



Tribal Fee Lands

BIA Tribal Providers Conference

Egan Convention Center, Anchorage

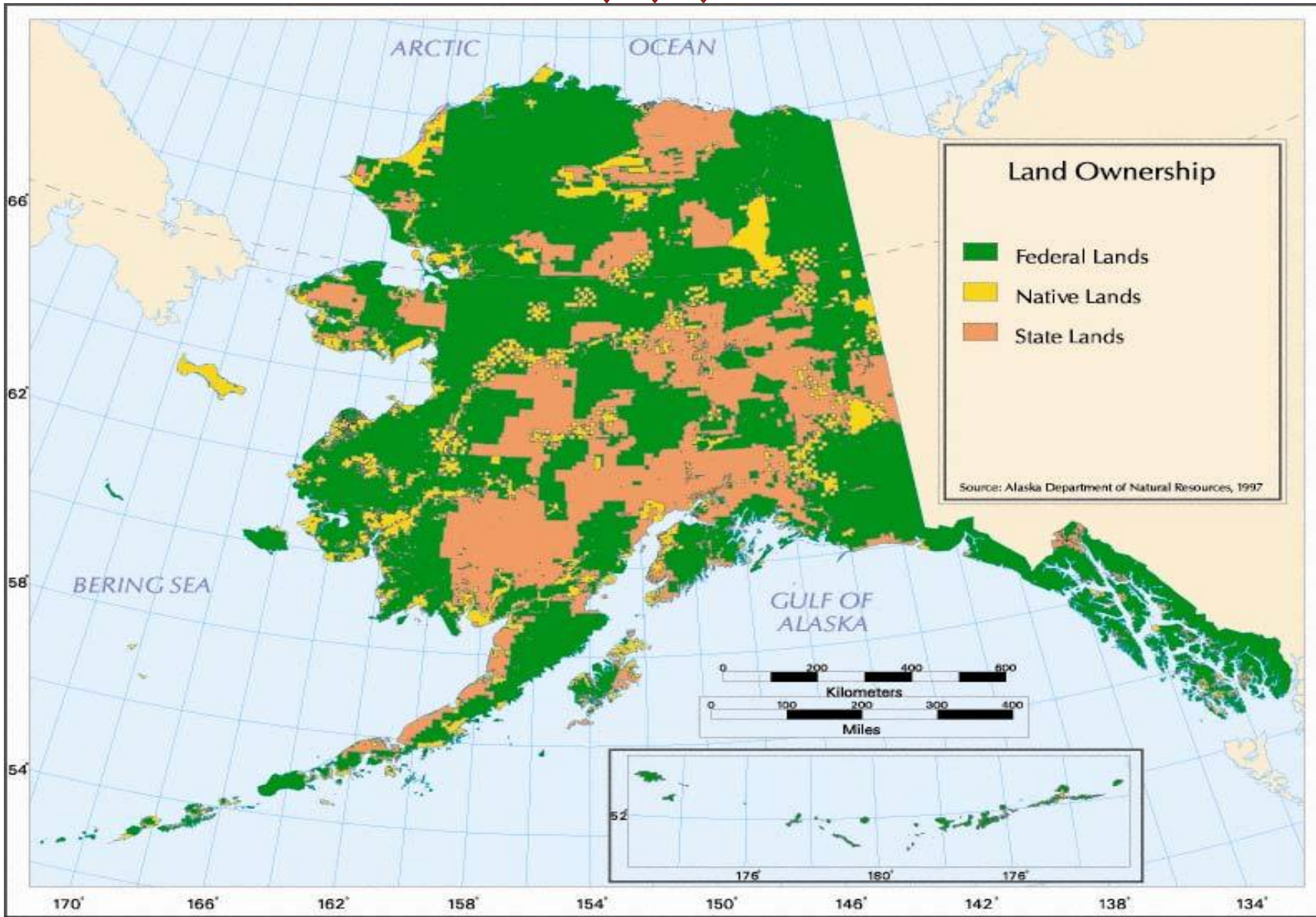
December 2010

**Prepared by Lisa Jaeger
Tribal Government Specialist
Tanana Chiefs Conference, Inc.
Fairbanks 1-800-478-6822
lisa.jaeger@tananachiefs.org**

“Land is like our parent. It provides us food, clothing and shelter. Without our land, we would be homeless, we would be like orphans.”



