



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ALASKA STATE OFFICE
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ANCHORAGE, ALASKA 99513-7599

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Amended
Policy Statement
for
Preparation and Processing of the Map of Boundaries under ANCSA 14(c)

The purpose of this policy statement is to provide guidelines for the preparation of a Map of Boundaries as required by 43 CFR 2650 5-4. The submission of a uniform Map of Boundaries will enable the Bureau of Land Management's (BLM) Division of Cadastral Survey and Geomatics to execute an efficient survey program for the 14(c) lands which will meet the applicants requirements in a more timely manner.

If at all possible, the Map Boundaries should be submitted in total. In accordance with 43 CFR Section 2650 5-4(c)(2) "(l)ands shown by the records of the Bureau of Land Management as not having been conveyed to the village corporation will be excluded by adjustments on the map."

1. The map is intended to include all 14(c) tracts which are to be surveyed. The map should be prepared on an enlargement of the best and latest aerial photography available or on a reproducible media such as a mylar or acetate photo overlay at the same scale. A scale of 1 inch = 50 feet or 1 inch = 100 feet is best for 14(c) (1) and (2) lots in a crowded village situation. A scale of 1 inch=200 feet or larger is usually adequate for 14(c) (3) grants or outlying subsistence tracts. In some cases, BLM's Branch of Mapping Science may have the best photography available; in other cases, the photography may have to be purchased from another government agency or a private aerial photo contractor. In either case, BLM is usually able to refer one to the best available source for aerial photographs. If the available photographs do not encompass all the tracts involved, a supplemental sheet of the same scale as the photo may be added to cover the immediate surrounding area. Delineated thereon will be the majority of:

- a 14(c)(1) Tracts occupied as a primary place of residence
- b 14(c)(1) Tracts occupied as a primary place of business
- c 14(c)(2) Tracts occupied by nonprofit organizations
- d 14(c)(3) The boundaries of municipal lands for community expansion and/or city maintained lots or rights-of-ways
- e 14(c)(4) Tracts utilized for airport sites, airways beacons, and other navigation aids

- 2 The tracts which cannot feasibly be shown on the photo because of their remote locations from the village proper can be shown on U S Geological Survey (USGS) quadrangle (1 63,360) maps

14(c) tracts shown on the USGS quadrangle map will generally include

- a 14(c)(1) remote claims Subsistence campsites and headquarters for reindeer husbandry
- b 14(c)(3) That portion of the municipal lands not included in the village photo
- c Any other tracts identified under ANCSA Section 14(c) not included in the village photo

Any enlarged drawing and written description for each individual tract or group of tracts will be shown on a separate sheet. These supplemental drawings will include the scale, date, north arrow, topographic features (lakes, rivers, swamps, ridges, etc), any improvements to include, description of corner markings, bearings (or approximate directions such as northwesterly, southeasterly, etc), and distances of boundary lines, applicant's name, and a reference (number or name) corresponding to the site location as shown on the USGS quadrangle maps. Examples of the preceding requirement may be obtained from the BLM (AK-925)

- 3 In accordance with 43 CFR Section 2650 5-4(b), BLM will survey the exterior boundaries of all " tracts required by law to be conveyed by the village corporations pursuant to section 14(c) of the Act " For the convenience of the village corporations and the surveyors, the Map of Boundaries may include vacant lots, lots occupied after December 18, 1971, and other non-14(c) lots. However, non-14(c) lots must be clearly identified as such and will not be surveyed by BLM
- 4 Federal Regulation 43 CFR 2650 5-4(c)(1) states that the boundaries of all Section 14(c) reconveyances shall be identified (staked or marked) on the ground, as well as shown on the Map of Boundaries. The location of the individual corners should be marked on the ground with durable materials to eliminate the possibility of boundary conflicts with adjacent tracts and to assure the actual location of the tract. Each tract should also be identified as to location by one of the following means:
 - a A tie to an existing survey monument of record
 - b Natural features (river frontage, etc)
 - c Occupancy (ties to improvement thereon)
 - d A tie to an adjacent (located) 14(c) tracts
 - e Written metes-and-bounds description

Roads, trails and/or reconveyance easement which are proposed but not constructed must be staked or marked on the ground. Existing rights-of-ways will be surveyed along an apparent centerline. Street names and/or label distinctions for rights-of-ways must be designated on the Map of Boundaries and will be noted by name on the final ANCSA 14(c) plat(s).

It is essential that conflicts among potential claimants identified under the ANCSA 14(c) reconveyances or between transferees and the village corporation be resolved before submission of the Map of Boundaries. Alaska National Interest Lands Conservation Act (ANILCA), Section 902(b) provides a one (1) year "statute of limitations" for such actions that may require judicial review. (See Appendix)

Any Map of Boundaries will have a title block identifying the municipality (or unincorporated village) and the village corporation. Also shown within the title block will be the following certification statement: "To the best of our knowledge, all conflicts concerning property lines shown on this Map of Boundaries have been resolved." In addition, the Map of Boundaries will contain the statement: "This Map of Boundaries represents the final discharge of all the Corporation's obligations under ANCSA 14(c)."

Separate signature lines shall be included in the title block which state: "The Map of Boundaries shown hereon has been received and reviewed by the Division of Cadastral Survey and Geomatics, Bureau of Land Management, Alaska State Office, and is 'accepted' for filing according to Section 902(b) of ANILCA." This statement is to be signed and dated by the Special Instructions Team Leader. Another line should state: "This Map of Boundaries is hereby 'approved' to be used as the Plan of Survey for the ANCSA 14(c) parcels shown hereon", to be signed and dated by Chief, Branch of Survey Preparation and Policy Interpretation.

