

Part twenty-seven of a serial: limitation on selections, individuals and regional corporations

(Editor's Note: This is the twenty-seventh in a series of excerpts from the Alaska Native Land Claims book. It is the hope of the Tundra Times and Alaska Native Foundation that the publication of the series will further the understanding and implementation of all parties involved and affected by the claims Settlement Act. The book was released by the ANF in 1976 and was also made possible by a Ford Foundation grant. Robert D. Arnold edited the text. Authors include: Janet Archibald; Margie Bauman; Nancy Yaw Davis; Robert A. Frederick; Paul Gaskin; John Havelock; Gary Holthaus; Chris McNeil; Thomas Richards, Jr.; Howard Rock and Rosita Worl.)

Limitations on Selections Chapter 32

Villages were not free to select any lands they desired anywhere in the state. There were numerous requirements for selection set out in the act which had the effect of limiting the choices open to villages. In addition to these requirements, villages were limited by a lack of knowledge that would assist them in making choices. And there was yet another kind of limitation: the deadline by which selections were to be completed.

Village withdrawal areas

Villages were required to choose their lands from land withdrawn by the act for this purpose. By being withdrawn from the public domain, these lands were made unavailable to the State or others.

Each withdrawal consisted of the core township — an area of six miles by six miles — within which the village was located and additional townships surrounding it to satisfy each village's expected entitlement. Generally, but not always, this amounted to 25 townships.

Withdrawals were also made for village (and regional) selections at some distances from the core townships. These withdrawals were called "deficiency lands" because they were intended to make up for the fact that there was not enough public land adjoining the villages to satisfy their entitlements (St. Paul Selection, Map 27). Deficiency lands withdrawn were to be as close to the villages as possible and of similar character.

No lands patented to the State or owned by private parties were available for selection by villages. Villages could choose, however, as much as three townships in lands selected by the State but not yet patented to it (See Egegik selection, Map 26). Certain federal lands were not available.

Prior rights

Even within the areas withdrawn for village selection there were parcels of land which might be unavailable to the villages. These parcels could not be selected because of "prior existing rights."

There are several categories of rights established prior to passage of the settlement act. They include lands patented to others, federal holdings, valid mining claims, and lands under navigable waters.

Title to small parcels of land throughout Alaska had already been conveyed before the settlement act was passed. Under the Homestead Act, the Native Allotment Act, and other land laws, many hundreds of tracts were in individual ownership. About half of the villages had either obtained townships or had applied for them; none of these lands could be selected, unless (in the case of those not patented), villages withdrew their applications.

Many hundreds of tracts were also held for use by federal agencies — the Coast Guard, the Bureau of Indian Affairs, the Alaska Railroad, and others. Although the act required them to review their holdings and reduce them in size if possible, the holdings they said they required could not be transferred to villages.

Another category of prior rights is that of mining claims. At the time of passage of the act many thousands of such claims existed. Those patented could not be selected. Thousands of other claims were valid under the law and the miner had possession of the surface. Only claims which had been abandoned, in effect, could be selected by the villages.

Another limitation deriving from prior rights was State ownership of tidelands and the beds of inland navigable waters. The problem was the absence of definition of "navigable waters." If the old "highway of commerce" definition prevails, the Yukon and Kuskokwim rivers would be navigable for they were long used for transportation of goods; but what about thousands of lakes and streams used less extensively for noncommercial purposes by boat or by snowmachine? If the waters within a village's selection are navigable the land beneath is owned by the State; if the waters are nonnavigable, the land beneath is charged against

the village's entitlement (Craig-Klawock selection, Map 28). Disagreement over the definition of "navigable waters" was expected to lead to court action.

Other limitations

Three other limitations on village choice were requirements that selections be compact, contiguous, and, wherever possible, not fall below a specified minimum size.

Requiring that selections be compact meant that, generally speaking, villages could not choose long, narrow tracts along a stream, for instance. One test of compactness was whether lands similar to the village site were passed over in favor of more distant lands. Requiring that selections be contiguous meant that selections needed to be joined to one another, unless separated by land not available for selection or by a navigable waterway. Scattered parcels of desirable land could not be chosen.