Louie Commack of Ambler
Village Journey, Thomas Berger



Source: *Alaska In Maps*

Categories of Alaska Native Land Holdings



- ◆ **Native Allotments (Act of 1906)**
 - **About 13 – 15 thousand Native allotments today**

- ◆ **Alaska Native townsite lands (Act of 1926)**
 - **About 106 Alaska Native townsites were created**

- ◆ **Alaska Native Claims Settlement Act (ANCSA) lands (Act of 1971)**

- ◆ **Reservations and other trust lands**

- ◆ **Tribal fee lands (land owned in fee simple title by the tribe – tribe or tribal council name is on the deed)**

Retribalization

Transferring land to a tribal government



Main ways tribes have retribalized land:

- ◆ **Land transferred from Bureau of Land Management (BLM) Alaska Native townsite program**
- ◆ **Purchases and gifts**
- ◆ **Land transferred from city governments**
- ◆ **Land transferred from village or regional corporations (surface)**

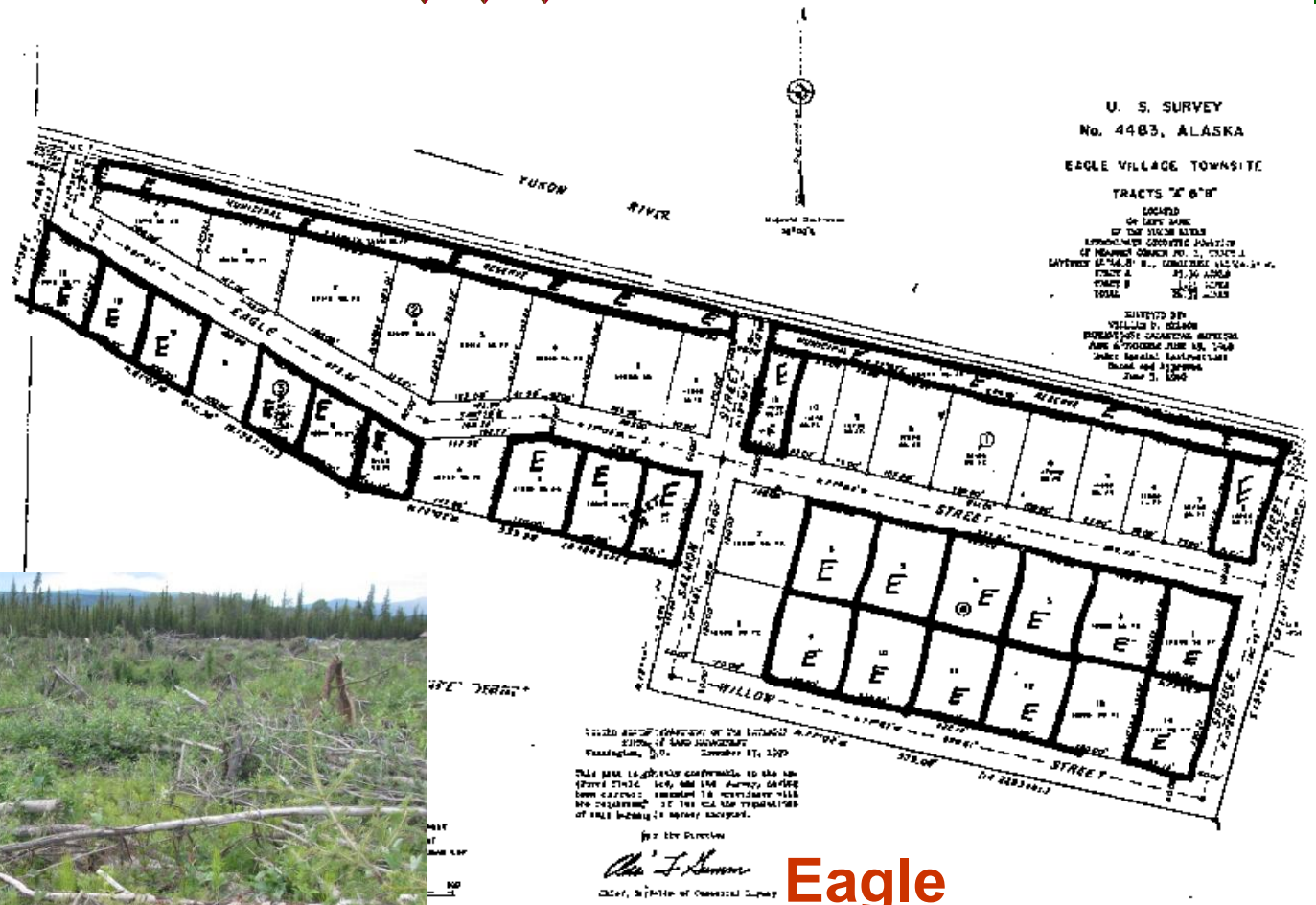
Alaska Native Townsites



- ◆ **'Townsite' refers to land in a community that is surveyed under federal townsite laws.**
