

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

743 SCOMM23: TITLE 29 POLICY REVISION ADVISORY COMM. 1980

to such tribe: *Provided*, That such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law, but no authority shall be granted to sell, mortgage, or lease for a period exceeding ten years any of the land included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress.

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SEC. 19. The term "Indian" as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words "adult Indians" wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty-one years.

Act of May 17, 1884 (23 Stats. 26) :

SEC. 14. That none of the provisions of the last two preceding sections of this Act shall be so construed as to warrant the sale of any lands belonging to the United States which shall contain coal or the precious metals, or any town site, or which shall be occupied by the United States for public purposes, or which shall be reserved for such purposes, or to which the natives of Alaska have prior rights by virtue of actual occupation, or which shall be selected by the United States Commissioner of Fish and Fisheries on the island of Kadiak and Afognak for the purpose of establishing fish-culture stations. And all tracts of land not exceeding six hundred and forty acres in any one tract now occupied as missionary stations in said district of Alaska are hereby excepted from the operation of the last preceding sections of this act. No portion of the islands of the Pribylov Group or the Seal Islands of Alaska shall be subject to sale under this Act; and the United States reserves, and there shall be reserved in all patents issued under the provisions of the last two preceding sections the right of the United States to regulate the taking of salmon and to do all things necessary to protect and prevent the destruction of salmon in all the water of the lands granted frequented by salmon.

SEC. 15. That until otherwise provided by law the body of lands known as Annette Islands, situated in Alexander Archipelago in Southeastern Alaska, on the north side of Dixon's entrance, be, and the same is hereby, set apart as a reservation for the use of the Metlakatla Indians, and those people known as Metlakatlans who

have recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior.

Act of March 3, 1891 (26 Stat. 1101):

SEC. 8. * * * *Provided*, That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress: *And provided further*, That parties who have located mines or mineral privileges therein under the law of the United States applicable to the public domain, or who have occupied and improved or exercised acts of ownership over such claims, shall not be disturbed therein, but shall be allowed to perfect their title to such claims by payment as aforesaid: *And provided also*, That the land not exceeding six hundred and forty acres at any station now occupied as missionary stations among the Indian tribes in said section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which said missionary stations respectively belong until action by Congress. But nothing contained in this act shall be construed to put in force in said district the general land laws of the United States.



Public Law 93-638
93rd Congress, S. 1017
January 4, 1975

An Act

To provide maximum Indian participation in the Government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Self-Determination and Education Assistance Act".

CONGRESSIONAL FINDINGS

SEC. 2. (a) The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

(b) The Congress further finds that—

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

(2) the Federal responsibility for and assistance to education of Indian children has not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

DECLARATION OF POLICY

SEC. 3. (a) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

(c) The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and

Indian Self-Determination and Education Assistance Act.
25 USC 450
note.
25 USC 450.

25 USC 450a.
98 STAT. 2203
98 STAT. 2204

excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

DEFINITIONS

25 USC 450b.

SEC. 4. For the purposes of this Act, the term—

(a) "Indian" means a person who is a member of an Indian tribe;

(b) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(c) "Tribal organization" means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided*, That in any case where a contract is let or grant made to an organization to perform services benefitting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant;

(d) "Secretary", unless otherwise designated, means the Secretary of the Interior;

(f) "State education agency" means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

REPORTING AND AUDIT REQUIREMENTS

Record-keeping.
25 USC 450b.

SEC. 5. (a) Each recipient of Federal financial assistance from the Secretary of Interior or the Secretary of Health, Education, and Welfare, under this Act, shall keep such records as the appropriate Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

88 STAT. 2204
88 STAT. 2205

(b) The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access (for the purpose of audit and examination) to any books, documents, papers, and records of such recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the preceding subsection.

(c) Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

(d) Any funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States.

PENALTIES

Sec. 6. Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of a contract, subcontract, grant, or subgrant pursuant to this Act or the Act of April 16, 1934 (48 Stat. 596), as amended, embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subcontract, contract, or subcontract, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

25 USC 450a.

25 USC 452.

WAGE AND LABOR STANDARDS

Sec. 7. (a) All laborers and mechanics employed by contractors of subcontractors in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this Act, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended. With respect to construction, alteration, or repair work to which the Act of March 3, 1921 is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1930 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C. 276c).

25 USC 450a.

40 USC 276a
note.

5 USC app. II.

(b) Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—

25 USC 452.

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77).

25 USC 1452.
88 STAT. 2205
88 STAT. 2206

CARRYOVER OF FUNDS

Sec. 8. The provisions of any other laws to the contrary notwithstanding, any funds appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208), for any fiscal year which are not obligated and expended prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure during such succeeding fiscal year.

25 USC 13a.

25 USC 13,
52a.

TITLE I—INDIAN SELF-DETERMINATION ACT

Citation of
title.
25 USC 450f
note.
25 USC 450f.

Sec. 101. This title may be cited as the "Indian Self-Determination Act".

CONTRACTS BY THE SECRETARY OF THE INTERIOR

25 USC 452.

25 USC 13,
52a.

Sec. 102. (a) The Secretary of the Interior is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, provided for in the Act of April 16, 1934 (48 Stat. 536), as amended by this Act, any other program or portion thereof which the Secretary of the Interior is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto: *Provided, however,* That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory; (2) adequate protection of trust resources is not assured, or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further,* That in arriving at his finding, the Secretary shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance.

(b) Whenever the Secretary declines to enter into a contract or contracts pursuant to subsection (a) of this section, he shall (1) state his objections in writing to the tribe within sixty days, (2) provide to the extent practicable assistance to the tribe or tribal organization to overcome his stated objections, and (3) provide the tribe with a hearing, under such rules and regulations as he may promulgate, and the opportunity for appeal on the objections raised.

(c) The Secretary is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however,* That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

CONTRACTS BY THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

25 USC 450g.

48 STAT. 2206
39 STAT. 2207
42 USC 2001.

Sec. 103. (a) The Secretary of Health, Education, and Welfare is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to carry out any or all of his functions, authorities, and responsibilities under the Act of August 3, 1954 (68 Stat. 674), as amended: *Provided, however,* That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted for will not be satisfactory; (2) adequate protection of trust resources is not assured; or (3) the proposed project or function to be contracted for cannot be properly completed or main-

tained by the proposed contract: *Provided further*, That the Secretary of Health, Education, and Welfare, in arriving at his finding, shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance.

(b) Whenever the Secretary of Health, Education, and Welfare declines to enter into a contract or contracts pursuant to subsection (a) of this section, he shall (1) state his objections in writing to the tribe within sixty days; (2) provide, to the extent practicable, assistance to the tribe or tribal organization to overcome his stated objections; and (3) provide the tribe with a hearing, under such rules and regulations as he shall promulgate, and the opportunity for appeal on the objections raised.

(c) The Secretary of Health, Education, and Welfare is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however*, That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

Hearings.

Liability
Insurance.

GRANTS TO INDIAN TRIBAL ORGANIZATIONS

SEC. 104. (a) The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for—

25 USC 450h.

25 USC 13,
52a.

(1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources);

(2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 102 of this Act and the additional costs associated with the initial years of operation under such a contract or contracts;

(3) the acquisition of land in connection with items (1) and (2) above: *Provided*, That in the case of land within reservation boundaries or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of Interior may (upon request of the tribe) acquire such land in trust for the tribe; or

(4) the planning, designing, monitoring, and evaluating of Federal programs serving the tribe.

25 USC 2201
25 USC 2202

(b) The Secretary of Health, Education, and Welfare may, in accordance with regulations adopted pursuant to section 107 of this Act, make grants to any Indian tribe or tribal organization for—

(1) the development, construction, operation, provision, or maintenance of adequate health facilities or services including the training of personnel for such work, from funds appropriated to the Indian Health Service for Indian health services or Indian health facilities; or

(2) planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 103 of this Act.

(c) The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made.

PERSONNEL

Sec. 103. (a) Section 3371(2) of chapter 33 of title 5, United States Code, is amended (1) by deleting the word "and" immediately after the semicolon in clause (A); (2) by deleting the period at the end of clause (B) and inserting in lieu thereof a semicolon and the word "and"; and (3) by adding at the end thereof the following new clause:

"(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act."

(b) The Act of August 5, 1954 (68 Stat. 674), as amended, is further amended by adding a new section 8 after section 7 of the Act, as follows:

"Sec. 8. In accordance with subsection (d) of section 214 of the Public Health Service Act (58 Stat. 680), as amended, upon the request of any Indian tribe, band, group, or community, commissioned officers of the Service may be assigned by the Secretary for the purpose of assisting such Indian tribe, group, band, or community in carrying out the provisions of contracts with, or grants to, tribal organizations pursuant to section 102, 103, or 104 of the Indian Self-Determination and Education Assistance Act."

(c) Paragraph (2) of subsection (a) of section 6 of the Military Selective Service Act of 1967 (81 Stat. 100), as amended, is amended by inserting after the words "Environmental Science Services Administration" the words "or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended".

(d) Section 502 of the Intergovernmental Personnel Act of 1970 (84 Stat. 1909, 1925) is amended—

(1) by deleting the word "and" after paragraph (8);

(2) by deleting the period after paragraph (4) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) Notwithstanding the population requirements of section 203(a) and 303(c) of this Act, a 'local government' and a 'general local government' also mean the recognized governing body of an Indian tribe, band, pueblo, or other organized group or community, including any Alaska Native village, as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which performs substantial governmental functions. The requirements of sections 203(c) and 303(d) of this Act, relating to reviews by the

43 USC 1601
note.

Ante, p. 2204.

42 USC 2004a.

42 USC 2004b.

42 USC 215.

Ante, p. 2206,
2207.

50 USC app.
456.

42 USC 2001.

42 USC 4762.

42 USC 4723,
4743.

88 STAT. 2208

88 STAT. 2209

43 USC 1601
note.

42 USC 4723,
4743.

Governor of a State, do not apply to grant applications from the governing body of an Indian tribe, although nothing in this Act is intended to discourage or prohibit voluntary communication and cooperation between Indian tribes and State and local governments."

