

VILLAGE LAND RECONVEYANCE PLANNING

A Handbook on ANCSA Section 14(c)



THE ALASKA NATIVE FOUNDATION

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Acknowledgments

This handbook was originally prepared in 1981 under the federally funded Village Management Assistance Program of the Alaska Native Foundation. Since then much progress has been made in 14(c) implementation. Several lawsuits concerning 14(c) issues have been resolved, and more research has been conducted on various 14(c) issues. Changes were made to State law which now require municipalities to adopt ordinances which address and affect 14(c)(3) reconveyances. The Bureau of Land Management again updated their policy statement for preparing maps of boundaries, and ANF staff have been able to fine tune many of the sample forms in the appendix.

The staff of the Alaska Native Foundation's 14(c) Technical Assistance Program have attempted with this fourth edition to keep up with and provide the most current information on 14(c) issues and implementation. The 14(c) Technical Assistance Program is financed in part by funds from the State of Alaska, Municipal and Regional Assistance Division, Department of Community and Regional Affairs.

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Sharon E. McClintock

Anchorage, Alaska

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Preface

This is the first of a series of informational materials on land planning. It is designed so that pages can be removed and updated versions or supplemental information can be inserted. We hope it will be of assistance to village corporations in meeting the reconveyance obligation of Section 14(c) of the Alaska Native Claims Settlement Act (ANCSA).

Several village corporations have generously shared with us their knowledge, experience and ideas about 14(c) implementation. They share our hope that this handbook will help other village corporations avoid costly and time consuming "reinvention of the wheel."

There simply are not any clear-cut guidelines for 14(c). Throughout this handbook, options are suggested to help corporations think about their procedures and policies. These are not the only options, however. Do not hesitate to consider other plans which might be more suitable to your traditional land use patterns or corporation needs.

The first chapter includes an overview of the reconveyance process and a summary of the legal requirements of ANCSA. Chapter two discusses some general guidelines which apply to Sections 14(c)(1) and (2). Chapters three and four cover in detail these first two types of 14(c) reconveyances.

Chapter five discusses the steps in the 14(c)(1) and (2) reconveyance process. Chapter six provides information on Section 14(c)(3), which is intended to supplement information from the Alaska Department of Community and Regional Affairs' 14(c)(3) handbook. Chapter seven covers Section 14(c)(4), the last reconveyance required by ANCSA. The last chapter, eight, includes information on final actions the corporation must take to complete the 14(c) process. Sample forms are included in the appendix to help reduce the time it takes to implement a reconveyance process. They can be used as is or changed to suit your corporation's 14(c) process.

Please remember, this material is only a rough guide. It has no "dos" or "don'ts," no rules to follow. Each corporation must decide what is best for its own situation. Good luck in your efforts!

The purpose of this handbook is to help village corporations identify some of the problems they may encounter and some options for solving them. It is not intended to be legal advice. Village corporations should contact a lawyer if there is a legal question on specific issues, or need help in tailoring specific language in the sample 14(c)(3) Agreement and deeds included in the appendix.

Chapter 1

An Overview of the Village Land Reconveyance Process

What is 14(c)?

Long ago, traditional use of land by Alaska Natives required no written laws to show ownership. In the 1800's, intrusions upon traditional Native lands by the military, missionaries, miners and squatters took place even though Congress's first Alaska land law (The 1884 Organic Act) said that Natives would not be disturbed in their use of land. Up until the early 1960's, traditional lands of Alaska Natives were still being transferred into private ownership. Miners, homesteaders and others were still acquiring patent to traditional Native land, the State was selecting land, and oil exploration was taking place, all without regard to what rights Native people might have to the land. Fearing further intrusion, Native leaders protested on behalf of all Native occupants in Alaska to put a stop to any more transfers of land. This attempt to preserve ancient land rights led to the settlement of the Native land claims on December 18, 1971.¹

1. Arnold, Robert D., Alaska Native Land Claims. The Alaska Native Foundation, 1976.

The Alaska Native Claims Settlement Act recognized the rights that the Alaska Natives had to the lands they traditionally occupied. Village corporations, comprised of village residents, were entitled to the lands around their villages. The village corporations could not select lands which had already been transferred by patent from the federal government to people or to the state of Alaska. Many other people were occupying land in and around the village in 1971, although they did not have any ownership papers. ANCSA made it possible for these occupants to own the land they occupied on the date when the Act was passed. This provision is in Section 14(c) of ANCSA.

Section 14(c) says that a village corporation which gets title to its ANCSA land must then give title to individuals and organizations who occupied land on December 18, 1971 when ANCSA was signed. This includes land for homes, businesses, subsistence campsites, reindeer facilities, and nonprofit organizations. People do not have to be corporation shareholders to get 14(c) land. Some of the remaining land in the village, including airports, will go to the city or the state. (If your village is not an incorporated city, the land will go to the state in trust for a future municipality.) When all of these lands are identified, their locations are plotted on a map called a map of boundaries which BLM will use as a guide to survey the parcels. This whole process is often called "14(c) reconveyance."

Although ANCSA requires the reconveyance of certain lands, it does not provide definitions of the types of parcels eligible, how much land to

reconvey* for each, or procedures to transfer these lands into private ownership. This is the job for the village corporation. It is an important job which will have a lasting effect on the land patterns in your village. Take enough time to think through your decisions carefully.

Before beginning its reconveyance program, the board may want to review its overall land management plan, including future development potential and the priorities used by the village during original land selection. This review helps coordinate 14(c) with other land plans. It is especially important for the community planning required by 14(c)(3).

How does 14(c) work?

There are several major steps in the reconveyance process. The order and details of these steps will vary from corporation to corporation. The first and probably most important step is for the board to establish its policies on the application process, definitions, size of parcels, appeals, etc. Policy will provide the corporation with a set of rules to follow in recognizing what rights people have to land occupied in 1971. Since the board is familiar with the traditional land uses of the village, it can take customary ways into consideration when setting these policies. When the board has a set of policies to work with, someone should be assigned to do the staff work required to carry out the reconveyance process.

* Underlined words are defined in the Glossary in back.

The second job is to notify people that it is time to apply for 14(c) lands. Newspaper ads, public and shareholder meetings, newsletters, radio spots and bulletin boards are all ways to publicize the corporation's plans. People who are not sure if reconveyance applies to them should fill out an application anyway.

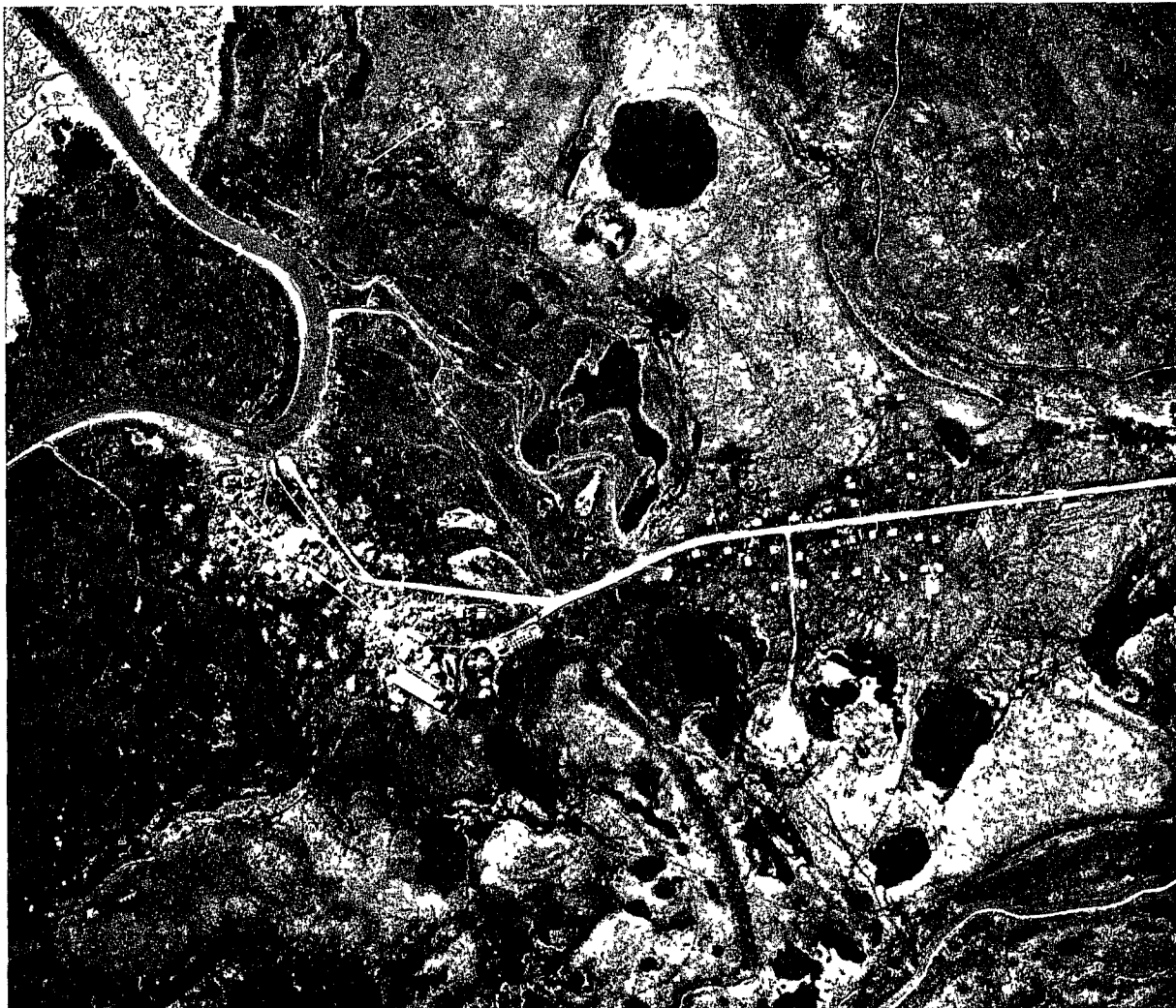
When applications begin coming in, a file should be started on each applicant. Preliminary information should then be gathered for board review. The preliminary work will involve checking land status, doing a field examination, taking photographs and interviewing applicants or references. It is extremely important at this point for the corporation to keep good records of its 14(c) process.

When all necessary information is compiled, the review of applications can begin. This review may be handled in several ways. Some corporations appoint land committees which can do this work, while others may give the job to the full board. Based on this review, an initial recommendation would be made to approve or disapprove applications.

An appeals process should be available in case any 14(c) claimants are dissatisfied with the initial decision. Appeals should be handled by a committee separate from the decision making body. If the issue still cannot be resolved to the claimant's satisfaction at the village level, as a last resort, he can take it to court. The possibility of court challenges is one

reason why it is extremely important for the corporation to try to resolve disputes at the village level.

After the corporation identifies all the people entitled to land, the lot lines are drawn on a general map or aerial photograph. This map is the beginning of the map of boundaries which will guide BLM survey crews. The next phase is to identify lands to be reconveyed under 14(c)(3) to the municipality (or to the state in trust if the village is not an incorporated city). The village corporation, the city/village council, and perhaps the entire



BLM/ASO

Mixture of old and new housing, Hooper Bay.

community will work on identifying community needs and land suitable to fit those needs. Rights-of-way for roads, trails and utilities are included in this phase. Airport facilities must also be considered in 14(c). Some guidelines for airport reconveyances have already been developed by the Alaska Native Land Managers' Association and the State Department of Transportation and Public Facilities. Technical assistance in reconveyance planning is available from agencies and organizations such as the State Department of Community and Regional Affairs, ANF, or some regional corporations and/or their nonprofits.

As the map of boundaries develops, adjustments may have to be made to lot sizes and shapes. Any adjustments will have to be agreed upon with the applicants involved because the corporation must resolve all conflicts before the map of boundaries goes to BLM. BLM Policy requires that the map be submitted as one final product and that the boundaries of claims be marked on the ground with durable materials. Legal challenges to the map will only be reviewed by the courts if they are made within one year of the date when the map of boundaries is filed with BLM.²

The next step in the reconveyance process is for BLM to survey the land and prepare an official plat (or map) showing all the 14(c) boundaries. After the boundaries have been identified by survey, the corporation can complete the process by giving deeds to the appropriate parties.

2. ANILCA Section 902(b).

The length of time for this whole process is hard to predict, but it will probably be several years before the corporation can issue deeds. After the period for accepting applications, it could take anywhere from several months to several years to produce a map of boundaries. Depending on BLM's patent plan process which is a schedule of survey priorities developed by BLM, the survey itself might not be done for several more years.

Who is Required to Reconvey Land?

The transfer of parcels under Section 14(c) must be done by village corporations organized under the provisions of ANCSA. Where there have been mergers or consolidations of Native corporations, the merged corporation takes over the village corporation's obligation to reconvey.³

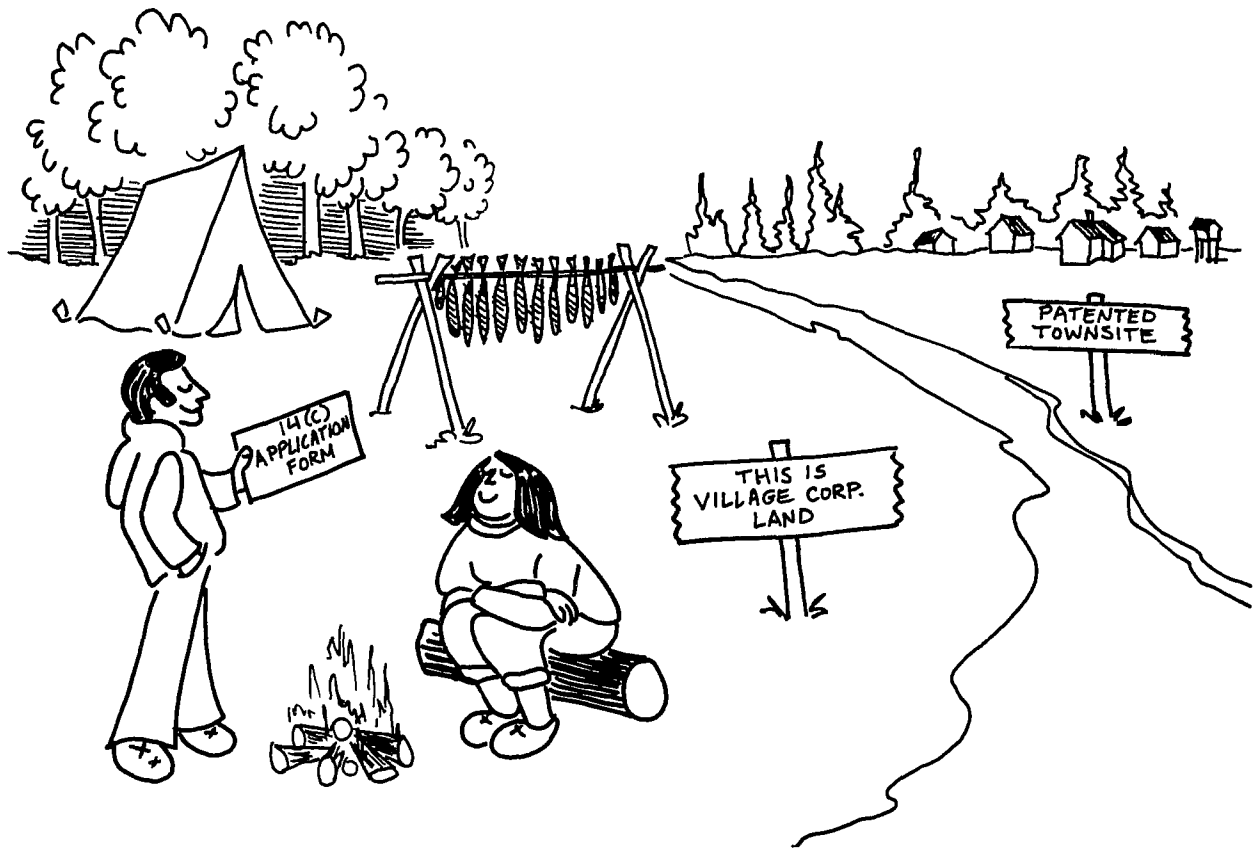
Three types of village corporations do not need to reconvey land. The former reservation villages which voted to take the surface and subsurface of their former reserve lands (instead of the monetary benefits of ANCSA) do not have to make 14(c) reconveyances.⁴ Nor does Section 14(c) apply to the Native groups which received land but were not certified as villages by BIA or the urban corporations for Sitka, Kenai, Juneau, and Kodiak.⁵ Regional corporations also do not have a 14(c) obligation.

3. ANCSA Section 30(b) (1976 amendment); Alaska Statutes 10.05.405(b).

4. ANCSA Section 19(b).

5. ANCSA Sections 14(h)(2) and (3) respectively.

If your village has a patented townsite, part of your 14(c)(1) and (2) reconveyance job is done, since the Federal Townsite Trustee surveys the village area and issues deed to village occupants. However, reconveyances of land outside the townsite boundaries (for instance, subsistence campsites) will still need to be done by the corporation. In these townsite villages, since most community needs may already be provided for, the need for 14(c)(3) land may be minimal.



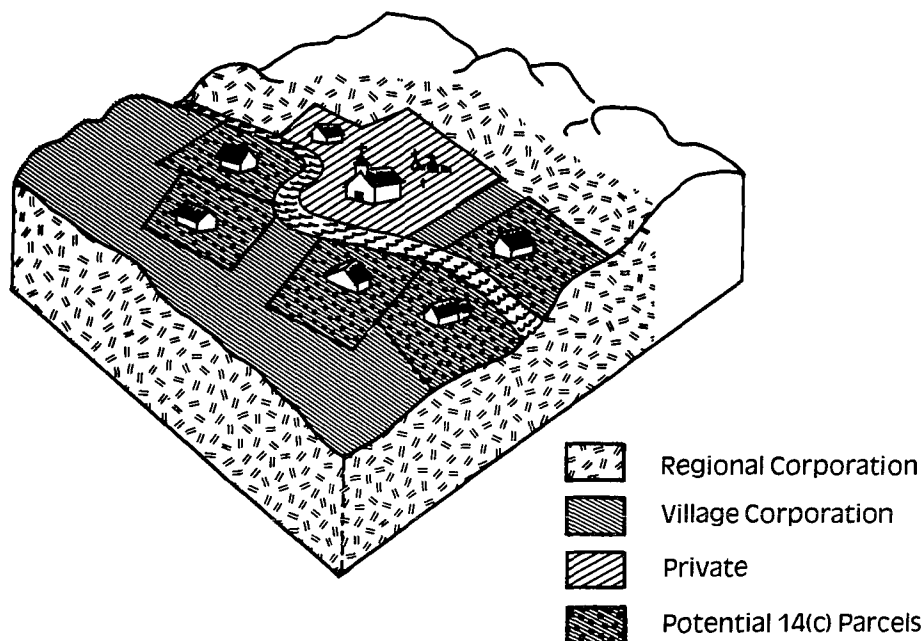
Who is Entitled to Receive Land Under Section 14(c)?

