

**TOWNSITE PROGRAM**

STAFF:           Allan J. Breitzman       - Townsite Trustee  
                  Shirley Spurlock       - Land Law Assistant

LOCATION:        Room 122, First Floor, Federal Building,  
                  Anchorage, Alaska

**MAILING ADDRESS:**

Townsite Program (AK-960A)  
Bureau of Land Management  
222 West 7th Avenue, #13  
Anchorage, Alaska 99513-7599

**TELEPHONE NUMBER:**

(907) 271-5689

## TOWNSITES

### I. TYPES OF TOWNSITES IN AK

#### A. Presidential Townsites

- 1) Established on government's motion with PLO to establish withdrawal for townsite purposes.
- 2) Public Sale of lots - patents issued by BLM
- 3) Trustee - acts as Superintendent of Sales
- 4) Examples - Tok, East Addition to Kodiak

#### B. Railroad Townsites

- 1) Selected by Alaska Railroad
- 2) Townsite Reserve by PLO
- 3) Public Sale of lots - patents issued by BLM
- 4) Trustee - Superintendent of Sales
- 5) Examples - Anchorage, Talkeetna, Nenana, Portage & Seward

#### C. Trustee Townsites (Handouts #1&2)

- 1) Section 11, March 3, 1891 (Regs 2564-2565, Handout #3))
- 2) May 25, 1926 - Alaska Native Townsite Act - Restricted Deeds
- 3) February 26, 1948 - Unrestricted Deeds

### II. TOWNSITE PROCESS (Handout #4)

#### A. Petition

- 1) Segregation Date - date petition accepted, serialized, noted to records
- 2) Size - less than 100 residents (not over 160 acres)
  - 100 to 200 residents (not over 320 acres)
  - more than 200 residents (not over 640 acres)

#### B. Feasibility Field Exam (reject if not suitable)

- 1) Permanent settlement
- 2) More than seasonal basis
- 3) Topography - planning and layout possible
- 4) Population stable
- 5) Not accommodated under other types of entry

C. Plan of Survey

- 1) Division into lots, blocks, tracts, municipal reserves, tracts for expansion
- 2) Preliminary ownership determination

D. Village Approval of Plan

E. Request for Survey to Cadastral

F. Survey Executed, Plat Approved

G. Plats and Application to Enter Filed in Village for 30 Days

- 1) Proof of Posting
- 2) Continuous Proof of Posting

H. Application to Enter and Final Proof (filed with BLM)

I. Adjudicate Any Conflicts and Issue Patent to Trustee

III. TRUSTEE'S PROCESS FOR DISPOSITION OF LAND AND PROCEEDS

A. Notice of Lot Awards (Handout #5)

B. Eligibility Criteria for Townsite Deeds

- 1) Improve and occupy before survey plat approval date
- 2) Improve and occupy before FLPMA if survey is approved after FLPMA date

C. Adjudicate Applications

- 1) Convey - Trustee Deeds - Non-natives and entities - assessment fees (Handout #6)
  - Restricted Deeds - Native individuals only (Handout #7)
  - Unrestricted Deeds - Native individuals only with BIA approval (Handout #7)
- 2) Conflicting Applications - Trustee Decision with Appeal Rights to the Interior Board of Land Appeals (IBLA)

D. Rights of Way and Permits

- 1) Public Utilities
- 2) Uses of temporary nature
- 3) Only valid until land conveyed

E. Public Sales

- F. Sales to Federal and State Entities
- G. Remaining Vacant Lands Transferred to Municipalities
- H. Townsite Funds Transferred to Municipalities
- I. Audit of Townsite Account and Closure Report for DSD

IV. HISTORICAL BACKGROUND (Handout #8)

A. Saxman Opinions

- 1) 1959 - Public auction inconsistent with ANTA
- 2) 1960 - Could not dispose of vacant lots to municipality, vacant lots must be retained for occupation by native individuals
- 3) Trustee continued to allow settlement on unsubdivided tracts by both natives and non-natives

B. Klawock vs. Gustafson

- 1) 1974 - City of Klawock appealed a Trustee's Decision to issue deeds to non-natives occupying townsite lots. The District Court overturned the Saxman Opinions and allowed conveyance of vacant lots to municipalities rather than hold for native individuals.

C. Aleknagik Natives vs. Gustafson

- 1) 1977 - Aleknagik, Nondalton and Ekwok claimed unoccupied townsite land was withdrawn by the Alaska Native Claims Settlement Act (ANCSA) and therefore selectable by the village corporation. The suit challenged a 1972 Memorandum by the Secretary of Interior which stated that townsite applications on file before passage of ANCSA constituted a valid existing right. On March 19, 1985, the District Court upheld the Secretary of Interior stating that the filing of the petition segregated the land and therefore the lands were not available for selection by village corporations. The Court of Appeals affirmed the District Court Decision on December 19, 1986.
- 2) Intervenors in the Aleknagik case, Port Graham and English Bay, contended that unoccupied townsite lands should be transferred to the traditional village councils in those communities because there is no municipality in either village. On July 17, 1987, the District Court ordered the Trustee to convey the residual lands to the village councils. The order was affirmed by the Ninth Circuit Court of Appeals on September 22, 1989. (Handout #9)

V. TOWNSITE FILES

A. Accounts File

B. Deed File

1) Duplicate Copy of Deed

2) Original Application

C. General Correspondence File

D. Historical File

E. Lot and Block File

1) Triplicate Copy of Deed

2) Copy of Application

3) Related Correspondence

F. Maps File

1) Field Plat

2) Status Plat

G. Pending File

H. Permit Files

I. Tract Book

1) List of Grantees by lot, block and tract

2) Type of deed, when issued and to whom delivered

## TOWNSITE PROGRAM

### Legal Authority:

Act of March 3, 1891	-	Extended townsite laws to Alaska
Act of May 25, 1926	-	Allowed native individuals to receive restricted deeds to townsite lots
Act of February 26, 1948	-	Allowed native individuals to receive unrestricted deeds

### Description of Program:

Communities within Alaska filed petitions with the federal government to establish townsites for the purpose of obtaining title to the land they occupied. The petition requested the government to survey the area into lots, blocks and tracts for future expansion and to appoint a Trustee to act on behalf of the community. After approval of the survey plat, the Trustee applies to the BLM for patent to the townsite. The Trustee's claim is adjudicated against all other claims and if no conflicts exist, a patent is issued. A Notice of Lot Awards is then posted in the village for 30 days to notify the residents that the Trustee will visit the village to take applications for deeds to the lots. Native individuals may apply for either restricted or unrestricted deeds and do not pay the survey assessment cost. Unrestricted native deeds may be issued only upon approval of the Bureau of Indian Affairs. Non-native individuals and all others must apply for Trustee Deeds and pay the cost of survey. The applications are adjudicated by the Trustee and deeds are issued based on occupancy and improvement of the lots prior to the date of survey plat approval or October 21, 1976 which ever date comes earlier. Conflicts are resolved by Trustee Decisions issued with the right of appeal to IBLA.

Settlement on unsubdivided tracts of land was precluded after October 21, 1976, when the Federal Land Policy and Management Act repealed the townsite laws. All claims established before that date must be surveyed by the Bureau of Land Management. After all lots have been awarded to valid claimants, the remaining land is deeded to the incorporated municipality and the townsite is closed.

The townsite program was virtually in suspension from 1977 to 1985 when the U.S. District Court in Alaska decided the question as to whether incorporated cities or the ANCSA corporations were entitled to unoccupied lands. The court decided in favor of the incorporated municipalities.

Until recently, the Trustee retained title to residual lands in unincorporated communities. On September 22, 1989, the Ninth Circuit Court affirmed a lower court decision that directed conveyance of these residual lands to village councils.

The goal of the program is to close all townsites by the end of fiscal year 1993.

Gamble v. Sault Ste. Marie, 10 L.D. 375 (1890)

The proceedings under the Act of 9/26/1850, whereby a cemetery was designated as a lot reserved for a public purpose on the approved plat of survey, constitute a statutory dedication to the village of Sault Ste. Marie of the tract set apart for cemetery purposes, thus passing title from the U.S. and, upon incorporation of the village, resting it in the municipal authorities. By such a statutory dedication, the Government parted with the title to the tract and control thereof.

**FEDERAL TOWNSITES IN ALASKA  
INTERNATIONAL RIGHT OF WAY ASSOCIATION  
MARCH 17, 1994**

One hundred eighty-five Alaskan communities are, at least in part, Federal Townsites. There are three types in Alaska: **Railroad** (example Seward and Anchorage), **Presidential** (example Tok and Kasilof), and **Trustee** (example Bethel).