Although entitlements were stated in townships, the only township that had to be chosen was the core — the one in which a village was located (Eyak selection, Map 29). The other requirement regarding size was that lands selected be in whole sections, and wherever feasible, in two-section parcels. A section is one square mile or 640 acres; 36 sections make up a township.

Special cases

There was an additional limitation upon villages located in a National Forest, part of the National Wildlife Refuge System, or on lands chosen by the State but not yet patented to it. These villages could select only 69,120 acres (three townships) within such areas. If they were entitled to more land, it had to be selected from deficiency lands (See Toksook Bay selection, Map 30).

Inadequate knowledge

While villagers knew better than any other persons what lands were needed for subsistence activities, food gathering was only one of several values important in land selection. They wanted to choose lands that would protect an existing way of life for themselves and their children, but they also wanted to assure that their choices would be best for their children's futures.

To choose wisely, villagers needed the expertise of geologists, foresters, wildlife managers, lawyers, recreation planners, economists, and many other disciplines. Apart from subsistence lands, villagers had many questions to answer. Which lands will increase in value over time? Which lands should be owned to protect other lands? What value do these stands of timber have? Will there be a port or other means to allow the shipment of the timber or other resources?

To varying degrees, village corporations were able to obtain some of the expert advice they needed. Probably none of them had as much knowledge as they wanted. And, even with expert advice, the burden of weighing and deciding still fell to villagers themselves.

Time

As villagers learned the provisions of the settlement act from regional corporations or consultants, they felt the pressures of time. All village corporations had three years in which to learn an extensive vocabulary, to gather an enormous amount of information, and to file for their lands. Furthermore, if lands chosen were to serve the goals of the village, lengthy discussions were needed to define village goals.

The time available for training villagers in the process of land selection was very short, given the complexity of the act and the large number of villages eligible to select land. Carrying out resource and economic studies, even with expert assistance, took time. Analyzing the results of studies performed and considering their implications for village lifeways took time. But the deadline was inflexible.

Owing to the significance of the choices represented in land selection, it was generally held that there was too little time to carry out the task well. One participant expressed concern that limitations of time, in too many instances, prevented adequate definition of village goals as a guide to land selection. Now he worries that the land selections may end up determining those goals.

Individuals and some others

Chapter 33

Although most of the land that is conveyed to Natives under the settlement act goes to corporations they own, perhaps 10,000 Natives are entitled by the act to become property owners as individuals. There are three ways in which this can take place: (1) by reconveyance by a village; (2) by individual application from those living at isolated locations; and (3) by obtaining an allotment filed for prior to passage of the act.

Natives whose permanent residences are in non-Native communities or outside the state are not entitled to obtain individual tracts of land.

Reconveyance: individuals

Most Natives who become individual landowners will receive their land by reconveyance from a village corporation.

Once village corporations receive title (patent or interim conveyance) to lands they have selected, they are, among other things, to reconvey parcels of land to individual occupants of such parcels. Specifically, they are required to give surface title at no cost to Natives and non-Natives who are using such parcels as:

- a primary place of residence;
- a primary place of business;
- a subsistence campsite, or
- a headquarters for reindeer husbandry.

Although there were about 49,000 Natives who considered their place of residence to be one of the 203 village corporations, it is not clear that all of them will receive tracts of village land. The act does not specify a date of occupancy which would entitle a person to an individual parcel. Some eligible corporations (such as Chenega) were formed at sites abandoned in 1964 following the earthquake. Furthermore, there is no definition of "primary" place of residence.

Persons who receive land from their village corporations may immediately sell or lease it. There is no restriction (as there is with stock ownership) against the sale of land. Individually held lands are subject to property taxes if they are developed or leased. If they are not, they are not subject to property taxes until 1992.



National Park Service (Robert Belous)

Ice fishing on the Kobuk River near Ambler.

Individuals receiving title do not obtain the subsurface estate. Except for the wildlife refuges and Naval Petroleum Reserve No. 4, the subsurface belongs to the regional corporation. In the case of those exceptions, it is retained by the federal government.

