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INTERNATIONAL RIGHT OF WAY ASSOCIATION
ANCHORAGE, CHAPTER 49

Presents

LAND TITLE IN RURAL ALASKA

Anchorage, Alaska
November 18, 2004

This training material was originally developed by combining various materials previously developed by Dan Beardsley and Jay Sullivan for Chapter 49 of the International Right of Way Association and materials developed by the Municipal and Regional Assistance Division of the State Department of Community and Regional Affairs. Rick Elliott updated materials, added new material, prepared it in this format and developed the exercises. Thanks to Alice Ruby, Paul Roehl, Al Breitzman, Sam Means and Keith Jost for reviewing the material and making valuable recommendations and suggestions for improvements. This material is updated on a yearly basis.

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LAND TITLE IN RURAL ALASKA

I. SOURCE OF TITLE

A. **SOVEREIGN** - A body in which independent and supreme authority is vested. The supreme power of a nation or a state which has jurisdiction over the land within its borders. All title to real property is derived from the sovereign power.

1. **The United States of America** - Public lands which have not been patented to the States or private individuals or organizations are held by the sovereign United States of America.

2. **Russia** - Certain lands within the State of Alaska derive their title from Russian grants, which were recognized and protected by the Purchase Treaty with Russia of 1867. – there are a few of these

3. . **The State of Alaska** - By the Alaska Statehood Act, Public Law 85-508 of July 7, 1958, the State of Alaska was granted the right to select and receive patent to nearly 103 million acres of federal lands within the boundaries of the State of Alaska. Portions of those lands have been patented to the State, some have been tentatively approved for patent, and some have been selected for patent.

4. **Municipalities** - Under provisions of Alaska Statute 29.65.010-.140, municipalities were granted the right to select certain state lands within their municipal boundaries. Some municipalities are also entitled to land conveyances from the Native village corporations under the provisions of Section 14(c)(3) of the Alaska Native Claims Settlement Act (ANCSA) of 1971.

5. **Tribal Governments** - Most tribal governments in Alaska do not have paper title to land. However, the federal courts have held that tribal governments do legally exist in Alaska and that tribal governments do have sovereign powers, including the powers of taxation and land regulation. However, the decision of the U.S. Supreme Court (***Alaska v. Native Village of Venetie Tribal Government, No. 96-1577, February 25, 1998***) may have limited the jurisdiction of tribal governments by the finding that land conveyed to corporations under the Alaska Native Claims Settlement Act (ANCSA) is not "Indian Country" and thus not subject to tribal jurisdiction. -Kipnuk is an example

B. **GRANT, PATENT OR DEED** - Land is conveyed into private ownership primarily by grant from the sovereign (such as the Russian grants in Alaska), or by patent from the federal government or the state, or by deeds from the municipalities.

C. **ENTRY** - When land is under the jurisdiction of the federal, state or municipal governments, certain laws allow private individuals and entities to acquire specific rights. Native allotments, homestead entries and mining claims are examples of these types of entries on federal lands. PLO - date that use of land commenced.

D. **ANCSA CONVEYANCES** - The Alaska Native Claims Settlement Act (ANCSA) introduced private land ownership in Alaska on a large scale: over 44 million acres of land has, or will be conveyed to nearly 200 village corporations and 12 regional corporations. Although ANCSA became law on December 18, 1971, it was several years before Native corporations started to receive conveyances from the federal government. Several million acres remain to be conveyed to Native corporations. Much of the land conveyed under ANCSA is unsurveyed. In these cases, the conveyances, called "interim conveyances," are based on protracted surveys. A patent is issued to replace the interim conveyance after the land is surveyed. (Note: Section 1410 of the Alaska National Interest Lands Conservation Act (P.L. 96-487, Dec 2,

1980) states that "conveyances ...shall be as fully effectuated by the issuance of interim conveyances as by the issuance of patents." Therefore, an interim conveyance should be considered as an actual title transfer.) **(See pages 3-1 through 3-5 for sample interim conveyance and patent.)**

E. **NATIVE ALLOTMENTS** - The Native Allotment Act of 1906 authorized the allotment of up to 160 acres of non-mineral land to Alaska Natives. ANCSA repealed the Allotment Act, but required that pending applications be processed. Most of the Native allotment applications were filed in the months immediately preceding the enactment of ANCSA. Prior to 1971, less than 2,000 applications had been filed. Over 8,000 applications were filed in 1971. About 80% of these applications have been processed. - kind of like a homestead thing for natives. They don't have all the requirements that ANCSA does.

