels that BLM has referred to the State, there are approximately 54 parcels have been QCD'd to BLM. This means that these applicants received or will receive the parcels[2] that they applied for, and are finally resolved.

Approximately 100 of these 196 unresolved parcels referred to DNR are being actively reviewed, and are at various stages of the review and reconveyance process with DNR, BIA, and/or BLM. Ultimately, the State may QCD these parcels to BLM for conveyance to an allottee, or it may be unable to reconvey once adjudication and review has been completed.

Approximately 96 of these 196 unresolved parcels the State has been unable to reconvey and has denied.[3] There are a number of complex, fact specific reasons for these decisions not to reconvey, but they often feature scenarios where the State has transferred valuable interests in the applied for lands to other third parties since the State acquired interest, or where the Legislature has designated the land should be retained for special uses, or where the lands have already been conveyed to a third party. (See attached maps for examples).

Of the 96 parcels that have not been reconveyed:

- 29 are part of Legislatively Designated Areas (LDAs). Typically LDAs include legislative restrictions on DNR's authority to transfer any land within the area.
- 12 have not had the final releases signed by the necessary parties.[4]
- 29 have significant defects with the application and/or BLM's adjudication (i.e., the State is aware of evidence of use or lack of use that was not considered by BLM).[5]

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[1] This number may still increase. While the statutory authority for individuals to make applications has expired, federal errors and omissions mean that petitions to open closed cases are still coming to BLM. Consequently, the number of parcels at any particular stage of the process is in flux as DNR receives then processes the parcels.

[2] Or substantial portions of the parcels that they have acknowledged as acceptable.

[3] Because these cases have not been finally resolved to the satisfaction of the applicant, BLM considers them open and counts them in the 303 'active' parcels statistic. If these applicants select alternate parcels their cases will be finally resolved.

[4] For the QCD to be finalized, the allottee applicant, or *ALL* of their heirs and devises, have to sign releases accepting the application has been satisfied and the land is satisfactory. When allottees have not signed these agreements for approximately 6 months, they are deemed rejected and the State releases the hold on the land. However, extensions to this six month period are liberally granted if requested. Typically, a given allotment parcel will be held for a year or two years to gather the needed releases.

- 26 have third party ownership interests (i.e., public easements and infrastructure cross the parcel, or a municipality or bona fide purchaser third party has received title through municipal entitlements or land sales).

These 96 denied parcels are now eligible for the alternate parcel program if the applicant would like to pursue that option.

There are also native allotment parcels that involve State land that BLM has not yet transferred to the State for state review, which BLM has estimated to number 58. When these parcels are provided to the State, they will increase the total number of unresolved parcels the State has received (currently ~196) and the number of cases receiving active state review (currently ~100). They will also eventually increase the number QCD'd back to BLM (currently ~54) or the number denied for reconveyance and eligible for alternate parcel selection (currently ~96).

Of note, the Tanana Chiefs Conference (TCC) recently provided a document showing that there may be approximately 264 allotment application parcels currently outstanding.[6] Discussion with BLM has indicated that they have 303 parcels remaining to adjudicate, involving all affected land owners and applicants throughout the State. (TCC's 264 thus should be a large subset of the 303 if BLM's statistics are accurate). Approximately 49 of BLM's 303 unresolved parcels do not affect the State (i.e., they occupy federal land or land that has never been owned by the State). As discussed are approximately another 58 of the 303 that, while they may affect state lands, BLM has not provided to DNR for review and which may include examples provided by TCC.

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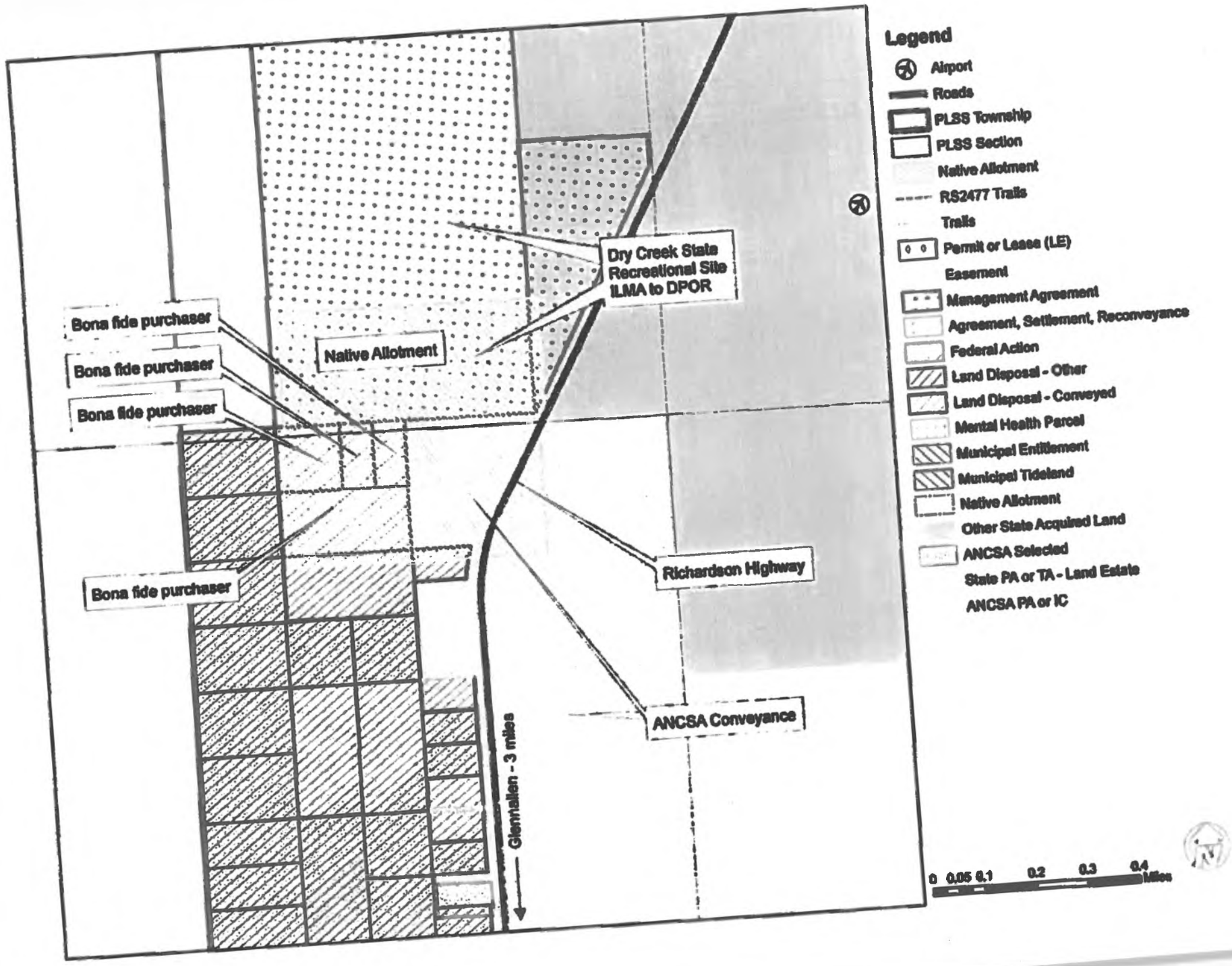
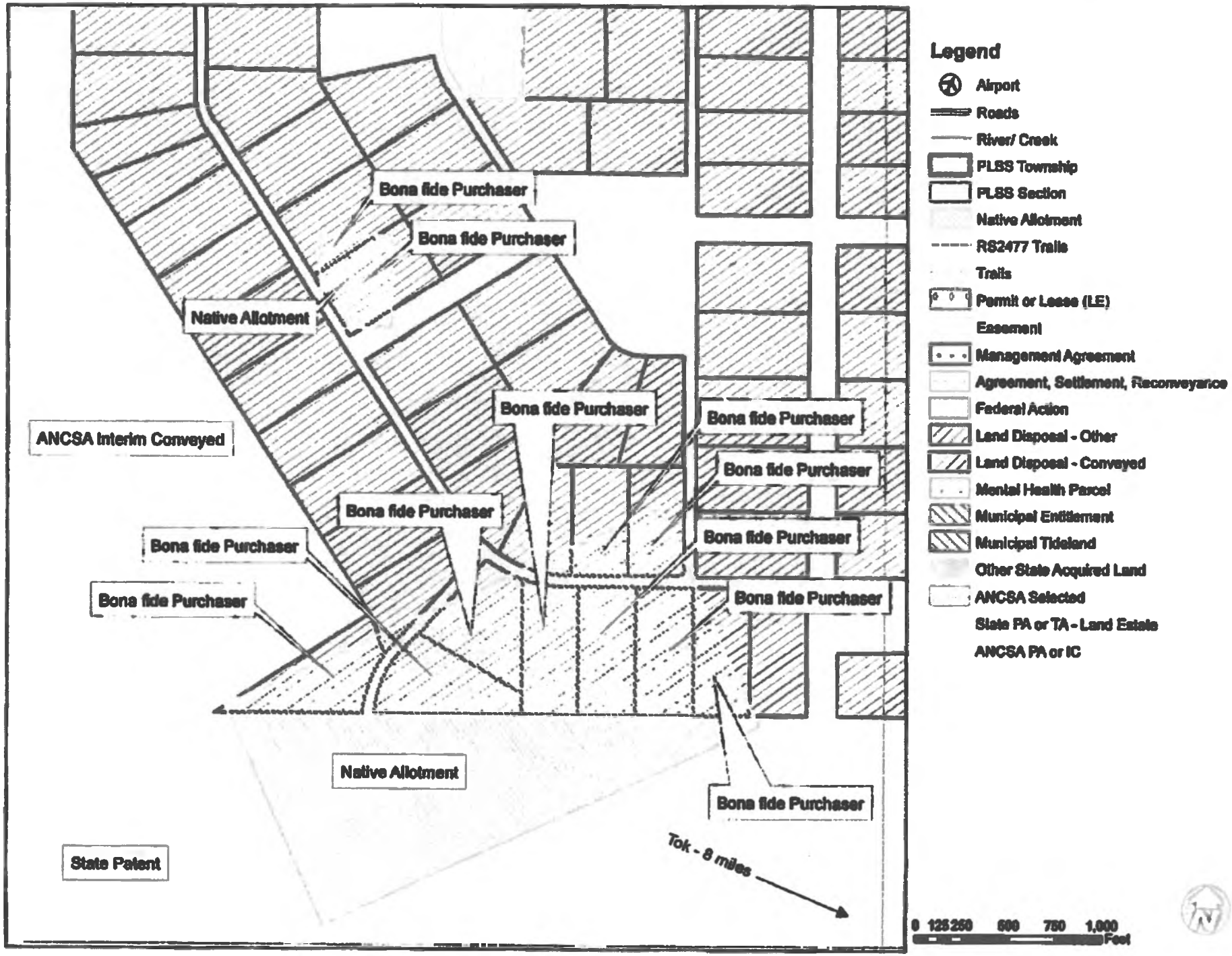
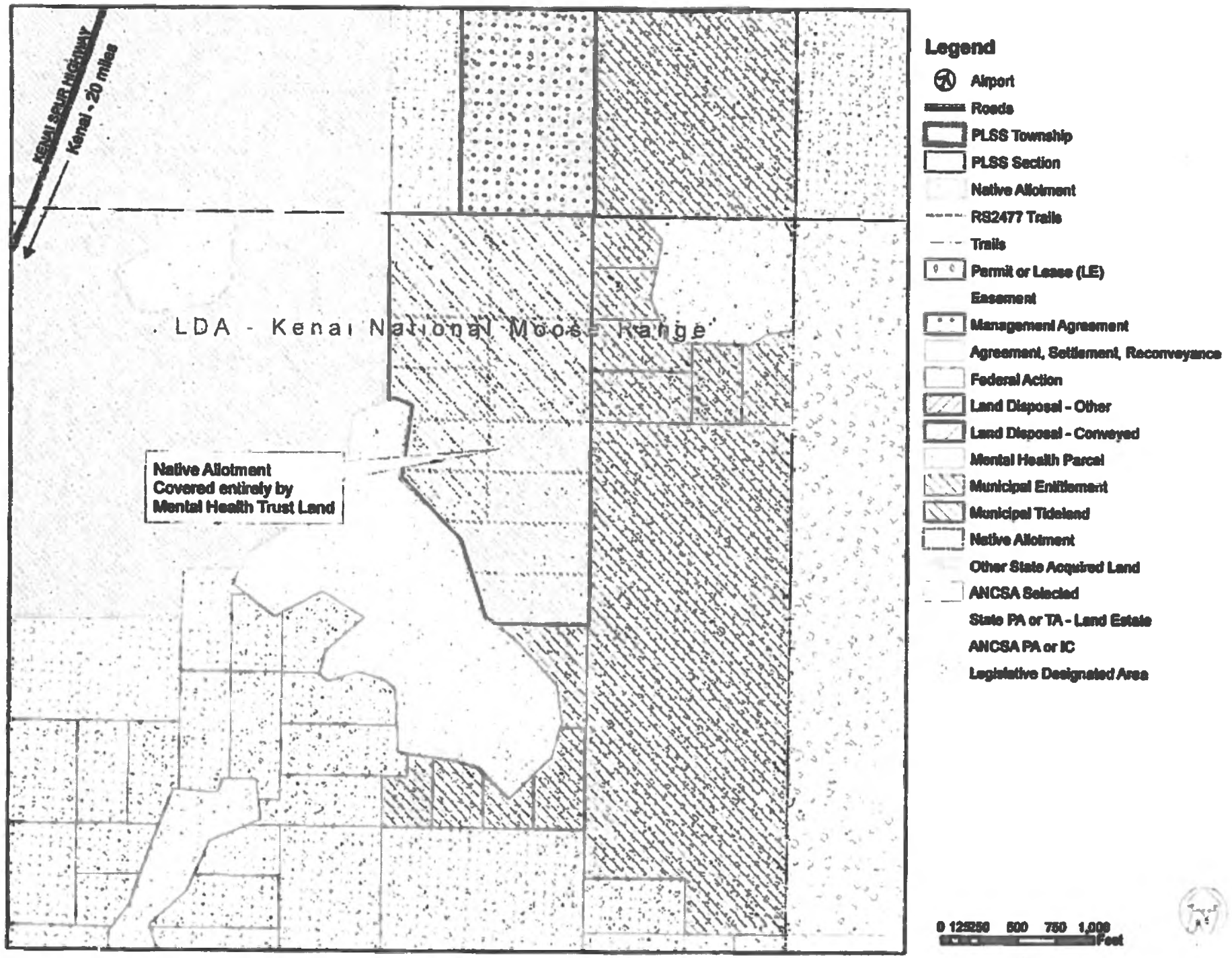
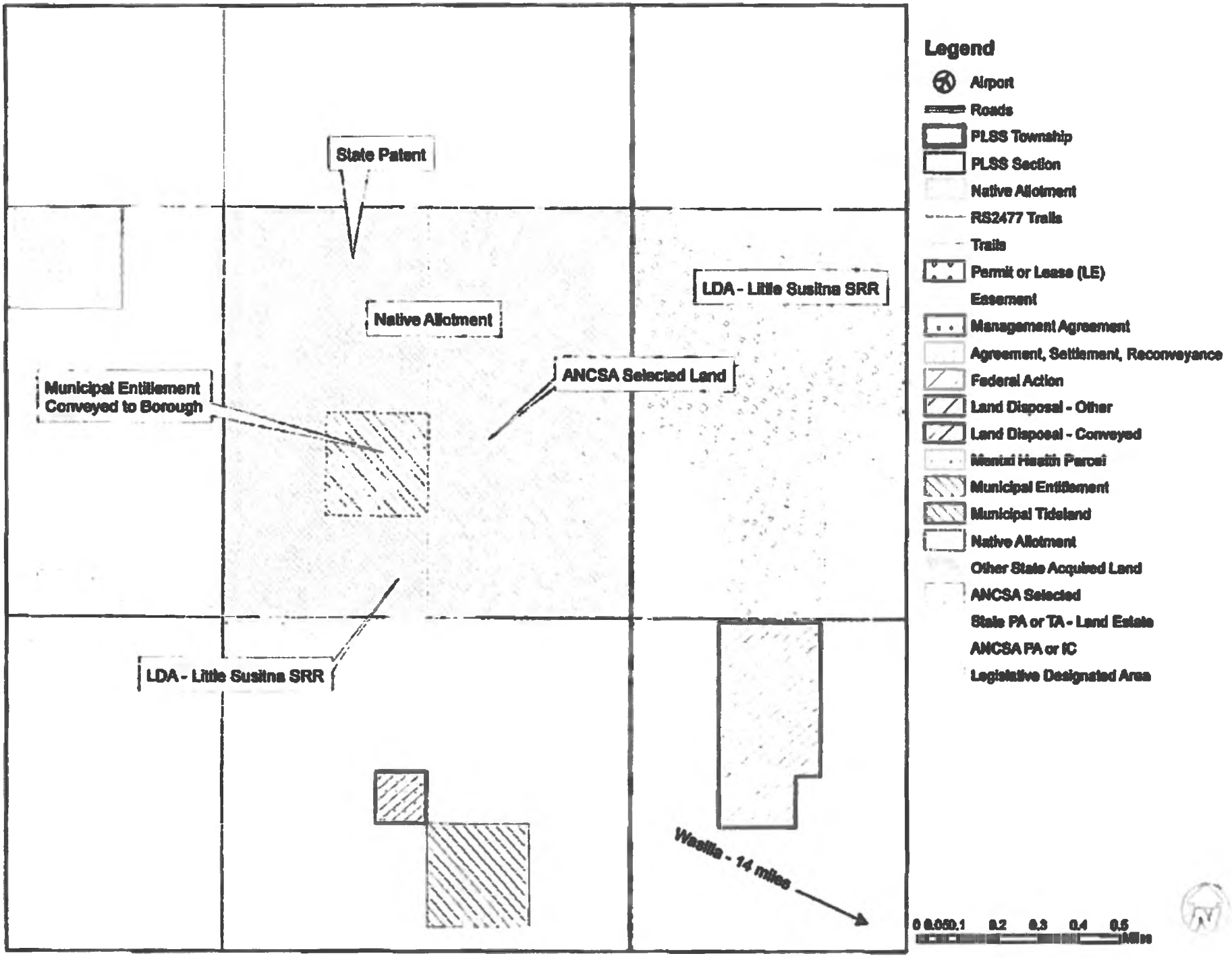
[5] Technically, BLM may re-adjudicate these parcels, conduct further review, and request that the State review them again. While these parcels are typically considered closed by the State, they *could* be reopened.