(e) Notwithstanding any other law, executive order, or administrative regulation, an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization on or before December 31, 1985, in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

(1) To retain coverage, rights, and benefits under subchapter I of chapter 81 ("Compensation for Work Injuries") of title 5, United States Code, and for this purpose his employment with the tribal organization shall be deemed employment by the United States. However, if an injured employee, or his dependents in case of his death, receives from the tribal organization any payment (including an allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the tribal organization, or other benefit of any kind) on account of the same injury or death, the amount of that payment shall be credited against any benefit payable under subchapter I of chapter 81 of title 5, United States Code, as follows:

(A) payments on account of injury or disability shall be credited against disability compensation payable to the injured employee; and

(B) payments on account of death shall be credited against death compensation payable to dependents of the deceased employee.

(2) To retain coverage, rights, and benefits under chapter 83 ("Retirement") of title 5, United States Code, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8340 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 of title 5, United States Code. Days of unused sick leave to the credit of an employee under a formal leave system at the time the employee leaves Federal employment to be employed by a tribal organization remain to his credit for retirement purposes during covered service with the tribal organization.

(3) To retain coverage, rights, and benefits under chapter 84 ("Health Insurance") of title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Employee's Health Benefit Fund (section 8909 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 89 of title 5, United States Code.

(4) To retain coverage, rights, and benefits under chapter 87 ("Life Insurance") of title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organizations are currently deposited in the Employee's Life Insurance Fund (section 8714 of title 5, United

Certain tribal organization employees, coverage, rights, and benefits.
25 USC 4501.

Work injuries, compensation.
5 USC 8101.

Retirement.
5 USC 8301.

Health insurance.
5 USC 8901.

Life insurance.
5 USC 8701.
88 STAT. 2209
90 STAT. 1210

5 USC 9701.

States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 87 of title 5, United States Code.

(f) During the period an employee is entitled to the coverage, rights, and benefits pursuant to the preceding subsection, the tribal organization employing such employee shall deposit currently in the appropriate funds the employee deductions and agency contributions required by paragraphs (2), (3), and (4) of such preceding subsection.

(g) An employee who is employed by a tribal organization under subsection (e) of this section and such tribal organization shall make the election to retain the coverage, rights, and benefits in paragraphs (1), (2), (3), and (4) of such subsection (e) before the date of his employment by a tribal organization. An employee who is employed by a tribal organization under subsection (e) of this section shall continue to be entitled to the benefits of such subsection if he is employed by another tribal organization to perform service in activities of the type described in such subsection.

"Employee."

(h) For the purposes of subsections (e), (f), and (g) of this section, the term "employee" means an employee as defined in section 2103 of title 5, United States Code.

Regulations.

(i) The President may prescribe regulations necessary to carry out the provisions of subsections (e), (f), (g), and (h) of this section and to protect and assure the compensation, retirement, insurance, leave, reemployment rights, and such other similar civil service employment rights as he finds appropriate.

(j) Anything in sections 205 and 207 of title 18, United States Code to the contrary notwithstanding, officers and employees of the United States assigned to an Indian tribe as authorized under section 3372 of title 5, United States Code, or section 2072 of the Revised Statutes (25 U.S.C. 48) and former officers and employees of the United States employed by Indian tribes may act as agents or attorneys for or appear on behalf of such tribes in connection with any matter pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: *Provided*, That each such officer or employee or former officer or employee must advise in writing the head of the department, agency, court, or commission with which he is dealing or appearing on behalf of the tribe of any personal and substantial involvement he may have had as an officer or employee of the United States in connection with the matter involved.

ADMINISTRATIVE PROVISIONS

25 USC 450j.

Sec. 102. (a) Contracts with tribal organizations pursuant to sections 102 and 103 of this Act shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the appropriate Secretary, such contracts may be negotiated without advertising and need not conform with the provisions of the Act of August 24, 1935 (49 Stat. 793), as amended: *Provided*, That the appropriate Secretary may waive any provisions of such contracting laws or regulations which he determines are not appropriate for the purposes of the contract involved or inconsistent with the provisions of this Act.

40 USC 270a.

68 STAT. 2210
88 STAT. 2211

(b) Payments of any grants or under any contracts pursuant to section 102, 103, or 104 of this Act may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this title. The transfer of funds shall be scheduled consistent with program requirements and applicable Treasury regulations, so as to

minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by the tribal organization, whether such disbursement occurs prior to or subsequent to such transfer of funds. Tribal organizations shall not be held accountable for interest earned on such funds, pending their disbursement by such organization.

(c) Any contract requested by a tribe pursuant to sections 102 and 103 of this Act shall be for a term not to exceed one year unless the appropriate Secretary determines that a longer term would be advisable: *Provided*, That such term may not exceed three years and shall be subject to the availability of appropriations: *Provided, further*, That the amounts of such contracts may be renegotiated annually to reflect factors, including but not limited to cost increases beyond the control of a tribal organization.

Contracts,
term.

(d) Notwithstanding any provision of law to the contrary, the appropriate Secretary may, at the request or consent of a tribal organization, revise or amend any contract or grant made by him pursuant to section 102, 103, or 104 of this Act with such organization as necessary to carry out the purposes of this title: *Provided, however*, That whenever an Indian tribe requests retrocession of the appropriate Secretary for any contract entered into pursuant to this Act, such retrocession shall become effective upon a date specified by the appropriate Secretary not more than one hundred and twenty days from the date of the request by the tribe or at such later date as may be mutually agreed to by the appropriate Secretary and the tribe.

(e) In connection with any contract or grant made pursuant to section 102, 103, or 104 of this Act, the appropriate Secretary may permit a tribal organization to utilize, in carrying out such contract or grant, existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within his jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance.

(f) The contracts authorized under sections 102 and 103 of this Act and grants pursuant to section 104 of this Act may include provisions for the performance of personal services which would otherwise be performed by Federal employees including, but in no way limited to, functions such as determination of eligibility of applicants for assistance, benefits, or services, and the extent or amount of such assistance, benefits, or services to be provided and the provisions of such assistance, benefits, or services, all in accordance with the terms of the contract or grant and applicable rules and regulations of the appropriate Secretary: *Provided*, That the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individuals.

(g) Contracts and grants with tribal organizations pursuant to sections 102, 103, and 104 of this Act and the rules and regulations adopted by the Secretaries of the Interior and Health, Education, and Welfare pursuant to section 107 of this Act shall include provisions to assure the fair and uniform provision by such tribal organizations of the services and assistance they provide to Indians under such contracts and grants.

(h) The amount of funds provided under the terms of contracts entered into pursuant to sections 102 and 103 shall not be less than the appropriate Secretary would have otherwise provided for his direct operation of the programs or portions thereof for the period covered by the contract: *Provided*, That any savings in operation under such contracts shall be utilized to provide additional services or benefits under the contract.

48 STAT. 2211
58 STAT. 2212

PROMULGATION OF RULES AND REGULATIONS

25 USC 450k.

Sec. 107. (a) The Secretaries of the Interior and of Health, Education, and Welfare are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purposes of carrying out the provisions of this title.

(b)(1) Within six months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall each to the extent practicable, consult with national and regional Indian organizations to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall each present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

Publication
in Federal
Register.

(3) Within eight months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall promulgate rules and regulations to implement the provisions of this title.

(c) The Secretary of the Interior and the Secretary of Health, Education, and Welfare are authorized to revise and amend any rules or regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations, the respective Secretary or Secretaries shall present the proposed revision or amendment to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives and shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

REPORTS

25 USC 450l.

Sec. 108. For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract or grant under this title, the Indian tribe which requested such contract or grant shall submit to the appropriate Secretary a report including, but not limited to, an accounting of the amounts and purposes for which Federal funds were expended, information on the conduct of the program or service involved, and such other information as the appropriate Secretary may request.

RESTRICTION OF PROGRAMS

25 USC 450m.

Sec. 109. Each contract or grant agreement entered into pursuant to sections 102, 103, and 104 of this Act shall provide that in any case where the appropriate Secretary determines that the tribal organization's performance under such contract or grant agreement involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons; or (2) gross negligence or mismanagement in the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, such Secretary may

98 STAT. 2217
98 STAT. 2213

under regulations prescribed by him and after providing notice and hearing to such tribal organization, rescind such contract or grant agreement and assume or resume control or operation of the program, activity, or service involved if he determines that the tribal organization has not taken corrective action as prescribed by him: *Provided*, That the appropriate Secretary may, upon notice to a tribal organization, immediately rescind a contract or grant and resume control or operation of a program, activity, or service if he finds that there is an immediate threat to safety and, in such cases, he shall hold a hearing on such action within ten days thereof. Such Secretary may decline to enter into a new contract or grant agreement and retain control of such program, activity, or service until such time as he is satisfied that the violations of rights or endangerment of health, safety, or welfare which necessitated the rescission has been corrected. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

Notice and
hearing.

EFFECT ON EXISTING RIGHTS

SEC. 110. Nothing in this Act shall be construed as—

25 USC 450n.

- (1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or
- (2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

TITLE II—THE INDIAN EDUCATION ASSISTANCE ACT

SEC. 201. This title may be cited as the "Indian Education Assistance Act".

Citation of
title.
25 USC 455
note.

PART A—EDUCATION OF INDIANS IN PUBLIC SCHOOLS

SEC. 202. The Act of April 16, 1934 (48 Stat. 596), as amended, is further amended by adding at the end thereof the following new sections:

25 USC 452.

"SEC. 4. The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contract is capable of meeting such objectives: *Provided*, That where students other than Indian students participate in such programs, money expended under such contract shall be prorated to cover the participation of only the Indian students.