The Map of Boundaries will be accompanied by a corporate resolution authorizing the Map of Boundaries and designating the corporate officer to sign and submit the map. Written agreements must be included when 14(c)(3) selections total less than 1280 acres, per Section 1405 of ANILCA.

The Bureau of Land Management will examine and review each submitted map for conformance with laws, regulations and policies, ensuring that the map and descriptions are complete enough to warrant an ANCSA 14(c) survey. This review and examination should be completed within 30 calendar days and the Map of Boundaries will either be accepted by Bureau of Land Management or returned to the Village Corporation for additional information.

If the Map of Boundaries is accepted, the start of the one-year statute of limitations for challenging each corporation's ANCSA 14(c) decisions, as identified in Section 902(b) of ANILCA, will date back to the "official filing date" of the Map. The "official filing date", as defined in 43 CFR Section 2650.0-5(m), is the date of postmark of the final accepted version of the Map. If the postmark cannot be ascertained or was hand delivered, the official filing date becomes the date of receipt by BLM.

If the Map is returned one or more times for additional information or completely rejected by BLM, the "official filing date" which will commence the Section 902(b) statute of limitations will be the date of postmark of the submitted additional information which completes the Map. If the Map had been rejected in total, the "official filing date" will be the date of postmark of the final accepted version of the Map.

The BLM will notify village residents of the acceptance of the Map and the commencement of the period for challenging the corporation's decisions by publishing a Public Notice in local and statewide newspapers and requesting that the local Postmaster post a Notice in the local Post Office. The BLM will also inform the Village Corporation of the acceptance in writing and circulate such notification through ANCSA 14(c) support agencies.

10 A village corporation which has no 14(c)(1), (2) and/or (4) obligations should submit a letter to the Bureau of Land Management certifying that fact. This letter will serve as a "Final Map of Boundaries", and should be signed by the appropriate designated corporate officer and accompanied by a corporate resolution authorizing the submission. The postmark date of this letter will be considered the "official filing date", which will formally start the one-year statute of limitations.

11 Some villages may elect to hire a private surveyor to survey all or a portion of their land for reconveyance purposes. In such cases, that village corporation must pay the entire cost of such contract survey with no present or future reimbursement by BLM's ANCSA 14(c) survey program.

Those ANCSA 14(c) surveys done under private contract with a village corporation will be documented with BLM prior to the actual survey. Assignment Instructions will be issued and the final ANCSA 14(c) plats will be reviewed by BLM, to insure their sufficiency as "federally mandated" 14(c) surveys. A letter of compliance from the Deputy State Director of Cadastral Survey and Geomatics will be required to accompany the plat(s) before they will be accepted for recording at the local Recording District. See: ANCSA 14(c) Private Survey Policy of February 7, 1990.

12 All ANCSA 14(c) reconveyances are the responsibility of each village corporation. BLM does not have any authority to adjudicate transfer decisions. Any dispute over 14(c) reconveyances must be resolved between the village corporation, each city (or the Municipal Trustee on behalf of an unincorporated community), individuals or any other claimant(s). The only certain method by which a village corporation can receive protection under ANILCA Section 902(b) is to file a Map of Boundaries.

13 Survey of the 14(c) parcels will not be scheduled until the Final Map of Boundaries has been received and approved by BLM.

BLM will not normally approve a Map of Boundaries until after the one year statute of limitations expires. However, when funding is available, BLM will approve a Map of Boundaries earlier and proceed to survey if a village corporation is willing to sign a "waiver" stating that it will bear the responsibility for any additional survey required because of post-approval changes or amendments. This would include the entire cost of the additional surveying and/or platting and would require the services of a private surveyor.

Any changes or amendments to the final Map of Boundaries, after it has been submitted to the BLM and accepted, but not surveyed, will be handled as follows

Changes or amendments which clarify or alter a description on the accepted Map of Boundaries will be incorporated into the Plan of Survey by the BLM prior to the actual field survey. These changes or amendments will be submitted as amended Maps of Boundaries and will not require any posting of Public Notice by the BLM or any changes in the one-year statute of limitations, unless the affected parties do not agree with the changes

If any parties whose rights are affected by the changes or alterations do not consent to them, then a new statute of limitations period will begin. This new limitations period runs for only those changes to which the affected parties did not consent. This new challenge period will begin with the "date of filing" of the amended Map of Boundaries. The village corporation shall be responsible for notifying the parties affected by any amendment to a map of boundaries. If any affected parties cannot be personally notified, the village corporation shall be responsible for posting and publishing notice of the proposed changes



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Survey and Geomatics, Alaska

Alaska National Interest Lands Conservation Act

PUBLIC LAW 96-487—DEC. 2, 1980

(ANILCA)

STATUTE OF LIMITATIONS

Sec. 902. (a) Except for administrative determinations of navigability for purposes of determining ownership of submerged lands under the Submerged Lands Act, a decision of the Secretary under this title or the Alaska Native Claims Settlement Act shall not be subject to judicial review unless such action is initiated before a court of competent jurisdiction within two years after the day the Secretary's decision becomes final or the date of enactment of this Act, whichever is later: *Provided*, That the party seeking such review shall first exhaust any administrative appeal rights. 43 USC 1632
43 USC 1301
note.