**Railroad and Presidential Townsites** were established and surveyed by the government. After survey the lots were sold at auction by the Townsite Trustee. The patents conveyed fee simple title. Copies of survey plats and patents for Railroad and Presidential Townsites are available at the Bureau of Land Management (BLM) Public Room at 222 West 7th Avenue Anchorage, Alaska 99513-7599. The Public Room's phone number is (907) 271-5960. There are no more lands available to the public in these townsites.

**Trustee Townsites** were created when the residents of a community petitioned the Federal government for the establishment of a Trustee Townsite. These townsites were authorized under two different statutes. Section 11 of the Act of March 3, 1891, extended the townsite laws to the Territory of Alaska. The Act of May 25, 1926, allowed the trustee to issue restricted deeds for townsite lots to Alaskan Natives. Both of these authorities were repealed by the Federal Land Policy and Management Act of October 21, 1976.

The Townsite Trustee prepares a plan of survey for the townsite based on existing improvements and the need for future expansion. After the townsite is surveyed by the Federal Government the Trustee receives patent to the townsite. Then the Trustee can issue deeds to the residents. Trustees can issue permits and grant rights-of-way on undeeded townsite lands.

Rights to townsite lots had to be established by the date the subdivisional survey of the townsite was accepted or October 21, 1976, whichever came first. The rights can be transferred before the deeds are issued by inheritance, gift, or sale. The deeds are subject to reservations listed in the Trustee's patent such as mineral resources or rights-of-way to the government. Copies of the patent to the Trustee are available at the BLM's public room as are copies of the survey plats.

The Trustee issues four types of deeds. **Trustee deeds** issued under the **Act of March 3, 1891**, convey lots to non-natives, municipalities, corporations, boroughs, state agencies, traditional councils, and IRAs. These deeds are for fee simple absolute title. A pro-rated portion of the survey costs are charged for Trustee deeds issued to corporations, businesses, churches, and non-native individuals.



**Restricted deeds** are issued to Alaskan Natives under the **Act of May 25, 1926**. Lots conveyed under this law can only be sold with the concurrence of the Bureau of Indian Affairs (BIA). They cannot be seized and are not taxable.

**Unrestricted deeds** issued under the **Act of February 26, 1948**, give fee simple absolute title to holders of restricted deeds. These deeds are issued when the BIA finds the holder competent.

**Deeds of correction** correct errors such as misspellings or inaccurate land descriptions.

Unoccupied lots, known as residual lots, are deeded without charge to the city. Residual lots in unincorporated Native communities are deeded without charge to the Traditional Council or the IRA.

Trustee deeds and unrestricted deeds are recorded with the State Recorder by the Trustee. Prior to statehood many deeds were sent to the grantee or the Magistrates. The BIA Alaska Title Service Center records restricted deeds with the State Recorder; they also have their own title plant.

Records for open townsites, recently closed townsites, and copies of the tract books for closed townsites are kept at the Trustee's office. Tract books are a list, by lot and block, of the deeds issued in a townsite. The list gives the grantee, the type of deed, and the date the deed was issued. Unrestricted deeds are noted to the tract books as they are issued. This is the only change made to the records for closed townsites.

The Trustee has no authority within closed townsites except to issue unrestricted deeds to Alaskan Natives who have been certified competent by the BIA.

After all deeds are issued the townsite is closed. The records are then transferred to the National Archives-Alaska Region, 654 West 3rd Avenue, Anchorage, Alaska 99501, phone (907) 271-2441.

Trustee records and National Archive records show only the original owner. Records for current owners and chain of title are kept by the Boroughs and the State Recorders Office.

prepared by: Martin Hansen, Townsite Trustee  
Shirley Spurlock, Land Law Assistant  
Bureau of Land Management  
222 West 7th Avenue # 13  
Anchorage, Alaska 99513-7599  
phone (907) 271-3795

## **ALASKA TRUSTEE TOWNSITES**

Bureau of Land Management  
222 W. 7th Avenue, #13  
Anchorage, Alaska 99513

Townsite Staff: Martin Hansen, Townsite Trustee  
Shirley Spurlock, Land Law Assistant

Phone Number: (907) 271-3795  
(907) 271-5689  
FAX Number: (907) 271-3684

### HANDOUTS:

- A. History of the Townsite Program
- B. Townsite Program including a list of the townsite records
- C. Townsite Records held by the Trustee
- D. Townsite Records held by the National Archives - Alaska Region
- E. Streets and Alleys
- F. Permits and Rights-of-Ways
- G. Types of Trustee Deeds with samples of all four (4)
- H. Lower Kalskag Townsite Tract Book  
(The trustee keeps copies of the tract book for records kept at Archives. Once the townsite program is closed, all records will be held at Archives.)
- I. Master Title Plat
- J. Survey Plat
- K. U.S. Survey 4414
- L. Dependent Resurvey of a portion of U.S. Survey 4414

HISTORY OF THE TOWNSITE PROGRAM

From March 3, 1891 to Present

Act of March 3, 1891

This Act established the Townsite Program. The method used for segregation and disposition of public lands as townsites is as follows:

A group of residents files a petition with the Interior Department to establish and survey a townsite and appoint a Trustee. Once the petition is filed and serialized, it segregates the land from other forms of entry. The petition is noted on the public land records. The Townsite Trustee, after consulting with the village council, prepares a plan of survey. When the survey is completed, a plat is prepared and officially approved. The initial plat shows the exterior boundaries of the townsite and the subdivisional boundaries of the occupied portion. Unoccupied portions are sometimes labeled "unsubdivided"; sometimes simply shown as a lettered tract with no lots indicated. The date of the subdivisional survey is critical. Up to that date, rights to land within the townsite can be acquired simply by occupancy.(1) Upon survey approval, the Trustee applies for patent to the land within the exterior boundaries as shown on the plat. When patent is received, the Trustee proceeds to make lot awards, collecting (from non-Natives only) a pro rata share of the survey cost. As unsubdivided tracts become occupied, successive subdivisional surveys and, upon approval, additional lot awards may be made. Lots which are unoccupied on the date of subdivisional survey approval are deeded to the incorporated municipality, if incorporated, or the traditional or IRA village.

Act of May 25, 1926

In 1926 Congress enacted "An Act to authorize the issuance of deeds to certain Indians or Eskimos for tracts set apart to them in surveys of townsites in Alaska and to provide for the survey and subdivision of such tracts." The purpose of this legislation was to authorize the issuance of deeds to Alaskan Natives who previously could not obtain deeds to the lots they occupied because the Act of March 3, 1891, extending townsite laws to Alaska had been construed as not applying to lands in the possession of Natives.

Act of February 26, 1948

After 1948, Alaska native individuals could apply for unrestricted townsite deeds, which removed restrictions as to sale, encumbrance, or taxation of the land.

1/Now superseded by FLPMA (No occupancy is allowed on unsubdivided tracts after October 21, 1976)

Saxman Opinions - 1959

A Department of Interior legal opinion held that disposition of unoccupied lots by public auction was inconsistent with the Native Townsite Act. A subsequent opinion based on the 1959 opinion, held that the Trustee could not convey unoccupied lots in a Native townsite to a municipality. Under the Saxman opinions, the Trustee had to retain unoccupied lots for future occupation by individual Natives instead of offering the lots for sale and then conveying unsold lots to the municipality. The Trustee, however, continued to hold vacant, unsubdivided land within the patented area open for entry and occupancy by both Natives and non-Natives until the filing of the final subdivisional plat.

January 17, 1969

On January 17, 1969, anticipating congressional passage of a Native Claims Settlement Act, Interior Secretary signed PLO 4582 withdrawing the entire State from most forms of entry or settlement. This freeze included petitions for townsites.

ANCSA - December 18, 1971

When the Alaska Native Claims Settlement Act was enacted on December 18, 1971, section 17(d) revoked PLO 4582 but permitted further withdrawals which for the most part have kept Alaska closed to settlement. With minor exceptions the only land in Alaska open to non-mineral entry after 1971 was in pending townsites. Some feel this was a major oversight. However, with passage of this Act, no more petitions could be filed requesting that a townsite be established and surveyed.

FLPMA - October 21, 1976

Repealed the townsites laws. Now if a survey is made after this date, occupancy is based on the date FLPMA was passed (October 21, 1976).

Klawock Case - November 11, 1976

The Trustee's authority to permit non-Natives to occupy the unsubdivided portion of a Native townsite was challenged in the City of Klawock v. Gustafson case. The City of Klawock appealed a decision by the Townsite Trustee to issue deeds to non-Natives occupying lots in a Native Townsite. The Federal District Court issued a decision on November 11, 1976 upholding the Trustee's decision. The court overturned the reasoning of the Saxman Opinions by concluding that the 1926 Alaska Native Townsite Act was concerned with issuing deeds to Native Alaskans rather than establishing exclusively Native townsites. Based on this interpretation, the court decided that non-Natives had a right to establish occupancy on unsubdivided lands in Native townsites. The court also concluded that unoccupied townsite lots were to be made available to municipalities rather than being retained by the Trustee for occupancy by Natives.