Section 14(c) recognizes the right of certain individuals, organizations and government agencies to receive land. The 1980 Alaska National Interest Lands Conservation Act (ANILCA or d-2) made it clear that people who occupied land as of December 18, 1971 for their homes, businesses, subsistence campsites, reindeer facilities and nonprofit organizations are entitled to receive the land under 14(c). City governments (or the state in trust on behalf of unincorporated communities) are entitled to the remaining improved lands within the community as well as lands for foreseeable community growth. The municipality or the state is entitled to land occupied by airports in December 1971.

Someone who occupied land in 1971 under a federal/state lease or permit may not be entitled to the land under 14(c). Under Section 14(g), the leases or permits are valid existing rights which the corporation must honor for their duration. The U.S. District Court ruled in Buettner and Hamar vs. Kivilco, Incorporated that 14(c) does not apply to lands occupied in 1971 under a valid existing right. Also, people may not be entitled to land under 14(c) if their presence in 1971 was unauthorized, for instance if they had been denied a homestead or other public land entry. Two recent federal appeals court decisions (Lee vs. U.S. and Donnelly vs. U.S.) upheld this interpretation. (See Appendix ____ for more information on these important court cases.) People are not entitled to land under 14(c) if their occupancy of land began after December 18, 1971.

What Lands Can the Corporation Convey?

A corporation can convey only lands it receives from the federal government. Since a village corporation only receives surface lands, surface lands are all that it can convey under 14(c).



When Should the Corporation Begin?

The obligation to transfer land into private ownership under section 14(c) does not begin until the village corporation receives interim conveyance (IC) or patent.⁶ Both the IC and patent transfer title to the corporation. The difference is that patent is title to surveyed lands and interim conveyance is title to unsurveyed lands. Since most lands transferred to corporations are not yet surveyed, BLM usually gives interim conveyances. After BLM surveys inholdings and the exterior boundaries of village selections, a patent will be given to the corporation.

Since there is no deadline for submitting map of boundaries to BLM, a corporation has some flexibility to set its own pace in land planning. The 14(c) process should fit into the corporation's overall land management plans. Although you don't want to rush the process so that it creates problems later, the corporation will not have clear title to its lands until 14(c) is completed. In some cases, the board might want to begin 14(c) planning before it receives interim conveyance.

6. Section 1437(d) and 1410 of ANILCA.

Chapter 2

General Reconveyance Guidelines Common to Sections 14(c)(1) and (2)

The general considerations in this chapter apply to the 14(c)(1) conveyances for homes, businesses, subsistence campsites, and reindeer facilities as well as to the 14(c)(2) conveyances for nonprofit organizations.

ANCSA does not provide guidelines for setting up a process of reconveyance. The board of directors has the responsibility for this. Chapters 2 through 5 outline some considerations which the board can discuss as it sets the corporation's overall 14(c) policy. Please remember that these are not the only options to consider.

Acreage

ANCSA does not specify how much land is to be conveyed for section 14(c)(1) and (2). Other than saying "the tract occupied", Congress left this up to the village corporation. In some villages, the homes, businesses and non-profits are close together. In others, they are more widely spaced. In many



Rob Stapleton/ Rural CAP

An example of closely spaced houses, Nulato.



Rob Stapleton/RURAL CAP

An example of houses which are widely spaced, Hooper Bay.

villages, there is a mixture of older buildings close together and new housing on bigger lots. The amount conveyed will have to be decided on an individual basis in most cases because standard size guidelines may not fit.

In the case, Steven Hakala and George Kitchen v. Atxam Corporation (File No. S-1866) the Supreme Court of the State of Alaska asked the trial court to apply the traditional definition of "curtilage" to determine the size of tract the claimants were entitled to under 14(c). The traditional definition of curtilage which could serve as a guide for corporations in deciding the extent of occupied tracts is:

A piece of ground commonly used with the dwelling house. A small piece of land, not necessarily enclosed, around the dwelling house, and generally includes the buildings used for domestic purposes in the conduct of family affairs. A courtyard or the space of ground adjoining the dwelling house necessary and convenient and habitually used for family purposes and the carrying on of domestic employments. A piece of ground within the common enclosure belonging to a dwelling house, and enjoyed with it, for its more convenient occupation.^{6b}

Subsistence campsites are usually away from the village and some corporations have set size guidelines for them. Each board will have to look at its own traditional subsistence patterns and determine what is appropriate acreage for that village. The board will need to be flexible because some occupied tracts may cover more ground, or extended families may want to own land together. (See communal lands option on page 27.) The board may want to minimize the size of the campsite itself, but give people permission to use the land nearby. (See page 31 for more information on this option.)

Occupancy as of December 18, 1971 the key factor is determining eligibility for 14(c) parcels. Although improvements on the land are not required, they help prove occupancy better than anything else. Most 14(c) parcels will probably have some improvements, although structures are not essential. For instance, a subsistence campsite may not have any permanent structure. Common types of improvements are listed on the following page.

6b. Black's Law Dictionary 346 (5th ed. 1979).

**Examples of
Improvements or Physical Evidence
on Land Applied for Under
Section 14(c)(1)**

House or Cabin	Dog Tie Downs	Campsites
Animal Bones	Dog Houses	Garden
Garbage Pit	Temporary Shelter (Lean-To)	Store
Reindeer Corral	Fire Pit	Walkway
Reindeer Line Camp	Cleared Area	Fence
Set Net Site	Fish Cutting Table	Tent
Food Storage Pit	Fish Racks	Tent Frame
Wood/Timber Used for Fuel	Boat Landing or Dock	Fishwheel
Old House Pits	Boat Rack	Meat Racks
Business Equipment Storage	Warehouse/Storage House	Smoke House
Fuel Storage Tank	Trails/Road to Campsite	Bathhouse
Water Tank	Hunting Racks	Outhouse
Clothesline	Net Racks	
Stretch Frame	Food Cache	



Examples of Improvements — left, meat racks at Gambell; upper right, food cache at Nulato. (Rob Stapleton/Rural CAP) Lower right, dog tie downs. (Community Enterprise Development Corporation)

Access

Access is a means of approach to a parcel of land. Access can either be for the general public (as for instance, public highways or roads) or for the use of only the parcels' owner or possibly a group of owners.

Except for community lands and airports, parcels approved for reconveyance will become private property. Under state law, all these newest property owners will be entitled to the same rights as all other private property owners. These rights include access which allows the property owner to get to his or her land. All 14(c) tracts must have a means of access and any village tracts without a legal access shown on the plan of survey may not be approved for survey.

Some public easements will probably already have been reserved in your corporation's interim conveyance (IC) document. This normally would include logical stopping sites along lakes, bays, and rivers and existing and future public access routes across corporation lands to public lands or facilities beyond. Routes which everyone uses within the village may or may not be reserved in the IC. Normally these village roads and trails may also be included as part of the 14(c)(3) community lands, but some (usually outlying ones) could be permanently dedicated as a public easement with the village

corporation still retaining the underlying ownership. A utility easement for powerlines, pipelines, and the like is usually not a public access easement unless it is specifically designated for that use.



Rob Stapleton/Rural CAP

Waterway access, Hooper Bay.



CEDC

Walkway.

Subsistence campsite owners usually have a traditional access route which should be mapped out in a claimant's 14(c) application. Traditional types of access may include snowmobiles, motorboats, dogteams, three wheelers, etc. Methods of transportation which cause damage to the surface, such as 4 x 4 wheeled vehicles, or bulldozers can be specifically excluded. The board will have to discuss what type of policy will be used to grant reasonable access. Easements, licenses, permits, or rights-of-way have been various methods utilized thus far. Although such traditional access should be guaranteed by the corporation, actual conveyance of access easements is neither necessary nor recommended [except as a part of the village 14(c)(3) conveyance.]

Dates of Occupancy and Abandonment

Although ANILCA specified that the corporation is to reconvey certain tracts "occupied as of December 18, 1971," there are still many possible interpretations of what this means. For instance, subsistence campsites are not usually occupied during the month of December. This does not mean that people cannot receive their summer subsistence campsites. The corporation may need to be specific in defining some of the 14(c) terms to reflect traditional customs of land use.

Abandonment means purposely giving up your right or claim to property without any intent to gain title or possession again. Someone who is in the military or away at school for a few years may not have abandoned a 14(c) claim if he or she intends to return to the village to live. However, someone who moved away from the village several years ago without intending to return, may have abandoned his or her 14(c) claim.

There are differing opinions on the subject of abandonment of 14(c) claims because at present there are no set rules. Each board must use common sense in looking at the reasons why someone who applies is no longer occupying the land. An attorney may need to be consulted for help in working out a solution to some situations.



Sharon McClintock/ANF

Abandoned cabin.

Rights of Successors

As of December 18, 1971, people with valid 14(c) claims had a right to receive their parcels even though it would be years before the 14(c) process could be completed. If someone dies before receiving title to a valid 14(c) claim, the right to receive the property passes to his/her heirs. If an individual dies without a will, the courts will decide who the proper heir(s) are according to the Alaska State laws of inheritance.

When an heir applies for a 14(c) parcel, s/he should provide certain information:

- a. The corporation should be given a copy of the person's will, or if the person died without a will, a copy of the court judgment. Oral sworn testimony from individuals may also be provided.
- b. If the person who occupied the land in 1971 died before filing a 14(c) application, the board will also need information about the person's occupancy of the land. This information should come from individuals who are not immediate relatives of the heirs. It can be in the form of written affidavits or oral sworn testimony about the deceased person's occupancy of the land in 1971.

Some people who were entitled to the 14(c) parcels have already sold or given their land to somebody else. The corporation will have to decide how to treat these types of transfers. The corporation could honor the application if the applicant can provide a bill of sale, quit claim deed or other written proof that s/he received the land from someone with a valid 14(c) claim. If there was more than one transfer of the same parcel over the years, written proof of each transaction would be necessary.

Joint Claimants

Under some circumstances, more than one person may receive the same parcel.

- a. A husband and wife may jointly receive the same parcel if they occupied the land together as of December 18, 1971. In this case, the corporation should convey title to the husband and wife as "tenants-by-the-entirety" unless they specifically request otherwise. This means that both husband and wife have the right to use the entire property. Neither one has the right to prevent the other from using a portion of it. If either spouse dies, the surviving spouse gets the whole property.

- b. If a claimant was married after December 18, 1971, the corporation should convey title only to the person who was eligible in 1971, not both spouses. If the claimant wishes to own with his/her spouse, then the property can be transferred to joint ownership with another deed. It is the responsibility of the claimant to provide for this joint ownership. Once the corporation deeds a parcel over to a claimant, its job is done.

- c. If a married couple was entitled to a valid 14(c) claim in 1971 and later divorced, both persons should check with their lawyers about how to handle the property. In the 14(c) application, the claimant should list the ex-spouse where it says, "If anyone else might claim ownership of the land, please give their name and address."

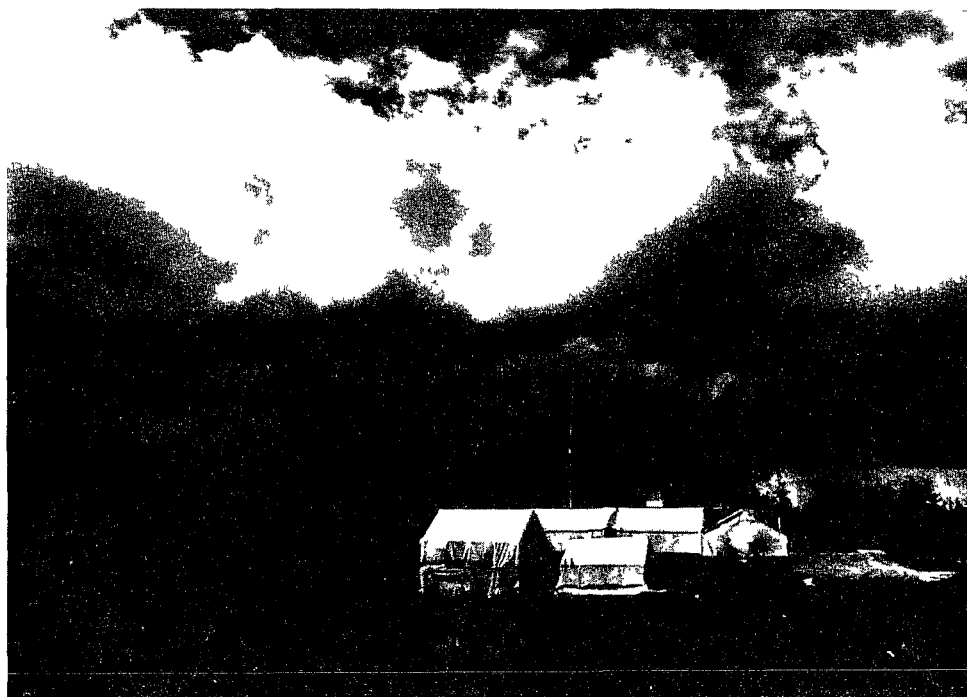
- d. If two or more people (other than a husband and wife) are entitled to the same parcel of land and want to own it jointly, then the corporation would convey title to the claimants as "tenants-in-common." This means that they all will share ownership of the whole property rather than have separate sections of their own. Each owner may sell his/her percentage of the land to anyone s/he wants, and leave it to anyone s/he wants when s/he dies. When one owner dies, his/her share of the land goes to his/her heirs, not automatically to the other owners.

- e. If a number of people apply for ownership of a single area, the corporation has several options. If the use is limited to only those applicants, the land could be owned by all as "tenants-in-common." Or the land could be split among the occupants with each owning only the piece of land on which his camp sits. The whole group could then arrange to use the lands around the camps with permission from the corporation. (See page 26.) The disadvantage here would be smaller individual camp-site lots. The advantage would be that everyone would own individual lots and still have use of the land around them. Another option is for

the corporation to reserve the parcel for communal use, if it is an area which many people customarily use and enjoy together. See following page for more information.



Richard O. Stern



CEDC

Cluster campsites.

Communal Lands

Under 14(c)(1), an individual is entitled to obtain a deed to land occupied as a subsistence campsite. In many Alaska villages, subsistence areas are often shared by a specific group of people or extended families. If each occupant were to qualify for an individual 14(c)(1) campsite parcel, the size of each campsite may be rather small, if the exact location could be determined at all. As a further disadvantage, as property owners, each can sell his/her own parcel or exclude others from using it. These situations could cause a great hardship to the remaining people which depend on the land for subsistence.

Several communities have expressed an interest in preserving an ownership pattern which allows for continued traditional use of the land by a group of people. But, in order to do so would require careful consideration by the corporation, because several workable mechanisms exist.

Interestingly, this concern for preserving traditional use patterns is not new. In 1887, when Massachusetts Senator Henry Dawes successfully sought passage of a new law called the General Allotment Act, (also referred to as the Dawes Act) nineteen Indian tribes unanimously opposed it. The Act, they

claimed, was aimed at breaking down Indian culture by allowing individual ownership of land. Private ownership led to the destruction of the Indian system of common ownership of land and lessened their sense of community identity.⁷

In villages where a number of people apply for ownership of a single area, the corporation has several options.

1. If the use is limited to only a few applicants, the land could be owned by all as "tenants-in-common" explained on page 25.
2. If the use is limited to family or extended family members, or just a cooperative group, the corporation could deed the land (with suitable covenants agreeable by everyone) to an association comprised of all family or group members. Each member would be a shareholder of the association owning equal shares. A board whose members are chosen by vote can make decisions about the use of the land at the direction of the group.

Descendants of members can be included as new members by vote of the group, or as another option, shares could be made inheritable (which however, might dilute the group if shares were allowed to be split).

7. Arnold, Robert D., Alaska Native Land Claims. Alaska Native Foundation, 1976.

3. Another option of the corporation is to reserve the parcel for community use under corporation ownership. The area would be classified as communal subsistence lands. Potential 14(c)(1) claimants would, however, be required to waive their rights to a 14(c)(1) subsistence campsite claim to allow for this type of designation. In exchange to this waiver of rights, the corporation should legally guarantee a continued subsistence use classification or permanent easement. Users of the land would be responsible for determining what uses are allowable or prohibited and also for monitoring trespass. Non-shareholder users would need to indemnify the corporation for liability in case someone gets hurt on the property.

4. The corporation could also designate the property for transfer under ANCSA § 14(c)(3), the reconveyance of land to the municipality or the state in trust (MLT). A possible disadvantage to this would be that under municipal/state laws, the general public would probably be able to use it freely.

5. Another option would be for the corporation to encourage potential claimants to apply for land use permits or leases rather than conveying title to group use lands. This option would allow persons and families to move campsites from year to year and also protect the land from being sold by individual owners in the future. It would, however, not protect against corporate changes in policy without some sort of corporate guarantee. Additionally, if individuals who are valid 14(c) claimants demand title to their lands under 14(c), the corporation must convey title to them.

Adverse Possession

Under state law, it is possible for people to occupy or "squat" on corporation land for a long time to claim ownership even though they were not entitled to receive any land from the federal government such as, a Native Allotment or townsite lot, or from the corporation under 14(c). This is called adverse possession.⁸ In Alaska, to claim ownership by adverse possession, a person would have to:

- a. Occupy and use the property for at least seven years if he or she has some document which supposedly made him/her the owner (or color of title), or for ten years if there is no "ownership" document.
- b. Occupy and use the property continuously for the entire seven or ten years (with only temporary absences) in an open or notorious possession without hiding.
- c. Occupy and use the property without the owner's permission throughout the entire time.
- d. Initiate a legal step called action to quiet title which consists of legal notice and a probable court hearing.