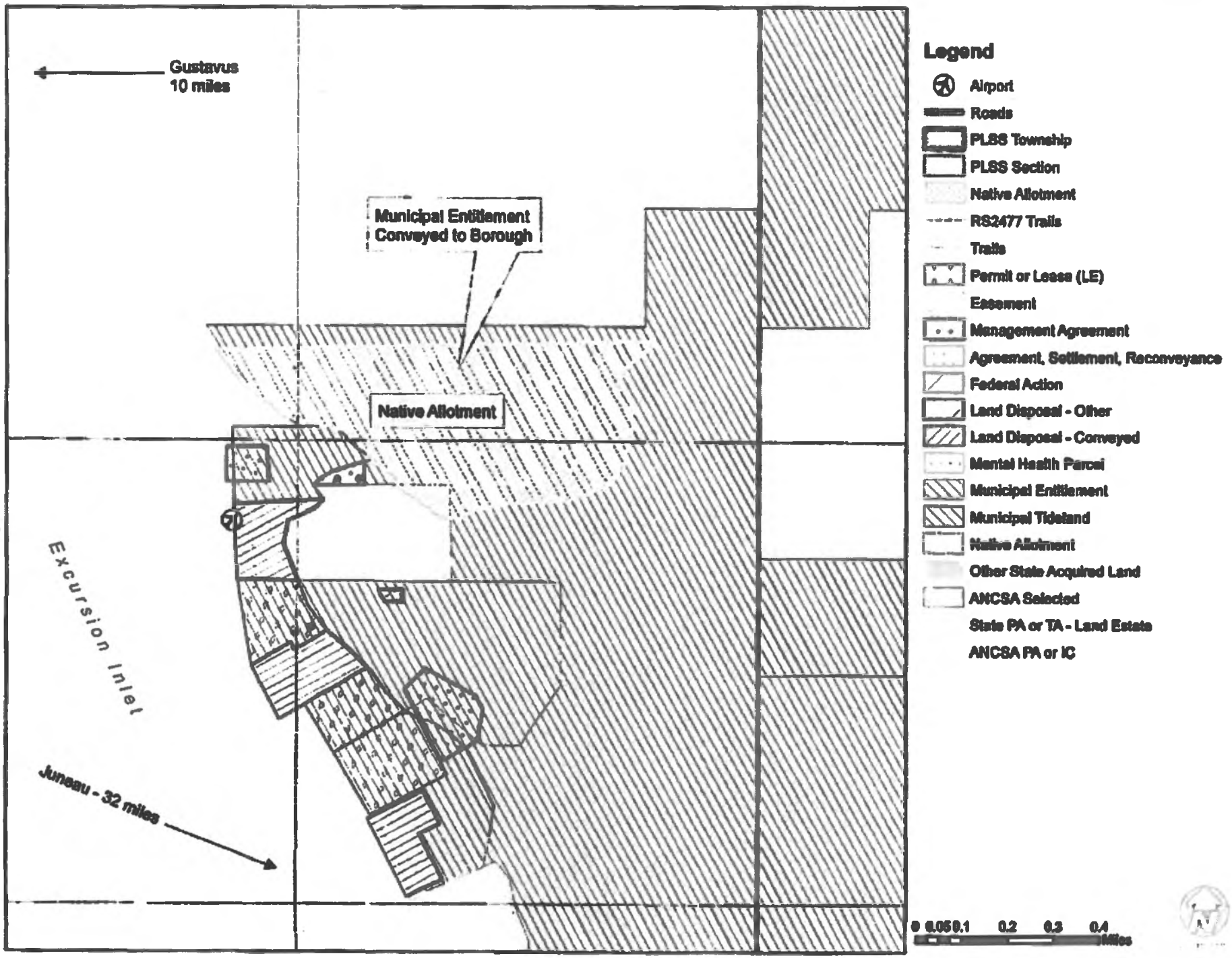
[6] TCC does not represent all potential applicants, thus the discrepancy between BLM's 303 active parcels statistic and TCC's 264. Some of the parcels TCC has raised may not involve State lands at all and require purely federal adjudications.