Attorney Fees for Klawock Case

The attorneys for Klawock petitioned the district court for the award of attorney fees, claiming that the value of the vacant lots (which cities could now obtain) created a common fund from which the attorney fees could be paid. The district court denied the request, but the 9th Circuit Court of Appeals ruled that the litigation benefited cities throughout Alaska, and that the vacant lots would provide a common fund from which to pay the attorney fees.

Aleknagik Natives, Ltd. v. U.S.A. - March 19, 1985

The village corporations of Aleknagik, Ekwok and Nondalton filed suit in Federal District Court contending that the Alaska Native Claims Settlement Act (ANCSA) terminated the operation of all townsite laws on all townsite lands that were vacant and unsubdivided at the time of ANCSA's passage in 1971, making them available for village corporation selection. The Secretary of the Interior disagreed. It was his contention that the filing of the petition by a majority of the residents of a future Federal townsite operated to segregate the land from further disposal under the public land laws (thus making them unavailable for village corporation selection). The U.S. District Court agreed with the Secretary of the Interior, and on March 19, 1985, granted summary judgment in favor of the federal defendants. The ninth Circuit Court of Appeals affirmed the District Court decision on December 19, 1986.

Two villages, Port Graham and English Bay, intervened in the Aleknagik case. They agreed that the townsite land could not be selected by the village corporations established under ANCSA, but argued that the vacant land should be turned over the IRA and traditional village councils because there was no municipality established under State law in those villages. On July 17, 1987, the District Court ordered the Trustee to convey remaining townsite land to the councils. The order was affirmed by the Ninth Circuit Court of Appeals on September 22, 1989.

A 4/4

MINUTES OF THE UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

ALEKNAGIK NATIVES LIMITED, et al. vs. UNITED STATES OF AMERICA, et al.

THE HONORABLE JAMES M. FITZGERALD CASE NO. A77-200 CIVIL

Deputy Clerk

Reporter

Recorder

LINDA CHRISTENSEN

X Janis Roller

APPEARANCES:

PLAINTIFF: JAMES BAMBERGER

DEFENDANT: JACK ALLEN

PROCEEDINGS: HEARING ON MOTION FOR RECONSIDERATION:

At 9:03 a.m. court convened.

RECEIVED  
REGIONAL SOLICITOR, USDI

Statements of Court and counsel heard.

JUL 20 1987

Plaintiff's motion for attorney fees - DENIED.

ANCHORAGE, ALASKA

At 9:24 a.m. Judge and counsel met in chambers.

At 9:47 a.m. court reconvened.

Court placed findings on the record re motion for reconsideration:

Petitioners Port Graham and English Bay's motion for reconsideration  
GRANTED.

IT IS ORDERED THAT the Townsite Trustee is directed to convey the  
remaining lands held in trust to petitioners for the benefit of  
the village inhabitants without restriction as to nationality or  
race.

At 9:50 a.m. court adjourned.

cc: J. Vollintine  
J. Bamberger (AK LEGAL SERV)  
D. Smith (AUSA)  
J. Reeves (BOGLE)

JUL 20 8 22 AM '87  
ALASKA

DATE: JULY 17, 1987

DEPUTY CLERK'S INITIALS: LC

C.F. No. 1

23

TOWNSITE PROGRAM

Legal Authority:

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H. Permit Files

I. Tract Book

- 1) List of Grantees by lot, block and tract
- 2) Type of deed, when issued and to whom delivered

FEDERAL TOWNSITES

January 6, 1994

The following is the list of townsite records held by the BLM Townsite Trustee in the BLM Townsite Program:

- OPEN -

- |                          |                         |
|--------------------------|-------------------------|
| Alakanuk USS 4405        | Aleknagik Lake USS 4873 |
| Andreafsky USS 5507      | Birch Lake USS 3453     |
| Chalkyitsik USS 4496     | Clarks Point USS 4992   |
| Egegik USS 4900          | Gulkana USS 4861        |
| Hyder USS 1428           | Hyder Add. USS 3861     |
| Kodiak USS 3066          | Meshik USS 5578         |
| Nulato USS 4370          | Perryville USS 4993     |
| Pilot Station USS 4489   | St. Michael USS 5579    |
| Salchaket USS 1901       | So. Naknek USS 4879     |
| Stevens Village USS 4393 | Tuntutuliak USS 4429    |

- CLOSED -

- |                   |                        |
|-------------------|------------------------|
| Northway USS 4027 | Upper Kalskag USS 4413 |
|-------------------|------------------------|

- PENDING -

- Nightmute USS 4423 (No Patent on Nightmute)

NOTE: As townsites are closed, the records will be transferred to the National Archives-Alaska Region.

ARCHIVED FEDERAL TOWNSITES

- CLOSED TOWNSITES -

January 6, 1994

NATIONAL ARCHIVES - ALASKA REGION

654 W. 3RD AVENUE

ANCHORAGE, ALASKA 99501

(907) 271-2441

- |                |                  |                 |
|----------------|------------------|-----------------|
| Akhiok         | Hooper Bay       | Noorvik         |
| Akiachak       | Hope             | Old Harbor      |
| Akiak          | Hydaburg         | Ouzinkie        |
| Alatna         | Hyder Ext.       | Pelican         |
| Ambler         | Juneau           | Petersburg      |
| Anaktuvak Pass | Kake             | Portage         |
| Anchorage      | Kaktovik         | Port Alexander  |
| Angoon         | Kaltag           | Port Graham     |
| Aniak          | Kasaan           | Rampart         |
| Baranof        | Kasilof          | Ruby            |
| Barrow         | Kenai            | Saxman          |
| Beaver         | Ketchikan        | Scammon Bay     |
| Bethel         | Kiana            | Selawik         |
| Birch Creek    | King Cove        | Seldovia        |
| Brevig Mission | Kivalina         | Seward          |
| Buckland       | Klawock          | Shageluk        |
| Cantwell       | * Kodiak         | Shaktolik       |
| Canyon Village | Kotlik           | Shungnak        |
| Chefornak      | Kotzebue         | Sitka           |
| Chevak         | Koyuk            | Skagway         |
| Chignik        | Koyukuk          | Stebbins        |
| Chignik Lagoon | Kwethluk         | Stony River     |
| Chignik Lake   | Larson Bay       | Talkeetna       |
| Circle         | Levelock         | Tanana          |
| Cordova        | Loring           | Tanacross       |
| Craig          | Lower Kalskag    | Teller          |
| Dillingham     | Manokotak        | Tenakee Springs |
| Douglas        | Marshall         | Tok             |
| Eagle          | McGrath          | Toksook Bay     |
| Eek            | Matanuska        | Togiak          |
| Ekwok          | Mentasta Village | Tununak         |
| Emmonak        | Metlakatla       | Twin Hills      |
| English Bay    | Moose            | Ugashik         |
| Fairbanks      | Moose Pass       | Unalaska        |
| Fort Yukon     | Mountain Village | Upper Kalskag   |
| Galena         | Nenana           | Valdez          |
| Girdwood       | New Stuyahok     | Wasilla         |
| Golovin        | Nikolski         | Whittier        |
| Graehl         | Ninilchik        | Wrangell        |
| Grayling       | Noatak           | Yakutat         |
| Haines         | Nome             |                 |
| Hoonah         | Nondalton        |                 |

\*Townsite with only a partial closure

A brief explanation on Streets, Alleys, etc.:

"...it has uniformly been held that when land in a townsite has been dedicated for public use, jurisdiction over such land as well as title and right to possession and control thereof passes from the United States (and the trustee) and that the right and title to such land is subject to disposition in the courts in accordance with applicable local law." The opinion goes on to indicate that "...it is not necessary and would not be appropriate for the townsite trustee to issue deeds to dedicated areas because after dedication, he no longer has title to nor jurisdiction over them."

Title 40, Section 40.15.180, of the Alaska State Statutes to reference state law as it pertains to title to vacated streets.

Gamble v. Sault St. Marie  
Admin Dec. by GLO  
turn of century.

PERMITS AND RIGHTS-OF-WAY

.13 During trusteeship for a town there will often be occasions when Federal, State, or local governmental units will desire to occupy and use certain lots (reserves or other) for generally temporary periods of time; or, some corporate authority will want to have a utility right-of-way through the townsite. Insofar as possible, the issuance of temporary permits should be kept to a minimum. These cases can, however, be handled under 43 CFR 80.14b.

In the case of incorporated cities, the Trustee obtains formal approval from the City Council on the application. If approval is granted, the Trustee prepares a Trustee Permit (no special form) on the order of permit shown in Appendix 10.

