

Alaska Native Lands

An overview of the Settlement Act, Tribal Lands and Native Allotments

Historical Overview

Organic Act 1884

The issue of aboriginal title was addressed long before 1850. The district of Alaska was created as part of the United States provided that “The Indians

or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation not claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislations by Congress.”

Territorial Organic Act of 1912

This legislation extended the public land laws to Alaska. The application and specific reference to the Constitution and the laws of the United States are applied to the territory. This action further preserved the status quo of aboriginal title to Alaska until further congressional action.

Alaska Statehood Act 1958

The Act protected aboriginal rights of Alaska Natives in two ways. First, in Section 4 it specifically disclaimed any rights to land held by Alaska Natives under aboriginal rights. Second in Section 6(b) 102 million acres were granted to the State but excluded “vacant, unappropriated and unreserved”.

Statehood Act Selections and Conveyances

This portion of history finally brought about the climax of the dispute and later resolution. The State conveyances issued east of NPRA and

west of ANWR were then and remain today some of the State's most valuable holdings.

Native Claims

The State continued its selection process for lands as well as ongoing leases of the same lands for oil development. This resulted in a “widespread awakening” of Alaskan Natives in the political process. In roughly 1963 the native community began to file claims with the BIA. In 1968 various regional native groups filed claim to 80% of the Alaska land mass.

Freeze and Super Freeze

The Secretary of the Interior was obligated to respond in some fashion to the claims. Udall's first move was to freeze all conveyances of federal land. This also froze the development of State resources. The State challenged this decision in *Alaska-v-Udall*. The State lost the case. Secretary Udall issued Public Land Order 4582 which withdrew all unreserved public lands in the State from all forms of appropriation and disposition, with the exception of mining claims. The DOI responded also by addressing Congress with a full investigative report on the assertion of native claims, issues and proposed a formal resolution. This

1968 report became an important influence on ANCSA.

At the same time the Environmental Movement had strength in Congress and they were demanding the withdrawal of lands for “national interest” which would reduce the selection area for any native group because of parks and refuges.

Alaska Native Claims Settlement Act

Congress was pressured from many directions to be sure this legislation address all land claims and concerns.

Congress had admittedly failed in other parts of the United States with reservations and adjoining allotments. A new approach was needed to address the future and Natives becoming a part of the future. This involved commerce and development potential.

The State wanted their land, the environmentalists wanted theirs and what would be left for the Native Selections under ANCSA ?

What did ANCSA accomplish ??

Effectively extinguishing all aboriginal title rights and other claims.

As with any legislation this issue is still being fought today over aboriginal rights. They include things like:

- ❖ post trespass fees,
- ❖ oil and gas resources,
- ❖ title to the Outer Continental Shelf (OCS) itself
- ❖ title to the sea ice for the protection of hunting and fishing rights,

- ❖ the right to hunt and fish in the OCS and any navigable waterway exclusively,
- ❖ the right for non-natives to live in native village.

Settled the issue of monetary land claims \$ 962,500,000.00

This money was to be distributed on a per capita basis to the regional corporations.

50% of this money was required to be shared with the village corporation and the regional shareholders at large.

ANCSA specifically cleared all land prior and future conveyances to the State from any and all aboriginal title claims.

Extinguished all aboriginal title to any submerged lands in all water areas, both inland and offshore AND any aboriginal hunting and fishing rights that existed.

It cleared the United States against all claims based on the aboriginal right, title, use and or occupancy of the land and water areas in Alaska or those lands based on any statute or treaty of the United States relating tot native use and occupancy that are based on the

laws of any other nation, including such claims that could be pending in court or by the Indian Claims Commission.

Authorized the conveyance of 44 million acres in fee simple to the Alaska Native Corporations.

22 million acres went as a “split estate” to village corporations (surface estate) and regional corporations (subsurface estate).

16 million acres went in fee to 6 Regional Corporations claimed under land lost.

3.7 million acres were conveyed in fee to village corporations on former reserves.

2.0 million acres were conveyed for cities, native groups, historic sites and individual primary places of residence. Whatever was left went to the Regional Corporations based on a per capita basis.

Twelve Regional Corporations received mainly subsurface estate lands. A 13th Regional Corporation was formed to collect all the Alaska Natives who had since moved from the State or were not on membership roles.

203 Original Village Corporations were formed based on 80,000 enrolled “Natives”.

4 Urban Corporations
Sitka, Juneau, Kenai and Kodiak

Ten Group Corporations

How were the lands chosen to convey ?

The conveyance began with the village locations. The “core” township was the center of each village corporation’s holdings. The pattern was generally a checkerboard of townships, excepting out parks, reservations and previously state patented lands. See pg 17 of Case course

What happened to all the money ?

Section 6 of the Act established the Alaska Native Fund. Monies were allocated over the next 10 years. The money was structured for disbursement by Section 9.