25 USC 455.

"SEC. 5. (a) Whenever a school district affected by a contract or contracts for the education of Indians pursuant to this Act has a local school board not composed of a majority of Indians, the parents of the Indian children enrolled in the school or schools affected by such contract or contracts shall elect a local committee from among their number. Such committee shall fully participate in the development of, and shall have the authority to approve or disapprove programs to be conducted under such contract or contracts, and shall carry out such other duties, and be so structured, as the Secretary of the Interior shall by regulation provide: *Provided, however*, That, whenever a local Indian committee or committees established pursuant to section 305 (b) (2) (B) (ii) of the Act of June 23, 1972 (86 Stat. 235) or an Indian advisory school board or boards established pursuant to this Act prior to the date of enactment of this section exists in such school district,

25 USC 456.

25 STAT. 2213
25 USC 2213

such committee or board may, in the discretion of the affected tribal governing body or bodies, be utilized for the purpose of this section.

"(b) The Secretary of the Interior may, in his discretion, revoke any contract if the contractor fails to permit a local committee to perform its duties pursuant to subsection (a).

25 USC 457.

"Sec. 6. Any school district educating Indian students who are members of recognized Indian tribes, who do not normally reside in the State in which such school district is located, and who are residing in Federal boarding facilities for the purposes of attending public schools within such district may, in the discretion of the Secretary of the Interior, be reimbursed by him for the full per capita costs of educating such Indian students."

Report to
congressional
committees.
25 USC 457
note.

Sec. 203. After conferring with persons competent in the field of Indian education, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall prepare and submit to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives not later than October 1, 1975, a report which shall include:

25 USC 452.

(1) a comprehensive analysis of the Act of April 16, 1934 (48 Stat. 596), as amended, including—

(A) factors determining the allocation of funds for the special or supplemental educational programs of Indian students and current operating expenditures;

(B) the relationship of the Act of April 16, 1934 (48 Stat. 596), as amended, to—

20 USC 236.

(i) title I of the Act of September 30, 1950 (64 Stat. 1100), as amended; and

20 USC 821
note.

(ii) the Act of April 11, 1965 (79 Stat. 27), as amended; and

20 USC 241aa
note.

(iii) title IV of the Act of June 23, 1972 (86 Stat. 235); and

20 USC 631.

(iv) the Act of September 23, 1950 (72 Stat. 548), as amended.

(2) a specific program to meet the special educational needs of Indian children who attend public schools. Such program shall include, but need not be limited to, the following:

(A) a plan for the equitable distribution of funds to meet the special or supplemental educational needs of Indian children and, where necessary, to provide general operating expenditures to schools and school districts educating Indian children; and

(B) an estimate of the cost of such program;

(3) detailed legislative recommendations to implement the program prepared pursuant to clause (2); and

Indian-con-
trolled com-
munity col-
leges.

(4) a specific program, together with detailed legislative recommendations, to assist the development and administration of Indian-controlled community colleges.

PART B—SCHOOL CONSTRUCTION

Contract
authority.
25 USC 458.

Sec. 204. (a) The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the acquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands.

(b) The Secretary may expend not less than 75 per centum of such funds as are authorized and appropriated pursuant to this part B on those projects which meet the eligibility requirements under subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended. Such funds shall be allocated on the basis of existing funding priorities, if any, established by the United States Commissioner of Education under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended. The United States Commissioner of Education is directed to submit to the Secretary, at the beginning of each fiscal year, commencing with the first full fiscal year after the date of enactment of this Act, a list of those projects eligible for funding under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended.

20 USC 644.

(c) The Secretary may expend not more than 25 per centum of such funds as may be authorized and appropriated pursuant to this part B on any school eligible to receive funds under section 208 of this Act.

(d) Any contract entered into by the Secretary pursuant to this section shall contain provisions requiring the relevant State educational agency to—

(1) provide Indian students attending any such facilities constructed, acquired, or renovated, in whole or in part, from funds made available pursuant to this section with standards of education not less than those provided non-Indian students in the school district in which the facilities are situated; and

(2) meet, with respect to such facilities, the requirements of the State and local building codes, and other building standards set by the State educational agency or school district for other public school facilities under its jurisdiction or control or by the local government in the jurisdiction within which the facilities are situated.

(e) The Secretary shall consult with the entity designated pursuant to section 5 of the Act of April 16, 1934 (48 Stat. 598), as amended by this Act, and with the governing body of any Indian tribe or tribes the educational opportunity for the members of which will be significantly affected by any contract entered into pursuant to this section. Such consultation shall be advisory only, but shall occur prior to the entering into of any such contract. The foregoing provisions of this subsection shall not be applicable where the application for a contract pursuant to this section is submitted by an elected school board of which a majority of its members are Indians.

(f) Within ninety days following the expiration of the three year period following the date of the enactment of this Act, the Secretary shall evaluate the effectiveness of the program pursuant to this section and transmit a report of such evaluation to the Congress. Such report shall include—

Program
evaluation,
report to
Congress.

(1) an analysis of construction costs and the impact on such costs of the provisions of subsection (f) of this section and the Act of March 3, 1921 (48 Stat. 1491), as amended;

(2) a description of the working relationship between the Department of the Interior and the Department of Health, Education, and Welfare including any memorandum of understanding in connection with the acquisition of data pursuant to subsection (b) of this section;

(3) projections of the Secretary of future construction needs of the public schools serving Indian children residing on or adjacent to Indian reservations;

- (4) a description of the working relationship of the Department of the Interior with local or State educational agencies in connection with the contracting for construction, acquisition, or renovation of school facilities pursuant to this section; and
- (5) the recommendations of the Secretary with respect to the transfer of the responsibility for administering subsections (a) and (b) of section 14 of the Act of September 23, 1930 (72 Stat. 549), as amended, from the Department of Health, Education, and Welfare to the Department of the Interior.
- 20 USC 644. Appropriation. (g) For the purpose of carrying out the provisions of this section, there is authorized to be appropriated the sum of \$35,000,000 for the fiscal year ending June 30, 1974; \$35,000,000 for each of the four succeeding fiscal years; and thereafter, such sums as may be necessary, all of such sums to remain available until expended.

PART C—GENERAL PROVISIONS

- 25 USC 458a. Sec. 205. No funds from any grant or contract pursuant to this title shall be made available to any school district unless the Secretary is satisfied that the quality and standard of education, including facilities and auxiliary services, for Indian students enrolled in the schools of such district are at least equal to that provided all other students from resources other than resources provided in this title, available to the local school district.
- 25 USC 458b. Sec. 206. No funds from any contract or grant pursuant to this title shall be made available by any Federal agency directly to other than public agencies and Indian tribes, institutions, and organizations: *Provided*, That school districts, State education agencies, and Indian tribes, institutions, and organizations assisted by this title may use funds provided herein to contract for necessary services with any appropriate individual, organization, or corporation.
- 25 USC 458c. Sec. 207. (a) (1) Within six months from the date of enactment of this Act, the Secretary shall, to the extent practicable, consult with national and regional Indian organizations with experiences in Indian education to consider and formulate appropriate rules and regulations to implement the provisions of this title.
- (2) Within seven months from the date of enactment of this Act, the Secretary shall present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.
- Rules and regulations, publication in Federal Register. (3) Within eight months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.
- (4) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this title.
- (b) The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to subsection (a) of this section: *Provided*, That prior to any revision or amendment to such rules or regulations the Secretary shall, to the extent practicable, consult with appropriate national and regional Indian organizations, and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.
- Publication in Federal Register. Sec. 208. The Secretary is authorized and directed to provide funds, pursuant to this Act: the the Act of April 16, 1934 (48 Stat. 596), as amended; or any other authority granted to him to any tribe or tribal organization which controls and manages any previously private
- 25 USC 458d.
- 25 USC 457.

January 4, 1975

- 15 -

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85 S.AT. 2217

school. The Secretary shall transmit annually to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives a report on the educational assistance program conducted pursuant to this section. Report to congressional committees.

Sec. 209. The assistance provided in this Act for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title IV of the Act of June 23, 1972 (86 Stat. 235). 25 USC 455e.

20 USC 1001
note.

Approved January 4, 1975.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 93-1600 (Comm. on Interior and Insular Affairs).

SENATE REPORTS: Nos. 93-682 and 93-762 (Comm. on Interior and Insular Affairs).

CONGRESSIONAL RECORD, Vol. 120 (1974):

Feb. 8, considered and passed Senate.

Feb. 18, action of Feb. 8 vacated.

Apr. 1, reconsidered and passed Senate.

Dec. 19, considered and passed House, amended; Senate concurred in House amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 11, No. 2:

Jan. 4, Presidential statement.

August 28, 1979

The Honorable Arlis Sturgulewski,
Senator
Alaska State Senate
2957 Sheldon Jackson Street
Anchorage, Alaska 99501

Dear Senator Sturgulewski:

Re: Indian Self-Determination and BIA
Contracting

In 1975 the U.S. Congress enacted the Indian Self-Determination and Education Assistance Act. This act had a pronounced effect upon the administration of Federal Indian programs. Nationally, the result was a decentralization of Federal Bureaucracies and a corresponding move towards local reservation control and administration of Indian and Native American programs. In Alaska, the result has been the strengthening and growth of Alaska Native Non-profit Corporations through the availability of increased Federal program dollars.

In the Indian Self-Determination Act it specifically identifies Alaska Native villages, or regional or village corporations as having "Indian Tribe" status. The act further states that any recognized Indian tribe with an accountable "Tribal Organization" can negotiate and contract for services normally provided to Indian and Native Americans by the U.S. Department of Interior and HEW.

There are a variety of federally funded programs currently being contracted out to Alaska Native Non-Profit Corporations. The Bureau of Indian Affairs (BIA) contracts to the non-profits for the provision of Social Services, Employment Assistance and Johnson O'Malley funds (educational). HEW through Indian Health Service (IHA) contracts for the provision of health services to a variety of Alaska Native Health entities. The U.S. Department of Labor contracts Indian and Native American CETA funds to 14 Native Non-

profit corporations throughout Alaska. HUD contracts to regional Native Housing Authorities for the provision of adequate Native housing.

Each of these Federal funding agents requires that the contracting non-profit have the support of the regional Native communities for which it is contracting. The Bureau of Indian Affairs is actively involved in the process of Indian Self-Determination implementation. The procedures BIA has developed for determining local support for contracting to a regional non-profit illustrate the inherent strengths and weaknesses of Indian Self-Determination.