(b) Decisions made by a Village Corporation to reconvey land under section 14(c) of the Alaska Native Claims Settlement Act shall not be subject to judicial review unless such action is initiated before a court of competent jurisdiction within one year after the date of the filing of the map of boundaries as provided for in regulations promulgated by the Secretary. 43 USC 1613



ANCSA SECTION 14(C) CASE LAW

A Federal Courts

1 City of Ketchikan v. Cape Fox Corporation, 85 F 3d 1381 (9th Cir 1996)

The City of Ketchikan operated electric, water, and telecommunications utilities under the name Ketchikan Public Utilities (KPU). As part of its electrical utility, KPU ran a hydroelectric powerhouse six miles from town. The powerhouse was on ANCSA land conveyed to Cape Fox Corporation (Cape Fox). The City of Ketchikan sued Cape Fox, seeking reconveyance of the site under ANCSA Section 14(c). Ketchikan argued that the site was a primary place of its electric utility business, entitling it to reconveyance pursuant to 14(c)(1). Ketchikan further contended that it was a nonprofit organization and thus entitled to the land under 14(c)(2). The district court found neither conveyance provision applicable and granted Cape Fox's summary judgment motion.

In its decision affirming the trial court, the Ninth Circuit Court of Appeals concluded that under 14(c)(1), a business can have only one primary place of business. The court then determined that the "center" of KPU's electric business activity in 1971 was its busy downtown office rather than the remote and small-staffed hydroelectric site.

The Ninth Circuit further ruled that the city (and consequently the utility) was a municipal corporation and was not a nonprofit organization for the purposes of reconveyance under 14(c)(2). In reaching this conclusion, the court found it significant that neither the city nor the utility was organized under the Alaska statutes for nonprofit organizations.

2 Tongass Alaska Girl Scout Council, Inc. v. Cape Fox Corporation, 67 F 3d 309 (9th Cir 1995) [Unpublished]

In 1960, the Tongass Alaska Girl Scout Council (Girl Scouts) acquired an annual renewable special use permit from the Forest Service for five acres of land. The Girl Scouts built several cabins on the site and camped there. However, the Girl Scouts infrequently used the site during the early 1970s and knowingly allowed the permit to expire in 1976.

Cape Fox's ANCSA selection included the five-acre site. In 1993, the Girl Scouts requested a reconveyance of the site under 14(c)(2) based on their nonprofit status. After Cape Fox refused to reconvey the land, the Girl Scouts filed suit. Judge Holland granted Cape Fox's summary judgment motion.

The Ninth Circuit affirmed, holding that the Girl Scouts "voluntarily relinquished" any claim to the land by allowing the permit to expire and by abandoning the property.

3 Buettner v. Kavalco, Inc., 860 F 2d 341 (9th Cir 1990)

During the summer of 1971, Buettner obtained a long-term special use permit from the Forest Service to build a residence on Kasaan Island in southeast Alaska. Buettner started building the cabin but left for the winter before it was completed. He returned in the spring of 1972 and finished building the cabin. That same year, Hamar obtained a special use permit for a second cabin, which had been built in 1969 and occupied by someone else since its construction.

Kavalco, Inc., the village corporation for Kasaan, selected Buettner and Hamar's lots pursuant to ANCSA. The United States issued a patent to Kavalco, but the patent was subject to Buettner and Hamar's special use permits. After the Forest Service transferred administration of the patents to Kavalco, Kavalco increased the permittees' rent. Buettner and Hamar filed a quiet title action in

state court, which Kavalco removed to federal court. Judge Fitzgerald granted Kavalco's motion for summary judgment. He concluded that the special use permits were valid existing rights governed by 14(g) and found that the permittees were thus precluded from acquiring title under 14(c)(1).

The Ninth Circuit disagreed and ruled that, unlike trespassers, permittees fit within the class of persons to which 14(c)(1) applies. The court found it significant that the plain language of the statute did not exclude permittees from 14(c)(1)'s class.

The Ninth Circuit remanded for the district court to determine (1) whether Buettner occupied the site as his primary residence on December 18, 1971, and (2) whether Hamar was entitled to a conveyance based on his predecessor's occupancy of the site.

4 Donnelly v. United States, 850 F.2d 1313 (9th Cir. 1988)

In the 1950s, Donnelly and several others located part of their homesteads on public lands that had been withdrawn from entry. In 1975, the United States filed a trespass action against the homesteaders, which was eventually dismissed. The homesteaders counterclaimed under the federal Quiet Title Act. In 1979, the United States patented the land at issue to Eklutna, Inc. The homesteaders then filed a third-party claim against Eklutna, Inc., seeking 14(c)(1) reconveyance. The district court dismissed the homesteaders' action.

On appeal, the Ninth Circuit affirmed, holding that the Quiet Title Act's statute of limitations barred the homesteaders' claims against the United States. The court further held that because the homesteaders could no longer join the United States, an indispensable party, their claims against Eklutna had to be dismissed as well. The court stated that 14(c)(1) does not require Native corporations to reconvey land to mere trespassers.

- 5 Johnson v. Kikiktagruk Inupiat Corp., 2006 WL 2390481 (D Alaska 2006) [not reported]

Plaintiffs, the successors-in-interest to a 14(c)(1) applicant, filed a lawsuit against the village corporation and a second 14(c)(1) applicant. Plaintiffs filed their lawsuit prior to the completion of the official map of boundaries, and they asserted in their complaint that ANCSA provided the village corporation with “complete and unfettered discretion” in delineating the specific boundaries of the 14(c) parcels.

Plaintiffs’ first claim was for promissory estoppel. Plaintiffs sought to enforce a promise that the village corporation allegedly made about the boundaries of the land it had intended to convey to plaintiff Johnson. The court held that it lacked subject matter jurisdiction over this claim for two reasons. First, the court concluded there is no federal cause of action for a promissory estoppel claim. Second, the court found that the applicable case law does not recognize ANCSA Section 14(c)(1) as creating a cause of action to contest a village corporation’s decisions on the boundaries of land conveyed to another.

