Part Twenty-eight of serial: Corporations and land owners, D-2 lands, subsistence and easements

(Editor's Note: This is the twenty-eighth in a serie of excerpts from the Alaska Native Claims Textbook. 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 Richareds, Jr.; Howard Rock and Rosita Worl.)

On the basis of village selections, Calista will obtain the most subsurface estate, and Sealaska, the least. Calista will have title to more than six million acres, because it has 56 village corporations and an enrollment of almost 13,500. Sealaska will have title to less than 208,000 acres, because its nine villages were limited to a single township each.

Although the total subsurface estate for regions equals village selections, it is not always beneath the specific lands selected by villages. The two exceptions are selections made in wildlife refuges or in Naval Petroleum Reserve No. 4. In those cases, the regional corporations will select an equivalent acreage from other lands designated for that purpose.

The 12 corporations will also obtain the subsurface estate in lands whose surface is acquired (1) by groups, (2) by individuals under the "hermit clause," (3) by local corporations in the four named cities, and (4) by the regions themselves as they select historical places or cemetery sites. Almost 600,000 acres were earmarked for these purposes.

Subsurface rights

As noted earlier, the regional corporation's development and removal of minerals from village lands is subject to the consent of the village corporation. This requirement is a departure from traditional property law, in that the owner of minerals, generally speaking, has the right to remove minerals as long as he pays compensation for damages to the surface.

One subject of considerable uncertainty is whether sand and gravel are part of the surface or subsurface estate. Court decisions have held that, depending upon the specific situation, they sometimes are and sometimes they are not.

All 12: surface

All 12 corporations will obtain title to some surface estate as well as subsurface. This is provided for as part of the two million-acre special purpose grant. These special purposes, it will be recalled, are as follows:

500,000 acres — Native groups, individual Natives at isolated locations, cemetery sites and historic places;

92,160 acres — One township each for Native corporations at Juneau, Kenai, Kodiak and Sitka;

400,000 acres — Native allotments filed for before passage of the settlement act.

One way all regional corporations will acquire the surface estate to land is in their selection of cemetery sites and places of historical or cultural significance. For this purpose (and for the other two cited above) the 500,000 acres is allocated among the regions, part of it divided equally among the 12 and part of it on the basis of population. The maximum acreages available to regions range from Ahtna's 27,800 acres to Sealaska's 65,000 acres.

The second way in which all regional corporations will acquire surface estate in lands is also through the special purposes grant. The total acreage for the preceding purposes will be subtracted from two million acres, and whatever remains is to be divided among the regions on the basis of their enrollments.

Six regional corporations

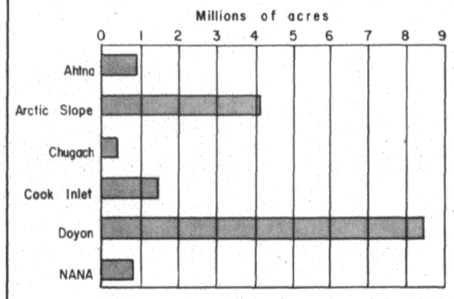
The 16 million acres earmarked for selection by regional corporations will go to only half of them. The reason for this is that these regional allocations are to be principally based upon how large a land area was claimed rather than how large a Native population lived within the claimed area.

Provision for regional land selection on the basis of land rights given up had been made at the urging of regional associations (especially the Arctic Slope), which claimed use and occupancy of enormous areas of land but whose populations were small. They had successfully argued that a land claims settlement should not be based simply upon the number of people involved or their subsistence needs, but should be based upon the amount of land claimed by the region. If the provision had not been made a part of the act, some of the largest regions would have received title to the smallest amounts of land.

Broadly told, the complex "land loss" provision allocates the 16 million acres to specific regional corporations the difference between what each would have gotten on the basis of its land area as related to the state land area, and what its villages are getting on the basis of their populations. Five corporations with small areas but large populations are thereby excluded from sharing in the "land loss" grant. Sealaska was excluded because of its earlier Court of Claims settlement.

The six corporations entitled to share in the 16 million acres are Arctic Slope, NANA, Doyon, Ahtna, Chugach and Cook Inlet. Their estimated entitlements range from about 336,000 acres for Chugach to about 8.5 million acres for Doyon.

FIGURE 20
ESTIMATED DISTRIBUTION
OF 16 MILLION ACRES OF LAND TO 6 REGIONAL CORPORATIONS IN ALASKA
(Surface and sub surface)



Subject to change upon formation of the 13th regional corporation.

Source: Land Distribution Chart, "Alaska Native Management Report," March 31, 1975

Selections made by the six corporations are to be made from the village withdrawal areas in a checkerboard pattern of townships. Knowing this, their villages often selected in a similar pattern to allow regional selections in between (Chitina selection, Map 31). If sufficient land is not available in the village withdrawal areas, regional corporations may choose any arrangement of townships in designated deficiency areas.