8. Adverse possession is explained in the Alaska Statutes 9.10.030 and 9.25.050.

Adverse possession could be a problem for village corporations which have already received interim conveyance from the government. Although people cannot claim adverse possession against the government, they can claim it against private land owners such as village corporations. The corporations do have temporary protection against adverse possession. Under ANILCA, the seven or ten year period cannot start until three years after the corporation receives interim conveyance from the government.⁹

Permission to Use Lands

There are several things a corporation can do to avoid adverse possession of its land. Since adverse possession requires use of property without permission, the corporation can protect its ownership by granting permission to use certain lands. For instance, to prevent adverse possession of land surrounding 14(c) campsites, the corporation may want to give permission for campsite owners to use adjacent lands. Permission can be given in the form



9. Section 907(c) and (d) of ANILCA.

of leases, permits or agreements which can spell out restricted and allowable uses. The difference between a permit and a lease is that a permit is for a short term and grants fewer and more temporary rights than the lease. Both leases or permits can contain conditions to protect the use of the lands and limit the uses to only those specifically authorized. Time limitations or renewal options could also be included along with possible reverter clauses which would allow the corporation to reclaim the properties if they are no longer needed.

There are a number of advantages to the lease/permit option; first, it is a potential income source to the corporation, and secondly, it removes one of the legal conditions (without permission) for adverse possession thus effectively eliminating the threat. Another advantage of leases or permits is that they are a highly flexible instrument that allows for virtually any conditions or terms that are reasonable to be written into them, yet it leaves the underlying ownership of the land to the corporation.

Chapter 3

Board Policy Considerations for Reconveyance of Homes, Businesses, Campsites and Reindeer Facilities

Section 14(c)(1)

The first major step in the reconveyance process is to establish board policy. Policy will provide the corporation with a set of rules to follow in recognizing rights people have to land occupied in 1971. The language of ANCSA Section 14(c)(1) provides the corporation with a few legal requirements. Other rules must be set by the corporation board. The full text of Section 14(c) is located in the appendix.

ANCSA Requirements

Text of Section 14(c)(1)

Section 14(c)(1) (as amended) states: "Upon receipt of a patent or patents⁹:
(1) the Village Corporation shall first convey to any Native or non-Native

9. Interim conveyance or patent, whichever comes earlier, ANILCA 1410 and 1437(d).

occupant, without consideration, title to the surface estate in the tract occupied as of December 18, 1971, as a primary place of residence, or as a primary place of business, or as a subsistence campsite, or as headquarters for reindeer husbandry;"

Vesting Date

Any parcel claimed under Section 14(c)(1) of ANCSA must have been occupied by the claimant as of December 18, 1971. The date when you have rights to something is called the vesting date.

Without Payment

Reconveyances for homes, businesses, campsites, and reindeer facilities must be made "without consideration", which means that the village corporation must transfer the land free of charge, without payment.



Board Policy Considerations

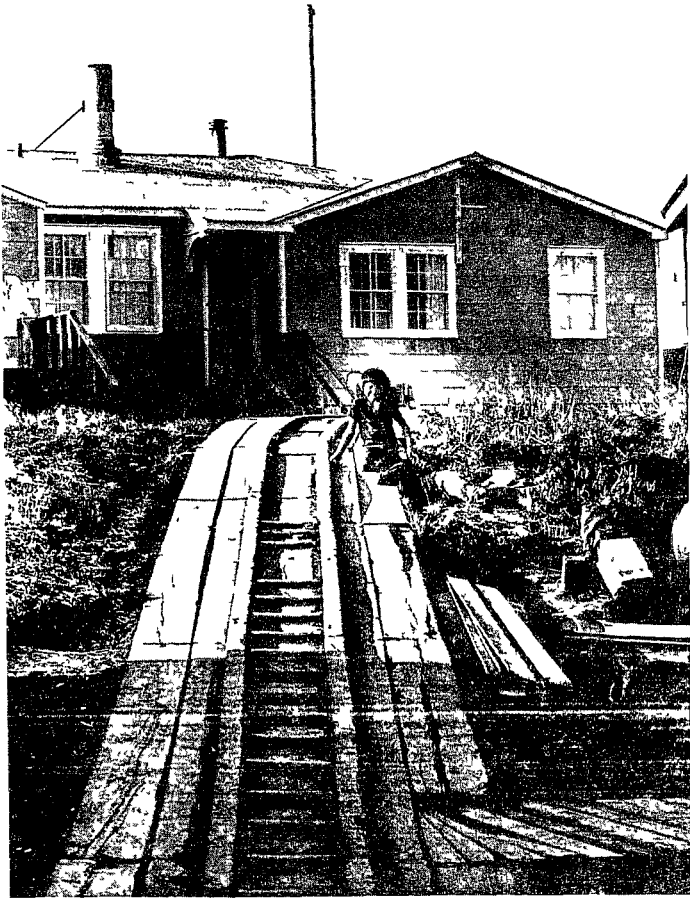
ANCSA does not define the terms, "primary place of residence, primary place of business, subsistence campsites, or headquarters for reindeer husbandry." Congress left this job to the village corporation. Since ANCSA provides no statewide guidelines, each village corporation has an opportunity to incorporate its own traditional land use patterns into board policy and procedures. While policy provides the corporation with rules to follow, procedures are guidelines which will be used to implement board policy.

ANCSA (as amended) does not say how much land should be given, other than saying, "the tract occupied as of December 18, 1971." The key for determining size is the extent of occupancy of the land on December 18, 1971. For the most part, each parcel will have to be determined on an individual basis using the best evidence available .

Following are some examples which may help the village corporation set its reconveyance policies. Remember, each village has its own land use traditions, so policies will differ from one to another.

Definitions

- a. Primary Place of Residence. This is the parcel of land used as the person's principal and most important place of residence. Normally, this would require a permanent structure.



There can be only one primary place of residence. This could include multiple parcels for uses associated with the primary residence. Recreational cabins, summer homes, etc. do not qualify since they are not the primary place of residence. A good indication is where the person is registered to vote.



Homes — upper, Hooper Bay; lower, Nulato. (Rob Stapleton/Rural CAP)

b. Primary Place of Business. This is the place that serves as the center of any business activity for that business.



Rob Stapleton/RURAL CAP

Business site, Kotzebue.

Although ANCSA specifies a primary (or main) place of business, the Alaska Supreme Court ruled in Steven Hakala and George Kitchen v. Atxam Corporation, that an individual may qualify for more than one primary place of business, but that there can only be one primary place of business for each business in which the person engages in.

The corporation's definition of a primary business site can distinguish between continuous and casual use. Continuous use would be regular use, such as month after month, year after year, or during every summer. Casual use would be every few years, occasionally, etc., and might not qualify for a "primary" place of business.

In applications for primary place of business parcels, the following information may help the corporation determine whether the claim is valid:

- Type of business
- 1971 business license number
- Percentage of the claimant's gross income which was produced by the business during 1971
- Tax records during 1971.

If more than one business was operating on December 18, 1971, the applicant could be asked to provide the above information for each business and to estimate what percentage of time was devoted to each business. This would help in deciding which one was the primary business.

- c. Subsistence Campsite. This is the parcel of land occupied on a seasonal basis as a campsite while the occupant harvests fish, wildlife, plants, fuel, and other products of the land and engages in other activities associated with the subsistence way of life.

Since ANCSA doesn't say "primary" campsite, applicants may apply for more than one parcel if they occupied more than one subsistence campsite in 1971. The applicant must show that each parcel was used as a subsistence campsite.

- d. Headquarters for Reindeer Husbandry. This is a parcel of land occupied for the purpose of managing, processing, and conducting reindeer herding activities. A claimant may apply for more than one parcel if there were facilities associated with the herding of reindeer in more than one location.



Richard O. Stern

Reindeer headquarter improvements.

Size of Parcel

Although the size of each parcel will basically be the amount of land occupied on December 18, 1971, the board may want to consider other factors in its decision on lot lines. For example, if most families occupied one-fourth acre, but one family occupied only one-eighth acre, then it might be more fair to give everyone one-fourth acre if there is room. Other factors to consider might include density, new or expected services, erosion, potential hazards, or topography.

a. Primary Place of Residence

A primary consideration in determining size is occupancy as of December 18, 1971. However, the board is not prevented from including factors such as present conditions. For instance, access to public facilities and rights-of-way should be considered. All residential parcels will include some form of permanent structure used as the main residence. Many will include additional improvements, such as sheds or steam baths.

The size of each parcel should be determined by the board through its evaluation of all the previously mentioned considerations, while still allowing the recipient the full use of his property as intended by Section 14(c)(1).

b. Primary Place of Business

The same elements used in determining the size of a primary place of residence should be utilized here. The nature of the business itself will provide the best guideline for the size of the parcel required. For example, a small cafe would occupy less land than a large store with a warehouse.

c. Subsistence Campsite

The village corporation has a wider range of options to consider in reconveying land for subsistence campsites than for homes or businesses. Some corporations have set a maximum size for subsistence parcels. Others have depended solely on the amount occupied, without trying to make all parcels roughly the same size. Since subsistence patterns differ from region to region, the size may vary also. In some cases, the corporation may have difficulty establishing the area occupied in 1971 because there may be no physical improvements. Standard size guidelines may be helpful in these situations.

Some campsite areas are shared by extended families or several unrelated people. The parcels may be reconveyed to them under 14(c) as "tenants-in-common" if all occupants agree to the arrangement. Other options are

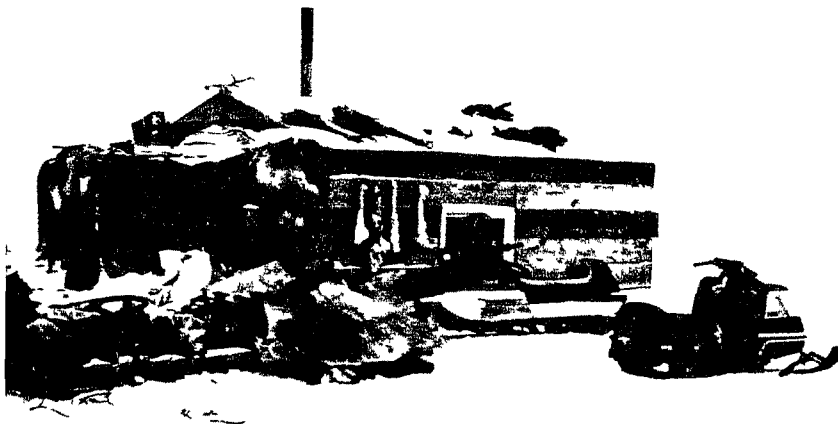
for each person to own his tract individually or for the corporation to reserve the whole area for communal use as discussed on pages 27-29.

d. Headquarters for Reindeer Husbandry

Reindeer headquarter sites vary in size and may include several parcels in different locations. The size will depend upon a number of factors, including the size of the herd. This has a direct influence on the size of facilities necessary to accommodate its management. Another factor is the location of the facilities and the type of terrain where they are located. Since each herder may have his own distinct corral pattern, the size will be entirely dependent upon each individual case.

The corporation is required to convey the amount of land occupied by reindeer facilities on December 18, 1971. However, due to increase in herd size and greater demand for reindeer products, the amount of land used in 1971 may be less than what is used today. The corporation could sell or lease the additional land needed or issue a permit to make it available for use with or without charge.

The type of improvements will also be a factor in the size. Traditionally, facilities have included line camps (consisting of cabins or tent frames), corrals, drying racks, storage sheds, and butchering facilities. These improvements will have the greatest influence on the size of reindeer headquarter parcels.



Upper left, reindeer corral. Note wings, chute, pockets and camp. Upper right, close-up of corral. Below, reindeer line camp. (Richard O. Stern)

Chapter 4

Board Policy Considerations for Reconveyance of Parcels for Nonprofits Section 14(c)(2)

The reconveyance of parcels of land for nonprofit organizations follows the same general format as the reconveyance of homes, businesses, campsites, and reindeer facilities in Section 14(c)(1). The only difference is that the corporation is given a choice to either require payment or convey the land at no cost to the nonprofit organizations.

ANCSA Requirements

Text of Section 14(c)(2)

Section 14(c) (as amended) states: "Upon receipt of a patent or patents¹⁰:
(2) the Village Corporation shall then convey to the occupant, either without consideration or upon payment of an amount not in excess of fair

10. Interim conveyance or patent, whichever comes earlier, ANILCA 1410 and 1437(d).

market value, determined as of the date of initial occupancy and without regard to any improvements thereon, title to the surface estate in any tract occupied as of December 18, 1971 by a nonprofit organization;"

Vesting Date

Any parcel claimed under Section 14(c)(2) of ANCSA must have been occupied by the claimant as of December 18, 1971. The date when you have rights to something is called the "vesting date."

Nonprofit Organizations

Alaska Statute Sec. 10.20.005 provides a list of what types of organizations may be organized as nonprofits. Any organization not organized for profit purposes also qualifies as nonprofit under the Internal Revenue Code whether tax-exempt or not. Below are some possible examples:

EXAMPLES OF 14(c)(2) NONPROFIT ORGANIZATIONS

Examples, type and possible land uses, follow:

Alaska Native Brotherhood or Sisterhood	fraternal	hall
Campfire/Scouts	civic	camp
Russian Orthodox, Moravian, Episcopal, etc.	religious	church & cemetery
Little League	athletic	ballfield
Headstart	educational	school and playground
Whaling Association	fraternal	office
Fisherman's Union	trade union	office
VFW/Eskimo Scouts	patriotic	hall/parade ground
4-H Club	agricultural	garden plot
Sec. 16 IRA Council /traditional government	civic	cultural hall
Aquacultural Association	commercial association	hatchery



Rob Stapleton/RURAL CAP

St. Paul church.

Board Policy Considerations

Payment for Nonprofit Organizations

The terms "without consideration" and "upon payment of an amount not in excess of fair market value" give the village corporation a choice. It can either convey the land to nonprofits free of charge (without consideration) or require payment.

If payment is charged, it cannot be more than the fair market value of the land when the nonprofit first occupied the parcel. The corporation can

charge less than this value, but not more. If improvements are located on the land, the corporation cannot include their value in the payment required. Only the land value is estimated.

In deciding which option to choose, the board of directors should consider several factors. The directors are entrusted by law with a fiduciary responsibility to the shareholders of the corporation. In addition, shareholders may have elected the board to fulfill certain goals which they feel are important.

The board may want to establish a 14(c)(2) policy which would provide income for the village corporation by conveying the land for its earlier fair market value. In cases where the value was high, the corporation might earn some significant income this way. In other cases, if the land had little commercial value or if the nonprofit has been on the site for many years, the earlier dollar value of the land may be quite low. In these cases, a village corporation might spend more money on an appraisal and staff time deciding how much to charge than it would receive later in payment. If so, a payment policy would not provide much (if any) income or protect stockholder interests.

On the other hand, the board may decide that it is in the shareholders' best interests to donate the land to the nonprofit. The corporation may be able to take a tax deduction for the charitable contribution. Another factor to

consider is whether the nonprofit organization has the ability to pay. For instance, can the church or clinic afford to pay for the land on which it was built?

If the board decides to require payment, the corporation and the nonprofit organization should negotiate the amount of payment as explained above. If the parties cannot agree on the fair market value of the land, an appraiser can be consulted. The corporation and the nonprofit organization could agree to split the cost of consulting an appraiser.

Uniform Payment Policy

The corporation does not necessarily have to adopt a policy which treats all nonprofit organizations in the same manner. It can give land free to some nonprofits and require payment from the rest. However, it may be easier and less troublesome to have one set policy. This is for the corporation to decide.

Size of Parcel

The board could rely on the same factors used in determining the size of homes and business parcels, since most nonprofits are also located within the village area. The size of parcel may vary depending on the type of nonprofit. For example, a school parcel might be larger than a church parcel.

Transfer of all Corporation Lands

Whether a village corporation can convey a large portion of all of its land to an IRA or traditional council under § 14(c) is an issue of considerable interest. Assuming that the council qualifies as a nonprofit organization, the issue is whether the council was an "occupant" as of December 18, 1971. Clearly, specific buildings and sites occupied for nonprofit uses qualify. However, other corporation lands that are not specifically used for tribal government activities will not be considered "occupied" by the council. Occupancy, as the term is likely to be used in § 14(c)(2), is perhaps best explained by an analogy. The Municipality of Anchorage has jurisdiction over all activities within its boundaries; but it only occupies specific sites, as an owner, e.g., municipal headquarters, library, etc.

ANCSA makes the 14(c)(2) reconveyance mandatory by saying a corporation "shall" convey certain lands to nonprofits. Since the reconveyance is mandatory, it presumably could be compelled by court action. Congress clearly did not, in passing ANCSA, intend tribal organizations to be able to compel a village corporation to convey the entire land holding of the corporation to it. If, however, tribal organizations are treated as "occupants" of the village and adjacent area, this is the exact result. In addition, a transfer of all corporation land to tribal organizations under § 14(c)(2) would create a conflict with § 14(c)(3); which is also mandated. Since treating tribal organizations as nonprofit occupants of village lands leads to nullifying the 14(c)(3) duty Congress could not have intended that a tribal organization be treated as a § 14(c)(2) occupant of all village land.

Board Policy Checklist

The previous chapters provided various options for board consideration in setting policy on 14(c)(1) and (2) reconveyances. This checklist is included so that the board can make sure all policy areas have been covered.