→ this no longer exist

F. **FEDERAL TOWNSITE CONVEYANCES** - In rural Alaska, "townsite" generally refers to land in a community, which was surveyed under the federal townsite laws. The townsite laws allowed communities to petition the federal government for the withdrawal and survey of public land in the community. After the land was surveyed and patented to the townsite trustee, qualified individuals and organizations were issued deeds to the lots they occupied. The federal townsite laws were repealed in 1976 by the Federal Land Policy and Management Act. The remaining vacant townsite land has been, or will be deeded to the local government. Nearly 150 communities have federal townsites. Most, however, have been closed. Only 3 townsites remain under the jurisdiction of the federal townsite trustee. - Hyder is the only Federal Town site not closed. You have to pay attention to "restricted deeds" with these. They have to be approved by BIA. (Bureau of Indian Affairs)

COPY

AA-9271

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
222 WEST SEVENTH AVENUE, #13
ANCHORAGE, ALASKA 99513-7599

INTERIM CONVEYANCE

WHEREAS

Calista Corporation

is entitled to a conveyance pursuant to Secs. 14(h)(1), 14(h)(7) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, as amended, 43 U.S.C. 1601, 1613(h)(1), 1613(h)(7), 1621(j), of the surface and subsurface estates in the following-described lands:

Seward Meridian, Alaska

T. 5 S., R. 98 W.,
Sec. 18, W½NW¼NE¼.

Containing approximately 3.6 acres.

Excluded from the above-described lands herein conveyed are the submerged lands, if any, up to the ordinary high water mark, beneath rivers or streams 3 chains wide (198 feet) and wider and lakes 50 acres and larger, which are meanderable according to the 1973 Bureau of Land Management Manual of Surveying Instructions, as modified by Departmental regulation 43 CFR 2650.5-1. These submerged lands will be identified at the time of survey.

Also excluded from the above-described lands are lands covered by tidal waters up to the line of mean high tide. The actual limits of tidal influence for those water bodies, if any, will be determined at the time of survey.

Interim Conveyance No. 1700

Date FEBRUARY 07 1997

AA-9271

COPY

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES OF AMERICA, unto the above-named corporation the surface and subsurface estates in the lands above described; TO HAVE AND TO HOLD the said lands with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said corporation, its successors and assigns, forever.

THE GRANT OF THE ABOVE-DESCRIBED LANDS IS SUBJECT TO:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease, contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1616(b)(2), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law; and

3. A covenant, running with the land, providing that (1) Calista Corporation shall not authorize mining or mineral activities of any type; nor shall it authorize any use which is incompatible with or is in derogation of the values as a cemetery site (the standards for determining incompatibility or derogation are found in 36 CFR 800.3 (1982) which contains the Advisory Council on Historic Preservation criteria of effect and adverse effect); and (2) that the United States reserves the right to seek enforcement of the covenant in an action in equity.

This Interim Conveyance is issued in lieu of the one dated January 15, 1996 which has been cancelled because of an error in the date.

Interim Conveyance No. 1700

Date FEBRUARY 07 1997

3-2

COPY

AA-9271

IN WITNESS WHEREOF, the undersigned authorized officer of the Bureau of Land Management has, in the name of the United States, set his hand and caused the seal of the Bureau to be hereunto affixed on this 7th day of February 1997, in Anchorage, Alaska.