If the town is unincorporated, the Trustee must prepare a notice (See Appendix 11) for posting in the town for a period of not less than 30 days. This notice should be given as wide publicity as possible. Send copies to stores, Magistrate, Postmaster, hotels and any other public spot for posting on the premises. If no objection is received within the period cited in notice, a Trustee permit can be issued.

The Trustee should be cautious, however, not to issue a permit that will extend beyond the anticipated period that the townsite will be active. In other words, the Trustee should not be bound to a permit or agreement that will prevent or delay the closing of the townsite.

F 2/2  
2/2  
107

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Bureau of Land Management  
555 Cordova Street  
Anchorage, Alaska 99501

TRUSTEE PERMIT

from the

TOWNSITE TRUSTEE FOR CHALKYITSIK TOWNSITE

to the

STATE OF ALASKA, DEPARTMENT OF HIGHWAYS

WHEREAS the Department of Highways, State of Alaska, has requested a construction permit for upgrading the village streets in Chalkyitsik; and

WHEREAS the Village Council, by Resolution dated January 9, 1973, has approved granting the construction permit; and

WHEREAS title to the land is still vested in the United States Government;

NOW THEREFORE, George E. M. Gustafson, Townsite Trustee for Chalkyitsik Townsite, hereby issues a Trustee Permit to the Department of Highways, State of Alaska, for road construction identified as Project G-20132 as shown on the State of Alaska, Department of Highways' right-of-way map, Chalkyitsik Townsite, a copy of which is on file in this office.

/s/ George E. M. Gustafson  
Townsite Trustee

Effective date: February 26, 1973

cc:  
Chalkyitsik Village Council  
Chalkyitsik, Ak. 99788

GEMGustafson:am 2/26/73



TYPES OF TRUSTEE DEEDS

The following is the explanation of the notations in the townsite tract book which describe the types of deeds issued by the Trustee.

The Trustee has authority to issue four types of deeds. The notations under Type of Deed indicate the date of enactment of the particular law which authorized issuance of each type of deed.

The first type is a Trustee Deed, which is issued to non-native individuals, corporate entities and municipal and village governments. Its designation in the tract book under type of deed is '3/3/91'.

The second type of deed the trustee has authority to issue is a Restricted Deed. Only Alaska native individuals are eligible for this type of deed. The deed is issued with certain restrictions and protections to be managed by the Bureau of Indian Affairs. The notation which indicates this type of deed is '5/25/26'.

The third type of deed is an Unrestricted Deed. Again, only Alaska native individuals are eligible for this type of deed. It does not provide the restrictions or protections found in a restricted deed. Upon the proper application, it may be issued as the original conveyance document, or as an amendment to a previously issued restricted deed. The notation which indicates this type of deed is '5/25/26 & 2/26/48'.

The fourth type of deed is a Deed of Correction. These correct deeds with errors such as incorrect legal description or misspelled names. They are based on the original deed and the laws listed above.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
ALASKA STATE OFFICE - ANCHORAGE, AK.

TRUSTEE DEED

THIS INDENTURE, made this 24th day of February, in the year of our Lord one thousand nine hundred and eighty-eight, by and between Gail Ozmina, as trustee for the townsite of Lower Kalskag, U.S. Survey Number 4414, in the State of Alaska, party of the first part, and the Diocese of Sitka and Alaska, Orthodox Church in America, Inc., of 414 Mission Rd. Suite 1, Kodiak, Alaska, 99615, party of the second part,

WITNESSETH, That said party of the first part, as such trustee, by virtue of the power vested in and conferred upon her by the terms of section 11 of the Act of Congress approved March 3, 1891 (26 Stat. 1095), and the regulations thereunder and the patent issued to her thereon, and in consideration of the sum of 203.00 dollars, the amount of the assessments upon the premises hereinafter described, the receipt of which is hereby acknowledged, by these presents does grant, convey and confirm unto the said party of the second part and its successors and assigns all the following lot, piece, and parcel of land situated in the townsite of Lower Kalskag, State of Alaska, described as follows, to-wit:

Lot Seven (7), Block Three (3), Tract "A", as shown on the official plat of U.S. Survey 4414, Alaska, Lower Kalskag Townsite, as accepted by the Chief, Division of Cadastral Survey, for the Director on January 15, 1971, and located within the Kuskokwim Recording District.

According to the official plat of survey of said townsite, subject to rights and reservations in said patent expressed. To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, its successors and assigns forever.

IN WITNESS WHEREOF said party of the first part, as trustee, has hereunto set her hand and seal on the day and year first above written.

In the presence of:

Dora C. Baker  
Bundas Passmore

Gail Ozmina  
Gail Ozmina

Townsite Trustee for the Townsite  
of Lower Kalskag, State  
of Alaska

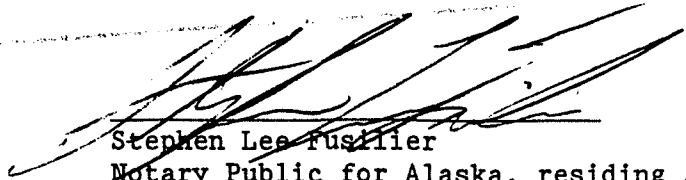
AK 2564-21 (Feb. 1984)

**TRIPPLICATE**

STATE OF ALASKA:

BE IT REMEMBERED, That on this 24th day of February, A.D. 1988, before me, a Notary Public, came Gail Ozmina, to me personally known to be the Trustee of said townsite of Lower Kalskag, and the identical person described in, and whose name is affixed to, the foregoing conveyance as grantor, and she acknowledged the execution of the same to be her voluntary act and deed as such Trustee, for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year first written above.



Stephen Lee Fuslier  
Notary Public for Alaska, residing at  
Anchorage, Alaska  
My Commission expires March 10, 1991

G 4/13

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
ALASKA STATE OFFICE  
Anchorage, AK

NATIVE RESTRICTED DEED

THIS INDENTURE, made this 24th day of March, in the year of our Lord one thousand nine hundred and eighty-nine, by and between Gail Ozmina, of the Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, Alaska, 99513-7599, as trustee for the townsite of Lower Kalskag, in the State of Alaska, party of the first part, and the Heirs, Devisees, and Assigns of Ambrose Luke of c/o Superintendent, BIA, Bethel Agency, P.O. Box 347, Bethel, Alaska, 99559, parties of the second part,

WITNESSETH, That said party of the first part, as such trustee, by virtue of the power vested in and conferred upon her by the terms of section 11 of the Act of Congress approved March 3, 1891 (26 Stat. 1095), the Act of Congress approved May 25, 1926 (44 Stat. 629), and the regulations thereunder and the patent issued to her thereon, by these presents does grant, convey, and confirm unto said parties of the second part and their heirs and assigns all the following lot, piece, and parcel of land situated in the townsite of Lower Kalskag, State of Alaska, described as follows, to-wit:

Lot Two (2), Block Eleven (11), Tract "A", as shown on the official plat of U.S. Survey 4414, Alaska, Lower Kalskag Townsite, as accepted by the Chief, Division of Cadastral Survey, for the Director on January 15, 1971, and located within the Kuskokwim Recording District.

Subject to the condition that the above-described land shall not be alienated or encumbered without the consent of the Secretary of the Interior, and shall not be subject to taxation, to levy and sale in satisfaction of debts, contracts, or liabilities, or to any claims of adverse occupancy or law of prescription, and subject to the further condition that there is reserved from the operation of this conveyance the land covered by the established streets and alleys extended upon and across the said tract.

According to the official plat of survey of said townsite, subject to rights and reservations in said patent expressed. To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, their heirs, executors, administrators, and assigns forever.

IN WITNESS WHEREOF said party of the first part, as trustee, has hereunto set her hand and seal on the date and year first above written.

In the presence of:

*Dora C. Baker*

*Gail Ozmina*  
Gail Ozmina, Trustee for the  
Townsite of Lower Kalskag,  
State of Alaska

*Angela Nichols*

Form 2560-7 (April 1977)

TRIPPLICATE

STATE OF ALASKA:

BE IT REMEMBERED, That on this 14th day of January A.D. 1988, before me, a Notary Public, came Gail Ozmina, to me personally known to be the trustee of said townsite of Lower Kalskag, and the identical person described in, and whose name is affixed to, the foregoing conveyance as grantor, and she acknowledged the execution of the same to be her voluntary act and deed as such trustee, for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year first above written.

*Allan J. Breitzman*

Allan J. Breitzman, Notary Public for  
Alaska, residing at Anchorage, Alaska

[SEAL]

My commission expires December 17, 1988

AFTER RECORDING PLEASE  
FORWARD TO THE GRANTEE

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
ALASKA STATE OFFICE  
Anchorage, AK

Annie Valka Young  
is the only heir  
of Ambrose Luke  
as determined by  
by BIA probate

NATIVE UNRESTRICTED TRUSTEE DEED

THIS INDENTURE, made this 5th day of August, in the year of our Lord one thousand nine hundred and ninety-three, by and between Martin Hansen, of the Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, Alaska, 99513-7599, as trustee for the townsite of Lower Kalskag, U.S. Survey Number 4414, in the State of Alaska, party of the first part, and Annie Valka Young, of 418 S. Flower Street, Anchorage, Alaska, 99508, party of the second part.