The Indian Self-Determination Act specifically identifies Alaska Native villages as being eligible for the contracting of Federal Indian programs. Each recognized Alaska Native community must pass a resolution of support for any entity seeking a service contract from the BIA. In the Calista Region, all fifty of the villages must decide whether or not to support the AVCP (Area Village Council Presidents) in their bid for the BIA contracted services. If only twenty communities pass resolutions supporting the AVCP initiative, the AVCP will receive funding for only those communities. The balance of the communities will continue to be served by the BIA or negotiate for their non-profit service contracts. Individual Native communities or sub-regional Native non-profit corporations can (with proven accountability and resolutions) contract for the provision of BIA funded services. Municipal governments have no say in the process of Indian Self-Determination. The IRA council or traditional council is the body which decides who will provide the contracted services for their community.

Through the Bureau of Indian Affairs, Indian Self-Determination has provided for a more equitable distribution of services. However, this is accomplished at the risk of a decrease in the efficiency of service delivery.

On a local level, the need for specific services and the best manner of delivery of such services can be tailor made through regional control. The variety and applicability of available services can increase the delivery of essential services. In addition, local or regionally contracted Native Non-profits are strengthened financially and professionally by the availability of program dollars. From this process of self determination, Alaska Native people have begun to have a greater sense of control over their own destinies.

However, as with most processes of change, there are many unanticipated problems. Indian Self-determination in Alaska

has created some specific challenges.

- 1) there has been no increase in BIA funding levels. However, with the proliferation of Native Non-profit service organizations, the total administrative costs have vastly increased. This has resulted in an overall reduction in available program dollars.
- 2) Each community has the right to support a particular non-profit in its bid for BIA contracts or provide the services themselves. This can lead to the fractionalization of region-wide non-profits and further divide available program and administrative dollars.
- 3) Each contracting Federal agency has its own limits on the allowable administrative costs. CETA programs have congressionally mandated administrative cost limits. BIA and IHS negotiate their allowable administrative cost levels independently. This can result in a Native non-profit corporation having 3 or 4 administrative cost levels. None of the federal agencies wants their program to be absorbing a disproportionate share of total administrative costs. Frequently, audits result in a Federal agency disallowing administrative costs they feel give a disproportionate share to their agency. This has created serious financial problems for many non-profits. This fosters the breaking apart of regional non-profits into separate non-profits offering specific functions (Health Authority, Housing Authorities, CETA organizations, etc.) The net effect is a reduction in cost efficiency and program coordination.

Conclusions:

There are some aspects of Indian Self-Determination that can be used. This process does allow regional priorities to be set and control to be established at the local level. The contracting of programs to regional non-profits allows these organizations to grow professionally and achieve financial solvency. Most importantly, the inhabitants of the regions have greater accessibility to the needed services and local native people can begin to integrate into the employment areas previously reserved for "outsiders".

There are liabilities involved in this self-determination process. There is a potential for continuing regional fractionalization of regional non-profits. This could result in the proliferation of sub-regional or village service delivery entities and a greater sub-dividing of the

The Honorable Arlis Sturgulewski
August 28, 1979
Page 4

State. The differing Federal agency administrative cost levels encourages the creation of separate regional non-profits. These two factors could lead to a decreased efficiency in the utilization of Federal funds and encourage the formation of sub-regional boundaries.

Sincerely,

James C. Sanders

JCS:sj

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO:

Palmer McCarter
Director

DATE:

January 28, 1976

FILE NO:

TELEPHONE NO:

FROM:

Carl Smith
Local Government Specialist

SUBJECT:

IRA Incorporation

John Hope, of BIA Tribal Operations outlined briefly the procedures for IRA Incorporation, with some background on the Bureau's current attitudes toward incorporations which may be proposed for special tax considerations. Incorporation procedures are as follows:

The community proposing IRA Incorporation must forward a list of persons who are interested in forming a corporation to the BIA. Once the list is received by the Bureau, a request is sent to the petitioners for creation of a constitutional committee. The completed constitution as drafted by the committee is then returned to the Bureau for review and approval. Upon approval, the Tribal Operations Office sets an election date on the question. At least 30% of the original petitioners must vote with a majority in favor of incorporation. The petitioners, all of whom must demonstrate "common residence occupation, and corporate interest," may then form an IRA council. While in the past some incorporations have established governmental and economic development functions, the trend now is for incorporations to occur strictly for profit ventures.

John Hope remarked that the most recent IRA Incorporation took place on the Kenai peninsula some five years ago. He reported that since the passage of the Claims Act in 1971, the Washington office has sought to discourage any IRA incorporations which would create conflict between ANCSA and PL 984, 1934 - the Indian Reorganization Act.

Hope concluded that while the idea of IRA Incorporation with intent to transfer village corporation lands and assets to avoid taxation has been presented before, there appears to be little evidence that this idea, in practice is legally defensible.

Mr. Hope encouraged us to have any inquiries concerning the Cordova group channelled to his office of Tribal Operations.

CS: ljd

TO: ☒

Palmer McCarter, Director, LGAD

DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

DATE : August 28, 1976

FROM:

Lane
Community Development CoordinatorSUBJECT: PL-93-638..Indian Self
Determination Act

Cook Inlet Native Association and Tanana Chief's Conference are contesting the position of Clay Antiquia, Area Director, Bureau of Indian Affairs, the latter who states that the non profit Regional corporations are not "tribes" under the definition of PL93-638, the Indian Self Determination Act. The latter piece of legislation, a rather complicated piece, essentially provides that services once performed by the Bureau can now be contracted to Indian tribes. The definition of Indian Tribes has been a very difficult one for Alaskan Natives to deal with and the Area Director is maintaining that only villages can be (under this definition he is looking at IRA, tradition village and second class cities) called tribes and therefore contract for services. It is the contention of CINA and TCC that if this is the case, then the money would be easily disipated because of the economy of scale.

During our soujourns in the Interior we can be just a jump ahead, or a jump behind the team that was traveling this area to explain the position of both sides and asking support for the non profit point of view. The team we met were Fred Baker, Fairbanks Regional Director, BIA; Tom Richards and Sam Demientieff, TCC. They had four resolutions covering the various services currently being offered by BIA and asking that the village councils pass on the resolutions. If a major support is given, then this will be used as an affirmative statement by the villages that they want the non profits to be considered as a contracting agency. In the middle Yukon area, on August 25, we found few of the village leaders present for any length of time, because of the "round up" of the village leaders for a joint meeting at Koyukon. In the upper Yukon, we did not find them at all for they were at a meeting in Fort Yukon. (August 27) We did sit in on the meeting at Galena where the process was explained and watched the decision making of the City Council of Galena. It was a good background for each of us to know.

There will be major meetings on PL 93-638 in Juneau, Bethel, Anchorage and Fairbanks on September 2, 3, 4, 1976. At this time a sub committee of the U. S. Congress on Indian Affairs will be taking testimony and also giving their explanations. It would seem prudent that these be covered in at least Juneau, Anchorage and Fairbanks.

Of particular importance to our Department will be the definition, especially as it may effect second class cities, where the majority of people sitting on the Council are Alaskan Natives, this may be considered "tribe" and therefore eligible to contract.

L: cm

STATE
of ALASKA

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO: ☒ Mike Harper
Deputy Commissioner

cc: Palmer, McCarter, Director
Local Government Assistance

DATE :

FROM: David Jensen
Local Government Specialist

SUBJECT: PL 93-638 meeting in Anchorage
8/20/76 (Indian Self-Determination)

The meeting commenced at 9:30 with about 35 persons present. The purpose of the meeting was to familiarize BIA regional officials with PL 93-638 grant programs. That portion of PL 93-638 relating to transfers of BIA services was not discussed.

Grants may be for:

Conduct a demographic and/or economic study of the village

Establish a personnel position to provide clerical and typing functions for tribal government

To purchase equipment and supplies for tribal government operations

Improve Tribal Communication System

Evaluate desirability of and/or complete charter for I.R.A. Charter

Establish a Tribal Record Management System

Improve meeting facilities

Develop and implement a Personnel Management System

Establish a Tribal Office

Train tribal officials in Tribal Government skills

Meet operating cost of the Tribal Government

Evaluate and revise Tribal Constitution - Evaluate and improve Tribal Election procedures

Develop budgeting and fiscal control systems for tribal funds

Establish a Tribal Newsletter

Establish Contract/Grant application personnel position (new hire)

Interoffice Memo
LEAD

Mike Harper
August 20, 1976
Page 2

DEPUTY COMMISSIONER
Interior Office Memos
LGAD

Basically the meeting was for the purpose of familiarizing BIA regional officials with PL 93-638 grant programs. The meeting was interesting in terms of familiarizing Betty Barton and myself with BIA programs. I believe Department of Community and Regional Affairs field staff should be aware of PL 93-638 grant programs with the advantage being that Department staff can convey information to rural areas.

It would be my opinion that Department staff could act as information carriers but avoid any further involvement.

Grant application deadline is September 10, 1976.

The Juneau Area Office has established the following order of precedence for determining the recognized governing body of a village for the limited purposes of the Self-Determination Act:

- (a). If there is an IRA council, and it provides governmental functions, it will be recognized.
- (b). If there is no IRA council, or it does not provide governmental functions, and there is a traditional village council which provides governmental functions, then the traditional village council will be recognized.
- (c). If there is no IRA council and no traditional village council which provide governmental functions, then under certain circumstances the city council of the incorporated second-class city may be recognized. For a city council to be recognized it must meet the following criteria:
 - (i) It must have been recognized as the traditional village government prior to its incorporation
 - (ii) It must be representative of the Native population of the village
- (d). If there is no IRA council, no traditional village council and no city council, then the village (profit) corporation will be recognized.
- (e). If there are none of the above, then the regional (profit) corporation will be recognized.

The regulations define the tribal governing body as, "The recognized governing body of an Indian tribe. "In many cases there are several governing bodies in each village, i.e., IRA council, traditional village council, city council, and the village corporation organized under the Alaska Native Claims Settlement Act. Which of these should be "recognized" as the governing body for the purposes of the Self-Determination Act?