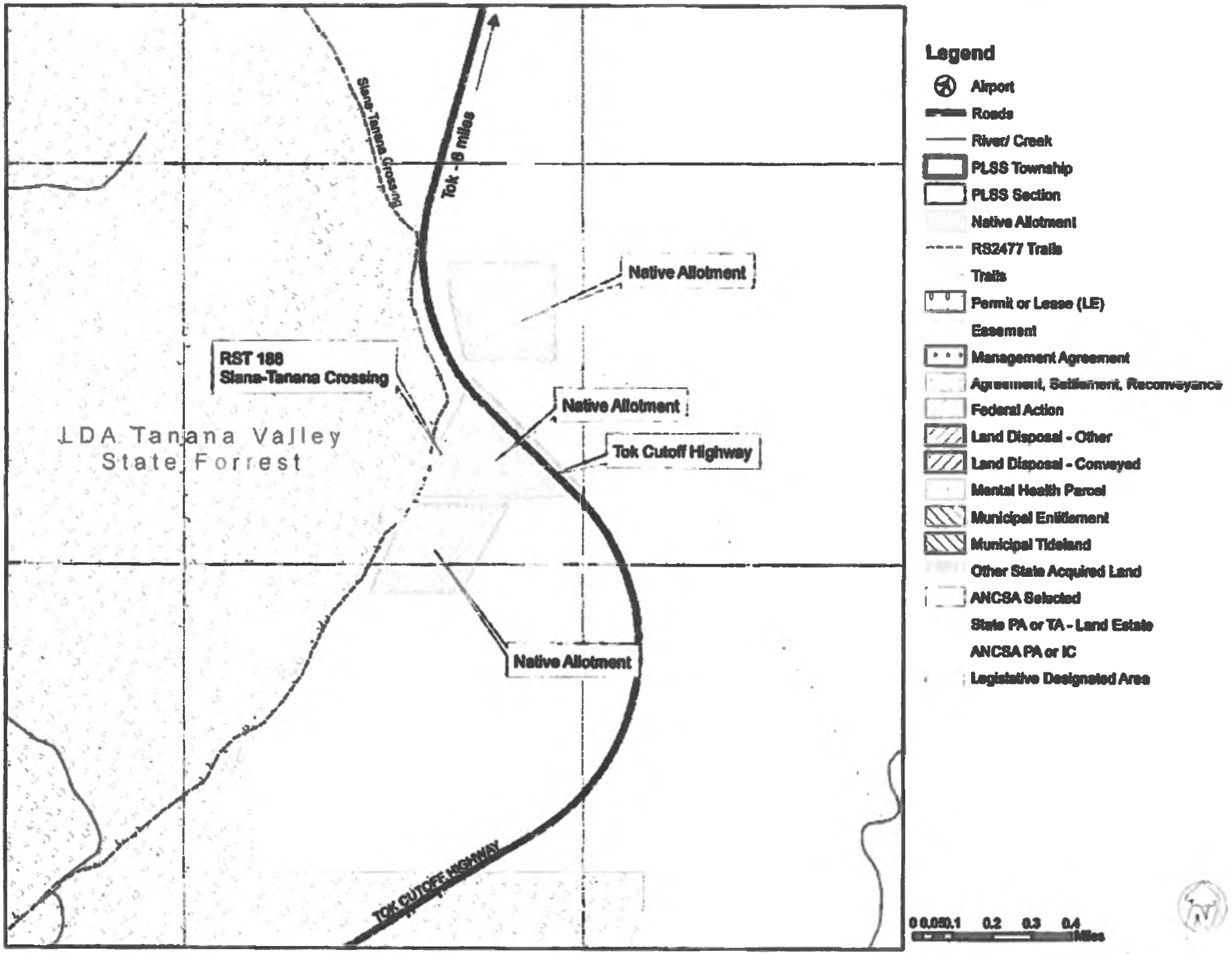

Dry Creek State Recreational Site ILMA to DPOR
Native Allotment
Bona fide purchaser
Bona fide purchaser
Bona fide purchaser
Bona fide purchaser
Richardson Highway
ANCSA Conveyance
Glennallen - 3 miles
Legend
Airport
Roads
PLSS Township
PLSS Section
Native Allotment
RS2477 Trails
Trails
Permit or Lease (LE)
Easement
Management Agreement
Agreement, Settlement, Reconveyance
Federal Action
Land Disposal - Other
Land Disposal - Conveyed
Mental Health Parcel
Municipal Entitlement
Municipal Tideland
Native Allotment
Other State Acquired Land
ANCSA Selected
State PA or TA - Land Estate
ANCSA PA or IC
0 0.05 0.1 0.2 0.3 0.4 Miles


Bona fide Purchaser
Bona fide Purchaser
Native Allotment
Bona fide Purchaser
Bona fide Purchaser
ANCSA Interim Conveyed
Bona fide Purchaser
Bona fide Purchaser
Bona fide Purchaser
Bona fide Purchaser
Bona fide Purchaser
Native Allotment
Bona fide Purchaser
State Patent
Tok - 8 miles
Legend
Airport
Roads
River/ Creek
PLSS Township
PLSS Section
Native Allotment
RS2477 Trails
Trails
Permit or Lease (LE)
Easement
Management Agreement
Agreement, Settlement, Reconveyance
Federal Action
Land Disposal - Other
Land Disposal - Conveyed
Mental Health Parcel
Municipal Entitlement
Municipal Tideland
Other State Acquired Land
ANCSA Selected
State PA or TA - Land Estate
ANCSA PA or IC
0 125 250 500 750 1,000
Feet


KENAI SPUR HIGHWAY
Kenai - 20 miles
LDA - Kenai National Moose Range
Native Allotment
Covered entirely by
Mental Health Trust Land
Legend
Airport
Roads
PLSS Township
PLSS Section
Native Allotment
RS2477 Trails
Trails
Permit or Lease (LE)
Easement
Management Agreement
Agreement, Settlement, Reconveyance
Federal Action
Land Disposal - Other
Land Disposal - Conveyed
Mental Health Parcel
Municipal Entitlement
Municipal Tideland
Native Allotment
Other State Acquired Land
ANCSA Selected
State PA or TA - Land Estate
ANCSA PA or IC
Legislative Designated Area
0 125250 500 750 1,000
Feet


State Patent
Native Allotment
LDA - Little Susitna SRR
ANCSA Selected Land
Municipal Entitlement Conveyed to Borough
LDA - Little Susitna SRR
Wasilla - 14 miles
Legend
Airport
Roads
PLSS Township
PLSS Section
Native Allotment
RS2477 Trails
Trails
Permit or Lease (LE)
Easement
Management Agreement
Agreement, Settlement, Reconveyance
Federal Action
Land Disposal - Other
Land Disposal - Conveyed
Mental Health Parcel
Municipal Entitlement
Municipal Tideland
Native Allotment
Other State Acquired Land
ANCSA Selected
State PA or TA - Land Estate
ANCSA PA or IC
Legislative Designated Area
0 0.05 0.1 0.2 0.3 0.4 0.5
Miles
N


Gustavus
10 miles
Municipal Entitlement
Conveyed to Borough
Native Allotment
Excursion Inlet
Juneau - 32 miles
Legend
Airport
Roads
PLSS Township
PLSS Section
Native Allotment
RS2477 Trails
Trails
Permit or Lease (LE)
Easement
Management Agreement
Agreement, Settlement, Reconveyance
Federal Action
Land Disposal - Other
Land Disposal - Conveyed
Mental Health Parcel
Municipal Entitlement
Municipal Tideland
Native Allotment
Other State Acquired Land
ANCSA Selected
State PA or TA - Land Estate
ANCSA PA or IC
0 0.05 0.1 0.2 0.3 0.4
Miles


Legend
Airport
Roads
River/ Creek
PLSS Township
PLSS Section
Native Allotment
RS2477 Trails
Trails
Permit or Lease (LE)
Easement
Management Agreement
Agreement, Settlement, Reconveyance
Federal Action
Land Disposal - Other
Land Disposal - Conveyed
Mental Health Parcel
Municipal Entitlement
Municipal Tideland
Other State Acquired Land
ANCSA Selected
State PA or TA - Land Estate
ANCSA PA or IC
Legislative Designated Area
Tok - 8 miles
Native Allotment
RST 188
Siana-Tanana Crossing
Native Allotment
Tok Cutoff Highway
LDA Tanana Valley
State Forrest
Native Allotment
TOK CUTOFF HIGHWAY
0 0.05 0.1 0.2 0.3 0.4
Miles

6

ALASKA FEDERATION OF NATIVES, INC.
2013 ANNUAL CONVENTION
RESOLUTION 13-26

TITLE: A RESOLUTION SUPPORTING LEGISLATION TO CHANGE STATE LAW REQUIRING THE DEPARTMENT OF NATURAL RESOURCES TO RECONVEY LAND FOR VALID PENDING NATIVE ALLOTMENTS

WHEREAS: The Alaska Federation of Natives (AFN) is the largest statewide Native organization in Alaska and its membership includes 118 federally-recognized tribes, 133 village corporations, 13 regional corporations, and 11 regional nonprofit and tribal consortiums that contract and run federal and state programs; and

WHEREAS: The mission of AFN is to enhance and promote the cultural, economic, and political voice of the entire Alaska Native community; and

WHEREAS: Valid claims are pending, many dating over 40 years, and whereby these allotments were erroneously conveyed to the State of Alaska, Department of Natural Resources (DNR) by the U.S. Department of the Interior, Bureau of Land Management (BLM); and

WHEREAS: To return the allotment land, the State DNR follows state law; and

WHEREAS: The state law currently allows the DNR to refuse to give back Native allotment land; and

WHEREAS: A bill has been drafted by Senator John Coghill requiring the State to quitclaim to the federal government land or an interest in land that was wrongfully or erroneously conveyed to the State by the federal government; and

WHEREAS: The recent Memorandum of Understanding (MOU) between the State of Alaska and BLM allows the State DNR to continue to refuse to give back the allotment land and provides an overall distraction to the original, rightful claim, ignoring the traditional and cultural use of the land which provides the basis.

NOW THEREFORE BE IT RESOLVED by the delegates to the 2013 Annual Convention of the Alaska Federation of Natives Inc., the Alaska State Legislature is urged to change the law and require that Native allotment land conveyed to the state be reconvened back to the BLM for ultimate transfer to the rightful allotment claimant

BE IT FURTHER RESOLVED that this resolution shall be the policy of AFN until it is withdrawn or modified by subsequent resolution.

SUBMITTED BY:	TANANA CHIEFS CONFERENCE
COMMITTEE ACTION:	DO PASS
CONVENTION ACTION:	PASS

INUPIAT COMMUNITY of the ARCTIC SLOPE

an IRA Regional Tribal Government

P.O. Box 934 • Barrow, Alaska 99723
Ph: (907) 852-4227 1-888-788-4227 Fax: (907) 852-2449

RESOLUTION 2013-05

A Resolution In Support Of Amending Alaska State Statute AS 38.05.035 To Require The State Department Of Natural Resources To Reconvey Land For Pending Native Allotments

WHEREAS: The Inupiat Community of the Arctic Slope (ICAS) is a federally recognized Native tribe of Inupiat Eskimos under the Indian Reorganization Act of 1934, a Regional Tribal Government, as amended, whose governing body is the ICAS Executive Board with representatives from all eight Inupiat tribal councils in the North Slope Borough of Alaska; and

WHEREAS: ICAS Regional Tribal Council (ICAS Executive Board) is the governing body of ICAS and is responsible for protecting the interests of its tribal members and its rights of self-governance; and

WHEREAS: The Inupiat Community of the Arctic Slope Executive Board (ICAS) met on July 11, 2013 and resolved to request the Legislature of the State of Alaska to amend AS 38.05.035; and

WHEREAS: The ICAS Executive Board represents 8 Tribes and approximately 10,000 Alaska citizens, some having allotments that have been pending for at least forty years simply because the allotments are on land erroneously conveyed to the State of Alaska; and

WHEREAS: Amending AS 38.05.035 is necessary because the existing statute allows the State Department of Natural Resources to either refuse to reconvey allotment land or substantially delay the reconveyance of such land; and

WHEREAS: There are approximately 301 pending allotments on land mistakenly or erroneously conveyed to the state and more are expected; and

WHEREAS: This problem arose due to no fault of the allotment applicants; instead BLM conveyed the land to the state before Alaska Natives were informed of their right to file for allotments on land they used for subsistence purposes. Once Alaska Natives learned of this right, approximately 10,000 allotment applications were filed throughout Alaska but some of the land applied for had already been conveyed to the state; and

WHEREAS: Laws governing Native allotments require the applicants to have used the land before the state selected it. If use did not begin before state selection, the allotment application was not valid and was closed. Thus, all pending allotments were used before the state selected it. This situation was the subject of a federal court lawsuit, Aguilar v. United States, 474 F. Supp 840 (D. Alaska 1979), in which the court directed the U.S. Department of the Interior (DOI) to process allotment applications for land already conveyed to the state and also stated DOI was responsible to get the allotment land back; and

NOW THEREFORE BE IT RESOLVED: that the ICAS Executive Board requests the Alaska State Legislature to introduce legislation to amend AS 38.05.035 in order to require reconveyance of land for pending Native allotments.

CERTIFICATION:
I, the undersigned hereby certify that the Inupiat Community of the Arctic Slope of 13 members of whom 10 were present at this meeting held on this 11 day of July, 2013, and the resolution attachment was adopted by a vote 10 for, 0 against and 0 abstaining.

