SCOMM

#23:6

IRA + TRADITIONAL COUNCILS

ISSUES AND LEGISLATION

Introduced for Discussion Primarily - needs conceptual work 9/25

Introduced: 4/17/80
Referred: ~~Community &~~ Regional Affairs

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

2 SENATE BILL NO. 565

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to Native village governments.

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

8 * Section 1. FINDINGS AND PURPOSE. (a) The legislature has determined
9 that

10 (1) there exist in the state several communities which have Native
11 village governments recognized as the traditional local government; and

12 (2) the law and customs of Native village governments include
13 notions of democracy, liberty and the exercise of personal rights consistent
14 with the state and federal constitution.

15 (b) It is the purpose of this Act to

16 (1) insure that the state recognizes Native village governments as
17 local governments and encourages them in the administration of government for
18 the benefit of their people; and

19 (2) provide for interaction between the state government and
20 Native village governments.

21 * Sec. 2. AS 29 is amended by adding a new chapter to read:

22 CHAPTER 70. NATIVE VILLAGE GOVERNMENTS.

23 Sec. 29.70.010. NATIVE VILLAGE GOVERNMENTS. A Native village
24 government, in a village which is not incorporated and not an organized
25 borough is recognized by the state as the governing body of that village.
26 A Native village government recognized by the state under this section
27 is eligible to participate in all state programs to the same extent and
28 in the same manner as a second class city. A Native village government
29 recognized under this section is entitled to notice concerning proposed

actions by the state to the same extent as the government of a second class city is entitled to notice. A Native village government recognized under this section shall be consulted by the state on state actions and programs which affect the village to the same extent that the government of a second class city is consulted on state actions and programs.

Sec. 29.70.020. AGREEMENTS. A Native village government or group of Native village governments may negotiate agreements with the commissioner of community and regional affairs regarding coordination of state activities with the activities of the Native village government or group of native village governments, including proposals to coordinate state services with services provided by a Native village government such as judicial services, law enforcement services, and correctional services.

(b) When the commissioner of community and regional affairs negotiates an agreement under this section, he shall first consult with the head of each principal executive department which may be affected by the agreement. The commissioner of community and regional affairs shall next submit the proposed agreement to the governor. The governor may approve an agreement and upon approval the agreement shall define the respective responsibilities of the state and of the Native village government during the period of time covered by the agreement.

Sec. 29.70.030. NONDISCRIMINATION. A Native village government which is a party to an agreement under AS 29.70.020 may not adopt a rule or operate a program which creates or extinguishes a benefit, liability, privilege, immunity or license dependent on racial classification or membership in a Native tribe, clan, or organization, except that a Native village government may participate in federally funded programs which provide services to persons or organizations because of their status as Native persons or Native organizations. Violation of this section renders an agreement entered into under AS 29.70.020 void.

Sec. 29.70.040. LIMITATIONS. Nothing in this chapter authorizes the alienation, encumbrance, or taxation of real or personal property, including water rights, belonging to a Native person or Native village that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or authorizes regulation of the use of property in a manner inconsistent with a federal treaty, agreement, statute, or a regulation, or extends the jurisdiction of the state to adjudicate the ownership or right to possession of property. Nothing in this chapter deprives a Native person, Native village, or Native corporation of any right, privilege or immunity afforded under federal or state treaty, agreement, or law, or alters the jurisdiction of the state, its political subdivisions, or a Native village government.

Sec. 29.70.050. DEFINITIONS. In this chapter

(1) "Native person" means a person who meets the requirements for membership in a Native village or organization authorized, chartered, or incorporated under the authority of a Native village government;

(2) "Native village government" means a local governing body organized by authority of the Act of Congress of June 18, 1934, 25 U.S.C. sec. 476, or a local governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act, 43 U.S.C. secs. 1601 et seq.

COMPOSITE INDIAN REORGANIZATION ACT FOR ALASKA

Alaska amendment of May 1, 1936:

That sections 1, 5, 7, 8, 15, 17, and 19 of the Act entitled "An Act to conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes", approved June 18, 1934 (48 Stat. 984), shall hereafter apply to the Territory of Alaska: *Provided*, That groups of Indians in Alaska not heretofore recognized as bands or tribes, but having a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district, may organize to adopt constitutions and bylaws and to receive charters of incorporation and Federal loans under sections 16, 17, and 10 of the Act of June 18, 1934 (48 Stat. 984).

SEC. 2. That the Secretary of the Interior is hereby authorized to designate as an Indian reservation any area of land which has been reserved for the use and occupancy of Indians or Eskimos by section 8 of the Act of May 17, 1884 (23 Stat. 26), or by section 14 or section 15 of the Act of March 3, 1891 (26 Stat. 1101), or which has been heretofore reserved under any executive order and placed under the jurisdiction of the Department of the Interior or any bureau thereof, together with additional public lands adjacent thereto, within the Territory of Alaska, or any other public lands which are actually occupied by Indians or Eskimos within said Territory: *Provided*, That the designation by the Secretary of the Interior of any such area of land as a reservation shall be effective only upon its approval by the vote, by secret ballot, of a majority of the Indian or Eskimo residents thereof who vote at a special election duly called by the Secretary of the Interior upon thirty days' notice: *Provided, however*, That in each instance the total vote cast shall not be less than 30 per centum of those entitled to vote: *Provided further*, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied.

The following provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. p. 984), are applicable to Alaska:

That hereafter no land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.

* * * * * * *

SEC. 5. The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift,

exchange, or assignment, any interest in lands, water rights or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: *Provided*, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona and New Mexico, in the event that the proposed Navajo boundary extension measures now pending in Congress and embodied in the bills (S. 2499 and H. R. 8927) to define the exterior boundaries of the Navajo Indian Reservation in Arizona, and for other purposes, and the bills (S. 2531 and H. R. 8982) to define the exterior boundaries of the Navajo Indian Reservation in New Mexico and for other purposes, or similar legislation, become law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

* * * * * * *

SEC. 7. The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, or to add such lands to existing reservations: *Provided*, That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations.

SEC. 8. Nothing contained in this Act shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation now existing or established hereafter.

SEC. 9. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary, but not to exceed $250,000 in any fiscal year, to be expended at the order of the Secretary of the Interior, in defraying the expenses of organizing Indian chartered corporations or other organizations created under this Act.

SEC. 10. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of $10,000,000 to be established as a revolving fund from which the Secretary of the Interior, under such rules and regulations as he may prescribe, may make loans to Indian chartered corporations for the purpose of promoting the economic development of such tribes and of their members, and may defray the expenses of administering such loans. Repayment of amounts loaned under this authorization shall be credited to the revolving fund and shall be available for the purposes for which the fund is established. A report shall be made annually to Congress of transactions under this authorization.

SEC. 11. There is hereby authorized to be appropriated, out of any funds in the United States Treasury not otherwise appropriated, a sum not to exceed $250,000 annually, together with any unexpended balances of previous appropriations made pursuant to this section, for loans to Indians for the payment of tuition and other expenses in recognized vocational and trade schools: *Provided*, That not more than $50,000 of such sum shall be available for loans to Indian students in high schools and colleges. Such loans shall be reimbursable under rules established by the Commissioner of Indian Affairs.

SEC. 12. The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil-service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions.

* * * * * * *

SEC. 15. Nothing in this Act shall be construed to impair or prejudice any claim or suit of any Indian tribe against the United States. It is hereby declared to be the intent of Congress that no expenditures for the benefit of Indians made out of appropriations authorized by this Act shall be considered as offsets in any suit brought to recover upon any claim of such Indians against the United States.

SEC. 16. Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws when ratified as aforesaid and approved by the Secretary of the Interior shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress.

SEC. 17. The Secretary of the Interior may, upon petition by at least one-third of the adult Indians, issue a charter of incorporation

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.

* * * * * * *

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 descendents 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 Metlakahtla Indians, and those people known as Metlakahtlans 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 lso*, 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.

U. S. GOVERNMENT PRINTING OFFICE: 1939

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".

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

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—

25 USC 450.

(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.

25 USC 450a.

88 STAT. 2203
88 STAT. 2204

(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

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

Recordkeeping.
25 USC 450c.

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, subgrant, 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 450d.

25 USC 452.

WAGE AND LABOR STANDARDS

SEC. 7. (a) All laborers and mechanics employed by contractors or 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 1950 (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 450e.

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.

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

CONTRACTS BY THE SECRETARY OF THE INTERIOR

25 USC 450f.

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. 596), 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.

25 USC 452.

25 USC 13, 52a.

(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.

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 5, 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-

88 Stat. 2206
88 Stat. 2207
42 USC 2001.

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.

Hearing.

(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.

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.

(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. 105. (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."

43 USC 1601 note.

Ante, p. 2204.

(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:

42 USC 2004a.

"SEC. 8. In accordance with subsection (d) of section 214 of the Public Health Service Act (58 Stat. 690), 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".

42 USC 2004b.
42 USC 215.
Ante, p. 2206, 2207.

(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".

50 USC app. 456.
42 USC 2001.

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

42 USC 4762.

(1) by deleting the word "and" after paragraph (3);

(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

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:

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

(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:

Work injuries, compensation. 5 USC 8101.

(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 8348 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.

Retirement. 5 USC 8301.

(3) To retain coverage, rights, and benefits under chapter 89 ("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.

Health insurance. 5 USC 8901.

(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

Life insurance. 5 USC 8701.

88 STAT. 2209

88 STAT. 2210

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.

5 USC 8701.

(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 coverages, 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 2105 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 wth 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. 106. (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.

(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

88 STAT. 2210
88 STAT. 2211

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.

Contracts, term.

(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.

(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 additonal services or benefits under the contract.

88 STAT. 2211
88 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.

REASSUMPTION 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

88 STAT. 2212
88 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.

88 STAT. 2213
88 STAT. 2214

such committee or board may, in the discretion of the affected tribal governing body or bodies, be utilized for the purposes 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-controlled community colleges.

(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. 596), 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 (46 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, 1950 (72 Stat. 548), 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.

25 USC 458d.

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 452.

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 458e.

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 NOon-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 accessability 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

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 [illegible]

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 Oper[illegible]ns 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

STATE
of ALASKA

MEMORANDUM

RECEIVED
SEP 01 1976

DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

TO: Palmer McCarter, Director, LGAD

DATE : August 28, 1976

FROM: La
Community Development Coordinator

SUBJECT: 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 PI93-638, 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

gh: Palmer, McCarter, Director
Local Government Assistance

FROM: David Jensen
Local Government Specialist

DATE:

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 familurize 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 Memos LGAD

DEPUTY COMMISSIONER
Interoffice 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

(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 (a) and (b), 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-

Tom - that note contracts are to incorporated areas

-29 TRIBAL ORGANIZATIONS

Contract total [illegible]

Incorporated cities

1.	1638	Ketchikan Indian Corporation - Box 6855, Ketchikan	352,438
2.	1643	Sitka Community Association - Box 4360, Mt Edgecumbe	235,264
3.	1644	Metlakatla Indian Community - Box 8, Metlakatla	82,819
4.	1647	Indians of Juneau, Inc. - Box 808, Douglas	298,463
5.	1663	Bidarki Corporation - Box 117, Cordova	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	370,287
13.	1634'	Dillingham JOM-NEC	147,790
14.	1635	Aleutian/Pribilof Islands Association 430-C St., Anchorage	156,255
15.	1636	Sand Point JOM/NEC	67,346
16.	1639	JOM/NEC of Egegik	7,440
17.	1646	Copper River Native Association	86,789
18.	1649	Chignik Lake JOM/NEC	25,438
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	Athabascan/Eskimo United Heritage Assocation Box 1010, Wasilla	158,769
23.	1660	Cook Inlet Native Association 1057 W Fireweed, Anchorage	1,209,[illegible]
24.	1661	North Pacific Rim - 903 W. Northern Lights, Anch	98,[illegible]
25.	1668	Naknek Native Village Council	50,718
26.	1630	Fairbanks Native Association	411,256
27.	1645	Northway JOM/NEC	20,7[illegible]
28.	1655	Arctic Village Tribal Council	18,474
29.	1666	JOM/NEC of Tanacross	10,552
30.	1669	United Crow Band	21,650

15 SCHOOL DISTRICTS

No.	Code	District	Amount
1.	1641	Hoonah Public Schools - Box 157, Hoonah	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	287,209
6.	1648	Northwest Arctic School District	690,575
7.	1664	Bering Straits School District	291,703
8.	1626	King Cove School District	48,493
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	86,490
15.	1662	Yukon Flats School District	154,743

Non-JOM - Education Contracts - [illegible]

- BE - 1. 1752 - Kuskokwim Community College - U of A. - 20,000
- E - 2. 1757 - Aleutian/Pribilof Islands Assoc. [illegible] - 20,000
- 3. 1789 - Kuskokwim Native Assoc. - 77,995.00
- 4. 1739 - Kuspuk School District - 75,736.00
- E - 5. 1719 - CINA - 50,000.00
- 6. 1647 - Education Research [illegible] - 58,8[illegible].00
- 7. 1786 - Utah State University - 65,050.00
- 8. 1743 - Alaska [illegible] Center - 48,995.00
- \- 9. 1772 - [illegible] Comm. College - U of A - 30,000.00
- 10. 1787 - [illegible] Lake Camp - 30,875.00
- \- 11. 1706 - [illegible] - 120,000.00
- 12. 1748 - Lower Yukon School Dist. - 324,2[illegible].00
- 13. 1755 - [illegible] - 200,000.00
- 14. 1738 - [illegible] - 500,000.00
- \- 15. 1781 - [illegible] Conference - 114,000.00
- = 16. 1754 - Kuskokwim Community College - 120,000.00
- 17. 1742 - [illegible] - 374,7[illegible]
- 18. 1730 - [illegible] - 163,[illegible]

PL. 93-638 PROGRAM CONTRACTS

SHEET 1

INDIRECT COST 7/18/79

1. Central Council T&H $11,045 + $8300

2. Metlakatla $160,900 + $38,995

3. " $727,093 + $65,100

4 " $157,522 + $9825

5 Tanana Chiefs $2,995,693 + $723,546

6. FBKS. NAT. ASSOC. $691,491 + $51,416

7. United Crow Band. $148,500 + $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. Maunaluk Assoc. $760,868 + $83,050

12. Sitka Comm. Assoc. $248,947 + $18,188

13. Central Council of T&H $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. $53,635 + $10,169

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

Cont. SHEET
18 Admiralty Cit. (Angoon) Council $158,499 + $1375

19. Kotzebue IRA Counc. 255,743 + $32,347

20. Aleut./Prib. Isle 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 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 to lands acquired by the department under this section may be acquired by adverse possession or prescription.