Plaintiffs’ second claim was that the other applicant was ineligible for a conveyance pursuant to 14(c)(1). The court concluded it lacked subject matter jurisdiction over Plaintiffs’ second claim because (1) Plaintiffs failed to cite any authority supporting a cause of action to test a village corporation’s determination as to a separate 14(c) applicant, and (2) Plaintiffs suffered no injury as a result of the village corporation’s decision as to the eligibility of the other applicant. The court explained that any injury suffered by the Plaintiffs was caused by the village corporation’s subsequent decision regarding boundaries. The court further noted that Plaintiffs’ second claim was not ripe for review because the official map of boundaries had not been completed.

The court’s conclusion that it lacked authority to review the village corporation’s decisions regarding the boundaries of parcels conveyed pursuant to

14(c) appears to be premised on Plaintiffs' concession in its complaint that the village corporation had "complete and unfettered discretion" in determining boundaries to the 14(c) parcels

6 Martin Andrews, Sr. v. Stebbins Native Corporation, No N96-0004CV (D Alaska 1996)

Andrews and his family had used a parcel of land on the Nunavulnuk River as a fishing and hunting camp since 1946. The Andrews placed a fish rack, fire pit, and tent site on this parcel. In 1973, Andrews built a house on the site. Stebbins Native Corporation (Stebbins) received a conveyance for this land in 1982. In 1988, Andrews sought title to the land pursuant to 14(c)(1). Stebbins denied Andrews' claim via a letter stating Andrews was ineligible because (1) he was not a Stebbins shareholder, and (2) the house was not built until after December 18, 1971.

Later, Stebbins informed Andrews that he was trespassing, but offered him a lease. Andrews negotiated significant changes in the offered lease. The lease signed by Andrews stated "Andrews waives any claim he may have to premises pursuant to Section 14(c)." In 1996, Andrews sued in state court, seeking reconveyance through 14(c)(1) and asserting title through adverse possession. Stebbins removed to federal court and counterclaimed, alleging Andrews had defaulted on the lease agreement. The parties cross-moved for summary judgment, with Andrews asserting the lease should be considered void for duress.

The court held that the lease was not void for duress because the legitimacy of Andrews' 14(c) claim was in dispute when he signed the lease. Specifically, there were questions regarding Andrews' family's exclusive use of the parcel. However, the court noted that Stebbins' denial of Andrews' 14(c) claim because (1) he was not a shareholder and (2) the site lacked a permanent structure, had been improper.

The court also discussed and rejected Stebbins' statute of limitations claim. In that discussion, the court ruled that the BLM was required to use the date that the corporation mailed the map of its boundaries (or date of receipt absent postmark) rather than the date that the BLM "accepted" the map, for statute of limitations purposes.

Finally, the court rejected Andrews' claim that he had acquired the parcel through adverse possession. The court explained that it is extremely difficult for an individual to adversely possess Native corporation land.

7 Ogle v. Salamatof Native Ass'n, Inc., 906 F. Supp. 1321 (D. Alaska 1995)

Ogle, an Alaska Native, lived on a parcel of federal land near Lake Iliamna. Salamatof Native Association's ANCSA selections included Ogle's parcel. This land was more than one hundred miles from Salamatof village, which was on the Kenai Peninsula.

Salamatof initiated a reconveyance program in accordance with 14(c). Ogle did not apply for reconveyance within Salamatof's application period. More than one year after Salamatof filed its map of boundaries with the BLM, Ogle sued for a reconveyance. Ogle contended that Salamatof failed to provide sufficient notice of its 14(c) program, which, he claimed, resulted in his inability to timely apply for reconveyance. Salamatof raised a statute of limitations defense.

In denying Salamatof's motion to dismiss, Judge Singleton ruled that "constitutional due process" required Salamatof to provide notice at two stages. First, Salamatof was required to provide notice when it was preparing its map and considering claims for reconveyance. Salamatof was also required to provide notice after filing its map of boundaries with the BLM. The court explained that when the government delegated to Salamatof initial responsibility to resolve section 14(c)

claims, Salamatof became obligated under the Fifth Amendment to give adequate notice before depriving individuals of their property rights

Judge Singleton noted that neither ANCSA nor the regulations provided the corporations with guidance regarding notice. He concluded that actual notice, by mail or other means, is required if the party's name and address are reasonably ascertainable.

8 City of Seldovia, Alaska v. Seldovia Native Association, Inc., A89-252 (D Alaska 1993)

This case involved a dispute between the village corporation and the municipal corporation (municipality) over a reconveyance pursuant to ANCSA Section 14(c)(3). The court determined that where the parties are unable to reach an agreement as to which land the village corporation will reconvey to the municipality, the next step is for the municipality to present a request for specific land. The parties should then negotiate with each other and, if no agreement can be reached, the village corporation will determine its best and final offer. That offer will be rendered in the form of a map, which, when filed with the BLM, will initiate the one-year statutory limitations period, during which time the municipality can bring suit. In the event of a lawsuit, the court would apply the statutory criteria to the competing proposals and decide which parcels of land should be reconveyed to the municipality.

The court also addressed the parties' arguments as to what land 14(c)(3) required the village corporation to reconvey to the municipality, and concluded that 14(c)(3) required the village corporation to reconvey to the municipality "useful land, which, unless otherwise agreed, must be a minimum of 1280 acres."