DJ/ajr

each of the Village Corporations two persons, whichever is needed or, such additional person or persons selected by the Village Corporations.

"BYE"

survey the areas selected or designated by the Village Corporations pursuant to the provisions of this Act, and at intervals of 10 years, to determine the exterior boundaries of the land selected or designated as a primary place of business, and for the purpose of being patented under this Act, and conveyances pursuant to this Act, and shall conform as nearly as possible to the Survey System.

SELECTION OF LANDS

selection by a Village Corporation pursuant to section 11 which the Secretary finds is in the public interest, the Secretary shall issue a patent to the surface estate in the number of acres:

It shall be entitled to a patent to an area of public lands equal to—

- 69,120 acres.
- 92,160 acres.
- 115,200 acres.
- 138,240 acres.
- 161,280 acres.

selected by the Village Corporation pursuant to section 11, the Secretary shall issue a patent to the surface estate in the lands selected.

When by any Village Corporation for a primary place of business, the Secretary finds is qualified to be patented under this Act, the Secretary shall issue to the Village Corporation a patent to the surface estate to 23,040 acres. The lands within the township or townships that contain the lands selected by the Village Corporation, and the surrounding townships withdrawn for the purpose of this Act.

When the Secretary issues a patent to a Village Corporation for a primary place of business, the Secretary shall issue to the Village Corporation a patent to the surface estate to 23,040 acres. The lands within the township or townships that contain the lands selected by the Village Corporation, and the surrounding townships withdrawn for the purpose of this Act.

(1) the Village Corporation shall first convey to any Native or non-Native occupant, without consideration, title to the surface estate in the tract occupied as a primary place of residence, or as a primary place of business, or as a subsistence campsite, or as headquarters for reindeer husbandry;

(2) the Village Corporation shall then convey to the occupant, either without consideration or upon payment of an amount not in excess of fair market value, determined as of the date of initial occupancy and without regard to any improvements thereon, title to the surface estate in any tract occupied by a nonprofit organization;

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

(4) the Village Corporation shall convey to the Federal Government, State or to the appropriate Municipal Corporation, title to the surface estate for existing airport sites, airway beacons, and other navigation aids, together with such additional acreage and/or easements as are necessary to provide related services and to insure safe approaches to airport runways; and

(5) for a period of ten years after the date of enactment of this Act, the Regional Corporation shall be afforded the opportunity to review and render advice to the Village Corporations on all land sales, leases or other transactions prior to any final commitment.

(d) The Secretary may apply the rule of approximation with respect to the acreage limitations contained in this section.

(e) Immediately after selection by a Regional Corporation, the Secretary shall convey to the Regional Corporation title to the surface and/or the subsurface estates, as is appropriate, in the lands selected.

(f) When the Secretary issues a patent to a Village Corporation for the surface estate in lands pursuant to subsections (2) and (3), he shall issue to the Regional Corporation for the region in which the lands are located a patent to the subsurface estate in such lands, except lands located in the National Wildlife Refuge System and lands withdrawn or reserved for national defense purposes, including Naval Petroleum Reserve Numbered 4, for which in lieu rights are provided for in subsection 12(a)(1): Provided, That the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the Village Corporation.

(g) All conveyances made pursuant to this Act shall be subject to valid existing rights. Where, prior to patent of any land or minerals under this Act, a lease, contract, permit, right-of-way, or ease-

Take note that some contracts are to incorporated areas

29 TRIBAL ORGANIZATIONS

Contract total to \$

1.	1638	<i>incorporated</i> Ketchikan Indian Corporation - <i>Box 6855, Ketchikan</i>	352,438
2.	1643	Sitka Community Association - <i>Box 4360, Mt Edgecumbe</i>	235,264
3.	1644	Metlakatla Indian Community - <i>Box 8, Metlakatla</i>	82,819
4.	1647	Indians of Juneau, Inc. - <i>Box 808, Douglas</i>	298,463
5.	1663	Bidarki Corporation - <i>Box 117, Cordova</i>	61,280
6.	1631	Hooper Bay Native Education Committee	112,539
7.	1637	Kuskokwim Native Association	171,459
8.	1667	Elim JOM/NEC	11,951
9.	1627	Ninilchik Native Association	19,373
10.	1628	Kokhanok JOM-NEC	57,236
11.	1629	Unalaska Aleut Development Corporation	29,222
12.	1632	Kodiak Area Native Association	370,297
13.	1634	Dillingham JOM-NEC	147,290
14.	1635	Aleutian/Pribilof Islands Association <i>430-C St, Anchorage</i>	156,455
15.	1636	Sand Point JOM/NEC	47,346
16.	1639	JOM/NEC of Egegik	7,440
17.	1646	Copper River Native Association	86,784
18.	1649	Chignik Lake JOM/NEC	25,434
19.	1652	Newhalen JOM/NEC	18,360
20.	1654	Bristol Bay Native Association	109,435
21.	1657	Tyonek JOM/Parent Committee	26,511
22.	1659	Athabaskan/Eskimo United Heritage Association <i>Box 1010, Kodiak</i>	158,769
23.	1660	Cook Inlet Native Association <i>1057 W. Franklin, Anchorage</i>	209,003
24.	1661	North Pacific Rim - <i>903 W. Northern Lights, Cordova</i>	98,812
25.	1668	Naknek Native Village Council	50,788
26.	1630	Fairbanks Native Association	411,256
27.	1645	Northway JOM/NEC	20,776
28.	1655	Arctic Village Tribal Council	18,424
29.	1666	JOM/NEC of Tanacross	10,552
30.	1669	United Crow Band	21,660

15 SCHOOL DISTRICTS

1.	1641	Hoonah Public Schools - <i>Box 157, Hoonah</i>	56,224
2.	1625	St. Mary's School District	52,129
3.	1656	Lower Yukon School District	304,059
4.	1665	Lower Kuskokwim School District	683,815
5.	1633	Nome Public School District	287,208
6.	1648	Northwest Arctic School District	690,575
7.	1664	Bering Straits School District	291,703
8.	1626	King Cove School District	98,493
9.	1642	Southwest Region Schools	152,867
10.	1658	Lake & Peninsula School District	61,928
11.	1640	North Slope Borough School District	590,956
12.	1650	Galena City School District	67,050
13.	1651	Yukon-Koyukuk School District	270,051
14.	1653	Iditarod Area School District	16,490
15.	1662	Yukon Flats School District	154,743

NON-JCM - Education Contractors -

Area -

BE-1.	1752-	Ketchikan Community College - <i>Box A</i>	20,000
BE-2	1757-	Alutian / Pribilof Islands Assoc. Inc.	20,000
3.	1789-	Kuskokwim Native Assoc.	77,995.00
4.	1739-	Kuspuk School District	75,736.00
E-5	1719-	CINA	30,000.00
6.	1697-	Education Research Associates	58,800.00
7.	1786-	Utah State University	65,050.00
8.	1743-	Alaska Technical Center	48,996.00
-9.	1772-	Prince William Sound Science Center - <i>Box A</i>	30,000.00
10.	1787-	Katmai Lake Camp	30,875.00
-11.	1706-	Kachemak, Inc.	120,000.00
12.	1748-	Lower Yukon School Dist.	224,224.00
13.	1755-	State of Alaska - Dept. of Ed.	300,000.00
14	1738-	Northwest Arctic School District	500,000.00
-15.	1781-	Alaska Change Conference	114,000.00
E-16	1754-	Kuskokwim Community College	120,000.00
17.	1646-	Alaska College of Science & Tech.	374,700.00
18.	1730-	Alaska College of Science & Tech.	163,000.00

PL. 93-638 PROGRAM CONTRACTS

SHEET 1

INDIRECT
COST

7/17/79

1. Central Council T&M \$11,045 + \$8300
2. Metlakatla \$160,900 + \$38,995
3. " \$727,093 + \$65,100
4. " \$157,522 + \$9825
5. TANANA CHIEFS \$2,295,693 + \$723,546
6. FBKS. NAT. ASSOC. \$691,491 + \$51,416
7. UNITED CROW BAND. \$178,500 + \$12,050
8. ASSOC. of Village Council Pres. \$1,415,801 + \$202,256
9. COOK INLET NAT. ASSOC. \$1,391,900 + \$214,548
10. INUPIAT COM. OF NORTH SL. \$677,107 + \$90,000
11. MAUNELUK ASSOC. \$760,868 + \$83,050
12. SITKA COMM. ASSOC. \$248,947 + \$18,188
13. Central Council of T&M \$2,357,694 + \$841,384
14. KODIAK AREA NAT. ASSOC. \$208,568 + \$41,655
15. KIANA TRADITIONAL GUNE \$41,721 + \$5,903

16. Ketchikan Ind. Comm. \$5,635 + \$10,169

17. Nome Eskimo Comm. \$164,026 + \$24,077

Cont. SHEET (ANGLAAN)
18 Admiralty Ctr. Council

\$158,499 + \$1375

19. Kotzebue IRA Comm.

255,743 + \$32,347

20. Aleut. / Prib. Is. Assoc.

97,452 + 19,045

**As communities grow and develop
so does their need for land**



ANNUAL REPORT
**Municipal Lands
Trustee Program**

STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS
JUNE 30, 1979

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

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

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

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

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

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

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

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

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

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

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811

June 30, 1979

To the Residents of the Trust-related Villages:

As trustee for municipal trust lands, I am pleased to present you with this report of the Municipal Lands Trustee program for the past year.

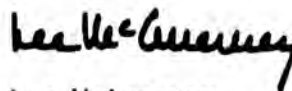
This program concerns the "so-called" 1,280 acre reconveyances to the State-in-Trust for any future municipality which may be established in your village in the future, in accordance with the Alaska Native Claims Settlement Act (ANCSA), Section 14 (c)(3). The commissioner of the Department of Community and Regional Affairs has trustee responsibilities for these lands.