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

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:

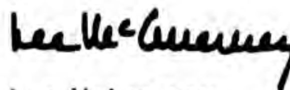
- Municipal trust lands are community lands. Title to these lands are used to benefit your village now and in the years ahead, and for a possible municipality in the future. These lands cannot be used for the benefit of the State itself without specific approval by your community.

- 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 Statues 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 Mangement 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 Munciipal 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 activites 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) NAME OF VILLAGE	Land Title or Other Interests Tentatively Transferred: Into Trust — Number of Actions-Acres FY 79 (Cumulative)		Out of Trust — Number of Actions-Acres FY 79 (Cumulative)		Other Related Activities — Number of Actions FY 79 (Cumulative)	REMARKS
(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	REMARKS
	Into Trust		Out of Trust		Number of Actions (Cumulative)	
	Number of Actions-Acres FY 79		Number of 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 Tentatively Transferred — Into Trust — Number of Actions FY 79	Into Trust — Acres FY 79	Out of Trust — Number of Actions FY 79	Out of Trust — Acres FY 79	Other Related Activities — Number of Actions (Cumulative)	REMARKS
(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 Tentatively Transferred — Into Trust: Number of Actions	Into Trust: Acres FY 79	Out of Trust: Number of Actions	Out of Trust: Acres FY 79	Other Related Activities: Number of Actions (Cumulative)	REMARKS
(Bristol Bay)						
EKUK	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	Reconveyance Discussions. 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)	Proposed Airport. Construction of an airport has been proposed which may involve municipal trust land.
KOKHANOK	-2- (2)	5.0 school 0.46 R-O-W (5.0) (0.46)	-1- (1)	5.0 school (5.0)	-0- (0)	New High School Site. 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)	Community Hall Site. A discussion with village officials was held on the siting of a new community hall on potential municipal trust land. Work continues. New Clinic. A new clinic has been proposed for 1980 for construction on potential muncipal trust land.
NAKNEK	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-2- (2)	Regulations Hearing. 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. Disposal Site. Participated in site planning discussions for solid-waste disposal project.
PILOT POINT	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	Firehouse. 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)	New School. 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)	Airport Construction. 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 Tentatively Transferred — Into Trust, Number of Actions-Acres FY 79		Out of Trust, Number of Actions-Acres FY 79		Other Related Activities, Number of Actions (Cumulative)	REMARKS
(Calista) ANDREAFSKI	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-2- (2)	Policy Review. 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 townsite to city of St. Mary's. 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.
CROOKED CREEK	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-3- (3)	New High School. 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. Title Discussions. Held discussions with village corporation concerning title to certain lands occupied after effective date of ANCSA, December 18, 1971. PHS Building. 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)	New Community Hall. Prepared site transfer documents for new community hall. Execution expected in FY 80. Power Plant. Village corporation conveyed .16 acres as municipal trust land. Site leased to village council as site for village electric generator. 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.
KWIGILLINGOK	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-2- (2)	New School. 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. Electrical Project. 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)	Realty Training. 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 — Into Trust — Number of Actions-Acres FY 79		Out of Trust — Number of Actions-Acres FY 79		Other Related Activities — Number of Actions (Cumulative)	REMARKS
OSCARVILLE	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	New School. 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)	Status and Plans. 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)	New School. 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)	Village Relocation. 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)	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 Cordova so residents of Tatitlek and neighboring communities could attend.
(Cook Inlet) EKLUTNA	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (1)	Muncipal Land Conveyances. 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)	New Airport. Discussions were held with the village president and state DOT/PF 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 Number of Actions-Acres FY 79		Out of Trust Number of Actions-Acres FY 79		Number of Actions (Cumulative)	
EVANSVILLE	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (2)	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.
MANLEY HOT SPRINGS	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-1- (2)	Incorporation. 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)	Community Council. Our suggestion to form a bi-racial "community council" to oversee the municipal land trust program was adopted by the community. PHS Building. Discussions on siting for the PHS building on potential municipal trust lands were held. Electrification. 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. 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.
TANACROSS	-0- (1)	-0- (0.9)	-0- (1)	-0- (0.9)	-2- (2)	New School. 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. 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 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)	Informal Discussions. 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 Tentatively Transferred — Into Trust: Number of Actions-Acres FY 79		Land Title or Other Interests Tentatively Transferred — Out of Trust: Number of Actions-Acres FY 79		Other Related Activities: Number of Actions (Cumulative)	REMARKS
KARLUK	-1- (1) village relocation	14.3 (14.3)	-1- (1) village relocation	14.3 (14.3)	-2- (2)	Airport Land Transfer. Discusssions 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. Village Relocation. 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. Dump Site. 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)	New High School. 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. School Site. Relocation of the old school site appears necessary due to erosion of the riverbank. The action may involve municipal trust lands. 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.
(Sealaska) KLUKWAN	-0- (0)	-0- (0)	-0- (0)	-0- (0)	-2- (2)	Land Selection. 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. 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.

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

JAY S. HAMMOND, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

DIVISION OF COMMUNITY PLANNING POUCH B – JUNEAU 99811

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 Tundra Times and ANF Management Report for publication of excerpts.

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

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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 subsistance 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 forseeable community needs." These lands must be transferred to the appropriate Municipal Corporation where one exists, or otherwise to the "State in trust for any Municipal

Corporation established in the Native village in the future."
In either case, the amount of lands to be transferred to the Municipal Corporation, or in trust, shall be no less than 1,280 acres (2 square miles). ANCSA Sec. 14(c)(3).[1/]

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

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

DISTINGUISHING BETWEEN STATE AS TRUSTEE AND STATE AS SOVEREIGN

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

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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 ______________________
> (name of village)
> in the future."

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 forseeable needs", subject to a minimum acreage requirement. ANCSA Section 14(c)(3). See item #13 on page 22 for philosophy on listing land-use catagories 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 forseeable 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 mandator 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, bilaterai, and cooperative role in negotiating a settlement of lands which will be surveyed by the Bureau of Land Management and subsequently transfered from the Village Corporation to the Municipal Corporation. Disagreement which cannot be overcome likely would require settlement through litigation between these two parties. (Of course, in any settlement prior to December 18, 1981, the appropriate Regional Corporation also must be given opportunity by the Village Corporation to review and render advice on this matter, according to common interpretations of ANCSA Section 14(c)(5)). Neither the State in trust nor existing municipalities appear to have a one-sided "selection" right, and for this reason, I recommend that the term "select" be avoided in reference to these lands.

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

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

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

A PLAN FOR IDENTIFYING MUNICIPAL TRUST LANDS.

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

in trust might follow the ideas listed here:

1. The Municipal Lands Trust program of the State should be conducted in a manner which recognizes a fiduciary responsibility to "any first or second class city established in the Native village in the future" (the beneficiary). This responsibility includes participating with the village corporation and residents of the village to identify the lands to be placed in trust.

2) The grant of 14(c)(3) community expansion lands by the village corporation as Grantor requires a corresponding acceptance by the State in trust as Grantee to complete the transaction.

3) BLM indicates that the Plan of Survey which instructs them how to survey various 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 forseeable needs of any future city which may be established there.

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

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

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

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

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

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

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

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

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

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

ON BEING RESPONSIVE TO COMMUNITY NEEDS CONCERNING EXPANSION LANDS

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

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

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

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

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

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

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

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

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

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

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

COMMENTS ON BASIC ISSUES

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

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

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

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

I feel this issue is best approached by recognizing that selections under ANCSA were authorized by an eligibility certification for each Native village. It makes best sense under ANCSA, I think, that community expansion lands located within a selection of 69,120 (or more) acres made by a village certified to so select, be designated for the benefit of that same village, not for another one. Thus, in the example given, since the incorporated city is not located <u>in</u> 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 <u>in</u> 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 <u>in</u> the donating village.

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

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

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

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

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

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

IN CONCLUSION

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

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

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

Send comments to:

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

OR

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

RLJ/ajr

Statement by Commissioner:

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

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

Lee McAnerney

Lee McAnerney, Commissioner

Department of [illegible]

Regional [illegible]

29 August 1977

Date

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

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

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

APPENDIX A (BOTTOM HALF)

ALASKA STATUTES 44.47.150:

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

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

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

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

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

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

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

APPENDIX B

Citations from Title 43, Code of Federal Regulations:

43 CFR 2650.5-4:

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

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

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

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

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

DRAFT

TRIBAL-STATE RELATIONS:
A NEW PARADIGM FOR LOCAL GOVERNMENT IN ALASKA

BY MICHAEL WALLERI
VILLAGE GOVERNMENT SPECIALIS
TANANA CHIEFS CONFERENCE
1ST & HALL STREETS
FAIRBANKS, ALAKSA 99701

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INTRODUCTION.

Alaska is a state which has clearly adopted the philosophy of the "New Federalism." In adapting the local government section of the Alaska Constitution, the framers clearly indicated that it was their intent to further the philosophy of the new federalism in Alaska by decentralizing state government, and addressing the majority of local concerns through local mechanisms.[1] The Alaska Supreme Court has fully embraced the concept of New Federalism in the area of individual rights by specifically holding that the Federal Constitution does not limit the State of Alaska from securing to its citizens greater protection of individual liberties and freedoms than these found under the Federal Constitution.[2] In the political arena, the State of Alaska has sought to lessen federal concern over lands within the state. Finally, in the conduct of its own affairs, the state government has shown innovative during its attempts to reduce the size and scope of state government.

This report is yet another attempt to pursue this policy. The goal of this study is to devise a mechanism which enhances local control over local concerns in those areas of the state which are "unorganized." Additionally, this study investigates possible mechanisms for coordinating multiple governments which may exist in a community.

In pursuit of these objectives, this study suggests a new paradigm for local government in Alaska. The study focuses upon the possibility of developing a state/tribal governmental interface. Fundamental to this paradigm is the effort to develop government-to-government relations between the state and the Native people. Admittedly, this is in sharp contrast to the short history of the State of Alaska. Since statehood, Alaska has attempted to deal with its Native population within a state/citizen context. While this context is appropriate in many situations, the state/citizen context proves inadequate for all situations. In order for a pluralistic society such as Alaska to reflect the respective pluralistic structures within the society, those structures must reflect the various pluralistic interest which make up the society-at-large.

In the case of the Native people, early experiments and societal assimilation have proved only marginally successful. Rather it is the rule that the Alaska Native people remain culturally unassimilated and retain cultural and government characteristics which separate them as a people from the majority of Alaskan citizens. On the contrary, it is not uncommon for the rural non-Native residents to become assimilated into the Native culture and society. In the political sense, this assimilation is reflected in the active enfranchisement of many non-Native into rural Native government. Thus, in such rural Alaskan communities the dominant Native government and society has come to constitute the whole community's government and society, in spite of the presence and participation of individuals racially defined as non-Native. Under these circumstances, the tribal government constitutes the only feasible and viable form of local government for that community. In such cases, the tribal/state paradigm does not function to exclude representation of non-Native elements within the community, but rather becomes the most appropriate vehicle for the representation of local interests and concern. It is the purpose of this study to investigate the feasibility of utilizing Alaskan Native governments as an alternative local government form for those communities where such a form is the most appropriate vehicle for the representation of local interests and concerns. For such a mechanism to be successful, it is necessary that the mechanism will promote to the maximum extent possible the coordination of Native government and state government. It is hoped that through such coordination the respective interest of the state and the Native governments can be met.

There exists in rural Alaska the common perception that where a parallel government exists within a community, the municipality represents the non-Native interest in the community while the Native government represents the Native interest in the community. For this reason, the Native element in the community generally elects not to participate in the municipal government. The result is that the municipal government is not an expression of self-government for the community but an expression of self-government for the non-Native portion of that community. Furthermore, the Native element of a community tends to exclude non-Natives from participating in the affairs of the Native government.

Obviously, the Native government represents the expression of self-government for the Native portion of the community. In this situation, neither council represents self-government of the community as a whole. The exclusion of Native governments from the local government system of the state thereby results in the exclusion of the Native portion of many communities in rural Alaska. The inclusion of Native governments within the state system of local government would promote the more accurate representation of the community as a whole, albeit a representation through the various factions of the community.

PART I

EARLY AND CURRENT ALASKAN LOCAL GOVERNMENTS

A. EARLY ALASKAN LOCAL GOVERNMENTS

The earliest "local governments" in Alaska were Native. As Dave Case points out these primeval governments varied as between the Native cultures.[1] Generally, however, these early governments were loose associations of individuals based upon family relationships and customs. Group decisions were made by consensus.

Similarly, early non-Native local government in Alaska was very informal. After the purchase of Alaska by the U.S. in 1867, the primary mechanism of local government was the extra legal mining districts.[2] Like the Native governments, these early miner's governments were loose associations based on custom. Generally, decisions were made by majority vote. In 1884, Congress recognized the authority of these mining districts, but the status of Native governments remained in limbo.

In 1900, Congress enacted a civil code for Alaska which included authorization to form towns of over 300 residents.[3] This first form of municipal government was patterned after the mayor-council city government common to the "lower 48." Towns were severely limited as to their ability to tax and contract debt and were highly dependent on intergovernmental transfers. Their primary function seems to have been providing school services. In 1904, some of these limitations were relaxed, but the next major change had to wait until the formation of a territorial government.

In 1905, Congress authorized the formation of independent (city) school districts, and school districts for unincorporated areas.[4] In both cases, the districts were fiscally autonomous respecting current expenditures. They directly received a portion of intergovernmental

revenue transfers due the city. They remained dependent on the city or territory tax revenues for capital expenditures.

In 1912, Congress passed the Organic Act creating the Territorial legislature.[5] In the following years, the legislature created a second class of territorial towns, subject to the limitations of the earlier Act of Congress. It was fully intentioned that local government be kept weak so as not to present a taxing or regulatory threat to commercial and mining interests in the territory.[6] In fact, the Organic Act prohibited organization of "counties" or other regional local governments.[7] In 1915, the legislature upgraded territorial towns so that they would be subject to the same limitations as the towns authorized under the federal legislation. At the same time, the legislature for the first time attempted to assimilate Native village government through the Indian Village Act of 1915. This Act authorized Indian villages to organize as units of local government.[8]

In 1917, the legislature authorized incorporation of school districts in unincorporated areas. Under this new legislation, the incorporated school districts achieved greater fiscal autonomy through authorization to tax, as well as an increase in shared intergovernmental transfer revenues.