- ◆ **The Alaska Native Townsite Act of 1926 was one of several different types of townsites in Alaska.**
- ◆ **Alaska Native townsites are different from other townsites because Alaska Native people could receive restricted titles.**
- ◆ **Although the townsites themselves remain, all townsite acts were repealed by the passage of the Federal Land Use Policy and Management Act (FLPMA) in 1976.**

- ◆ **The townsite laws were replaced by the provisions of ANCSA 14(c) in Native villages without townsites.**
- ◆ **In Alaska Native townsites where cities formed, vacant lots were transferred from BLM to the city government.**
- ◆ **Where no cities formed, BLM held the vacant lots in trust until BLM was ordered to transfer them to village councils in 1987 as part of a court case involving land in Aleknagik.**
- ◆ **There are 20 Alaska Native Townsites in the Tanana Chiefs Region, and some 106 Statewide**



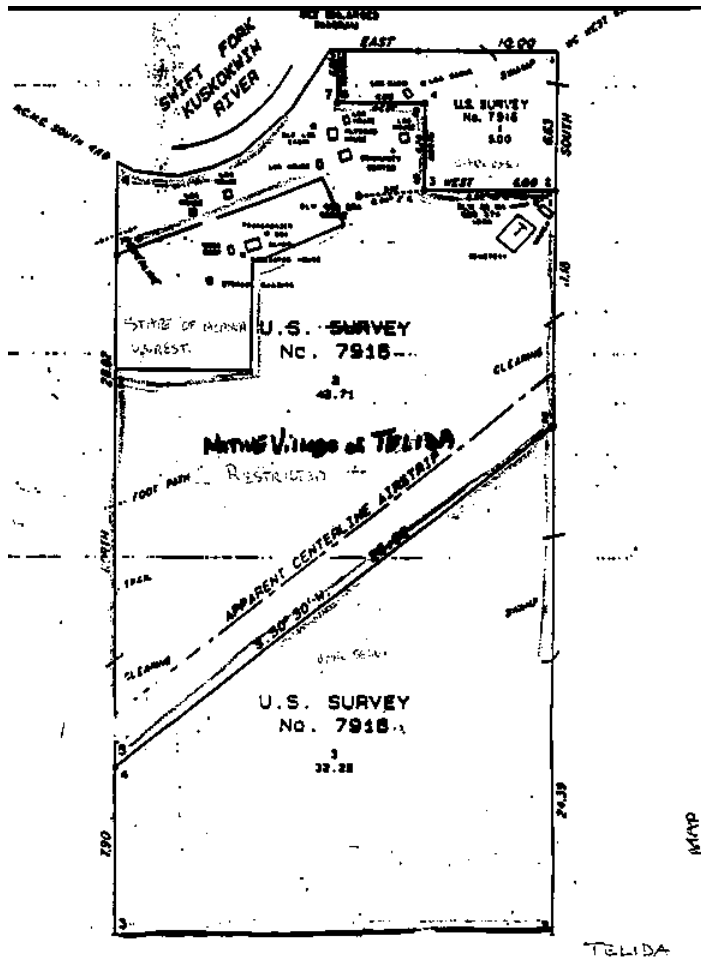


Eagle
Lots with an 'E' were transferred
to the tribal council
Alaska Native Townsite
Village destroyed in 2009 flood