As trustee of community lands under ANCSA, our objectives are important to you. These objectives are:

- Municipal trust lands are community lands. Title to these lands are used to benefit your village now and in the years ahead, and for a possible municipality in the future. These lands cannot be used for the benefit of the State itself without specific approval by your community.
- The laws and regulations which control the Trustee Program and our staff activities guarantee the rights of village residents to oversee the Trustee's activities concerning their community lands.
- The trust lands will be turned over to any first or second class municipality established in your village in the future. Our intent is to be so responsive to your needs and desires, however, that you will feel no particular need to incorporate as a municipality simply to obtain more localized control over these lands.

By keeping us informed about your concerns and interests, we can better serve you, your village, and any future municipality.

Sincerely,



Lee McAnerney
Commissioner
(Municipal Lands Trustee)

INTRODUCTION

This annual report of the Municipal Lands Trustee Program is prepared and distributed pursuant to Alaska Statutes 44.47.150 (reprinted on the inside front cover of this report).

Section 14(c)(3) of the Alaska Native Claims Settlement Act (ANCSA) requires all two hundred Native Village Corporations in the state to convey certain lands to the existing municipality in the village or, if no municipality exists, to the State-in-Trust for any municipality that may be established in the village in the future. Those lands conveyed to the State-in-trust are known as Municipal Trust Lands.

Municipal trust lands consist of the surface estate of certain improved lands on which the village is located and additional lands necessary for community expansion, public rights-of-way, and other foreseeable community needs. The minimum amount required by ANCSA to be transferred is 1,280 acres (see the inside front cover of this report for a reprint of ANCSA Section 14(c)(3)). The State Legislature and the Department of Community and Regional Affairs regard these trust lands as being community lands, administered in trust for the residents of the village and for any future municipality in the village, not State lands to benefit the whole of the State.

OVERVIEW OF THE TRUSTEE PROGRAM

In 1975 the State Legislature designated the commissioner of the Department of Community and Regional Affairs, acting as the trustee of municipal trust lands, to accept, administer, and dispose of such lands where no incorporated municipality exists. This Act established four basic policies under which trust lands are administered.

First, all transfers of trust land by sale, lease, right-of-way, easement, or permit, including transfer of surface resources, must first

have the approval of a recognized "appropriate village entity such as a traditional council, village meeting, or village referendum".

Second, the Trustee Program aims to be so responsive to the needs and desires of village residents that they will feel little or no pressure to incorporate as municipalities for the single reason of obtaining local control of their lands. If and when a city is organized in a village for which trust lands have been administered, these lands together with all records of lands and revenues, will be conveyed to the city within one State fiscal year.

Third, careful records will be kept concerning trust lands, including an accounting of any revenues received from them, so that if and when incorporation into a municipality does occur, the legislature may appropriate these monies for the new municipality.

Fourth, title to and interest in trust lands can be obtained only through the Trustee Program and may not be acquired by adverse possession or prescription (loosely: a method of acquiring title by possession ("squatting") or by long, continued use).

The Municipal Lands Trustee Program was initiated by AS 44.47.150. Under the general direction of the commissioner, the municipal lands trust officer is responsible for developing and conducting the trustee program. Administrative responsibility for the program is assigned to the director of the Division of Community Planning.

The Trustee Program is a result of federal legislation (the Alaska Native Claims Settlement Act). The State Legislature has shown a clear understanding of the local community issues involved for which the State has responsibilities, has shown constructive interest in the program, and has been responsible in funding the program. The Trustee Program is wholly supported by funds from the State; no money or control over the trustee program is provided by the federal government. The legislature

provided sufficient travel funds and one additional professional staff position for fiscal year 1979. One additional professional-technical position was funded for FY 1980. Two more staff positions (one clerical and one professional) are being proposed for fiscal year 1981 to meet expected increased trustee activity requirements. This should round out the trustee program staff.

STATUS OF THE TRUSTEE PROGRAM

There are presently 95 villages associated with the trustee program. Their village corporations are receiving lands under ANCSA and have a legal duty to convey municipal lands under Section 14(c)(3). None of these trust villages are incorporated as municipalities under Alaska Statutes. Additional villages may eventually be added to this list as a result of the settling of certain legal or land status issues presently being litigated or considered. The inside back cover of this report contains a list of current trust villages.

The period between July 1, 1978 and June 30, 1979 was devoted to meeting two main objectives:

- (1) developing operating regulations and policies to guide the way the trustee must operate and to insure appropriate control of these activities by village residents.

- (2) meeting specific land title needs to permit urgent community projects to proceed.

Following strong support of the 1977 preliminary statement of trust philosophy from rural leaders directly affected by the MLT program, operating regulations were drafted for consideration at hearings across the State. These proposed regulations stress that village residents, through their recognized village entity or by village meetings, generally will oversee the trust program in each particular village. This is

important since village residents best know the land in their area, can identify land clearly essential for community expansion, and can define continuing expansion needs.

Fourteen hearings were held, with all but one being convened in or near one or more affected unincorporated villages. The proposed regulations were printed and distributed widely for review and comment before hearings were held. Each village council received a copy of the hearing schedule and notices of the hearings were published in the Tundra Times and other news media. Individual copies of the draft regulations were made available to all concerned parties. Hearings were scheduled to test the widest possible range of locational, social, and varied land status situations.

Testimony and comments were plentiful and generally very supportive. Many very constructive suggestions were received. After all hearings were held and all comments considered, the draft regulations were revised as needed. They provide procedures for identifying and conveying potential municipal lands into trust, for officially recognizing "appropriate village entities", for determining how and when meetings of village residents will be held to oversee the trustee program, and for the manner of obtaining approval from recognized village entities concerning transfers of trust lands. Provisions also are included in the regulations for "due process", notice, and review of action to be taken by the State in-trust. The regulations are designed to assure opportunities for high amounts of local participation and input.

At the time this report is being prepared, the final version of the regulations is undergoing a final review by the Attorney General's office, and is expected to be officially adopted during the first quarter of FY 80. Upon adoption, the trustee program can progress to the next stage of recognizing village entities to oversee the program for each village. The following stage will be the tender and acceptance of substantial amounts of Municipal Trust Lands.

Although village corporations filed their land selections with the Bureau of Land Management in 1974, by June 30, 1978, only 17 (out of the approximately 100 village corporations which will ultimately convey land to the State in trust) had received title to even a small portion of their land; none had received title to all of its selections. This left little opportunity to develop and implement a large-scale program of conveyances under the trust program.

BLM has now established new policies and reorganized its ANCSA land conveyance procedures and staff. As a result, as of June 30, 1979, 29 trust program villages have received title, or are very close to receiving title, to a substantial portion of their land. The increasing frequency of conveyances indicates that the adoption of our regulations will coincide with the ability of many village corporations to make conveyances under 14(c).

Where Interim Conveyance from BLM has not been granted, the trustee program has developed and used various forms of interim transactions to meet land title requirements needed for pending and urgent community projects such as the construction of new schools, HUD housing projects, village relocations, and so forth. These include both formal, contractual agreements between a village corporation and the State-in-trust respecting future commitments to convey, and informal and conditional letters of intent which convey sufficient property interest to allow project planning by a particular agency to proceed. In turn, these agreements are based upon statutory approval of the proposal by an appropriate village entity.

This past year evidenced a large increase in the number of discussions with village councils and corporations relating to planning for future conveyances of Municipal Trust Lands. These meetings have been helpful in promoting a better understanding of the program and what it means to the villages. There is an increase in activities which have made municipal trust lands available for community uses compared to prior years.

THE FUTURE

The 1980 annual report of trustee activity is expected to show a substantial increase in specific activities involving trust lands. Transfers of land or commitments to transfer certain land into trust, and transfers of land out of trust status to permit school and other public facility construction will substantially increase. These expectations are based upon the following factors, which are expected to be present in the coming year:

- (1) The program development phase of the Trustee Program will be completed with adoption of operating regulations.
- (2) A greatly increased acreage of land will be conveyed to village corporations by the Bureau of Land Management during 1980.
- (3) Village corporations are becoming increasingly aware of the reconveyance requirements of ANCSA 14(c)(3), as a result of explanations by ourselves, regional corporations, and other organizations.
- (4) Contacts with, and personal visits to the trust-related villages by the municipal lands trust officer and other department staff members will be greatly increased.

The d-2 legislation currently before Congress, when enacted, will increase the scope of the municipal land trust program by authorizing the transfer of trusteeship over vacant Federal Townsite land in unincorporated villages from BLM to the State-in-trust. This same legislation will also permit change in the minimum acreage requirements for conveyance under ANCSA 14(c)(3) for some villages. The alterations, of course, will come about only if the d-2 legislation is passed in its present form or the proposed legislation is passed in a separate bill, apart from d-2.

TABLES

The following tables show FY 79 and accumulated municipal trust land activity for the period ending June 30, 1979. Because of the restrictions under which community development projects must presently operate due to land title problems, the tables also provide data concerning tentative trustee transactions and related activities.

No revenues have been received from municipal trust lands in this or preceeding years. An RSA contract has been developed for execution in early FY 80 to develop an accounting system for expected revenues generated by the municipal trust lands program in a manner provided by law.

CONSOLIDATED ACCOUNT OF TRUST LAND AND RELATED REVENUES

(Showing activity for FY 79 and Accumulated Activity Through June 30, 1979) 1/ 2/

Location (Native Region) <u>NAME OF VILLAGE</u>	Land Title or Other Interests				Other Related Activities Number of Actions FY 79 (Cumulative)	<u>REMARKS</u>		
	Tentatively Transferred		Out of Trust					
	Into Trust		Number of					
	Number of	Actions-Acres	Number of	Actions-Acres	Actions			
	FY 79	(Cumulative)	FY 79	(Cumulative)	FY 79			
(Ahtna) CANTWELL	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-2- (2)	HUD Housing. Discussions were held on siting future HUD housing project on potential municipal trust land. Community Hall. Discussions on siting a community hall on potential municipal trust land were held.		
CHITINA	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-2- (2)	HUD Project. Provided technical assistance concerning use of potential municipal trust lands and conveyance procedures as applied to proposed HUD housing project. Regulations Hearing. A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made. Hearings were held in Tazlina and Anchorage so residents of Chitina, Cantwell, and other communities could attend.		
COPPER CENTER	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-3- (3)	HUD Housing. Public notice was given and a hearing was held on proposed agreement by village corporation to convey 2 acres as municipal trust land for reconveyance as site for public housing. Agreements are near completion. Final execution is expected during FY 80. Village Relocation. Discussions held on potential conveyance of municipal trust land for partial village relocation. Community Hall. Discussions held on siting for a proposed new community hall.		
GULKANA	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	Public Housing. Site control questions for a proposed Public Housing project were covered in discussions with the Federal Townsite Trustee. Technical assistance was made available for site control documentation.		
MENTASTA	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-2- (2)	HUD Housing. Discussions were held on site location for a proposed new housing project. Proposed site is potential municipal trust land. Laundromat. Provided technical assistance to village and BLM Federal Townsite Trustee in funding activities for a village laundromat.		

