

# 1991 bill isn't needed to transfer land

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for the *Tundra Times*

How can Alaska Natives best protect their land? One approach being evaluated in many villages is the option of transferring corporate land to tribal government ownership.

The transfer of corporate land to a tribal government does not have to be complicated. The 1991 debate has clouded the issue.

Many Alaska Natives believe that the only way to transfer corporate land to a tribal government is by including specific provisions for a land transfer in the 1991 amendments.

Fortunately, corporate land can be transferred to a tribal government even if the present 1991 bill passes without language authorizing a transfer. Under present laws, land can either be transferred by shareholder voting procedures or actions taken by the board of directors.

If there is a group of shareholders and tribal members that believe a transfer of corporate land is in the best interest of their village, then steps should be taken to inform all shareholders of the options available.

A joint effort by the tribal government and corporation to produce a series of newsletters documenting differences in land protection, jurisdictional powers, 1991 amendments and corporate law would be beneficial.

Newsletters could further encourage shareholder participation by discussing topics such as Indian country, sovereign immunity, self-determination, land bank protections and the differences between Lower 48 tribes and Alaska tribal governments.

Newsletters, village meetings, workshops and the use of guest speakers at annual meetings can be used to address shareholders' concerns relating to a possible land transfer. Whether it pertains to a land transfer on the village level or a statewide issue

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such as 1991, Alaska Natives have expressed repeatedly that they want to be kept well informed when it comes to decisions concerning their future.

For a transfer to be successful, a tribal government must be prepared to receive land. Tribal constitutions will have to be reviewed to ensure that this important document defines the territory over which the tribe has jurisdiction.

For example, a tribe might want to extend governmental power over all transferred, fee simple, purchased, donated or land otherwise acquired now and in the future. A tribal land use ordinance can also be adopted to further define specific jurisdictional rights concerning sale of land, ANC-SA 14(c), land leases, trespass, subsistence resources, development standards and zoning requirements.

Tribal ordinances that regulate membership enrollment and rights should also be reviewed under the constitution. Most Alaska Natives take it for granted that they are tribal members of their home villages and in most cases this is true.

However, what rights to the land they have as tribal members may need clarification. If they do not live in the village, do they have the same rights as the village tribal residents? Unlike corporations that are required by state law to treat shareholders equally

because of dissenters' rights, tribes have the ability to implement measures designed to achieve social justice.

Elders, low income individuals and tribal members living in the village can be given special treatment when a situation warrants it. Most tribal members would agree that this is justified. However, the rights of members should be clearly defined by tribal ordinances.

Management and protection of Native land requires a budget. If a village is discussing a land transfer, the tribal government might want to seek BIA funding. Soliciting a grant to train a tribal land administrator, hire outside expertise, set up a land department or establish an inventory of tribal resources are possible options.

Another approach would be to form a regional tribal organization to secure funds for the same purposes. An example of such a tribal entity is the Council of Athabascan Tribal Governments which was formed in Yukon Flats earlier this year.

A shareholder vote to transfer corporate land to a tribal government is not the only approach a village can take to accomplish a transfer. For village corporations that find it difficult to establish a quorum, it could take several votes over a period of years to obtain the necessary support to proceed with a land transfer. This

does not need to be the case. If the board of directors of a corporation believes it is in the best interest of the shareholders to transfer corporate land to the village tribal government, they can take a gradual approach by transferring land in small parcels over a period of time.

One corporation might want to transfer 50 acres within the village. Another might choose to transfer 1,000 acres of subsistence habitat land outside the village. If the corporation and tribal government are working together and have kept shareholders and tribal members well informed on transfer options and other important issues such as constitutional changes there should be minimal shareholder backlash.

A tribe does not need the whole corporate land base to start asserting tribal jurisdiction, providing benefits to members, initiating land protections and dealing with the day-to-day concerns of land ownership. Whether a tribe owns a small or large parcel of land, protecting the land is an ongoing job.

If a tribe does not have the administrative capacity to protect and manage a land base, it may not receive the support it needs to acquire corporate land.

On the other hand, a village government can secure shareholder support by taking action to improve its constitution, adopting new ordinances, defining membership rights and developing steps to assert tribal jurisdiction over its present or future land base.

The success or failure of a corporate land transfer will depend on many factors. A critical factor will be the ability of all parties concerned to focus on the common goal of protecting the Native land. This goal will require that the village corporation and tribal government work together in a way that will encourage shareholder participation.