CHECKLIST-14(c)(1) and (2) RECONVEYANCE POLICIES

The Board needs to make the following determinations:

- _____ **Definition of Primary Place of Residence**
- _____ **Size of Tract for Primary Place of Residence**
- _____ **Definition of Primary Place of Business**
- _____ **Size of Tract for Primary Place of Business**
- _____ **Definition of Subsistence Campsite**
- _____ **Size of Tract for Subsistence Campsite**
- _____ **Definition of Headquarters for Reindeer Husbandry**
- _____ **Size of Tract for Headquarters for Reindeer Husbandry**
- _____ **Definition of Nonprofit Organization**
- _____ **Size of Tract for Nonprofit Organization**
- _____ **Payment Policy for Nonprofit Parcels**
- _____ **Joint Claimants and Communal Lands**
- _____ **Claims by Successors**
- _____ **Competing Applications**
- _____ **Shared Use Tracts**
- _____ **Application and Decision Making Process**
- _____ **Access**

Chapter 5

The Reconveyance Process

The technical reconveyance process can begin when the board has decided its general 14(c) policies. The chapter discusses all the steps in the reconveyance process from giving notice to preparing the map of boundaries. Remember that the order and details of these steps will vary from corporation to corporation depending upon individual situations. References are made throughout this chapter to sample forms which are in the appendix. These forms can either be used as they appear or they can be modified to suit your corporation's 14(c) process.

Making Policy: Step 1

The board's first step, making general policy on 14(c), was discussed in Chapters two through four.

Assigning Staff Work: Step 2

When the corporation is ready to begin, it will need to assign someone to do the work of implementing the reconveyance process. These tasks would involve publicizing the program, helping people with applications, keeping good records, gathering information for board review, conducting field exams, handling correspondence, and drafting the plan of survey.

After reading this chapter, you will have a better idea of the amount of work involved. Depending on the size of your village and the number of claims you expect, 14(c) may need a full-time or part-time person. The board could also consider assigning the work to a committee.

Giving Notice: Step 3

After the board has decided on its general 14(c) policies and assigned someone to do the staff work, the next step is to notify people that the corporation is taking applications. It is important that the corporation make a reasonable effort to contact everyone (not just shareholders) who may have a claim. Otherwise, people who would be entitled to parcels can rightly say that they didn't know it was time to apply. There are two aspects to con-

sider in giving notice: how much time is adequate, and where the notice should be given. Both aspects are best answered by the corporation board in light of the particular village situation.

How Long?

How long to give notice depends on the village itself, but it should not be less than 60 days. This is the legal notice period required for several types of land matters such as "quiet title actions." Some corporations may need much more time to contact people, especially if many residents are out of town. The notice period could last several months, or even years. To notify people who occupy subsistence campsites only during certain seasons, some corporations may want to extend the application deadline for a full year. The balance is between giving enough time to potential applicants and allowing the corporation to settle its obligations within a reasonable time so it can have clear title to its ANCSA lands.

In most communities, the summer months would not be a good time to set the application deadline because village residents may be at subsistence camps, out on fishing boats, etc. Deadlines close to important holidays may not be a good idea either.

Where?

It is also important to consider where to give notice. Effective notice depends upon how many of the potential applicants are in the village, subsistence patterns, where residents visit when out of town, etc. It certainly would not be enough to post a notice in an unused building or publish it in a newspaper that no one reads; but there are no fixed rules on what is enough.

The corporation can place notices in well-used buildings such as the post office, store, armory, clinic, and community hall. (A sample notice is in the appendix as Form A.) Many potential 14(c) applicants can be reached by publishing a notice or ad in a newspaper which is widely read in the region, and in the corporation's newsletter. (See Form B in appendix.) The frequency of publication might be four to six times over a 60-120 day period.

Radio and TV announcements are other effective means to inform people, as are public information meetings. Radio can be especially helpful during the summer, when people depend on it for messages and news while at camp. The annual meeting is an excellent time to announce a reconveyance program and to explain 14(c) to stockholders. Informational materials on 14(c) can accompany proxy materials for the annual meeting. Some suggestions for giving notice are listed on the next page.

Suggestions for Giving Notice

- **Hold a public meeting in the village.**
- **Post notice and map in busy places in village, such as the post office, community hall, store and corporation office.**
- **Publish notices in the Tundra Times, the Anchorage Daily News or the Anchorage Times, and/or a newspaper of general circulation in the region.**
- **Include a notice in the corporation newsletter or a letter to the shareholders.**
- **Include a notice in the annual meeting announcement.**
- **Make an announcement on the radio and/or television.**

The corporation may want to make a special effort to seek out older people who may have difficulty understanding English or the reconveyance process. Some of these people were passed over when various land entry programs were initiated in the past. They may require special assistance to apply for 14(c) land.

It is important that the corporation keep records of its efforts to notify people about 14(c) applications. It will give some measure of protection to the corporation to show that a reasonable effort was made to contact potential 14(c) claimants. Keep a record of the times notices are published, the frequency of radio announcements, where notices were posted, etc. (Form C is a chart you can use for this purpose. See Appendix.)

Receiving Applications: Step 4

When notice about 14(c) is given, the corporation must be ready to distribute application forms. Two sample applications, (Form D) are in appendix. Most people can pick up an application at the corporation office, but be prepared to mail them to people living outside the village. (See Form E in appendix for a letter that could accompany the application form.)

All 14(c) applications should be submitted directly to the village corporation. A person could be available to help people fill out applications and someone should be assigned to accept them as they come in. Even people who are not sure if reconveyance applies to them should fill out an application.

If an applicant wants to provide additional information for board review, sworn statements (affidavits) can be assigned by people who know about the applicant's occupancy. (See Form F in appendix.) Affidavits are optional, but some corporations find them helpful, especially in situations where the 14(c) applicant lives out of town.

To keep track of each applicant's materials, an individual file folder should be started when each application is turned in. Be sure to mark the date received on each completed application. All forms, correspondence, maps,

reports, and interviews which relate to a person's application should be kept in this file folder. If they are kept in alphabetical order in a file drawer or box, it will be much easier to find someone's folder when you need it.

Gathering Information: Step 5

Someone should be assigned to gather the preliminary information for the application review. The first task is checking the land status. This step is important because 14(c) reconveyances can only be granted for land which the corporation received from the federal government under ANCSA. The corporation cannot give 14(c) parcels if the lands are claimed or have already been patented to others for mining claims, Native Allotments, homesites, etc. Land records can be checked at the State's district recording offices, the BLM district offices or the Alaska Department of Natural Resources (DNR) if the corporation's land is located within the vicinity of State land holdings. BLM or State DNR "master title plats" (MTP's) will show which lands are patented and which lands fall within boundaries of the village corporation selection. Aerial photographs taken before or near December 18, 1971 will show what buildings and improvements were located on the land at that time. Current aerial photographs will show post-71 improvements.

Conducting Field Examinations: Step 6

The field exam is a visit to the site which can provide information to help the board determine the validity of the 14(c) claims. A date and time for a

field examination of the land should be arranged with each 14(c) applicant. The visits could be made as each application comes in or they could all be scheduled after the application deadline. It may be helpful to look at campsites during the time of year the applicant claims to use the land. The exam should be conducted with the applicant present if possible. All of the field exam information should be put into the applicant's 14(c) file folder.

The report should include a description of all the improvements, visible use and occupancy. (See the report format in Form G in appendix.) It can also include interviews with adjacent property owners or references. They can be interviewed if there is need for more information such as when and how the applicant first occupied the property, when improvements were built, etc. In some cases, it may be helpful to take photographs of the land and improvements. However, remember that the key date for occupancy is December 1971, not the present. If the applicant has any photographs taken around December 1971, these can be attached to the field report.

Selecting Committees for Decision Making: Step 7

While applications are being accepted, the board needs to make final decisions about its 14(c) process if it has not done so already. This includes deciding who will make the preliminary decisions on 14(c) applications, how to handle appeals, and what additional forms will be used in the process.

The corporation can give the job of reviewing 14(c) applications to several types of committees. To date, various corporations have given this job to their land committee, the full board of directors, and a committee of board and non-board members.

Since each applicant should have an opportunity to appeal if dissatisfied with the initial decision, a different group should be appointed to hear appeals. For example, if the board's land committee makes the initial decisions, then the full board could hear appeals. Or if the full board makes the initial decisions, then appeals could be made to a grievance committee, board of elders, neutral person, or hearing officer.

Reviewing Applications: Step 8

When the staff work on the applications is finished, the committee assigned to make the initial decision should review all the information included in each 14(c) file. This will include the application, any affidavits, the land status check and the field exam report. This committee then makes a preliminary decision on each application.

Notifying the Applicant: Step 9

The applicant should be informed of the committee's decision by certified letter. To make sure the letter is delivered to the applicant only, mark "restricted delivery, show to whom and date delivered" on the receipt for certified mail. Since applicants must sign to receive the letter, the corporation will know that its decision has been communicated. This is especially important if the application has been denied because there will be a specific time period for requesting an appeal.

Keep the post office receipt in the person's 14(c) folder. If the corporation prefers to distribute letters in the village or have people pick them up, be sure to have the applicant sign that it has been received.

If the application is recommended for approval, the applicant can be sent a copy of a map showing the location of the parcel. (See Form H in appendix.)

If the application is denied, the letter should give the reasons why. (See Form I in appendix.) The denied applicant should be offered a chance to appeal if s/he feels the decision was unfair. The corporation should give the applicant a reasonable amount of time to respond to the letter, at least 30 days. If the applicant wants to appeal his/her case, a time should be arranged for the appeals committee to hear cases. See the "hearing appeals" step below.

Plotting Locations on Map: Step 10

Parcels approved for reconveyance can then be plotted on a general map or aerial photo. This is the beginning of the map of boundaries. Each applicant and the city or state in trust should be given an opportunity to review this map to be sure lot lines were drawn correctly.

Hearing Appeals: Step 11

The appeals process will allow aggrieved applicants an opportunity to provide additional information or argue his/her case. Remember that the burden of proof is on the claimant. Development of procedures to hear appeals is the responsibility of the corporation. Important considerations in this process involve setting up a committee separate from the decision making committee to avoid conflict of interest and providing adequate time and notice to individuals who appeal. Before the appeals hearing, the applicant should be given a copy of the field examination report or other pertinent information. (See Form J in appendix.) He or she should be permitted to appear at the hearing in person and/or through a lawyer. The applicant can also ask other people to speak about his or her occupancy of the land.

Making a Final Decision: Step 12

The decision reached after the appeals hearing is the final decision made on the village level. If the applicant is still not satisfied, s/he can take the issue to court. However, it is very important for the village corporation to make every attempt to resolve any dispute on the village level, because any resulting lawsuits are costly, time consuming and will not only delay the reconveyance process, but also will result in the title to land remaining clouded.

Working on the Next Phases of 14(c)

When you have completed the first two obligations of the reconveyance process--14(c)(1) and (2)--you are ready for the next phases, 14(c)(3) and 14(c)(4).

Chapter 6

Working on the Next Phases of 14(c) Municipal Reconveyance Planning 14(c)(3)

When you have proceeded well along toward accomplishing the first two obligations of the reconveyance process--14(c)(1) and (2)--you are ready to actively begin the next phases.

The next step is planning for the transfer of land for community purposes to the existing municipality [or to the state in trust--the Municipal Land Trustee (MLT)] under § 14(c)(3). The last type of reconveyance, § 14(c)(4) is to the state, city, or other airport operator for lands used in 1971 for airport facilities (Chapter 7).

This chapter is not intended to be a detailed step-by-step 14(c)(3) planning manual, but as a supplement to the 1983 Alaska Department of Community and Regional Affairs' handbook entitled COMMUNITY PLANNING FOR ANCSA 14(c) LAND RECONVEYANCES. It is intended to offer additional points and viewpoints that village corporations may need to consider.

What is ANCSA Section 14(c)(3)?

Section 14(c)(3) is the third obligation after 14(c)(1) and (2). It is a joint planning process which requires negotiation between a village corporation and city, or if there is no city, the State Municipal Land Trustee. The final 14(c) settlement agreement will specify the location and the amount of land which will be reconveyed to the city or state to meet community needs. If the city or State Municipal Land Trustee agree in writing, less than 1,280 acres, or even no acreage at all, need be conveyed.

What Does 14(c)(3) Say?

Text of ANCSA Section 14(c)(3)

Section 14(c)(3) (as amended) states: "Upon receipt of a patent or patents:¹²
(3) the Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future, title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs: Provided, That the amount of lands to be transferred to the Municipal Corporation or in trust shall be no less than 1,280 acres unless

12. Interim conveyance or patent, whichever comes earlier, ANILCA §1410 and 1437(d).

the Village Corporation and the Municipal Corporation or the State in trust can agree in writing on an amount which is less than one thousand two hundred and eighty acres: Provided further, That any net revenues derived from the sale of surface resources harvested or extracted from lands reconveyed pursuant to this subsection shall be paid to the Village Corporation by the Municipal Corporation or the State in trust: Provided, however, that the word "sale," as used in the preceding sentence, shall not include the utilization of surface resources for governmental purposes by the Municipal Corporation or the State in trust, nor shall it include the issuance of free use permits or other authorization for such purposes;"

What Does it Mean?

Simply put, Section 14(c)(3) means that the village corporation, unless it can negotiate for a lesser amount, must convey a minimum of 1,280 acres of land to meet community needs to city governments or to the state in trust. Further, the conveyance of land is subject to the conditions that a written agreement for less than a 1,280 acre reconveyance is required, and that the net proceeds from the sale of surface resources harvested or extracted (which are not utilized for governmental purposes) will go to the village corporation.

It should be emphasized that 14(c)(3) is much more than a simple reconveyance step based on the desires of the city or village corporation. Rather, it is a participatory planning/negotiation process that normally will require a written agreement for a final settlement. Because the process is one in which both parties must participate, the village corporation and the city each need to know its individual long range goals and present and future interests. This is so each will be able to bargain wisely for the best mutually acceptable compromise possible.

Who is Entitled to 14(c)(3) Land?

The village corporation is to convey land to "any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future..." A Municipal Corporation is defined in § 3(i) of ANCSA to be "...any general unit of Municipal government under the laws of the State of Alaska." Under the Alaska Statutes (AS 29.04.010-.020), the term municipality means a home rule or general law city or an organized borough of any class.

If the village is unincorporated (as over ninety are), the land is to be conveyed to the State, to hold in trust. The Municipal Land Trustee (MLT) Program was created under Alaska law (A.S. 44.47.150) to specifically accommodate ANCSA § 14(c)(3). Alaska law pertaining to lands conveyed in

trust for unincorporated communities defines the term municipality to be only first or second class cities. Although it would seem that a borough would not qualify under that definition, and because it is not the municipality "in the Native village," a borough can be a recipient or joint recipient of 14(c)(3) lands. This occurs in cases where the village is situated wholly or partly within a borough or unified home rule municipality. A 14(c)(3) reconveyance could be made to the borough or unified home rule only if the Appropriate Village Entity gives its approval (19 AAC 90.020).

The "Appropriate Village Entity" or AVE is an officially recognized group that the trustee is satisfied can be truly representative of the entire population of the village and whose purpose is to oversee and approve of all the actions of the trustee in administering the trust lands of that village. If no AVE is recognized, each proposed action affecting trust lands requires that a special village meeting be called to obtain approval of the residents. (See page 10 and 11 of DCRA's 14(c)(3) Handbook.)

An IRA or traditional council, does not qualify as a recipient of 14(c)(3) lands under the MLT definition of municipality and there are no state laws which include them in any definition of municipality.

What Types of Land are to be Reconveyed Under 14(c)(3)?

ANCSA Section 14(c)(3) requires that the village corporation reconvey certain types of land to meet community needs.

Remaining Improved Land

The wording "... shall then convey title to the remaining surface estate of the improved land on which the Native village is located ..." means the improved land remaining after the preceding § 14(c)(1) and (2) claims have been satisfied are to be conveyed under § 14(c)(3). "Improved land" is generally recognized to mean land altered from its natural state and benefited in some positive manner for use by people. This definition is supported in the MLT regulations [19 AAC 90.990(5)] which defines improved land as "the land conveyed under ANCSA to village corporations which is changed from its natural state through valuable additions made to the land or



Improved land in the village of Nulato.

Rob Stapleton/RURAL CAP

through regular use by the residents of the village..." Thus vacant and unimproved land would not qualify of itself under this part of 14(c)(3). Other improved land uses that might not qualify are improvements to corporation land which took place after 1971 without securing the consent of the corporation. Obvious examples of improved land to be conveyed might be community buildings, cemeteries, water storage tanks, sewage lagoons, garbage dumps, and similar public uses.

Land Necessary for Community Expansion and Other Foreseeable Needs

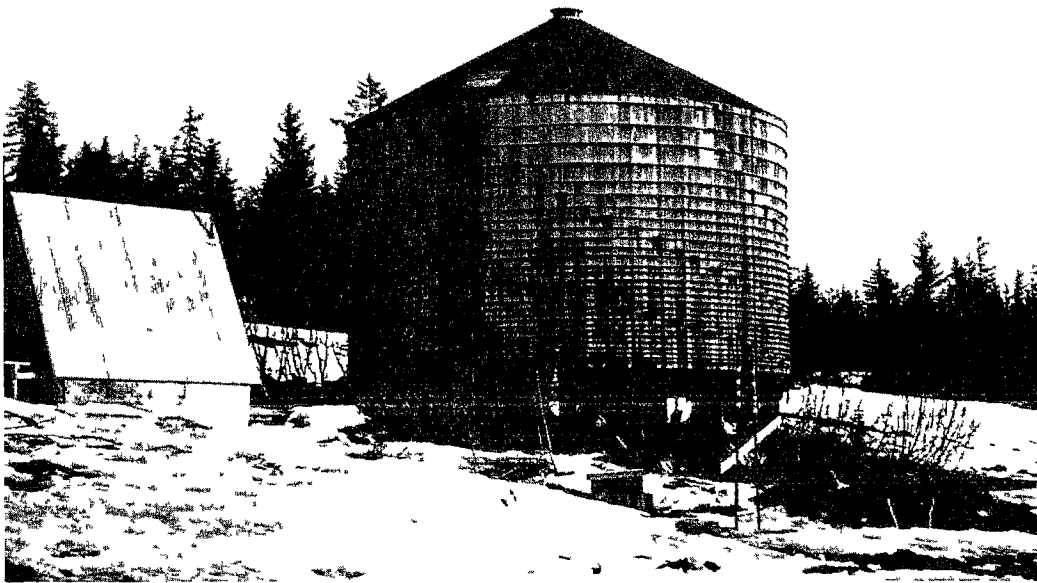
Next to be conveyed is "...land necessary for community expansion and other foreseeable community needs." As a village grows, lands which the community would use in common are good candidates for 14(c)(3) reconveyance. For example, land for expanded community facilities, new roads, a new larger



Sharon McClintock/ANF

New community hall at Fort Yukon.

garbage dump, or a new or larger airport, which are used in the performance of municipal purposes might qualify. If, on the other hand, the population over the past ten years or longer has been declining, foreseeable community land needs might be rather minimal.



