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TRIBAL–STATE RELATIONS

A New Paradigm for Local Government in Alaska

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

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INTRODUCTION

Local government in rural Alaska is plagued by the existence of parallel government systems. On one hand, there exists a system of Native governments. On the other hand, the state has encouraged the formation of municipal governments. Often the dual system exists side-by-side in communities of less than 200 persons. In these situations, confusion, and the duplication of administrative costs and services has had a crippling effect on local government. Communities which attempt to avoid the duplication find themselves either ineligible for the respective benefits of the missing government, or forced to create exotic or *ad hoc* organizations which are marginally eligible for the desired benefits.

This study is an effort to sort out and compare these two systems of government. Additionally, the study makes suggestions on how to correct this situation within existing constitutional restraints.

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, primal governments varied 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 type of 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 for financial support. 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 exercised fiscal autonomy over current operating expenditures. They directly received a portion of intergovernmental

revenue transfers due the city. They remained dependent on the city or territorial government for 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 to prevent 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."[11]

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, and other 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 incorporate villages under territorial law.[15] An Incorporated Village had limited powers which included power to provide water, electricity, 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 Article XV, Section 1 of the Alaska Constitution provided that, the laws of the territory remained in effect until they were repealed, amended or expired.

Finally in 1972, the state undertook a wholesale revision of the municipal code to create the current system. The main impact of the 1972 revision on the smaller rural communities was to strip those communities which organized under the Village Incorporation Act of their "village" status.

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 specified topical concerns.

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 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 upon which the majority of local governments in Alaska are based.

It is also important to note that the framers specifically desired to provide independent authorization for city and borough powers, rather than provide that such powers be delegated to the cities and boroughs by the legislature. The legislature's authority over cities and borough is specifically enumerated. It may only regulate cities and boroughs through its authority to classify and define the respective powers and manner of incorporation.[24] Oddly enough the Constitution provides for legislative definition of borough assemblies' appointment and composition.[25] In contrast, it does not have a similar provision governing city councils. Rather, the Constitution merely provides that the council, however composed, shall be the governing body of the city.[26]

On the other hand, the powers of service areas are delegated. In the case of an incorporated area, the service area's powers are derived from the organized borough.[27] The exercise of this borough power is subject to legislative regulation by the legislature. In contrast, service areas in unorganized areas of the state possess authority delegated and regulated by the legislature.[28]

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."[29] By statute, the borough is a government for an "area."[30] This is in contrast to a city, which is a government for a "community."[31] The framers of the constitution anticipated that an average size borough would be between 1,000-2,500 square miles.[32] Presumably, an area could include a number of communities and their outlying areas.[33] 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.[34]

The Alaska Supreme Court has recognized this by stating that the Constitution does not require the coexistence of boroughs and cities.[35]

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...[36]

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."[37] (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>."[38] (emphasis added) It remains unclear whether such prescription should be by 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."[39] 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.[40] 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."[41]

In City of Douglas v. City and Borough of Juneau,[42] 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.[43]

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.[44]

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 appraising, its own assisting agency, its own condemnations.[45]

This point was recognized by the Alaska Supreme Court in <u>Macauley v. Hildebrand</u>[46] 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.[47] Thus, while the constitution provides that "all local powers shall be vested in boroughs and cities",[48] it does not

exclude the exercise of governmental authority by governments other than cities and b roughs.

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.[49] Once a borough is organized, the assembly may create service areas within its borders.[50] 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.[51] 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 separate school board,...to supervise the school functions...[52]

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.[53] 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 regulation of the parent municipality in areas which are the subject 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.[54] 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 traditional state concerns as state government "decentralized." The framers seemed to have accepted this ambiguity, and left the matter to the legislature. The courts, in turn, have recognized this role for the legislature 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.[55] 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.[56] 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".[57] It must be remembered, however, that a collection of service areas lack independent taxing authority possessed by cities. Thus, a collection of service areas 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, as defined by 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."[58] To implement this section, the legislature provided that it may authorize "service areas" in the unorganized borough.[59] It is agreed that such service areas do not possess powers of fiscal autonomy,[60] 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.[61] 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 district coastal management programs.[62] 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.[63] 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.[64]

Finally, the legislature has "impliedly" authorized organization of volunteer fire departments for unorganized areas of the state through the state revenue sharing program.[65] Under this program, local fire departments may organize under regulations adopted by the state fire 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 are defined 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 exists "quasi-governmental" entities.

General Purpose Governments.

It is commonly stated that there are two types of general Native governments in Alaska: Traditional Councils and IRA Councils.[66] In practice, there is little difference between the operation of these two types of government. 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 Native governments were primarily based on family ties.[67] 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 like the United Kingdom. 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.[68]

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 important that tribal status however, is the general recognition of a group's authority to govern itself. This recognition is directly linked to its dependent status vis-anvis the federal government.[69] In turn, 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,[70] the State and Local Fiscal Assistance Act,[71] the Housing and Community Development Act,[72] the Comprehensive Employment Training Act,[73] and the Indian Child Welfare Act.[74] 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.[75]

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 which places responsibility of the Secretary of the Interior to determine those Indian tribes which perform law and order functions.[76] 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, corrections functions, and the adoption a law and order code.[77]

i) <u>I.R.A.s</u>. 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.[78] The Act originally applied only to the "lower 48." Its application in Alaska was somewhat unique. A 1934 version of the Indian Reorganization Act provided that only an "Indian tribe or tribes residing on the same reservation" could organize to adopt constitutions under the Act. Since 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.[79] 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.[80] 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.[81] Even though the reservation policy was abandoned by the Bureau, the organizational efforts of the Bureau left in its wake a number of organized Native villages without reservations. Those few reservations actually formed pursuant to the Act were later revoked by the Alaskan Native Claims Settlement Act.[82] The 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. A House report 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.[83]

In this sense, the Alaska amendment was consistent with the general statutory purpose of the Indian Reorganization Act, which was

> 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.[84]

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.[85] In that case, the court recognized the 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

While 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.[86] In that case, an individual brought a lawsuit against the Council to require inclusion in the preparation of the tribal roll under the Tlingit/Haida Settlement.[87] 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.[88] 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 that, although the Tlingit/Haida Central Council was certainly 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 has not been fully delineated.

The organization of the Inupiat Community under the Indian Reorganization Act presents a similar case. 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, that the Inupiat Community cannot enter into contracts or accept grants without the prior approval of the affected villages.[89] 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.[90]

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.[91] This is in accordance with the principle that "the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal governments existed."[92] 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 above, there exists entities which, for the lack of a better term, may be called 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.[93] 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. These notices are similar to those 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. Generally BIA programs in Alaska cannot be effectively administered at the village level. 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.[94] 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 under a contract 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 municipal incorporation[2] and subsequent boundary 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 jurisdiction. A municipality may provide parks, roads, trails, playgrounds, emergency medical services, cemeteries, and airports outside its municipal boundaries.[6] Additionally, cities outside boroughs may exercise extra-territorial curfew regulation.[7]

In contrast, a borough's 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] First class boroughs may exercise any municipal power as a non-area-wide power by ordinance.[11] Second

class boroughs may only exercise certain enumerated powers as non-areawide powers by ordinance. These include regulatory power over fireworks, animals, motor vehicles, snow vehicles, garbage, water pollution. A second class borough may only acquire other municipal if such powers are specified in its charter or subsequently acquired by referendum.[12]

ii) Native Government. Native Village constitutions, whether adopted under the traditional form of government or under the Indian Reorganization Act, generally 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."[13] 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 crimes.[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, or
>
> (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 <u>Bates v. Clark</u>,[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 was expanded in <u>Donnelly v. U S.</u>,[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,[22] 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 treatise on the federal-Indian relationship, David Case pointed out that the Sandoval doctrine presents a clear analogy to the Alaskan situation. Like the New Mexico pueblos, Alaska 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 this 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, In re 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 traditional 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 of 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 (P.L. 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 indicates that Congress clearly desired to overrule and reverse the precedents set by that case.[27] If the application of PL 280 to Alaska was a congressional reaction to McCord, rather than 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. That Act specifically states that the State of Alaska shall have jurisdiction over Indian country within its borders. It therefore 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 Kake 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. Kake, like Naknek, did not address the question whether Indian country exists in Alaska.

It should be noted that the mere existence of Indian country and consequent tribal jurisdiction is not an exclusive claim to jurisdiction and does not exclude state criminal and civil jurisdiction. As noted earlier, Alaska is subject to the mandatory provisions of PL 280 which authorized the extension of state jurisdiction over Indian country. As

a general rule, however, the application of PL 280 does not create exclusive state jurisdiction nor does it substantially affect tribal jurisdiction. In Bryan v. Itasca County,[30] the Court 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 of the Act, 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 were destroyed. The argument, however, rests upon the proposition that Indian country is dependent upon the existence of reservations. The Supreme Court has clearly announced that there is nothing magic in the term "reservation."[32] Other forms of Indian country exist in addition to reservations. 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 these principles. In the Chavez case, Indian country was defined as "any unceded land owned or occupied by an Indian nation or tribe of Indians." It is not necessary to establish clear unequivocal boundaries. 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 Post-ANCSA Alaska it is quite easy to identify those villages in rural Alaska which continue to be "distinctly Native communities." Such communities retain substantial cultural, social, and economic characteristics identifiable as Native and therefore these villages clearly fall within the definition of a dependent Indian community enunciated in the Chevez 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. Again, 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 was ruled irrelevant in the Sandoval case.

This view is consistent with a recent solicitor's opinion which stated that,

> The continued existence of Indian country in Alaska, in our view, does not conflict with the Settlement Act, and consequently, that Act should not be construed to have abolished Indian country or the possibility that Native villages might qualify as "dependent Indian communities."[36]

The opinion then considered a number of factors including whether the Native village was modern and urban in character, a high percentage of Native residents, the village's elibiligy to receive federal services, and the land tenure pattern, and concluded that,

> In our view, these factors are sufficient to support presumption that the area (Allakaket) is a dependent Indian community and, therefore, Indian country for the purposes of the liquor laws.[37]

Of course, this does not address the substantial concern which may arise upon subsequent land transfers by the respective Native

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 United States v. McGowan.[38] 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 their acquisition would not necessarily extend village jurisdiction.

The above type of subsequent acquisition, however, should be sharply contrasted from acquisitions authorized under the Indian Reorganization Act.[39] 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,[40] 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.[41] In contrast to these decisions, however, is the decision in DeCoteau v. District County Court.[42] 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 reservation. 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 these two lines of cases it is unclear whether 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. It is unclear whether village's Indian country is diminished through unilateral sale or cession of village lands.

B. PERSONAL JURISDICTION

In contrast to a municipal government, tribal government has very limited personal jurisdiction. It is generally assumed that personal jurisdiction of a municipality extends to all or most individuals within its territorial jurisdiction. This may depend upon the subject matter involved (see below). 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[43] and U.S. v. Wheeler.[44] 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 over non-members. It is important to note, however, that the Court in Oliphant did not overrule the holding in U.S. v. Mazurie.[45] In that case, the Court upheld the extension of tribal liquor ordinances over non-members of the tribe. Although the cases seem irreconcilable at first glance, there was a substantial difference between these two cases. In Mazurie, the Court upheld the authority of the tribe to prescribe the ordinance and stated that such 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 non-members but that tribes lack the authority to enforce such ordinances against non-members. 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 since federal jurisdiction has

generally been withdrawn. Thus, in Alaska the state courts are the only forum for the enforcement of most tribal ordinances against non-members.

As noted above, "PL 280" requires the state to give "full force and effect" to valid tribal ordinances in civil cases.[46] This supports the notion that a village would have prescriptive jurisdiction over non-tribal members. It also clarifies that state enforcement of tribal ordinances is clearly required by federal law 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.[47] On the other hand, many states have refused full faith and credit, but have extended "comity" to tribal ordinances.[48] The issue remains unresolved.[49]

C. 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.[50] 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.[51] 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."[52] In these situations, both the tribe and state fairly claim an interest in asserting jurisdiction. The Williams test was designed to resolve this conflict by providing that the state could protect its interest in its non-Native citizens up to the point where tribal self-government would be affected.[53] 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 P.L. 280.[54] 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 the law has had on tribal governments."[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."[56]

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."[57]

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

First, PL 280 does not confer upon a state general civil regulatory control over Indian country.[58] 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,[59] zoning authority,[60] and outdoor advertizing61 in Indian country are beyond the state's 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.[62] This basic principle, if applied in Alaska, could have a crippl-

ing effect on rural Alaskan municipal governments. 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 Congress, but rather are inherent powers of a limited sovereignty which has never been extinguished.[63] This has recently been compared with the concept of home rule under Alaska state law.[64]

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.[65] A general law municipality possesses powers delegated to it by state law.[66] Basically, general municipalities exercise four types of powers.

A general law municipality possesses "general powers" related to the municipal corporate identity. These powers include the following powers: be sued; employ municipal officers and officials; levy taxes and special assessments; enforce ordinances; prescribe penalties for violations; acquire manage, control, use, and dispose of personal and real property; promote legislation for the municipality; expend funds for community purposes; and borrow money and issue evidence of undebtedness.[67] By statute, all municipalities possess the unilateral authority to exercise these powers.

Second, general law municipalities "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.[68]

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 general law 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.[69] 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, general law 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 exercise such powers on an area-wide basis.[70] 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.[71]

An exhaustive comparison of these powers is certainly beyond the scope of this project, however, it is possible to select areas for special consideration.

i) Police Powers. While municipalities possess police powers,[72] tribes possess the power to regulate the conduct of members.[73] The federal government has withdrawn tribal jurisdiction over most felony crimes by enactment of the Major Crimes Act,[74] and Assimilative Crimes Act.[75] 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.[76]

Municipalities are prevented from operating "courts" since the Alaska Constitution provides for an integrated court system under state government.[77] This constitutional reservation of power to the state, however, does not prevent municipalities from operating "administrative tribunals" capable of enforcing ordinances.[78] 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.[79]

In contrast to municipalities, Native governments possess the inherent power to create courts to enforce their ordinances.[80] While tribal courts are not generally subject to the individual guarantees of the Bill of Rights,[81] they are subject to the guarantees of the Indian Civil Rights Act of 1968,[82] 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 provide for municipal planning authority. Within organized boroughs, planning is an area-wide function of the borough.[83] Of course, the borough may also delegate such powers to a city within its borders.[84] Outside organized boroughs, first class cities are required, and second class cities may exercise planning powers.[85] In unorganized areas of the state, planning authority rests with the Department of Natural Resources.[86]

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.,[87]

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.[88]

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,[89] and operation and licensing. The municipality, however, is not able to direct state agencies to comply with local plans. For example, the prior A.S. 29.33.090(d) required certain state land management programs to comply with municipal plans. This was repealed.[90]

Municipalities also may implement their plans through its licensing power over vehicles, animals, day care facilities, etc.[91]

A tribe's most potent implementation tool is its recognized authority to license. For example, in U.S. v. Mazurie,[92] the Supreme Court upheld a tribe's right to license bars owned by non-Natives on fee simple land within Indian country. Secondly, a village may regulate the nature of member's ownership rights in property.[93] By defining members property rights, a tribe can restrict uses of property which are delitereious. 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,[94] the Court struck down local zoning ordinances holding that "the extension of local jurisdiction is inconsistent with tribal self-determination and autonomy."[95] 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.[96] The extent of this power is almost wholly uncertain, since few Native governments exercise this power. The courst, however, have upheld tribal taxes on business,[97] occupations,[98] or to accompany tribal permits,[99] regardless of whether the tax was levied against members or non-members.