APPROVE: ✓ **AGAINST:** _____

George Olemaun, President — 7/11/13 Date

Doreen Ahgeak, Secretary — 7/11/13 Date

"WHERE THE TWO RIVERS MEET"

TANANA TRIBAL COUNCIL

PO Box 130, Tanana, AK 99777

Phone: (907) 366-7160 or 7170 Fax: (907) 366-7195

Tanana Tribal Council

RESOLUTION No. 2013-18

June 26th, 2013

TITLE: A RESOLUTION IN SUPPORT OF AMENDING ALASKA STATE STATUTE AS 38.05.035 TO REQUIRE THE STATE DEPARTMENT OF NATURAL RESOURCES TO RECONVEY LAND FOR PENDING NATIVE ALLOTMENTS

WHEREAS: The Tanana Tribal Council met on June 20th, 2013 and resolved to request the Legislature of the State of Alaska to amend AS 38.05.035;

WHEREAS: The Tanana Tribal Council represents 390 Alaska citizens, some having allotments that have been pending for at least forty years simply because the allotments are on land erroneously conveyed to the State of Alaska;

WHEREAS: Amending AS 38.05.035 is necessary because the existing statute allows the State Department of Natural Resources to either refuse to reconvey allotment land or substantially delay the reconveyance of such land;

WHEREAS: There are approximately 301 pending allotments on land mistakenly or erroneously conveyed to the state and more are expected;

WHEREAS: This problem arose due to no fault of the allotment applicants; instead BLM conveyed the land to the state before Alaska Natives were informed of their right to file for allotments on land they used for subsistence purposes. Once Alaska Natives learned of this right, approximately 10,000 allotment applications were filed throughout Alaska but some of the land applied for had already been conveyed to the state;

WHEREAS: Laws governing Native allotments require the applicants to have used the land before the state selected it. If use did not begin before state selection, the allotment application was not valid and was closed. Thus, all pending allotments were used before the state selected it. This situation was the subject of a federal court lawsuit, Aguilar v. United States, 474 F. Supp 840 (D. Alaska 1979), in which the court directed the U.S. Department of the Interior (DOI) to process allotment applications for land already conveyed to the state and also stated DOI was responsible to get the allotment land back.

NOW THEREFORE BE IT RESOLVED that the Tanana Tribal Council requests the Alaska State Legislature to introduce legislation to amend AS 38.05.035 in order to require reconveyance of land for pending Native allotments.

BY: Carl J. Sommer

TANANA TRIBAL COUNCIL PRESIDENT

Maniilaq Association

P.O. Box 256
Kotzebue, Alaska 99752
(907) 442-3311

Maniilaq Association

Resolution #13-03

TITLE: A RESOLUTION IN SUPPORT OF AMENDING ALASKA STATE STATUTE AS 38.05.035 TO REQUIRE THE STATE DEPARTMENT OF NATURAL RESOURCES TO RECONVEY LAND FOR PENDING NATIVE ALLOTMENTS

WHEREAS: The Maniilaq Board of Directors met on July 11, 2013 and resolved to request the Legislature of the State of Alaska to amend AS 38.05.035;

WHEREAS: The Maniilaq Board of Directors represents 12 Tribes and approximately 7,000 Alaska citizens, some having allotments that have been pending for at least forty years simply because the allotments are on land erroneously conveyed to the State of Alaska;

WHEREAS: Amending AS 38.05.035 is necessary because the existing statute allows the State Department of Natural Resources to either refuse to reconvey allotment land or substantially delay the reconveyance of such land;

WHEREAS: There are approximately 301 pending allotments on land mistakenly or erroneously conveyed to the state and more are expected;

WHEREAS: This problem arose due to no fault of the allotment applicants; instead BLM conveyed the land to the state before Alaska Natives were informed of their right to file for allotments on land they used for subsistence purposes. Once Alaska Natives learned of this right, approximately 10,000 allotment applications were filed throughout Alaska but some of the land applied for had already been conveyed to the state;

WHEREAS: Laws governing Native allotments require the applicants to have used the land before the state selected it. If use did not begin before state selection, the allotment application was not valid and was closed. Thus, all pending allotments were used before the state selected it. This situation was the subject of a federal court lawsuit, Aguilar v. United States, 474 F. Supp 840 (D. Alaska 1979), in which the court directed the U.S. Department of the Interior (DOI) to process allotment applications for land already conveyed to the state and also stated DOI was responsible to get the allotment land back.

NOW THEREFORE BE IT RESOLVED that the Maniilaq Board of Directors requests the Alaska State Legislature to introduce legislation to amend AS 38.05.035 in order to require reconveyance of land for pending Native allotments.

THIS RESOLUTION WAS ADOPTED AT A REGULAR MEETING OF THE MANIILAQ BOARD OF DIRECTORS ON JULY 11, 2013.

IN WITNESS THEREOTO:

GUY ADAMS, CHAIRMAN — **DATE** 10/24/13

ATTEST:

PAULA OCTUCK, BOARD SECRETARY — **DATE** 08/01/2013

Central Council
Tlingit and Haida
Indian Tribes of Alaska

CENTRAL COUNCIL
Tlingit and Haida Indian Tribes of Alaska
ANDREW P. HOPE BUILDING
320 West Willoughby Avenue • Suite 300
Juneau, Alaska 99801-1726

Executive Council of the Central Council
TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA

Resolution EC/ 13-44

Title: Support to Amend Alaska Statute 38.05.035

WHEREAS, Central Council Tlingit and Haida Indian Tribes of Alaska (Central Council) is a federally recognized tribe of more than 28,000 tribal citizens worldwide; and

WHEREAS, amending Alaska Statute 38.05.035 is necessary because the existing statute allows the State Department of Natural Resources to either refuse to reconvey allotment land or substantially delay the reconveyance of such land; and

WHEREAS, there are approximately 301 pending allotments on land mistakenly or erroneously conveyed to the state with more expected; and

WHEREAS, problems arose due to no fault of the allotment applicants, the Bureau of Land Management (BLM) conveyed the land to the state prior to Alaska Natives being informed of their right to file for allotments on land they used for subsistence purposes. Once Alaska Natives learned of this right, approximately 10,000 allotment applications were filed throughout Alaska but some of the land applied for had already been conveyed to the state.

WHEREAS, laws governing Native Allotments require the applicants to have used the land before the state selected it. If use did not begin before state selection, the allotment application was not valid and was closed. All pending allotments were used before the state selected it. This situation was the subject of a federal court lawsuit, Aguilar v. United States, 474 F. Supp 840 (D. Alaska 1979), in which the court directed the U.S. Department of the Interior (DOI) to process allotment applications for land already conveyed to the state and also stated DOI was responsible to get the allotment land back.

NOW THEREFORE BE IT RESOLVED, the Executive Council hereby authorizes the Central Council to support the introduction of legislation to amend AS 38.05.035 in order to require the reconveyance of land for pending Native allotments.

ADOPTED this 2nd day of November 2013, by the Executive Council of the Central Council of Tlingit and Haida Indian Tribes of Alaska, by a vote of 5 yeas, 0 nays, 0 abstentions and 1 absence.

CERTIFY

President Edward K. Thomas

ATTEST

Tribal Secretary Harold Houston, Sr.

TANANA CHIEFS CONFERENCE
Executive Board of Directors
Resolution No. 2013 – 09

A RESOLUTION IN SUPPORT OF AMENDING ALASKA STATE STATUTE AS 38.05.035 TO REQUIRE THE STATE DEPARTMENT OF NATURAL RESOURCES TO RECONVEY LAND FOR PENDING NATIVE ALLOTMENTS

WHEREAS, The Tanana Chiefs Executive Board met on 6/11, 2013 and resolved to request the Legislature of the State of Alaska to amend AS 38.05.035:

WHEREAS, The Tanana Chiefs Executive Board represents 42 Tribes and 12,000 Alaska citizens, some having allotments that have been pending for at least forty years simply because the allotments are on land erroneously conveyed to the State of Alaska;

WHEREAS, Amending AS 38.05.035 is necessary because the existing statute allows the State Department of Natural Resources to either refuse to reconvey allotment land or substantially delay the reconveyance of such land;

WHEREAS, There are approximately 301 pending allotments on land mistakenly or erroneously conveyed to the State and more are expected;

WHEREAS, This problem arose due to no fault of the allotment applicants; instead the U.S. Department of Interior conveyed the land to the state before Alaska Natives were informed of their right to file for allotments on land they used for subsistence purposes. Once Alaska Natives learned of this right, approximately 10,000 allotment applications were filed throughout Alaska but some of the land applied for had already been conveyed to the state;

WHEREAS, Laws governing Native allotments require the applicants to have used the land before the state selected it. If use did not begin before the state selection, the allotment application was not valid and was closed. Thus, all pending allotments were used before the state selected it. This situation was the subject of a federal court lawsuit, Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979), in which the court directed the U.S. Department of the Interior (DOI) to process allotment applications for land already conveyed to the state and also stated DOI was responsible to get the allotment land back.

NOW THEREFORE BE IT RESOLVED that the Tanana Chiefs Conference Executive Board requests the Alaska State Legislature to introduce

legislation to amend AS 38.05.035 in order to require reconveyance of land for pending Native allotments.

CERTIFICATION

I hereby certify that this resolution was duly passed by the Tanana Chiefs Conference Executive Board of Directors on 6/11, 2013 at Fairbanks, Alaska and a quorum was duly established.

Pat McCarty, Secretary/Treasurer

NATIVE VILLAGE OF BARROW
INUPIAT TRADITIONAL GOVERNMENT

RESOLUTION 2013-18

A Resolution In Support Of Amending Alaska State Statute AS 38.05.035

WHEREAS: The Native Village of Barrow (NVB) is a federally recognized Native Tribe of Inupiat Eskimo under the Indian Reorganization Act of 1934, a Regional Tribal Government, as amended, whose governing body is the NVB Executive Board with representatives from the Village of Barrow in Barrow Alaska, and

WHEREAS: NVB Tribal Council is the governing body of Native Village of Barrow and is responsible for protecting the interests of its tribal members and its rights of self-governance; and

WHEREAS: amending AS 38.05.035 is necessary because the existing statute allows the State Department of Natural Resources to either refuse to re-convey allotment land or substantially delay the re-conveyance of such land ; and

WHEREAS: there are approximately 301 pending Native Allotments on land mistakenly or erroneously conveyed to the state and more are expected; and

WHEREAS: This problem arose due to no fault of the allotment applicants; instead BLM conveyed the land to the state before Alaska Natives were informed of their right to file for allotments on land they used for subsistence purposes. Once Alaska Natives learned of this right, approximately 10,000 allotment applications were filed throughout Alaska but some of the land applied for had already been conveyed to the state; and

WHEREAS: laws governing native Allotment require the applicants to have used the land before the state selection. If use did not begin before state selection, the allotment application was not valid and was closed. Thus all pending allotments were used before the state selection. This situation was the subject of a federal court lawsuit, Aguilar v. United States, 474 F Supp 840 (D. Alaska 1979), in which the court directed the U.S. Department of the Interior (DOI) to process allotment applications for land already conveyed to the state and also stated DOI was responsible to get the allotment land back; and

NOW THEREFORE BE IT RESOLVED: that the NVB Executive Board requests the Alaska State Legislature to introduce legislation to amend AS 38.05.035 in order to require re-conveyance of land for pending Native Allotments.