Sharon McClintock/ANF

A new water tank will some day replace this one at Tatitlek.

The word "foreseeable" means, "what may reasonably be anticipated," "the ability to see or know in advance," or "that which lies within the range for which forecasts are possible." Foreseeable is probably best defined by what a competent expert witness says it is in each particular case. An example of a reasonable interpretation of foreseeable might be the ten year period used for the comprehensive plan adopted by Anchorage. Other land management entities have similar land use planning periods with more frequent periodic reviews and updates required as needed.

The Alaska Statutes (AS 29.40.030) requires the municipality's governing body to periodically review and update the comprehensive plan as necessary. In planning for Capital Improvement Programs (CIP), it is common to have a five year plan along with the current year's budget for a total of six years. Small cities often plan their CIP's only one to two years ahead.



Sharon McClintock/ANF

Land planning session in Shishmaref.

If all else fails, ask community residents what their community needs are--they should be more aware of their own needs than anyone else. Otherwise, 14(c)(3) reconveyances that are based on over-long and over-zealous future community expansion and community needs estimates are on very weak ground. Also, there is no requirement for the corporation to assume the burden of providing for unknown and unspecified purposes. The point to bring out here is that if each community were to access their reasonable foreseeable needs through a proper planning process, there should be no reason to contest a 14(c)(3) decision.

Appropriate Rights-of-Way for Public Use

Under 14(c)(3), the language requires the village corporation to provide appropriate rights-of-way for public use. Rights-of-way provide access across land for people, vehicles and utilities such as water and sewer lines, electric and telephone poles and lines.



Main Street at Emmonak. Note utility poles and lines.

Sharon McClintock/ANF

Depending on the type of use, rights-of-way for public use can be provided through the reservation of an easement or by outright ownership. Where only the use of the land is required and the primary beneficiary of the use is the adjacent landowner, an easement is appropriate.

An easement is a lesser right of use for a limited purpose; for example, a utility easement whereby a utility has only the right to cross land with its lines and associated supporting structures and such access as is necessary to maintain the utility. A utility easement is usually limited to the utility uses specified. The basic ownership is retained by the land owner. Easements do not provide full public access although sometimes they receive such public use.

Outright ownership means all rights (to the surface estate) of the land are transferred. Ownership is appropriate when the primary beneficiary is someone other than the adjacent land owner. For example: a right-of-way easement might be used for local electrical service (the power poles and lines) but a right-of-way deed might be used for a power transmission line (the structures and lines) serving another region. In most communities, easements are usually reserved rights-of-way for public access, although some are owned outright. Easements are also frequently reserved for utilities, which can be owned either privately or publicly. Easements for utility services, such as electricity, telephone, water, or sewer can be provided through a narrower (i.e., 10-25 feet) access separate from the road, although road easements can generally be used for both.

Rights-of-way, either existing or as a definitely foreseeable need, leading to outlying publicly used sites such as dumps or airports, should also be provided. For access to airports, the corporation may be required to grant the right-of-way outright if federal funds are used to maintain it.

Because a village corporation seldom needs or wishes to have the responsibility for maintaining public rights-of-way, paying taxes on them, or assuming the legal liability for accidents, it is probably always best for the corporation to give these rights-of-way as part of the 14(c)(3) grant.



Rob Stapleton/Rural CAP

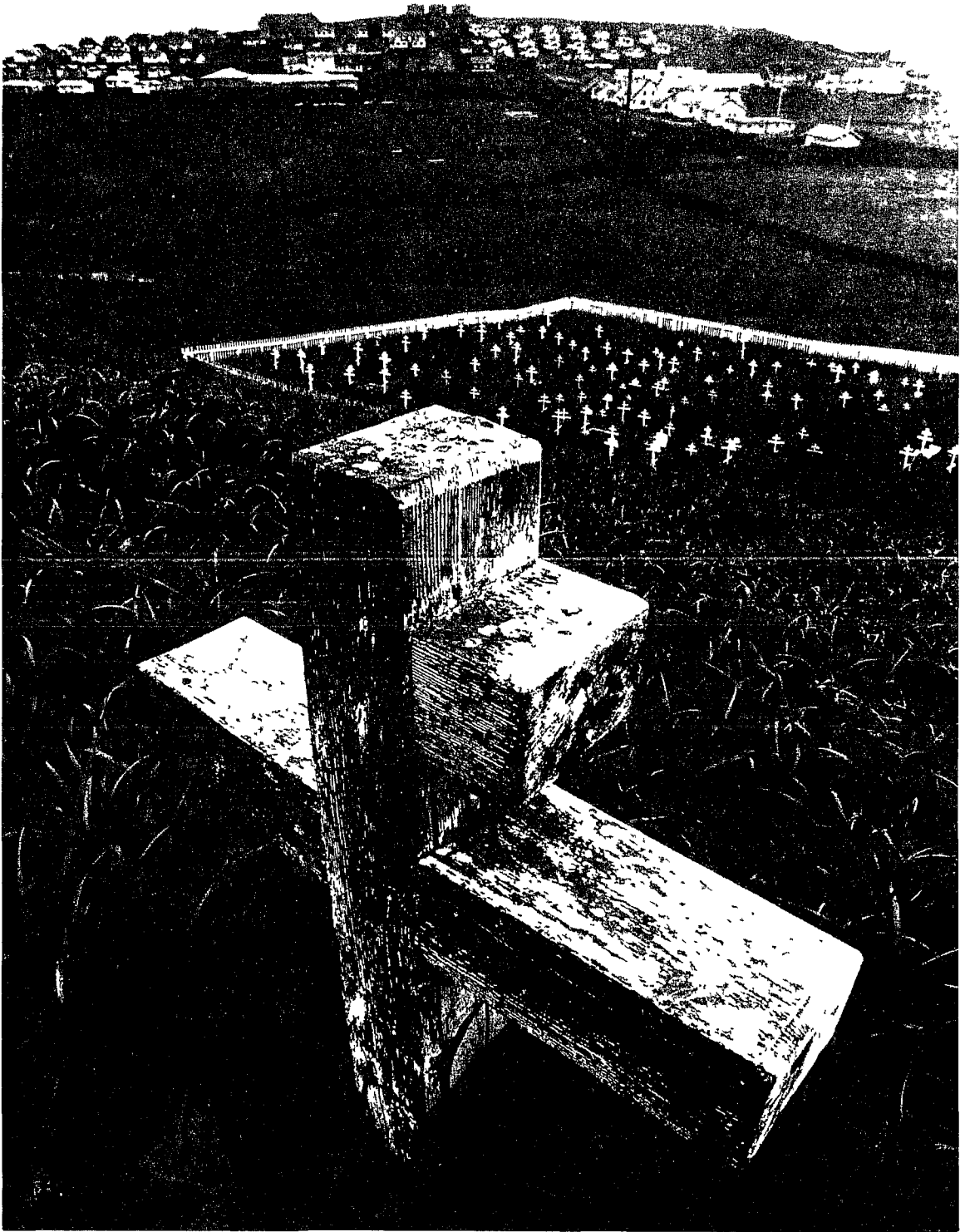
Road right-of-way at Hooper Bay.

Amount of 14(c)(3) Land

The pertinent portion of Section 14(c)(3) says that the amount of lands to be transferred "...shall be no less than 1,280 acres unless the village corporation and the Municipal corporation or the state in trust can agree in writing on an amount which is less..." A 1980 ANILCA Amendment (§ 1405) added the provision that less acreage could be conveyed if agreed to in writing.

ANCSA legislative history shows that several alternate versions of the 14(c)(3) provisions were considered. Among them was a bill which gave no thought to the municipal conveyances, to versions giving municipalities anywhere from 160 acres to an entire township for community expansion. One version considered the use of a sliding scale conveyance of 160-640 acres based on the population of the village. The history also showed that there was a movement away from giving municipalities everything to only giving it some lands to meet foreseeable community needs.

The 1,280 acre minimum was simply a mistake, according to David Hickok who was an advisor to the chief counsel for the Senate Interior Committee when ANCSA was being written. He had recommended one square mile (640 acres) as an amount of land that would cover anything conceivable for municipal purposes. When asked about doubling it he agreed that in his opinion the 1,280 acres would surely cover anything anyone could ever conceive of. So the staff people in both the House and Senate began to think of the 1,280 acres as a maximum



Rob Stapleton/Rural CAP

The amount of land to meet 14 (C)(3) community needs in St. Paul will vary from other villages.

acreage for municipal conveyance. He believes someone forgot to change the "no less than" of the 160 acre amount to "no more than" for the 1,280 acre amount. The large land transfer minimum was just a mistake in final drafting that wasn't caught in the very hectic conference committee period. The amount of land required for 14(c)(3) reconveyance was later to be the subject of much controversy which ultimately led to the 1980 amendment in ANILCA § 1405.

The ANILCA amendment allowing for a lesser conveyance was proposed because the reconveyance of the full 1,280 acres far exceeded village municipal needs and made little sense. Legislative history shows consideration was given to asking Congress to identify villages where reconveyance may not be necessary to providing some standard for determining a reasonable amount. Thought was even given to a sliding scale ranging from 100 to 500 acres depending on the population of the village, but was struck down when the issue arose of whether or not the reduction of the 1,280 future would constitute a taking of municipal property rights. The final language left the amount negotiable.

The point to be made here is that not only is 1,280 acres a considerable amount of land but, that it is far in excess of any realistic foreseeable need for any of Alaska's cities or villages. And since Alaska's larger communities, such as Kotzebue, Nome, Bethel, Dillingham, and Barrow as they presently exist, do not now occupy as much as 1,280 acres of improved area, it is illogical to suppose that 1,280 acres is really necessary for the smaller villages' present and foreseeable needs. The DCRA 14(c)(3) handbook on pages

15-18 has an excellent section illustrating the size of some existing villages and how large 1,280 acres is by comparison.

The key to arriving at a sound 14(c)(3) agreement is by identifying actual community needs, backed by local knowledge of suitable land best able to meet those needs. Past experience shows that each community is best equipped to



Sharon McClintock

Existing city building in Kwethluk and its parking area covers less than one half acre.



Sharon McClintock

Future needs in Kwethluk includes a new cemetery site.

identify its own needs and to resolve the issue themselves. When careful thought and consideration is given to balancing the economic needs of the corporation and the needs of the community, the final 14(c)(3) sign-off will most likely result in a sound agreement. A surprisingly small amount of land very likely will meet actual community needs.

When to Begin

Since each village is different, with its own set of unique problems and circumstances, the process and 14(c) responsibilities will vary from village to village. Roughly half of ANCSA villages have federal townsites where community improvements, rights-of-way, and expansion needs have been, in large measure, already provided for. In the rest of the ANCSA communities where no federal townsite withdrawal exists, the corporations' 14(c)(1) and (2) responsibility will be more extensive. In these cases, because 14(c)(1) and (2) claims take precedence over other 14(c) reconveyances, the length of time it might take to resolve them could affect the timing of 14(c)(3) negotiations.

In all situations, it is wise for a village corporation to begin consideration of the possible impacts of 14(c)(3) on their land ownership early in the 14(c) process. While 14(c)(3) is the reconveyance that is ordinarily done last after all the other 14(c)(1), (2), and (4) claims are completed, the

village corporation needs to think ahead to which lands will best meet its future corporate goals, and what lands are presently used and are necessary for future community expansion.

Planning Considerations

To determine the amount and kind of land which an existing or future city actually requires to meet its present and future needs, some sort of a planning process is needed. If the planning process is more formalized and there is good village participation, the plan will most likely be accepted by all parties. While it is possible for the municipal corporation and the village corporation to each work up or commission a separate version of what it thinks should be in a community plan, and then try to compromise on a final version, it might be a better approach to work up the plan from its initial stages on a community wide basis and in a non-adversarial situation.

Past experience indicates that when a broadly based community plan is finalized on such a basis, it will be far easier for the village corporation and the municipal corporation or MLT to reach a final, negotiated, written compromise 14(c)(3) agreement. Chapter three of DCRA's 14(c)(3) handbook provides one step by step method which has been used by many communities. Other communities may find that another similar process may work better for them. The end product is an agreement negotiated to meet both parties needs.

Sequence of Reconveyance

The participants representing the village corporation in the formulation of the community plan need to be well aware of several factors. One is that the ANCSA language sequence requires 14(c)(1) and (2) claims to be satisfied first before land is conveyed to the municipality or to the State for airports. This has not been the case for a number of reasons.

There are situations where corporations have altered the sequence of the 14(c) process. This has occurred when villages have found it necessary to make a partial 14(c)(3) conveyance before completing the 14(c)(1) and (2) phase in order to secure funding for a badly needed project such as new housing, water system, new school, or other community improvement project. (See Form P in appendix.) There have also been many cases where airport reconveyances have been made before 14(c)(1) and (2) claims have been identified.

Although the rights of 14(c)(1) and (2) claimants or other valid existing rights have not always been identified first, it is advisable that the corporations make 14(c)(3) and (c)(4) reconveyances last. If the corporation does not follow the ANCSA sequence, it is important that those conveyances be made subject to valid existing rights, and that an alternative corrective action be considered in case a conflict does arise after the land is identified and before the ANILCA § 902(b) Statute of Limitations elapses. There are two reasons for this. One is that the boundaries of 14(c)(3) and (4) land cannot be adequately established until the 14(c)(1) and (2) claims are firmly identified. Another reason is that because 14(c) is a village corporation obligation, there is some risk the corporation may be taking upon itself if it conveys land which properly belongs to a 14(c)(1) or (2) claimant to the city or state.

Value of Land

Another consideration is that because the settlement of the land claims was meant to afford Native organizations an opportunity for economic advancements, it is reasonable that Congress did not intend for the 14(c)(3) provision to take that opportunity away from village corporations by forcing them to give away their most valuable land. Thus, it is important that corporations be aware of their overall corporate goals, and the potential for utilizing it's land to meet those goals.

Since village corporations receive only the surface estate, it is these lands on which it must depend upon to survive. In any community the lots within the village core or near the improved area are most likely to have the highest value--probably higher in monetary value than most casual observers would believe. As of 1984, values of \$0.35 per square foot and higher, which were estimated by a BLM appraiser, are not uncommon for centrally located lots even in small villages. (That translates to \$15,000 plus per acre) Once such lands are formally deeded to the municipal interest, the village corporation becomes the same as any other land applicant and if a mistake was made in granting certain lands, the corporation will be in the position of having to purchase or exchange lands in order to get formally deeded lands back.

Economic Viability

A key principle to keep in mind is that village corporations are created primarily to be profit-making entities and that municipal corporations are not, although some cities do dispose of land or operate money-making ventures to add money to their budgets. Consequently, 14(c)(3) land should generally not go to a city to be used for profit-making schemes which will openly compete for profits with the local village corporation.

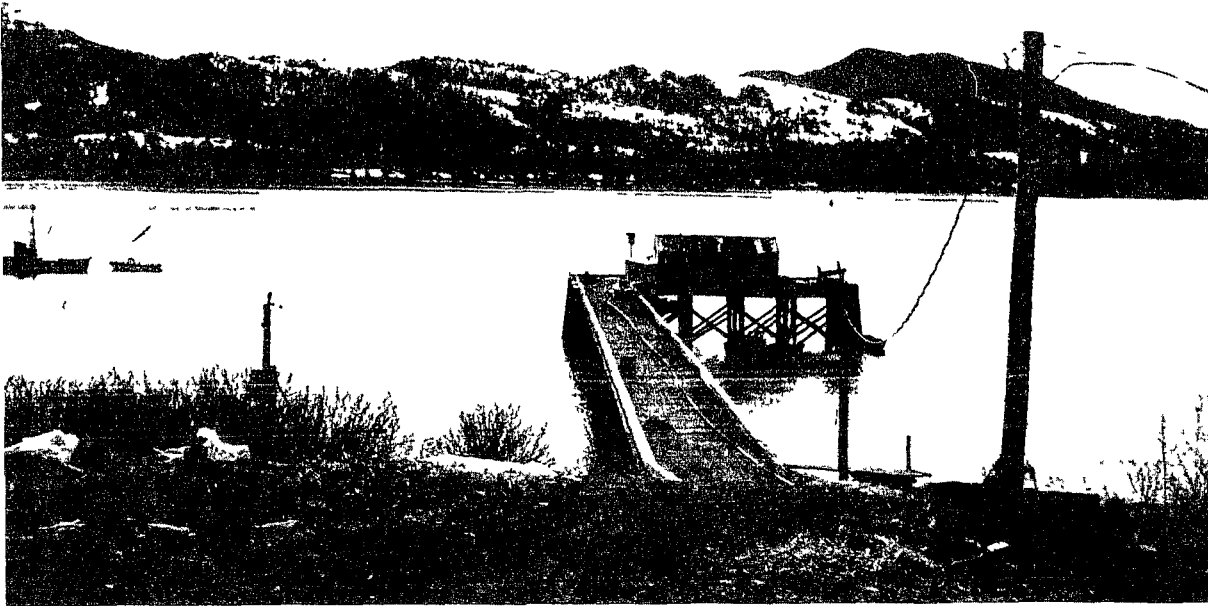
The legislative history of ANCSA supports the contention that Congress did not intend for the 14(c)(3) process to take away a corporation's economic viability once having created it for profit-making purposes. Thus, retaining a certain amount of good developable land in and near the community is a



Land for residential subdivisions — a good business proposition.

Sharon McClintock/ANF

reasonable goal for a village for-profit corporation. For example, land can be retained for corporation offices and other corporation land development, such as residential subdivisions, or shorefront development.