Location (Native Region) NAME OF VILLAGE	Land Title or Other Interests Tentatively Transferred				Other Related Activities Number of Actions (Cumulative)	REMARKS		
	Into Trust		Out of Trust					
	Number of		Number of					
	Actions-Acres FY 79		Actions-Acres FY 79					
TAZLINA	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-2- (2)	Glennallen High School. Continued intermediary activity between village corporation, school officials, and officials of State DOE and DNR affecting existing Glennallen High School as described in FY 78 report. Site may or may not become municipal trust land. Alternative solutions are being studied by the parties and negotiations between them are in progress. Regulations Hearing. A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made. Residents of Copper Center and Gakona also attended the hearing.		
(Aleut) AKUTAN	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-3- (3)	Incorporation. Information was provided on the nature of local control over municipal trust land at a public meeting of residents considering incorporation as a second class city. Incorporation is pending. Fuel Storage Grant. Application for a 1979 Block Grant (HUD) for utilities and fuel storage for 18 houses has been made. Municipal trust lands probably will be used. General Tender. Discussions were held covering a general tender of land to satisfy major 14(c)(3) requirements for municipal trust lands.		
FALSE PASS	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	Airfield Upgrading. An application was made in 1979 for a RDA Grant (joint with DOT/PF and APA) for the upgrading of the local airfield. Municipal trust lands involvement is likely.		
NELSON LAGOON	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	New School. Discussions were held with school district officials about potential municipal trust land as site of new school. Construction may begin in 1979.		
NIKOLSKI	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-0- (1)			
ST. GEORGE	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-2- (3)	Tender of Lands. Discussions with village corporation officials for tender of municipal trust land were held. Action is expected in FY 80. Incorporation. Information was provided on nature of local control over municipal trust lands at a public village meeting of residents considering incorporation as a second class city. Incorporation action was deferred.		

Location (Native Region) NAME OF VILLAGE	Land Title or Other Interests				Other Related Activities Number of Actions (Cumulative)	REMARKS
	Tentatively Transferred		Out of Trust			
	Into Trust					
	Number of Actions-Acres FY 79		Number of Actions-Acres FY 79			
(Arctic Slope). ATKASOOK	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-2- (2)	HUD Housing. There is possible municipal trust land involvement in the conveyance of land title for 13 HUD houses already constructed. Discussions were held with North Slope Borough officials on the use and availability of municipal trust land for both housing and airport construction projects. Airport Construction. Application has been made by Borough for funding construction of an airport at Atkasook. Availability of potential municipal trust land for the project was covered in discussions.
POINT LAY	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-2- (2)	Village Relocation. Continued discussions with village residents, consultants, and North Slope Borough officials on use of municipal trust land for village relocation were held. Commitment to convey all or most of the new village site as municipal trust land was made by the village corporation board. Execution expected in FY 80. Regulations Hearing. A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which decisions affecting the municipal trust lands would be made.
(Bering Straits) COUNCIL	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	Bridge Construction. Information was provided to State(DOT/PF) on the process of transferring municipal trust lands. Particular emphasis was on statutory power of an appropriate village entity in the village to oversee and approve use or disposal of municipal trust land.
KING ISLAND	-1- (1)	15 +/- pending (15 +/-) (pending)	-1- (1)	15 +/- pending (15 +/-) (pending)	-1- (1)	Village Relocation. There were continuing discussions involving the corporation, Native Community Council, and DCRA to utilize municipal trust lands for potential village relocation to Cape Wooley. Formal approval and title transfer is dependent upon completion of planning and a final relocation commitment by the village council. Regulations Hearing. A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made. The hearing was held in Nome so residents of King Island and Mary's Igloo could attend.

Location (Native Region) NAME OF VILLAGE	Land Title or Other Interests				Other Related Activities Number of Actions (Cumulative)	REMARKS
	Tentatively Transferred		Other			
	Into Trust	Out of Trust	Number of	Number of		
	Actions-Acres FY 79	Actions-Acres FY 79	Actions-Acres FY 79	Actions-Acres FY 79		
(Bristol Bay) EKUK	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	<u>Reconveyance Discussions.</u> Discussions were held with village corporation staff concerning the reconveyance process for municipal trust lands.
IVANOFF BAY	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	<u>Proposed Airport.</u> Construction of an airport has been proposed which may involve municipal trust land.
KOKHANOK	-2- (2)	5.0 school 0.46 R-0-W (5.0) (0.46)	-1- (1)	5.0 school (5.0)	-0- (0)	<u>New High School Site.</u> Final execution of transfer documents was completed in FY 79 and recorded for 5.46 acres to be used for a new high school site.
KOLIGANEK	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-2- (2)	<u>Community Hall Site.</u> A discussion with village officials was held on the siting of a new community hall on potential municipal trust land. Work continues. <u>New Clinic.</u> A new clinic has been proposed for 1980 for construction on potential municipal trust land.
NAKNEK	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-2- (2)	<u>Regulations Hearing.</u> Conducted hearing in Naknek to inform participants about ANCSA 14(c)(3) and obtain testimony regarding proposed regulations especially in relation to Borough vs. State-in-Trust as recipient of title. <u>Disposal Site.</u> Participated in site planning discussions for solid-waste disposal project.
PILOT POINT	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	<u>Firehouse.</u> Application was made for a HUD Block Grant for the construction of a firehouse. The firehouse likely will be built on municipal trust land.
PORTAGE CREEK	-0- (1)	-0- (0.1)	-0- (1)	-0- (0.1)	-1- (1)	<u>New School.</u> A new school is planned which will most likely be built on municipal trust land.
SOUTH NAKNEK	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	<u>Airport Construction.</u> Application has been made for the construction of airport facilities which may involve municipal trust land.

Location (Native Region) NAME OF VILLAGE	Land Title or Other Interests				Other Related Activities Number of Actions (Cumulative)	REMARKS
	Tentatively Transferred		Out of Trust			
	Into Trust					
	Number of Actions-Acres FY 79		Number of Actions-Acres FY 79			
(Calista) ANDREAFSKI	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-2- (2)	<u>Policy Review.</u> Provided policy review to village officials and to City of St. Mary's officials relative to potential recipients of land to be conveyed under ANCSA 14(c)(3), and potential corollary effects of a proposed annexation of a portion of Andreafski townsites to city of St. Mary's. <u>Regulations hearing.</u> A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made.
CROOKED CREEK	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-3- (3)	<u>New High School.</u> Moderated discussions between village council and school officials on siting and title transfer for proposed new school. Transfer agreement documents involving municipal trust land have been drafted and partially executed. <u>Title Discussions.</u> Held discussions with village corporation concerning title to certain lands occupied after effective date of ANCSA, December 18, 1971. <u>PHS Building.</u> Discussions on siting and transfer of municipal trust land for proposed Public Health Service building were held.
KIPNUK	-1- (1) power plant	0.16 (0.16)	-1- (1) power plant	0.16 (0.16)	-2- (2)	<u>New Community Hall.</u> Prepared site transfer documents for new community hall. Execution expected in FY 80. <u>Power Plant.</u> Village corporation conveyed .16 acres as municipal trust land. Site leased to village council as site for village electric generator. <u>Regulations Hearing.</u> A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made.
KWIGILLINGOK	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-2- (2)	<u>New School.</u> To be constructed during the summer of 1979, a new school probably will be located on land leased by BLM to DOT/PF. This lease may be replaced through the municipal trust lands program upon its expected termination in 1980. <u>Electrical Project.</u> Funded by a 1979 RDA grant, portions of the village electrical project will be located on future municipal trust land.
LIME VILLAGE	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	<u>Realty Training.</u> Provided realty training for village land managers with emphasis on the requirements of ANCSA 14(c)(3). Tendering of trust lands scheduled in FY 80 following effective date of regulations. The hearing was held in Aniak so residents from Red Devil, Crooked Creek, Sleetmute, Stony River, and Lime Village could attend.

Location (Native Region) NAME OF VILLAGE	Land Title or Other Interests Tentatively Transferred				Other Related Activities Number of Actions (Cumulative)	REMARKS
	Into Trust		Out of Trust			
	Number of		Number of			
	Actions-Acres FY 79		Actions-Acres FY 79			
OSCARVILLE	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	<u>New School.</u> Discussions were held with school officials on use of potential municipal trust land for proposed new school. Planned for 1980 construction.
PAIMUIUT	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	<u>Status and Plans.</u> Meetings were held with members of the village corporation concerning the status of potential municipal trust lands. Plans were covered for land selection and transfer procedures.
TUNTUTULIAK	-1- (1)	3.72 (3.72)	-1- (1)	3.72 (3.72)	-0- (0)	<u>New School.</u> 3.72 acres for a new school were conveyed in FY 79 through the municipal trust lands program.
(Chugach) CHENEGA	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	<u>Village Relocation.</u> Continuing discussions were held with the village corporation, village council, and officials of the North Pacific Rim on the use of potential municipal trust land for village relocation and re-establishment. Further transactions are dependent upon BLM conveyance schedule and 14(c)(3) conveyances by the village corporation.
TATITLEK	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (2)	<u>Regulations Hearing.</u> A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made. The hearing was held in Cordova so residents of Tatitlek and neighboring communities could attend.
(Cook Inlet) EKLUTNA	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	<u>Municipal Land Conveyances.</u> Village corporation and Municipality of Anchorage reached agreement in principle on 14(c)(3) reconveyances. If approved by village residents in FY 80, Department of Community and Regional Affairs will construe these actions as a discharge of any potential trustee duties. Work continues.
TYONEK	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-0- (2)	
(Doyon) DOT LAKE	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	<u>New Airport.</u> Discussions were held with the village president and state DOT/PE for airport development on potential municipal trust land.