The legislature undertook a revision of the territorial municipal code in 1923. The new code replaced federally authorized towns with first class cities which directly elected a mayor, expanded council powers, provided for mayoral vetoes, and established minimum procedures for city government.[9] Later, in 1929, the legislature repealed the Indian Village Act of 1915, and revised the laws relating to second class cities making them substantially equal to first class cities.

By 1934, the federal policy toward Indians had again shifted away from assimilation. This was reflected by the passage of the Indian Reorganization Act, and the subsequent extension of the Act to Alaska in 1936.[10] The Act was intended to vest "tribal organizations with

real, though limited, authority, and by prescribing conditions which must be met by such tribal organizations."

At this same time, the legislature instituted reforms designed to authorize special purpose regional governments. In 1935, the legislature authorized incorporation of "independent school districts" which included both the area inside city limits and the surrounding adjacent areas. The new school districts were independent of city governments and were fiscally autonomous.[12] Also in 1935, the legislature authorized public utility districts which were fiscally autonomous special purpose governments capable of providing garbage, parks, street, fire, telephones, electrical, etc., services.[13]

In 1951, the legislature authorized third class cities, which were essentially the same as second class cities, differing only in geographical and population size.[14]

In 1957, the territorial legislature again attempted to create incorporate villages under territorial law.[15] An Incorporated Village had limited powers which include its power to provide water, electing sewers, and fire protection; regulate dogs, curfews, and land use; and provide public works. The State amended the Act in 1959 to invest the incorporated village with general police powers and provided for village magistrates to levy limited fines. At the same time, the legislature defined the incorporated villages as a city of the fourth class.

At the time of statehood, there existed in the state:

24 first class cities
8 second class cities
2 third class cities
10 fourth class cities
69 I.R.A.'s
5 P.U.D.'s
8 independent school districts
1 incorporated school district
unknown number of traditional Native councils

Statehood did not drastically alter the local government pattern since under Article XV, Section 1 of the Alaska Constitution, the laws of the territory remained in effect until they were repealed, amended or expired.

It was not until 1972, the state undertook a wholesale version of the municipal code to create the current system.

B. CURRENT STATE CHARTERED LOCAL GOVERNMENT

The system of local government authorized under the Alaska Constitution is relatively simple. It is possible to categorize Alaskan local governments into two basic types, i.e., general and special purpose governments. For the sake of analysis, a general purpose government is a government which exercises independent discretion over a broad range of topical concerns. In contrast, a special purpose government is a government which exercises discretion over a specific topical concern.

General Purpose Governments.

The general purpose government is the constitutionally preferred unit of local government in Alaska. This policy is specifically stated in Article X, Section 1 of the Alaska Constitution which states that, "The purpose of this article is to provide for maximum local self-government with a minimum of local government units, ..." This policy is implemented in Article X, Section 2 which provides that "All local government powers shall be vested in boroughs and cities," and is further stated in Article X, Section 15 which states "Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law."

This concern for consolidating local powers into single general purpose governments is expressed throughout the Constitutional Convention record. The adoption of "one basic local government system" was

intended to prevent "creation of numerous types of local units which can become not only complicated but unworkable."[16] Of immediate concern to the Delegates was the governance of the school boards, Public Utility Districts (P.U.D.s) and health districts. As stated by Delegate Victor Fischer:

> "That is one of the points that we have tried to meet here, not to establish too many local governments but those that would be established would be effective to carry out not only the local but also state functions as may be necessary."[17]

To this end the constitution provides for the creation of boroughs and cities.[18]

The most unique aspect of the Alaskan general law municipality is the framer's intent to create strong local government units. Systems of government then operating in the majority of the states were felt to be too weak.[19] In his initial address to the convention introducing the Local Government Committee's proposed article, Delegate Vic Fischer expressed the "New Federalist" philosophy favoring general decentralized government. Citing the Congressional Commission on Intergovernmental Relations, Delegate Fischer stated:

> "The Commission concerned itself with the need for strengthening of state government and a decentralization of federal power. In this study they found that local government is an important factor in this process and I would like to briefly quote a few paragraphs. In discussing the strengthening of local government, the Committee says, 'The objective of decentralization cannot be obtained by a readjustment of national-state relations alone. It will be fully achieved only when carried through to the lowest levels of government where every citizen has the opportunity to participate actively and directly. The strengthening of local government requires the activities that can be handled by these units be allocated to them together with the financial resources necessary for

their support.' Then the report goes on and draws a picture of the tremendous number of overlapping tax jurisdictions and separate local entities we now have in the state and goes on to say, 'More or less hidden in this picture is a paradox that consistently plagues the state and bars any easy solution of the problem of achieving the decentralization of government -- too many local governments and not enough local government.' That is one of the points that we have tried to meet here, not to establish too many local governments but those that would be established would be effective to carry out not only the local but also state functions as may be necessary."[20]

To implement this plan, the committee adopted the so-called "Texas Plan." This approach was explained to the convention by Delegate Victor Rivers as follows:

> The old approach to county government was that they existed and had their authorities only in those specifically delegated to them and specifically spelled out to them by the legislature or by the constitution. The other approach which has been adopted and which has operated in a few states, approximately seven as I recall, particularly in Texas, has been called the Texas Plan, and there, under that plan, they allocate such powers to the intermediate tier of government and the cities are not specifically reserved or eventually withdrawn by the state itself. They have a broad exercise of local authority much as our cities have today. That has been the matter of the choice -- whether we wanted to follow the old pattern in which the constitution and the legislature would delegate certain specific powers to the intermediate form of government, which often is called the county and which we have designated as the borough, or whether we would follow the plan of reserving powers to the state and letting the local government exercise broad general authority within the limits of those reservations.[21]

It is quite clear that the "pure" Texas plan called for application of home rule principals to all local governments. The various classes of cities and boroughs would be defined in law by the quantity and quality of powers reserved by the state.

The record indicates that some delegates to the constitutional convention supported the "pure" Texas Plan.[22] In fact, the concept of a "general law" municipality was not introduced in the floor debate, but seems to have been an assumed constant which carried over from the territorial local government concepts. This is reflected in Article X, Section 9 and 11 which respectively provide that first-class municipalities could assume home-rule status, and that the legislature could extend home rule to other classes of government. The concept of "general law" municipalities was enacted by statute.[23] It is interesting to note that although the "general law" concept was not discussed in convention floor debates, it has become a fundamental concept guiding the majority of local governments in Alaska.

i) Boroughs: A borough is the intermediate level of government in the State of Alaska. Although the term "borough" is somewhat unique, the notion of an intermediate level of government is common to the American local government scene. The borough "corresponds generally to the county in other states."[24] By statute, the borough is a government for an "area."[25] This is in contrast to a city, which is a government for a "community."[26] The framers of the constitution anticipated that an average size borough would be between 1,000-2,500 square miles.[27] Presumably, an area could include a number of communities and their outlying areas.[28] Clearly, the framers intended to create a system of two-tiered, local coexistent governments.

But the framers also intended local government to be flexible enough to adjust to future developments. It has, therefore, been observed that:

> Boroughs in different parts of Alaska may serve two quite different purposes. In areas which include cities, they may

constitute a second tier of government. In other areas, they may themselves be the sole or primary local units.[31]

The Alaska Supreme Court has recognized this by stating that the Constitution does not require the coexistence of boroughs and cities.[32]

There is a strong indication that the original concept of the borough was strongly linked to home rule. This is most notably demonstrated in committee answers to delegate questions regarding the unorganized borough.

V. Rivers: ... In the extent that the benefits that the legislature sets up will offset the added cost to the people, and the extent of their desire for home rule will govern how far they go in organizing those boroughs, but it was our thought there would be enough inducement for them to organize and exercise home rule so that as time went on they would gradually all become incorporated boroughs...[33]

This sentiment is noticeable in comparing the respective constitutional sections dealing with cities and boroughs. Whereas the constitution specifically states that "Cities shall have the powers and functions <u>conferred by law</u> or charter."[34] (emphasis added) The comparable clause dealing with boroughs is less specific providing that, "The legislature shall classify boroughs and <u>prescribe their powers and functions</u>."[35] (emphasis added) It remains unclear whether such prescription should be bv specific enumeration or reservation. Nevertheless, inclusion of reference to boroughs in Article X, Sections 9 and 10 leaves no doubt that general law boroughs were constitutionally contemplated.

ii) <u>Cities</u>. In contrast to boroughs, cities are statutory defined as the local government unit for "communities."[36] The local government committee of the Constitutional Convention considered the option of abolishing the city form of government. It was felt, however, that

such a move was "too drastic a step," and it was felt that the existing territorial units of governments should be perpetuated. On the other hand, it was also stated that,

> " .. we visualize the possibility that as the borough becomes a more definite unit of government over the years, which we hope it will, the scope better defined, that all the functions that can best be carried out on the unified basis be transferred over to the borough."[38]

In City of Douglas v. City and Borough of Juneau,[39] the Court recognized that "Unification is consistent with the purpose expressed in Article X, Section 1 of minimizing the number of local government units." But in preserving the city, the convention did not intend to subordinate the city to the borough as indicated by the following exchange:

HURLEY: The borough then has nothing to say about the services that the city offers its own residents within its boundaries. Is that true?

ROSSWOG: Yes, the city should remain as much the same as today, or practically the same unless there are some gradual changes in the future. They can delegate powers back and forth but the borough would not tell the city that they had to supply certain services or couldn't supply certain services. That is why the two are set up as having the authority.

HURLEY: In essence, then, you have two local government units?

ROSSWOG: Yes, that is right.[40]

> appraising, its own assisting agency, its own condemnations.[42]

This point was recognized by the Alaska Supreme Court in Macauley v. Hildebrand[43] where the Court held that a home rule borough may not require its school system by ordinance to participate in centralized accounting where the Legislature has delegated express authority to the school board to resist such requirements. The Court based its decision upon the theory that education was an area of "pervasive state authority." The obvious conclusion, therefore, is that service areas may exercise substantial autonomy in areas of "pervasive state authority." In a similar manner, the legislature could provide substantial autonomy to public utility districts since regulation of public utilities is also an area of state concern.[44] Thus, while the constitution provides that "all local powers shall be vested in boroughs and cities",[45] it does not exclude the exercise of governmental authority by governments other than cities and boroughs.

This balance is further demonstrated in those constitutional provisions which provide that when a borough is organized, existing service districts shall be "integrated" into the borough government.[46] Once a borough is organized, the assembly may create service areas within its borders.[47] This latter power is subject to the single prohibition that services areas cannot be established where such services can be rendered by annexation to an existing service area or city.[48] This prohibition is consistent with the general preference for integration rather than separate incorporation.

It is quite clear that service areas are only "semi-autonomous." As indicated above, the service area would be subject to the exclusive "fiscal jurisdiction" of the assembly. Beyond this, however, the framer's contemplated that service area boards could be set up and exercise substantial powers. This was clarified by Delegate Fischer who stated:

> ..., it is the intent of the committee that when you establish a service area you could, say, establish a

Thus, while the momentum set in force by the Constitutional Convention contemplates eventual dissolution of cities in favor of boroughs, the interim is governed by the principals of sovereign coexistence.

Special Purpose Governments

As noted above the integrated/unified local government is the preferred vehicle of local government in Alaska. The constitution, however, provided for service areas and districts which seem to be semi-autonomous special purpose governments. In understanding the role of special purpose governments, it is necessary to recognize that service areas represent a compromise between the constitutional delegates who argued in favor of wholly integrated local governments, and those delegates who favored continuing the independent school districts, health districts and P.U.D.s formed under the territorial government. In expressing this compromise, delegate Vic Fischer stated:

> Mr. Johnson, it was not the intention of the committee to do away with any existing school districts just by the enactment of this article. (Sec 15). The intent was to leave them within a new framework of government.... what we visualize is putting them under the general fiscal jurisdiction of the larger entity, which includes all the people within the particular school district.[41]

This was again explained by Delegate Rivers who stated:

> Mr. President, the idea was that the general powers of government would be with the general elected representatives of the people. Now, as Mr. Fischer has pointed out, the special functions in regards to the use of one group for one special purpose such as health, education or anything else, the power to take the board and take its powers away, the powers of the boards would probably continue except for the taxing power being centralized in the one taxing agency which would thus have its own

separate school board,...to supervise the school functions...[49]

Thus, it is possible for a service area to exercise substantial power independent of the general borough assembly.

It must be remembered, however, that the service area may never exercise total autonomy. There seems to be two chief limitations on the service areas. First, the service area may not unilaterally tax. The Constitution specifically provides that only cities and boroughs may tax.[50] As indicated above, this limitation on service areas was perceived by the framers as the sufficient link needed to achieve local government coordination. There remains, however, substantial autonomy even in fiscal matters as indicated by the Macauley v. Hildebrand case. A school district may maintain separate financial records. Similarly, while service areas have limited control over tax revenues, they may possess substantial autonomy with respect to revenues from intergovernmental transfers. For example, under the terms of A.S. 29.89.030 (2), a health district operating a hospital may qualify for state revenue sharing. Although, the sponsoring municipality would initially receive the revenue sharing payments, the municipality is required to transfer such payments to the service area to be used for health services at the discretion of the hospital "directors".

The second major limitation on a service area's autonomy is related to the operation of the "local activity rule." As the Court stated in Macauley, the legislature may delegate to service areas power beyond the resolution of a parent municipality in those subject areas of state concern. It follows, therefore, that service area autonomy is inversely related to "local" concerns. For example, a municipality could certainly regulate the use of municipal property regardless of whether it was assigned to the service area, since municipal property is purely a local concern.[51] Of course, is is not easy to define what is a "local" concern as opposed to a "state" concern. This is even less clear under the borough form of government in that the framers of the constitution intended boroughs to assume greater responsibility in the area of tradi-

tional state concerns as state government "decentralized." The framers seemed to have accepted this ambiguity, and left the matter to the legislature. The courts recognized this role for the legislature in the Macauley and Chugach Electric cases by holding that municipal regulation is invalid in the face of contrary statutory law.