Revenue Sharing Section 7(i)

7(i) is a key part of the Act. This section requires each regional corporation to share with all 12 land owning regional corporations in

Alaska 70% of all revenues derived from the timber resources and the subsurface estates conveyed pursuant to ANCSA. This has become a huge part of the revenue for all corporations.

For obvious reasons, Regional Corporations have ventured into many multi million dollar businesses that do not involve the subsurface resources. There is no doubt that Congress succeeded in their plan.

Alaska Native owned corporations in Alaska today help create our future. Construction companies, drilling outfits, maintenance contractors, design firms are only a few of the very profitable enterprises resulting from ANCSA.

Within the first few years of trying to apply Section 7(i) revenue sharing, it was obvious the law had not addressed the needed details to execute Congress' intent. A Settlement Agreement was reached after many a lawsuit that exhaustively defined terms and concepts, established detailed accounting procedures and established a consensus among the regions on policies for development of resources.

Who lost out ? The 13th Regional Corporation (land less), and the village corporations who decided to opt out and take all the land and no cash.

How much land did each one get and why ?

Land entitlement was based on the village population during the 1970 Census.

25 to 99	69,120 acres
100 to 199	92,160
200 to 399	115,200
400 to 599	138,240
600 and more	161,280

These are referred to as 12(b) lands and only the surface estate went to the Village Corporations.

Did all the Village Corporations receive their lands this way ?

No. Special provisions were made for a number of previous “Reserve Areas”. Those villages did become village corporations under ANCSA – they chose to receive more land and not share with the Regional Corporations—the price ? No money from Congress.

Arctic Village

Elim

Gambell

Savoonga

Tetlin and

Venetie

Did the Corporation use any of the lands for the community ?

Under Section 14(c) of ANCSA, the Corporation was obligated to in turn convey some of these lands for community purposes.

- ❖ Section 1 obligated the Corporation to convey to native and non-native alike, any primary place of residence or business that was occupied as of the date to the Act;
- ❖ Section 2 presented the same obligation for non-profits, they could charge the recipient for this;
- ❖ Section 3 addressed the greater community needs. This obligation

was not to exceed 1280 acres and must be conveyed to the municipal corporation for community development, public rights of way and other foreseeable community needs;

- ❖ Section 4 addressed the obligation to convey at no cost existing airport sites that were in use the day of the Act.

Were there any Indian Reservations left after ANCSA ?

Only one. The Annette Island Reserve made up of members of the Metlakatla Indian Community is the only true reservations in Alaska.

How was the land conveyed ?

Huge survey issues forced the BLM to find a quick solution. They created a document called an “Interim Conveyance”. Short as IC—it is viable title--just unsurveyed. Once BLM gets around to surveying the land they would issue a patent to each owner. Two patents to the same property would be issued to the village and corresponding regional corporation for their share of the “split estate”.

13 (or more) subsequent amendments dealing with everything from stocks to land exchanges. More to come.....

Were there problems ?

Land ownership plus a budget to go with it were new experiences for many village leaders. Being a for-profit corporation was new. Many villages did not have the expertise to handle the job or the money. The result was the full gamete of success and failure.

Many were primed for the job. They have taken a nest egg and their land entitlements and developed multiple viable competitive businesses. They have subsidiaries and aggressively compete for large government contracts and development projects.

Other corporations exist in name only and their money is embezzled and

used for personal gain. Corporation papers and budgets go to the way side. Bankruptcies are common. IRS Liens are many.

Congress and our Alaskan leaders had the foresight to build in some safety nets. The focus was to protect the land—the most valuable resource. Protection was granted from:

- ❖ Adverse possession claims;
- ❖ Real property taxes;
- ❖ Judgments from bankruptcy
- ❖ Judgments in general;
- ❖ Corporate dissolution

These protections can be lost if the land is developed, leased or sold or pledged as security. Many

amendments to ANCSA have added additional protections as the need arose.

What does all this have to do with DOT&PF ? How does it affect us ?

Split estates -

By-Laws -

Unsurveyed lands –

14c obligations -

Revenue sharing -

Solvency -

17b easements -

Liens -

Quality of Interest the Department can acquire by either practical or political means

Tribal Organizations

What is a tribe ?

Why are they different?

Why are there so many names ?

How are they funded ?

What kind of powers do they have ?

What's the difference in these groups:

Native Village Council

Traditional Village Councils

IRA Government

Village Corporations

Village Councils

Traditional IRA Councils

Tribal Councils

Regional Corporations

Section 16 Council

Section 17 Corporation

What is sovereign immunity ?

Given that most Native lands were conveyed under ANCSA, how do Tribal Groups get land ?

Two revoked reserves, Venetie and Tetlin, chose to take their land and no cash, transferred their land interest from the Corporation to the IRA tribal entity. This was in hopes of having their land be completely protected as “Indian Country”. This move and subsequent actions by the village of Venetie began a series of events that eventually once again defined Indian Country in Alaska by US Supreme Court.