Finally, the court announced its intent to appoint three special masters to formulate a plan for the reconveyance of 1280 acres owned by the village

corporation in the vicinity of Seldovia, which would be useful in meeting foreseeable municipal needs

B State Courts

1 Swiss v. Chignik River, Ltd., 951 P 2d 433 (Alaska 1998)

John Swiss was a big game guide and subsistence hunter. Swiss set up permanent hunting camps in several places in Alaska, including Black Lake on the Alaska Peninsula. In 1967, Swiss built a cabin on the site. He used the camp for guiding hunts and for subsistence purposes.

Chignik River Ltd's (Chignik) ANCSA selections included the Black Lake site. Swiss received two conveyances under 14(c)(1). One conveyance was for a guiding campsite, Swiss's primary place of business, the second conveyance was for a game subsistence campsite. Neither conveyance included the Black Lake site.

Swiss sued to force Chignik to convey him the Black Lake site as a second subsistence campsite. The superior court granted summary judgment to Chignik, finding that 14(c)(1) required the corporation to convey to an individual only one campsite per subsistence use. The Alaska Supreme Court reversed, holding that the plain language of 14(c)(1) and the realities of hunting in Alaska precluded corporations from limiting subsistence campsites to one per subsistence use.

The Court declined Chignik's request to uphold the summary judgment on the alternate ground that Swiss had used the Black Lake site primarily for business rather than subsistence. However, the Court remanded for further proceedings on this issue, noting that no standard has been set to determine whether a site which is used for subsistence and for another purpose qualifies as a subsistence campsite under ANCSA.

2 Capener v. Tanadgusix Corp., 884 P 2d 1060 (Alaska 1994)

The federal government granted missionaries a special use permit to build a church and parsonage on St Paul Island in 1966. The missionaries built a church, a garden, and two garages. One of the garages was used for a motorcycle rental and tourist service business.

In 1974, the village corporation for St Paul, Tanadgusix Corporation (TDX), selected the lots in question under ANCSA. The patent from the BLM was subject to the missionaries' permit rights. In 1980, TDX informed the missionaries that the corporation now administered the special use permit and would terminate the lease unless new arrangements could be made. The missionaries refused.

In 1988, TDX sued to eject the missionaries and to quiet title. The missionaries counterclaimed, arguing that 14(c) entitled them to receive title to the lands. The trial court granted summary judgment in TDX's favor.

On appeal, the Alaska Supreme Court decided three issues. First, the Court held that permittees under a revocable permit are entitled to a 14(c) reconveyance so long as they occupied the land in issue for the purposes described in 14(c)(1) or (c)(2). Second, the Court held that if an occupant has an equitable ownership in the property, the occupant is entitled to reconveyance even if he or she is on the property subject to a permit issued to another. Third, the Court ruled that the right to reconveyance under 14(c)(1) or (c)(2) is transferable. The Alaska Supreme Court then remanded the case to the superior court for the court to resolve several factual questions.

3 Hakala v. Atxam Corp., 753 P 2d 1144 (Alaska 1988)

Two hunting guides began using lands on the Alaska Peninsula for commercial bear hunting trips in 1967. In 1969, they erected a small structure on

the site, which they used as a base camp. In 1974, they built a cabin on the site. Atxam Corporation, the village corporation for Atka, received an interim conveyance to land which included the guides' camp. After Atxam sued for trespass, the guides claimed that the site should be reconveyed to them under 14(c)(1) as a primary place of business. The superior court granted summary judgment in Atxam's favor.

The primary issue on appeal was how to interpret 14(c)(1)'s phrase "a primary place of business." In reversing the trial court and holding that the plaintiffs were entitled to a 14(c)(1) conveyance of the cabin site and surrounding curtilage, the Alaska Supreme Court ruled that there can be a separate primary place of business for each business in which a person engages. The Court noted that "many Alaskans make a living from several different businesses."

In dissent, Justice Rabinowitz argued that because the guides had used the site on only one-tenth of their commercial hunting trips in 1971, it was not their "primary place of business."

These case summaries are being provided for the purposes of background. Before you rely on the referenced cases, be certain to contact an attorney (if you are not an attorney) to confirm that the courts' decisions have not been

modified by subsequent cases or statutory enactments. If you have any questions about these materials, please feel free to contact me.

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**AS 10.06.450. Board of Directors; Duty of Care;
Right of Inspection; Failure to Dissent.**

- (a) All corporate powers shall be exercised by or under the authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors except as may be otherwise provided in this chapter. If a provision is made under AS 10.06.468 or in the articles, the powers, duties, privileges, and liabilities conferred or imposed upon the board by this chapter shall be exercised, performed, extended and assumed to the extent and by the person or persons to whom they are delegated as provided in AS 10.06.468 or in the articles. Directors need not be residents of this state or shareholders of the corporation unless required by the articles or bylaws. The articles or bylaws may prescribe other qualifications for directors. The board may fix the compensation of directors unless otherwise provided in the articles.
- (b) A director shall perform the duties of a director, including duties as a member of a committee of the board on which the director may serve, in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care, including reasonable inquiry, that an ordinarily prudent person in a like position would use under similar circumstances. Except as provided in (c) of this section, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by
- (1) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented,
 - (2) counsel, public accountants, or other persons as to matters that the director reasonably believes to be within the person's professional or expert competence, or
 - (3) a committee of the board upon which the director does not serve, designated in accordance with a provision of the articles or the bylaws, as to matters within the authority of the committee if the director reasonably believes the committee to merit confidence.