WITNESSETH, That the party of the first part, as trustee, by virtue of the authority vested in and conferred upon him by the terms of section 11 of the act of March 3, 1891 (26 Stat. 1095), the act of May 25, 1926 (44 Stat. 629), and the act of February 26, 1948 (62 Stat. 35), the regulations thereunder, and the patent issued to him pursuant thereto, by these presents does grant, convey, and confirm unto the party of the second part and her heirs and assigns, to have and to hold together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any way appertaining, all the following lot, piece, and parcel of land situated in the townsite of Lower Kalskag, State of Alaska, described as follows:

Lot Two (2), Block Eleven (11), Tract "A", as shown on the official plat of U.S. Survey 4414, Alaska, Lower Kalskag Townsite, as accepted by the Chief, Division of Cadastral Survey, for the Director on January 15, 1971, and located within the Kuskokwim Recording District. This deed is executed to remove the restrictions and conditions in the deed made by the grantor, the previous Townsite Trustee, Gail Ozmina, to said grantee of March 24, 1989, and recorded in Volume 22, Deeds, Page 22, Kuskokwim Recording District, Alaska, wherein the grantee was subject to the condition that the above-described land could not be alienated or encumbered without the consent of the Secretary of the Interior, and would not be subject to taxation, to levy and sale in satisfaction of debts, contracts, or liabilities, or to any claims of adverse occupancy or law of prescription, and subject to the further condition that there was reserved from the operation of this conveyance the land covered by the established streets and alleys extended upon and across the said tract. Although the deed of March 24, 1989 was issued to the Heirs, Devisees, and Assigns of Ambrose Luke, probate order No. IP SA 42N 77, issued by the Administrative Law Judge for the Department of the Interior, vested full interest in the lot to Annie Valka.

According to the official plat of survey of said townsite, and subject to rights and reservations in said patent expressed.

Subject to the condition that the said land shall not be liable to the satisfaction of any debt, except obligations owed the Federal Government, contracted prior to the issuing of this deed, and subject to the condition that there is reserved from this conveyance the land covered by the established streets and alleys extended upon and across the said tract.

**DUPLICATE**

IN WITNESS WHEREOF said party of the first part, as trustee, has hereunto set his hand and seal on the day and year first above written.

In the presence of:

Shirley Spurlock  
Cheryl Anzures

Martin Hansen  
Martin Hansen, Townsite Trustee for  
the Townsite of Lower Kalskag,  
State of Alaska

STATE OF ALASKA:

BE IT REMEMBERED, That on this 5th day of August, A.D. 1993, before me, a Notary Public, came Martin Hansen, known to be the Trustee of said townsite of Lower Kalskag, and the identical person described in, and whose name is affixed to, the foregoing conveyance as grantor, and he acknowledged the execution of the same to be his voluntary act and deed as such trustee, for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year first above written.

[SEAL]

Margaret J. McDaniel  
Margaret J. McDaniel, Notary Public for  
Alaska, residing at Anchorage, Alaska

My Commission expires February 23, 1997

Form 2560-8, (March 1973)  
(formerly 2242-7)

**DUPLICATE**

UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
JUNEAU AREA OFFICE

APPLICATION FOR AND CERTIFICATE OF COMPETENCY  
TO REMOVE RESTRICTIONS

Allottee: Annie Valka Young Date: 03/12/93

BIA No. \_\_\_\_\_ Agency KNA - Bethel

Application is hereby made for certificate of competency to remove restrictions for the following described lands:

Lot 2, Block 11, Tract "A", USS# 4414, Lower Kalskag, Alaska

containing 0.31 acres, more or less.

In justification of this application, true statements are made to the following items:

1. Age: 52 2. Date of Birth: 12/25/41

3. Degree of Indian Blood: 4/4 4. Married XXX  
Single \_\_\_\_\_

5. Education: Years in elementary school: 8

High School: None College: None

6. The following persons are dependent upon me for support: (Give names, ages, and relationship) None

7. I am enrolled to the Calista Regional Corporation.

8. Permanent Mailing Address: 418 So. Flower St.  
Anchorage, Alaska 99508

9. The amount of my annual income is: -0-

10. My income is obtained from the following sources: None



11. If receiving public assistance grants from the State or general assistance from the Bureau of Indian Affairs, or funds from the Veterans Administration, Social Security, or any regular public benefit, state kind and amount (if none, state none)

None

12. If indebted to the United States, or any other lending institution or individual person, state amount and purpose of indebtedness. (If not, state none)

None

13. I (~~do~~) (do not) live on or make personal use of the land covered by this application.

14. The land is leased and the annual rent received is -0-  
(If not leased, state none)

Annie Valka Young  
Signature of Applicant(s)

Date: 3/15/93

I hereby certify that I have investigated this request and that the effect of this application was explained to and fully understood by the applicant; I therefore recommend approval.

James G. Kramme Jr  
Realty Officer  
Date: 03/17/93

Based on the Realty Officer's report of investigation; the application is hereby recommended for approval.

Arthur Lehe  
Area Field Representative  
Date: 4/8/93

The application is hereby approved and the request for certificate of competency is granted. Annie Valka Young is hereby vested with full power and authority to sell and convey any or all above-described lands.

[Signature]  
Area Director Resing  
Date: 5/10/93

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

FORM APPROVED  
OMB NO. 1004-0028

Expires: May 31, 1990

SEE INSTRUCTIONS  
ON REVERSE

NATIVE INDIAN OR ESKIMO OF ALASKA  
TRUSTEE DEED APPLICATION

Acts of May 25, 1926 (44 Stat. 629) and February 26, 1948 (62 Stat. 35)

1. Name of applicant(s) (first, middle initial, last)

Annie Valka Young

Address (include zip code)

418 S. Flower St.  
Anchorage, Alaska 99508

hereby applies to the trustee for the townsite of

LOWER KALSKAG

, Alaska

for a  Restricted Deed  Unrestricted Deed to the following-described tract of land located in the above-named townsite

to the following-described tract of land located in the above-named townsite

Lot Number 2

, Block Number 11

Tract "A"

, U.S. Survey Number 4414

2. Are there improvements on this tract?  Yes  No (If "yes," describe)

3a. Give history of the occupancy of this tract (list others who have occupied this land, for what period of time, and how they acquired their interest; tell how you acquired your interest)

Annie Young inherited this lot from her father, Ambrose Luke, IP SA 42N 77  
( ODH included )

b. How many years does this history cover? 20 + years

4. Have you used and occupied this tract?  Yes  No (If "yes," give date) Approx. 1968

I HEREBY CERTIFY That there is no one living on, or claiming an interest in, this tract other than myself and that the statements made above are true and correct to the best of my knowledge and belief and are made in good faith.

\_\_\_\_\_  
(Date) 8/2/98

\_\_\_\_\_  
(Signature of Applicant) Annie Young

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Applicant)

STATEMENT OF TWO DISINTERESTED WITNESSES

(Witness must be a person who is not interested in the tract and not related to the applicant)

We,

and

hereby certify that we have read the above statements made by the applicant and from personal knowledge know that the statements made are true to the best of our knowledge and belief and are made in good faith.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Witness)

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

CERTIFICATION BY BUREAU OF INDIAN AFFAIRS  
(For Use in Unrestricted Deed Applications Only)

I CERTIFY That to the best of my knowledge and belief

is  is not competent to manage his own business affairs.

\_\_\_\_\_  
(Authorized Officer)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Title)

INSTRUCTIONS

Prepare in duplicate. Applications must be typed or printed plainly in ink. Submit original to Townsite Trustee and copy to BIA Area Director.

SPECIFIC INSTRUCTIONS

Item 1 - Application for either a restricted or unrestricted deed may be made. One of these blocks must be checked. See 43 CFR 2564.0-3.

The Paperwork Reduction Act of 1980 (44 USC 3501, et seq.) requires us to inform you that:

This information is being collected to establish the applicant's claim to lands under the specific Alaska Townsite law identified herein.

This information will be used to determine if the lands sought are available for conveyance and whether the applicant is an eligible claimant pursuant to the specific law and regulation under which the application is made.

The obligation to respond is required to obtain Trustee deed pursuant to the specific law and regulation under which the application is made.