Sharon McClintock/ANF

Waterfront — prime land for profit-making ventures.

Differing Land Status

Despite the fact that land status varies from village to village, the 14(c)(3) reconveyance is still an obligation of all corporations. However, several factors regarding individual land status should be considered in overall 14(c)(3) planning, because the land status could affect the actual needs of villages or hamper the corporation's ability to provide for such needs.

For instance, many villages have a patented federal townsite. Since a federal townsite is basically an earlier version of the entire 14(c) process, villages with these townsites may have many, if not most, of their existing and future community land needs already met. If a city becomes or is already the owner of federal townsite land, there should be little reason why a full 1,280 acres from the village corporation is needed to fulfill the same purposes.

Another factor which could affect 14(c)(3) needs is that many corporations were not able to select the majority of lands near their own village since these lands had already been transferred into private ownership before ANCSA. Since the intent of 14(c)(3) is to provide for community expansion, it is unlikely (and not cost effective) to expect communities to expand in scattered locations, unless a relocation is necessary or suitable land for public uses like dump sites are located miles away.

Other Considerations

Municipal ownership of lands falling outside of the incorporated municipal boundaries, while not prohibited for such things as roads, dumps or watersheds, is open to question if the purpose is not an authorized city function. In these situations there may be other alternatives that would accomplish the same objective for the city as outright ownership. See pages 90 to 93.

Today, many communities are close knit and the city which receives 14(c)(3) land very likely reflects the common interests of all of its residents. However, someday that might not be the case and common interests could be lost.

Public vs. Private Ownership of Land

In the ideal cooperative joint planning process, where each interest is knowledgeable as to the other's viewpoint and respects those views, the question of public versus private ownership of land is certain to arise. Each



Rob Stapleton/Rural CAP

Graveyard and sidewalk — obvious 14(C)(3) public uses. Satellite dish can be either public or private.

community must decide for itself what combination of ownership will best fit its particular interests and needs. Some considerations to help make those decisions, follow.

Each tract conveyed to the city or MLT under 14(c)(3) becomes public land. The use of public land by all people both within and outside of the village will be subject to such limitations as municipalities or the MLT may want to place on the land.

The Alaska Statutes, particularly Title 29, regulates a municipality's actions relative to land controls and municipal ownership inside and outside of the city limits. With the major revision of Title 29, that became affective January 1, 1986, a municipality's governing body is now required to have an ordinance which establishes a formal procedure for acquisition and disposal of land and interests in land by the municipality. (A.S. 29.35.090)

A municipality must formally adopt such an ordinance as a part of its code of ordinances prior to executing a 14(c)(3) agreement. The municipality must follow the procedures specified in the ordinance when it approves the 14(c)(3) agreement and signs the map of boundaries. Failure of the municipality to do so may invalidate the 14(c)(3) reconveyances.

The MLT for unincorporated villages can make negotiated sales to individuals (such as post-71 occupants) but without discriminating to whom the land will

go to. A private land owner such as a village corporation, on the other hand, has more flexibility than either. It can sell or lease lands and regulate use as it sees fit.

There is seldom any dispute that public buildings such as city offices, the health clinic, sewer and water systems, or the garbage dump should be public and deeded to the municipality. A strong consideration should be given to the fact that most state and federally funded projects require public ownership or a long term lease from a public entity.

Probably one of the most frequent areas of ownership contention between the village corporation and the municipal interest is over jointly used lands. Public ownership of communally used lands along a waterfront or communal subsistence campsite areas may not be the best choice if such municipal ownership will lead to the corporation losing a potential money-making option for a privately financed port facility or problems with non-villagers using campsite areas heavily--for sport fishing or hunting, for example. Other communal land uses such as wood cutting areas or watershed protection areas may fall into the category of "...other foreseeable community needs..." for a 14(c)(3) conveyance.



Rob Stapleton/Rural CAP

Meat racks at Gambell. Corporation or city ownership of certain village lands require careful thought.

Another area of public versus private ownership concern is on land that is subject to natural hazards. This includes land areas which are prone to flooding, avalanches, mass wasting, (rock or mud slides) erosion and so forth. When the corporation is planning for 14(c)(3) reconveyances, it needs to consider which lands might be more advantageous in public ownership, by weighing the potential risk of liability and the suitability of the land for development against public ownership and the protection it could offer.

Alternatives to Outright Ownership

Zoning

Zoning is the division of a city (or borough in Alaska) into regulatory districts or zones--each of which prescribes a certain standardized set of building and/land use prohibitions together with the uses allowed in that zone. Zoning offers a regulatory approach to land protection, but only to incorporated municipalities which utilize their powers to do so.

Both borough and city governments which are created under Alaska law (A.S. Title 29) either have, or can assume planning, platting, and zoning powers which enable them to control the land uses within their jurisdictional boundaries. Essentially, a city must first create a planning/platting commission which sees that a comprehensive development plan is prepared. A zoning ordinance can then be passed to implement that plan. This process, although advantageous to long range planning, takes some time, can be costly, and may not be a responsibility every small city wants.

Zoning can prevent or limit development or use of privately owned steep eroding river banks, or flood hazard areas without requiring the city to own the lands.

This alternative is a rational way to handle community development in many cases, but, if carried to extremes it could devalue the land to a point of no value. Consequently, zoning restrictions may sometimes result in the owner not being able to use the land in whatever manner they choose.

Moreover, zoning and other land use controls have proven ineffective in the face of strong economic pressure for development. From the standpoint of a village corporation, however, even a very restrictive zoning, with the possibility of modifying it at some future time, might be preferable to the outright loss of ownership by 14(c)(3) conveyance.

Leasing/Permits

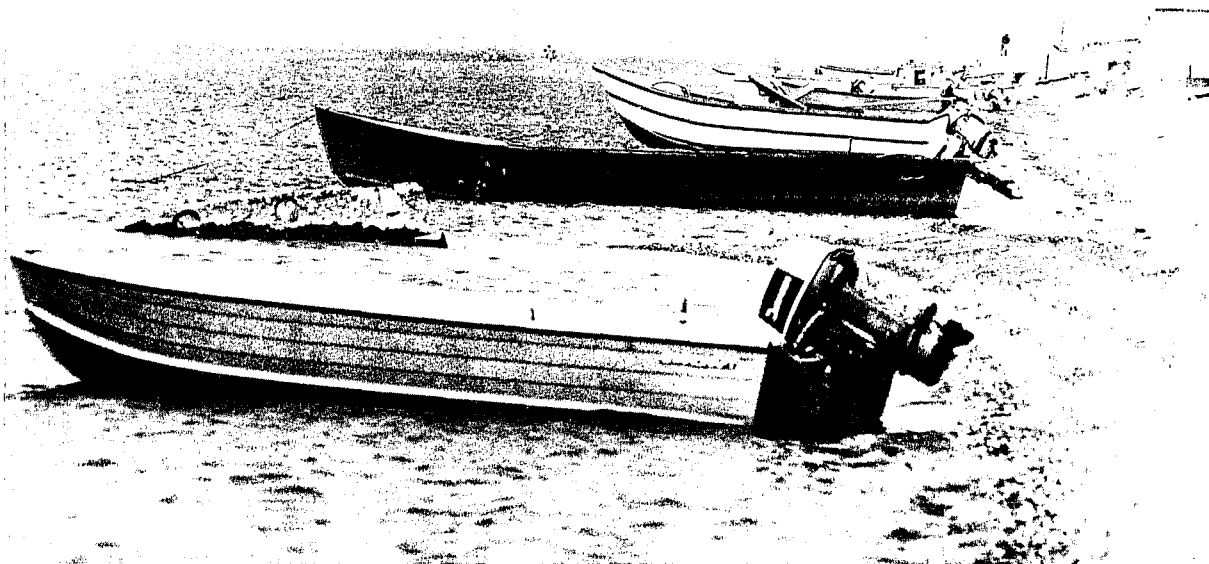
The use of leases and permits to allow for specific uses of land are not only a very favorable alternative but can be a highly flexible mechanism. To protect both municipal and corporate interests, a lease could be drawn up with such terms and conditions that it becomes almost the equivalent to ownership. As an interim measure, in the absence of a full 14(c)(3) sign-off, the use of interim leases instead of partial reconveyance deeds offer more protection to the village corporation. Interim leases would provide income until a 14(c)(3) agreement is finalized, and reduce the risk of conflicts with unresolved 14(c)(1) and (2) claims. If a lesser interest would adequately protect the city's needs, a permit or lease for a shorter term might also be used.

In either case, expert legal and financial advice is probably needed to assist both entities in protecting each of their respective interests.

Protective Easements

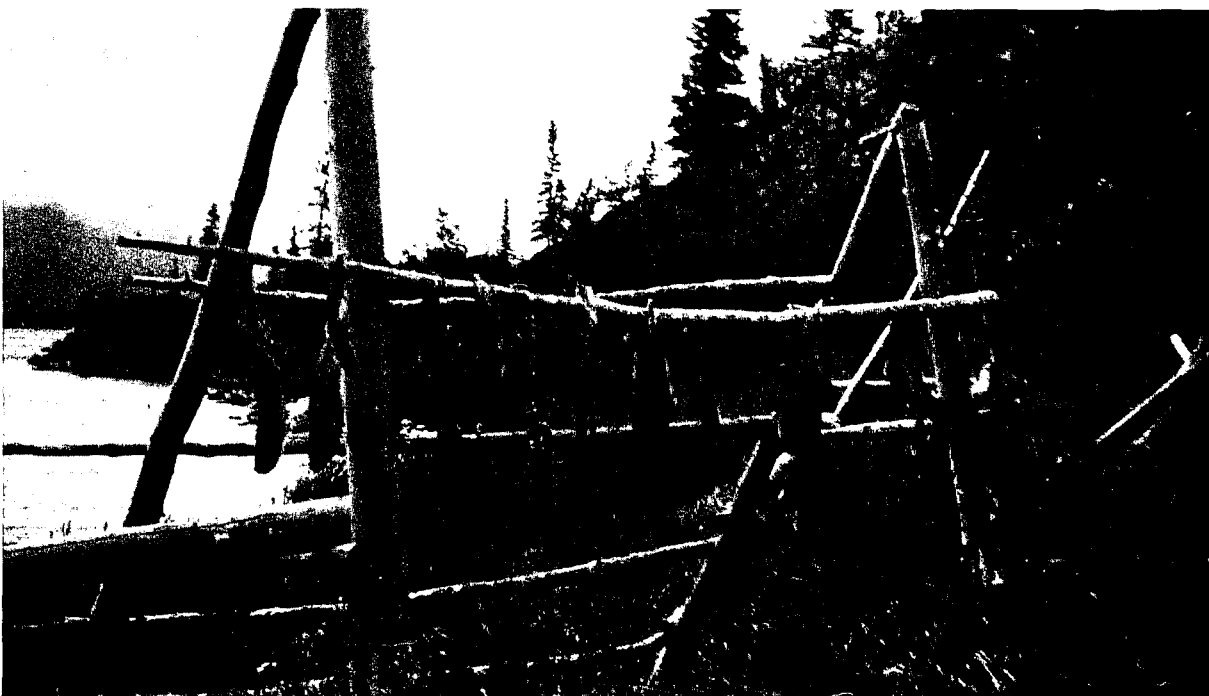
An easement is a legal right of use upon, or over, the property of another. It is granted by the property owner to another party for a specific use, or set of uses, by that other party. A protective easement, like an easement for utilities, is a partial interest. Partial interests can generally be sold, leased, donated, or bequeathed from one party to another, either for a set time period, or perpetually. A protective easement might be perpetual and "run with the land." However, the concept of a protective easement is somewhat different from the usual easement, in that it is designed to protect or "conserve" a value or right, or set of values or rights, that the city deems to be of importance now, and in the future.

Thus, an easement could be granted by the corporation to the city to protect a public value on its private lands, such as a communal boat launching or fish rack area, and might be written in such a way that the corporation retains at least some development rights. Perpetual protective and conservation easements are a new concept to Alaska. Since there is no provision under current Alaska law to provide for such a concept, Alaska legislation would need to be developed.



Rob Stapleton/Rural CAP

Communal boat launching area in Kotzebue.



Sharon McClintock/ANF

Fish drying racks — Pedro Bay.

Bargaining Considerations

The 14(c)(3) reconveyance is a process whereby the corporation and city negotiate an agreement as to the location and amount of lands to be conveyed. In the course of that settlement, the parties, while complying with the requirements of ANCSA law, may reach such other agreements as they deem to be appropriate.

ANCSA § 14(c)(3) as amended, is silent as to any mention of compensation or restrictions of title which might be imposed by a village corporation as a part of a final 14(c)(3) agreement. By the absence of such language, ANCSA provides no limitations to prohibit a village corporation from receiving compensation from a city as part of a 14(c)(3) agreement or from attaching reversionary provisions or other restrictions to a mutually acceptable agreement.

Although a 14(c)(3) settlement is negotiable, the Municipal Lands Trustee Program regulations follow different rules. Under 19 AAC 90.040, the trustee will not accept conditions on 14(c)(3) land reconveyances. However, it is possible for them to accept less-than-fee interests on a discretionary basis.

Compensation

Section 14(c)(1) provides that reconveyances are to be made without compensation. Section 14(c)(2) provides that those reconveyances are to be made either without compensation or upon payment not in excess of fair market value determined as of the date of initial occupancy. Section 14(c)(3) and (c)(4) are silent as to compensation. The ambiguity of the 14(c)(3) language can and has been argued either way--that Congress intended to require no consideration or that Congress by its silence did not prohibit payment.

Restrictions of Title

Section 14(c)(3) expressly sets forth an obligation for the village corporation to convey land to the city or state in trust and that the mandatory conveyance be for title to the surface estate, subject to the restrictions and conditions as stipulated in the conveyance from the United States. There is nothing in the 14(c)(3) language or the legislative history which would prohibit limitations such as reverter clauses or other restrictions in the 14(c)(3) reconveyance. State law for Municipal Trust Lands, on the other hand prohibits the MLT from accepting a reconveyance which contains a reversionary clause or conditions created by the village corporation.

In summary, there are no limitations which would prevent the village corporation from bargaining with a city for compensation, reversionary interests or other restrictions, if they are agreed to as a part of a proposed negotiated settlement.

Time Limitations

Since ANCSA sets no time limitation on the completion of the 14(c) process, the village corporation has considerable leverage on its side during bargaining. By refusing to agree to any 14(c)(3) land transfers until a final agreement can be reached, the village corporation can use the delaying tactics to its advantage. The potential forfeiture of funding for a local project because of a cloud on the land title has been known to help markedly in hastening a final agreement. Conversely, a corporation which gives partial 14(c)(3) grants without a final 14(c)(3) agreement, may lose all of its leverage for obtaining a reasonable and final agreement. Lastly, when an agreement is reached, it should be final and without open ended provisions for indefinite future city land needs. See Appendix for a sample 14(c)(3) Agreement (Form O).

Summary

The foregoing chapter has discussed at some length why a corporation should begin consideration of the 14(c)(3) process early on. The entire process is actually a planning and negotiation task where there is consideration given to a number of factors. When agreement is reached, the parties will agree on all aspects--from who the valid recipient is, to how much land must be conveyed, and what conditions are acceptable to both parties.

The chapter makes some additional key points. Among the most important is that Congress did not intend for a corporation to give away all of its highest value lands and its principal source of economic viability. Another point is that under 14(c)(3), Congress intended for communities to obtain unencumbered land to meet public needs. Further, village lands have a far higher value than most people are aware of.

Other points made are that cities have other ways to acquire land, and that there are alternatives to outright city ownership which still allow for public use of lands. Further, just about every aspect of 14(c)(3) is negotiable and whatever can be agreed upon between the two interests--corporate and municipal is acceptable. The final point is to reiterate that 14(c)(3) is a joint planning/negotiation process, and that cooperation and compromise in a non-adversarial relationship is far preferable and more expedient in most cases than is litigation of a dispute in the courts.

Chapter 7

14(c)(4) Airport Reconveyances

The information in this chapter, as in Chapter 6, is intended to supplement information on ANCSA Section 14(c)(4) which is already available from the Alaska State Department of Transportation and Public Facilities and the Department of Community and Regional Affairs.

This provision requires the reconveyance of land used for airports and air navigation and related purposes as such existed on December, 1971 to the present airport operator. Section 14(c)(4) is the fourth and last conveyance legally required of the village corporation under 14(c), although in practice this provision has often been done first.

Since valid 14(c)(1) and (c)(2) claims take precedence over the airport conveyance, this practice as explained on page 81 can be a risky step for

several reasons. One is that because the boundaries of the airport cannot be adequately established unless the 14(c)(1) and (2) boundaries are properly identified. Two, the corporation might incur some liability unless they are certain that a reasonable effort is made to identify the location of the 14(c)(1) and (2) claims beforehand, or to assure that language in the conveyance deed subjects the transfer to valid existing rights. Another reason why it is advisable to make 14(c)(4) reconveyances last is because the State DOT/PF must have "good title," that is, generally, title free and clear of encumbrances.

What 14(c)(4) Says

Section 14(c) (as amended) states: "Upon receipt of a patent or patents:¹³
(4) the Village Corporation shall convey to the Federal Government, State, or to the appropriate Municipal Corporation, title to the surface estate for airport sites, airway beacons, and other navigation aids as such existed on December 18, 1971, together with such additional acreage and/or easements as are necessary to provide related governmental services and to insure safe approaches to airport runways as such airport sites, runways, and other facilities existed as of December 18, 1971."

13. Interim conveyance or patent, whichever comes earlier, ANILCA 1410 and 1437(d).

What Does 14(c)(4) Mean?