- (c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by (b) of this section unwarranted

- (d) A director has the absolute right at a reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the corporation or a domestic or foreign subsidiary of the corporation. Inspection by a director may be made in person or by agent or attorney and the right of inspection includes the right to copy and make extracts. This section applies to a director of a foreign corporation having its principal executive office in this state or customarily holding meetings of its board in this state

- (e) A director of a corporation who is present at a meeting of its board at which action on a corporate matter is taken is presumed to have assented to the action taken unless the director's dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the secretary of the meeting before adjournment or forwards the dissent by certified mail to the secretary of the corporation immediately after adjournment. The right to dissent does not apply to a director who voted in favor of the action

AS 10.06.478. Director Conflicts of Interest.

(a) A contract or other transaction between a corporation and one or more of the directors of the corporation, or between a corporation and a corporation, firm, or association in which one or more of the directors of the corporation has a material financial interest, is neither void nor voidable because the director or directors of the other corporation, firm, or association are parties or because the director or directors are present at the meeting of the board that authorizes, approves, or ratifies the contract or transaction, if the material facts as to the transaction and as to the director's interest are fully disclosed or known to the

(1) shareholders and the contract or transaction is approved by the shareholders in good faith, with the shares owned by the interested director or directors not being entitled to vote, or

(2) board, and the board authorizes, approves, or ratifies the contract or transaction in good faith by a sufficient vote without counting the vote of the interested director or directors, and the person asserting the validity of the contract or transaction sustains the burden of proving that the contract or transaction was just and reasonable as to the corporation at the time it was authorized, approved, or ratified

(b) A common directorship does not alone constitute a material financial interest within the meaning of this section. A director is not interested within the meaning of this section in a resolution fixing the compensation of another director as a director, officer, or employee of the corporation, notwithstanding the fact that the first director is also receiving compensation from the corporation

(c) A contract or other transaction between a corporation and a corporation or association of which one or more directors of the corporation are directors is neither void nor voidable because the director or directors are present at the meeting of the board that authorizes, approves, or ratifies the contract or transaction, if the material facts of the transaction and the director's other directorship are fully disclosed or known to the board and the board authorizes, approves, or ratifies the contract or transaction in good faith by a sufficient vote without counting the vote of the common director or directors or the

contract or transaction is approved by the shareholders in good faith This subsection does not apply to contracts or transactions covered by (a) of this section

(d) Interested or common directors may be counted in determining the presence of a quorum at a meeting of the board that authorizes, approves, or ratifies a contract or transaction

(e) Nothing in this section affects the prohibitions or restraints imposed by AS 45 50

AS 10.06.485. Loans to Directors, Officers, and Employees.

- (a) A loan may not be extended to an officer or employee without authorization by the board. A loan may not be extended to a director without the approval of two-thirds of the voting shares. An employee or officer who is also a director is considered a director for purposes of this section. A shareholder is not disqualified from voting on a loan to a shareholder as a director because of personal interest.
- (b) A loan to a director, officer, or employee and a loan secured by the shares of the corporation may not be made unless the loan would be permissible as a distribution under AS 10.06.358 – 10.06.365. A loan under this subsection impairs the retained earnings or paid-in capital accounts to the extent of the loan.
- (c) For purposes of this section, a loan may consist of cash, securities, or personal or real property.
- (d) If a corporation acts as a guarantor on a loan to a director, officer, or employee, the guarantee is treated as a loan under this section.
- (e) A director, officer, or employee of an affiliate corporation is a director, officer, or employee of the lending corporation for purposes of this section.
- (f) A loan is to be judged by the duties of directors and officers to act in good faith in a manner reasonably believed to be in the best interests of the corporation and with the care, including reasonable inquiry, that an ordinarily prudent person in a like position would use under similar circumstances.



Article 1. Conflict of Interest and Public Meetings.

Section

- 10 Conflict of interest
- 20 Meetings public

Sec. 29.20 010 Conflict of interest (a) Each municipality shall adopt a conflict of interest ordinance that provides that

- (1) a member of the governing body shall declare a substantial financial interest the member has in an official action and ask to be excused from a vote on the matter;
- (2) the presiding officer shall rule on a request by a member of the governing body to be excused from a vote;
- (3) the decision of the presiding officer on a request by a member of the governing body to be excused from a vote may be overridden by the majority vote of the governing body; and
- (4) a municipal employee or official, other than a member of the governing body, may not participate in an official action in which the employee or official has a substantial financial interest

(b) If a municipality fails to adopt a conflict of interest ordinance by June 30, 1986, the provisions of this section are automatically applicable to and binding upon that municipality

(c) This section applies to home rule and general law municipalities (§ 7 ch 74 SLA 1985)

NOTES TO DECISIONS

This section does not prohibit enactment of ordinances which go beyond its requirements *Acevedo v City of N Pole, 672 P 2d 130 (Alaska 1983), decided under former, similar law*

Limitation on eligibility of city officeholder for salaried position not preempted by section — Home rule charter section which prohibited a person who holds or has held an elective city office from being eligible for appointment to an office or for employment for which a salary is paid by the city until

one year has elapsed following the term for which he was elected or appointed, unless an exception is made with the approval of four or more members of the city council, was not preempted by this section since the charter also contained a section prohibiting members of the city council from voting on matters in which they have a pecuniary interest *Acevedo v City of N Pole, 672 P 2d 130 (Alaska 1983), decided under former, similar law.*

Collateral references — Validity, construction, and application of regulation regarding outside em-

ployment of governmental employees or officers. 34 ALR3d 1230

Sec 29 20.020 Meetings public (a) Meetings of all municipal bodies shall be public as provided in AS 44 62 310 The governing body shall provide reasonable opportunity for the public to be heard at regular and special meetings

(b) This section applies to home rule and general law municipalities (§ 7 ch 74 SLA 1985)