G 12/13

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
ALASKA STATE OFFICE  
Anchorage, AK

NATIVE RESTRICTED DEED

DEED OF CORRECTION

THIS INDENTURE, made this 14th day of March, in the year of our Lord one thousand nine hundred and eighty-eight, by and between Gail Ozmina as trustee for the townsite of Lower Kalskag, in the State of Alaska, party of the first part, and Crim Evan and Polossa Evan (husband and wife) of P.O. Box 66, Lower Kalskag, Alaska, 99626, parties of the second part,

WITNESSETH, That said party of the first part, as such trustee, by virtue of the power vested in and conferred upon her by the terms of section 11 of the Act of Congress approved March 3, 1891 (26 Stat. 1095), the Act of Congress approved May 25, 1926 (44 Stat. 629), and the regulations thereunder and the patent issued to her thereon, by these presents does grant, convey, and confirm unto said parties of the second part and their heirs and assigns all the following lot, piece, and parcel of land situated in the townsite of Lower Kalskag, State of Alaska, described as follows, to-wit:

Lot Two (2), Block Four (4), Tract "A", as shown on the official plat of U.S. Survey 4414, Alaska, Lower Kalskag Townsite, as accepted by the Chief, Division of Cadastral Survey, for the Director on January 15, 1971. This deed is made in place of and as a Deed of Correction of the deed made by the grantor herein to said grantees dated April 12, 1974, and recorded in Book 22, Page 587 in the Bethel Recording District, Bethel, Alaska, whereas said deed had said Lot One (1), Block Four (4), whereas the correct Lot and Block is Lot Two (2), Block Four (4). This instrument is made by grantor and accepted by grantee herein in order to correct such mistake and is in all other respects confirming said former deed. This instrument to be recorded in the Kuskokwim Recording District in which the property is now located.

Subject to the condition that the above-described land shall not be alienated or encumbered without the consent of the Secretary of the Interior, and shall not be subject to taxation, to levy and sale in satisfaction of debts, contracts, or liabilities, or to any claims of adverse occupancy or law of prescription, and subject to the further condition that there is reserved from the operation of this conveyance the land covered by the established streets and alleys extended upon and across the said tract.

According to the official plat of survey of said townsite, subject to rights and reservations in said patent expressed. To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, their heirs, executors, administrators, and assigns forever.

IN WITNESS WHEREOF said party of the first part, as trustee, has hereunto set her hand and seal on the date and year first above written.

In the presence of:

Dora C. Baker

Gail Ozmina

Gail Ozmina, Trustee for the  
Townsite of Lower Kalskag,  
State of Alaska  
Form 2560-7 (April 1977)

Allan F. Britman

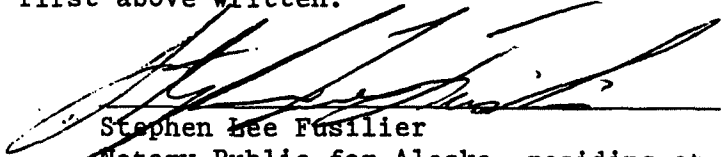
**TRIPPLICATE**

G 13/13

STATE OF ALASKA:

BE IT REMEMBERED, That on this 14th day of March, A.D. 1988, before me, a Notary Public, came Gail Ozmina, known to be the Trustee of said townsite of Lower Kalskag, and the identical person described in, and whose name is affixed to, the foregoing conveyance as grantor, and she acknowledged the execution of the same to be her voluntary act and deed as such trustee, for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year first above written.



Stephen Lee Fusilier  
Notary Public for Alaska, residing at  
Anchorage, Alaska  
My Commission expires March 10, 1991

H 1/3

6-3-83 Copy to City.  
10-3-86 John Gliva  
9-31-89 Copy to City<sup>D PA</sup>

TRACT BOOK

LOWER KALSKAG TOWNSITE

U.S. SURVEY 4414 TRACTS "A", "B", and "C"

Accepted by the Chief, Division of Cadastral Survey for the Director on

January 15, 1971

H 2/3

Tract A

LOWER KALSKAG TOWNSITE - U.S. SURVEY 4414 TRACTS "A", "B", and "C"

Lot No.	To Whom Deeded	Amount Paid	Receipt No.	Type of Deed	Date of Deed	To Whom Delivered
<u>BLOCK 3 (Cont.)</u>						
7	Diocese of Sitka & Ak., Orthodox Church in America	\$203.00	#34270	3/3/91	02/24/88	Kuskokwim District Rec.
8	City of Lower Kalskag			3/3/91	9/25/85	Dist. Rec.-Bethel
9	MUNICIPAL RESERVE City of Lower Kalskag			3/3/91	9/25/85	Dist. Rec.-Bethel

BLOCK 4

1	<del>Crim &amp; Polossa Evan</del> (Deed of Correction Issued for L 2, B4, Tr "A") ANNA G. EVAN			<del>5/25/26</del>	<del>4/12/74</del>	<del>BIA</del>
2	Crim and Polossa Evan husband and wife			5/25/26	1/14/88	Ak. Tit. Serv. Ctr.
3	Alexandria Evan			5/25/26	1/14/88	Ak. Tit. Serv. Ctr.

All restricted deeds are delivered to the BIA -  
AK Title Services Center is part of the BIA

H 3/3

Tract A

LOWER KALSKAG TOWNSITE - U.S. SURVEY 4414 TRACTS "A", "B", and "C"

Lot No.	To Whom Deeded	Amount Paid	Receipt No.	Type of Deed	Date of Deed	To Whom Delivered
<u>BLOCK 10 (Cont.)</u>						
5	Mary Valka			5/25/26	1/14/88	Ak. Tit. Serv. Ctr.
6	Paul Takumjenak			5/25/26	4/12/74	BIA
7	Wassilie M. & Stephanita Kameroff			5/25/26	4/12/74	BIA
8	Gregory Kameroff			5/25/26	4/12/74	BIA
9	Mary P. Kameroff			5/25/26	1/14/88	Ak. Tit. Serv. Ctr.
<u>BLOCK 11</u>						
1	Matfi Abruska			5/25/26	4/12/74	BIA
2	<del>Heirs, devisees, and assigns of Ambrose Luke</del> Annie Valka Young			5/25/26 & 2/26/48	<del>3/24/89</del> 8/5/93	<del>Ak. Title Serv. Ctr.</del> Kuskokwim Rec. Dist.
3	John & Anna Elia			5/25/26	4/12/74	BIA



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON 25, D. C.

C  
O  
P  
Y

March 16, 1953

TITLE TO STREETS AND ALLEYS IN THE CITY OF ANCHORAGE, ALASKA;  
PATENTS FOR THE STREETS AND ALLEYS IN THAT CITY SHOULD NOT BE ISSUED.

TOWNSITES -- STREETS AND ALLEYS -- PATENTS

The Federal Government has established many hundreds of townsites on the public lands, and sold lots in such townsites under conditions substantially the same as those existing in the City of Anchorage, Alaska, and all questions of title to the streets and alleys in such townsites have been left for determination by the local authorities, or in the courts. The same procedure should be followed in the case of townsites in Alaska.

Title to streets and alleys in a Government townsite may, under certain conditions, vest in the municipality, in trust for the public. The matter of enacting such legislation for Alaska is within the jurisdiction of the Territorial legislature.

In the absence of a statutory provision, as indicated, the lot purchasers become the successors in interest of the Government with respect to the ownership of the fee to the center of the streets and alleys abutting on their respective holdings in the city or town, subject to the use of the streets and alleys for the purpose for which they were dedicated.

No patent should be issued to the City of Anchorage, Alaska, for streets and alleys in that city.

Attachment

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HCA

Distribution: Regional Administrators, 2 each  
Regional Counsels 1 each  
Managers of Land Offices 1 each  
Chief, Division of Lands 2  
Solicitor's Office 2

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON 25, D. C.

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March 16, 1953

Memorandum

To: Regional Administrator, Region VII

From: Chief Counsel

Subject: Title to streets and alleys in the City of Anchorage, Alaska; patents for the streets and alleys should not be issued.

On December 31, 1952, you forwarded to the Director, for consideration by the Chief Counsel, an opinion of the Regional Counsel of the same date, concerning the title to streets and alleys in the City of Anchorage, Alaska. Your memorandum states:

"The City of Anchorage is naturally very anxious to obtain full title to the streets, in part because it will enable them to close certain streets now shown on the plat, but impossible or unnecessary to construct, and devote these lands to some other worthwhile public use, such as schools, parks, recreational facilities, etc. I personally feel that it would be a good idea to encourage them in this, and to remove such legal obstacles as may exist at the present time, particularly since I do not believe that it was intended that the U. S. Government should indefinitely retain title to the dedicated streets."