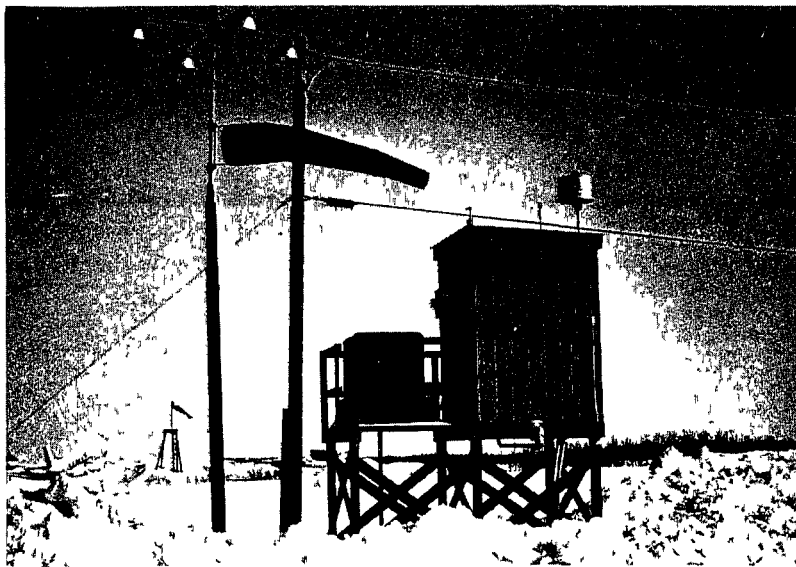
The language of Section 14(c)(4) as amended, means that the village corporation must reconvey the surface estate of land occupied for airport sites, related navigational aids and easements as they existed on December 18, 1971 to the appropriate governmental entity responsible for operation of the airport.

Who is Entitled to 14(c)(4) Land?

In most cases, the State Department of Transportation and Public Facilities (DOT/PF) will be the recipient of 14(c)(4) land since it is the leading operator of Alaska airports, although there are a few municipalities who also operate airports.

In some situations, the DOT/PF will not be a direct recipient of some airport land. This will occur in villages which have expanded their airport since 1971, or have added a cross runway or other facility, or moved to a new location entirely. In others, a new airport may have been built where no airport at all existed in 1971.

If one of these situations exist, the post-1971 airport land will probably be a 14(c)(3) community grant to the City or MLT. The city or MLT, in turn, would lease the 14(c)(3) airport portion to the DOT/PF or DOT/PF could purchase it from the corporation. In situations where a 20-year lease agreement already existed between BLM & DOT/PF, the lands are conveyed to the corporation as part of its normal entitlement, subject to the lease. BLM will waive administration of the lease to the corporation when it issues interim conveyance. ANCSA Section 14(g) insures that all of the current leases remain in effect until the expiration date and the corporation must honor the lease terms for that duration.



Sharon McClintock/ANF

Navigational aids at Emmonak Airport.

What Type of Land is Conveyed Under 14(c)(4)?

The type of land conveyed under 14(c)(4) is airport sites, including related navigational aids such as easements or approach zones which are necessary to



Rob Stapleton/RURAL CAP

Runway at Gambell.

provide related and safe governmental services. Lands which comprise regular use of airport property include the airspace, improvements, and facilities used for the operation of aircraft flying to and from the landing area. Besides the runway, taxiways and parking aprons, the airport property may include other areas used for supporting services and facilities related to the operation of the aircraft as such existed as of December 18, 1971.

BACKGROUND

The airport is among the most vital of services in the village, since the community residents depend on it as a major link for many of its basic needs. When it comes to airport safety, there is no stronger advocate than the village resident.



Sharon McClintock/ANF

Airport facility — Point Hope.

WHO OPERATED THE FIRST AIRPORTS?

The first public airports and landing strips were first constructed by the Alaska Road Commission, and were later transferred to the Territory of Alaska, Department of Aviation. After Statehood, the Department of Public Works, Division of Aviation took over responsibility for air transportation facilities. Today, that responsibility for airport operation belongs to the Alaska State Department of Transportation and Public Facilities (DOT/PF). This agency presently has responsibility for the operation and maintenance of more than 200 public airports in the State.

How Were the First Airports Withdrawn?

Prior to ANCSA the village airport land was either: 1) patented to the State under the Airport Conveyance Act; 2) a one time federal or military airport, subsequently patented to the State under the 1958 Statehood/Omnibus Act; 3) a BLM 20-year airport lease, or similar Fish and Wildlife Service permit to the State; or, 4) a townsite tract airport either already deeded to the State or pending a townsite trustee deed. Since items 1 and 2 are already patented, the village corporation is normally only involved with items 3 and 4, unless more land is needed for expansion of the patented airports. Acreage under these various granting authorities varied widely with no set size standard other than a general policy effort on the part of the governmental entity to have as much land as possible to meet future needs.

ANCSA Section 14(c)(4) Amendment

Like other ANCSA provisions, the language of 14(c)(4) was amended in ANILCA §1404(c) to clarify that the corporation is required to reconvey only airport lands as they existed on December 18, 1971.

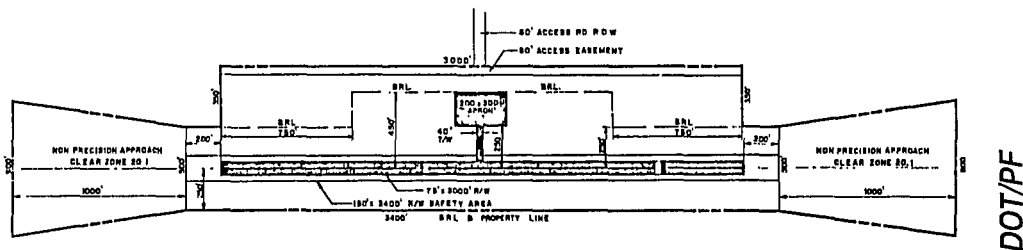
ANCSA Section 14(c)(4) Implementation

Despite the ANCSA amendment and its seeming clarity, the actual implementation of this provision during the last several years has been the subject of much concern by ANCSA corporations.

Early on, one of the major problems of 14(c)(3) and (c)(4) airport grants was the matter of lack of size standards on how much land was actually necessary to safely operate the airport.

AFN LMA-DOT/PF Memorandum of Agreement

The lack of a size standard and problems encountered in the 14(c)(4) reconveyance process led to an AFN Land Managers Association-DOT/PF Memorandum of Agreement (MOA) Policy Guidelines on Airport Conveyances (See Appendix) in 1981. The memorandum provided four standard templates or airport diagrams showing four classes of airports and the FAA minimum acreage requirements for each, and options for 14(c)(4) reconveyances.



Template of typical secondary airport.

The agreement also set forth the understanding that DOT/PF would not acquire additional property interests for expanded or future airport operations under 14(c)(4), but could obtain them by lease from the local municipality, purchase them from the corporation or obtain them through other normal means of acquisition. DOT/PF is also willing to accept title, which contains a reversionary clause, to airport lands from municipalities or the State-in-trust .

Because village airports vary in size and uses, the templates considered for use should be used only as guidelines in the negotiation of 14(c)(4) claims. If you use the templates, two points should be kept in mind: first, the diagrams represent an idealized flatland situation, and in practice, individual terrain considerations can either raise or lower the acreage required for safe approach zones; second, approach clear zones and navigational electronic interference-free zones do not necessarily require a conveyance and an easement will often suffice.

As guidelines, the memorandum of agreement is a good rule of thumb to follow, for most cases. In others, it may be more advantageous to consider the factual situation. For instance, if an airport has grown substantially since 1971, and federal funding is used to operate the airport, the village should consider using FAA guidelines rather than the agreement. Further, since the memorandum was signed, DOT/PF has upgraded the classification of all state airports one grade up from their basic STOL to the Secondary airport. This in

effect means that the STOL size can no longer be recognized as a classification serving a community, and therefore the minimum size standard which they will accept is a secondary airport. This could mean an additional 20+ acres.



Rob Stapleton/Rural CAP

Airstrips' size varies from village to village.

Considerations for 14(c)(4) Negotiations

In settlement of the 14(c)(4) obligation, the corporation and the airport recipient have not only the legal requirements of ANCSA, but also the Memorandum of Agreement to use as guidelines.

A point to remember is that DOT/PF is entitled to land occupied by airports as of December 18, 1971 even though the airport may not exist today. Since

the 14(c)(4) provision is subject to negotiations between the operator and the village corporation, additional provisions may be agreed upon with the consent of both parties.

Airport lands are often among the most economically valuable lands a village corporation may have. Experience has shown that the airport land actually used in 1971 [14(c)(4)] and/or what is needed as a post-1971 14(c)(3) airport grant is subject to varying interpretation. Often the village corporation and the DOT/PF must undergo extensive negotiations to come up with a settlement which is agreeable to both parties and which conforms to what ANCSA law intended. While few would argue that an airport is an essential service for most communities, and that few villages can afford the cost of maintaining it, a village corporation also needs to protect its corporate economic viability by making certain that the minimum requirements of 14(c)(4) are complied with.

Since 1971, over forty agreements have been made on 14(c)(3) and (4) airports. From these early experiences, a number of village corporations have identified problem areas which are still the subject of great concern among Native land managers. Because village airport circumstances may vary greatly, corporations with unresolved 14(c)(4) claims should become aware of some of the issues they might encounter in the 14(c) process. Depending upon individual situations, corporations may run into any one of these circumstances.

Airport Leases

At the time that BLM issued 20 year airport leases to Alaskan villages, the regulations were not specific as to how they would provide for easements and clear zones, so they just described them by aliquot part. This practice resulted in airport lease areas encompassing quite a large area -- larger than was actually needed. In villages where these leases exist, a corporation undergoing 14(c)(4) negotiations often encounter considerable difficulty because DOT/PF may or may not give up the interest it has in the land encompassed by the lease even though the 14(c)(4) standards are smaller.

In several situations, DOT/PF has been reluctant to cancel the old BLM airport lease when it embraces a larger than standard guideline area (a common occurrence) upon receiving a 14(c)(4) and/or 14(c)(3) deed for the airport because they contend that the guarantees required for federal funding of the original airport construction (through FAA) forbid altering the original property interest to a lesser acreage until the remainder of the original 20-year lease term has run. However, if there is no use of the land for airport operation, and if the land is needed by the village immediately, and if no Federal money was used for the airport construction then exceptions can be granted by DOT/PF on a case by case basis.



Bruce Oskokoff/ANF

Airstrip at Chalkyitsik.

Auxiliary Uses

A second problem area is the leasing or potential leasing of airport lands for non-aviation and "auxiliary" uses in direct competition or potential competition with village corporation initiatives. Auxiliary uses by State Regulation (17 AAC 40.320) are defined as functions not directly aviation related and generally operated for the convenience of the air-transient public such as a taxi cab service, rent-a-car agency, cocktail lounge, etc. (and probably also a fishing/hunting lodge and commercial fish buying/processing and air hauling as well). It is not uncommon that land is leased for such auxiliary uses despite the strong objections of affected villages by these decisions.

Federal/State policy generally holds that airports should become financially self-sustaining as soon as possible and any such leasing is to be encouraged, but it does not require them to be so. Like other government agencies, it is a questionable practice when it begins competing with private business interests. Presently there has been no solution to this problem except to seek change through the political process.

Use of Gravel

Another long standing contention is over the use of gravel for the construction and maintenance of airports. A BLM airport lease does not authorize the use of gravel and since it has been determined by the courts to be a subsurface resource, permission to use gravel is primarily a determination to be made by the regional corporation and the village corporation.

When gravel is involved, an appraisal of Native land is required. When DOT/PF requires lands for roads, for example, they need to look around for comparable sales. Since that information often doesn't exist in a small village, comparable sales are based on other "similar" lands usually in larger communities and adjusted. Until recently DOT/PF did not pay for gravel needed for State facilities built in the villages. The last agency to agree to pay was the Local Service Roads and Trails Program. Now the State pays for the gravel needed for all State owned developments and improvements they build in rural Alaska: airports, buildings, roads and trails.

Leasing for Post-71 Airports

In a post-71 [14(c)(3)] situation, the possibility of leasing an airport or part of an airport to the State occasionally comes up in discussion. The State DOT/PF can lease from the city or MLT interest, and is often not adverse to doing so, depending on lease term and fee. A village corporation, however, because it is a private entity, is by current federal regulation, not able to give an acceptable land interest to qualify for airport money grants.

Summary

The 14(c)(4) reconveyance is a complex step, in which many cautions should be observed. First, before reconveying any land for airports, the village corporation should be absolutely sure that all valid 14(c)(1) or (2) claims within the boundaries to be reconveyed are identified or that acceptable language is included in the deed which subjects that conveyance to those and other valid rights. Second, the corporation should be sure that the airport land conveyed under 14(c)(4) does not exceed the 1971 criteria unless there is compensation given for a larger area or an acceptable agreement is reached as to the excess land. Leasing of 14(c)(3) airport lands may be a viable alternative for the City or MLT under present standards, but seldom is for a village corporation.

Chapter 8

Finalizing the 14(c) Process

When the village corporation has adjudicated and verified most of its 14(c)(1) and (c)(2) claims for validity, and successfully signed off on a 14(c)(3) agreement with the municipal interest, and settled its 14(c)(4) airport obligation, it is time to complete the final steps in the process. The next steps are to finalize a map of boundaries and submit it to BLM. Once the map of boundaries has been approved by BLM and a survey completed, the corporation can then issue deeds.

Plan of Survey

The Map of Boundaries refers to the map(s) or air photo enlargements showing the boundaries of all the tracts required by law to be reconveyed by the village corporation pursuant to 14(c) of ANCSA, plus any additional tracts to be surveyed at the corporation's or city's option. This plan is intended to guide BLM survey crews to the exact location of all 14(c) claims in the field.

If the municipal interest--city or MLT--and the village corporation have been working together in a joint 14(c) planning process, much of the basic work will probably already be done, and it may only be a matter of finalizing existing planning maps or photos into a map of boundaries. In most cases, there will probably be two basic sets of maps or photos -- one set showing the area of and near the village itself, and a second set covering the 14(c) tracts in outlying areas. (See appendix for examples.)

Law, Regulation, and Policy Relating to Plans of Survey

ANCSA § 13(a) specifically provides that the federal government shall survey the boundaries of all primary places of residence and business, subsistence campsites, reindeer and nonprofit sites and land for other 14(c) purposes. The regulations which expand on § 13(a)--43 CFR 2650.5-4(c)(1) require: that the boundaries of these tracts be posted on the ground and shown on a map "...approved in writing by the affected village corporation and submitted to the Bureau of Land Management." Later in Section 2650.5-4(c)(2) the regulations state that "No surveys shall begin prior to final written approval of the map by the village corporation and the Bureau of Land Management. After such written approval, the map will constitute a plan of survey. Surveys will then be made in accordance with that plan of survey."

The map of boundaries is also referred to in § 902(b) of the Alaska National Interest Lands Conservation Act (ANILCA) which states that any judicial review

(lawsuit) of decisions made by a village corporation on 14(c) must be initiated "...within one year after the date of filing of the map of boundaries as provided for in the regulations promulgated by the Secretary."

In 1974 BLM issued a three page "Policy Statement for Preparation of Survey Plans under 14(c) of ANCSA" which expanded upon the law and regulations cited above. The most recent version of that policy statement, dated October 16, 1987, (See Appendix) requires that the map of boundaries be submitted in total, but recognizes that there may still be some tracts encumbered by a question of title at the time of the submittal. According to the policy, these tracts should be provided for in the map, in order to avoid the need for a new survey after the title dispute is resolved.

The single stage map of boundaries submission is necessary, according to BLM, because it is more cost effective for BLM to survey the 14(c) land all at one time. However, there are situations where a village corporation has made previous partial reconveyances. Under BLM's revised § 14(c) guidelines, a village corporation can obtain the protection of § 902(b)'s statute of limitation for partial conveyances and final self-survey by filing a map of boundaries with BLM. There is no other method of invoking 902(b). This statute of limitation is designed to assure that village corporation decisions relating to reconveyancing become "absolutely final."

In order to minimize the possibility of boundary disputes between adjoining tract occupants, BLM requires that the village lots be staked with durable materials prior to survey. This is so that early on, lot occupants can visually see where their lines lie, and to help eliminate later "surprises" and disputes when the survey begins, among other reasons.

Another method to work out disputes over lot lines, before the actual survey is done, is for the village corporation to require 14(c) claimants to sign a settlement of 14(c) obligation form (Form M in Appendix.) As an additional measure, the corporation may post a draft map of boundaries in a public place in the village and notify all the claimants where it can be viewed. Such practices will be a form of insurance that will enhance the corporation's legal position in the event of a later dispute over the way the lots were surveyed.

Any extra surveys that the corporation wants or needs to do that are not legally a part of 14(c) (such as post-71 occupancy tracts), may be considered for inclusion in the map of boundaries even though that part of the survey will not be paid for by BLM (Item #3 of BLM policy). In principle, the corporation can save a considerable amount of money if it can take advantage of BLM paying the high cost of mobilization or setting up/travel costs for the survey effort. Even so, the corporation should probably seek bids from competing survey firms to insure the lowest possible cost.

Actually, BLM need not enter into the 14(c) survey picture at all if the village corporation is willing to do the planning, and contract for (and pay

all the costs of) the survey. While few village corporations are probably willing to assume this entire burden, partial 14(c) surveys for special projects or problem areas are also a possibility. In the case of housing projects, for example, the responsible agency will normally do the planning and surveys.

Approval of the Plan of Survey

When the draft plan is finalized it is then submitted to BLM for their review. BLM survey staff makes sure that the draft map of boundaries is surveyable and that there are no conflicts with Allotments or other valid rights. They may also suggest planning changes such as making sure each lot has legal access. Claimants should be informed in writing of any changes that affect their claims. BLM also requires that copies be submitted of the corporation resolution (and municipal resolution if appropriate) approving the map of boundaries and 14(c)(3) agreement as well as the 14(c)(3) agreement itself. (See Forms R and T in Appendix) If the map of boundaries successfully passes this review, BLM will sign the map as officially accepted.

Once the map is accepted BLM will issue a legal notification that the map is accepted and the one year statutory protest period of ANILCA 902(b) has begun (See Appendix). At the end of that one year period, if there have been no legal challenges to the accepted map of boundaries, BLM will sign the map as officially approved. At this point, the map of boundaries becomes the plan of survey. BLM will then write the "Special Instructions," a detailed written guide for the surveyors to follow based on the plan of survey, and then

contract for the actual survey. Present BLM policy is that most 14(c) surveys will be carried out by BLM staff surveyors. However, depending on funding, it may be several years before a particular survey is actually done.