Purchases and Gifts of Land



- ◆ **Some tribal councils have purchased land, although generally not in large amounts because tribal funds are limited.**
- ◆ **The most common purchases are of lots for council offices or buildings used for various programs run by the tribal council.**
- ◆ **Land is sometimes given to the tribe, typically for council offices or special lands such as in and around the village cemetery.**
- ◆ **There is a great deal of interest among tribes to purchase Native Allotments and restricted townsite lots when individuals are going to sell them.**



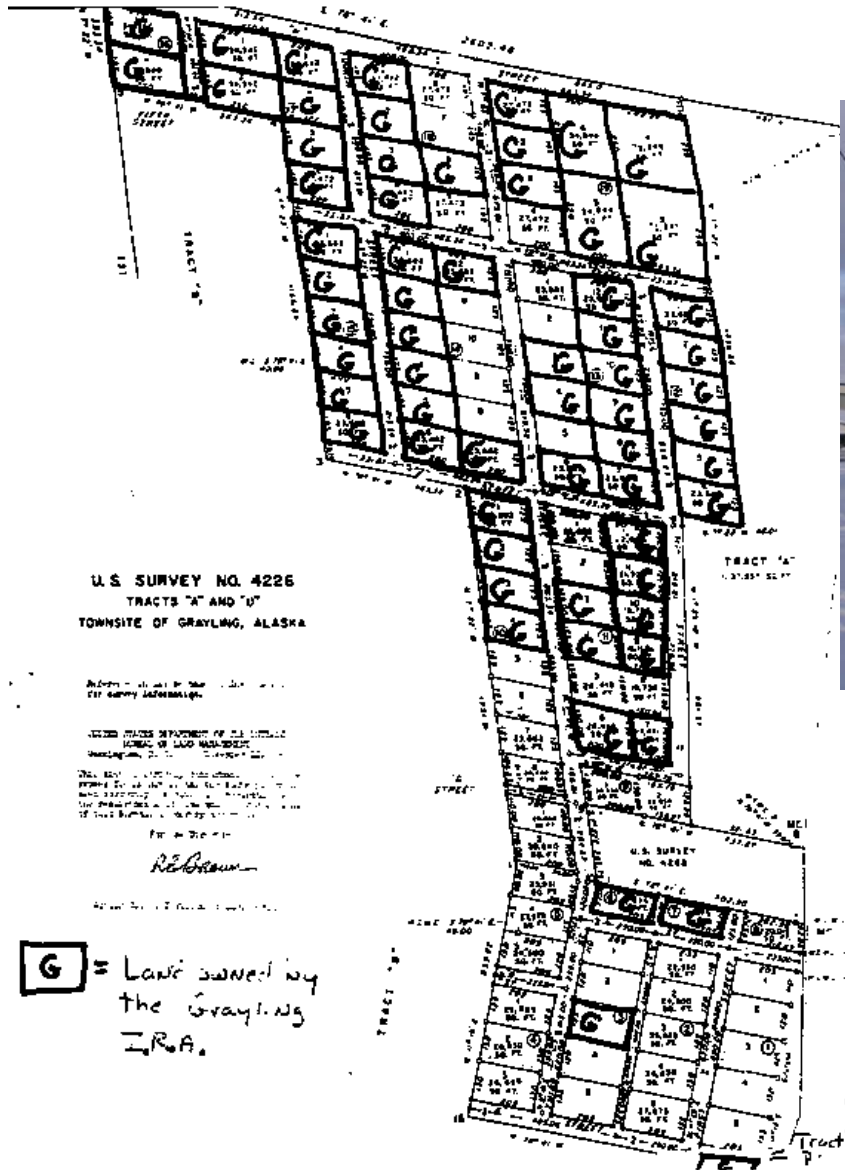
Telida

**Native Allotment
purchased by the Tribe**

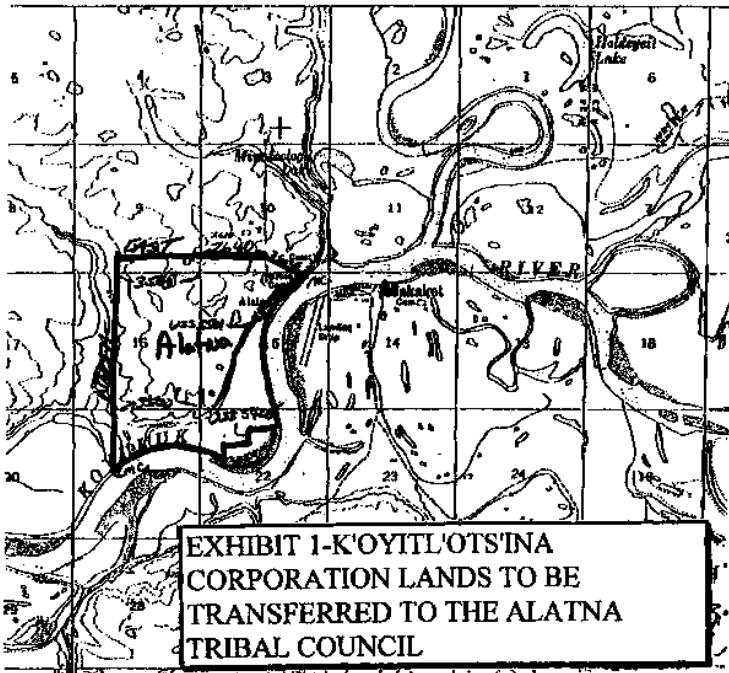
Transfers of land from city governments to tribal governments



- ◆ City townsite land transfers
- ◆ Transfers through 14(c)(3) of ANCSA
- ◆ Municipal land disposals are governed under AS 29.35.090, which requires that a municipality establish a formal procedure for disposal of land. [i.e. introduction of an ordinance proposing the disposal, 30 day or some such time period between introduction and a final hearing before the city council where the public has an opportunity to speak.]
- ◆ Judicial review of an municipal land transfer would likely focus on whether that procedure was followed or not [*Cabana v Kenai Peninsula Borough*, Op. No. 5594 (Alaska Supreme Ct., 7/12/02)]