With a Consensus:

Adopted this 17 **day** December, **2013.**

APPROVED:		**DISAPPROVED:**	
Thomas Olemaun,	**President**	**Thomas Olemaun,**	**President**
Dorothy Edwardsen,	**Vice President**	**Dorothy Edwardsen,**	**Vice President**
Marjorie Solomon,	**Treasurer**	**Marjorie Solomon.**	**Treasurer**
Fannie Suvlu,	**Secretary**	**Fannie Suvlu**	**Secretary**
Doreen Ahgeak,	**Sgt-At-Arms**	**Doreen Ahgeak,**	**Sgt.At – Arms**
Doreen Lampe	Member	Doreen Lampe	Member
George Olemaun	Member	George Olemaun	Member

CHILKAT INDIAN VILLAGE
An Indian Reorganization Act Village
Under Act of Congress June 15th, 1935
32 Chilkat Ave. Klukwan, Alaska 99827
HC60 Box 2207 Haines, Alaska 99827
Phone: 907-767-5505
Fax: 907-767-5518
klukwan@chilkat-nsn.gov

RESOLUTION 2013 - 13

A RESOLUTION IN SUPPORT OF AMENDING ALASKA STATE STATUTE AS 38.05.035 TO REQUIRE THE STATE DEPARTMENT OF NATURAL RESOURCES TO RECONVEY LAND FOR PENDING NATIVE ALLOTMENTS

WHEREAS; the Chilkat Indian Village Tribe has been in existence since time & immemorial; and

WHEREAS; the Chilkat Indian Village Council has the responsibility to aid needy members and to protect the general welfare and security of members of the Village; and

WHEREAS; the Chilkat Indian Village Council met on November, 2013 and resolved to request the Legislature of the State of Alaska to amend AS 38.05.035;

WHEREAS; the Chilkat Indian Village Council represents 1 Tribe and 261 tribal members, some having allotments that have been pending for at least forty years simply because the allotments are on land erroneously conveyed to the State of Alaska;

WHEREAS; amending AS 38.05.035 is necessary because the existing statute allows the State Department of Natural Resources to either refuse to reconvey allotment land or substantially delay the reconveyance of such land;

WHEREAS; there are approximately 301 pending allotments on land mistakenly or erroneously conveyed to the state and more are expected;

WHEREAS; This problem arose due to no fault of the allotment applicants; instead BLM conveyed the land to the state before Alaska Natives were informed of their right to file for allotments on land they used for subsistence purposes. Once Alaska Natives learned of this right, approximately 10,000 allotment applications were filed throughout Alaska but some of the land applied for had already been conveyed to the state;

WHEREAS; Laws governing Native allotments require the applicants to have used the land before the state selected it. If use did not begin before state selection, the allotment application was not valid and was closed. Thus, all pending

allotments were used before the state selected it. This situation was the subject of a federal court lawsuit, Aguilar v. United States, 474 F. Supp 840 (D. Alaska 1979), in which the court directed the U.S. Department of the Interior (DOI) to process allotment applications for land already conveyed to the state and also stated DOI was responsible to get the allotment land back.

NOW THEREFORE BE IT RESOLVED that the Chilkat Indian Village Council requests the Alaska State Legislature to introduce legislation to amend AS 38.05.035 in order to require reconveyance of land for pending Native allotments.

CERTIFICATION: This certifies that the foregoing resolution of the Chilkat Indian Village of Klukwan, Alaska was adopted. The Chilkat Indian Village Council is made up of seven members with a quorum of 5 established. The foregoing resolution was adopted on this 22nd day of November, 2013, by a vote of 5 in favor, 0 opposed, 2 absent, & 0 abstaining.

Jones P. Hotch Jr., Tribal President

Brian D. Willard, Tribal Secretary

7

43 U.S. CODE § 1634 - ALASKA NATIVE ALLOTMENTS

Current through Pub. L. 113-75, except 113-66. (See Public Laws for the current Congress.)

(a) Approval of applications for certain lands; lands containing coal, oil, or gas; nonmineral lands; lands within National Park System; protests; voluntary relinquishment of application

(1)

(A) Subject to valid existing rights, all Alaska Native allotment applications made pursuant to the Act of May 17, 1906 (34 Stat. 197, as amended) which were pending before the Department of the Interior on or before December 18, 1971, and which describe either land that was unreserved on December 13, 1968, or land within the National Petroleum Reserve—Alaska (then identified as Naval Petroleum Reserve No. 4) or within Fort Davis (except as provided in subparagraph (B)) are hereby approved on the one hundred and eightieth day following December 2, 1980, except where provided otherwise by paragraph (3), (4), (5), or (6) of this subsection, or where the land description of the allotment must be adjusted pursuant to subsection (b) of this section, in which cases approval pursuant to the terms of this subsection shall be effective at the time the adjustment becomes final. The Secretary shall cause allotments approved pursuant to this section to be surveyed and shall issue trust certificates therefor.

(B) The land referred to in subparagraph (A) with respect to Fort Davis—

(i) shall be restricted to—

(I) the allotment applications named in the decision published at 96 IBLA 42 (1987) and to the acreage involved in those applications; or

(II) the heirs of an applicant who made an application described in subclause (I); and

(ii) shall be subject to valid existing rights and an easement for the Iditarod National Historic Trail established by section 1244 (a)(7) of title 16, but pending final determination of the trail's location, the easement shall be located on an interim basis by the Secretary, in consultation with the Iditarod Historic Trail Advisory Council.

(2) All applications approved pursuant to this section shall be subject to the provisions of the Act of March 8, 1922 (43 U.S.C. 270–11) [43 U.S.C. 270–11 to 270–13]. [1]

(3) When on or before the one hundred and eightieth day following December 2, 1980, the Secretary determines by notice or decision that the land described in an allotment application may be valuable for minerals, excluding oil, gas, or coal, the allotment application shall be adjudicated pursuant to the provision of the Act of May 17, 1906, as amended, requiring that land allotted under said Act be nonmineral: Provided, That "nonmineral", as that term is used in such Act, is defined to include land valuable for deposits of sand or gravel.

(4) Where an allotment application describes land within the boundaries of a unit of the National Park System established on or before December 2, 1980, and the described land was not withdrawn pursuant to section 11(a)(1) of the Alaska Native Claims Settlement Act [43 U.S.C. 1610 (a)(1)], or where an allotment application describes land which has been patented or deeded to the State of Alaska or which on or before December 18, 1971, was validly selected by or tentatively approved or confirmed to the State of Alaska pursuant to the Alaska Statehood Act and was not withdrawn pursuant to section 11(a)(1)(A) of the Alaska Native Claims Settlement Act [43 U.S.C. 1610 (a)(1)(A)] from those lands made available for selection by section 11(a)(2) of the Act [43 U.S.C. 1610 (a)(2)] by any Native Village certified as eligible pursuant to section 11(b) of such Act [43 U.S.C. 1610 (b)], paragraph (1) of this subsection and subsection (d) of this section shall not apply and the application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], and other applicable law.

(5) Paragraph (1) of this subsection and subsection (d) of this section shall not apply and the Native allotment application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, if on or before the one hundred and eightieth day following December 2, 1980—

(A) A Native Corporation files a protest with the Secretary stating that the applicant is not entitled to the land described in the allotment application, and said land is withdrawn for selection by the Corporation pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]; or
(B) The State of Alaska files a protest with the Secretary stating that the land described in the allotment application is necessary for access to lands owned by the United States, the State of Alaska, or a political subdivision of the State of Alaska, to resources located thereon, or to a public body of water regularly employed for transportation purposes, and the protest states with specificity the facts upon which the conclusions concerning access are based and that no reasonable alternatives for access exist; or
(C) A person or entity files a protest with the Secretary stating that the applicant is not entitled to the land described in the allotment application and that said land is the situs of improvements claimed by the person or entity.
(6) Paragraph (1) of this subsection and subsection (d) of this section shall not apply to any application pending before the Department of the Interior on or before December 18, 1971, which was knowingly and voluntarily relinquished by the applicant thereafter.
(7) Paragraph (1) of this subsection and subsection (d) of this section shall apply, and paragraph (5) of this subsection shall cease to apply, to an application—
(A) that is open and pending on October 31, 1998;
(B) if the lands described in the application are in Federal ownership other than as a result of reacquisition by the United States after January 3, 1959; and
(C) if any protest which is filed by the State of Alaska pursuant to paragraph (5)(B) with respect to the application is withdrawn or dismissed either before, on, or after October 31, 1998.
(8)
(A) Any allotment application which is open and pending and which is legislatively approved by enactment of paragraph (7) shall, when allotted, be made subject to any easement, trail, or right-of-way in existence on the date of the Native allotment applicant's commencement of use and occupancy.
(B) The jurisdiction of the Secretary is extended to make any factual determinations required to carry out this paragraph.
(b) Conflicting land descriptions in applications; adjustments; reductions
Where a conflict between two or more allotment applications exists due to overlapping land descriptions, the Secretary shall adjust the descriptions to eliminate conflicts, and in so doing, consistent with other existing rights, if any, may expand or alter the applied-for allotment boundaries or increase or decrease acreage in one or more of the allotment applications to achieve an adjustment which, to the extent practicable, is consistent with prior use of the allotted land and is beneficial to the affected parties: Provided, That the Secretary shall, to the extent feasible, implement an adjustment proposed by the affected parties: Provided further, That the Secretary's decision concerning adjustment of conflicting land descriptions shall be final and unreviewable in all cases in which the reduction, if any, of the affected allottee's claim is less than 30 percent of the acreage contained in the parcel originally described and the adjustment does not exclude from the allotment improvements claimed by the allottee: Provided further, That where an allotment application describes more than one hundred and sixty acres, the Secretary shall at any time prior to or during survey reduce the acreage to one hundred and sixty acres and shall attempt to accomplish said reduction in the manner least detrimental to the applicant.
(c) Amendment of land description in application; notification; protest; adoption of final plan of survey
An allotment applicant may amend the land description contained in his or her application if said description designates land other than that which the applicant intended to claim at the time of application and if the description as amended describes the land originally intended to be claimed. If the allotment application is amended, this section shall operate to approve the application or to require its adjudication, as the case may be, with reference to the amended land description only: Provided, That the Secretary shall notify the State of Alaska and all interested parties, as shown by the records of the Department of the Interior, of the intended correction of the allotment's location, and any such party shall have until the one hundred and eightieth day following December 2, 1980, or sixty days following mailing of the notice, whichever is later, to file with the Department of the Interior a protest as provided in subsection (a)(5) of this section, which protest, if timely, shall be deemed filed within one hundred and eighty days of December 2, 1980, notwithstanding the actual date of filing: Provided further, That the Secretary may require that all allotment applications designating land in a specified area be amended, if at all, prior to a date certain, which date shall be calculated to allow for orderly adoption of a plan of survey for the specified area, and the Secretary shall mail notification of the final

date for amendment to each affected allotment applicant, and shall provide such other notice as the Secretary deems appropriate, at least sixty days prior to said date: Provided further, That no allotment application may be amended for location following adoption of a final plan of survey which includes the location of the allotment as described in the application or its location as desired by amendment.

(d) Powersites and power projects

Where the land described in an allotment application pending before the Department of the Interior on or before December 18, 1971 (or such an application as adjusted or amended pursuant to subsection (b) or (c) of this section), was on that date withdrawn, reserved, or classified for powersite or power-project purposes, notwithstanding such withdrawal, reservation, or classification the described land shall be deemed vacant, unappropriated, and unreserved within the meaning of the Act of May 17, 1906, as amended, and, as such, shall be subject to adjudication or approval pursuant to the terms of this section: Provided, however, That if the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), as amended [16 U.S.C. 791a et seq.], or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress, the foregoing provision shall not apply and the allotment application shall be adjudicated pursuant to the Act of May 17, 1906, as amended: Provided further, That where the allotment applicant commenced use of the land after its withdrawal or classification for powersite purposes, the allotment shall be made subject to the right of reentry provided the United States by section 24 of the Federal Power Act, as amended [16 U.S.C. 818]: Provided further, That any right of reentry reserved in a certificate of allotment pursuant to this section shall expire twenty years after December 2, 1980, if at that time the allotted land is not subject to a license or an application for a license under part I of the Federal Power Act, as amended [16 U.S.C. 791a et seq.], or actually utilized or being developed for a purpose authorized by that Act, as amended [16 U.S.C. 791a et seq.], or other Act of Congress.

(e) Validity of existing rights; rights acquired by actual use and national forest lands unaffected

Prior to issuing a certificate for an allotment subject to this section, the Secretary shall identify and adjudicate any record entry or application for title made under an Act other than the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], the Alaska Statehood Act, or the Act of May 17, 1906, as amended, which entry or application claims land also described in the allotment application, and shall determine whether such entry or application represents a valid existing right to which the allotment application is subject. Nothing in this section shall be construed to affect rights, if any, acquired by actual use of the described land prior to its withdrawal or classification, or as affecting national forest lands.

(f) Reinstatement

(1)

(A) Notwithstanding paragraphs (1) and (6) of subsection (a) of this section, and subject to subparagraph (B), each Alaska Native allotment application made pursuant to the Act entitled "An Act authorizing the Secretary of the Interior to allot homesteads to the natives of Alaska", approved May 17, 1906 (34 Stat. 197), that—

(i) was pending before the Department of the Interior on or before December 18, 1971; and

(ii) describes lands within the National Petroleum Reserve-Alaska that have been selected, interim conveyed, or patented to a Village Corporation or Regional Corporation,

is reinstated only for the purpose of this section, subject to this section.