In spite of these limitations, service areas would seem to be remarkably flexible mechanisms of local government. For example, the Constitution authorized intergovernment cooperative agreements between "any local governments" for joint administration of any functions or powers.[52] Presumably, these provisions would apply to service areas since they are local governments. This view is supported by the fact, that only cities and boroughs are authorized to transfer powers, while "all local governments" are authorized to enter into intergovernmental agreements.[53] Thus, it would seem possible for co-extensive service areas to enter into cooperative administrative agreements for such things as centralized accounting and budgeting, personnel management and property management systems. Such mechanisms could be used rather extensively to provide a wide range of services for a community without city incorporation. This concept is not beyond the framer's contemplation, in that both pro-integration, and anti-integration factions within the constitutional convention characterized cities as "a collection of service areas".[54] It must be remembered, however, that a collection of service areas would lack the power to independently tax which a city possesses. Thus, such a collection would be totally dependent on intergovernmental transfers, whether from the borough or the state. Furthermore, a collection of service areas would be subordinate to borough regulation in areas of "local control". The collection of service areas, however, could exercise substantial autonomy in areas of state interest, upon approval of the legislature.

Service areas have their greatest utility in the unorganized boroughs. The constitution directs the legislature to provide necessary services in the unorganized boroughs, "allowing for maximum local participation and responsibility."[55] To implement this section, the legislature provided that it may authorize "service areas" in the unorganized borough.[56] It

is agreed that such service areas do not possess powers of fiscal autonomy,[57] however, they may exercise other powers delegated by the legislature.

The legislature has seen fit to authorize four types of service areas in the unorganized borough - i.e.: 1) aquaculture service areas; 2) coastal resource service areas; 3) regional educational service areas, and 4) volunteer fire departments.

The legislature authorized the Commissioner of Commerce and Economic Development to declare aquaculture service areas.[58] The purpose of these service areas are to provide fishery enhancement services. The service area board is comprised of representatives of member user groups.

The coastal zone management service areas are general "planning" units for coastal areas of the state. Whereas, coastal boroughs are automatically designated coastal zone management districts, unorganized areas may organize a special service area for the conducting of making district coastal management programs.[59] These programs operate to guide state agencies in the operation of their programs throughout the coastal areas of the state. While the state continues to be the basic provider of basic services, the service area boards operate as a centralized planning agency for the area. The board of the service area is popularly elected.

Third, the regional education attendance areas (REAA) are service areas providing eudcational services within the unorganized borough.[60] Like the coastal zone management areas, the REAA's are controlled by a popularly elected board, but were mandatorally organized by the legislature after a settlement of the "Molly Hootch" case.

Finally, the legislature has "impliedly" authorized organization of volunteer fire departments for unorganized areas of the state through the state revenue sharing program.[61] Under this program, local fire departments may organize under regulations adopted by the state

marshall. Upon approval and registration of the departments, the organizations are eligible for state funding. Generally, these departments enjoy substantial fiscal autonomy, provided that they confine their activities to fire protection.

As noted above, there is great variety in the organization and operation of these special service areas. At the present time, the authority of these special service areas has not been challenged in court, so that it is impossible to define the limits of the legislature's discretion as to the manner and form that these service areas may take. If the past record is an indication of legislative authority, it can only be stated that the legislature possesses broad discretion in creating and organizing service areas, provided they remain impotent in regards to the levying of taxing authority.

C. ALASKA NATIVE GOVERNMENT ORGANIZATION

As with state chartered local governments, Alaskan Native governments can be categorized as general or special purpose governments. Additionally, there is an additional type of "quasi-governmental" entity. This latter type of entity is included in the following discussion.

General Purpose Governments.

It is commonly stated that there are two types of general Native governments in Alaska: Native Councils and IRA Councils.[62] It practices there is little difference between the operation of these two types governments. The distinction between the two governments is largely theoretical. This distinction is important, however, when the authority or status of the government comes into question.

i) Traditional Councils. In a strict sense, traditional councils are not traditional to the Alaska Native people. As pointed by David Case, the traditional precontact of Native governments were primarily based on family ties.[63] Traditional councils have been formed in reaction to contact with the non-Native culture for local representation of the

Native community before outside interest. Many of these councils have adopted formal traditional constitutions while others seem to operate according to an unwritten constitution analogous to the British constitution. In all cases, the basic level of organization is the village.

The basis of these government's authority rests in their retained sovereignty, i.e., the principle that absent express Congressional action to the contrary, Indian nations retain the inherent power of internal self-government.[64]

This observation has led to several inquiries regarding the tribal status of Alaskan Native villages. Although the question of tribal status in Alaska is intriguing from an ethnic and political perspective, its resolution has doubtful legal significance. More importantly, the courts have clearly stated that recognition of an Indian community's authority for self-government is directly linked to its dependent status with the federal government. In the United States v. Sandoval,[65] the Supreme Court stated that a Native community's dependent status is determined by legislative and executive course of action respecting the Native community in question.

Congress has specifically extended this recognition to Alaska Native villages and has treated them in the same manner as other Indian tribes. For example, Native villages receive identical treatment as Indian tribes under the Indian Self-determination Act,[67] the State and Local Fiscal Assistance Act of 1972,[68] the Housing and Community Development Act of 1974,[69] the Comprehensive Employment Training Act of 1974,[70] and the Indian Child Welfare Act.[71] Additionally, Congress has recognized self-governing qualities of Alaska Native communities when it provided for the extension of state civil jurisdiction over Alaska Natives. In applying PL 83-290 to Alaska, Congress expressly reserved that:

> Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community, in the exercise of any authority which it may posess shall, if not inconsistent

with any applicable civil law of the state, be given full force and effect in the determination of civil cause of action pursuant to this section.[72]

The executive branch has likewise dealt with Alaska Native villages as Native governments where it exercises discretion. The best example of this is the Omnibus Crimes Control and Safe Streets Act of 1968 which places responsibility of the Secretary of the Interior to determine those Indian tribes which perform law and order functions.[73] Under this authority, the Secretary of the Interior has recognized several Alaska Native villages as exercising the law and order functions including the employment of tribal police, establishment of tribal courts, to undertake corrections functions, and to adopt a law and order code.[74]

i) I.R.A.s. A second type of general Native government in Alaska is the "IRA Village Council." IRA stands for Indian Reorganization Act or the Howard Wheeler Act which was passed in the 1930s in an effort to modernize Indian or Native American governments.[75] IRA originally applied throughout the United States. Its application in Alaska was somewhat unique. A 1934 version of the Indian Reorganization Act provided that only "Indian tribe or tribes residing on the same reservation" could organize to adopt constitutions under the act. In that few reservations existed in Alaska at the time, the Act had, in its original form, doubtful utility in Alaska. To address the special problems of Indian organization in Alaska, Congress amended the Indian Reorganization Act in May of 1936 to specifically extend its provisions to the Territory of Alaska.[76] The operation of the Indian Reorganization Act under the 1936 Alaska amendment was substantially different than the general application of the Act in the "lower 48." The adoption of the Alaska amendment marked the extension of the reservation policy to Alaska. Under the Act, Indian communities could petition the federal government for the creation of reservations.[77] Between 1934 and 1949, several IRA reserves were established. The IRA reserve policy, however, was greatly opposed by non-Native residents of Alaska and through the operation of territorial politics, lawsuits and other pressures on the

Bureau of Indian Affairs, the Bureau abandoned the policy of creating IRA reserves in Alaska.[78] Even though the reservation policy was abandoned by the Bureau, the organizational efforts of the Bureau left in its wake a number of Native villages organized under the Act, but outside established reservations. Those few reservations actually formed pursuant to the Act were later revoked by the Alaskan Native Claims Settlement Act.[79] A net result of this course of events has left a number of Native governments continuing to operate under their IRA constitutions.

The legislative history accompanying passage of the Alaska amendment clearly indicates that Congress intended to recognize the Alaska Native village as analogous to a tribal organization. The House reports stated:

> The proposed amendment, number 1 above, set out is necessary because of the peculiar nontribal organization under which the Alaska Indians operate. They have no tribal organizations as the term is understood generally. Many groups that would otherwise be termed tribes live in villages which are the basis of their organization.[80]

In this sense, the Alaska amendment was consistent with the general statutory purpose of the Indian Reorganization Act. This general purpose was stated to be:

> To stabilize the tribal organization of Indian tribes by vesting such tribal organizations with real limited authority and by prescribing conditions which must be met by such tribal organizations.[81]

In light of these Congressional enactments and legislative history, it is clear that the Alaskan Native IRA Village Council is equivalent or at least analogous to the tribal organization found in the "lower 48." This principle is recognized under Alaskan state law and was enunciated by the Alaska Supreme Court in Ollestead v. Native Village of Tyonek.[82] In that case, the court recognized tribal status of the Native village of Tyonek council.

It is, therefore, clear that to the extent that they exist, Alaska Native Village Councils organized under Indian Reorganization Act are recognized as local tribal government organizations.

Special Purpose Governments

Whereas it is clear that the general purpose governments of Alaskan Natives are organized at the village level, additional special purpose Native governments exist which complicate the governmental pattern of Alaskan Natives. Most notable in this category is the Tlingit/Haida Central Council.

The specific status of Tlingit/Haida Central Council was litigated in Cogo v. the United States.[83] In that case, an individual brought a lawsuit against the Council to require inclusion in the preparation of tribal roll under the Tlingit/Haida Settlement.[84] In that case, the council successfully claimed sovereign immunity as a tribal organization. The plaintiffs argued that the Council was not a tribal organization, and, therefore, could not assert tribal sovereign immunity. Specifically, the plaintiff pointed to the language in the Indian Self-Determination Act which seems to indicate that in Alaska, the village council was the tribal organization. The court rejected the plaintiff's claim stating that the language in the Indian Self-determination Act was irrelevant for the purposes of this suit and went on to state and whereas the Tlingit/Haida Central Council certainly was not a tribal organization for the purposes of the Indian Self-Determination Act; it was a tribal organization for the purposes of Tlingit/Haida Settlement. This case has clearly established a principle that special purpose tribal governments exist in Alaska, however, the exact extent of such special purpose tribal governments have not been fully delineated.

The organization of the Inupiat Community under the Indian Reorganization Act presents a similar problem. Prior to the passage of ANCSA, the Inupiat Community organized several northern slope villages to form a regional IRA. The Department of the Interior takes a position for the purpose of the Indian Self-Determination Act, the Inupiat Com-

munity cannot enter into contracts or accept grants without the prior approval of the affected villages.[85] In both cases, the Solicitor has depended upon the terms of the Indian Self-Determination Act itself which defined "Indian Tribe" as:

> any Indian tribe, band, nation, or other organized group or community including any Alaskan Native or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act which is recognized as eligible for the special programs of services provided by the United States to Indians because of their status as Indians.[86]

In these special cases, it is unclear which is the special purpose government and which is the general purpose government. As a general rule, Indian nations have the power to determine their own form of self-government in accordance with the political and cultural history.[87] This is in accordance with the principle that "the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal governments existed."[88] Under these circumstances, it is necessary to review an organization's status on a case-by-case basis. In light of the Cogo decision, however, it is also necessary to review any relevant specific statutory law to determine if the respective organization has a special function under federal law.

Native Quasi-Governments

In addition to the general purpose governments and the special purpose governments outlined below, there exists entities which, may be called, for the lack of a better term, Native quasi-governments. These types of organizations are not governments in the formal sense, however, they exercise a variety of functions which are generally exercised by governments. In rare cases, these types of organizations have been formally recognized as exercising governmental authority. The most notable example is illustrated in the court case State v. Aleut Corporation.[89] In that case, several Native organizations sued the

Alaska Division of Lands to prevent a proposed sale of lands adjacent to their communities. In addition to various villages, the plaintiff's list included the Bristol Bay Native Corporation and the Aleut Corporation, both regional corporations formed under the terms of the Alaska Native Claims Settlement Act. The plaintiffs in that case sued under AS 38.05.305, which provided that the Division should give notice and consult with incorporated municipalities and other organized communities adjacent to lands proposed for sale by the state. The court recognized that ANCSA regional corporations perform a number of quasi-governmental functions in rural Alaska. However, the court specifically held that for the purposes of the Alaska Lands Act, regional Native corporations formed under ANCSA did not possess the requisite governmental attributes to qualify them for notice and consultation under the terms of the then existing statute. Subsequent to the Alaska Supreme Court decision, the Alaska Legislature amended the Alaska Lands Act to specifically require the Division of Lands to give notice to the regional Native profit corporations prior to a proposed sale of lands by the state. In 1979, the legislature again amended Section 305 to require the Division of Lands to give notice and consult with village corporations formed under ANCSA, similar to that notice given to organized municipalities. In light of this legislative history, it would seem that the Alaska Legislature intended to vest in ANCSA corporations certain specific governmental powers in spite of their general corporate character.

A second type of quasi-governmental Native organization is characterized by the regional Native nonprofit corporation. The activities of these regional nonprofits substantially vary. Their activities include Self-Determination Act contracting for the administration of BIA programs; contracting from HUD for the administration of housing projects; contracting under Title VI, the Comprehensive Employment and Training Act, for the operation of Native CETA programs; etc.

The basic model for the regional Native nonprofit organization was established under the terms of the Indian Self-Determination Act. That Act authorizes contracts between the BIA and Native governments or, in their place, Native organizations. In Alaska, BIA programs cannot

generally be effectively administered independently by the villages. The sheer cost of administering such programs at the village level makes such contracting not feasible. In response to this problem, Natives have organized along regional lines to form Native organizations which can effectively contract with BIA for the operation of BIA programs within their region.[90] With the exception of the Inupiat Community and the Tlingit/Haida Central Council, none of these regional Native nonprofit organizations possess de jure governmental authority. Rather, they only provide those services normally provided by BIA or other federal or state agencies on a contract basis with those agencies. In this way, they are capable of performing governmental functions without the prerequisite governmental stature.

PART II

COMPARISONS OF GOVERNMENTAL AUTHORITY

The question of governmental authority is actually a question of the respective jurisdiction of the governments in question. Basically there are two types of jurisdiction: Territorial jurisdiction, i.e., the geographical area over which a government's authority extends; subject matter jursidiction, i.e., the topical areas over which a government has the authority.