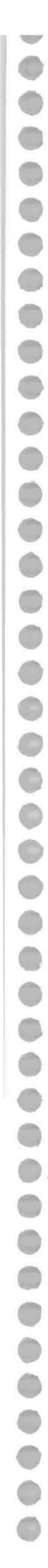
NOTES TO DECISIONS

Fairbanks charter provision preempted — The State Open Meetings Act preempts the Fairbanks City Charter provision concerning open meetings

Walleri v City of Fairbanks, 964 P 2d 463 (Alaska 1998)

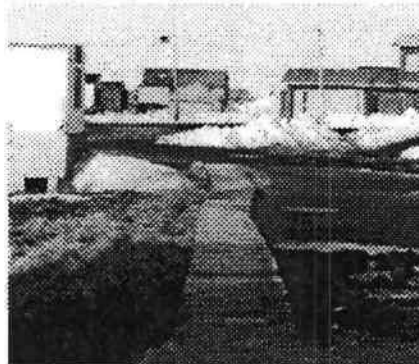
Collateral references — Validity, construction, and application of statutes making public proceedings open to the public 38 ALR3d 1070

ALASKA STATUTES (2008)



Remaining Questions

- What's next?
- How does reconveyance actually happen?
- What type of information is needed?
- Where can I seek information?
- How do I undertake this process?



Chevak

Lands Committee

- Purpose – Gather information and make recommendations
- Composition – Multi-interest group committee
- Participants – Village corporation, city government, and additional local leaders



Scammon Bay Meeting

Planning Process

Needed to determine the amount and kind of land which an existing or future city requires to meet present and future needs

- Community Wide Basis
- Non-Adversarial Manner
- Collaborative and Open Process

Plan creates basis for village corporation and city to reach a final and negotiated 14(c)3 agreement

Community Needs Assessment

- ◆ Remaining Improved Land
- ◆ Land for Expansion in Foreseeable Future
- ◆ Appropriate Rights-of-Way for Public Use



Napaskiak

Community Needs Assessment

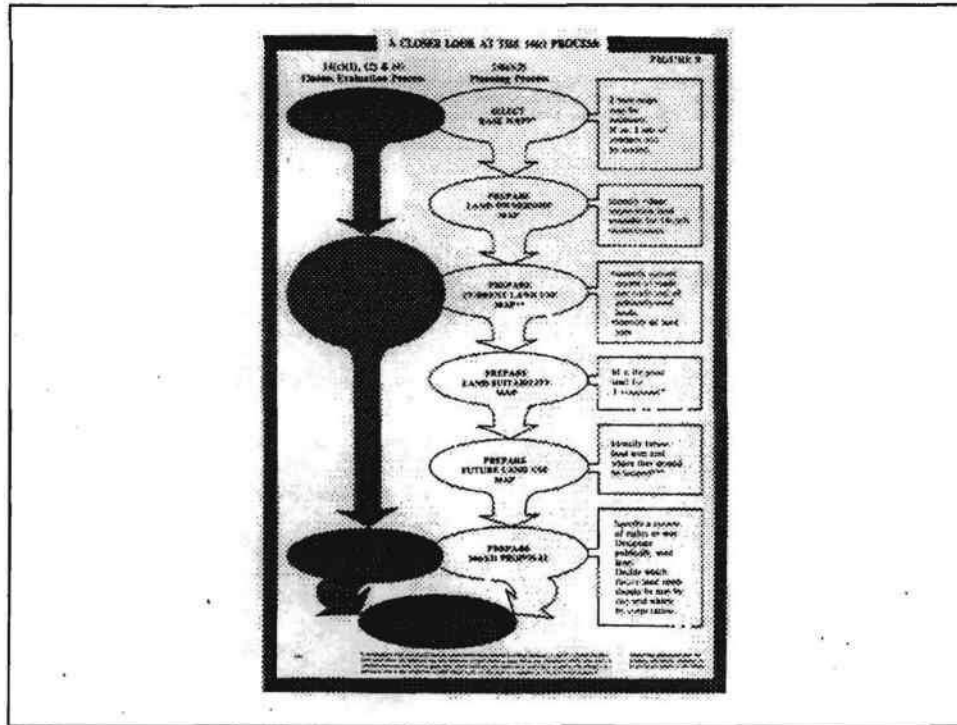
- What community resources do we already have?
- What resources do we need for the future?
- How do we get from here to there?



Goodnews Bay

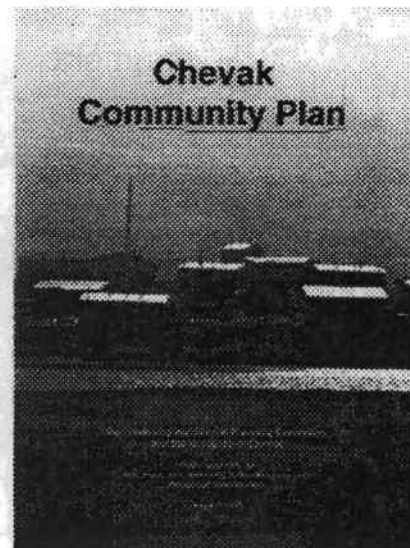
Needs Assessment Nuts-n-Bolts

- Inventory Existing Resources
 - Identify facilities, utilities, roads, trails, and public areas
- Inventory Current Land Uses
 - Identify all current land uses across entire community
- Inventory Land Suitable for Development
 - Identify land that is good for future development
- Inventory Future Land Needs
 - Identify land that is needed for future needs



Existing Community Plans

- ◆ Community Plans
- ◆ Strategic Plans
- ◆ Land Use Plans
- ◆ Transportation Plans
- ◆ Maps
- ◆ Resource Inventories
- ◆ Economic Development Plans