Location (Native Region) NAME OF VILLAGE	Land Title or Other Interests Tentatively Transferred				Other Related Activities	REMARKS
	Into Trust		Out of Trust		Number of	
	Number of		Number of		Number of	
	Actions-Acres FY 79		Actions-Acres FY 79		Actions (Cumulative)	
EVANSVILLE	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (2)	<u>Regulations Hearing.</u> A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made.
MANLEY HOT SPRINGS	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (2)	<u>Incorporation.</u> Information was provided on nature of local control over municipal trust land at a public village meeting of residents considering incorporation as a 2nd class city. Proposition defeated.
TAKOTNA	-0- (2)	-0- (3.1)	-0- (2)	-0- (3.1)	-4- (5)	<u>Community Council.</u> Our suggestion to form a bi-racial "community council" to oversee the municipal land trust program was adopted by the community. <u>PHS Building.</u> Discussions on siting for the PHS building on potential municipal trust lands were held. <u>Electrification.</u> Discussions were held on the use of municipal trust land for electric generating plant site and use of distribution lines right of way. The 1979 legislature appropriated funds for the electrification project. <u>Regulations Hearing.</u> A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made.
TANACROSS	-0- (1)	-0- (0.9)	-0- (1)	-0- (0.9)	-2- (2)	<u>New School.</u> Title transfer agreements for 10.86 acres into trust and 5.0 acres out of trust for the construction site of a new elementary school were developed. Execution was partially completed in FY 79. <u>Regulations Hearing.</u> A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made. The hearing was held in Tok so Tanacross, Eagle, and Northway residents could attend.
TELIDA	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-0- (1)	
(Koniag) AFOGNAK	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	<u>Informal Discussions.</u> Informal discussions were held with some of the directors of the village corporation concerning the municipal trust lands program and reconveyance procedures.

Location (Native Region) NAME OF VILLAGE	Land Title or Other Interests				Other Related Activities	REMARKS
	Tentatively Transferred					
	Into Trust	Out of Trust				
	Number of Actions-Acres FY 79	Number of Actions-Acres FY 79			Number of Actions (Cumulative)	
KARLUK	-1- 14.3 (1) (14.3) village relocation	-1- 14.3 (1) (14.3) village relocation			-2- (2)	<u>Airport Land Transfer.</u> Discussions were held with village corporation and council on municipal trust land for site of new airport. Documents for title transfer partially developed during FY 79. Execution expected in FY 80. <u>Village Relocation.</u> Continuing discussions were held with the village corporation respecting tender and conveyance of the new village site as municipal trust lands. They are expected to be included in a tender in FY 80. <u>Dump Site.</u> A dump site was discussed. Probable location will be on municipal trust land.
(Nana) NOATAK	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-3- (3)	<u>New High School.</u> Discussions with school officials, village corporation members, and village council representatives on the use of municipal trust land for the new school and partial villlage relocation were held. Work continues. <u>School Site.</u> Relocation of the old school site appears necessary due to erosion of the riverbank. The action may involve municipal trust lands. <u>Regulations Hearing.</u> A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made.
(Sealaska) KLUKWAN	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-2- (2)	<u>Land Selection.</u> Meetings were held with representatives of Klukwan and Sealaska concerning the unique problems and possible solutions for the unusual situation in which all lands available for reconveyance to the State-in-Trust are located 380 miles from the village. Work continues. <u>Regulations Hearing.</u> A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made.

Footnote 1/: See inside of back cover for complete listing of villages potentially involved in the Municipal Lands Trustee Program.

Footnote 2/: No revenues have been received from Municipal Trust Lands for any villages to date.

POTENTIAL STATE IN TRUST VILLAGES
as of June 30, 1979

AHTNA

1. Cantwell
2. Chistochina
3. Chitina
4. Copper Center
5. Gakona
6. Gulkana
7. Mentasta Lake
8. Tazlina

ALEUT

1. Akutan
2. Atka
3. Belkofski
4. False Pass
5. Nelson Lagoon
6. Nikolski
7. St. George
8. Unga

ARCTIC SLOPE

1. Atkasook
2. Point Lay

BERING STRAITS

1. Council
2. King Island
3. Mary's Igloo

BRISTOL BAY

1. Chignik
2. Chignik Lagoon
3. Chignik Lake
4. Egegik
5. Ekuk
6. Igiugig
7. Iliamna
8. Ivanoff Bay
9. Kokhanok
10. Koliganek
11. Levelock

BRISTOL BAY (Cont'd)

12. Naknek
13. Pedro Bay
14. Perryville
15. Pilot Point
16. Portage Creek
17. South Naknek
18. Twin Hills
19. Ugashik

CALISTA

1. Andreafski
2. Bill Moore's
3. Chuloonawick
4. Crooked Creek
5. Georgetown
6. Hamilton
7. Kipnuk
8. Kongiganak
9. Kwigillingok
10. Lime Villages
11. Napamiut
12. Ohogamiut
13. Oscarville
14. Paimiut
15. Pitkas Point
16. Red Devil
17. Sleetmute
18. Stony River
19. Tuntutuliak
20. Umkumiute

CHUGACH

1. Chenega
2. English Bay
3. Port Graham
4. Tatitlek

COOK INLET

1. Chickaloon
2. Knik
3. Ninilchik
4. Tyonek

DOYON

1. Alatna
2. Beaver
3. Birch Creek
4. Chalkyitsik
5. Circle
6. Dot Lake
7. Eagle
8. Evansville
9. Healy Lake
10. Manley Hot Springs
11. Minto
12. Northway
13. Rampart
14. Stevens Village
15. Takotna
16. Tanacross
17. Telida

KONIAG

1. Afognak
2. Kaguyak
3. Karluk
4. Woody Island

NANA

1. Noatak

SEALASKA

1. Klukwan

NOTE: This list does not include 19 villages that are in litigation or uncertain as to municipal status within the Aleut, Bering Straits, Cook Inlet, and Koniag Regions.

Additional copies of the Annual Report, Statement of Trust Philosophy,
and Administrative Regulations, as well as other information on the
Municipal Lands Trust Program, may be obtained by contacting:

Director
Division of Community Planning
Department of Community and
Regional Affairs
225 Cordova St., Bldg. B
Anchorage, Alaska 99501

or

Municipal Lands Trust Officer
Division of Community Planning
Department of Community and
Regional Affairs
225 Cordova St., Bldg. B
Anchorage, Alaska 99501

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

JAY S. HAMMOND, GOVERNOR

DIVISION OF COMMUNITY PLANNING

POUCH B - JUNEAU 99011

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

MUNICIPAL LANDS TRUST PROGRAM

A PRELIMINARY STATEMENT OF TRUST PHILOSOPHY

AND

AN ASSESSMENT OF PRINCIPLES AND PRIMARY POLICY ISSUES

By: Robert L. Jenks
Municipal Lands Trustee

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

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

BACKGROUND

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

MUNICIPAL LANDS TRUST PROGRAM
A PRELIMINARY STATEMENT OF TRUST PHILOSOPHY

AND

AN ASSESSMENT OF PRINCIPLES AND PRIMARY POLICY ISSUES

By: Robert L. Jenks
Municipal Lands Trustee

PURPOSE

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

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

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

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BACKGROUND

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

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

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

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

Corporation established in the Native village in the future."

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

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

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

DISTINGUISHING BETWEEN STATE AS TRUSTEE AND STATE AS SOVEREIGN

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

^{1/}

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

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

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

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

^{2/}

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

PRINCIPLES OF TRUSTEESHIP: A DISCUSSION

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

Trust Document: Creation Of The Trust: Settlor

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

"Interim" Trustee Role of Village Corporations

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

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

Acceptance Of Trust Responsibility by State.

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

Identity of Trustee Of Lands Held In Trust

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

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

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

administered in accordance with the above definition of the trustee.

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

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

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

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

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

90 CJS Trusts 247.

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

ibid.

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

Beneficiaries Of Lands Held In Trust.

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

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

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

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

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

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

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

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

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

WHAT LANDS MAKE UP THE TRUST (CORPUS)?

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

Nature of Title Held.

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

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

Type of Property to be Conveyed in Trust

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

Acreage to be Conveyed

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

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

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

WHEN DO TRUST RESPONSIBILITIES AND ACTIVITIES BEGIN?

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

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

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

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

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

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

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

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

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

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

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

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

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

TRUSTEE PARTICIPATION IN IDENTIFYING MUNICIPAL TRUST LANDS.

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

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

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

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

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

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

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

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

A PLAN FOR IDENTIFYING MUNICIPAL TRUST LANDS.

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

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

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

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

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

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

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

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

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

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

in the Native village in the future, on a "take it or leave it" basis, it is quite unlikely to occur. If it did, or if a corporation refused altogether to convey lands pursuant to Section 14(c)(3), it appears to be a duty of the trustee to litigate the issue, if it otherwise cannot be resolved by negotiation or arbitration. However, good faith negotiation between the parties will resolve every case without litigation, in my view.

2 Section 14(c)(3) land is community land; the State in trust has a duty to represent and advocate long-term, public interests of the community. Valid community interests will tend to solidify behind reasonable and appropriate settlements of 14(c)(3) lands if all parties representing villages recognize that these lands are their community lands, not the State's. Each community can best determine for itself which lands are most appropriate for community use.

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

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

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

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

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

ON BEING RESPONSIVE TO COMMUNITY NEEDS CONCERNING EXPANSION LANDS

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

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

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

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

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

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

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

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

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

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

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

COMMENTS ON BASIC ISSUES

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

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

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

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

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

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

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

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

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

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

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

IN CONCLUSION

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

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

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

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