A. TERRITORIAL JURISDICTION

i) Municipalities. The Alaska Constitution provides that boundaries are determined by the Local Boundary Commission.[1] The Local Boundary Commission is charged by statute with establishing boundaries upon incorporations[2] and subsequent alterations.[3]

The territorial jurisdiction of Alaskan cities is ill-defined by Alaskan statutes. The statutes provide for the creation of boundaries,[4] which presumably infers that boundaries constitute the jurisdictional demarcation of a city.[5] This inference is further reinforced by statutes which provide for extra-territorial jurisdictions. These latter statutes authorize any municipality to provide parks, roads, trails, playgrounds, emergency medical services, cemeteries, and airports outside municipal boundaries.[6] Additionally, cities outside boroughs may exercise extra-territorial curfew regulation.[7]

On the other hand, borough territorial jurisdiction is clearly defined in regards to each respective power. Certain powers are "area-wide," i.e., a power of an organized borough exercised throughout the borough.[8] These include education, planning, platting, zoning, and tax assessment and collection and such additional powers acquired by the borough through transfer or referendum.[9] The borough may exercise other municipal powers as "non-area-wide powers," i.e., powers exercised only in the area outside of cities.[10] For first class boroughs,

any municipal power may be exercised as a non-area-wide power by ordinance.[11] Second class boroughs may only exercise certain enumerated powers as non-area-wide powers. These include regulatory power over fireworks, animals, motor vehicles, snow vehicles, garbage, water pollution, and any other municipal power specified in its charter or subsequently acquired by referendum.[12]

ii) Native Government. It is quite common that the various Native village constitutions, whether adopted under the traditional form of government or under the Indian Reorganization Act, fail to define the exterior boundaries of their territorial jurisdiction. It is, therefore, necessary to look to common law in order to determine the respective jurisdictions of the tribal organizations.

Generally, it is said that tribal law and custom are applicable within "Indian country." This rule was not altered when Congress extended the State of Alaska's jurisdiction to Alaskan Indian country. Congress expressly reserved that Indian law and custom shall be given full force and effect in the determination of civil causes of action arising within Indian country in Alaska.[14]

This observation, however, begs the question to whether Indian country exists in Alaska, and, if so, what are the limits of Indian country in Alaska. Unfortunately, in Alaska the question whether Indian country exists is largely disputed, and supported by a vacillating history of cases.

As Felix Cohen illustrates in his early attempt to define the term Indian country, the term is a dynamic concept. Originally, the concept seems to have been born out of respect for the territorial integrity of Indian nations.[15] Later, the idea was supported in the Jacksonian policy of Indian removal to reserves, a policy designed to physically separate Indians and the immigrant culture.[16] From thence, the concept found its way into the early Indian Intercourse Acts to indicate Indian lands west of the Mississippi.[17] From this point, the courts and Congress have separately, albeit tangentially, developed the concept of "Indian country."

Congress repealed the definition section of the act in 1834 and failed to reenact a substitute general definition of Indian country.[18] Later, however, Congress defined the term Indian country in relation to specific jurisdictional situations.[19] The only current federal statutory definition of Indian country exists in 18 USC 1151 which defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights of way running through the reservation.

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof and whether within or without the limits of a state.

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

It should be noted that this definition of Indian country only applies to a set of federal criminal statutes contained in Title 18 of the U.S. Code. The term Indian country, however, is also found in 28 USC 1360 dealing with state civil jurisdiction over Indians. The result is that there is no general statutory definition for Indian country, nor is there a statutory definition for Indian country in the civil sense.

The resulting ambiguity from the lack of a statutory definition of Indian country led to a series of Supreme Court decisions laying down the principal common law definition of Indian country. Felix Cohen states that the first ruling by the Supreme Court on the issue came in Bates v. Clark,[20] which stated in essence that:

"It follows from this that all the country described by the Act of 1834 is Indian country, remains Indian country so long as the

Indians retain their original title to the soil, and ceases to be Indian country when ever they lose that title, in the absence of any different provision by treaty or act of Congress."

This basic principle expanded in Donnelly v. U.S.,[21] where the court stated that executive order reservations constituted Indian country even though the respective band did not possess original title to the land in question.

Of more importance to the Alaskan situation however, was the case U.S. v. Sandoval, 231 US 28 (1913) which held that Pueblo lands not held in trust by the United States, but owned in fee simple by a Native community under a Spanish land grant, was in fact Indian country. In his treaties on the federal-Indian relationship, David Case pointed out that the Sandoval doctrine presents a clear analogy to the Alaskan situation where Native communities own land in fee simple through their Native corporations. In the Sandoval case, the court looked to the statutory definition embodied in 18 USC 1151 and held that the Pueblos of New Mexico were clearly dependent communities within the definition of Indian country. In a similar case, U.S. v. Chavez,[23] the Court defined Indian country as "any unceded lands owned or occupied by an Indian nation or tribe of Indians." If these Court cases are to be literally applied to the Alaska situation, it is clear that Indian country does exist in Alaska. However, the matter has never truly been settled.

The modern federal courts have only addressed the question whether Indian country exists in Alaska on three occasions. In the first case, regarding McCord,[24] the Court heard a petition in a proceeding for a writ of habeas corpus arising from a conviction for statutory rape occurring upon the Tyonek Indian Reserve. In that case, the Court followed the Donnelly decision and held that the executive order reservation was in fact Indian country which denied state jurisdiction to prosecute the defendant in the case. The second major case following McCord by one year, was U.S. v. Booth.[25] In that case, the court held that the Metlakatla Indian Reservation did not constitute Indian country because the reservation was not a "reservation in the tradi-

tional sense." The court further distinguished the case from McCord by noting the different conditions and history behind the Metlakatla Reservation. The decision in the McCord case, however, led to a general public outcry in concern over the lack of law and order within Indian country in Alaska. Alerted to this apparent gap in jurisdiction, Congress passed an amendment to PL 83-280 including Alaska among those states where mandatory state jurisdiction extended over Indian country within the borders of the state.[26] The legislative history behind this action clearly indicates that the Congress reacted to the holding in the McCord case, and clearly desired to overrule and reverse the precedents set by that case.[27] If the application of PL 280 in Alaska was a congressional reaction to McCord, not Booth, it is safe to assume that the holding in McCord was a correct statement of the legal crisis prior to the application of PL 280 to Alaska. In that the Act specifically states that the State of Alaska shall have jurisdiction over Indian country within its borders, it seems incredible to assert that Indian country does not exist in Alaska.

But the doctrinal confusion regarding the existence of Indian country in Alaska has continued. This is primarily due to the nature of the cases in which the claim of Indian country arises. For example, in the People of South Naknek v. Bristol Bay Borough,[28] the plaintiffs claimed a tax exemption for Native townsites within the borough by claiming that the townsites were Indian country and therefore exempt from state taxation. The court firmly refused to attempt an answer as to whether or not the land in question was in fact Indian country. The court, however, noted the historical confusion over the question of Indian country in Alaska. The court blamed much of this confusion on "one of the principal Indian jurisdictional cases that has emerged from Alaska," specifically, the Organized Village of Kake v. Egan.[29] Like Naknek, the Kake case arose out of a claim denying state jurisdiction. It is important to note, however, that the case did not deal with the question of Indian country per se, but addressed a narrower question of whether state law applied to off-reservation Indians. It should be noted that the mere existence of Indian country and consequent tribal jurisdiction is not an exclusive claim to jurisdiction and does automatically not deny state criminal and civil jurisdiction.

As noted earlier, Alaska is subject to the mandatory provisions of PL 83-280 which authorized the extension of state jurisdiction over Indian country. As a general rule, however, the application of PL 83-280 does not create exclusive state jurisdiction nor does it substantially affect tribal jurisdiction. In the case Bryan v. Atasca County,[30] the court clearly stated that:

> . . . nothing in its [PL 280] legislative history remotely suggests that Congress meant the Act's extension of civil jurisdiction to states would result in the undermining or destruction of such tribal governments as did exist and a conversion of the affected tribes into little more than private voluntary organizations.[31]

In reaching this conclusion, the court noted that 28 USC Section 1360(c) provided for full force and effect of any tribal ordinances or customs heretofore or hereafter adopted by an Indian tribe if not inconsistent with any applicable civil laws of the state. In light of these cases, it would seem that territorial jurisdiction over those areas which can be determined to be Indian country, would seem to be concurrent between the state and the tribe.

There remains, however, substantial concern that the Alaska Native Claims Settlement Act placed in question the existence of Indian country in Alaska. Specifically, concern centers around Section 19, which revoked existing reservations in Alaska. The supporters of this theory contend that, when the reservations were revoked, the territorial jurisdictions of the respective villages was destroyed. The argument, however, rests upon the proposition that Indian country is exclusively coexistent with reservations. The Supreme Court has clearly announced that there is nothing magic in the term "reservation."[32] It is also clear that tribal jurisdiction is not dependent upon federal ownership of the territory in question. The Pueblo cases arising out of the New Mexico situation clearly demonstrate this. For example, in Chavez, Indian country was defined as "any unceded land owned or occupied by an Indian nation or tribe of Indians." It is not necessary that clear, unequivocal boundaries be established. Rather, it is only

necessary that the lands in question are occupied by "distinctly Indian communities" recognized and treated by the government as dependent communities entitled to its protection.[33] Applying this rule to Alaska subsequent to ANCSA, it is quite easy to identify those villages in rural Alaska which continue to be predominantly Native. Such communities retain substantial cultural, social, and economic characteristics identifiable as Native. Those villages clearly fall within the definition of a dependent Indian community enunciated in the Sandoval decision. Additionally, it must be recognized that ANCSA clarified continued Native title to certain lands within the state. Under the terms of the Act, Alaskan Native aboriginal claims to the land were extinguished.[34] In compensation for the extinguishment of such claims, Alaska Native villages were allowed to select and receive substantial amounts of land surrounding the villages.[35] The main effect of this act was to continue Native occupancy and ownership of a substantial amount of land surrounding Native communities, thus those lands selected and ultimately conveyed to the village corporations clearly constituted "unceded lands owned and occupied" by the Native villages concerned. Thus, the definition of Indian country as specified in the Chavez case is clearly met. As noted earlier, the fact that such lands were conveyed in fee simple is irrelevant under the terms of the Sandoval case.

Of course, this does not address the substantial concern which may arise upon subsequent land transfers by the respective Indian communities. The problem presents itself in two distinct situations. First, what is the status of lands originally selected by a village corporation and then conveyed by the corporation to non-Natives? Secondly, what is the status of lands subsequently acquired by the Native village?

The basic rule governing subsequently acquired Indian lands and their respective status as Indian country was laid down. In that case, the lands in question were lands owned by the United States and purchased out of funds appropriated by Congress for this purpose. The ruling that such lands were in fact Indian country relied on the role of the government in the establishment of the colony. The role of the federal government in the creation of the Reno Colony is substantially

analagous to the role of the federal government in the identification and conveyance of lands received under the terms of ANCSA. Subsequent purchases of private land by Alaskan Native villages in fee simple would by definition not involve the federal government. Under the rationale of McGowan, the diminished federal role in the identification of Indian lands would substantially impact the status of those lands under the McGowan test. Subsequently, acquired land which would not involve federal government participation in the acquisition of such land would clearly not extend village jurisdiction.

The above type of subsequent acquisition, however, should be sharply contrasted from acquisitions authorized under the Indian Reorganization Act.[36] Lands acquired in this manner would fall under the black letter rule of McGowan, so that lands subsequently acquired pursuant to the terms of the Indian Reorganization Act would clearly extend village jurisdiction to those lands.

The possibility that a village might sell or otherwise dispose of village lands to nonmembers of the community presents a substantially different problem. In the case Seymour v. Superintendent,[37] the United States Supreme Court held that lands conveyed to non-Indians within the exterior boundaries of a former reservation did not lose the character of Indian country. This rests upon the theory that once Congress has set aside certain lands for the use and occupancy of Indians, such use and occupancy shall not be disturbed. Broadly applying this principle to Alaskan Native villages, it would seem that lands within the Alaskan Native village selections authorized under the terms of ANCSA, would continue to be Indian country in spite of subsequent conveyance of such lands to non-Indians by the village.[38] In contrast to these decisions, however, is the decision in DeCoteau v. District County Court.[39] In that case, the Court held that the Lake Traverse Indian Reservation in South Dakota was terminated and returned to the public domain and, hence, Indian country on the Lake Traverse reservation ceased to exist on this reservation. The Court in DeCoteau noted that the Act in question was a ratification of a prior negotiated agreement which was fully intended to terminate the reser-

vation. By the terms of the agreement itself, the Indians would "cede, sell, and relinquish, and convey" all the remaining land in the reservation. The court distinguished Matz and Seymour as being cases involving unilateral Congressional action rather than possession or sale of land by the Indians. From this line of cases, it is only reasonable to conclude that a sale of Indian lands by a village would result in the relinquishment of tribal jurisdiction over those lands.

iii) Summary Comparison. In summary, it seems clear that the territorial jurisdiction of state municipal governments are basically defined in terms of their boundaries. Borough's territorial jurisdiction may be limited in regards to a number of powers by the existence of cities within its boundaries. Finally, all municipalities may exercise extraterritorial jurisdiction in respect to certain enumerated powers. The procedure for enlarging or diminishing boundaries is statutorily prescribed. In contrast, a Native village government's territorial jurisdiction is defined in reference to the village's "Indian country." It is most likely that a village's Indian country is coextensive with lands received under ANCSA, and any other lands subsequently acquired with federal participation. A village's Indian country may be diminished through unilateral sale or cession of village lands.

PERSONAL JURISDICTION

In contrast to a municipal government, tribal government has very limited personal jurisdiction. Whereas personal jurisdiction of a municipality extends to all or most individuals within its territorial jurisdiction, a tribe's jurisdiction is generally linked to its membership. The U.S. Supreme Court enunciated the basic principles of tribal personal jurisdiction in the companion cases, Oliphant v. Suquamish[40] and U.S. v. Wheeler.[41] In Oliphant, the Suquamish tribe attempted to enforce a local traffic ordinance against a nontribal member. In its decision, however, the Court denied the tribe's claim to jurisdiction over nonmembers. In Wheeler, however, the Court upheld the Navajo Reservation's claim to enforcement jurisdiction over tribal members.