Regions may not acquire land already patented to others or having other valid claims upon it. An additional limitation is that regions may not select lands which the State is in the process of acquiring.

Both the surface and subsurface of these 16 million acres will be owned by the six corporations. Their selections are to be completed by December 18, 1975. Once they have title, they are free to lease or sell just as any other owner of land is.

As with lands acquired by Native individuals and village corporations, property taxes may not be levied until 1992, except for tracts which are developed or leased. Taxes may be levied before then upon profits from sales or leases of land.

Corporations as Land Owners
Chapter 35

As land is conveyed to village and regional corporations, a range of responsibilities falls to the new landowners — the regional and village corporations. The responsibility of land selection had been a heavy one. But, as Richard Atuk, land director for the Bering Straits Regional Corporation, told the 1974 AFN convention, "The biggest job is coming up — land management."

One responsibility of a village corporation once it obtains its land has already been described: it must reconvey tracts of land to individuals, organizations, and government. Village corporations also have other responsibilities which are a follow-on to their land selection activities — recording title to land, determining the value of lands for accounting purposes, planning for the second round of land selection, and other activities. Further, all Native corporations are required to pay property taxes (where property taxes exist) on lands which are developed.

These and other land management activities are required by the settlement act or by general law. But land management goes much beyond meeting legal requirements; it is concerned with what is done with land at what locations and under what controls. While this book is not the place to treat the complex issues of land management, it is possible to suggest some of the issues involved.

Apart from requirements imposed by law, the task of land management is to direct or control events to achieve the goals of a corporation regarding its land. If a corporation wants to sell its lands, for instance, the land manager will try to do so; if it wants to keep its lands, he will plan for their retention. The choices are, of course, far more numerous than these two.

Although Native corporations are free to sell part or all of their lands, none were declaring the sale of land to be a goal by 1975. Instead, corporations were emphasizing the desirability of retaining their lands. If the land is to be retained, issues will arise over the uses of the land.

Possible uses may be seen by looking at a few goals of one corporation affecting land. These are from the Calista annual report for 1974:

- Establish within Calista Corporation land department a permanent Renewable Resource Division to continuously research and develop means and ways to protect to the maximum the subsistence lifestyle of Calista people.
- Investigate recreational development in prime geographic areas of the region.
- Establish long-range planning for development of subsurface resources of the Calista Region bearing in mind constantly that the first priority of consideration is to maintain the natural state of the land.
- To provide full support for revitalization of the reindeer industry in our region.

Pursuit of goals like these involves not only land issues, but questions of costs and calculations of profits discussed earlier.

One kind of use of Native lands that did not require any policy action by a corporation was food-gathering by Natives for subsistence. But, as will be shown, even this use requires a land management approach.

NOTICE

"We are once again reminding all persons (excluding persons who are enrolled in the Bethel Native Corporation) that no fish camps or buildings of any sort may be built on any land claimed by Bethel Native Corporation, unless said person or persons first get Native people permission. This includes cutting of brush, alder, or cottonwood for purpose of smoking of fish or otherwise. Any person wishing to build as above mentioned will have to appear before the Bethel Native Corporation Board of Directors where written permission may be obtained. Edward Hoffman, Sr., President and Lucy Crow, Secretary."

Source: Legal notice from the *Tundra Drums*, June 7, 1975.

Fishing, hunting, harvesting plants and berries, and other gathering activities are heavily relied upon by most rural Natives for their subsistence. Living off the land is not only traditional, but — owing to the scarcity of cash income — it is required.

But preservation of subsistence opportunities may be threatened by other uses of Native lands. Any large-scale development tends to cause a migration of birds and animals away from the development. Further, public use lands neighboring Native lands may become unavailable for subsistence hunting and fishing.

Development of lands is a second kind of use which corporations are considering. Such development might mean the sale of timber for lumber and construction of a mill. It might mean drilling for oil, finding it, and building a pipeline to take it out. Or it might mean building a hotel or wilderness camps to encourage tourism.

As these illustrations suggest, any proposed use of land has implications for other possible uses. If tourists are encouraged to come to an area to fish and hunt, there will be less fish and game for local people. If coal or oil is sold by a regional corporation, it is likely to mean substantial disruption of the surface.

Although corporations have much freedom in deciding what to do with their lands, there are limitations. First, all village corporations need to submit their plans to their regional corporations for review. Second, federal or State laws may limit uses indirectly, as they do with requirements that stream water quality be preserved. Third, lands of corporations which are in boroughs or in cities with zoning powers are subject to governmental controls over use. Such powers of zoning give the local government the authority to designate some areas for industrial use, for instance, and other areas for residential use.