UNITED STATES OF AMERICA

/s/ Patricia K. Underwood

Patricia K.Underwood
Acting Chief, Branch of 962 Adjudication

Interim Conveyance No. 1700

Date FEBRUARY 07 1997

3-3

Form 1860-9
(January 1988)

The United States of America

To all to whom these presents shall come, Greeting:

AA-10470

COPY

WHEREAS

Sealaska Corporation

is entitled to a patent pursuant to Secs. 14(h)(1) and 14(h)(7) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), 1613(h)(7), of the surface and subsurface estates in the following-described lands:

U.S. Survey No. 11350, Alaska.

Containing 7.27 acres, as shown on the plat of survey officially filed May 30, 1996.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES OF AMERICA, unto the above-named corporation the surface and subsurface estates in the lands above described; TO HAVE AND TO HOLD the said lands with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said corporation, its successors and assigns, forever.

THE GRANT OF THE ABOVE-DESCRIBED LANDS IS SUBJECT TO:

1. Valid existing rights therein, if any, including but not limited to those created by any lease, contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1616 (b)(2), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law; and

Patent Number 50-97-0157

3-4

Form 1860-10
(April 1988)

COPY

AA-10470

2. A covenant, running with the land, providing that (1) Sealaska Corporation shall not authorize mining or mineral activities of any type; nor shall it authorize any use which is incompatible with, or is in derogation of the values as a historical place (the standards for determining incompatibility or derogation are found in 36 CFR 800.3 (1982) which contains the Advisory Council on Historic Preservation criteria of effect and adverse effect); and (2) that the United States reserves the right to seek enforcement of the covenant in an action in equity.

This Patent is issued in lieu of the one dated January 21, 1996, which has been cancelled because of an error in the date.

IN TESTIMONY WHEREOF, the undersigned authorized officer of th Bureau of Land Management, in accordance with the provision of the Act of June 17, 1948 (62 Stat. 476), has, in the name of th United States, caused these letters to be made Patent, and the Se of the Bureau to be hereunto affixed.

[SEAL]

GIVEN under my hand, in ANCHORAGE, ALASKA
the SEVENTH day of FEBRUARY
in the year of our Lord one thousand nine hundred and
NINETY-SEVEN and of the Independence of tl
United States the two hundred and TWENTY-FIRST.

By /s/ Patricia K. Underwood
Patricia K. Underwood
Acting Chief, Branch of 962 Adjudication

Patent Number 50-97-0157

3-5

II. PUBLIC RECORDS

A. **FEDERAL RECORDS** - The land record system of the federal government only furnishes information about federal ownership of land and claimants to federal lands. The system does not show any transaction beyond the issuance of patent. The federal system is maintained by the Bureau of Land Management. The types of records in the federal system include:

- ⇒ Master Title Plats
- ⇒ Historical Indices
- ⇒ Casefiles and Casefile Abstracts
- ⇒ Public Land Orders and Executive Orders
- ⇒ Easement Identification Maps (these are blue line maps under Native allotments that aren't needed.)
- ⇒ Navigability Maps
- ⇒ Federal Surveys
- ⇒ Patents and Interim Conveyances
- ⇒ Mining Claim Index

. The master title plats (MTP) show all land in federal ownership and all lands patented to private ownership or conveyed to the State. Withdrawals, easements, rights-of-way, and other reservations are also identified. In addition, the MTP shows all current applications and entries for title to federal land. This is important since it shows:

- the location of state and Native selected land
- the location of land interim conveyed or patented to Native corporations
- the location of lands tentatively approved or patented to the State of Alaska
- all pending and certified Native allotments
- surface and subsurface conveyances
- easements and rights-of-way
- other important information

B. **STATE RECORDS** - The State Division of Lands in the Department of Natural Resources maintains a land record system that is similar to the federal system. The state land record system only furnishes information about State owned land and claimants to State land. Examples of State interests in land in rural communities include state-operated airports, state owned school sites, and tidelands. Records also include the conveyance of state holdings such as water rights and tideland leases. In Alaska, the recording offices are under the administration of the Department of Natural Resources, Support Services Division. After title is transferred from the sovereign, state recording offices are the primary source of title information. The recording system will be discussed in Part VII.