There are basically two ways to interpret the meaning of these cases. In the broad sense the Oliphant decision can be interpreted as denying tribal jurisdiction in a general sense over nontribal members. It is important to note, however, that the Court in Oliphant did not overrule the holding in U.S. v. Mazurie. In that case, the court upheld the extension of tribal liquor ordinances over nonmembers of the tribe. Although the cases seem irreconcilable at first glance, there were substantial differences in these two cases. In Mazurie, the Court upheld the prescriptive, i.e., legislative, act of a tribal government and stated that such prescriptive or legislative acts extend and apply to nontribal individuals. The actual enforcement mechanism in the Mazurie case were federal authorities, i.e., the federal courts. In contrast, the tribe in Oliphant was attempting to enforce tribal ordinances through tribal courts. The only way these two cases can be reconciled is to recognize that tribal ordinances extend to nonmembers and that tribes have the prescriptive jurisdiction over nontribal members. In contrast, Oliphant tells us that tribes do not have enforcement jurisdiction over nonmembers. The result is that tribes must seek alternative enforcement mechanisms against nontribal members, i.e., the state or federal courts. As noted in Bryan v. Itasca, federal courts are not available in a PL 280 state such as Alaska in that federal jurisdiction has essentially been withdrawn. Thus, the state courts are the only forum for enforcement of tribal ordinances which are available in a PL 280 state. As noted above, however, "PL 280" requires the state to give "full force and effect" to valid tribal ordinances in civil cases.[43] Under this rationale, a village would have prescriptive jurisdiction over non-tribal members with state enforcement in civil matters.

There remains, of course, the question of criminal cases. PL 280 has no comparable requirement for "full force and effect" of tribal ordinances in criminal cases. There exists, however, two lines of authority on this issue. Some states have extended "full faith and credit" to tribal ordinances by holding that a tribe is a "territory" under 28 USC 1738.[44] On the other hand, many states have refused full faith and credit, but have extended "comity" to tribal ordinances.[45] The issue remains unresolved.[46]

B. SUBJECT MATTER JURISDICTION

Subject matter jurisdiction refers to the types of issues with which a government may concern itself. Often subject matter jurisdiction is referred to as the "powers" of a government. Title 29 of the Alaska Statutes enunciates in a comprehensive manner, the powers of state chartered local governments. In contrast, there exists no similar comprehensive and authoritative exposition of tribal powers. Understanding tribal powers requires a thorough review of a substantial body of federal and international common law. Finally, there exists a less formidable body of federal common law governing the interaction of these respective jurisdictions.

1) Concurrent Jurisdiction

There are two basic principals governing the interaction between municipal and tribal governments.

The first principle was enunciated by the United States Supreme Court in Williams v. Lee.[47] In that case, the United States Supreme Court held that states have jurisdiction over Indians except where such state jurisdiction infringes upon tribal self-government. This test was specifically applied to Alaska in Organized Village of Kake v. Egan.[48] In that case, the Court analyzed the development of this principle and stated:

> "these decisions indicate that even on reservations, state laws may be applied to Indians unless such application would interfere with reservations, self-government, or impair a right granted or reserved by federal law."

In explaining these lines of decisions, the Supreme Court further stated that, "it must be remembered that the Courts in applying the Williams test, have dealt principally with situations involving non-Indians."[49] In these situations, both the tribe and state fairly claim an interest in asserting jurisdiction. The Williams test was designed to

resolve this conflict, but providing that the state could protect its interest in its non-Native citizens up to the point where tribal self-government would be affected.[50] In fulfillment of this policy, cases arising between tribal members fell within the exclusive interest of the tribal government.

The second major principle is a modification of the above rule required by the fact that Alaska is governed by the operation of Public Law 280.[51] Generally, this law confers upon the state criminal and civil jurisdiction to adjudicate matters between Natives within Indian country. It is important, however, to understand the parameters of PL 280 as recently defined by the courts. The courts have generally attempted to limit the effect of PL 280 because of the "devastating impact on tribal governments" that the law has had.[52] In Brian v. Itasca County, the U.S. Supreme Court in commenting on PL 280 stated:

> "nothing in this legislative history remotely suggest that Congress meant the acts extension of civil jurisdiction to the states should result in the undermining or destruction of such tribal governments as did exist in a conversion of the affected tribes in the little more than "private volunteer organizations," a possible result if tribal governments and reservation Indians were subordinated to full Panoply of civil regulatory powers, including taxation of state and local governments. The act itself refutes such an inference: There is notably absent any conferral of state jurisdiction of the tribes themselves and Section 4 C, 28 U.S. C Section 1360(C) (28 U.S. CS Section 1360 (C)), providing for the "full force in effect" of any tribal ordinances or custums "heretofore or hereafter adopted by An Indian Tribe...if not inconsistent with any applicable civil laws of the state, contemplates the continuing vitality of tribal government."

The court went on in a footnote to further explain this policy of promoting Native governments. In a comment of particular importance to Alaska, the court stated:

"the suggestion is that since tribal governments are disabled under many state laws from incorporating as local units of government, general regulatory control might relegate tribal governments to a level below that of counties and municipalities, thus essentially destroying them, particularly if they might raise revenue only after the tax base had been filtered through many governmental layers of taxation. Present federal policy appears to be returning to a focus upon strenghthening tribal government...and the Court of Appeals of the Ninth Curcuit has impressed the view that courts are not obliged in ambiguous instances to strain to implement an assimilationist policy Congress has now rejected, particularly, where to do so will interfere with the present Congressional approach to what is after all an ongoing relationship."[54]

This general policy, favoring the strengthening of tribal governments has two effects.

First, PL 280 does not confer a state's general civil regulatory control over Indian country.[55] Although the Supreme Court has failed to fully define what the scope of "regulatory" means, it is clear that taxation of personal property on trust land,[56] zoning authority,[57] and outdoor advertizing[58] in Indian country is beyond the state authority. The second effect of Brian v. Itasca was that PL 280 only made applicable to Indian country those state laws which "had a general applicability throughout the state." In short, this general principle denies the authority of local governments to exercise authority over Indian country since their authority does not extend throughout the state.[59] This basic principle, if applied in Alaska, could have a crippling effect on rural municipal governments in Alaska. The result would be the creation of local governments chartered under state law whose authority only extended over non-Indians. The end result would be the creation of parallel local government units incapable of exercising jurisdiction over the respective persons subject to the other local government's personal jurisdiction.

2) Local Government Powers.

The basic rule regarding the powers of a tribal government is that such powers are not in general delegated powers granted by express Acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished.[60] This has recently been compared with the concept of home rule under Alaska state law.[61]

In contrast, Alaskan municipalities are of two types. A home rule municipality, like an Indian tribe possesses all local government powers not reserved from it by state law.[62] A general law municipality possesses powers delegated to it by state law.[63] As noted above, Alaskan municipalities are further divided between cities, boroughs, and service areas.

Basically, all these municipalities exercise four types of powers.

A municipality possesses "general powers" related to the municipal corporate identity. These powers include the power to be sued, power to employ municipal officers and officials, power to be sued, power to levy taxes and special assessments, enforce ordinances, prescribe penalties for violations, acquire manage control use, and dispose of personal and real property to promote legislation for the municipality to expend funds for community purposes, and to borrow money and issue evidence of undebtedness. By statute, all municipalities possess the unilateral authority to exercise these powers.

Second, municipal organizations possess "regulatory powers," which relate to: public rights-of-way facilities to services, traffic and general transportation including buses, taxis, etc., animal control, sales of goods, foods, and alcoholic beverages, dangerous insect and rodent control, recreational devices, building codes, public nuisance abatement, garbage & solid waste collection, water and air pollution, licensing of day-care facilities, police powers, or other general health safety and well-being welfare functions.[65]

As a general rule, cities possess the unilateral authority to exercise the regulatory powers. Boroughs, however, are subject to a narrower grant of authority depending on whether the power is area-wide or non-area-wide (see Part II (i) above).

Third, Alaska Statutes outline a number of municipal facilities and services which municipalities may provide. These include services and facilities relating to streets and sidewalks, sewage treatment facilities, harbors, flood control, health and hospital services, cemeteries, police and jail services, cold storage, telephone, lights, power, heat, water, transportation, community centers, libraries, recreation facilities, airport facilities, garbage facilities, fire protection, parking, urban renewable, consumer protection, and historical sites, buildings and monuments.[66] Any city may exercise the powers necessary to provide these facilities, however, boroughs must assume the powers to provide these facilities and services in a like manner required for the exercise of regulatory powers. Third class boroughs are not specifically authorized to provide such facilities and services.

Fourth, municipalities are authorized to exercise what are commonly called area-wide powers, i.e., education, and planting, platting, and zoning authority. Generally, first and second class boroughs have the statutory authority to unilaterally provide such services on an area-wide basis. All third class boroughs may provide educational services on an area-wide basis and may, upon voter approval, exercise planning and zoning authority. As a rule, cities do not exercise such powers except when they are located outside borough boundaries.[68]

An exhaustive comparison of these powers is certainly beyond the scope of this project if not impossible, however, it is possible to select three areas for special consideration.

i) Police Powers. While municipalities possess police powers,[69] tribes possess the power to regulate the conduct of members.[70] The federal government has withdrawn tribal jurisdiction over most felony crimes by enactment of the Major Crimes Act,[71] and Assimilative Crimes Act.[72]

Both the tribe and the municipality are limited from prescribing a punishment for violation of an ordinance in excess of $500 and/or thirty (30) days in jail.[73] Municipalities are prevented from operating "courts" since the Alaska Constitution provides for an integrated court system under state government.[72] This constitutional reservation of power to the state, however, does not prevent municipalities from operating "administrative tribunals" capable of enforcing its ordinances.[73]

Such tribunals, however, are subject to the same constitutional guarantees protecting the rights of the accused, where the ordinance provides for the regulation of acting which traditionally connotes criminality.[74]

In contrast to municipalities, Native governments possess the inherent power to create courts to enforce their ordinances.[75] Such tribal courts are not generally subject to the individual guarantees of the Bill of Rights.[76] To rectify this, Congress passed the Indian Civil Rights Act of 1968,[77] which applies the constitutional protections of the Bill of Rights to Indian governments.

ii) Planning. Both tribes and municipalities possess planning authority. Alaska statutes specifically provides for municipal planning authority. Within organized boroughs, planning is an area-wide function of the borough.[80] Of course, the borough may also delegate such powers to a city within its borders.[81] Outside organized boroughs, first class cities are required, and second class cities may exercise planning powers.[82] In unorganized areas of the state, planning authority rests with the Department of Natural Resources.[83]

Tribal planning authority is a power retained by tribes in the absence of contrary federal law. This authority is already expressly recognized by the state. While the Court in State v. Aleut Corp.,[84] held that ANCSA regional corporations lacked governmental planning authority so as to require the State Division of Lands to give notice of pending land actions, the Court also held that traditionally organized Native villages constituted local authorized planning agencies.[85]

While both entities enjoy substantially similar planning authority, the entities implement this authority in substantially different ways. Muncipalities have authority to directly implement their plans through zoning, platting,[86] and operation of their program. The municipality, however, is not able to direct state agencies to comply with its plan. For example, the prior A.S. 29.33.090(d) required certain state land management programs to comply with municipal plans. This was repealed.[87]

Municipalities also may implement their plans through its licensing power over vehicles, animals, day care facilities, etc.[88]

A tribe's most potent implementation tool is its recognized authority to license. For example, in U.S. v. Mazurie,[89] the Supreme Court upheld a tribe's right to license bars owned by non-Natives on fee simple land within Indian country.[89] Secondly, a village may regulate the nature of member's ownership rights property.[90] Finally, there is some authority to believe that a Native village government may exercise zoning authority over Native land. In Santa Rosa Band of Indians v. Kings County,[91] the Court struck down local zoning ordinances holding that "the extension of local jurisdiction is inconsistent with tribal self-determination and autonomy."[92] This infers, of course, that the local government invaded a power to zone reserved to the tribe.

iii) Taxation. The right of a Native government to tax is a retained sovereign power.[93] The extent of this power is almost wholly uncertain, since few Native governments exercise this power. It would seem that a tribe may impose taxes on business,[94] lawyers,[95] or to accompany tribal permits.[95]

The taxing powers of municipalities are more clearly defined. They may levy sales and use taxes,[97] and property taxes.[98] These taxing powers are subject to a substantial number of exemptions and limitations.[99]

PART III

SUGGESTIONS TO INCLUDE NATIVE VILLAGE GOVERNMENTS WITHIN THE ALASKAN LOCAL GOVERNMENT SYSTEM

A. POLICY CONSIDERATIONS

The decision to allow inclusion of the Native tribal government within the local government system within the State of Alaska local government system is, of course, a policy issue. The Alaska Constitution and the basic principles which underlies Article 10 dealing with local government in Alaska provides certain objective standards for policy evaluation. The local government committee of the Alaska Constitutional Convention articulated five basic principles which guided the drafting of Article 10. These basic principles are:

1. Self-government.
2. A unified local government system.
3. Prevention of overlapping tax authorities.
4. Flexibility.
5. State interest.[1]

The inclusion of Alaskan Native tribal government within the state local government system is consistent with these principles first enunciated in the Constitutional Convention.

1. Self-government. The maximization of local control over local government was a primary concern of the framers. This policy is specifically enunciated in Section 1 of Article 10 of the Constitution which provides that, "the purpose of this Article is to provide for maximum local self-government..." This concern is reflected in other provisions of Article 10. For example, Section 6 provides that the legislature shall provide performance of services that it deems necessary and advisable in the unorganized boroughs "allowing for maximum

local participation and responsibility." Section 9 provides that home rule charters of first-class municipalities shall be approved by popular election. This policy favoring local self-government in municipal matter is consistent with federal policy favoring self-determination of Indian tribes. Fundamental to self-government/self-determination, is the right of people to determine what form their government shall take and to establish rules and regulations regarding the management and operation of that government. For a variety of reasons, several Alaskan Native villages have failed to organize a second-class city under the Alaska state law preferring rather to organize themselves exclusively as Alaska Native villages. In many cases, such organizations reflect a community decision to organize a local government which best reflects the cultural and social character of the respective community. Under this rationale, the state should encourage communities to organize themselves under any authorized governmental form which best represents the respective communities' social, cultural and economic pattern. The inclusion of Native governments within the system of Alaska state local government promote that policy. This action would broaden the number of local options available to communities desiring to organize.

2. Integrated local government system. The framers of the Alaskan Constitution desired to create a single system of local government within Alaska. As noted by this report, however, two parallel systems of local government exist in Alaska, i.e., state chartered municipalities and tribal government. The quality and quantity of interaction between these two types of government varies from community to community. The quality and quantity of possible interaction ranges from substantial cooperative efforts to substantial opposition. Often times coordination between governments is merely a function of interlocking office holders. Where the Native council and the city council are substantially the same, the respective governmental efforts are highly coordinated. In contrast, where the councils are not interlocked there is little coordination and often counterproductive efforts. State and federal program operation is often dependent on this cooperation, since state programs prefer to operate through municipalities and many federal programs operate through tribal governments.