The taxing powers of municipalities are more clearly defined. They may levy sales and use taxes,[100] and property taxes.[101] These taxing powers are subject to a substantial number of exemptions and limitations.[102]

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.[103] 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.

PART III

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

The decision to allow inclusion of Native village government within the state local government is, of course, a policy issue. Several factors must be considered in making this decision. First is the question whether such action is consistent with the Alaska Constitution. Second, the actions of other states must be considered. Thirdly, the backdrop of federal law needs to be considered. Finally, the state interest in non-Native citizens needs to be addressed.

A. THE CONSTITUTION

Substantial concern exists as to whether the proposed action is consistent with the Alaska Constitution. The proposal raises two issues. First, the proposal must be analyzed to determine whether it is consistent with the constitutional scheme for local government. The local government committee of the Constitutional Convention articulated five basic principles with which the proposal may be compared, i.e., self-government, unified system, prevention of overlapping tax authorities, flexibility, and state interest. Additionally, the proposal raises a question whether it is consistent with the equal protection clause of the Alaska Constitution.

1. Self-government. Maximum local control over local government was a primary goal 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 for the performance of services that it deems necessary and advisable in the unorganized boroughs "allowing for maximum local participation and responsibility." (emphasis added) 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 as second-class city under the Alaska state law. The prefer rather to organize themselves exclusively as Alaska Native villages. In many cases, such organization reflects 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 promotes this policy. This action would broaden the number of local options available to communities desiring to organize, thereby leaving greater control at the local level.

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 study, 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 counterproductive efforts often result. State and federal programs often depend on the existence of local cooperation. Nonrecognition of Native governments is a impediment to this local cooperation.

Non-recognition problems also 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 the duplicity and confusion which results from parallel governments.

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 and non-members. Additionally, the eligibility of Native villages to receive intergovernmental revenue transfers frustrates 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.

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. Since the state does not recognize Native governments, these local mechanisms are unavailable to the state. The inclusion of Native governments within the state system of local government makes available to the State existing government entities through which the State may operate. 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 which require substantial community participation. 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.

6. Equal Protection. It is unfortunate that the Alaska Constitutional Convention failed to address the issue of Native local governments. In the heady atmosphere of the convention, the delegates seemed to assume that the state mechanism would be comprehensive. The record fails to indicate that the convention ever considered that viable Native governments would continue. In this vacuum it is difficult to analyze the

constitutionality of state legislation which seeks inclusion of Native government in the local government system. Generally, however, there exists concerns whether such legislation would violate the equal protection clause of the Alaska Constitution.[2] Since this is a novel question in Alaska, we must look to sister states for guidance.

The Supreme Court of Minnesota was forced to deal with the issue in State v. Forge.[3] In that case, non-Indians sought to challenge the constitutionality of a compact between the state and the Chippewa Tribe over ricing and fishing. The state legislation vested certain rights in members of the Chippewa tribe that did not extend to state citizens in general. The court upheld the statutes in the face of a challenge based on the equal protection guarantees of the Minnesota Constitution.

In deciding that the state action did not violate the state constitutional guarantee of equal protection, the Court noted that the compact related to the reconciliation of claims between the state and the Indian tribes. As such, the classifications made by the state law rationally related to the competing claims of the state and the tribes.[4] It is important to note that the court's finding was based upon Indian treaty rights, which could not be used as a basis for Alaskan legislation. Nevertheless, the Court noted that:

> Even in the absence of treaty rights, the United States Supreme Court has frequently upheld legislation that singles out Indians for particular and special treatment.[5]

Subsequent to State v. Forge, the United States Supreme Court dealt with the issue directly in United States v. Antelope.[6] In that case, Antelope was tried for murder under the Major Crimes Act. The defendant argued correctly that if he were not an Indian, he would have been charged under the Assimulative Crimes Act for manslaughter. The court held that the statute did not create an impermissible racial classification since the constitution specifically authorizes particular and special treatment of Indians.[7]

There is one distinction, however, which may distinguish Alaska's and Minnesota's Constitution. The standards of the equal protection clause under the Minnesota Constitution are synonymous with the U.S. Constitution's equal protection clause.[8] In contrast, however, the standards of protection under Alaska's equal protection clause is not synonymous with that of the U.S. Constitution.[9] Absent an express ruling to the contrary, however, the Minnesota interpretation is probably an accurate indicator of the Alaskan position.

B. OTHER STATES

Other states have attempted to establish direct tribal-state relations in one of two basic ways - 1) incorporation, or 2) recognition and compact.

1) Incorporation. Incorporation is the formation of a unit of local government. As noted above, such incorporation may result in the formation of either a general or special purpose government. Theoretically, it is possible to incorporate Native governments under state law. In Bryan v. Itasca, 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.[10] This implies, of course, that it is possible for a state to allow such incorporation if it removes its self-imposed prohibitions.

As noted above, this has been attempted twice in Alaska's past. Several current second class cities were originally incorporated under the 1957 Village Incorporation Act. The villages lost their village status through the 1972 municipal code revision.[11] In general, the attributes of tribal self-government are no longer present, so that neither the people, the state, nor the federal government recognize these governments as tribal entities.

Direct state incorporation of general purpose Native governments is not common. There are, however, a few instances of such state action.

One example is New Mexico, which provides for the incorporation of Peubleo Indian communities.[12] The courts, however, have ruled that the pueblo's did not gain any powers, rights or duties under this statue, but rather their powers stem from their authority as Indian tribes.[13]

In contrast, Maine has recently enacted the Maine Indian Claims Settlement Act[14] which does not incorporate the tribal enities, but rather delegates to them "all the rights, privileges, powers and immunities" of a state municipality.[15] This includes the authority to enact ordinances, collect taxes and provide general services like any municipality. Conversely, the tribe is subject to all duties, obligations, liabilities and limitations of a municipality in the operation of municipal authority. A major exception is the internal organization of the tribes.

The tribes' jurisdiction extend over "Indian territory" as defined by the Act, which includes newly created reservations (akin to townsites) and surrounding lands conveyed in fee simple to the new Native corporations.[16] As enities possessing municipal authority, the tribal councils have jurisdiction to prescribe criminal and civil ordinances over non-Natives, but may only judicially enforce certain ordinances against members and handle small claims matters between members.[17] The state courts have jurisdiction to hear all other cases.[18] Law enforcement is handled through a cross-deputization of tribal and state police.[19]

The state has also sought to protect nonmember's rights by making municipal authority dependent upon nondiscriminatory delivery of services and guaranteeing enfranchisement in county, state and federal elections.[20]

In considering the Maine Settlement, two major points must be made. First, the Main Settlement was prompted by litigation over both the land claims <u>and governmental</u> claims of the Maine Indians. By comparison, the Alaska Settlement only addressed land claims, and left unresolved the governmental claims of the Alaskan Native people. This oversight is generally attributable to the common perception of P.L.-280 in the pre-ANSCA period. It must be remembered that ANCSA preceded

Bryan v. Itasca,[21] which was decided in 1976. Prior to 1976, the general feeling was that P.L. 280 replaced tribal authority. The court in Bryan v. Itasca, however, clearly rejected this analysis, and reasserted that P.L.-280 merely resulted in concurrent state/tribal jurisdiction.

Secondly, except of the delegation of municipal powers, the Maine Settlement Act does not substantially change the respective authority of the state and tribes. Generally, the Act serves as a restatement of the law as currently understood. Thus, the Maine statutory scheme may serve as a useful model for incorporation of general purpose Native government under a state's authority.

In contrast to general purpose incorporation, some states have sought to declare Indian tribes as special purpose governments. For example, Florida, like Connecticut, has established a state reservations which in effect is an extension of a federal Seminole reservation.[22] In addition, however, the state has declared the whole Seminole Reservation (both federal and state portions) and the Miccosukee Reservation as "special improvement districts."[23] While the state recognizes that the tribes may regulate their members and lands as other tribes,[24] the state law provides that the tribal councils (organized as I.R.A.s) shall be the governing body of the districts, and are granted law enforcement, housing, and health powers, along with providing a variety of state services.[25]

It is interesting to note, that Florida is not the only state which has set up state Indian reservations. Connecticut has also established state reservations.[26] Management of the reservations is through an Indian Affairs Council and tribal councils, both of which have state regulatory powers over the reservation.[27] The State Administrative Procedure Act specifically applies to regulatory decisions of the councils. Texas also has authorized state Indian reservations.[28] Furthermore, Texas has extended state recognition of a federally nonrecognized tribe, and committed the state to seek federal recognition.[29] Even more unique than this, Texas has delegated bonding

authority to tribal councils.[30] Under state law, lands held in trust by the state and the rents, royalties, revenue and income from such lands, may be pledged to back the bonds.[31]

While the above states have attempted various types of incorporation, many states have taken the intermediate step of creating State Commissions on Indian Affairs.[32] A fairly representative example is Minnesota which created an Indian Affairs Board.[33] While the tribes are not brought within state government directly, the board is a state commission comprised of various state commissioners, state legislators, and tribal officials. The commission does not attempt to exercise governmental authority over tribes. Rather it acts as a liaison between state and tribal service programs.

Simiarly, in California, state law authorizes the formation of school districts within Indian reservations.[34] Unlike Florida, either the tribal governing body or an independently selected body is the governing body of such a district.

2) Recognition and Compact. Recognition is a concept borrowed from international law. It is 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.[35] Recognition of the government is acknowledgement that an individual or body of individuals act as the government for the community.[36]

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 under its existing authority.

States typically implement recognition of Native governments in one of two ways. Either a state may extend general purpose recognition to Native governments, and provide for a systematic procedure for entering into compacts, or the state may adopt an incremental policy of limited recognition for specified purposes.

The Interlocal Cooperation legislation in Nevada,[37] Washington[38] and South Dakota[39] are good examples of legislation which reflect this first policy. Typically, these statutes allow state and local governments to enter into agreements providing for the joint exercise of powers, procedures for entering into such agreements, and financing of joint programs. In the above three states, the Interlocal Act simply defines entities eligible to enter into these agreements to include Indian tribes. Nevada has clarified this inclusion by enacting legislation which guarantees the rights of self-government of Indian tribes,[40] and provides that the administrative jurisdiction of state agencies is not extended over Indian country.[41]

In contrast, other states have adopted an incremental approach to recognition and compacts with Native government. A good example of this approach is Minnesota. A dispute between the State of Minnesota and the Chippewa Tribe arose over ricing and game regulation. The dispute led to a substantial amount of litigation which in turn led to an out-of-court settlement in the form of a ricing and game management compact between the state and the tribe.[42] The compact is a limited effort by the state and tribe to cooperate in these limited subject areas, and does not attempt to establish an ongoing general relationship.

A more common area of limited state-tribal cooperation is in the area of law enforcement. In New Mexico, for example, state law provides general cross-deputization of state and tribal police.[44] Under this agreement, pueblo and Navaho tribal police also carry an appointment under

state law, and may, therefore, enforce state law within Native communities. State police also carry a tribal appointment.

C. FEDERAL LAWS

In considering inclusion of Native governments within the state local government system, the backdrop of federal law will have substantial effect. Of prime concern is the extent state law attempts to regulate the internal organization of Native government organization. Secondly, there is future legislation to be considered.

First, the Williams' doctrine prohibits states from regulating the internal self-government of Indian tribes.[45] Thus, the state could not mandate incorporation of Native governments under Title 29. Rather, the state could only authorize such incorporations upon consent of the tribe.

The Alaska constitution authorizes only three forms of local government - cities and boroughs which are capable of possessing all local government powers; and service areas/districts which are only capable of possessing enumerated powers.[46] Therefore, the legislature is limited to these modes of organization. The legislature may classify, define powers, and define manner of incorporation. Thus, in order to provide for the incorporation of a Native government under state law, the legislature must create a class of city, borough or service area, and define the powers of such government in a manner consistent with the Native government character.

If the legislature provided for state incorporation of Native governments as boroughs, however, the constitutional provisions vesting in the legislature the authority to regulate composition and apportionment of borough assemblies[47] would be inconsistent with the Williams' doctrine, which prevents state regulation of internal organization. This inconsistency is irreconcilable.

On the other hand, if the legislature provides for incorporation as a city, there exists no comparable constitutional claim to internal regulation The state would merely create a class of city over which it disclaims authority to regulate composition.

The remaining option is the service area. The use of service areas in the unorganized areas of the state is relatively simple. Since such service areas operate by delegation of authority, the legislature may simply adopt the Florida or Maine plan and delegate to Native governments certain powers. In contrast, service areas within organized areas are subject to borough regulation. While the legislature may authorize boroughs to create a class of service area appropriate to the Native government, the character of borough regulation is equally important. Borough regulation which violates the Williams' test would invalidate the plan. To avoid this, the legislature may declare that the furtherance of Native self-determination is a matter of state interest, and under the local activity rule, the legislature could preempt borough regulation of Native service area composition.

Thus it is conceivable that the state could provide for incorporation of Native government as cities and service areas whether within or without organized boroughs.

The second consideration is the proposed Tribal-State Compact Act which is currently before the U.S. House of Representatives (see Appendix C). The implementation of the tribal-state paradigm would be substantially affected by the terms of the Act. In its current form, the bill specifically authorizes states and local governments to enter into agreements with Native governments. Such legislation is needed in non-P.L. 280 states because of recent court decisions invalidating such agreements.[48]

In addition to merely authorizing tribal-state agreements, Sec. 102 of the proposed Act provides federal assistance to the entity assuming new obligations under the terms of a tribal-state compact. If passed, the Act will provide a mechanism to assist the state in its constitutional

plan of decentralization. By entering into eligible arrangements, the state may take advantage of available federal funding to facilitate implementation of state programs. Such agreements are more likely to operate in rural areas of the state where program costs are greatest. Use of such federal funding will decrease the burden on the state budget that such programs represent. While the state enjoys its present wealth, the need for federal assistance is less, yet, as projected state revenues decline in the future, the need for federal assistance will increase.