(B) The reinstatement under subparagraph (A) shall be carried out regardless of whether the application was—

(i) relinquished by the applicant; or

(ii) denied by the Department of the Interior, if the denial was based solely on the grounds that land within the National Petroleum Reserve-Alaska was unavailable.

(2)

(A) To the extent that the application describes lands (or any interest in the lands) that have been selected, interim conveyed, or patented to a Village Corporation or Regional Corporation, the Secretary is authorized to accept from the Village Corporation or Regional Corporation the reconveyance or relinquishment of the lands (or any interest in the lands).

(B)

(i) To the extent that the application describes lands (or any interest in the lands) that a Village Corporation is not willing to reconvey or relinquish pursuant to subparagraph (A), the applicant may relinquish any claim to any portion of the lands (or any interest in the lands) or may, with the consent of the affected Village Corporation, amend the application to exclude the lands and include in lieu thereof a description of lands selected by, interim conveyed to, or patented to the Village Corporation of an acreage that is not to exceed the amount of land relinquished.

(ii) The Secretary is authorized to accept the reconveyance or relinquishment of the lands (or any interest in the lands) described in the amended application from the Village Corporation or Regional Corporation in lieu of the lands (or any interest in the lands) described in the initial application.
(C) If a Village Corporation or Regional Corporation reconveys lands (or any interest in the lands) to the United States under subparagraph (A) or (B), the Secretary shall reduce the acreage charged against the entitlement of the Village Corporation or Regional Corporation.
(D) The authority of the Secretary to accept the reconveyance or relinquishment of lands (or any interest in the lands) under this paragraph shall terminate on the date that is 6 years after October 14, 1992.
(3)
(A) Subject to any valid existing rights, to the extent that the application describes lands that are authorized to be reconveyed or relinquished to the United States under paragraph (2), the Village Corporation shall file with the Secretary, not later than 3 years after October 14, 1992, the name of the applicant and the land description of each allotment proposed to be reconveyed or relinquished.
(B) Upon receipt of the land description, the Secretary shall immediately notify the State of Alaska and all interested parties of the land description proposed to be reconveyed or relinquished, and any such party shall have 60 days following notification in which to file with the Department of the Interior a protest as provided in subsection (a)(5) of this section.
(C) The Secretary shall then either—
(i) if no protest is filed, approve the application; or
(ii) if a protest is filed, adjudicate the legal sufficiency of any protest timely filed; and—
(I) if the protest is legally insufficient, approve the application; or
(II) if the protest is valid, issue a decision that closes the application and that is final for the Department.
(D) The Secretary shall, with respect to each allotment approved pursuant to this subsection—
(i) survey the allotment; and
(ii) following reconveyance or relinquishment, issue a Native allotment certificate to the applicant or heirs of the applicant.
(4)
(A) To the extent a Village Corporation or a Regional Corporation reconveys lands (or any interest in the lands) to the United States pursuant to paragraph (2) and the conveyance results in a reduction in the acreage charged against the entitlement of the Village Corporation or Regional Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), the Village Corporation or Regional Corporation shall be entitled to make selections in lieu of the reconveyed lands (or any interest in the lands).
(B)
(i) The quantity of acreage of the surface estate reconveyed pursuant to paragraph (2) shall be added to the quantity of acreage of underselection, if any, for the Village Corporation. The Secretary shall provide for the selection of lands for replacement in accordance with the procedures for withdrawals and selections under section 22(j)(2) of the Alaska Native Claims Settlement Act (43 U.S.C. 1621 (j)(2)).
(ii)
(I) A Village Corporation described in clause (i) shall be entitled to select lands for replacement from the lands that have been withdrawn for selection by the Village Corporation pursuant to section 11(a)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1610 (a)(1)).
(II) In any case in which the lands described in subclause (I) are no longer in Federal ownership and the Village Corporation is entitled to make a selection pursuant to this subparagraph, the Secretary shall withdraw, and the Village Corporation shall select, Federal lands that are compact and contiguous with lands previously conveyed to the Village Corporation.
(C) Lands (or any interests in the lands) in the replacement of lands (or interests in the lands) reconveyed by the Regional Corporation to the United States under this subsection shall be selected by the Regional Corporation from lands that are—
(i) compact and contiguous with other lands previously conveyed to the Regional Corporation within the National Petroleum Reserve-Alaska; and
(ii) beneath the surface estate of lands selected and conveyed to a Village Corporation.
(D) The Secretary shall convey the lands selected pursuant to this paragraph in accordance with this subsection.
(5)

(A) Each Native allotment certificate issued to an applicant or the heirs of the applicant pursuant to paragraph (3) shall be subject to any existing easement or other right that had been reserved, conveyed, transferred, or recognized by the United States prior to the issuance of the certificate.
(B) Each conveyance by the Secretary to any applicant or to the heirs of the applicant under this subsection shall reserve to the United States—
(i) except as provided in subparagraph (C), all interests in oil, gas, and coal in the conveyed lands, and the right of the United States, or a lessee or assignee of the United States, to enter on lands conveyed to the applicant or to the heirs of the applicant, to drill, explore, mine, produce, and remove the oil, gas, or coal; and
(ii) all other rights reasonably incident to the mineral reservations described in clause (i).
(C)
(i) If the oil, gas, or coal described in subparagraph (B)(i) was previously conveyed to the Regional Corporation and the Regional Corporation reserves those interests in a reconveyance to the United States, the Secretary shall reserve from the reconveyance to the applicant or to the heirs of the applicant for the benefit of the Regional Corporation the same rights and privileges that would have been reserved for the United States.
(ii) With respect to a reconveyance of lands (or any interest in the lands) by the Regional Corporation to the United States that does not convey the entire mineral estate, the Regional Corporation shall not be entitled—
(I) to a reduction of the acreage charged against the entitlement under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); or
(II) to select mineral interests to replace the acreage.
(6) The United States shall not be subject to liability for the presence of any hazardous substance in land or an interest in land solely as a result of any reconveyance to and transfer by the United States of the land or interest pursuant to this subsection.

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[1] See References in Text note below.

Source
(Pub. L. 96–487, title IX, § 905,Dec. 2, 1980, 94 Stat. 2435; Pub. L. 102–415, §§ 2, 12,Oct. 14, 1992, 106 Stat. 2112, 2115; Pub. L. 105–333, § 9,Oct. 31, 1998, 112 Stat. 3134.)
References in Text

Act of March 8, 1922 (43 U.S.C. 270–11), referred to in subsec. (a)(2), is act Mar. 8, 1922, ch. 96, 42 Stat. 415, as amended, which enacted sections 270–11 to 270–13 of this title. Sections 270–11 and 270–13 of this title were repealed by Pub. L. 94–579, title VII, § 703(a),Oct. 21, 1976, 90 Stat. 2789. For complete classification of this Act to the Code, see Tables.
Act of May 17, 1906, as amended, referred to in subsecs. (a)(3), (4), (5), (d), (e), and (f)(1)(A), is act May 17, 1906, ch. 2469, 34 Stat. 197, as amended, which was classified to sections 270–1 to 270–3 of this title prior to its repeal by Pub. L. 92–203, § 18(a),Dec. 18, 1971, 85 Stat. 710.
The Alaska Statehood Act, referred to in subsecs. (a)(4) and (e), is Pub. L. 85–508, July 7, 1958, 72 Stat. 339, as amended, which is set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For complete classification of this Act to the Code, see Tables.
The Alaska Native Claims Settlement Act, referred to in subsecs. (a)(4), (5)(A), (e), and (f)(4)(A), (5)(C)(ii)(I), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.
That Act, as amended, referred to in subsec. (d), is the Federal Power Act, act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. Part I of the Federal Power Act of June 10, 1920, as amended, is classified generally to subchapter I (§ 791a et seq.) of chapter 12 of Title 16. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.
Codification

In subsecs. (a)(1), (3)–(5), (c), and (d), "December 2, 1980" substituted for "the effective date of this Act", which probably meant the date of enactment of Pub. L. 96–487.
Amendments

1998—Subsec. (a)(7), (8). Pub. L. 105–333added pars. (7) and (8).
1992—Subsec. (a)(1). Pub. L. 102–415, § 2, designated existing provisions as subpar. (A), inserted "or within Fort Davis (except as provided in subparagraph (B))" after "Naval Petroleum Reserve No. 4)", and added subpar. (B).
Subsec. (f). Pub. L. 102–415, § 12, added subsec. (f).

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474 F.Supp. 840
(Cite as: 474 F.Supp. 840)

C

United States District Court, D. Alaska.
Ethel AGUILAR, Elmer Hotch, Ester Hotch, Donald Hotch, Smith J. Katzeek, Sr., Larry Jacquot and Henry Jacquot, Individually and on behalf of all others similarly situated, Plaintiffs,
v.
UNITED STATES of America, Defendant.

No. A76-271 Civil.
July 31, 1979.

Alaska natives brought action challenging Department of Interior's rejection of their allotment applications without a hearing on ground that the subject land had been conveyed to the State of Alaska. Cross motions for summary judgment were filed, as was motion to vacate class certification. The District Court, von der Heydt, Chief Judge, held that: (1) use and occupancy prior to state selection gave the native claimants "preference right" under Alaska Native Allotment Act; (2) fact that plaintiffs did not file an application for allotment until after the land was selected by the state did not eliminate the "preference right" protection given their prior use and occupancy; (3) Government's decision not to recover the land before it held a hearing to determine the facts was arbitrary and capricious; and (4) if defendant had mistakenly or wrongfully conveyed land to the State of Alaska to which plaintiffs had a superior claim, it was the responsibility of the defendant to recover that land.

Motion to vacate denied; defendant's motion for summary judgment denied; plaintiffs' motion for partial summary judgment granted and case was remanded with instructions.

West Headnotes

[1] United States 393 ⚿105

393 United States
393VIII Claims Against United States
393k105 k. Claims Under Indian Treaties or Statutes for Relief of Indians. Most Cited Cases

Where Alaska natives used and occupied land prior to selection thereof by the state, such use and occupancy gave the natives "preference right" under the Alaska Native Allotment Act, and, thus, the United States had no authority to convey such lands to the state. Alaska Native Allotment Act, 43 U.S.C. (1970 Ed.) §§ 270–1 to 270–3; Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.

[2] Public Lands 317 ⚿63

317 Public Lands
317II Survey and Disposal of Lands of United States
317II(G) Grants to States for Internal Improvements
317k63 k. Lands Included in Grant. Most Cited Cases

Until passage of the Alaska Native Claims Settlement Act, land occupied by natives was not available for state selection. Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.

[3] Indians 209 ⚿165

209 Indians
209IV Real Property
209k161 Allotment or Partition
209k165 k. Preferential Rights. Most Cited

Cases
(Formerly 209k13(4))

Alaska Native Allotment Act grants to qualified applicants a preference right to the allotment of land occupied by such applicant. Alaska Native Allotment Act, 43 U.S.C. (1970 Ed.) §§ 270–1 to 270–3.

[4] Indians 209 ⚿165

209 Indians
209IV Real Property
209k161 Allotment or Partition
209k165 k. Preferential Rights. Most Cited Cases
(Formerly 209k13(4))

Fact that Alaska natives did not file for an allotment until after the land had been selected by the state did not eliminate the protection given their prior use and occupancy as a preferential right under the Alaska Native Allotment Act. Alaska Native Allotment Act, 43 U.S.C. (1970 Ed.) §§ 270–1 to 270–3; Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.

[5] Indians 209 ⚿165

209 Indians
209IV Real Property
209k161 Allotment or Partition
209k165 k. Preferential Rights. Most Cited Cases
(Formerly 209k13(4))

Preference right granted Alaskan natives under the Alaska Native Allotment Act is very similar to the right of preemption frequently granted white settlors who occupied public lands on the American frontier before the lands were surveyed and therefore were not available for sale. Alaska Native Allotment Act, 43 U.S.C. (1970 Ed.) §§ 270–1 to 270–3.