Alegnagik was a case that resulted in traditional and IRA councils and unincorporated communities being

allowed to receive land under the Alaska Native Townsite Act. It came to them unrestricted, without a trust relationship and was not considered Indian Country.

Under ANCSA 14c3, tribes are not allowed to receive corporation lands that count toward that entitlement. ANCSA is very specific about it being the municipal corporation for the community. The State Department of Community and Economic Development has a Municipal Trustee that acts for the communities to receive such lands to hold in trust for a future community. In this case, the tribes act as the appropriate village entity or the governing seat, but with no land title.

Tribal Land Issues

Numerous cases have developed since the passage of ANCSA that tell stories of continuing unrest over the lack of tribal freedom and twisting complexities of government and differing organizations within villages.

Tyonek Native Village sued to prevent non-natives from living in their village. They said it violated their local Ordinances. They felt their land was Indian Country and not subject to the laws of the US. The further insisted that the tribe had sovereign immunity and was not subject to suit.

The Issue of whether or not the tribe was immune was remanded back to the District.

Venetie The State of Alaska built a new school complex in the village of Venetie. The Native Village of Venetie sued the State for payment of taxes (\$161,000) for the privilege of conducting business within Venetie. Venetie Native Corporation had received these lands under ANCSA, not as trust lands, not as a reservation, just land in fee. They received the subsurface and surface estate in their conveyance. The argument was that because the Native Corporation conveyed the lands to the local tribe, the land was now “Indian Country” and hence they could impose their own taxes and self government. The federal district courts held that Venetie’s lands were not Indian Country and Venetie did not meet the test of “dependant Indian community”. They appealed all the way to the US Supreme Court and lost. ANCSA’s primary purpose, namely, to effect Native self-determination and to end paternalism in federal Indian relations. February 1998

Nome Tax Case 1989

Villages organized under Section 16 of the IRA have the power to prevent their assets from being taken from them. This inferred some real power to tribes who were recognized and properly organized.

Ada Deer, working for the Department of the Interior issued a list of federally recognized tribes in Alaska. This had far reaching affects on our relationships with those new governments. Adminstrative Order 123 which shed some light on the powers that these tribes may have. See tab – Order 123

Why are Tribal Issues Important to DOT&PF ?

Our mission is to serve all Alaskans and help provide their transportation needs. While those aren't the words on our letterhead, it does focus on the people we serve.

The public we enter into contracts with must be positioned on the same playing field the Department. A contract is a two party agreement in which both sides have responsibilities and rules to follow. A waiver of sovereign immunity assures that everyone is playing fair and all activities are conducted according to State law. Since the passage of ANCSA and even before then, the State of Alaska insisted upon equal footing when entering into a contract with a tribal organization.

Some councils do not have any immunity from State law.

Determine if it is necessary to have a waiver first by investigating the kind of native group you are dealing with. Were they organized under the IRA ?

Do they have a constitution ? Is there other legal precedent that would lead you to believe they have immunity ? Are they recognized as a tribe by the US ?

In the handouts there is a copy of a website that maintains a library of current tribal constitutions. They need to be reviewed in advance of any acquisition to be sure that it is even

legal for the tribe to sell their land—similar to a corporation that has not addressed that issue in its bylaws or articles of incorporation. Many constitutions, particularly the IRA Constitutions were drafted at the same time and have similar language and terms.

Most constitutions are specific. All should be reviewed by the AGO for sufficiency and have enough teeth to outlast our projects and beyond. Most villages have corporation lands surrounding the community. The necessity for a waiver is rare, but it is good to know what to do when you do encounter it.

Execution of the waiver can be complicated requiring a vote of all the tribal adult members. We will do whatever is necessary to accommodate these governments and get the title we need for our projects.

What are the key organizational documents you should review about a native group ?

Why would you need to read their constitution?

How would you find it ?

Are there any reasons to investigate the liens of a native corporation ?

Why ?

If the group you are dealing with does not have a constitution and is not a federally recognized tribe, but owns land in the area of a project what should you know before proceeding ?

How would you find the information you need ?

You have a new airport site to acquire.

Below is a list of property owners.

Site A

Point Hope Native Corporation/Arctic
Slope Regional Corporation
Heirs of the Heirs of Paul Weyiounna
Point Hope IRA Council

Site B

Grayling Village Council
Dorothy Collard
Heirs of Henry Deacon
Deloy Ges/Doyon Limited

Site C

14 lots that are subsistence fishing
sites conveyed under 14c1 of ANCSA
Russian Mission Native
Corporation/Calista Corporation

Two native allotments that have not been located or found valid

The same man can have four separate jobs: The City Mayor, the President of the Village Corporation, the Chief of the IRA Council, and the school district superintendent. The Department needs a slice from each of these entities. It is our responsibility to assure that we obtain good quality title and have a defensible contract with each sale. As a negotiator which one do you approach first ??