D. NON-NATIVES

The greatest concern over inclusion of Native village governments into the Alaska local government system is the preception 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.[49] This power specifically includes the power to provide for the adoption of non-Natives into the tribe.[50] 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.[51]

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.[52] Benefits provided through state revenue sharing are required by state procedures to be 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.[53] 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.

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.[54] 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.[55]

There is some concern that the Act only provides relief through the right of habeas corpus. This concern focuses around dicta contained in Santa Clara Pueblo v. Martinez.[56] In that case, the Court reviewed a tribal ordinance which conferred benefits upon tribal members based upon a distinction between patrilinial/matrilinial 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 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.[57]

CONCLUSIONS

It is clearly feasible to include Native village government into the state local government system. This may be done in one of two ways - either through compacts (see Appendix A) or direct incorporation (see Appendix B).

The first draft bill (see Appendix A) would be sufficient to authorize tribal state compacts. In addition to recognition, the bill defines the method whereby the State will engage in relations with the Native villages. The proposal provides that Native villages could participate in state programs to the same extent as second-class cities. It does not delegate to tribes general local government powers but does recognize the existing tribal powers retained by Native governments. 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 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 relationship upon the Native government's compling with anti-discrimination 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 village governments to enter into similar agreements.

The second draft bill (see Appendix B) would also provide for state-tribal compacts. In addition to this recognition, the bill allows direct incorporation of the Native government as a third class city. As a third class city, the government would have the attributes of a municipality and a Native village government. To avoid conflicts with the *Williams* doctrine, state law which regulates the internal operation of a city government are not made applicable to the third class city.

Other provisions of the bill are comparable to the first draft.

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.

* Section 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 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 Native village government, 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 agreements with the Commissioner regarding coordination of state and Native village facilities and services which may include judical, law enforcement, and correction services.

(b) When the Commissioner 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 shall next submit the proposed agreement to the Governor. The Governor may approve the agreement and upon approval of 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. NONDISCRIMINATION.

(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 extinguishes a benefit, liability, privilege, immunity or license 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 extends a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that such determination may not be dependent on a Native village government's operation or participation in programs funded exclusively by federal or tribal funds 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 chapter authorizes the alienation, encumbrance, or taxation of real or personal property, including water rights, belonging to a Native person or

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 adjudicate the ownership or right to possession of property. Nothing this 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. 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 agreement, 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.

APPENDIX B

A BILL

For an Act entitled: "An Act Relating to Native Village Governments Establishing Third Class Cities."

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 incorporation of Native village.

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

* Section 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. INCORPORATION OF THIRD CLASS CITIES.

a) A Native village government as defined in this chapter shall be eligible to incorporate as a third class city.

b) Nothing in this chapter shall prevent such Native governments from exercising any power retained by that government by virtue of its tribal authority.

Sec. 29.--.030. ORGANIZATION OF COUNCIL.

a) A third class city shall be organized pursuant to the organic documents for the Native village government seeking incorporation under this chapter.

b) The following provisions of this title shall not apply to third class cities.

1) A.S. 29.23.200-250 (organization of city council).

2) A.S. 29.48.130-260 (administrative procedures).

c) A third class city shall possess all powers of a second class city outside boroughs as provided in A.S. 29.43.

Sec. 29.--.040. AGREEMENTS.

(a) A Native village government or a group of Native village governments may negotiate agreements with the Commissioner regarding coordination of state and Native village facilities and services which may include judical, law enforcement, and correction services.

(b) When the Commissioner 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 shall next submit the proposed agreement to the Governor. The Governor may approve the agreement and upon approval of 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.--.050. NONDISCRIMINATION.

(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 extinguishes a benefit, liability, privilege, immunity or license 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 extends a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that such determination may not be dependent on a Native village government's operation or participation in programs funded exclusively by federal or tribal funds 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.--.060. 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 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 adjudicate the ownership or right to possession of property. Nothing this 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. 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.--.070. 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 agreement, 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.

96TH CONGRESS
2D SESSION

S. 1181

IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 1980

Referred to the Committee on Interior and Insular Affairs

AN ACT

To authorize the States and the Indian tribes to enter into mutual agreements and compacts respecting jurisdiction and governmental operations in Indian country.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Tribal-State Compact Act
4 of 1980".

5 DECLARATION OF POLICY

6 SEC. 2. The Congress hereby declares that it is the
7 policy of this Nation to continue to preserve and protect the
8 tribes of the American Indian people. The policy of this
9 Nation is premised on the status of tribal governments as a
10 continuing part of the American political fabric. Accordingly,

1 the United States has a responsibility to establish a legal
2 framework which will enable the tribes and the States to
3 achieve maximum harmony and facilitate their cooperative
4 efforts in the orderly administration of their governments.
5 Federal enabling authority for the establishment of viable
6 intergovernmental agreements between the tribes and the
7 States based on mutual consent must be established.

8 DEFINITIONS

9 SEC. 3. For purposes of this Act:
10 (a) "Indian tribe" means any Indian tribe, band, nation,
11 or other organized group or community which is exercising
12 powers of self-government and which is recognized by the
13 Secretary of the Interior as eligible for services provided by
14 the United States to Indians because of their status as
15 Indians.
16 (b) "State" means any of the States of the United
17 States, including cities, counties, municipalities, or other
18 political subdivisions thereof.
19 (c) "Secretary" means the Secretary of the Interior
20 unless otherwise designated in this Act.
21 (d) "Indian country" shall be defined in accordance with
22 the provisions in section 1151 of title 18, United States
23 Code.

1 TITLE I—AUTHORIZATION OF COMPACTS AND
2 AGREEMENTS

3 SEC. 101. (a) Notwithstanding the Act of August 15,
4 1953 (67 Stat. 588), as amended, or any other Act transfer-
5 ring civil or criminal jurisdiction over Indians within Indian
6 country from the United States to the various States, or
7 establishing a procedure for such transfers, and notwithstand-
8 ing the provisions of any enabling Act for the admission of a
9 State into the Union, the consent of the United States is
10 hereby given the States and the Indian tribes and the same
11 are hereby authorized to enter into compacts and agreements
12 between themselves on matters relating to (1) the enforce-
13 ment or application of civil, criminal, and regulatory laws of
14 both within their respective jurisdiction, and (2) allocation or
15 determination of governmental responsibility of States and
16 tribes over specified subject matters or specified geographical
17 areas, or both, including agreements or compacts which pro-
18 vide for concurrent jurisdiction between the States and the
19 tribes, and (3) agreements or compacts which provide for
20 transfer of jurisdiction of individual cases from tribal courts to
21 State courts or State courts to tribal courts in accordance
22 with procedures established by the laws of the tribes and
23 States.

24 (b) Such agreements and compacts shall be subject to
25 revocation by either party upon six months written notice to

1 the other unless a different period of time is agreed upon. No
2 agreement may provide for a period for revocation in excess
3 of five years unless first approved by a majority of the adult
4 enrolled Indians within the affected area voting at a special
5 election as prescribed in section 406 of the Act of April 11,
6 1968 (82 Stat. 80; 25 U.S.C. 1326), but such approval shall
7 not curtail the right of the parties to revoke the agreement by
8 mutual consent within a shorter period of time.

9 (c) Agreements or compacts entered into under the pro-
10 vision of this section must be filed with the Secretary within
11 thirty days of consummation. In the event an agreement is
12 not so filed, it shall be subject to immediate revocation by
13 either party. The Secretary shall cause the jurisdictional pro-
14 visions of any such agreement, compact, or revocation to be
15 published in the Federal Register.

16 (d) Such agreements, compacts, or revocation thereof
17 shall not affect any action or proceeding which arose prior to
18 the effective date of such an agreement, compact, or revoca-
19 tion, and no such action or proceeding shall abate by reason
20 of such agreement, compact, or revocation unless specifically
21 agreed upon by all parties to any such action or proceedings
22 and by the parties to the agreement or compact.

23 (e) Nothing in this Act shall be construed to: (1) enlarge
24 or diminish the jurisdiction over civil or criminal matters
25 which may be exercised by either State or tribal governments

1 except as expressly provided in this Act; (2) authorize or em-
2 power State or tribal governments, either separately or pur-
3 suant to agreement or compact, to expand or diminish the
4 jurisdiction presently exercised by the Government of the
5 United States to make criminal, civil, or regulatory laws for
6 or enforce those laws in the Indian country; (3) authorize or
7 empower the government of a State or any of its political
8 subdivisions or the government of an Indian tribe from enter-
9 ing into agreements or exercising jurisdiction except as au-
10 thorized by their own organizational documents or enabling
11 laws; (4) authorize agreements or compacts which provide for
12 the alienation, financial encumbrance, or taxation of any real
13 or personal property, including water rights, belonging to any
14 Indian or any Indian tribe, band, or community that is held in
15 trust by the United States or is subject to a restriction
16 against alienation imposed by the United States; or (5) to
17 enter into agreements or compacts for the transfer of unlimit-
18 ed, unspecified, or general civil and criminal jurisdiction of an
19 Indian tribe, except as provided under section 406 of the Act
20 of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326).

21 (f) Nothing in this Act shall be construed as impairing or
22 restricting the right of the United States, States and Indian
23 tribes to enter into negotiations with each other with respect
24 to settlement of property rights arising from aboriginal own-
25 ership, treaties or other Federal laws or judicial decisions.

1 FUNDING AND IMPLEMENTATION—FEDERAL ASSISTANCE

2 SEC. 102. (a) In any agreement or compact between an
3 Indian tribe and a State authorized under this Act, the
4 United States, upon agreement of the parties and the Secre-
5 tary, may provide financial assistance to such party for costs
6 of personnel or administrative expenses in an amount up to
7 100 per centum of costs actually incurred as a consequence
8 of such agreement or compact, including indirect costs of ad-
9 ministration which are clearly attributable to the services
10 performed under the agreement or compact. In determining
11 the amount of Federal assistance, if any, to be provided the
12 Secretary may consider among other things:

13 (1) Whether or not the party assuming an obliga-
14 tion under the agreement or compact is already
15 obligated or entitled to perform the function which is
16 the subject of the compact.

17 (2) Whether or not the Federal assistance will
18 cause or enable the contracting party to perform the
19 function at a standard above that which it is already
20 obligated to perform.

21 (3) The financial capacity of the contracting par-
22 ties to underwrite the expenses without Federal assist-
23 ance.

24 (4) The extent to which the success or failure of
25 the compact may depend upon Federal assistance.

1 (5) The extent to which the proposed compact or
2 agreement will contribute to fostering of community re-
3 lations between Indian and non-Indian communities.
4 (6) The extent to which the proposed compact or
5 agreement will enhance protection of resources of both
6 Indian and non-Indian communities.
7 (7) The comparative costs if the function which is
8 the subject of the compact or agreement were to be
9 performed by the United States.
10 (8) The extent to which Federal funding is al-
11 ready supplied through revenue sharing, grants in aid,
12 or other Federal program moneys.
13 (b) Whenever a party to such agreement or compact
14 seeks financial assistance from the United States, to offset
15 their costs, such party shall prepare a detailed statement of
16 the projected costs; a copy of such statement shall be sup-
17 plied to the other party; and the original of such statement
18 shall be supplied to the Secretary at the time said agreement
19 or compact is tendered to him for his approval.
20 (c) In any agreement or compact in which one of the
21 parties qualifies for Federal assistance, the other party shall
22 be supplied with copies of all vouchers for payment at the
23 time they are submitted and shall be fully informed of all
24 payments made by the United States to the recipient party.
25 In the event disputes arise between the parties, either party

1 may request an audit. The books and records of the party
2 receiving Federal assistance which are relevant to the agree-
3 ment or compact shall be open to inspection by authorized
4 representatives of the United States.
5 (d) In the funding of governmental operations authorized
6 under this Act, the Secretary may enter into agreements or
7 other cooperative arrangements with any and all other Fed-
8 eral departments, agencies, bureaus, or other executive
9 branches for transfer of funds or contributions of funds appro-
10 priated for programs within the category of the functions to
11 be performed by the parties under such agreements or com-
12 pacts, and such departments, agencies, or bureaus are hereby
13 authorized to use such funds in the implementation of this
14 Act.
15 (e) All Federal departments, agencies, and other execu-
16 tive branches are authorized to provide technical assistance
17 and material support and assign personnel to aid tribal and
18 State authorities in the implementation of the agreements or
19 compacts they may enter into under the terms of this Act.
20 (f) The Secretary is hereby authorized to promulgate
21 such rules and regulations as may be necessary to carry out
22 the purposes of this Act.
23 (g) There are authorized to be appropriated such sums
24 as may be necessary during fiscal year 1981 not to exceed
25 $10,000,000 and each subsequent fiscal year in order to

1 carry out the agreements or compacts entered into pursuant
2 to this title. Such funds shall be expended by the Secretary
3 only after determination that there are no funds available
4 from alternative sources as provided in subsection (d) of this
5 section. The Secretary shall provide for such records as may
6 be necessary for the accounting and justification of the funds
7 expended under this authorization.

8 TITLE II—PLANNING AND MONITORING BOARDS

9 SEC. 201. (a) The Secretary is hereby authorized and
10 directed to encourage the tribes and the States to establish
11 councils, committees, boards, or task forces comprised of rep-
12 resentatives of the States and individual tribes, or on a
13 statewide or regional basis, to discuss and confer upon juris-
14 dictional questions which exist between the parties, and to
15 provide Federal representatives at such conferences.

16 (b) In furtherance of this objective, the Secretary is au-
17 thorized and directed to provide adequate representation of
18 tribal members at such conferences, and such further confer-
19 ences among the tribes as may be necessary for their sepa-
20 rate deliberations, and to participate in the payments of ex-
21 penses in employment of reporters, transcription of state-
22 ments, and preparation of reports as may be appropriate.

23 (c) Beginning October 1, 1980, funds appropriated pur-
24 suant to the Act of November 21, 1921 (42 Stat. 208), may
25 be utilized for the purposes of this title.

1 TITLE III—JUDICIAL ENFORCEMENT

2 SEC. 301. Any party to an agreement or compact en-
3 tered into in accordance with this Act may bring a civil
4 action to secure equitable relief, including injunctive and de-
5 claratory relief, for the enforcement of any such agreement or
6 compact, but no action to recover damages arising out of or
7 in connection with such agreement or compact shall lie
8 except as specifically provided for in such agreement or com-
9 pact. The United States district courts shall have original
10 jurisdiction of any civil action authorized by this section.
11 States and Indian tribes, by entering into compacts or agree-
12 ments in accordance with this Act, shall be deemed to have
13 consented to suit with respect to the subject matter of such
14 compacts or agreements unless the agreement or compact
15 specifically states otherwise.

Passed the Senate May 30 (legislative day, January 3), 1980.

Attest: J. S. KIMMITT,

Secretary.