In contrast, non-recognition problems result where a community is exclusively organized as a Native village government. Such communities are not immuned from the same problems which plaque communities organized as municipalities. Where the municipality may draw on the resources of the state to help address such problems, the Native village encounters greater reluctance by the state to render equal assistance. The obvious solution to this problem is for the community to organize as a municipality. The community would in fact only trade problems--i.e., the community would trade a reluctance on part of the state to render assistance in exchange for duplicity and confusion of local government.

The inclusion of the Native government within the local government system, therefore, would further state policy favoring a unified local government system. It would promote cooperation where parallel governments exist and it would alleviate the necessity of creating parallel local governments where none exist now.

3. Prevention of overlapping taxing and authorities. As noted above, the framers of the Alaska Constitution specifically intended to eliminate overlapping tax authorities and promote physical integration within local government. For this reason, Article 10, Section 2, specifies that cities and boroughs are the only local governments authorized to tax under the Alaska Constitution. As noted above, however, this plan is somewhat frustrated by the existence of Native government which possess authority to levy taxes and dues on members. Additionally, the eligibility of Native villages to receive intergovernmental revenue transfers supports the state's objective to facilitate fiscal integration of local government. This lack of fiscal integration within the community leads to a number of problems including duplicate accounting systems, redundant and excessive administrative costs and, in some cases, program duplication. The framers had hoped to avoid such problems in adopting a policy favoring fiscal integration. The inclusion of Native governments within the local government system will help avoid these inefficient fiscal management systems as intended by the framers of the Constitution.

4. Flexibility. Throughout the Constitutional floor debates, the drafters of Article 10 emphasized their desire to provide a "framework" for local government which would be flexible enough to meet community demands throughout a highly pluralistic state such as Alaska. Native governments represent a flexible accommodation to the need for pluralistic representation in local government. It, therefore, follows that the inclusion of such governments fulfill a constitutional policy favoring flexibility in Alaskan local government.

5. State interest. As noted above, the framers of the Alaska Constitution felt that strong local government was a mechanism to facilitate the decentralization of state government. It was fully intended that strong local government could perform traditional state functions much better than a centralized government structure. This plan, however, is dependent on the existence of local government. The state by necessity remains responsible for the provision of basic services in the unorganized areas of the state. Thus, good strong local government serves the state's interest in a long term. The existence in unrecognized, parallel, and competing systems of government at the local level serves to delete the potency of local government and thereby thwarts the efficient implementation of the eventual decentralization of state government. The inclusion of Native governments within the system of local government within the State of Alaska makes available to the state existing government entities capable of pursuing the state's interest. In this sense, the Native government can serve as a conduit for the provision of state services. In a limited sense, the state has already adopted this policy. For example, in the Coastal Zone Management Act, the Rural Development Act, the Municipal Trust Land (14c) Program, the Community Legal Assistance Program, the Community Miscellaneous Assistance Program and various state contracting programs utilize Native government to administer and otherwise implement these programs where substantial community participation is required. The general inclusion of Native governments within the local government system of the State of Alaska will make available to the state a valuable local instrument for the fulfillment of the state interest.

6. Fundamental Rights. The greatest concern over inclusion of Native village governments into the Alaska local government system is the fact that the Native governments are racially defined institutions. As such, it is feared that non-Natives will be relegated to a status of second class citizens in their own communities. This view is founded on two questionable assumptions: 1) non-Natives cannot participate in Native government, and 2) non-Natives have no rights under a Native government.

It is a general rule of law that a Native tribe has the exclusive authority to determine its membership.[2] This power specifically includes the power to provide for adoption of non-Natives into the tribe.[3] This general rule is subject to one exception. The Secretary of the Interior is charged with the responsibility of determining tribal enrollment for the purposes of distributing tribal trust funds.[4]

In contrast, Native governments providing services under federal contracts may also render services to non-Native tribal members, since for the purpose of contracting "Indian" is defined in terms of tribal membership.[5] Benefits provided through state revenue sharing are required by state procedures equally available to non-Native residents of the respective communities. Thus, it is quite possible for non-Natives to fully participate in Native government.

Participation by non-Natives in Native government is quite common, despite efforts of the B.I.A. to discourage the practice. In one case, a Native village constitution goes so far as to guarantee non-member/non-Native heads of households representation on behalf of their Native children before the Native council.[6] In practice, Native councils are reluctant to open village roles to non-Natives who may be transient or are reluctant to establish permanent ties with the community. This is understandable in that membership in a village generally carries with it cultural duties and obligations. This reluctance is analogous to the policy of the federal government to extend citizenship to aliens, or for that matter, the reluctance of the State of Alaska to extend full state benefits to "cheechakos."

The second major concern relates to the individual rights of non-Natives under Native government. The prime guarantee of individual rights under a Native government is the Indian Civil Rights Act of 1968.[7] The Act mandates that a Native government provide many of the same individual protections provided under the U.S. Constitution. These include:

- free exercise of religion
- freedom of speech, press and assembly
- freedom of unreasonable search and seizure
- protection from double jeopardy and self-incrimination
- protection from taking of property without compensation
- right of due process and counsel
- protection from cruel and unusual punishment and excessive bail
- right to equal protection of the laws
- prohibition of bills of attainder or expost facto laws, and
- right to trial by jury

These rights extend to members and non-members alike.[8]

There is some concern that the Act only provide relief through the right of habeas corpus. This concern focuses around dicta contained in Santa Clara Pueblo v. Martinez.[9] In that case, the Court review a tribal ordinance which conferred benefits upon tribal members based upon distinction between patritinial/matritinial ancestors. In dicta, the Court stated that Congress only provided one clear remedy for plaintiffs under the Act - i.e., habeas corpus. A full reading of Martinez, however, reveals that the holding of the case rests upon a test which balances the two current policies of federal Indian law - i.e., self-determination and protection of individual rights. As one commentator remarked, "In litigation under the Indian Civil Rights Act, federal court jurisdiction outside the scope of habeas corpus proceedings has been firmly established.[10]

Conclusion. While the municipalities and tribes do not have co-extensive powers, they have many similar areas of concern where their powers overlap. It should be remembered that the tribal organization is a governmental unit with broader areas of concern and responsibility than the municipality. For example, tribal powers include regulation of property rights, marital relations, and child custody.[100] Tribes provide employment, welfare, economic development, child protection, and various other services generally felt to be beyond the scope of local government. As local government in Alaska develops along the path of decentralization envisioned by the framers, it is likely that municipal governments will also address these subject areas. In any case, it is clear that village and municipal government are not the same thing. It is also evident that they are closer than commonly perceived.

B) PROPOSALS

There are three basic concepts which would allow inclusion of Native governments in the State system of local government. These three concelpts are incorporation, service area designation, and recognition.

i) Incorporation- Incorporation is the formation of a unit of local government. Theoretically it is possible to incorporate Native governments as units of local government under State law. As noted in Part IA, above, this has been attempted twice in the past. Several current second class cities were originally incorporated under the 1957 Act. The Native character of these governments- ie the attributes of tribal self-government- have been so eroded that they are not currently recognized as tribal enities by their people or the federal government.

This is not to say that incorporation is not possible. In Bryan v Itasca[11] the Court stated that one reason it was reluctant to extend local government jurisdiction over Native communities was the fact that many states did not allow incorporation of Native government under state law. This implies, of course, that such incorporation is constitutionally permissible. As noted above, however, Alaska is not bound by the

standards of the U.S. Constitution when it is faced with interpreting the Alaska Constitution.. There is no precedence at all in regards to the position of the Alaska Constitution on this issue. Thus, incorporation of Alaska Native village government would be Constitutionally uncertain.

ii) Service Area Designation. Service area designation would allow the formation of service areas in unicorporated areas so as to provide a local mechanism for the provision of state services. This concept has two limitations. First, the Constitution prohibits the use of service areas where the service contemplated could be rendered through a city of annexation by a city.[12] This means that the service area could not be formed in cities. Secondly, the service area is a local government unit, and designation of a Native government would be akin to incorporation, ie Constitutionally uncertain. To provide for independent organization of the service area would only be fostering futher creation of parallel local government units.

iii) Recognition. Recognition is a concept borrowed from international law. Itis the process whereby one government acknowledges the authority of another government. It is more than taking note of a mere fact. It is the process whereby two governments seek to establish intergovernmental relations. There are two types of recognition- recognition of the community and recognition of the government. Recognition of the community is acknowledgement that the community is a legal enity capable of being organized under an independent and effective government.[14] Recogniton of the government is acknowlegement that an individual or body of individuals act as the government for the community.[15]

The use of the concept of recognition is quite useful in the context of Native governments, since the state is not attempting to create a racially defined institution under its own authority. Rather the State is acknowledging the existence of the Native communities and governments. Thus the Native government gains no authority from the State, but merely enters into cooperative relations with the existing governments

The draft bill (see Appendix A) would be sufficent to carry out this task. In addition to recognition, the bill defines the method whereby the State will engage in realtions with the Native Villages. The proposal anticipates that Native villages could participate in State programs to the same extent as second class cities. This is analogous to federal programs which extend participation to states and tribes.[16] Incident to recognition, the bill will clarify the status of Native village laws before state courts.

The bill also proposes cooperative agreements between the State and the Native governments to carry out State programs. This section anticipates the passage of the Tribal-State Compact Act[17] which would allow federal funding of programs conducted under a State-Tribal agreement, and thus reduce the burden on the State treasury for those areas affected by these agreements.

Finally, the bill conditions the realtionship upon the Native government compling with antidiscrimination provisions. This of course exempts federally funded Indian programs. The bill allows the Governor to enforce compliance through withdrawal of recognition.

The bill does not attempt to expand the jurisdiction of the State or the Native village. Section three (3) allows municipalities and villages governments to enter into similar agreements.

APPENDIX A

A BILL

For an Act entitled : "An Act relating to Native Village Governments."

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

* Section 1. FINDINGS AND PURPOSE. (a) The legislature has determined that

(1) there exist within the state several communities which have Native village governments whose members are citizens of the State; and

(2) the law and customs of Native village governments include notions of democracy, liberty, and the exercise of personal rights consistent with the State and federal constitutions.

(b) It is the purpose of this Act to

(1) extend recognition to Native village governments and encourage them in the administration of local government;

(2) provide for cooperative agreements between the State government and Native village governments to promote the equitable delivery of State services.

* Sec. 2. AS 29 is amended by adding a new chapter to read:

CHAPTER ____ NATIVE VILLAGE GOVERNMENTS.

Sec. 29. --. 010. NATIVE VILLAGE GOVERNMENTS. The State of Alaska hereby recognizes the Native Villages as distinct, independent, political communities exercising original tribal soverienty in dependent association with the United States. Any Native village ordinance or custom heretofore or hereafter adopted by the duly constituted governing body of Native Village, in the exercise of any authority which it may possess shall, if not inconsistent with any applicable law or constitutional provision of the State of Alaska, be given full force and effect within the Alaska State Courts, Provided that such Court shall have jurisdiction to hear such cause

as a result of the withdrawal of federal jurisdiction pursuant to P.L. 83-280 (67 Stat. 588), as amended by P.L. 85-615 (72 Stat. 545).

Sec. 29.—. 020. ELIGIBILITY FOR STATE PROGRAMS. A Native Village government, for a village which is not incorporated under this title, and is not located within an organized borough is

a) eligible to participate in all State programs to the same extent and in the same manner as a second class city;

b) entitled to notice concerning proposed actions by the state to the same extent as a government of a second class city is entitled to notice;and

c) entitled to consultation with the state on state actions and programs which affect the village to the same extent that the government of a second class city is consulted on state actions and programs.

Sec. 29.--.030. AGREEMENTS. (a) A Native Village government or a group of Native village governments may negotiate agreeements with the Commissioner regarding coordination of State and Native Village facilities and services which may include judicial, law enforcement, and correctional services.

(b) When the Commissioner negotiates an agreement under this section, he shall first first consult with the head of each principal executive department which may be affected by the agreement. The Commissioner shall next submit the proposed agreement to the Governor. The Governor may approve the agreement and upon approval the agreement shall define the respective responsibilities of the State and of the Native village government during the period of time covered by the agreement.

Sec. 29.—.040. NON-DISCRIMINATION. (a) A Native Village government which is a party to an agreement under AS 29.—.030 may not adopt a rule or operate a program which creates or estinquishes a benefit, liability, privilege, immunity or licence dependent upon racial classification or membership in a Native tribe, clan or organization, except that a Native village government may participate in federally funded programs which provide services to persons or organizations because of their status as Native persons or Native organizations. Violation of this section renders an agreement entered into under AS 29.—.020 void.

(b) The Governor may withdraw recognition of a Native Village government authorized under AS 29.—.010 whenever he shall make a determination that the Native Village government has adopted a rule or operates a program which creates or extinquishes a benefit, liability, privilege, immunity or licence dependent upon racial classification or membership in a Native tribe, clan or organization, except that such determination may not be dependant a Native Village government's participation in federally funded programs which provide services to persons or organizations because of their status as Native persons or Native organizations .

(c) Actions and determinations made under this section shall be made in accordance with the Alaska Administrative Procedure Act (AS 44.62).

Sec. 29.—.050 LIMITATIONS. Nothing in this capter authorizes the alienation, encumbrance, or taxation of real or personal property, including water rights, belonging to a Native person of village that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or authorizes regulation of the use of property in a manner inconsistent with a federal treaty, agreement, statute, or regulation, or extends the jurisdiction of the State to adjucicate the ownership or right to possession of property. Nothing in this chapter deprives a Native person

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Native village, or Native corporation of any right, privilege, or immunity afforded under federal or state treaty, agreement, or law, or alters the jurisdiction of the state, its political subdivisions, or a Native Village government. Nothing in this chapter shall create in the state any trust obligation toward a Native person or Native organization because of their status as Native persons or Native organizations.

Sec. 29.—.060. DEFINITIONS. In this chapter

(1) "Native person" means a person who meets the requirements for membership in a Native Village or organization authorized, chartered or incorporated under the authority of a Native village government;

(2) "Native Village government" means a local governing body organized by the authority of the Act of Congress of June 18, 1934, 25 USC sec. 476, or a traditional governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act, 43 USC secs. 1601 et. seq.