Finally, Native corporations need to concern themselves with the uses of neighboring lands, and their neighbors need to care about uses planned by corporations. Cooperative agreements regarding land use may be employed to benefit

Ahtna, Inc. (Frank Flavin)

Tazlina village corporation president, Robert Marshall, accepts title to 150 acres from Daryll Fish of the Bureau of Land Management. At left is Robert M. Goldberg, attorney for Ahtna, Inc.

neighboring landowners. Because most land uses have impact beyond single owner property lines, it was expected in 1975 that State control over land use might be substantially expanded.

In 1964 Alaska's Congressman had doubted the necessity of conveying land as part of a settlement, saying, "It would just lie there." What was clear in 1975 was that even letting the land "just lie there" would require land management.

The Public
Chapter 36

Although the title of the settlement act makes plain that its subject is land for Natives, it also provides for land or rights to land to a much larger group of people — the public.

First, the act provides for selection of national interest lands and classification of others on behalf of the public. Second, it provides a means — easements — for assuring rights of limited access for the public across Native lands. Third, it requires village corporations to convey some of their land to municipalities for growth and expansion.

National interest lands

About 83 million acres has been withdrawn by the Department of the Interior for possible designation as National Parks, Forests, Wildlife Refuges, and Wild and Scenic Rivers. The Congress, which received the recommendations of Interior in December, 1973, must act upon them before December, 1978.

Because the withdrawals were made under Section 17(d)(2) of the settlement act, they are usually referred as the "(d)(2) lands."

The recommendations consist of 28 separate proposals ranging in size from 70,000 acres to over eight million acres. Among other things, they include proposals for three new National Forests, three National Parks, six Wildlife Refuges, four National Monuments, and additions to existing systems.

Management policies for different parts of these national systems vary, but they do place restrictions upon the activities which may be carried out within. For instance, mining and hunting are not generally permitted in National Parks.

In part because of such restrictions, the State of Alaska and private development interests complained that too much land would be removed from possible development by the national interest withdrawals. Of greater concern to village Alaskans, however, was the possible impact of the establishment of the national systems upon subsistence.

Subsistence

Concern over subsistence is greatest with regard to the nearly 63 million acres proposed as additions to the National Park and Wildlife Refuge systems. These proposals provide for continuation of subsistence activities, but also for their possible curtailment. They say, in part:

> . . . existing traditional subsistence uses of renewable resources will be permitted until it is demonstrated by the Secretary [of the Interior] that utilization of these resources is neither economically or physically necessary to maintain human life nor necessary to provide opportunities for the survival of Alaskan cultures centering on subsistence as a way of life.

The conditions which might bring an end to food-gathering activities raise as many questions for Natives as they answer. At what point, for instance, are the lands' resources no longer "economically or physically necessary to maintain human life"?

Further, the proposals allow the restriction of subsistence uses if they threaten "a progressive reduction of animal or plant resources which could lead to long-range alterations of ecosystems." This was likewise a worrisome provision to Natives who continue to rely upon the land for subsistence.

In 1971 when the settlement act was passed about 48 million acres were devoted to National Parks, Forests, and Wildlife Refuges. Approval of the pending recommendations would raise the total land area set aside to about 130 million acres, more than one-third of the state's total land area of about 374 million acres.

Another withdrawal made in the name of the public interest consists of the 60 million acres set aside for study and classification. These lands, dubbed "(d)(1)" on the basis of their location in Section 17 of the settlement act, are made up of all lands in Alaska not withdrawn for other purposes or transferred to others. The effect of the "(d)(1)" withdrawal was expected to be protection of the public interest by preventing entrance by homesteaders or others until the lands were classified for specific uses.

Easements

A second way in which the settlement act provides for land rights for the public is through its requirement that easements be reserved on Native lands. Such easements would allow limited public uses of specific parts of lands conveyed to Natives.

Under the act easements were to be identified (1) across lands selected by Native corporations, and (2) at periodic points along the courses of major waterways. They would have to be "reasonably necessary" to guarantee, among other things, a full right of public use and access for recreation, hunting, transportation, utilities, and docks.

As the Federal-State Land Use Planning Commission (established by the act) began its task of recommending standards for the identification of easements, it became clear that there was much room for disagreement. How wide should such easements be? What are "major waterways"? How many easements are "reasonably necessary"?

When, in early 1975, the Bureau of Land Management issued its preliminary system for transportation and utility corridors — a form of easements — Natives were shocked. For corridors alone the federal agency was proposing more than 11,000 miles of easements, many crossing Native lands. At hearings called on the subject, Roger Lang, then president of AFN, charged that the burden of proving the necessity of easements was on those proposing them. Natives should not have to prove, he said, that they were unnecessary. He pointedly asserted that:

> Congress clearly did not intend in the Act to grant Natives a right to select lands from the public domain and then permit federal agencies to take the land back by calling their uses 'easements.'

Next week —

Shaping the Future