C. **MUNICIPAL RECORDS** - All municipalities that own land should have some type of land records systems. Local officials need information about land in and near their communities in order to make informed decisions about how to use land in their community. Municipalities that regulate land use or that tax real property need information about land within their boundaries. Alaska Statute 29.35.010(8) provides the authority for municipalities to "acquire, manage, control, use and dispose of real and personal property." Land acquisition and disposal ordinances are required by Alaska Statute 29.35.090.

<u>COMPLETE EXERCISE #1 ON PAGE 27</u>

You check all of the above three resources when reviewing a state piece of property.

III. OTHER SOURCES OF TITLE INFORMATION

A. **ABSTRACTS OF TITLE** - An abstract of title is a chronological listing of all recorded documents and court actions affecting a specific parcel of land. A full abstract would list all documents from the date of patent by the U.S. government to the present date. From this information an attorney may give an opinion of the condition of title. Certificates to plat and limited liability reports may also be obtained from title companies to obtain title information.

B. **TITLE INSURANCE COMPANY** - A title insurance company provides a written report of the current condition of title for a parcel of land. The title insurance policy, which is usually the amount of the purchase price, covers all matters available in the public records and covers certain hidden defects such as defective deeds, errors in records, and undisclosed heirs. However, other possible defects in title are excluded from coverage. Generally, all unrecorded matters are excluded from coverage unless extended coverage is purchased. **(See Appendix B for more information.)**

COMPLETE EXERCISE #2 ON PAGE 28 and AFTER DISCUSSION COMPLETE EXERCISE #3 ON PAGE 29.