[6] Indians 209 ⚿162

209 Indians
209IV Real Property
209k161 Allotment or Partition
209k162 k. In General. Most Cited Cases
(Formerly 209k13(1))

Indians 209 ⚿171

209 Indians
209IV Real Property
209k171 k. Alaska Native Claims Settlement. Most Cited Cases
(Formerly 209k13(1))

Potential conflict between provision of Alaska Native Claims Settlement Act governing extinguishment of aboriginal title and provision saving any application for an allotment pending before Department of Interior on December 18, 1971 created an ambiguity in ANCSA that was to be resolved in favor of native claimants. Alaska Native Claims Settlement Act, §§ 4, 4(a), 18(a), 43 U.S.C.A. §§ 1603, 1603(a), 1617(a).

[7] Indians 209 ⚿119

209 Indians
209I In General
209k119 k. Status and Disabilities of Indians in General. Most Cited Cases
(Formerly 209k6.2, 209k6(1), 209k6)

In its relationship with native Americans the Government owes a special duty analogous to those of a trustee; such exacting fiduciary standards apply to the federal Government in its conduct toward Alaskan natives. Alaska Native Allotment Act, 43 U.S.C. (1970 Ed.) §§ 270–1 to 270–3; Alaska Native Claims

Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.

[8] Indians 209 ⚿165

209 Indians
209IV Real Property
209k161 Allotment or Partition
209k165 k. Preferential Rights. Most Cited Cases
(Formerly 209k13(4))

The "preference right" given Alaskan natives under Alaska Native Allotment Act gives qualified applicants first choice in the land included in a pending allotment application; if through an adjudication an applicant can establish the facts which he alleges would establish his right to allotment he has an equitable interest in such allotment. Alaska Native Allotment Act, 43 U.S.C. (1970 Ed.) §§ 270–1 to 270–3; Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.

[9] Indians 209 ⚿152

209 Indians
209IV Real Property
209k152 k. Land Held in Trust in General. Most Cited Cases
(Formerly 209k10)

Protection of Indian property rights is an area where the trust responsibility of the federal Government has its greatest force.

[10] Constitutional Law 92 ⚿3522

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)4 Government Property, Facilities, and Funds
92k3522 k. Sale or Lease in General. Most Cited Cases
(Formerly 92k250.4)

United States 393 ⚿105

393 United States
393VIII Claims Against United States
393k105 k. Claims Under Indian Treaties or Statutes for Relief of Indians. Most Cited Cases

Department of Interior's decision not to recover lands which were selected by the State of Alaska but which allegedly were subject to "preference rights" of Alaska natives based on prior use and occupancy, without holding a hearing to determine the facts, was arbitrary and capricious; rejection of allotment applications without a fact-finding hearing was a violation of natives' rights to due process. Alaska Native Allotment Act, 43 U.S.C. (1970 Ed.) §§ 270–1 to 270–3; U.S.C.A.Const. Amends. 5, 14.

[11] Public Lands 317 ⚿63

317 Public Lands
317II Survey and Disposal of Lands of United States
317II(G) Grants to States for Internal Improvements
317k63 k. Lands Included in Grant. Most Cited Cases

If the United States mistakenly or wrongfully conveyed land to the State of Alaska to which Alaska natives had a "preference right" under Alaska Native Allotment Act based on use and occupancy prior to state selection, it was responsibility of the federal Government to recover that land. Alaska Native Allotment Act, 43 U.S.C. (1970 Ed.) §§ 270–1 to 270–3.

*841 Luther A. Granquist, Gregory M. O'Leary, Alaska Legal Services Corp., Anchorage, Alaska, for

474 F.Supp. 840
(Cite as: 474 F.Supp. 840)

plaintiffs.

Stephen Cooper, Asst. U. S. Atty., Fairbanks, Alaska, Alexander O. Bryner, U. S. Atty., Anchorage, Alaska, for defendants.

Barbara J. Miracle, Asst. Atty. Gen., Anchorage, Alaska, for State of Alaska amicus curiae.

MEMORANDUM AND ORDER

VON DER HEYDT, Chief Judge.

THIS CAUSE comes before the court on plaintiffs' motion for partial summary *842 judgment and for a remand to the Department of Interior, defendant's motion for summary judgment and for an order vacating the class certification.

The plaintiffs in this case are Alaskan Natives who have made timely applications to the U.S. Department of Interior for an allotment under the Alaska Native Allotment Act (May 17, 1906, 34 Stat. 197, as amended Aug. 2, 1956, Ch. 891, 70 Stat. 954; former 43 U.S.C. ss 270-1-270-3, repealed but with a savings clause for applications pending on December 18, 1971, by P.L. 92-203, 85 Stat. 70). In Ethel Aguilar, 15 IBLA 30 (1974), the Interior Board of Land Appeals affirmed the rejection of their allotment applications without a hearing because the land they claim for the allotment has already been conveyed to the State of Alaska. The plaintiffs claim that the use and occupancy upon which their allotments applications are based commenced prior to the conveyance of the land to the State of Alaska.

The court has previously certified a class under Fed.R.Civ.P. 23(a) and (b)(2) as follows:

> All Alaska Native allotment applicants each of whom commenced use of the land for which he or she applied prior to the filing with the Department of Interior of an application for conveyance of the same land to the State of Alaska and whose allotment application was or will be rejected, in whole or part, because the land described therein was conveyed to the State of Alaska prior to adjudication of the allotment application.

The defendant has moved to vacate this class but the court finds no merit in the grounds cited by defendant. Oral argument has been requested but in view of the extensive briefs and in order to expedite the business of the court oral argument is denied. Local Rule 5(C)(1). In order to decide these motions the court must determine what kind of interest an Alaskan Native Allotment applicant has in his claim that he uses and occupies, and what the responsibility of the federal government is to protect that interest.

I. The Interest of the Allotment Claimants in the Land Conveyed to the State

The Alaska Native Allotment Act of 1906 was the first statute passed which allowed the Natives of Alaska to perfect their title to the land occupied and used by them. United States v. Atlantic Richfield Co., 435 F.Supp. 1009, 1015 (D. Alaska 1977). The Committee on Public Lands described to the House of Representatives how the land used and occupied by Alaskan Natives could be selected by others and cause them to be dispossessed because no legal means existed to secure their rights:

> The necessity for this legislation arises from the fact that Indians in Alaska are not confined to reservations as they are in the several States and Territories of the United States, but they live in villages and small settlements along the streams where they have their little homes upon land to which they have no title, nor can they obtain title under existing laws. It does not signify that because an Alaska Indian has lived for many years in the same hut and reared a family there that he is to continue in peaceable possession of what he has always regarded his home. Some one who regards that particular spot as a desirable location for a home can file upon it for a homestead, and the Indian or Eskimo, as the case

may be, is forced to move and give way to his white brother.

H.R.Rep.No.3295, 59th Cong., 1st Sess. (1906). In order to remedy this problem the Congress passed the Alaska Native Allotment Act which

authorized the Secretary "in his discretion and under such rules as he may prescribe" (s 270-1) to allot up to 160 acres of vacant, unappropriated, and unreserved land in Alaska to any qualified Alaska Native. To qualify, the Native applicant must make "proof satisfactory to the Secretary . . . of substantially continuous use and occupancy of the land for a period of five years." (s 270-3) The Secretary's regulations construe the Act to allow for customary and seasonal patterns of use and occupancy,*843 but require that there must be actual possession and use, potentially exclusive of others, and not merely intermittent use. 43 C.F.R. s 2561.0-5(a). Thus, an applicant can meet the required qualifications by showing seasonal use of the claimed land, potentially exclusive of others, for five consecutive years for such customary purposes as hunting, fishing, or berry picking.

Pence v. Kleppe, 529 F.2d 135, 137 (9th Cir. 1976). The Allotment Act states "Any person qualified for an allotment as aforesaid shall have the Preference right to secure by allotment the nonmineral land occupied by him not exceeding one hundred and sixty acres. (emphasis added). 34 Stat. 197, (former 43 U.S.C. s 270-1).

The Ninth Circuit Court of Appeals interpreted the legislative history of the Act to mean "that the Native applicants here have a sufficient property interest to warrant due process protection . . . This is a clear indication that Congress intended to create or to recognize rights in Alaska Natives to the land that they occupy for the statutory period, and not, as the Secretary contends, merely a hope that the government will give them the land." Pence v. Kleppe, 529 F.2d at 141-42.

[1] The plaintiffs contend that their use and occupancy prior to the state selections reserved the land from selection by the state, and therefore that the United States had no authority to convey the lands claimed by the Native allotment applicants to the State. This court finds that the "preference right" granted by the Native Allotment Act, the relevant case law, and the decisions of the Department of Interior support the claims of the plaintiffs.

[2][3] Until the passage of the Alaska Native Claims Settlement Act, land occupied by Natives was not available for state selection. State of Alaska v. Udall, 420 F.2d 938 (9th Cir. 1969). Cert. denied 397 U.S. 1076, 90 S.Ct. 1522, 25 L.Ed.2d 811 (1970). But these plaintiffs need not rely on a naked aboriginal title. The Native Allotment Act grants to qualified applicants a preference right to the allotment of land occupied by such applicants. Herbert H. Hilscher, 67 I.D. 410 (1960). "Conveyance of land in derogation of a Congressional directive to respect and protect Native occupancy would be void and legally ineffective to extinguish aboriginal title." United States v. Atlantic Richfield Co., 435 F.Supp. 1009 at 1020 n. 45.

In Cramer v. United States, 261 U.S. 219, 43 S.Ct. 342, 67 L.Ed. 622 (1923), the United States on behalf of three Indians in California brought suit to cancel a portion of a patent issued by the United States to the Central Pacific Railway Company because that land was occupied and used by the Indians and therefore could not validly be conveyed to the railroad. The Court held that the Indians' pre-existing right of possession excepted the lands occupied by the Indians from the grant to the railroad. The discussion of the government policy involved and the Interior Department cases upholding it is very instructive in the instant case and will be quoted at length:

Unquestionably it has been the policy of the Federal Government from the beginning to respect

the Indian right of occupancy, which could only be interfered with or determined by the United States. Beecher v. Wetherby, 95 U.S. 517, 525 (24 L.Ed. 440); Minnesota v. Hitchcock, 185 U.S. 373, 385 (, 22 S.Ct. 650, 46 L.Ed. 954). It is true that this policy has had in view the original nomadic tribal occupancy, but it is likewise true that in its essential spirit it applies to individual Indian occupancy as well; and the reasons for maintaining it in the latter case would seem to be no less cogent, since such occupancy being of a fixed character lends support to another well understood policy, namely, that of inducing the Indian to forsake his wandering habits and adopt those of civilized life. That such individual occupancy is entitled to protection finds strong support in various rulings of the Interior Department, to which in land matters this Court has always given much weight. Midway Co. v. Eaton, 183 U.S. 602, 609 (22 S.Ct. 261, 46 L.Ed. 347); *844Hastings & Dakota R. R. Co. v. Whitney, 132 U.S. 357, 366 (, 10 S.Ct. 112, 33 L.Ed. 363). That department has exercised its authority by issuing instructions from time to time to its local officers to protect the holdings of non-reservation Indians against the efforts of white men to dispossess them. See 3 L.D. 371; 6 L.D. 341; 32 L.D. 382. In Poisal v. Fitzgerald, 15 L.D. 19, the right of occupancy of an individual Indian was upheld as against an attempted homestead entry by a white man. In State of Wisconsin, 19 L.D. 518, there had been granted to the State certain swamp lands within an Indian reservation, but the right of Indian occupancy was upheld, although the grant in terms was not subject thereto. In Ma-Gee-See v. Johnson, 30 L.D. 125, Johnson had made an entry under s 2289, Rev.Stats., which applied to "unappropriated public lands." It appeared that at the time of the entry and for some time thereafter the land had been in the possession and use of the plaintiff, an Indian. It was held that under the circumstances the land was not unappropriated within the meaning of the statute, and therefore not open to entry. In Schumacher v. State of Washington, 33 L.D. 454, 456, certain lands claimed by the State under a school grant, were occupied and had been been improved by an Indian living apart from his tribe, but application for allotment had not been made until after the State had sold the land. It was held that the grant to the State did not attach under the provision excepting lands "otherwise disposed of by or under authority of an act of Congress." Secretary Hitchcock, in deciding the case, said:

"It is true that the Indian did not give notice of his intention to apply for an allotment of this land until after the State had made disposal thereof, but the purchaser at such sale was bound to take notice of the actual possession of the lands by the Indian if, as alleged, he was openly and notoriously in possession thereof at and prior to the alleged sale, and that the act did not limit the time within which application for allotment should be made."