Reconveyance: others

Transfer of title to individuals is but one task of reconveyance imposed on a village corporation. It is also required to convey surface title to nonprofit organizations (such as churches) for tracts they occupy, either without cost to the organization or for what the land was worth when it

Fearing the impact, Mercurieff has urged an evaluation of the impact of reconveyance upon cultures and lifestyles before any reconveyance takes place.

Another persisting concern is that village corporations are immediately free to sell the lands they own, after reconveyance, even though stockholders may not sell their stock in the corporation. If the potentially most important asset of the corporation — its land — is sold, the stock could become virtually valueless by the time it could be sold.

Isolated locations

Only a small number of Natives will receive title under the act to tracts of land away from villages. Of 41 applications filed for such tracts by the deadline, 11 had been rejected by the end of 1974.

The act provided — in what was dubbed the "hermit clause" — that a Native whose primary place of residence was away from villages (or cities) could obtain up to 160 acres. He would own the surface estate and the subsurface would be owned by the region.

A Native could not acquire land under the Native Allotment Act and also under the "hermit clause." The problem for thousands of Natives was that delays in the processing of their allotments made them unsure whether to apply for isolated tracts under the act or not.

Native allotments

Nearly 7,500 applications were pending in 1974 for allotments of up to 160 acres filed for under the Native Allotment Act of 1906. The settlement act had revoked this earlier law, but had provided that applications for allotments made before its revocation would be honored.

Unlike lands acquired under the settlement act, Native allotments will be in a trust status. The Native obtaining the land will receive "restricted" title, rather than fee title. He may not sell or lease it without the approval of the Department of the Interior's Bureau of Indian Affairs. As long as it is so held, it may not be taxed. If the title is modified to "unrestricted" (at the allotment holder's request), the land becomes taxable.

The subsurface estate of all Native allotments to be granted will belong to the federal government.

Even though applied for under the 1906 law, lands granted as allotments would be charged to the 40 million-acre settlement. If all applications are approved, more than one million acres will be transferred to individuals as allotments. (While only 400,000 acres are earmarked for allotments, that acreage does not constitute a ceiling.) It is expected that it may be five years or more before all applications are reviewed and allotments approved or disapproved.

Regional Corporations Chapter 34

The 12 regional corporations will obtain title to the subsurface estate of 22 million acres on the basis of village selections. They may obtain the subsurface estate to perhaps another million acres on the basis of the special purpose grant. In addition, six of the corporations are entitled to select 16 million acres to which they will obtain title to both the surface and subsurface estate. No lands at all will go to a 13th regional corporation.

All 12 corporations: village subsurface

As title to the surface estate is transferred to village corporations, title to the subsurface of the same lands, generally speaking, goes to the appropriate regional corporations. Taken together, the regional corporations will own the subsurface of 22 million acres.

On the basis of village selections, Calista will obtain the most subsurface estate, and Sealaska, the least. Calista will

Next week

More on Regional Corporations and corporations as landowners

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continued next week . . .



Margaret Bauman

At Bering Straits Corporation stockholders' meeting, Emma Willoya asks the Bureau of Land Management to explain its work on allotments so that stockholders not fluent in English can understand.

was first occupied. It must also convey to the municipal, state, or federal governments surface title to lands where airports or air navigation aids are located. And it must convey to its municipal government no less than 1,280 acres of the remaining improved lands in the village; if there is no city government, this acreage is to be conveyed to the State where it would be held in trust.

As with individuals, there are many uncertainties surrounding these additional tasks of reconveyance. There is no deadline established. Which lands need to be conveyed to municipalities is not clear. Lawyers and land planners were urging early in 1975 that a set of uniform standards be developed to guide planning for reconveyance.

Other problem areas

Some land planners are concerned about the effect of reconveyance upon historic communal uses of land in villages. As Aleut Corporation land director Larry Mercurieff, for instance, has written:

Everyone recognizes that [the settlement act] institutes the new concept of property ownership on a mass scale. In most villages, there is recognition of the right of its citizens to their homes. Use of all other land within the community is recognized as a right of every citizen . . . This communal concept of land use within the village setting will be completely eliminated [with reconveyance] because the land within the village will be owned by individuals, not the community as a whole.



Arctic Environmental Information and Data Center

Simon Paneak of Anaktuvuk Pass discussing land use.