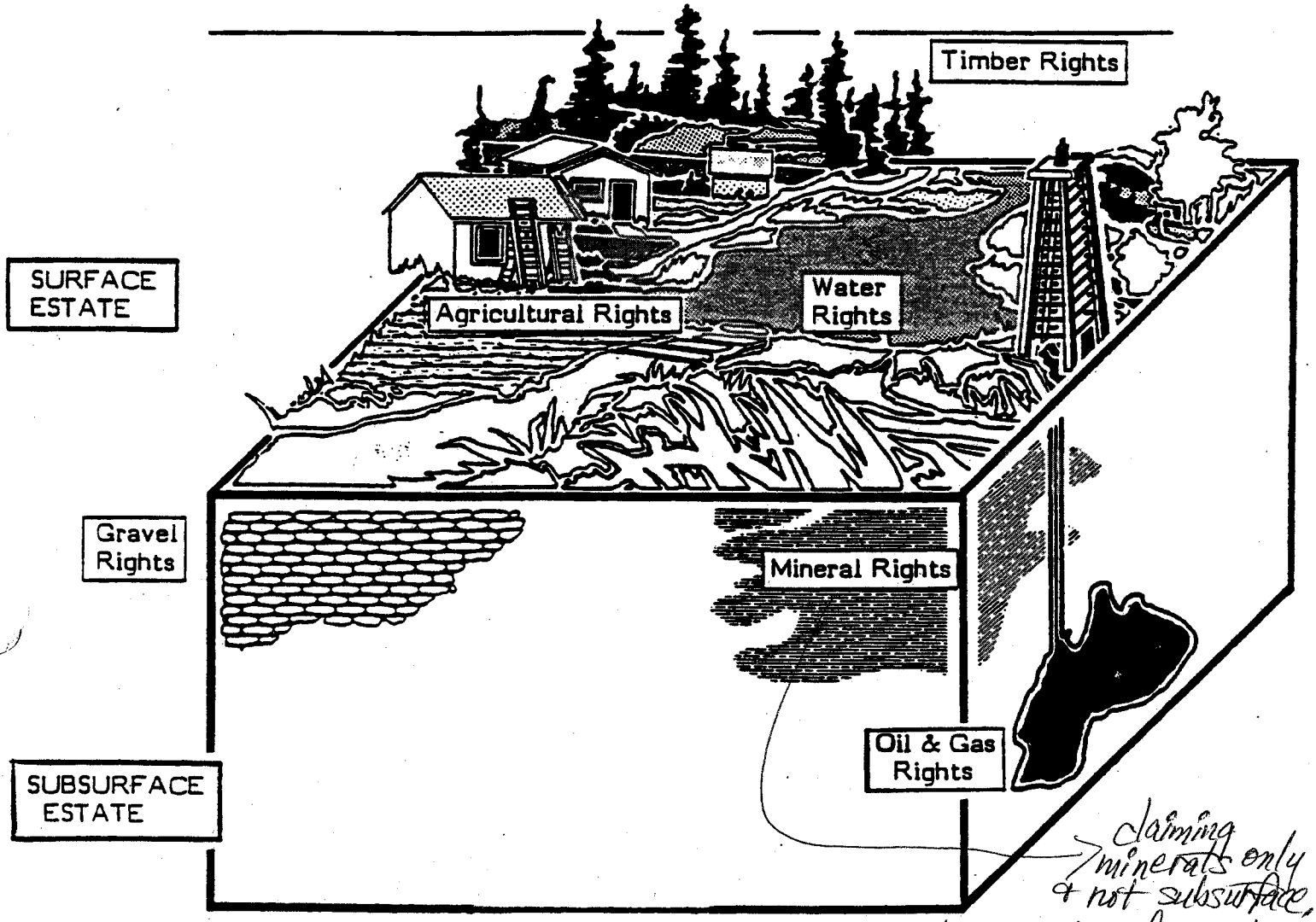
IV. REAL ESTATE/ REAL PROPERTY CONCEPTS

A. **WHAT IS REAL ESTATE?** - Land and anything permanently affixed to the land, such as buildings and fences. The term is generally synonymous with "real property." Unless there has been an exception or reservation, the specific rights of real property will include: surface, subsurface and air.

B. **LEGAL CONCEPT OF REAL ESTATE** - Legal theory holds that land includes not only the ground or soil, but everything which is attached to the earth, whether by course of nature (trees and herbage) or by the hand of man (buildings.) It includes not only the surface of the earth, but everything under it and over it. Thus, in legal theory, a tract of land consists not only of the portion on the surface of the earth, but is an inverted pyramid having its tip or apex at the center of the earth, extending outward through the surface of the earth at the boundary lines of the tract, and continuing on upward to the heavens.

C. **BUNDLE OF RIGHTS** - Land ownership may be thought of as a "bundle of rights" pertaining to a parcel of land. These rights may be transferred as an entire bundle, as individual rights, or as a group of less than the entire bundle. Here are some examples of "sticks" in the bundle:

⇒ right to sell
⇒ right to occupy and use
⇒ right to rent or lease
⇒ right to grant easements
⇒ right to mortgage
⇒ right to exclude others
⇒ right to give away or devise by will
⇒ right to permit other uses



claiming minerals only & not subsurface.

- It's hard to tell where surface estate ends & subsurface estate begins.

exception! sand & gravel considered subsurface & not mineral rights

BUNDLE OF RIGHTS ILLUSTRATION

Source: Alaska Local Government Handbook, 3rd Edition, August, 1987.

D. **POWERS OF GOVERNMENT RELATING TO REAL PROPERTY** - While a complete bundle of rights implies that the owner has a complete estate without limitation or restriction, these rights may be limited by four powers of government.

Tax 1. **Power of Taxation:** power of the sovereign to levy and collect taxes
ANCSA's are not taxable till they are developed (people differ on their definitions re: development)

Take 2. **Power of Eminent Domain:** right to take private property for public use

Regulate 3. **Police Power:** right to regulate property for public health, safety and welfare (examples: zoning, buildings restrictions)

4. **Escheat:** property returns to the state if the owner dies without a will or heirs.

E. **LEGISLATIVE ACTS THAT RESTRICT RIGHTS** - The Air Commerce Act of 1926 and the Civil Aeronautics Act of 1938 establish that the U.S. government has complete sovereignty over the air space of the nation.

V. REAL PROPERTY RIGHTS

Real property rights go with the land. Unless there has been an exception or reservation of a specific right the ownership of real property usually include:

A. **SURFACE** - The right to use the surface and a reasonable portion of the airspace above the surface.

B. **SUBSURFACE** - The right to use the land beneath the surface. The various uses of the subsurface may be limited or defined to allow only specific activity, for example, the right to extract coal, oil or gas.