BLM's policy statement allows a survey to be completed prior to expiration of the one year statute of limitations and BLM's formal approval of the map of boundaries. The corporation must agree in writing to bear the costs of any additional survey work resulting from changes to the map of boundaries due to successful legal challenges or appeals (See Form S in Appendix). BLM must also have funding available to perform these surveys.

Deeds

A deed is a document that transfers ownership of an interest in land from one entity to another. There are a number of different kinds of deeds, but a quitclaim deed is the main one of interest to a village corporation.

A quitclaim deed is one which transfers only that title which the corporation (the grantor) has or may have. The quitclaim deed does not contain any guarantees (or warrants) that the title being transferred is valid and without defects. For all 14(c)(1) and (2) reconveyances, a quitclaim deed (Form N, see page 151.) is recommended. However, it is advisable that the 14(c)(1) and (2) quitclaim deed not be signed and delivered until after the BLM has completed its survey of the 14(c) parcels, for two reasons.

First, the survey may result in a slightly different description of the land. There could be confusion if the deed described one piece of land and the survey boundaries are slightly different.

Alaska Statutes 29.40.180 and 29.71.800.(23)(A) make it illegal to sell or transfer subdivided land unless a plat has been approved by the appropriate platting authority. Further, unless a subdivision has received proper approval, the recorder will not accept a plat for filing. There is a strong legal argument that the requirements of Section 14(c) of ANCSA should be controlling so these Alaska Statutes do not apply. However, you should obtain legal advice from the corporation's lawyer if you wish to issue deeds before the Bureau of Land Management has completed its survey of the 14(c) parcels or before the one year statute of limitations has passed.

A warranty deed is one in which the grantor guarantees good clear title and is obligated to make good on any defects which may be hidden but could arise later. Since the BLM does not warrant its patent, it is not good business for a village corporation to do so.

Issuance of Deeds & Recordation

When the survey is completed and approved, an official plat of survey will be sent to the corporation. This plat shows the exact dimensions and size of each lot, as well as designating an official lot and block or other system to

legally describe each parcel. This plat thus enables the corporation to precisely and legally describe the parcel(s) to be reconveyed.

Any deed must basically do four things: first, it must state the name of the grantor (the corporation), then the name of the grantee(s) or recipient(s).¹⁴ Secondly, it must give the legal description of the land being conveyed and thirdly, the type of interest in the land that is being conveyed, i.e. surface estate. Fourth, the deed must state any reservations affecting the parcel; those contained in the patent from BLM, and subsequent easements or rights-of-way developed as a result of the joint 14(c)(3) planning process. Any additional reservations such as reversionary clauses and similar conditions imposed at the option of the corporation are not authorized by law [14(c)] and can only be included if consented to by the grantee or recipient. A sample quit claim deed form is found in the Appendix. (See Form N on page 151.)

Deeds issued by the corporation, unlike townsite lot deeds or Allotment certificates, are unrestricted and may be sold, or attached, as by a lien for money owed. Although an unrestricted deed normally subjects land to taxation, it is not certain whether a 14(c)(3) reconveyance is considered "given pursuant to ANCSA Section 21(d)." If so, 14(c) claims would incur the exempt status for a period of 20 years from ANILCA or issuance of interim conveyance, whichever is earlier, unless the land is developed or leased to third parties.

14. See pp 24-26 on Joint Claimants and pp 27-29 on Communal Lands

As soon as the deeds have been issued, it is important they be recorded at the State's District Recording Office. Recordation is the actual legal notice to the world that a deed has been issued and the property is owned by the grantee. It also protects the ownership record in case the original deed is lost. The 14(c) land recipient will want to record his or her deed. When the deeds are issued, the village corporation's 14(c) obligation is completed.



Sharon McClintock/ANF

A brass cap monument marks the survey's corners.

Steps to be Taken by the Corporation Board in the Reconveyance Process

- STEP 1 Make Policy
- STEP 2 Assign Staff Work
- STEP 3 Give Notice
- STEP 4 Receive Applications
- STEP 5 Gather Information for Committee Review
- STEP 6 Conduct Field Examinations
- STEP 7 Select Committees for Decision Making
- STEP 8 Review Applications
- STEP 9 Notify the Applicant of Decision
- STEP 10 Plot Locations on Map
- STEP 11 Hear Appeals
- STEP 12 Make a Final Decision at Village Level on 14(c)(1) & (2)
- STEP 13 Corporation & Village or City Council Work on 14(c)(3)
- STEP 14 Corporation, Council & DOT/PF Work on 14(c)(4)
- STEP 15 Map of Boundaries to BLM
- STEP 16 Survey by BLM
- STEP 17 Issue Deeds

Appendices

Glossary

These words are found in the text and are underlined the first time they appear. Some of the words have more than one definition, but only the meaning used in the text is given here. These are not precise legal definitions. They favor generally understandable English rather than "legalese."

Abandonment	To knowingly give up property or a claim to property without intending to get it back again.
Access	A means of approach to a parcel of land.
Action to Quiet Title	A legal proceeding to establish a claimant's or plaintiff's right to land by bringing an adverse claimant (Such as a Native corporation) into court to defend its title. See also Adverse Possession.
Adverse Possession	A method of acquiring title to real property by means other than the normal ownership process. It requires using land in an open, notorious way for a number of years without permission of the owner. Specifics on adverse possession are explained in the Alaska Statutes.
Affidavit	A written statement which is sworn to before a notary public or village postmaster.
Appraisal	An estimate of property value which is made by someone specially qualified to give estimates (an appraiser).
Appropriate Village Entity	Any group or organization in an unincorporated (MLT) village that the trustee believes can fairly represent <u>all</u> the people in that village on MLT issues.
Color of Title	An appearance or semblance of title.
Comparable Sales	Competitive property sales used for comparison in the valuation process, also called "comps."
Convey	To transfer title to property from one person to another by means of a written document, such as a deed, interim conveyance or patent.
Deed	A legal document that transfers property title from one party, the grantor, to another party, the grantee.
Easement	The right to use land for a specific purpose such as for access to other land or running utility lines.

Interim Conveyance (IC)	Legal title to ANCSA lands given by the federal government to a Native corporation. IC lands are not surveyed yet. The IC contains certain restrictions for easements, navigable waters, rights-of-way, 14(c) claims, etc.
Legal Description	A technical written description of land which identifies it very specifically. It must be specifically precise to enable a surveyor to locate the boundaries. The description is required in order for a deed to be valid.
Lot	A piece of land with specific boundaries.
Map of Boundaries	Map(s) and/or aerial photo(s) showing the boundaries of lots which the village corporation will convey under Section 14(c).
Municipal Lands Trustee (MLT)	The state entity to which 14(c)(3) community purpose lands are conveyed to be held in trust for any future city which may be created in an unincorporated village.
Notorious Possession	An occupancy so commonly and widely known that a prudent landowner should also know. (A term used in adverse possession cases.)
Patent	The document of land title by which the government gives legal title to surveyed public lands. Patent of ANCSA land contains certain restrictions for easements, navigable waters, rights-of-way, or other interests in land such as 14(c).
Plan of Survey	The final map of boundaries when formally approved by BLM at the expiration of the 902(b) statute of limitations becomes the plan of survey. BLM uses the plan of survey to survey all 14(c) reconveyances.
Public Easement	A public right to use private land (such as ANCSA land) for certain purposes. The easements may be for use by the general public or for use by a specific governmental agency. These easements are permitted under Section 17(b) of ANCSA, and are listed in the IC and patent documents.
Quit Claim Deed	A deed which gives whatever rights a person has, if any, to a piece of land.

Reconvey To convey again, such as when the corporation transfers land under 14(c) after it receives interim conveyance from the federal government.

Section 902(b) Statute of Limitations A one-year period, specified in section 902(b) of ANILCA, after which a corporation's map of boundaries cannot be challenged in a court of law.

Subdivision The division of a parcel of land into two or more lots or other division for the purpose of sale or building development, including resubdivision, and relates to the process of subdividing or to the land subdivided. (AS 29.71.800(23))

Successor A person who receives a right or title from someone else by inheritance, sale, etc.

Title The right to or ownership of land, also the evidence of such ownership.

Valid Existing Rights A property right or other legal interest (lease, permit, etc.) which was given to someone by the federal or state government before the land was selected by a Native corporation. These rights are recognized in Section 14(g) of ANCSA.

Vesting Date The specific date when a person becomes entitled to something. For instance, the date when someone had a right to land under 14(c).

Throughout the text, we have referred to sample forms you can use in your reconveyance process. Each form is explained briefly below. The purpose of these forms is to help your corporation reduce the amount of time it takes to implement the actual reconveyance process. They can be used as they appear here or they can be adapted to the board's specifications.

FORM A - Bulletin Board Notice

This is the text of a notice to be posted in the village. It can be written on a large piece of cardboard or paper so it attracts attention. This notice should be accompanied by a photo or map of the village land selection boundaries and land status. (See page 133.)

FORM B - Newspaper Notice

This is the text of a notice to be published in the newspaper. It can be sent to the newspaper on your purchase order form. Be sure to send it enough in advance to give the newspaper time to plan for publication on the schedule you request. The newspaper will automatically send you an "affidavit of publication" as proof that the notice was published. Keep the affidavit of publication on file. (See page 134.)

FORM C - Record of Notice Given

This chart will help you keep track of the times reconveyance notice was

given. List the type of notice under "method" (for instance, radio, newspaper, shareholder meeting. Indicate the days when notice appeared or was printed. Put the name of the newspaper or the buildings where the notice was posted in the "location" column. The "comments" column is meant for miscellaneous notes, such as the frequency of publication or a notice that a copy of the ad is in the file. (See page 135.)

FORM D - Application

Two sample 14(c) applications are provided. Note that sample #2 is specifically tailored for a primary place of residence only. To obtain copies of applications for the business, subsistence campsite, reindeer headquarter sites and nonprofits, please contact ANF. Your board can either use the forms as they appear or adapt them to your own needs. (See page 137 & 143)

FORM E - Letter to Applicants

This letter is intended to accompany applications given to potential 14(c) claimants. It explains the application and gives the deadline for returning applications to the corporation. (See page 148.)

FORM F - Affidavit

This sample affidavit can be filled out by individuals who wish to make a sworn statement on behalf of the 14(c) applicant. It may be especially helpful if the applicant is not living in the village at present. (See page 150.)

FORM G - Field Examination Report

This report form is intended to help the corporation employee conduct a

"ground check" on 14(c) claims. The information gathered in this report will help the board make a decision on 14(c) applications. (See page 151.)

FORM H - Letter Approving Applications

This sample letter informs the applicant that the board has approved his/her application. It can be accompanied by a map so the claimant can verify the location. The 30 days period for review of the boundaries is optional; if the corporation feels more time is needed, then the number should be changed. Have people sign for the letters or send them by certified mail. Keep the receipt in the applicant's file. (See page 153.)

FORM I - Letter Denying Applications

This letter informs the 14(c) applicant that his/her 14(c) application has been denied by the review committee. Be sure to list the reasons why the application was denied and give a reasonable amount of time for the applicant to respond if he/she wishes to appeal the preliminary decision. Have people sign for these letters or send them by certified mail. Keep the receipt in applicant's file. (See page 154.)

FORM J - Letter Scheduling Appeal

This letter notifies the applicant of the date for his or her appeals hearing. A copy of a completed field examination report should accompany this letter. Send all letters by certified mail. Keep the receipt in applicant's file. (See page 155.)

FORM K - Record of Applications

This record of 14(c) applications will help the corporation keep track of the number of applications submitted, the date they were received, whether the applications have been reviewed, and other information for the files. This way, if an application is lost, the corporation has a record of when it was originally received. (See page 156.)

FORM L - 14(c) Progress Chart

This form will keep the corporation up to date on the progress of the 14(c) program. It will be easy to see at a glance how much has been done so far and what still needs to be done. (See page 157.)

FORM M - Claim Settlement Form

BLM requires the corporation to resolve any conflicts before they will accept the plan of survey. This form will help the corporation show BLM that no conflicts exist between the 14(c) claimant and the corporation. (See page 158.) Another approach would be to have people sign the corporation's copy of the plan submitted to BLM.

FORM N - Quit Claim Deed

This deed is intended for the transfer of 14(c)(1) and (2) land. It would be best not to sign and deliver this deed until after the Bureau of Land Management has completed its survey of the 14(c) parcels. There are two reasons for this.

First, the survey may result in a slightly different description of the land. There could be confusion if the deed described one piece of land and the survey boundaries were slightly different.

As explained on page 119, Alaska Statutes 29.40.180 and 29.71.800(23(A) make it illegal to sell or transfer subdivided land unless a plat has been approved by the appropriate platting authority. Remember to obtain legal advice from the Corporation's lawyer if you wish to issue deeds before the Bureau of Land Management has completed its survey of the 14(c) parcels or before the one year statute of limitation has passed.

Because the quitclaim deed provides for the grantee to sign that he is accepting the deed in full satisfaction of all his claims under Section 14(c), the deed should contain all the 14(c) parcels which the grantee is to receive. (See page 159.)

FORM O - Sample 14(c)(3) Agreement

This is a sample agreement between the municipality and a village corporation for lands to be conveyed to the municipality under Section 14(c)(3) of ANCSA. (See page 160.)

FORM P - 14(c)(3) Partial Reconveyance Deed

This is a sample deed for a partial reconveyance under 14(c)(3) from the village corporation (grantor) to the State Department of Community and Regional Affairs (grantee), as Trustee for any future municipal corporation.

This form was not written by nor reviewed by a lawyer according to the State Municipal Lands Trustee Program, which prepared it. It should be reviewed by your corporation's lawyer if you're planning to use it (take special note of paragraph 3), especially to indemnify the corporation and to provide reversionary language which would go into effect if conflicts with 14(c)(1) and (2) claims arise. To get started on the Section 902(b) Statute of Limitations one year period, it would be in the corporation's interest to submit a map of boundaries to BLM showing the parcel's location and shape. (See page 178.)

FORM Q - 14(c)(3) Interim Lease

This is a sample lease to be used as an interim measure for community use or expansion purposes until such time as the 14(c)(3) reconveyance takes place. This interim lease offers more protection than a partial reconveyance deed: It reduces the risk of 14(c)(1) and (2) claim conflicts, provides income to the village corporation up until such time as the deed is issued; provides leverage to get the city to resolve the 14(c)(3) issue. But it may have some shortcomings, so a review by the corporation's lawyer is recommended to insure the village corporation's interests are protected. (See page 180.) A sample board resolution providing for authorization to approve the lease and empower a corporate representative to sign on behalf of the corporation follows on page 183. Another sample board resolution is provided for either an AVE or city representative to approve the lease on Page 184.

FORM R - Map of Boundaries Transmittal Letter

This is an example of a letter one ANCSA corporation prepared to transmit its map of boundaries to BLM. The letter briefly describes the content of each individual sheet of the map of boundaries. The letter also lists the additional materials submitted, such as copies of resolutions, the 14(c)(3) agreement and pertinent supplemental legal descriptions and surveys. (See Page 185.)

FORM S - 902(b) Statute of Limitations Letter

This is an example of a letter an ANCSA corporation sent to BLM regarding the 902(b) statute of limitations. In the letter, the corporation agrees to pay for any survey that maybe required if a successful legal challenge or appeal alters any 14(c) reconveyance boundaries shown on the map of boundaries. A corporation is required to agree to this in order for BLM to survey prior to expiration of the one year statute of limitations. (See page 188.)

FORM T - Corporate Resolutions:
Map of Boundaries and 14(c)(3) Agreement

These two resolutions are typical of those a corporation submits to BLM along with the map of boundaries. BLM's policy statement requires the corporation to adopt a resolution approving the map of boundaries and naming the corporate official authorized to sign the map of boundaries. The second resolution authorizes the corporation to execute the 14(c)(3) agreement when less than 1,280 acres are being reconveyed. BLM's policy statement makes no mention of this resolution, although BLM asks that a copy be submitted also. (See Page 189)

N O T I C E

WERE YOU OCCUPYING LAND ON DECEMBER 18, 1971 WHICH WAS LATER SELECTED BY THE VILLAGE CORPORATION?

THE ALASKA NATIVE CLAIMS SETTLEMENT ACT (SECTION 14(c)) REQUIRES THE VILLAGE CORPORATION TO GIVE LEGAL TITLE TO PEOPLE WHO OCCUPIED LANDS ON DECEMBER 18, 1971 FOR:

- 1) HOMES (PRIMARY PLACE OF RESIDENCE)
- 2) BUSINESSES (PRIMARY PLACE OF BUSINESS)
- 3) SUBSISTENCE CAMPSITES
- 4) REINDEER FACILITIES
- 5) NONPROFIT ORGANIZATIONS

PLEASE LOOK OVER THIS MAP. THE AREA OUTLINED IN BLUE IS THE BOUNDARY OF THE VILLAGE CORPORATION LAND. THE AREAS IN RED ARE ALREADY OWNED BY OTHERS. IF YOU USED LAND WITHIN THE WHITE AREA AND YOU OCCUPIED THE LAND ON DECEMBER 18, 1971, THEN YOU MAY HAVE A VALID 14(c) CLAIM.

FOR 14(c) APPLICATIONS AND INFORMATION ON THE RECONVEYANCE PROCESS, PLEASE CONTACT:

(NAME)

(ADDRESS)

(PHONE NUMBER)

APPLICATIONS WILL BE ACCEPTED UNTIL _____

This request for publication can be sent to the newspaper on a purchase order form or in a letter.

Please publish the following legal notice:

_____ NATIVE CORPORATION has begun its reconveyance program under section 14(c) of the Alaska Native Claims Settlement Act. The reconveyances will be for land around _____ (name of village) which was occupied by individuals/ organizations on December 18, 1971 as either (1) a primary place of residence (2) primary place of business, (3) subsistence campsite, (4) headquarters for reindeer husbandry or (5) site of a nonprofit organization.

Application forms and further information are available from:

Telephone (907) _____.

Applications will be accepted until _____.

Publish: (dates) _____.

(Signature)

PUBLICATION RECORD

Method	Date(s)	Location	Comments (frequency)