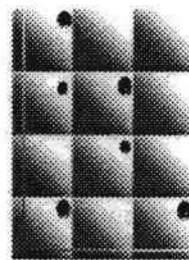
Existing Community Plans

- ◆ Sanitation Master Plans
- ◆ Infrastructure Development Plans
- ◆ Capital Improvement Plans
- ◆ Public Input Information
- ◆ Community Research

Prepared by
City of Eek

May 2005

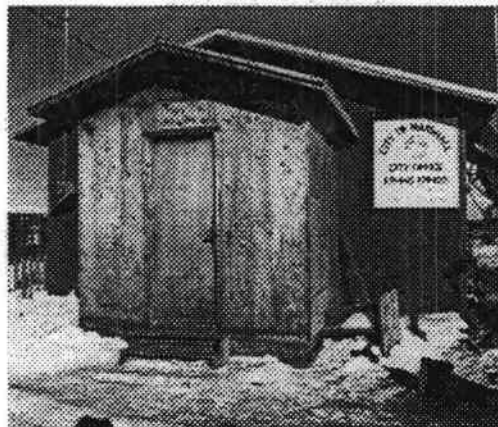
Water and Sewer MASTER PLAN



Prepared by
MWH

Local Information Sources

- ◆ Local Government
- ◆ Traditional Council
- ◆ Clinic
- ◆ School
- ◆ Utility
- ◆ Airport



Marshall City Hall

Agency Information Sources

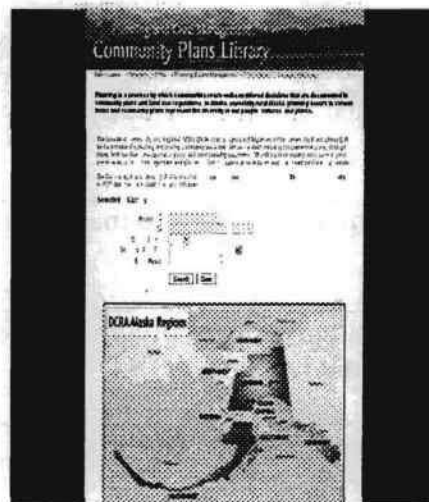
- Alaska Department of Transportation and Public Facilities
- Bureau of Indian Affairs
- Regional Development Organizations



State of Alaska Statewide and Area Transportation Plans

Agency Information Sources

- Alaska Department of Commerce, Community, and Economic Development
- Alaska Native Tribal Health Consortium
- Housing Authority



Division of Community and Regional Affairs

ANCSA 14(C) CHECKLIST AND TIMELINE (2010-11)

| Steps | Plan of Action | Lead Person | Time to Complete | Task Completed |
|-------------------|--|-------------|-------------------|----------------|
| Step One | Make Policy | | One Month | |
| A | Attend ANCSA 14(c) training in Fairbanks | | May 2010 | |
| B | Corporation's Board of Directors appoints Staff/Land Committee to take lead on 14(c) | | | |
| C | Staff/Land Committee prepares Policies and Procedures and 14(c) forms | | | |
| D | Board reviews and approves Policies and Procedures and 14(c) forms | | | |
| Step Two | Provide Notice for 14(c)(1) and (2) Applications (Sixty Days) | | Two Months | |
| A | Post notice in Village(s) with deadline | | | |
| B | List notice in newspaper(s) | | | |
| C | Ads on radio | | | |
| D | Letter to shareholders and known occupants on "magic date" (December 18, 1971) | | | |
| Step Three | Review 14(c)(1) and (2) Applications | | Two Months | |
| A | Initial review of applications by Staff/Land Committee | | | |
| B | If application is incomplete, provide applicant with 30 days to fix | | | |
| C | Interview applicant and others who may have knowledge of land in issue | | | |
| D | Staff/Land Committee prepares preliminary report on each 14(c) application | | | |
| Step Four | Conduct Field Examinations and Prepare Final 14(c) Report | | Two Months | |
| A | Staff/Land Committee take photographs of site | | | |
| B | Use GPS to confirm location of site | | | |
| C | Confirm site is on Corporation's lands | | | |



| Steps | Plan of Action | Lead Person | Time to Complete | Task Completed |
|-----------------------|---|-------------|-----------------------|----------------|
| Step Four cont | Conduct Field Examinations and Prepare Final 14(c) Report | | Two Months | |
| D | Perform additional research, if necessary | | | |
| E | Plot locations on map | | | |
| F | Staff/Land Committee prepare a Final 14(c) Report based on field examination | | | |
| Step Five | Issue Formal Decisions | | One Month | |
| A | Staff/Land Committee provides written decisions to applicants | | | |
| Step Six | Hear Appeals and Issue Final Decisions on Section 14(c)(1) and (2) | | Two Months | |
| A | Applicant has 30 days from date of decision to appeal | | | |
| B | Entire Board of Directors rules on appeal (unless conflict of interest) and issues written decision | | | |
| C | If applicant does not appeal, Staff/Land Committee decision is final | | | |
| D | Conveyance less than 1,280 acres requires written agreement | | | |
| Step Seven | Corporation and Village Council and/or City Work on 14(c)(3) | | Several Months | |
| A | Focus on community's present and future land needs | | | |
| B | If no City, consult with State Municipal Lands Trustee | | | |
| C | Plot locations on map | | | |
| Step Eight | Address 14 (c)(4) | | One Month | |
| A | Incorporate airport information into map of boundaries | | | |
| Step Nine | Map of Boundaries to BLM | | One Month | |
| A | Final review of map of boundaries | | | |
| B | Informal consultation with BLM, if necessary | | | |
| C | Submit map of boundaries to BLM | | | |