FOOTNOTES

PART I

1. D. Case, The Special Relationship of Alaskan Natives to The Federal Government, pp. 119-127 (ANF, 1978).
2. P-eliminary Report on Borough Government, p. 11 (Alaska Legislative Council, 1960) [hereinafter cited "Preliminary Report"].
3. id.
4. id. at 14
5. 37 Stat. 512 See Preliminary Report, 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 (h.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. AK. Const., Art. X, Sec. 3 & 7.
25. AK. Const., Art. X, Sec. 4.
26. AK. Const., Art. X, Sec. 8.
27. AK. Const., Art. X, Sec. 5.
28. AK. Const., Art. X, Sec. 6.
29. Walters v. Cease, 380 P.2d 263 (Alaska, 1964)
30. A.S. 29.18.030
31. A.S. 29.18.011
32. Con. Cov. Proc., Pt. 4, pp. 2621-2.
33. id.
34. Local Government Under The Alaska Constitution, p. 46 (1959, Public Administration Service).
35. 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).
36. Con. Cov. Proc., Pt. 4, p. 2650.
37. Ak. Con., Art. X, Sec. 7.
38. id, Sec. 3.
39. A.S. 29.18.011
40. Con. Conv. Proc., Pt. 4, p. 2654.

41. id.
42. 484 P.2d 1040 (Alaska, 1971).
43. Con. Conv. Proc., Pt. 4, p. 2653.
44. id, at 2623
45. id, at 2624.
46. 491 P.2d 720 (Alaska, 1971).
47. Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska, 1970).
48. Ak. Const. Art. X, Sec. 2.
49. id, Sec. 15.
50. id, Sec. 5.
51. id.
52. Con. Conv. Proc., Pt. 4, pp. 2719-20.
53. Ak. Const., Art. X, Sec. 2 See Liberati v. Bristol Bay Borough, 384 P.2d 1130 (Alaska, 1978).
54. Wien v. City of Ketchikan, 383 P.2d 721 (Alaska, 1963).
55. Ak. Const., Art. X, Sec. 13.
56. id.
57. Compare Con. Conv. Proc. Pt. 4, pp. 2713 and 2652.
58. Ak. Const., Art. X, Sec. 6.
59. A.S. 29.03.020
60. 1961 Op. Attorney General No. 24
61. A.S. 16.10.380
62. A.S. 46.40.110 et. seq.
63. A.S. 14 08.031
64. Hootch v. Alaska State-Operated Schools, 536 P. 2d 793 (Alaska, 1975)
65. A.S. 29.89.040
66. D. Case, supra at 130.
67. See generally id., at 119-127
68. 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).
69. U.S. v. Sandoval 231 U.S. 28 (1913)
70. P.L. 93-638, Sec. 4(a)
71. P.L. 92-512, Sec. 108(b) (14)
72. P.L. 93-383, Sec. 102(a) (1)
73. P.L. 93-203, Sec. 302
74. P.L. 95-608, Sec. 4(8)
75. 28 U.S.C. 1360 (c)
76. P.L. 90-351, Sec. 601(b)
77. See Fed. Reg. (May 25, 1973) p. 13758; Fed. Reg. (July 10, 1980) p. 46581-2.
78. 25 U.S.C. 476
79. 25 U.S.C. 473(a)
80. 25 U.S.C. 466
81. See generally D. Case, supra, at 38-40
82. 43 U.S.C. 1618
83. House Rept. No. 2244, 74th Cong., Second Session, .2 (1936).
84. Senate Rpt. No. 1080, 73d Cong., Second Session, 1 (1934).
85. 560 P.2d 31 (Alaska, 1977)
86. 465 F. Supp. 1286 (D.C. Alaska, 1978).

87. Act of June 19, 1935 (49 Stat. 388), as amended by Act of August 19, 1965 (79 Stat. 543).
88. P.L. 93-638, Sec. 4(a).
89. 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).
90. 25 U.S.C. 450(b).
91. Pueblo of Santa Rose v. Fall, 273 U.S. 315 (1927).
92. Williams v. Lee, 358 U.S. 217 (1959).
93. 541 P.2d 730 (Alaska, 1975).
94. 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. A third class borough may only exercise taxing and education powers. A.S. 29.41.010
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
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. U.S. Solicitor's Opinion, (Oct. 1, 1980), p. 2.
37. id.
38. 302 U.S. 535 (19380.
39. See generally 25 U.S.C. 465, 473(a)
40. 368 U.S. 351 (1962)
41. See Matz v. Arrnet, 412 U.S. 481 (1973)
42. 420 U.S. 452 (1975)
43. 436 U.S. 191 (1978)
44. 436 U.S. 313 (1978)
45. 419 U.S. 544 (1975)
46. 28 U.S.C. 1360(c)
47. 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)
48. Fox v. Fox, 542 P.2d 918 (Or. App., 1975); Begay v. Miller, 70 Ariz. 380, 222 P.2d 624 (1950)
49. Compare Santa Clara Pueblo v. Martinez, 98 S.Ct. 1670 (1978) and U.S. v. Wheeler, supra.
50. 358 U.S. 217 (1959)
51. 369 U.S. 69 (1962)
52. id, at 75-76
53. McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973).
54. 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.
55. See Goldberg, Public Law 280: The Limits of State's Jurisdiction Over Rservation Lands, 22 UCLA Law Review 535 (1975).
56. 426 U.S., 388-89 citing U.S. v. Mazurie, supra.
57. id.
58. id, at 384
59. id.
60. Santa Rosa Band of Indians v. Kings County, 532 F.2d 655 (9th Cir., 1975)
61. Morongo Band of Mission Indians v. Area Director, IBILA 79-18-A (1979).
62. See generally Goldberg, supra; Santa Rosa Band of Indians v. Kin County, supra.
63. F. COHEN, supra, at 122
64. D. CASE, supra, at 152-3
65. A.S. 29.08.010

66. A.S. 29.08.020
67. A.S. 29.48.010
68. A.S. 29.48.035
69. A.S. 29.48.030
70. A.S. 29.33
71. A.S. 29.43
72. A.S. 29.48.030 (7); Town of Ketchikan v. Greenbaum, 5 Alaska 396 (1915)
73. 55 I.D. 14 (Powers of Indian Tribe)
74. 18 U.S.C. 1153
75. 18 U.S.C. 1152
76. Compare A.S. 29.48.200 and 25 U.S.C. 1302 (7)
77. Ak. Const. Art. IV, Sec. 1
78. 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).
79. 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)
80. Iron Crow v. Oglala Sioux Tribe, 231 F.2d 89 (1959)
81. Talton v. Mayes, 163 U.S. 376 (1896)
82. 25 U.S.C. Sections 1301-1303
83. A.S. 29.33.070. et. seq.
84. A.S. 29.33.070(b)(2)
85. A.S. 29.29.43.040
86. A.S. 38.05.037
87. 541 P.2d 730. See P.24 infra, for discussion
88. id, at 737-8
89. A.S. 29.33.070 et. seq.
90. Sec. 45, Chap 85 SLA 1979
91. A.S. 29.48.035
92. 419 U.S. 544 (1975)
93. Johnson v. Chilkoot Indian Village, 957 F. Supp. 384 (D. Alaska, 1978)
94. 532 F.2d 655 (9th Cir., 1977)
95. id, at 663
96. 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)
97. Buster v. Wright, supra.
98. Maxey v. Wright, 105 F. 1003 (8th Cir., 1900)
99. Morris v. Hitchcock, 194 U.S. 384 (1904)
100. A.S. 29.53.415 et. seq. (boroughs); A.S. 29.53.440 (cities within boroughs); A.S. 29.43.020 (cities outside boroughs)
101. A.S. 29.53.010 (boroughs); A.S. 29.53.400, 410 (cities within boroughs); A.S. 29.43.020 (cities outside boroughs)
102. A.S. 29.53.020, et. seq.
103. 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. AK. Const., Art. I, Sec. 1, provides that this constitution is dedicated to the principles...that all persons are equal and entitled to equal rights, opportunities, and protection under the law;...
3. 262 N.W. 2d 341 (Minn., 1977)
4. id., at 348
5. id., at 348n24 citing Morton v. Mancavi, 417 U.S. 535 (1974) and McClanahan v. Arizona State Tax Comm., 411 U.S. 164 (1973)
6. 430 U.S. 641 (1977)
7. U.S. Const., Art. 1, Sec. 8
8. 262 N.W. 2d, at 347n.23
9. 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)
10. 426 U.S., at 388-9
11. A.S. 29.08.050(b)
12. N.M. Stat. Ann. Sec. 53-9-1.
13. Toledo v. Pueblo de Jemez, 119 F. Supp. 429 (D.N.M., 1954)
14. 30 M.R.S.A. Sec. 6201 et. seq.
15. 30 M.R.S.A. Sec. 6206
16. 30 M.R.S.A. Sec. 6206
17. 30 M.R.S.A. Sec. 6206
18. 30 M.R.S.A. Sec. 6204
19. 30 M.R.S.A. Sec. 6210
20. 30 M.R.S.A. Sec. 6206
21. 426 U.S. 373 (1976)
22. Fl. Stat. Sec. 285.06
23. id., Sec. 285.17
24. See id., Sec. 285.061 (2). See Solicitor's Opinions, No. M-36907 (Nov. 14, 1978) Criminal Jurisdiction on Seminole Reservations in Florida.
25. Fl. Stat. Sec. 285.18
26. Conn. Gen. Stat., Sec. 47-63, et. al.
27. Conn. Gen. Stat., Sec 47-65(d)
28. Texas Stat., Chapter XLIV, Acts of the 5th Legislature, 1854
29. Texas Stat., Art. 5421z, Sec. 11A
30. Texas Stat., Art. 5421z, Sec. 12
31. Texas Stat., Art. 5421z, Sec. 18
32. These states include California, Delaware, Idaho, Montana, Maryland, Massachusetts, Michigan, Minnesota, North Dakota, Oregon, South Dakota, Wisconsin, and Wyoming.
33. Minn. Stat., Sec. 922 et. seq.
34. Cal. Code Educ. 4084
35. KELSEN, PRINCIPLES OF INTERNATIONAL LAW, 387 (2nd ed., 1966)
36. id., at 399
37. Nev. Rev. Stat. Sec. 277.080 et seq
38. R.C.W. 39.34
39. S.D. Compiled Laws Ann. Sec. 1-23-24 et seq
40. Nev. Rev. Stat. Sec. 233A.120
41. Nev. Rev. Stat. Sec. 233A.130

42. See State v. Forge, 262 N.W. 2d 341 (Minn. 1977); Minn. Stat. 97.431
43. Or. Rev. Stat. Sec. 390.845
44. N.M. Rev. Stat. 29-1-11. See also Tribal-State Compact Act of 1978. Hearings on S.2502 before the U.S. Senate Select Committee on Indian Affairs, 95th Cong., 2d Sess. 35-36, 183-189, and 252-259 (1978) Statements on cross-deputization in other states.

45. See generally Part II(B)(1) supra.
46. See generally Part II(B) supra.
47. AK. Const., Art. X, Sec. 4
48. See White v. Califano, 437 F. Supp. 543 (1977); Black v. District Court, 158 Mont. 523 (1973); Kennerly v. District Court, 400 U.S. 423 (1971)
49. 55 ID 14 (1934), Smith v. Bonifer, 154 F.883 (1909); Ollestead v. Native Village of Tyonek, 560 P.2d 31 (1977).
50. Smith v. Bonifer, supra.
51. 25 USC 163
52. 25 CFR 271.2 (i)
53. Proposed IRA Constitution for Dish-Ina-Nek, Art. 5, Sec. 4
54. 25 U.S.C. 1301
55. Dodge v. Nakai, 298 F. Supp. 26 (D. Ariz., 1969); Dry Creek Lodge, Inc. v. United States, 515 F.2d 926 (10th Cir., 1975)
56. 436 U.S. 49 (1978)
57. MANUAL OF INDIAN LAW, B-9 (The American Indian Lawyer Training Program, Inc., 1976)

Tl'átk Saxman
City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
(907) 225-4166

Re: Proposed Community Legal Assistance Grant Application

Senator Arliss Sturgulewski
Pouch V
Juneau, Ak. 99811

November 25, 1980

Dear Senator,

Enclosed please find the City of Saxman's Community Legal Assistance Grant application for your review and comments.

After spending some time with you and Patrick Poland discussing the approach to the regarded application, I believe the best approach is one which utilizes an economic development strategy as the medium for demonstration of Michael Walleri's Tribal-State Relations, A New Paradigm for Local Government in Alaska on the community level.

Some background information which will be helpful to you in seeing the application of this approach is listed below.

Recently, the City of Saxman and the Cape Fox Corporation (CFC) entered into an agreement which demonstrated the determination of the CFC Board of Directors and the City Council to set policy that bound public/private sector involvement into the rehabilitation of the industrial area, specifically the Saxman Village Port & Terminal, within Saxman, which qualified the proposed appropriate and compatible growth by enunciating community participation. This was another leap into actualized acumen which afforded vivid opportunity for continued relations.

The City Council has, additionally, established the thoroughfare for the future development of the facility by revoking the franchise under which the Saxman Village Port & Terminal (SVPT) operation was authorized (Resolution 80-11); resolved that if the SVPT is removed from its current status, it be returned to its original condition when placed into receivership (Resolution 80-13); resolved to protect the only public transportation terminal in S.E. Alaska through a consensus agreement with CFC and the existing receiver (Resolution 80-16) and to authorize the City to grant to CFC a franchise for the management and operation of the facility through the development of a joint-management agreement (Resolution 80-14).

The general election of October 7, 1980 directed the City Council through the vote to implement Resolutions 80-13 and 80-14. The election also produced voter approval to regulate commerce within its jurisdiction and to provide for the establishment of a Saxman Tribal land use program through an inter-cooperative joint-management agreement between the City of Saxman and the Organized Village of Saxman, the Saxman IRA Council.

The City of Saxman and the Organized Village of Saxman have jointly submitted through the Saxman Comprehensive Community Development Plan(s) (SCCDP) preapplication to HUD's CDBG program for $1.5 million over hte next three years utilizing a total leveraging of over $3.5 million, which among other projects would provide rehabilitation funds for the facility and acquisition funds for surrounding properties. A request for determination of eligibility to make application under Hud's Urban Development Action Grant program which would over the ten year period of the SCCDP provide up to

$15 million with a HUD mandated 1 to 9 lo 1 to 10 leveraging factor meaning a potential, if invited to apply, of up to $150 million over the next decade into the community, was submitted.

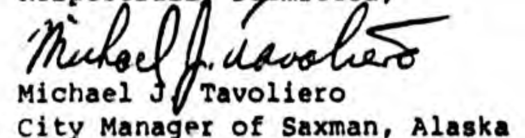
The Central Council of the Tlingit and Haida Indian Tribes of Alaska and the Bureau of Indian Affairs, which recently wrote the City after the submission of the SCCDP, "We were very impressed with the document and plan to fully utilize the valuable information contained within the plan.", have actively supported the planning approach employed by the inter-cooperative efforts of the City, CFC, and the Saxman IRA.