The opinion of the Regional Counsel contains the following statements as to the title to the streets:

"The adoption by the Government of a townsite plat and the sale of lots, as contemplated by the regulations just referred to, constitute a dedication to public use of the streets and alleys laid out on the plat of survey, 52 L.D. 558. In the absence of specific statutory provisions to the contrary, such a common law dedication results merely in creating an easement or public right

of user, while the fee to the land remains in the land owner. Harris v. Elliott, (U.S.) 10 Pet. 25, 9 L. ed. 333; Barclay v. Howell, (U.S.) 6 Pet. 498, 8 L. ed. 477; 4 Tiffany on Real Property, (3rd ed.), Secs. 1105 and 1112. The fee to the land may vest either in the abutting land owner or the original proprietor or dedicator: In the case of a townsite entered under the public land laws, patentees of abutting lots do not acquire the fee of adjacent streets or alleys, because, by the very nature of the proceedings, streets and alleys are already dedicated at the time the lots are sold, and the patents for these lots describe the land exclusive of the abutting streets and alleys. See: Loeber v. State General Electric Co., (Mont.), 39 P. 912, 913; 50 Am. St. Rep. 468. Neither does the municipality acquire the fee to streets so dedicated by the U. S. Government in the establishment of the townsite. See: Dubuque v. Maloney, 9 Ia. 450; 47 Am. D. 358."

The townsite of Anchorage, Alaska, was subdivided, and lots therein were sold, under authority of Executive Order No. 3489, of June 10, 1921, as amended (43 CFR. Part 297). The Executive Order was issued pursuant to section 1 of the act of March 12, 1914 (38 Stat. 305, 48 U.S.C. sec. 303).

The Federal Government has established many hundreds of townsites on the public lands and has sold lots in such townsites under conditions substantially the same as those existing in the case of the City of Anchorage. In no instance, however, so far as I am able to ascertain, has patent been issued to such a city for the streets and alleys therein. All questions of title to the streets and alleys have been left for determination by the local authorities, or the courts. The same procedure should be followed, in my opinion, in the case of townsites in Alaska.

The Regional Counsel stated his conclusion as follows:

"Accordingly, it is my conclusion that while at the present time vacating of a public street in the City of Anchorage would merely result in the reversion of the lands to the Railroad Townsite without incident authority of further disposal to the municipality by the Superintendent of Sales, (except perhaps by reservation, based upon a supplemental survey), such authority, as well as the power to convey to the municipal government

the fee to all existing public streets in the City of Anchorage, could be created by an executive amendment of the existing regulations, and without the need of further legislation, in the event that this should be deemed advisable and proper as a matter of policy."

The above conclusion is based, no doubt, on the fact that, in Alaska, there is no Territorial law providing that upon the recording of a townsite plat, and the sale of the lots in the townsite, title to the lands shown on the plat as streets and alleys shall vest in the municipality in trust for the public. In jurisdictions in which statutes of this kind have been enacted, it has been held that the fee title to the streets and alleys vests in the municipality in trust for the public and that all interest and control of the United States over the streets and alleys cease with the recording of the plat and the sale of the adjoining lots (United States v. Illinois Central Railroad Company, 154 U.S. 225 (1893)); Tiffany on Real Property, Third Edition, V. 4, Section 1112, Dillon on Municipal Corporations, Fifth Edition, V. 3, sections 1071 and 1072. The matter of enacting legislation of this kind applicable to townsites in Alaska is within the jurisdiction of the Territorial legislature.

In the absence of a statutory provision, as indicated, the rule generally followed by the courts in the States has been that a deed for a lot in a townsite, describing the tract by lot and block numbers, conveys to the grantee the fee of an abutting street to the center thereof subject to the rights of the grantor and his successors in title to use the same for the purposes of a way. (Dillon, Municipal Corporations, Fifth edition, V. 3, section 1084, 9 Iowa 450 (1859), cited by the Regional Counsel, seems to support that view. That case involved the Government townsite of Dubuque, in which the lots alone were sold, and the court stated:

" \* \* \* the city by virtue of the dedication by the United States, took no title to the streets; that it has no right to use them for its own purposes, nor to employ them for any purpose different from that for which they were designed; that subject to the public easement, the owner of the adjoining lots is the absolute owner of the soil of the streets, and retains his exclusive right in all mines, quarries, springs of water, timber and earth, for every purpose not inconsistent with the public right-of-way."

It is noted that Tiffany on Real Property, also referred to by the Regional Counsel, states in section 1113:

"As between the abutting owner and the original owner, it is generally held that the title reverts to the abutter, although this rule is not without exceptions."

It is true, as pointed out by the Regional Counsel that the common law rule is that the owner of land who grants an easement over it for a highway retains the ownership of the fee in the road, subject to the easement. If, however, the owner transfers the title to the entire tract subject to the easement, the interest of the owner in the fee in the road ordinarily would pass to his transferee. In Government townsites in which the lots above are sold, the lot purchasers are the transferees of the Government. As was said by the Supreme Court in the case of Barkley v. Howell's Lessee, 6 Pet. 498, 513, (1832):

"Where the proprietor of a town disposes of all his interest in it, he would seem to stand in a different relation to the right of soil, in regard to the streets and alleys of the town, from the individual over whose soil a public road is established, and who continues to hold the land on both sides of it."

Therefore, in the absence of a Territorial recordation statute such as was considered by the Supreme Court in the case of United States v. Illinois Central Railroad Company, mentioned above, the lot owners become the owners of the fee of an abutting street or alley to the center thereof, subject to the right of the public to use the same for the purpose for which the dedication was made. The situation, as pointed out in your above-mentioned memorandum of December 31, is different than that which exists in the case of a trustee townsite in Alaska affected by section 33 of the act of March 3, 1891 (26 Stat. 1099, 48 U.S.C. sec. 355), in which patent for the entire tract including the streets and alleys, is issued to the trustee.

In these circumstances, I am of the opinion that no patent should be issued to the City of Anchorage, Alaska, for streets and alleys within its limits, and that each case involving the closing of streets and alleys in the city, or other actions affecting them, should be left for determination by the local authorities, or the courts. Consideration should be given in each case to all the interest involved, including the interests of the United States, which owns certain lots and Federal reserves in the City.

/s/ Jacob N. Wasserman  
Chief Counsel

Approved:  
/s/ William Purvus  
Assistant Director

FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

ALEKNAGIK NATIVES LIMITED; )  
ALEKNAGIK CITY; ALEKNAGIK VILLAGE )  
COUNCIL; EKWOK NATIVES LIMITED; )  
EKWOK CITY COUNCIL; NONDALTON )  
NATIVE CORPORATION; NONDALTON CITY )  
COUNCIL; NONDALTON VILLAGE COUNCIL, )

NO. 87-4188  
D.C.# CV-77-200-JMF

Plaintiffs-Appellees, )

vs. )

OPINION

UNITED STATES OF AMERICA; DONALD P. )  
HODEL, Secretary of the Interior; )  
GAIL OZMINA, Townsite Trustee; )

Defendants-Appellants, )

and )

ENGLISH BAY VILLAGE COUNCIL; PORT )  
GRAHAM VILLAGE COUNCIL, )

Defendants-Intervenors- )  
Appellees. )

Appeal from the United States District Court  
for the District of Alaska  
James M. Fitzgerald, Chief Judge, Presiding

Argued and Submitted January 13, 1989  
Seattle, Washington

FILED: September 22, 1989

BEFORE: WRIGHT, TANG and WIGGINS, Circuit Judges.

Opinion by Judge Tang

TANG, Circuit Judge:

The Native Alaskan communities of English Bay and Port Graham  
are located in the southwestern tip of the Kenai Peninsula in

Alaska, approximately 140 miles south of Anchorage. The State of Alaska recognizes the Village Councils in English Bay and Port Graham as the governing entities in these unincorporated communities.

On July 17, 1987, the district court ordered the transfer of title of unoccupied townsite lands<sup>1</sup> held by a Townsite Trustee to the Village Councils. On appeal, the government challenges this order, arguing that such a transfer is inconsistent with the Alaska Native Townsite Act ("ANTA") and with a Department of the Interior regulation which permits the transfer of such lands only to incorporated entities.

The Village Councils argue that the regulation frustrates the purpose of the ANTA as well as the Federal Land Policy and Management Act ("FLPMA"), and that in the absence of municipal corporations in these communities, the Village Councils are the appropriate entities to receive title to the land.

We affirm and hold that the district court did not err in ordering the transfer of title.

I.

A. In 1891, Congress enacted the Alaska Townsite Act ("ATA") permitting the creation of towns out of public lands in Alaska by having townsite trustees hold land in trust. The ATA directed the Department of the Interior to "provide by regulation for the proper execution of the trust in favor of the inhabitants of the town site. . ." 26 Stat. 1099.

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<sup>1</sup>At issue are approximately 288 acres in Port Graham and 69 acres in English Bay.