(3) "Commissioner" means Commissioner of the Department of Community and Regional Affairs.

* Sec. 3 AS 29.48.010 (4) is amended to read:

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, (OR) with the United States, or with a Native Village government recognized under AS 29.—.010.

Introduction

1 - Constitutional Convention Proceedings, Pt. 4, pp. 2616-7.

2 - See State v. Erickson 574 P.2d 1 (Alaska, 1978). Isakson v. Rickey, 550 P.2d 358 (Alaska, 1976); Lynden Transport, Inc., v. State, 522 P.2d 1125 (Alaska, 1974).

I. PART I

1. D. Case, The Special Relationship of Alaskan Natives to The Federal Government, pp. 119-127 (ANF, 1978).

2. Preliminary Report on Borough Government, p. 11 (Alaska Legislative Council, 1960) [hereinafter cited "Preliminary Report"].

3. id.

4. id. at 14

5. id. at 12

6. R. Cease & J. Saroff, The Metropolitan Experiment in Alaska, p. 2 (Praeger, 1968).

7. id.

8. Chapter 11, SLA 1915; amended Chapter 25, SLA 1917; repealed Ch.23, SLA 1923.

9. Preliminary Report, supra, at 12-13

10. 25 U.S.C. 476

11. Sen. Rpt. 1080, 73rd Cong. 2d Session, 1 (1934)

12. Preliminary Report, supra, at 14

13. id. at 15

14. id.

15. Chapter 150, SLA 1957; amended Chapter 79, SLA 1959.

16. Con. Cov. Proc., Pt.4, p. 47

17. id. at 2161

18. Ak. Const., Art. X, Sec. 2.

19. Con. Cov. Proc., Pt. 6, p. 59.

20. Con. Cov. Proc., Pt. 4, pp. 2616-7.

21. id., pp. 2613-4

22. See comments by Delegate Lonberg, Con. Cov. Proc., Pt. 4, p. 2651.

23. A.S. 29.08.020

24. Walters v. Cease, 380 P.2d 263 (Alaska, 1964)

25. A.S. 29.18.030

26.

27. Con. Cov. Proc., Pt. 4, pp. 2621-2.

28. id.

29. id. at 2653

30. Con. Conv. Proc., Pt. 6, pp. 45-6

31. Local Government Under The Alaska Constitution, p. 46 (1959, Public Administration Service).

32. City of Douglas v. City and Borough of Juneau, 484 P.2d 1040 (Alaska, 1971). See also Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska, 1974).

33. Con. Cov. Proc., Pt. 4, p. 2650.

34. Ak. Con., Art. X, Sec. 7.

35. id, Sec. 3.

36. A.S. 29.18.011

37. Con. Conv. Proc., Pt. 4, p. 2654.

38. Id.

39. 484 P.2d 1040 (Alaska, 1971).

40. Con. Conv. Proc., Pt. 4, p. 2653.

41. id, at 2623

42. id, at 2624.

43. 491 P.2d 720 (Alaska, 1971).

44. Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska, 1970).

45. Ak. Const. Art. X, Sec. 2.
46. id, Sec. 15.

47. id, Sec. 5.

48. id.

49. Con. Conv. Proc., Pt. 4, pp. 2719-20.

50. Ak. Const., Art. X, Sec. 2 See Liberati v. Bristol Bay Borough, 384 P.2d 1130 (Alaska, 1978).

51. Wien v. City of Ketchikan, 383 P.2d 721 (Alaska, 1963).

52. Ak. Const., Art. X, Sec. 13.

53. id.

54. Compare Con. Conv. Proc. Pt. 4, pp. 2713 and 2652.

55. Ak. Const., Art. X, Sec. 6.

56. A.S. 29.03.020

57. 1961 Op. Attorney General No. 24

58. A.S. 16

59. A.S. 46.40.110 et. seq.

60. A.S. 14.08.031

61. A.S. 29.89.040

62. D. Case, supra at 130.

63. See generally id., at 119-127.

64. Cohen, Handbook on Federal Indian Law, 122 (1948); 55 ID14 (1934) Powers of Indian Tribes; Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832); Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).

65. 231 U.S. 28 (1913)

66. P.L. 93-638, Sec. 4(a)

67. P.L. 92-512, Sec. 108(b) (14)

68. P.L. 93-383, Sec. 102(a) (1)

69. P.L. 93-203, Sec. 302

70. P.L. 95-608, Sec. 4(8)

71. 28 U.S.C. 1360 (c)

72. P.L. 90-351, Sec. 601(b)

73. *See* Fed. Reg. (May 25, 1973) p. 13758; Fed. Reg. (July 10, 1980) p. 46581-2.

74. 25 U.S.C. 476

75. 25 U.S.C. 473(a)

76. 25 U.S.C. 466

77. *See generally* D. Case, *supra*, at 38-40

78. 43 U.S.C. 1618

79. House Rept. No. 2244, 74th Cong., Second Session, .2 (1936).

80. Senate Rpt. No. 1080, 73d Cong., Second Session, 1 (1934).

81. 560 P.2d 31 (Alaska, 1977)

82. 465 F. Supp. 1286 (D.C. Alaska, 1978).

83. Act of June 19, 1935 (49 Stat. 388), as amended by Act of August 19, 1965 (79 Stat. 543).

84. P.L. 93-638, Sec. 4(a).

85. Field Solicitor's memorandum, *Status of the Inupiat Community of the Arctic Slope for Self-Determination Act contracting and other purposes*, May 1, 1979 (unpublished).

86. 25 U.S.C. 450(b).

87. *Pueblo of Santa Rose v. Fall*, 273 U.S. 315 (1927).

88. *Williams v. Lee*, 358 U.S. 217 (1959).

89. 541 P.2d 730 (Alaska, 1975).

90. *See* D. Case, *supra*, at 136-141.

PART II

1. Ak. Const. Art. X, Sec. 12
2. A.S. 29.18.090
3. A.S. 29.68
4. A.S. 29.18.050 et. seq. and A.S. 29.68
5. See generally. Fairview Public Utility District No.1 v. City of Anchorage, 368 P.2d 540 (Alaska, 1962)
6. A.S. 29.48.037
7. A.S. 29.43.100
8. A.S. 29.78.010 (18)
9. A.S. 29.33.010 et. seq.
10. A.S. 29.78.010 (19)
11. A.S. 29.38.010
12. A.S. 29.48.020; A.S. 29.38.020; A.S. 29.38.030
13. F. COHEN, supra at 5
14. 2 U.S.C. 1360(c) (PL 83-280) states

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

15. See PRICE, LAW AND THE AMERICAN INDIAN, 79-84, (1973)
16. id

39. 420 U.S. 452 (1975)

40. 436 U.S. 191 (1978)

41. 436 U.S. 313 (1978)

42. 419 U.S. 544 (1975)

43. 28 U.S.C. 1360(c)

44. Jim v. C.I.T. Financial Services Corp., 87 N.M. 362, 533 P.2d 751 (N.M., 1975). 28 U.S.C. 1738, requires that:

Acts, records, and judicial proceedings (of any State, Territory or Possession) shall have the same full faith in credit in every Court within the United States and its Territories and Possessions as they have by usage in the Courts of such State, Territory or Possession from which they are taken.

See also In re Buehl, 87 Wash 2d 649, 555 P.2d 1334 (1976); Ragsdale, Problems in Application of Full Faith and Credit for Indian Tribes, 7 N. Mex. L. Rev. 133 (1977)

45. Fox v. Fox, 542 P.2d 918 (Or. App., 1975); Begay v. Miller, 70 Ariz. 380, 222 P.2d 624 (1950)

46. Compare Santa Clara Pueblo v. Martinez, 98 S.Ct. 1670 (1978) and U.S. v. Wheeler, supra.

47. 358 U.S. 217 (1959)

48. 369 U.S. 69 (1962)

49. id, at 75-76

50. McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973).

51. P.L. 83-280 (67 Stat. 588), amended to add Alaska, P.L. 85-615 (72 Stat 545). Now codified as 18 U.S.C. 1162, 28 U.S.C. 1360 and other scattered sections.

17. Indian Intercourse Act of 1834 (4 Stat. 729)

18. F. COHEN, supra, at 5-6

19. id. at 6n60

20. 5 U.S. 240 (1887)

21. 228 U.S. 243 (1913)

22. 231 U.S. 28 (1913)

23. 290 U.S. 357 (1933)

24. 151 F. Supp 132 (Alaska, 1957)

25. 161 F. Supp 269 (Alaska, 1958)

26. P.L. 85-615

27. 1978 Op. Atty. Gen. File No. J-66-001-67, J-66-503-77. Memo re: State Taxation of Alaska Natives and Business Enterprises Operated by Native Organizations. p.21

28. 466 F. Supp 860 (Alaska, 1979)

29. 369 U.S. 60 (1962)

30. 426 U.S. 373 (1976)

31. Citing U.S. v. Mazurie, 419 U.S. 544 (1975); See also Santa Rose Band of Indians v. Kings County, 532 F.2d 655, (9th Cir., 1975)

32. U.S. v. McGowan, 302 U.S. 535 (1938)

33. U.S. v. Sandoval, supra

34. 43 U.S.C. 1603(e)

35. 43 U.S.C. 1611, 1613

36. See generally 25 U.S.C. 465, 473(a)

37. 368 U.S. 351 (1962)

38. See Matz v. Arrnet, 412 U.S. 481 (1973)

52. See Goldberg, Public Law 280: The Limits of State's Jurisdiction Over Rservation Lands, 22 UCLA Law Review 535 (1975).

53. 426 U.S., 388-89 citing U.S. v. Mazurie, supra.

54. id.

55. id, at 384

56. id.

57. Santa Rosa Band of Indians v. Kings County, 532 F.2d 655 (9th Cir., 1975)

58. Morongo Band of Mission Indians v. Area Director, IBILA 79-18-A (1979).

59. See generally Goldberg, supra; Santa Rosa Band of Indians v. Kings County, supra.

60. F. COHEN, supra, at 122

61. D. CASE, supra, at 152-3

62. A.S. 29.08.010

63. A.S. 29.08.020

64. A.S. 29.48.010

65. A.S. 29.48.035

66. A.S. 29.48.030

67. A.S. 29.33

68. A.S. 29.43

69. A.S. 29.48.030 (7); Town of Ketchikan v. Greenbaum, 5 Alaska 396 (1915)

70. 55 I.D. 14 (Powers of Indian Tribe)

71. 18 U.S.C. 1153

72. 18 U.S.C. 1152

73. Compare A.S. 29.48.200 and 25 U.S.C. 1302 (7)

74. Ak. Const. Art. IV, Sec. 1

75. See McKenzie, YOU HAVE THE RIGHT, 25-27 (AFN, 1976); Keiner v. City of Anchorage 378 P.2d 406 (Alaska, 1963); State v. Lundgren Pacity Const. Co. Slip Op. 1980 (Alaska, 1979).

76. Gutherie, Analysis of Amendment to HB 533 proposed by Tanana Chiefs, Legislative Affairs Agency (March 21, 1980), citing Baker v. City of Fairbanks, 471 P.2d 386; Alexander v. City of Anchorage, 490 P.2d 910 (1979)

77. Iron Crow v. Oglala Sioux Tribe, 231 F.2d 89 (1959)

78. Talton v. Mayes, 163 U.S. 376 (1896)

79. 25 U.S.C. Sections 1301-1303

80. A.S. 29.33.070. et. seq.

81. A.S. 29.33.070(b)(2)

82. A.S. 29.29.43.040

83. A.S. 38.05.037

84. 541 P.2d 730. See P.24 infra, for discussion

85. id, at 737-8

86. A.S. 29.33.070 et. seq.

87. Sec. 45, Chap 85 SLA 1979

88. A.S. 29.48.035

89. 419 U.S. 544 (1975)

90. Johnson v. Chilkoot Indian Village, 957 F. Supp. 384 (D. Alaska, 1978)

91. 532 F.2d 655 (9th Cir., 1977)

92. id, at 663

93. Buster v. Wright, 135 F.947 (8th Cir. 1905). Iron Crow v. Oglala Sioux Tribe, supra; Barta v. Oglala Sioux Tribe, 259 F.2d 553. (8th Cir., 1958), cert. den. 385 U.S. 932 (1959); 55 I.D. 14, 28 (1934) (Powers of Indian Tribes)

94. Buster v. Wright, supra.

95. Maxey v. Wright, 105 F. 1003 (8th Cir., 1900)

96. Morris v. Hitchcock, 194 U.S. 384 (1904)

97. A.S. 29.53.415 et. seq. (boroughs); A.S. 29.53.440 (cities within boroughs); A.S. 29.43.020 (cities outside boroughs)

98. A.S. 29.53.010 (boroughs); A.S. 29.53.400, 410 (cities within boroughs); A.S. 29.43.020 (cities outside boroughs)

99. A.S. 29.53.020, et. seq.

100. 55 I.D. 14 (1934) (Powers of Indian Tribes). See also Indian Child Welfare Act, P.L. 95-608

PART III

1. Con. Conv. Proc., Pt. 6, p.478
2. 55 ID 14 (1934), Smith v. Bonifer, 154 F.883 (1909); Ollestead v. Native Vill~qe of Tyonek, 560 P.2d 31 (1977).
3. Smith v. Bonifer, supra.
4. 25 USC 163
5. 25 CFR 271.2 (i)
6. Proposed IRA Constitution for Dish-Ina-Nek, Art. 5, Sec. 4
7. 25 U.S.C. 1301
8. Dodge v. Nakai, 298 F. Supp. 26 (D. Ariz., 1969); Dry Creek Lodge, Inc. v. United States, 515 F.2d 926 (10th Cir., 1975)
9. 436 U.S. 49 (1978)
10. MANUAL OF INDIAN LAW, B-9 (The American Indian Lawyer Training Program, Inc., 1976)
11. 426 U.S. 373 (1976)
12. Ak. Const., Art. X, Sec. 5
13. See KELSEN, PRINCIPLES OF INTERNATIONAL LAW, 387-410 (2ed ed., 1966)
14. id., at 387-8
15. id., at 399
16. See generally supra. notes 66-70 (Part I)
17. S. 1181, 96th Cong. 2d. Session

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AN AUTOPSY AND EPITAPH

OF

THE NEW DEVELOPMENT CITY OF LOST RIVER

A

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