Upon the signing of the consensus agreement (Resolution 80-16), the SCCDP will be submitted to EDA with a preapplication and request for determination of eligibility to make application under EDA's Special Economic Development and Adjustment Assistance to establish a $1 million permanent/revolving loan fund for the organization and development of the Saxman Tribal and Community Development Corporation (SCCDP, Chap. 1.x.10), a community owned and represented enterprise, which will inter-relate with the City, CFC, and the Saxman IRA.

Through the legal research project as proposed in cooperation with LGAD and the Tanana Chiefs Conference, the infrastructure for inter-cooperation and interaction and the assurance and guarantee of autonomous weel-being will be developed and implemented through community participation and representation.

If you have any questions as to this proposal, please feel free to call on me.

Respectfully Submitted,



Michael J. Tavoliero
City Manager of Saxman, Alaska

COMMUNITY LEGAL ASSISTANCE GRANT APPLICATION*

INSTRUCTIONS

- Review the attached sample application form; then,
- Complete this application form by answering all questions.

I, Michael J. Tavoliero of the City of Saxman, Alaska
your name and title — name of city or organization

P.O. Box 8676 Ketchikan 99901 225-4166
address — city — zip code — telephone number

request a Community Legal Assistance Grant from the Department of Community and Regional Affairs to pay for See attached narrative's legal services.
name of attorney

MONEY QUESTIONS

Amount of money requested $20,000.00

Please describe your organization's financial condition. (Include a recent financial report if available.)

(See attached narrative)

Amount of money in checking account(s) $ 15,773.93

Amount of money in savings account(s) $ 1,049.84

TOTAL $ 16,823.77

How much of the above total could be used for this project?

$ 00.00 (See attached narrative)

*authorized by AS 44.47.200-230, and 19 AAC 40.010-050

PROJECT QUESTIONS

What legal problem do you want to solve? (Please be specific.)

The City of Saxman, Alaska, has recently completed its comprehensive community development plan's) (a ten year plan). There exists a need to develop and establish intercooperative and/or mutual agreements between the City of Saxman and the Saxman I.R.A. Council, a Native government, to promote the equitable, fair and maximum delivery of State/Federal services and programs through economic development strategies in a severely impacted economic area through the optimal and functional utilization of public/private sector involvement and fund leveraging which will not offend either State/Federal constitutional guarantees. (See attached narrative)

What has been done to solve the legal problem? (describe agencies contacted, correspondence written, and amount of money already spent.)

This is the third written request under this program for legal assistance. The original applications dealt with a more general topic area than found within this application. (These applications have not received a determination from LGAD due to a question as to whether or not their approval would have been "premature" as to the need as stated. All questions as to a premature need for legal assistance are at this time moot, because the main point, completion of the EDA funded marketing/feasibility study, is no longer at issue.) In the period during the submitted application considerations, the City of Saxman continued to remain in contact with LGAD and reasserted the need for legal assistance. (Please note that outside of the first grant submission, which did in fact receive a determination, but that determination was based upon EDA consultation which was subsequently reversed and never followed up, no determination was made on the next application due to LGAD not receiving a letter of agreement from the City and its counsel stating that the original contract for legal services was still applicable. In light of these inconsistencies, the City requests that if this application is properly submitted, it receive immediate approval and award.) (See attached narrative)

How would the requested Community Legal Assistance Grant solve the legal problem?

By approving and awarding the requested Community Legal Assistance Grant, the City of Saxman will be able to resolve the problems contained within the problem statement and effectively provide a model demonstration for the paradigm as presented by Mr. Michael Walleri. (See attached narrative)

How will the legal problem be solved if you do not receive a Community Legal Assistance Grant?

The legal problem as presented cannot be resolved by the City of Saxman without the approval and award of this legal assistance application. All objectives found within the attached narrative under OBJECTIVES require legal analysis, assistance and representation. The City of Saxman does not have the necessary expertise to undertake this project without legal counsel. The City of Saxman is seeking this legal assistance to compensate for the loss of time by staff in conducting this project as well as providing a model demonstration site for the application of Mr. Walleri's paradigm.

November 24, 1980
date

your signature

Please send this application, and a written and signed agreement with your attorney to:

Division of Local Government Assistance
Department of Community & Regional Affairs
Building B
225 Cordova Street
Anchorage, Alaska 99501

Telephone: 276-1721

PROBLEM STATEMENT

The effective manager in an intergovernmental context is one who knows the legal competence and institutional capacities of his/her own government and meshes these capacities with those being cooperatively managed and shared from the private, State and Federal side. In situations where competing governmental claims to authority occur, the political and governmental capabilities and related services capabilities of different governmental entities need to be optimally and functionally assured.

In looking at the legal significance attached to enhancing the role of Native/local governments in the delivery of public services and their relationship to private sector involvement, there exists a need to utilize governmental and economic strategies which require an unprecedented level of intergovernmental interaction. the building of Native/local managerial capacity within this environment essentially revolves around acknowledgement and awareness of governmental prerogatives, agendas, and flow of authority between the State government, the local government and the Native government. In other words, the various levels of government having specific responsibilities to discharge relative to their government and constituencies cannot address the mutual problems inherent within the State and Native self-determination approaches without the aggregate (State/Native) community participation. Likewise, the fiscal restraints on Native/local government dictates that managers cannot manage in isolation from either government effectively.

As Michael Walleri has stated within the attached materials as to Alaskan communities being organized as municipalities and Native village governments, "This rich" (and somewhat frustrating) "variety in organization has led to a great deal of confusion regarding the roles of the various governments. Individually, these governments lack the resources to effectively exercise their proscriptive and enforcement powers." As well as their political and economic development.

Mr. Walleri continues, "Generally, the State agencies prefer to operate through municipalities. Federal agencies prefer Native governments. But state operated, federally funded programs may include Native villages, while federal municipal assistance programs include municipalities. The net result is a community's eligibility for a particular project or program depends on its organizational characteristics. Consequently, many communities have created paper local governments to prove eligibility for a given program. This willy-nilly organizational effort has created a multifurcated governmental scheme of overlapping and disjointed jurisdictions."

In the City of Saxman, this multifurcated governmental scheme of overlapping and disjointed jurisdiction is coupled with ineffective management and substantial economic deterioration and distress due to the lack of an efficient level of intergovernmental interaction.

OBJECTIVES

The City of Saxman, Alaska, proposes to contract through a joint contract/agreement the services of Ellis Law Offices, Inc. and Michael Walleri to do a legal research/analysis project which addresses the problems and utilizes Mr. Walleri's Tribal-State Relations, A New Paradigm for Local Government in Alaska, as the second phase of the originally contemplated intergovernmental and interentity legal research project which produced Mr. Walleri's paradigm. The ultimate objective of this second phase project will be to establish intercooperative and/or mutual agreements between the City of Saxman and the Saxman I.R.A. Council, a Native government to promote the equitable and maximum delivery of State/Federal services and programs through economic development

strategies in a severely depressed and impacted economic area through the optimal and functional utilization of public/private sector involvement and fund leveraging as a demonstration model.

A. SPECIFIC DEMONSTRATION MODEL SITE

The Saxman Village Port & Terminal (formerly the Ketchikan & Northern Terminal), owned by the City of Saxman, has been in receivership for more than fifteen years. The facility status and future viability is threatened by a history of disencentives, barriers and inactivity fostered by the policy prohibition for rehabilitation and revitalization through local community participation and minority business enterprise development and the exhibition of outside discretion of policy which directly and indirectly excluded local community participation and minority business enterprise from effectively and effeciently organizing the infrastructural management and operation system to address the institutional disencentives, barriers and inactivities, such as a restrictive and inflexible receivership, lack of technical assistance necessary to offset debt obligation through the leasing of properties on which the facility is situated, lack of transportation and marketing consultation, and a consistent and continuous "wait and see" policy adherred to by the Economic Development Administration, as necessary and needed for the rehabilitation and revitalization of the facility.

The Saxman Village Port & Terminal facility was originally funded in 1963, under the Area Redevelopment Administration as a freight terminal. The City of Saxman purchased and constructed the facility through revenue bonds, of which approximately $1 million plus $.3 million in current accrued interest is still owed. Due to financial and management difficulties, the facility was put into receivership by the Federal government, and is now operated by the same receivership. The facility, originally constructed to handle freight, was until recently utilized by Foss Alaska Line (FAL) for containerized barge freight. Realized revenues have been to maintain the facility, albeit in a minimal and to the detriment of future viability; thus, net revenues for debt service were not available.

The primary leasee of the facility, FAL, encountered numerous difficulties in dealing with the receiver. This is from the standpoint of the receiver's inability due to judicial restrictions, a lack of funding and technical assistance, and insufficient and underqualified staff necessary to satisfactorily manage the overall facility management and operation requirements. The lease between the receiver and the lessee, FAL, expired in early 1980. Based on a position by the lessee that without the management and operation requirements to implement improvements and other necessary actions, continued leasing was inappropriate.

The City of Saxman, because of its ownership of the real property on which the facility is situated, determined in 1977 that an analysis of the facility's legal status and its receivership operations should be pursued. Having obtained a grant from the Bureau of Indian Affairs, a study was commissioned entitled "Report on the Status of the Saxman Terminal", which was completed in February, 1978. It was recoomended by the report that the City of Saxman immediately institute a request for a 15 year principle and interest moratorium. This would be conditioned upon a development program designed to eventually create sufficient revenues so that when required improvement construction financing had been amortized, full payment on the revenue bonds could then be accomplished. The report, also recommended, if and when the Federal government is committed to a moratorium program, a marketing study, analyzing the Southeastern Alaska transportation economics, would be necessitated. The study would determine through interviews with present and prospective users, improvement goals and alternative revenue potentials. The City of Saxman's commitment, as to improvements and the receivership terminated in accordance with a court order entered upon a stipulated moratorium or forgiveness agreement as to the original revenue bond obligation.

The marketing study was initiated through a technical assistance grant through EDA in the spring of 1979. After its final draft review, the study recommended two financial alternatives of which one considered the possibility that the Cape Fox Corporation assume the role in the future operations and financing the facility through joint development and joint funding assistance program planning and implementation which will be consistent with the principles, policies, procedures and practices of the Saxman Comprehensive Community Development Plan(s), a direct prod ct of community participation.

Conversely, the study's other financial alternative recommended the liquidation of the facility at its current fair market value, which would preclude its use as a public transportation facility, as well as, minimize public sector control and public long-term benefits that might be derived from the facility. (The original contract is assumed, by this writer, as inherited through the catylist of legistlative recombinant genetics by EDA, to have been predicated on the primary goals of economic mobilization and employment opportunities, which were a consideration of the revenue bond obligation by the City of Saxman. With the failure of the facility in 1965 and the bond debt declared in default, this consideration and goal of the project was rescinded.

The Local Government Assistance Division (LGAD), the Community Legal Assistance Grant Program coordinating agency, having been consultated directly and indirectly by EDA in the previous grant application determination processes, deferred award based on the prematurity of need for legal assistance, when the City of Saxman had inquired, requested or made application up to this point.

Simultaneously, during the City of Saxman's relationship with LGAD as to the above legal assistance project, the City requested LGAD as to the advisable feasibilty of analyzing a Native/local intergovernmental relationship to eliminate governmental and jurisdictional multifurcation and encourage and enhance an aggregated eligibility characteristic strategy for the optimal and functional delivery of programs and services and development of community resources. LGAD informed the City after further investigation into the project's potential that the Tanana Chiefs Conference was also interested in the concept and its village government specialist, Michael Walleri, was submitting a proposal for a legal research project as (Mr. Walleri is a member of the Alaska State Bar) proposed by LGAD and, if appropriate and acceptable, in cooperatiom with the City of Saxman.

The project developed a specialized paradigm, the set of all governmental and jurisdictional forms based on the theme of Tribal-State inter-relationships, a legal and political touchstone conceptualization, which, if utilized, in a specific demonstration site, would yield an effective management capacity and mitigate adverse economic impact through the actualization of an intergovernmental interaction model which would establish aggregated eligibility charac eristics and, if employed, strategically develop community resources through the optimal and functional delivery of State/Federal programs and services. This present application serves as the second phase of the originally contemplated intergovernmental and interentity legal research project, which produced Mr. Walleri's paradigm.

B. IMPLEMENTATION OF THE PARADIGM

1. PROJECT TASK OBJECTIVES

a. Analyze current legal status of inter-public.private entity involvement and interaction (See Saxman Comprehensive Community Development Plan(s); Chaps. 1.x.01 through 1.x.10, 2.x.02 through 2.x.03 and 4.x.03);

b. Minimize negative multiplier factors effect and reduce through legal mechanism (See Saxman Comprehensive Community Development Plan(s); Chaps. 1.x.01 through 1.x.10, 2.x.02 through 2.x.03 and 4.x.03);

c. Analyze letting of taxation to avoid leasing and best comprehensive lease payment of tax advantage and prepare a detailed tax analysis (See Saxman Comprehensive Community Development Plan(s); Chaps. 1.x.01 through 1.x.10, 2.x.02 through 2.x.03, and 4.x.03);

d. Review, analyze and prepare best approach to State/Federal Revenue Sharing, State Equalization, Hold Harmless Monies and other Tribal/municipal assistance funds (See Saxman Comprehensive Community Development Plan(s); Chaps. 1.x.01 through 1.x.10, 2.x.02 through 2.x.03, 3.x.03, 4.x.03);

e. Analyze governmental and legal status and devise method of implementing greater degree of coordination of governmental functions (See Saxman Comprehensive Community Development Plan(s); Chaps. 1.x.01 through 1.x.10, 2.x.02 through 2.x.03, 3.x.01 through 3.x.06 and 4.x.03);

f. Analyze and prepare relative service capabilities and aggregated eligibility characteristics and the ability to proceed with implementation (See Saxman Comprehensive Community Development Plan(s); Chaps. 2.x.02 through 2.x.03, 3.x.01 through 3.x.06 and 4.x.03);

I. Outline strategy of implementation of service functions;

II. Assess service capabilities of entities;

g. Develop approach, legal review and intercooperative agreements to maximize implementation based on demonstration model for current utilization and with respect to §7(h) and other applicable sections of the Alaska Native Claims Settlement Act of 1971 as amended (See Saxman Comprehensive Community Development Plan(s); Chaps. 2.x.02 through 2.x.03 and 4.x.03);

h. Act on the behalf of the community ---- in negotiating with the receiver or other court appointed representatives of the Saxman Village Port & Terminal (See Saxman Comprehensive Community Development Plan(s); Chaps. 1.x.01 through 1.x.10, 2.x.02 through 2.x.03, 4.x.03);

i. Assist the community ---- in negotiating with the Federal government and other agencies with regard to financial obligations and needs of the Saxman Village Port & Terminal (See Saxman Comprehensive Community development Plan(s); Chaps. 1.x.01 through 1.x.10, 2.x.02 through 2.x.03, 4.x.03);

j. Assist the community ---- in negotiating with potential tenants (the Native village (ANCSA) corporation and others) or other users of the Saxman Village Port & Terminal (See Saxman Comprehesive Community Plan(s); Chaps. 1.x.05 through 1.x.10, 2.x.02 through 2.x.03, 4.x.03(01,03,04,07-15,20,21,23,24,28);

k. Perform all other legal services necessary to achieve the effective and efficient realization and actualization of the ultimate objective (See Saxman Comprehensive Community Development Plan(s); Chaps. 1.x.01 through 1.x.10, 2.x.02 through 2.x.03), 4.x.03(01,03,04,07-15,20,21,23,24,28);

2. PROJECT PREFORMANCE OBJECTIVES

a. Provide intergovernmental stability and interaction within a legal framework (See Saxman Comprehensive Community Development Plan(s); Articles 1.1,

2.2, and 3.2);

b. Provide a realistic demonstration model site applying aggregated eligibility characteristics and economic development strategies through intergovernmental intercoperation and interaction (See Saxman Comprehensive Community Development Plan(s); Articles 1.2,2.2 and 3.2);

c. Develop legal framework which allows optimal and functional stimulation of private investment and participation through consortia approaches of public/private sector involvement and fund leveraging (See Saxman Comprehensive Community Development Plan(s); Articles 1.2,2.2, and 3.2);

d. Promote the development and/or facilitate equal employment opportunities, economic enterprise and small business activity and provide equal service representation through community participation acessibility (See Saxman Comprehensive Community Development Plan(s); Articles 1.2,2.2, and 3.2).