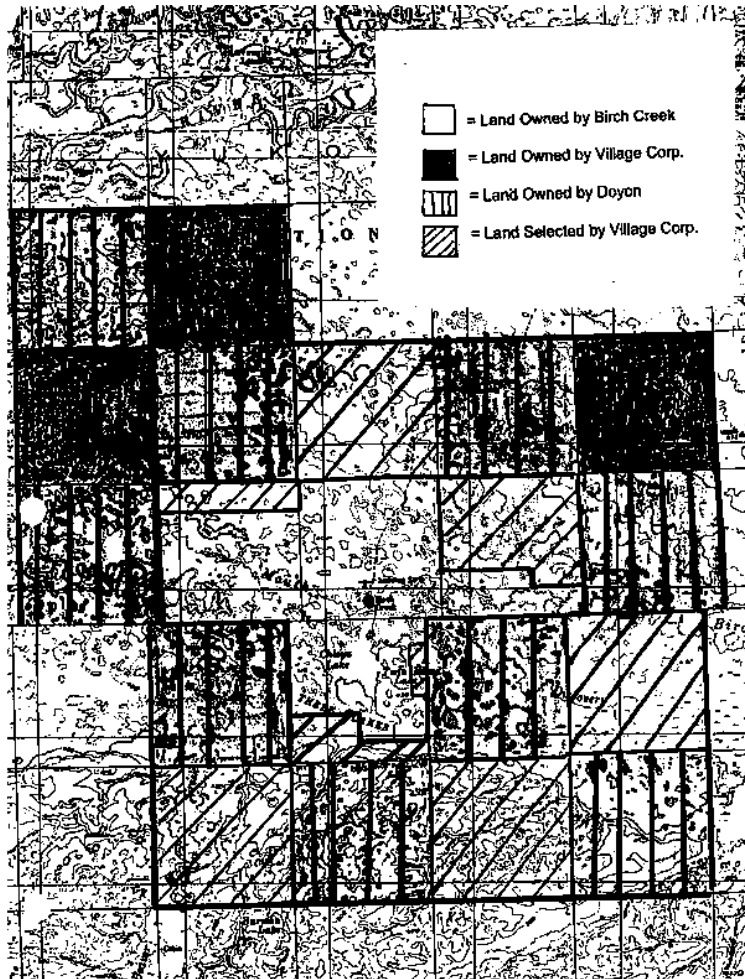


Grayling
Alaska Native Townsite
Lots with 'G' transferred from
City to Tribe



Alatna
In lieu 14(c)3
1,000 acres

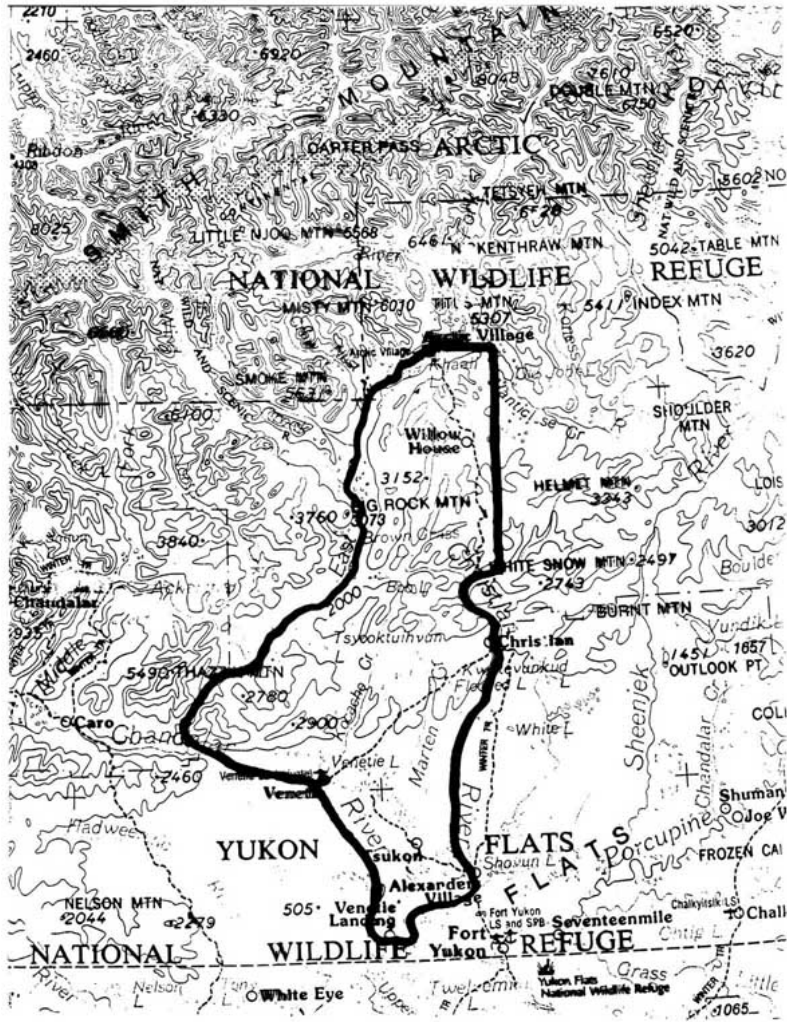
General land patterns created by ANCSA



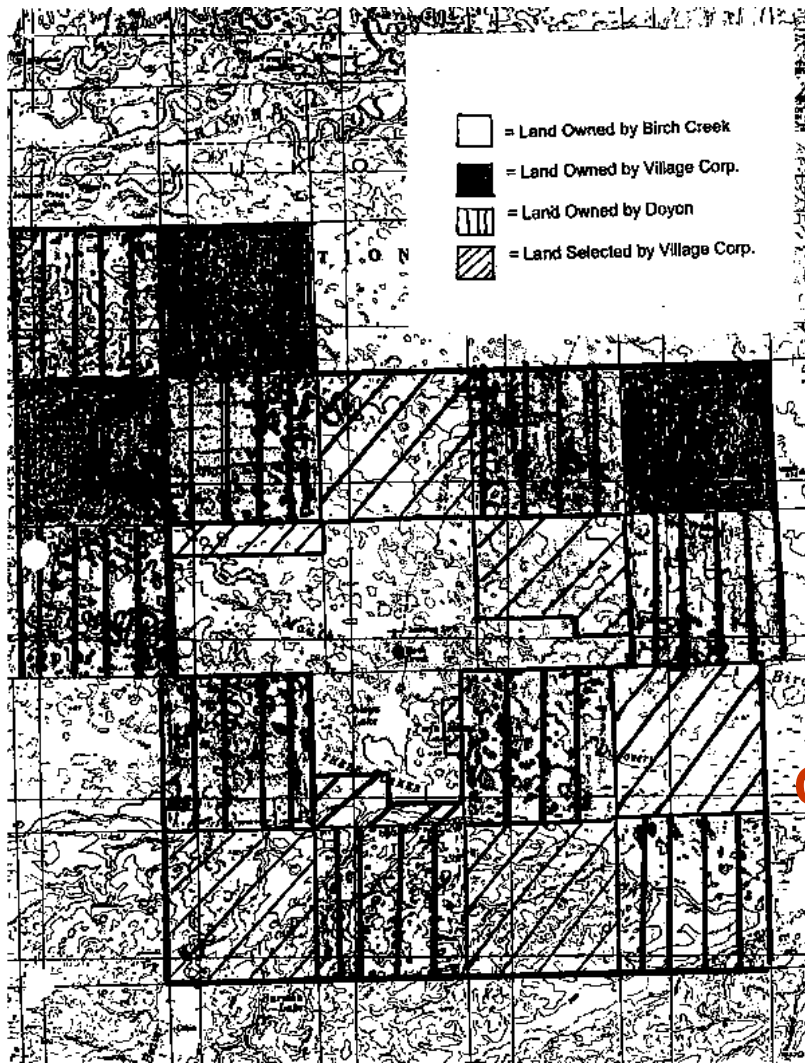
Land Transfers from ANCSA corporations to tribes

- ◆ **Neither ANCSA, nor any of its amendments, offer direct methods for transferring land from an ANCSA corporation to a tribe.**
- ◆ **Mechanisms that may be available under state law are somewhat clouded.**
- ◆ **However, some village corporations have transferred land to tribal governments and many are considering such action.**
- ◆ **The main reasons village consider this action is to promote local control over lands around the village, and to potentially protect land that is developed.**





Venetie
Former Reservation
Owned by Tribe in fee simple title now



**Birch Creek
Core Townsite transferred to Tribe
Alaska Native townsite**



Tribal Fee Lands



- ◆ Land owned in fee simple title by the tribe
- ◆ The tribe's name, or tribal council's name, is on the deed
- ◆ Land owned by a tribe in fee is different from an individual owning land in fee because of the unique nature of tribal status, such as their special relationship with the federal government and their sovereign immunity.
- ◆ The ruling by the Alaska State Supreme Court in the *Nome Eskimo Community* case (1989) held that land held in fee simple by the Nome Eskimo Community could not be taken away without their consent because they are organized under the Indian Reorganization Act (IRA).
- ◆ The ruling by the U.S. Supreme Court in the *Venetie Tax* case (1998) held that land owned by a tribe in fee simple title that has gone through ANCSA is not Indian country.
- ◆ Department of Interior regulations prevent taking tribal fee land in Alaska into trust.

Tribal Fee Land Management Issues

- ◆ **A most basic principle of tribal ownership of fee land is that it is owned by all tribal members, and managed by the tribal council for the benefit of the tribe.**
- ◆ **Tribes cannot issue restricted deeds, so they either issue fee simple deeds or keep the land in tribal ownership and use a permit system for living on or otherwise using the land. (tribal land assignments).**
- ◆ **Ordinances outlining management policies and procedures for tribal fee land should be adopted by tribal councils with input from tribal members.**
- ◆ **Tribal members may reserve the right to sell tribal land through a vote of the membership rather than allow councils to sell land without a vote from the members.**
- ◆ **Care must be taken to word waivers of sovereign immunity such that land is not put at risk.**