Congress itself, in apparent recognition of possible individual Indian possession, has in several of the state enabling acts required the incoming State to disclaim all right and title to lands "owned or Held by any Indian or Indian tribes." See 25 Stat. 676, c. 180, s 4, par. 2; 28 Stat. 107, c. 138, s 3, par. 2.

The action of these individual Indians in abandoning their nomadic habits and attaching themselves to a definite locality, reclaiming, cultivating and improving the soil and establishing fixed homes thereon was in harmony with the well understood desire of the Government which we have mentioned: To hold that by so doing they acquired no possessory rights to which the Government would accord protection, would be contrary to the whole spirit of the traditional American policy toward these dependent wards of the nation.

Cramer v. United States, 261 U.S. at 227-29, 43 S.Ct. at 344. While some of the language in this deci-

sion is unfortunately paternalistic, the legal principles announced in Cramer would appear to have even more force when applied to a right of occupancy protected by the Native Allotment Act of 1906. No statute or treaty protected the right of occupancy litigated in Cramer while the right of occupancy of these plaintiffs is explicitly given a preference under the Native Allotment Act. See also Minnesota v. Hitchcock, 185 U.S. 373, 388-92, 22 S.Ct. 650, 46 L.Ed. 954 (1902) (a grant to Minnesota from the United States was held not to include Indian land protected by treaty but not formally set aside as an Indian reservation). Leavenworth, Lawrence and Galveston Railroad v. United States, 92 U.S. 733, 23 L.Ed. 634 (1876) (a grant to Kansas from the United States for the purpose of building a railroad was held not to include Indian land protected by treaty stipulations). While the two cases just cited involved Indian lands protected by treaty, there is no apparent reason why less protection should be given to lands of Native Alaskans that are protected by a statute such as the Allotment Act.

*845 [4][5] The fact that these Natives did not file an application for an allotment until after the land was selected by the State does not eliminate the protection given their right of use and occupancy. The departmental decisions and rules regarding allotment rights are in some respects similar to those governing settlement and homestead. Herbert H. Hilscher, 67 I.D. at 414. The preference right granted Alaskan Natives under the allotment act is very similar to the right of preemption frequently granted white settlers who occupied public lands on the American frontier before the lands were surveyed and therefore were not available for sale. The right of preemption gave the settlers first chance to purchase the land. Shepley v. Cowan, 91 U.S. 330, 23 L.Ed. 424 (1875) involved a dispute between state selection rights and a settler's pre-emption rights. The plaintiff based his claim on a patent received from the State of Missouri and the defendant based his claim on a patent issued by the United States to a settler claiming pre-emption rights. The Court noted that as against each other (in the instant case the right of Alaska as against the allotment applicants), "the first in time in the commencement of proceedings for the acquisition of the title, when the same are regularly followed up, is deemed to be first in right." Shepley v. Cowan, 91 U.S. at 338. But the Court earlier in its opinion had held that the first initiatory act for a pre-emption settlement takes effect at settlement. "Thus the patent upon a State selection takes effect as of the time When the selection is made and reported to the land-office; and the patent upon a pre-emption settlement takes effect From the time of the settlement as disclosed in the declaratory statement or proofs of the settler to the register of the local land-office." Shepley v. Cowan, 91 U.S. at 337 (emphasis added). The Court held that the patent based upon the pre-emption right was superior. In much the same way the preference right of the Alaskan Natives in this case was acquired upon their first use and occupancy of the land. See also Stockley v. United States, 260 U.S. 532, 544, 43 S.Ct. 186, 189, 67 L.Ed. 390 (1923) (A homestead claim that was not yet patented was held a valid existing right excepted from a Presidential withdrawal order because, "(t)he effect of a preliminary homestead entry is to confer upon the entryman an exclusive right of possession, which continues so long as the entryman complies in good faith with the requirements of the homestead law.")

Two departmental decisions also support the position of the plaintiffs in this case. In Yakutat and Southern Railway v. Setuck Harry, Heir of Setuck Jim, 48 I.D. 362 (1921) it was held that actual occupancy and use of a tract of land by an Alaskan Native prior to its inclusion in the Tongass National Forest confers upon the occupant a preference right to a Native Allotment, although the application for the allotment was filed subsequent to the proclamation creating the National Forest. In a more recent decision of the Interior Board of Land Appeals it was held that the use and occupancy of an allotment applicant would preclude State selection under the Statehood Act even though the application for the allotment was filed after the tentative approval of the State selection. Lucy S.

Ahvakana, 3 IBLA 342 (1971). The foregoing cases convince this court that the plaintiffs are correct in their contention that land in an allotment claim used and occupied for subsistence purposes by an Alaskan Native was not available for conveyance to the State of Alaska.

[6] The State of Alaska as Amicus has argued that the contention of the plaintiffs is foreclosed by this court's decision in United States v. Atlantic Richfield Co., 435 F.Supp. 1009 (D. Alaska 1977) which held that s 4(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. s 1603(a), extinguished all claims based upon aboriginal title at conveyance or tentative approval of conveyance to the State of Alaska. None of the principles announced in this decision disturb that decision because the claims of the plaintiffs are not based upon aboriginal title but are based on the first preference given these Natives by the Allotment Act passed in 1906. Rather than extinguishing *846 the claims of plaintiffs, ANCSA repealed the Allotment Act but provided "any application for an allotment that is pending before the Department of the Interior on December 18, 1971, may, at the option of the Native applicant, be approved . . .", s 18(a), U.S.C. s 1617(a). Acceptance of the State's argument would mean that what the Congress saved in s 18(a) it had already extinguished by s 4. It would create the anomalous situation where Natives who happened to use and occupy land conveyed to the State had their allotment rights taken away, while Natives living on federal land had their allotment preserved. The State or the defendants have referred to no part of the legislative history of ANCSA that would support such an act of discrimination on the part of the Congress. At most the potential conflict between s 4 and s 18(a) creates an ambiguity in ANCSA that must be resolved in favor of the Natives. Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89, 39 S.Ct. 40, 63 L.Ed. 138 (1918), Bryan v. Itasca Co., 426 U.S. 373, 392-93, 96 S.Ct. 2102, 38 L.Ed.2d 710 (1976); Alaska Public Easement Defense Fund v. Andrus, 435 F.Supp. 664, 671 (D. Alaska 1977).

The claims of these plaintiffs are in no way comparable to the amorphous trespass claims asserted in the ARCO case. No applicant for a Native allotment can receive more than 160 acres and no Native who does not already have an application pending before the Department of Interior as of December 18, 1971, could benefit from this decision.

II. The Federal Government's Responsibility to Recover Lands Wrongfully Conveyed to the State

The defendant has refused to adjudicate the plaintiffs' applications so that it can determine the validity of their allotment claims. The Department of Interior only made an informal investigation and determined that the conveyances to the State were valid. The existence or sufficiency of the plaintiffs' use and occupancy cannot be determined on a motion for summary judgment. But the rights of the plaintiffs likewise cannot be determined without a formal adjudication under Pence v. Kleppe, 529 F.2d 135, 137 (9th Cir. 1976).

[7] In its relationship with Native Americans the government owes a special duty analogous to those of a trustee. Heckman v. United States, 224 U.S. 413, 32 S.Ct. 424, 56 L.Ed. 820 (1912); Seminole Nation v. United States, 316 U.S. 286, 62 S.Ct. 1049, 86 L.Ed. 1480 (1942); Morton v. Ruiz, 415 U.S. 199, 94 S.Ct. 1055, 39 L.Ed.2d 270 (1974). These "exacting fiduciary standards" apply to the federal government in its conduct toward Alaskan Natives. Alaska Pacific Fisheries v. United States, 249 U.S. 53, 39 S.Ct. 208, 63 L.Ed. 474 (1918); Aleut Community of St. Paul Island v. United States, 480 F.2d 831, 202 Ct.Cl. 182 (1973); Adams v. Vance, 187 U.S.App.D.C. 41, 44 n. 3, 570 F.2d 950, 953 n. 3 (1978); People of Togiak v. United States, 470 F.Supp. 423 (D.D.C.1979); Eric v. Secretary of HUD, 464 F.Supp. 44 (D. Alaska 1978).

[8][9] In the previous section of this opinion the court has identified the statutorily protected interests

which the plaintiffs have in the land which they use and occupy. The "preference right" gives qualified applicants first choice in the land included in a pending application. If through an adjudication the plaintiffs can establish the facts which they allege which would establish their right to an allotment, they would have an equitable interest in their allotment. The protection of Indian property rights is an area where the trust responsibility has its greatest force. Seminole Nation v. United States, 316 U.S. 286, 62 S.Ct. 1049, 86 L.Ed. 1480 (1942), Pyramid Lake Paiute Tribe of Indians v. Morton, 354 F.Supp. 252 (D.D.C.1953). While the government in this litigation has not denied its trust responsibility, it evidently takes the position that it no longer has to act because it has already given away the land claimed by the plaintiffs. But this is clearly circular reasoning.

The Department of Interior refuses to hold adjudicatory hearings which the plaintiffs contend would establish that the United States wrongfully or mistakenly conveyed the disputed allotments to the State *847 of Alaska. The Department has contended that it has no responsibility to recover the lands because there was no mistake in the conveyance. But it then refuses to hold hearings required by Pence v. Kleppe that would determine whether a mistake was made on the ground that it no longer has jurisdiction since the land has already been conveyed to the state.

This court agrees with Administrative Law Judge Burski who dissented in a recent decision of the Interior Board of Land Appeals dealing with the same issue. He said:

> Moreover, under the decisions of the Ninth Circuit Court of Appeals in Pence v. Kleppe, 592 F.2d 135 (1976), and this Board in Donald Peters, 26 IBLA 235 (1976), no Native allotment application can be rejected on the basis of a disputed issue of fact without notice and an opportunity for hearing. It is true that where a decision to reject a Native allotment is premised on a purely legal determinant no hearing is required. But I must admit difficulty in following the logic of a procedure which rejects an allotment application on the basis of an issued patent where the correctness of the issuance of the patent is disputed, without ever affording the Native allotment applicant an opportunity to show his entitlement.
>
> If this Department has erroneously issued the patent to the State in derogation of the appellant's rights, it seems only elementary justice that the Department should bear the economic burdens attendant to a suit to cancel the patent. A hearing is essential before the Department can make an informed judgment as to the merits of the appellant's application. Accordingly, I would reverse the decision below rejecting the Native allotment application, order the State Office to hold further action on the application in abeyance and direct the State of Alaska to bring a contest against the allotment applicant. Should the State of Alaska decline, I would recommend that the Solicitor's Office undertake discussions with the Justice Department with a view towards the initiation of suit to cancel (the patents), to the extent of the conflict between the patents and the allotment application.
>
> Berthyn Jane Baker, 41 IBLA 239 (1979) (Judge Burski dissenting).

[10][11] The defendant's decision not to recover the land without first holding a hearing to determine the facts is arbitrary and capricious. The defendant's rejection of the plaintiffs' allotment applications without a fact-finding hearing is a violation of the plaintiffs' rights to due process under Pence. If the defendant has mistakenly or wrongfully conveyed land to the State of Alaska to which plaintiffs have a superior claim, it is the responsibility of the defendant to recover that land. United States v. Cramer, 261 U.S. 219, 43 S.Ct. 342, 67 L.Ed. 622 (1923); Heckman v. United States, 224 U.S. 413, 32 S.Ct. 424, 56 L.Ed. 820 (1912); Joint Tribal Council of Passamaquoddy

Tribe v. Morton, 528 F.2d 370 (1st Cir. 1975).

Accordingly IT IS ORDERED:

1. THAT defendant's motion to vacate class certification is denied.

2. THAT defendant's motion for summary judgment is denied.

3. THAT plaintiffs' motion for partial summary judgment and remand to the Department of Interior is granted.

4. THAT the plaintiffs' cases are remanded to the Department of Interior with instructions to adjudicate their substantive claims of entitlement pursuant to all applicable procedures.

5. THAT the Clerk may prepare an appropriate final judgment form.

D.C.Alaska, 1979.
Aguilar v. U.S.
474 F.Supp. 840

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