PAST ACTIVITY IN RESOLVING THE PROBLEM

To attempt to fix a dollar value on the amount of money the City of Saxman has spent, not to mention lost in attempting to solve the problem as stated would take a major financial study beginning over fifteen years ago with the Saxman Village Port & Terminal until now. Starting with the City's bond obligation, the lack of technical assistance, and the ubiquitous inconsistencies and impracticalities of an undefined intergovernmental jurisdiction, the study would only offer loss guesstimations.

However, over the past few years, more than $100,000.00 has been spent in attempting to develop this project. Affected entities are the Economic Development Administration, the Bureau of Indian Affairs, the State of Alaska's Department of Community & Regional Affairs' Local Government Assistance Division, the Tanana Chiefs Conference, the City of Saxman, and the Saxman I.R.A. Council.

The City of Saxman has currently reached a consensus agreement with the receiver and the Cape Fox Corporation in returning local control to the community of the Saxman Village Port & Terminal. The City and the Saxman I.R.A. Council have jointly submitted preapplications to HUD under the CDBG and UDAG progams for specific funding for the economic development strategy and revitalization of the Saxman Village Port & Terminal and other interrelated community development projects. These projects are contained within the Saxman Comprehensive Community Development Plan(s).

Legal assitance is required to optimally and functionally assure overall success of the economic and governmental development interactions as proposed.

Mr. Walleri has recently completed the first phase of his legal research project as proposed by LGAD in cooperation with the City of Saxman. The outline of this project will be based on the paradigm as presented by Mr. Walleri and the principles, policies, practices and procedures of the Saxman Comprehensive Community Development Plan(s). While the Tanana Chiefs Conference has expressed an interest in pursuing the second phase of this project, the Tanana Chiefs Conference has agreed that the City of Saxman is the more appropriate site for a demonstration model. For this reason the City of Saxman urges approval of this legal assistance grant application in order to proceed as soon as possible.

Tl'átk Saxman
City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
(907) 225-4166

Re: SAXMAN VILLAGE PORT & TERMINAL (SVPT)
CONSENSUS AGREEMENT
FINAL DRAFT REPORT

A. PURPOSE AND INTENT

1) THE PURPOSE AND INTENT OF THIS CONSENSUS AGREEMENT is to stimulate private investment and participation through public/private sector financial leveraging strategies in the City of Saxman, Alaska; to encourage revitalization and rehabilitation of the SVPT through involvement of public sector development of management, entrepreneurial and administrative capabilities hand-in-hand with private sector implementation of management approaches, funding sources, financing techniques and government programs to facilitate public/private sector development; increase the role of minority business enterprise (MBE) participation; promote Article III - PURPOSE of the Articles of Incorporation of KAA and TL'ATK Development Corporation; seek appropriate compensation and restitution for the sustained losses of revenues and employment opportunites caused by the lack of use and occupancy compensation attached to the free and unencumbered property upon which the SVPT is situated as a fair and equitable consideration in the future status of the SVPT; and to promote and insure community participation and representation as a necessary element in the future viability of the SVPT.

B. CONSENSUS

1) THE CONSENSUS OF THE UNDERSIGNED PARTIES is based on the background of the SVPT (infra). It is common consensus that the SVPT demonstrates sudden and severe economic dislocation and long term economic deterioration and further demonstrates a deteriorated and reduced economic potential in the City of Saxman, a city of less than 25,000; that the submitted CDBG and UDAG preapplications are consistent with the Saxman Overall Economic Development Plan, as amended, 1980, and the attached Saxman Comprehensive Community Development Plan(s) (SCCDP), also submitted to HUD; that based on the deteriorated and reduced economic state of the SVPT the immediate discontinuance of its rail and barge operations and renovation of its bonded warehouse are required; that potential viability of the SVPT (leading to financial solvency and debt service pending stipulated moratorium or forgiveness agreement) can only be accomplished through joint-funding assistance and development over a long term redevelopment plan, a short term interim management and operation plan, and implementation in a cooperative manner through a marketing and business campaign for long range improvements between public/private sector involvement and participation; that based on the demonstrated commitment of the City of Saxman, it is the primary goal of the Consensus Agreement to terminate (or substitute with an entity, such as, the Cape Fox Corporation) the existing receivership in order to implement the guidelines and development programs and projects of the SCCDP on or before January 1, 1981 and formally requests EDA to allow and support the full and meaningful purpose and intent through community participation of comprehensive community planning and development to transpire, without the self-determined influence and control of the existing receivership, thereby, mitigating community and minority business enterprise (MBE) participation barriers and disencentives.

C. CONCLUSION AND RECOMMENDED POLICY

1) THIS CONSENSUS AGREEMENT BETWEEN THE UNDERSIGNED PARTIES IS PRECATORY IN NATURE AND IS PRESENTED AS A FORMAL NOTICE OF AGREEMENT TO THE ECONOMIC DEVELOPMENT ADMINISTRATION; and,

-Tl'átk Saxman
City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
(907) 225-4166

C. CONCLUSION AND RECOMMENDED POLICY

2) THIS FORMAL NOTICE OF AGREEMENT TO THE ECONOMIC DEVELOPMENT ADMINISTRATION includes a request to comply with the mandated purposes and intents of cited applicable and appropriate Federal law and regulation as referenced within the SCCDP, Title 1, Article 1.3 et al; and,

3) THIS CONSENSUS AGREEMENT BETWEEN THE UNDERSIGNED PARTIES provides the impetus and consistency for Federal/State participation in the implementation, funding, technical assistance, and the accomplishment of comprehensive community planning and development of the following:

A CONSENSUS AGREEMENT NEGOTIATED AND ENTERED INTO BY a) THE APPOINTEE TO THE EXISTING RECEIVERSHIP BY THE ECONOMIC DEVELOPMENT ADMINISTRATION, b) THE CITY OF SAXMAN, ALASKA, AN EQUAL OPPORTUNITY EMPLOYER, AND c) THE CAPE FOX CORPORATION, A FINANCIALLY AND PROFESSIONALLY MANAGED SAXMAN COMMUNITY-BASED ANCSA VILLAGE (MINORITY BUSINESS ENTERPRISE) CORPORATION FOR THE PURPOSES OF TERMINATING (OR SUBSTITUTING) THE EXISTING RECEIVERSHIP OF THE SAXMAN VILLAGE PORT & TERMINAL (formerly THE KETCHIKAN & NORTHERN TERMINAL) AS HEREIN SET FORTH AND THROUGH THE INCLUDED AND REFERENCED TITLES, ARTICLES, CHAPTERS, SECTIONS AND OTHER PARTS OF THE SAXMAN COMPREHENSIVE COMMUNITY DEVELOPMENT PLAN(S) AS CITED AND THE SCCDP COMPREHENSIVE PREAPPLICATION GUIDE, PART IV, A THROUGH D; THE SCCDP COMPREHENSIVE PROGRAM (CDBG) (UDAG), PART IV, A THROUGH C, AND THE CAPE FOX CORPORATION ANNUAL REPORT FOR JULY, 1979 THROUGH JUNE, 1980, ON THIS _____ DAY OF NOVEMBER, 1980.

____

William G. Moran, Sr. Receiver

____

William K. Williams, Mayor, City of Saxman, Alaska

____

Larry J. Johnson, Sr., Chairman of the Board of Directors, Cape Fox Corporation

Tl'átk Saxman

City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
(907) 225-4166

Re: SAXMAN VILLAGE PORT & TERMINAL (SVPT)
CONSENSUS AGREEMENT
BACKGROUND

BACKGROUND

1) The status of the Saxman Village Port & Terminal (SVPT) facility's future viability is threatened by a history of disincentives, barriers, and inactivity fostered by the policy prohibition for rehabilitation and revitalization through local community participation and minority business enterprise development and the exhibition of outside discretion of policy which directly and indirectly excluded local community participation and minority business enterprise from effectively and efficiently organinzing the infrastructural management and operation system to address the institutional disincentives, barriers, and inactivities, such as, a restrictive and inflexible receivership, lack of technical assistance necessary to offset debt obligation through the leasing of those properties upon which the facility is situated, lack of transportation and marketing consultation, and a consistent and continuous "wait and see" policy adherred to by the Economic Development Administration, as necessary for the rehabilitation and revtalization of the facility; and,

2) The SVPT facility was originally funded in 1963, under the Area Redevelopment Administration as a freight terminal. The City of Saxman financed the facility through GOB/revenue bonds, of which approximately $1 million plus another $.3 million in current accrued interest is still owed. Due to financial and management difficulties, the facility was put into receivership by the Federal Government, and is now operated by the same receiver. The facility, originally constructed to handle freight, was intil recently utilized by Foss Alaska Line (FAL) for containerized barge freight. Realized revenues have been to maintain the facility, albeit in a minimal manner and to the detriment of future viability; thus net revenues for debt service were not available; and,

3) The primary lessee of the facility was Foss Alaska Line (FAL). FAL encountered numerous difficulties in dealing with the receiver. This is from the standpoint of the receiver's inability due to judicial restrictions, a lack of funding and technical assistance, and insufficient and underqualified staff necessary to satisfactorily manage the overall facility management and operation requirements. The lease between the receiver and FAL expired in early 1979. Based on a position by FAL that without the management and operation requirements to implement improvements and other necessary actions, continued leasing was inappropriate; and,

4) The City of Saxman, because of its ownership of the real property upon which the facility is situated, determined in 1977 that an analysis of the facility's legal status and its receivership operations should be pursued. Having obtained a grant from the Bureau of Indian Affairs, a study was commissioned entitled, "Report on the Status of the Saxman Terminal", which was completed in February, 1978. It was recommended by the report that the City of Saxman immediately institute a request for a 15 year principle and interest moratorium. This would be conditioned upon a development program designed to eventually create sufficient revenues so that when required improvement construction financing had been amortized, full payment of the revenue bonds could then be accomplished. The report, also recommended, if and when the Federal Government is committed to a moratorium program, a marketing study, analyzing the Southeastern Alaska transportation economics, would be necessitated. The study would determine through interviews with present and prospective

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BACKGROUND (continued)

users, improvement goals and alternative revenue potentials. The City of Saxman's commitment, as to improvements and the receivership terminated in accordance with a court order entered upon a stipulated moratorium or forgiveness agreement as to the original revenue bond obligation; and,

5) The hereinabove mentioned marketing study was initiated through a technical assistance grant through EDA in the spring of 1979. After its final draft review, the study recommended two financial alternatives of which one considered the possibility that the Cape Fox Corporation assume the role in the future operations and financing the facility through joint development and joint funding assistance program planning and implementation which will be consistent with the purposes, principles, policies, procedures and practices of the Saxman Comprehensive Community Development Plan(s) (SCCDP). Conversely, the study's other financial alternative recommended the liquidation of the facility at its current fair market value, which would preclude its use as a public transportation facility, as well as, minimize public sector control and public long term benefits that might be derived from the facility. (The original contract between the Area Redevelopment Administration and the applicant is assumed to have been predicated on the furthering of economic mobilization and employment opportunities, which were a consideration of the revenue bond obligation by the City of Saxman. With the failure of the facility in 1965 and the bond debt declared in default, this consideration and goal of the project was rescinded.); and,

6) As a demonstration of the City's commitment and as an actual program within the Saxman Comprehensive Community Development Plan(s), the City jointly with the Organized Village of Saxman, the Saxman IRA Council, submitted November 4, 1980 to the Department of Housing and Urban Development the SCCDP attached to preapplications under the Community Development Block Grant (CDBG), and a request for Determination of Eligibility to make application under the Urban Development Action Grant (UDAG) programs. This action on the part of both local and Tribal government is consistent with the 1980 Saxman Overall Economic Development Plan, as amended, and NOI submitted August 15, 1980 to State-Federal A-95 Review. Further, the programs and projects within the SCCDP over a ten year timeframe are comprehensive and consistent with the Economic Development Administration's primary goal of stimulating local economics, generating equal employment opportunities, and increasing the role of minority business enterprise participation; and,

7) Based on the eligibility characteristics of the community as presented by the SCCDP and as demonstrated through documentation of EDA and other sources, the community has endured for more than fifteen years sudden (and reverbrative ripple effect during this time till present) and severe economic dislocation and long term economic deterioration resulting from the facility's failure. Of more recent applicability and demonstration of meeting special needs arising from actual and continually threatened unemployment, the departure of the facility's sole tenant, Foss Alaska Line (FAL), in the summer of 1980, adversely impacted the community leaving compounded sudden and severe economic dislocation; and,

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Re: SAXMAN VILLAGE PORT & TERMINAL (SVPT)
CONSENSUS AGREEMENT
BACKGROUND

BACKGROUND (continued)

8) This consensus agreement between the City, CFC and the receiver has been included within the SCCDP to meet the primary goal of terminating (or substituting) the existing receivership in order to implement a economic development strategy (EDS) through comprehensive planning. In order for this EDS to be successful, the full and meaningful purpose and intent of this action plan (SCCDP) must be allowed and supported without the self-determined influence and control of the existing receivership as predicated by EDA. In other words devoid of community participation and minority business enterprise involvement, the barriers, disencentives and inactivity currently continuing to turn the facility into a complete economic loss will remain alive and well in the community.