Initial federal regulations established that the ATA included Alaskan Natives, Non-Mineral Entries in Alaska, 12 Pub. Lands Dec. 583 (1891). Natives, not then recognized as U.S. citizens, however, protested that the ATA oppressed them by permitting taxation of their property without affording them full participation in government. See Wrangell Townsite, 37 Pub. Lands Dec. 334, 334-35 (1908) ("[The Natives] have no voice in the government of the town. . . . They also object to being taxed for the government of the town or for the support of schools, as their children are not permitted to attend said schools."). The regulations were amended in 1908 to prohibit expressly the conveyance of townsite lots to Alaska Natives pending "future legislation." Alaskan Townsites -- Status and Rights of Indian Occupants, 37 Pub. Lands Dec. 337, 338 (1908).

In 1916, the Secretary of the Interior again amended the regulations and provided for the disposal of residual townsite lands in non-Native, incorporated communities:

After the public sale and upon proof of incorporation of the town, all lots then remaining unsold will be deeded to the municipality, and all municipal public reserves will, by a separate deed, be conveyed to the municipality in trust for the public purposes for which they were reserved.

Circular Instructions Relating to the Acquisition of Title to Public Lands in the Territory of Alaska, 45 Pub. Lands Dec. 227, 244 (1916). This regulation ("1916 regulation") remains in effect today, 43 C.F.R. 2565.7 (1987), and is at the crux of the instant appeal.

B. In 1926, Congress passed the ANTA to extend the townsite laws to Alaska Natives. 44 Stat. 629. Alaska Governor George



Alexander Parks had argued that "[t]here is nothing that would give [the Alaska Natives] more encouragement in their progress toward municipal government in their own settlements than the ownership of the land." Report of the Governor of Alaska to the Secretary of the Interior 37-38 (1925). One ANTA regulation provided that a trustee be designated to accomplish the purposes of the law. Survey and Disposition of Indian Possessions in Trustee Town Sites, Alaska, 51 Pub. Lands Dec. 501, 503 (1926). This regulation still applies to the townsites of Port Graham and English Bay. 43 C.F.R. 2564.0-4(b).

C. On October 21, 1976, in passing the FLPMA, Congress repealed the ATA and the ANTA. 90 Stat. 2744, 2789-90 (1976). Section 701 of the FLPMA contained a general savings clause which protected land use rights existing at the time of the enactment of the FLPMA. Pub.L. 94-579. We held that the FLPMA closed all townsites to new claims, but preserved "valid existing rights." *Aleknagik Natives, Ltd. v. United States*, 806 F.2d 924, 927 (9th Cir. 1986), *aff'g* 635 F. Supp. 1477 (D. Alaska 1985).

## II.

In 1977, three Native village corporations, established pursuant to the Alaska Natives Claims Settlement Act ("ANCSA"), 43 U.S.C. 1607(a), and other plaintiffs,<sup>2</sup> brought a quiet title and ejectment action against the United States, the Secretary of the Interior, and the trustee for the townsites located within the

<sup>2</sup>The plaintiffs were the Aleknagik City Council, the Aleknagik Village Council, and Aleknagik Natives Ltd.; the Ekwook City Council, the Ekwook Village Council, and Ekwook Natives Ltd.; and the Nondalton City Council, the Nondalton Village Council, and the Nondalton Native Corporation.

various communities including English Bay and Port Graham (the "federal defendants").<sup>3</sup> The district court dismissed the case for failure to exhaust administrative remedies. *Aleknagik Natives, Ltd. v. Andrus*, No. A-77-200 (D. Alaska August 16, 1978). On appeal, we reversed and remanded. 648 F.2d 496 (9th Cir. 1980). Following the remand, the Port Graham and English Bay Village Councils ("Village Councils") intervened, and adopted the position of the federal defendants in arguing that the lands were available under the ANCSA, 43 U.S.C. 1610(a)(1), and that the Townsite Trustee had an ongoing responsibility to administer the lands, despite the repeal of the townsite acts.

The district court granted summary judgment in favor of the federal defendants. 635 F. Supp. 1477 (D. Alaska 1985). The court held that unoccupied lands within the boundaries of a townsite were not available to ANCSA village corporations, and also that lands within pre-FLPMA townsites were unavailable to individual members of the communities for whose benefit the trust was established. On appeal, we affirmed. 806 F.2d 924 (9th Cir. 1986). One question then remained unanswered: whether unincorporated Native village councils are entitled to receive title to these residual lands.

The Village Councils filed a Motion for Reconsideration with the district court, asking whether village councils in unincorporated communities are eligible to receive a conveyance of residual townsite lands. The district court stayed consideration

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<sup>3</sup>The remaining defendants were individual non-Natives who entered or who intended to enter the townsite land.

of the motion for reconsideration and ordered the Village Councils to make formal application to the Townsite Trustee for the transfer of the lands. The Townsite Trustee reaffirmed her position that she had no authority to transfer the land to unincorporated entities. The district court reinstated the Motion for Reconsideration, and on July 17, 1987, ordered the Trustee to convey the residual trust lands to the Village Councils. The government appeals.

### III.

A. The central question in this appeal is whether the 1916 regulation, which provides that residual townsite lands be transferred to incorporated entities, bars the unincorporated Village Councils from taking title to the approximately 357 acres of land at issue. We affirm the district court and hold that the Village Councils may obtain title.

B. It is apparent that the 1916 regulation is inapplicable to the instant case. Section 1 of the ANTA did expressly provide that deeds are to be issued pursuant to the ATA and its regulations, which included the 1916 regulation. 44 Stat. 629, Section 3 of the ANTA, however, which pertains to this appeal, makes no mention of the applicability of any regulations:

That whenever [the Secretary of the Interior] shall find nonmineral public lands in Alaska to be claimed and occupied by Indians or Eskimos of full or mixed blood, natives of Alaska, as a town or village, the Secretary of Interior is authorized to have such lands surveyed into lots, blocks, streets, and alleys, and to issue a patent thereof to a trustee who shall convey to the individual Indian . . . the land so claimed and occupied. . .

We must assume that Congress' omission in Section 3 of the ANTA of any mention of the applicability of regulations was intentional. *Russello v. United States*, 464 U.S. 16, 23 (1983).

An examination of the historical context further underscores this interpretation. Under the ATA, non-Native townsites could obtain title to their residual townsite land only by providing proof of incorporation. Circular Instructions, 45 Pub. Lands Dec. at 244. According to Alaska law, communities with at least 400 residents could petition for incorporation. 1923 Alaska Sess. Laws, ch. 97, 1. As the government concedes, however, non-citizens could not petition or vote for incorporation. *Id.* Although Alaska Natives were purportedly made citizens of the United States under the Citizenship Act of 1924, 43 Stat. 253, the question of whether Alaska Natives were encompassed within the 1924 law was not resolved until 1932. See *Status of Alaska Natives*, 53 Int. Dec. 593, 605-606 (1932). Until 1932, therefore, when Alaska Natives were finally recognized as United States citizens, they could not incorporate their communities. 1923 Alaska Sess. Laws, ch. 97, 2.

When Congress enacted the ANTA in 1926, it extended the townsite laws to Alaska Natives. Considering that Alaska Native communities could not become incorporated when ANTA was enacted in 1926, however, it would certainly violate the purpose of the ANTA if Alaska Native communities were barred from getting title to residual townsite lands on the grounds of not being incorporated. Thus, it would be inappropriate for us to apply the 1916

regulation which bars unincorporated entities from obtaining title to residual townsite land in Native Alaska communities.

C. Furthermore, in repealing the townsite laws with the enactment of the FLPMA, Congress manifested an intent "to promote modern land-use planning and to eliminate the random community growth that had been typical under the federal townsite laws." *Aleknagik*, 635 F. Supp. at 1499. In furtherance of this Congressional intent with respect to the residual townsite lands, there is no meaningful difference between unincorporated village governments and incorporated municipalities.

#### IV.

The government argues that even if the 1916 regulation requiring incorporation is inconsistent with the ANTA, the district court exceeded its authority by ordering the transfer of land to the Village Councils. We disagree.

The district court's authority to adjudicate the claims of the Village Councils is derived from 25 U.S.C. 345. See *Hy-Yu-Tse-Mil-Kin v. Smith*, 119 F. 114, 115 (9th Cir. 1902), *aff'd*, 194 U.S. 401 (1904). That statute, originally enacted in 1894, provides, in part, that

All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment Act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereof in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any

law or treaty . . .; and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him, . . .

25 U.S.C. 345. Indeed, we have previously noted that this statute provides the district court with an independent basis of jurisdiction. See, e.g., *United States v. Pierce*, 235 F.2d 885, 887-889 (9th Cir. 1956). No valid purpose would be served by remanding this matter to the Department of the Interior.

Accordingly, the judgment of the district court is  
AFFIRMED.

David C. Fleurant, Esq., Carol H. Daniel, Esq., Anchorage, Alaska,  
for defendants-intervenors-appellees.

Robert L. Klarquist, Esq., Vicki L. Plaut, Department of Justice,  
Washington, D.C., for defendants-appellants.