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Ketchikan, Alaska 99901
(907) 225-4166

Re: Letter of November 25, 1980

Senator Arliss Sturgulewski
Pouch V
Juneau, Ak. 99811

Patrick Poland
Deputy Director
Division of Local Government Assistance
225 Cordova, Bldg. B
Anchorage, Ak. 99501

December 3, 1980

Dear Senator and Mr. Poland,

Please note an error in my letter to you dated November 24, 1980.

Page -2-, first line is incorrect. It should read, "$15 million with a recommended 2 to 3 leveraging factor, however, 1 to 9 to 1 to 10 leveraging factors are not uncommon, meaning a potential,"

Sorry about this error.

Sincerely,

Michael J. Tavoliero
City Manager of Saxman, Alaska

SAXMAN COMPREHENSIVE COMMUNITY
DEVELOPMENT PLAN(S)
PROGRAM(S) ABSTRACT

THE CITY OF SAXMAN HAS THE GREATEST UNDEVELOPED POTENTIAL FOR RESIDENTIAL, COMMERCIAL AND INDUSTRIAL GROWTH ON REVILLAGIGEDO ISLAND.

ALTHOUGH THE PRESENT POPULATION IS SLIGHTLY MORE THAN 400 PEOPLE, ITS FUTURE GROWTH CAPACITY IS EASILY CAPABLE OF ACCOMODATING 1500-2000 BY THE YEAR 1990.

THE PURPOSE OF COMMUNITY PLANNING ON THE COMPREHENSIVE LEVEL IS AN ACTION ORIENTED PROCESS UTILIZING THE AGGREGATED ELIGIBILITY CHARACTERISTICS OF THE COMMUNITY IN A JOINTLY-FUNDED ASSISTANCE SIMPLIFICATION APPROACH IN PROGRAMS IN THE SAME FUNCTIONAL CATEGORIES THROUGH COMMUNITY (MONITORING, EVALUATION, REVIEW AND FEEDBACK (MERF)) PARTICIPATION.

The Saxman Comprehensive Community Development Plan(s) (SCCDP) is a ten year action document consisting of four separate, yet tangential (sub)plans. The (sub)plans consist of:

1. The Saxman Village & Native Community Plan;
2. The Saxman Village & Municipal Service Plan;
3. The Saxman Community Resources & Services Plan;
4. The Saxman Comprehensive Community Development Plan.

As a jointly funded economic (community) strategy, it is a jointly funded assistance program(s) approach which utilizes upon submission(s) and application(s) 169 Federal & State funding assistance sources assuring the optimal and functional administrative consolidation of closely related programs for 38 projects within the community.

As the aggregated eligibility characteristic utilization strategy of the community, it promotes the community's comprehensive fundability (i.e. the municipal corporation, the IRA Council (Tribal government), and the ANCSA profit corporation) towards the realization of three primary goals, self-government, self-determination, and self-sufficiency, by its submission as the community's master contracting document.

The Saxman Village & Native Community Plan demonstrates the historical, political, economic, social and cultural data & information with "optimal assurance of the basic community and tribal rights for limited sovereignty, self-government, self-determination and self-sufficiency and the cooperative efforts of and in coordination with other entities outside the traditional Saxman Native community and village."

The Saxman Village & Municipal Services Structure Plan utilizes 6 infrastructural goals consistent with the statement of community needs which are based on community administrative services; utility and energy services; resource & development services; manpower and training services; education and cultural services; and health and human needs services. This infrastructural approach employs management and policy functions (specially designed) hybrid systems.

The Saxman Community Resources and Service Plan utilizes the broad goals of the Saxman Village & Municipal Services Plan with the aim of achieving an optimal and functional degree of assurance for the maintenance and effective and efficient delivery of services through organized community action.

The Saxman Comprehensive Community Development Plan is the implementation of action and the instrumentation of carrying out the plan(s).

The SCCDP is the City of Saxman' master contracting document once "plugged into" the Federal and State funding and funding assistance program(s) network will act as contract and guideline using all administrative and legislative requirements and procedures to insure the primary purpose of comprehensive community planning.

POLICY IMPLICATIONS OF SELECTED TITLE 29 REVISIONS

A brief summary of various policy issues related to specific suggested changes to Title 29 has been completed at the request of Tam Cook. The purpose of this overview is to supplement work being done by the Title 29 technical group, and does not attempt to address either the legal acceptability or the mechanics of these suggested revisions.

The subjects of this policy overview are:

a. removal of specific limitations on home-rule powers;

b. elimination of the First Class Borough;

c. elimination of differences in scope of powers of different classes of municipalities;

d. specific suggestions on changes to the statutes on planning, platting and zoning; and

e. specific recommendations on changing Title 29 to encourage small, Native communities to participate in municipal government.

The following addresses a. above:

Removal of Specific Limitations on Home-Rule Powers.

The removal of limitations on home-rule powers would release a home-rule government from having to follow a specific statutory provision. There are very definite technical and policy implications surrounding this removal of restrictions. In some cases, these limitations provide a statutory basis for relationships between governments, and as such provide a common ground for intergovernmental activity. (If Title 29 is revised to allow all classes of municipalities discretion in the exercise of powers, the review of limitations on home-rule powers should be done with an awareness of a broader need for or applicability of those limitations.)

(1) AS 29.09.140. BOROUGH TRANSITION. This section sets out the method by which service areas and existing governments are to be incorporated into newly incorporated municipalities.

Focusing primarily on the assumption of powers and bonded debt by the new municipality, this section is designed to protect the financial status of the government, by providing both continuity of fiscal responsibility during transition and preventing the existing government from taking on new debts during the transition period. For these reasons, it is probably desirable to continue to have all classes of municipalities bound by these provisions.

(2) AS 29.12.010. CHANGE OF MUNICIPAL NAME. This section sets out the procedure to be followed in changing the name of a municipality. The considerations around a name change are legal and technical; aside from these legal concerns, there are no further policy issues.

(3) AS 29.12.040. ANNEXATION AND EXCLUSION; LOCAL BOUNDARY COMMISSION.

(4) AS 29.12.080-160. MERGER AND CONSOLIDATION.

(5) AS 29.12.420-500. DISSOLUTION. These statutes (Numbers (3), (4), and (5) above) deal with the relationships between municipalities or between a municipality and a surrounding unincorporated area, and with the dissolution of a municipality. These statutes establish a portion of the legal framework governing how municipalities relate to territory outside of their immediate authority. As such, these provisions should remain applicable to all municipalities.

However, wording of one of the provisions within these statues needs to be clarified. AS 29.12.040(b)(3) states that the local boundary commission establish procedures whereby an area may be annexed to a municipality without an election "if all property owners and voters" within the area petition the annexing municipality. This should probably be revised simply to read "all voters", as other annexations are accomplished using voter approval only. This is especially confusing in the case of non-resident property owners, as the desires of absent owners of property and area residents may be quite different.

Finally, there is a question as to why AS 29.19.190-500 UNIFICATION OF LOCAL GOVERNMENTS, is not included as a requirement

that home-rule municipalities must follow. These sections establish a procedure by which a borough and cities within that borough may unify. As such, it sets out a system of interaction between different municipal units, and should be applied equally to all municipalities, if it is to be retained. (A second question concerns some of the duplication between AS 29.19.040. MERGER AND CONSOLIDATION, and AS 29.19.190-500. UNIFICATION OF LOCAL GOVERNMENTS. Are both of these necessary or can these provisions be combined into one section?)

(6) AS 29.15.080 CHARTER AMENDMENT. This section requires that a municipality's voters have the right to propose a charter amendment by initiative. It is desirable to retain this option, unless the section on municipal charters is revised to require a broad statement on the inclusion of initiative rights.

(7) AS 29.24.010. CONFLICT OF INTEREST. Requires that a conflict of interest ordinance be adopted or else the conflict of interest provision of this section is automatically applicable. It is not precisely clear what the conflict of interest provision is and how it is enforced.

(8) AS 29.24.020. MEETINGS PUBLIC. This section requires that meetings of all municipal bodies be public. Discussion at the September committee meeting suggested that the definition of "meetings and "public bodies" be clarified; i.e., what constitutes executive session, what about a meeting between a borough mayor and borough attorney, and so on. In general, once these questions are resolved, the provision that meetings are public should be retained for all municipalities.

(9) AS 29.24.060. ASSEMBLY COMPOSITION AND APPORTIONMENT. This section, effective January 1, 1981, revises the system of assembly composition used by some boroughs prior to that date. Therefore, it is necessary to make the new standards for assembly composition and apportionment apply uniformly.

AS 29.24.070-120. ASSEMBLY COMPOSITION AND APPORTIONMENT PROVISIONS. These sections establish the mechanics of assembly apportionment. If a home-rule borough's charter provides for reapportionment and assembly composition, that home-rule borough is not bound by this chapter (as long as the intent in AS 29.24.060 is met.) Perhaps this exclusion could be broadened to other classes of boroughs by stating that these provisions apply unless other provisions, which meet AS 20.24.060, have been adopted by ordinance or charter.

(10) AS 29.24.150. EXPULSION OF BOROUGH ASSEMBLYMEN.

(11) AS 29.24.200. REMOVAL OF BOROUGH MAYOR FROM OFFICE.

(12) AS 29.24.290. EXPULSION OF CITY COUNCILMEN FROM OFFICE.

(14) AS 29.24.035. REMOVAL OF (CITY) MAYOR FROM OFFICE. These sections establish the basis and method by which an assembly or council may of its own volition remove an elected officer from office. The reasons for removal are defined narrowly as a conviction for an offense described in AS 15.56 as a "corrupt practice". Found in the state's election code, "corrupt practices" are defined in relation to willfully subverting the election process through a variety of actions. AS 15.55 (the correct citation, not AS 15.56) also states that the person convicted of such a corrupt practice may also be deprived of office. As this language is permissive, the person may not actually be deprived of office in a court action. Therefore, this provision allows an assembly or council to remove a mayor, assemblyman, or councilman from office upon their conviction of a corrupt practice. Further, this is the <u>only</u> grounds for council or assembly action.

If this section was eliminated, an assembly or council would have no ability to remove an elected official from office. If only the limitation on home-rule powers was eliminated, it might mean that home-rule municipalities could enable their assemblies or councils to remove elected officials for other than election law violations. (Note AS 29.24.710 allows an assembly or council to declare an office "vacant" for certain reasons. This section (710) should be reviewed from a policy viewpoint).

The most advisable policy option might be to simply state, for all classes of municipalities, that conviction of election law violations deprives an individual of elected office. This would seem to be the strongest method of making sure elected officials and those running for office "play by the rules". If this cannot be accomplished, at least the limitation on home rule powers should be retained, but perhaps these sections can be combined into a single section dealing with removal from office by a means other than recall.

(13) AS 29.24.340(a). ELECTION AND TERM OF MAYOR. This paragraph allows home rule cities to prescribe residency requirements for the office of mayor. Other classes of cities are specifically empowered to establish a residency requirement of up to three years. Evidently, home rule cities may exceed this residence requirement.

(There is some question in general on the length of residency requirements - perhaps any limitation over one year is not legally sound.)

This paragraph only limits all classes of cities from establishing any qualifications on holding office other than a residency requirement. As a general guarantee of the rights of an individual to run for office, and a reflection of faith in the electorate's ability to judge those seeking office, this limitation should probably be retained.

(15) AS 29.24.680. PROHIBITIONS RESPECTING APPOINTMENT AND REMOVAL OF PERSONNEL. This section is primarily a non-discrimination clause. As home-rule municipalities may act as they wish unless prohibited by law, the express prohibition against discriminatory action found in AS 29.24.680 may make the limitation on home-rule powers unnecessary, while ensuring home-rule municipalities are prevented from engaging in discriminatory actions.

(16) AS 29.24.700. MUNICIPAL REPORTS. This section lists the reports that all municipalities must file to be eligible for

state assistance under AS 29.62 - the revised state shared revenue program. This entire section could probably be accomplished as regulations in the revenue sharing program, rather than establishing a statutory reporting requirement. This is especially true in light of AS 29.33.230, which also requires all municipalities to complete an audit. (See (29) below).

(17) AS 29.27.010(a)(12). MUNICIPAL EXEMPTION ON CONTRACTOR BOND REQUIREMENTS. This subparagraph requires municipalities to exempt by ordinance contractors providing construction or repair of municipal public works projects from performance bonds. This is evidently to prevent such exemptions from bonding to be granted by a manager or department of a municipality. The accountablity of those decisions to the public is probably the principal reason for this limitation. However, this seems to be a minor point, in that the city remains responsible for public works projects and must "make good" on a contractor's non-performance. Thus, a municipality has a financial reason to grant exemptions from bonding only when warranted, whether the exemption is granted by ordinance or by administrative action.

(18) AS 29.27.060. CODIFICATION. This section requires all municipalities to codify ordinances within three years of incorporation and every five years thereafter. As a compulsion on home-rule municipalities to codify their ordinances, this section is probably unnecessary.

(19) AS 29.30.010, 020(6), 030. MUNICIPAL ELECTIONS. The effect of these sections is to prevent a home-rule municipality from altering voter qualifications of AS 29; prevent a home-rule municipality from allowing a person to serve as a borough mayor and assemblyman, or as a city mayor and assemblyman, at the same time; and prevent a home-rule municipality from calling a special election upon less than 20 days notice. (AS 29.30.330 states that an election to fill a vacancy created by recall will be held at least 10 days and not more than 45 days from the recall election. Appears somewhat contradictory)

As far as establishing minimum standards in the conduct of local elections, these restrictions on home-rule automomy appear warranted.

(20) AS 29.30.060(f) APPEALS ON REMOVAL FROM OFFICE. (I think the correct citation is not 29.30.060, but only subsection (f) of that section.) This subsection simply states that there is no appeal to removal from office that is accomplished by an assembly or council pursuant to an elected official's conviction on an election violation. This limitation is probably unnecessary; if a home rule municipality wants to provide for an appeal there is no reason that it should not do so.

(21) AS 29.30.210-330. RECALL. This article describes the procedure to be used in recall of elected officials. The addition of a sentence stating that these provisions must be followed by home-rule municipalities unless another process is adopted by ordinance would seem to satisfy the concern that home-rule municipalities must provide for some recall procedure. They could then be relieved of the burden of following the specific procedures set out in this article.

A secondary concern is whether the procedure in Title 29 establishes the minimum procedure that a home-rule municipality must meet. That is, should a home-rule government be prohibited from requiring more signatures on a recall petition than is found in state law? If the recall procedure set out in AS 29.30.210-330 is a minimum set of standards that a home rule recall ordinance must meet or surpass, it should be stated in the enabling legislation suggested above.

(22) AS 29.33.020. EXTRATERRITORIAL JURISDICTION. This section provides limited powers of extraterritorial jurisdiction. The limitation on home-rule municipalities of acting otherwise than allowed simply clarifies the legislative intent that only these specific extraterritorial powers be implemented. Unless a broader scope of extraterritorial planning and service delivery

powers for home-rule municipalities is desired, it is probably best to leave this restriction intact.

(23) AS 29.33.030. EMINENT DOMAIN. This section allows municipalities to exercise the power of eminent domain as provided in AS 9.55.250-460 (Code of Civil Procedure) with the further provision that each exercise of eminent domain powers be approved by the voters. Requiring eminent domain to be exercised in conformance with AS 9.55.250-460 places tight constraints on the eminent domain power. The requirement that each exercise of eminent domain be approved by the voters may be philosophically attractive but with the publication, compensation, public declaration and judicial appeal processes included in AS 9.55.250-460, may be unnecessary as a constraint on the misuses of eminent domain.

This section could be effectively broken into two subsections, the first requiring all municipalities to exercise eminent domain in conformance to AS 9.55.240-460, and the second subsection including further restrictions. Home-rule municipalities would be limited only by the first subsection.

(24) AS 29.33.080. GARBAGE AND SOLID WASTE SERVICES. The limitations operating on home-rule governments are found in subsection (b), which states that a municipality may not prevent a pre-existing, validly certified waste collection or disposal service from operating within the municipality unless the municipality buys out all or a portion of that operation.

Due process requirements, court definition of the "taking" rights, and the restrictions on the exercise of eminent domain would seem to implement some of the concerns behind this limitation. The effect of this limitation is desirable; the technical group should state whether the intent of this limitation would be achieved through other requirements if this limitation was removed.

(25) AS 29.33.090(b). EFFECT OF AREAWIDE EXERCISE OF BOROUGH POWERS. This subsection primarily limits the powers of

home-rule cities within boroughs in that home-rule cities are prohibited from exercising a power that is exercised by a surrounding borough on an areawide basis. (Other portions of this subsection enumerate powers that boroughs may provide areawide or non-areawide at their option; this is a permissive section and would probably allow home-rule boroughs the same powers without their specific mention.

This subsection should be split and the provision applicable to home-rule cities within boroughs clarified and stated separately.

(26) AS 29.33.090(c). BOROUGH BUILDING CODE JURISDICTION WITHIN CITIES. This reference is non-existent. Building codes are treated in AS 29.33.090(a)(14); this sentence states that the exercise of building code powers may be adopted according to AS 29.33.090(b). The home-rule limitation should be dropped, and the reference to AS 29.33.090(a)(14) added to those powers specifically listed in subsection (b).

(27) AS 29.33.100-160. UTILITIES. These sections set out the procedures around the creation of municipal utilities, granting of franchises, rights of franchise holders, rights of the public, rate setting and so on. As municipal utilities are not regulated by the Public Utilities System, this section forms the basic statutory framework enabling municipal utilities to be formed.

Unless the technical group thinks that an adequate guarantee of public interests in the creation of utilities and franchises and rate-setting is available outside of these sections, the requirement that home-rule municipalities conform to these provisions is probably useful.

(28) AS 29.33.220. EXPENDITURES OF BOROUGH REVENUE. This section sets basic parameters of municipal expenditures, while allowing home-rule municipalities wide latitude in fiscal priorities. The section states that revenues levied and collected areawide must be used areawide, while revenues collected in areas outside cities can only be expended on functions outside cities. This

FOR

DATE ____ TIME ____ A.M. P.M.

2933.000(2)

p. 9 – end of 1st paragraph – effect is ambiguous.

PHONE NO. p. 12 – sentence missing

TELEPHONED		PLEASE CALL	
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	

MESSAGE AS 29.36.040 needs to be stated here or only in the education article.

p. 14 – last sentence – these outer sections should be stated. Same with last 2 lines.

SIGNED

LA-A 16

does not appear to be a necessary constraint on home-rule powers. If the citizens of a community wish to support a particular non-areawide function on an areawide basis, they should be allowed to do so. This section also appears to contradict the ability of a borough to pledge the full faith and credit of a borough's areawide tax base to support capital improvements in a service area or the area outside cities (upon areawide voter approval) as provided in AS 29.51.040.

(29) AS 29.33.230. POST AUDIT. This section requires that all municipalities complete an audit or financial statement annually. This provision should be retained as applicable to both home-rule and general law municipalities, unless the policy group feels municipalites should have the ability to prepare audits on some other basis, such as every two years. In any event, the limitation should be set out in law, as a minimal guarantee of financial accountability to the public.

(30) AS 29.36.010(b). AREAWIDE BOROUGH POWERS. This section prohibits home-rule cities within boroughs from exercising the following mandatory borough powers; education powers; planning, platting and zoning powers; and tax assessment and collection. This is a prohibition on exercise of powers dealing with relations between governmental units which needs to be retained. If more latitude for cities within boroughs is desired, this section should be reworded to allow boroughs to delegate a power by ordinance to a city, such as is found in AS 29.33.090(b).

(31) AS 29.34.050, AS 29.36.230(d). RESPONSIBILITY FOR EDUCATION ON MILITARY RESERVATIONS. (Note: incorrect citation-AS 39.36.320 should read AS 29.36.230(d)]. AS 29.34.040 sets out the relationship between a borough school district and responsibility for on-base education. As this reflects a real constraint on the exercise of local education powers by the federal government, this section is probably unnecessary. That is, a home-rule government might not be able to act otherwise than provided, even if it wished to do so.

As the citation to AS 29.36.230(d) concerns only third class boroughs, it is unnecessary to include as a limitation on home-rule municipalities.

(32) AS 29.36.130(c) ACQUISITION OF ADDITIONAL AREAWIDE POWERS. This subsection describes the procedure for the transfer of a power exercised by a city to a borough upon voter approval of a new borough areawide power. This subsection should probably be divided into two parts, with the first four sentences dealing with an areawide election and election results in one subsection, and the discussion of transfer of powers elevated to become a separate section. The home rule limitation should then be applied only to that section dealing with the orderly transfer of power from one municipality to another.

(33) AS 29.39.020-060. POWERS OF CITIES OUTSIDE BOROUGHS. These sections apply the mandatory borough powers of education; tax collection; and planning, platting and zoning to cities outside of incorporated boroughs. Section .020 extends the power of assessment and tax collection to such cities and section .030 gives cities the authority to establish differential tax zones. These sections are primarily permissive, although section .020 states that tax collection functions must be implemented as provided in AS 29.45. The only apparent reason for identifying this section as a home-rule limitation seems to be that requirement that home-rule cities comply with AS 29.45. The technical group must determine whether this limitation should be stated here, or whether it needs to be stated only in AS 29.45.530.

Sections .040 and .060, however, mandate that home rule cities outside boroughs establish schools and provide planning, platting, and zoning. There is a major policy question over the mandate that home-rule and first-class cities outside boroughs establish school districts. This section was established prior to the creation of REAAs. Now, the incorporation or reclassification of cities to home-rule or first class status would mean the fragmentation of existing districts. (The City of Bethel is a

good example-the headquarters of the Lower Kuskokwim School district are located in Bethel. In order for Bethel to take advantage of home-rule or first class city status, Bethel would be required to establish its own school district.)

Section .040 could be made permissive rather than mandatory. This would allow cities to establish their own school districts if, in their own view, such local services were preferrable to existing REAA education services.

If such a change were to be recommended, the applicability of the home-rule limitation would depend upon whether the restriction that education be provided in conformance with AS 29.36.040 relates to borough school districts, the technical group may recommend that the limitation on home-rule cities be retained to make that reference effective.

Section .060 makes the exercise of planning, platting and zoning powers mandatory for home-rule cities outside of boroughs. The policy question here is not one of removing a prohibition on the actions of home-rule cities but whether planning should be mandated for cities outside boroughs. (As in the previous section, the limitation may need to be retained in order to require home-rule cities outside boroughs to conform to AS 29.42.010-245 Planning Powers of Boroughs - by reference.)

(34) AS 29.42.040(d). ZONING OF STATE LAND FOR HOMESITE ENTRY. This section was repealed by Sec. 45, Ch 85, SLA 1979.

(35) AS 29.42.080(b). APPLICABILITY OF LOCAL PLATTING REGULATIONS TO STATE LAND IN A MUNICIPALITY. This subsection limits the power of municipalities to require subdivision improvements on state land disposals. Unless state policy is changed to support compliance with local subdivision improvement requirements in the state's own land disposal program, this limitation on platting powers of home-rule municipalities will have to be retained. (The technical committee might determine that, because of state supremacy considerations, this limitation is unnecessary. Local governments may not have the authority to require the state to build subdivision improvements, even without subsection [b]).

(36) AS 29.45.010-450. BOROUGH AND CITY PROPERTY TAXES. This citation should probably be changed to AS 29.45.010-540 rather than AS 29.45.010-450, as the sections following .450 also deal with the implementation of a property tax. This Article provides the complete framework for the exercise of local property taxing authority, including the rights of the public in relation to their local taxing authority. Unless the policy group decides that home-rule governments should be free to establish their own taxing systems, this limitation should be retained. Even if the limitation on home-rule powers was lifted, those sections of AS 29.45 dealing with taxation of state-owned property and those sections detailing the taxing powers of cities within boroughs might have to be kept in force.

(37) AS 29.45.020. TAXPAYER NOTICE. This limitation is included in the previous citation. However, if the general limitation on the taxing powers of home-rule governments was lifted, this section might have to remain limited. Section .020 requires that municipalities which levy a property tax must provide notice of the effective tax rate, and of the state's contributions to local revenue through a variety of state funding mechanisms, on an annual basis. The intention of this section is to make the state's role in funding local services apparent to the local taxpayer.

As an aside, the Municipal Assistance Fund, administered by the Department of Revenue, should probably be added to the list of state programs reported in the Notice to Taxpayers. In fiscal 1980, this fund distributed over $16 million to communities.

(38) AS 29.45.580(d). INTEREST ON SALES TAX. This citation apparently needs to be changed to AS 29.45.570(d). Apparently, the only provision of the statutes relating to sales tax collection which home-rule boroughs must follow is that interest on delinquent sales tax accounts is levied at at 8% annual rate. Should home rule boroughs be limited to this rate? If not, the limitation should be removed.

In a broader sense, there are some apparent inconsistencies regarding the property and sales taxes, and their application to home-rule governments. There is no stated limitation that home-rule boroughs must follow the sales tax procedures set out in AS 29.45.570-590, except for the subsection 570(d). There is no state restriction on how home-rule cities within boroughs may levy a sales tax, except for an earlier blanket provision that no city may exercise a power exercised by a borough on an areawide basis. How does AS 29.45.610-630, which grants sales tax powers to cities inside boroughs, relate to home-rule cities? Are home-rule cities within boroughs limited to sources taxed by the borough, and in the manner provided by boroughs (AS 29.45.610)? This may be somewhat confusing, in that AS 29.39.020 gives cities outside boroughs the same powers of rate setting, identification of items to be taxed, etc., as are enjoyed by boroughs. Do home-rule cities within boroughs have that same flexibility?

(39) AS 29.48.090. EXEMPTION FROM SPECIAL ASSESSMENT. This section mandates that municipalities exempt the residential property of senior citizens from special assessments, and provides a procedure for municipalities to follow in granting those exemptions. In that if both require local governments to grant exemptions and sets out a procedure to be followed, this limitation is probably required.

(40) AS 29.51.520-530. BONDED DEBT FOR SCHOOL CONSTRUCTION. This citation should read AS 29.51.420-430. Section .420 specifically allows home-rule governments to exceed limitations in their charters on the issuing of bonds, if additional funds are needed for school construction. Section .430 then establishes a mechanism that would guarantee state repayment of the principal and interest of the bonds authorized under the previous section.

This section was written specifically for the City of Petersburg, and was never implemented. The entire section should be deleted, especially now that the state has revised its School Foundation Program to fund 100% of local construction debt service.

(41) AS 29.51.210(b). SECURITY FOR BONDS. This subsection specifically states that general obligation bonds for a revenue-producing utility may be additionally guaranteed by the revenue from that utility. The section goes on to provide that bonds so secured are not subject to debt limitations contained in a home-rule charter. The effect of this "limitation", then, is to give a home-rule municipality powers beyond its charter.

A policy question that might be considered is whether such a provision should be allowed by statute at all. The effect of this section is to allow a home-rule municipality to pledge the general obligation of its tax base, while not having to conform to any limits on bonded debt that may be in its charter. If the revenue-producing service cannot meet the debt service payments, the service costs of that debt fall back on the community's tax base.

The intention of this section may be to "create" a bond that functions like a revenue bond but has general obligation bond guarantees. While this may produce lower interest rates at the bond market than a strict revenue bond could command, the fiscal intention of the local residents may be of more importance in those few instances where this may be implemented.

In any event, the application may be rather limited. Discussion with Pat Poland and Terry Early at the Department of Community and Regional Affairs indicates that very few charters include debt limitation.

(42) AS 29.51.390. BOND ATTORNEYS, BOND AND FINANCIAL CONSULTANTS. This section provides that only the governing body of a municipality can contract for the services of bond attorneys, bond and financial consultants. The policy question involved in deleting this limitation is whether such contracts for financial planning services should only be entered into by the assembly, or whether a manager's office should also have that authority, as may be authorized by charter. If the charter does not require all contracts to be approved by the council or assembly, is there any purpose in singling out these types of services? Public

accountability purposes are still served by the fact that capital programs must still be approved by the governing body, and bonds approved by local voters.

(43) AS 29.62. MUNICIPAL TAX RESOURCE EQUALIZATION.

(44) AS 29.62. STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES.

This article details the state's revised revenue sharing program. The "limitation" inherent in this article concerns eligibility for the revenue sharing programs. As such, there is probably no need for a citation as a limitation on home rule powers. If a community wants to participate in the program, it will conform to the application procedure included in the statutes which established the revenue sharing program. (Much of this article might be accomplished by program regulations rather than statute.)

(45) AS 29.71.010. ADVERSE POSSESSION. This section states that municipalities cannot be divested of real property through adverse possession. While this statute applies to home-rule municipalities, it is probably not necessary to cite this section under the list of limitations on home-rule powers.

(46) AS 29.71.020. TAXATION OF MUNICIPALITIES. Again, this section has no direct "limitation" on home-rule actions. Section .020 provides that the state cannot tax municipalities, unless the intention to tax is clearly stated in the state statute or regulation. There is probably no need to include this citation under the general heading of "limitations" on home-rule powers.