1. **Under ANCSA** - Section 14(f) of ANCSA provides:

   When the Secretary issues a patent to a Village Corporation for the surface estate in lands pursuant to subsection (a) and (b), he shall issue to the Regional Corporation for the region in which the lands are located a patent to the subsurface estate in such lands ... Provided, That the right to explore develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the Village Corporation.

   Therefore, the Village Corporation receives title to the surface estate and the Regional Corporation receives title to the corresponding subsurface estate: this creates a "dual estate" or what is sometimes called a "split estate."

ANCSA does not define the terms "surface estate" or "subsurface estate." The law does not give any indication as to where the surface estate ends and the subsurface estate begins. Thus, it has been left to the courts to define the rights of the respective estate owners. In the case of ***Chugach Natives, Inc. v. Doyon, Ltd*** (588 F.2d 723) the court determined that sand and gravel are part of the subsurface estate. In the case of ***Koniag, Inc. v. Koncor Forest Resources*** (39 F.3d 991), the court held that the surface owner had the right of reasonable use of subsurface rock for the purposes of economic development, but was required to pay a "reasonable" price for use of the rock. The court also held that the surface owner could perform certain "cut and fill" operations related to road construction without compensating the subsurface owner. The court indicated that there are "legitimate incidental uses" of the subsurface estate that do not require payment to the subsurface owner. There are still differences of opinion about the extent of rights of the owners of the two estates. Further litigation on this matter is likely.

2. **Minerals** - There may be exceptions or reservations of the mineral estates in deeds or patents. For example, the State of Alaska is required by law to reserve the mineral estate in all land that is conveyed out of State ownership. All of the mineral estate is included in the subsurface estate that is conveyed to Regional Corporations under ANCSA.

3. **Water** - Ownership of land in Alaska does not automatically include the right to surface and subsurface waters. The Alaska constitution and state law (A.S 46.15.030) provide that water, occurring in a natural state, is reserved to the people. Priority to use water is established by a permit system. Once the water right is obtained, it becomes an appurtenance to the land. **(See Appendices C and D for more information.)**

C. **AIR** - The ownership of real property includes the right to the airspace reasonably within the control of the property owner, subject to regulation by valid police powers.

D. **APPURTENANCE** - Rights which are incidental to the ownership of land and pass with the title are appurtenances to the land. Examples of appurtenant rights are easements and water rights.

E. **TIDELANDS** - lands lying between the lines of mean high and mean low tide that are owned by the State as a consequence of the Statehood Act and the equal footing doctrine. Submerged land, also owned by the State, extends from the line of mean low tide seaward 3 geographical miles. Although some cities have received a patent to tidelands within their boundaries, the State normally issues tidelands leases for docks, shore fishery leases for set-net sites and oil and gas leases for oil field development. **(See Appendix E for more information.)**

F. **NAVIGABLE WATERS** - the land lying beneath navigable waters is owned by the State of Alaska. State ownership of the beds of navigable waters is an inherent attribute of state sovereignty protected by the U.S. Constitution. Title to the beds of navigable waters vested at Statehood in 1959. The non-tidal water boundary for navigable water is the "ordinary high water." Generally, the ordinary high water line can be observed by noting the vegetation line or well defined stream banks. **(See Appendix E for more information.)**

G. **RIPARIAN** - These rights include the rights involving access to and use of surface waters, shorelines, and beds of rivers. In order to have riparian rights, the owner's land must border upon a water body. The rights may be effected by the following actions:

1. **Accretion** - The gradual deposit of soil along the edge of a water body is called accretion. The upland owner gains property. -adding to

2. **Erosion** - When land areas gradually decrease due to the water body washing it away, erosion has occurred. The upland owner loses property. -taking away

3. **Avulsion** - When a sudden change in a watercourse cuts a portion of property off, this change is called avulsion. The cut off portion remains in the original ownership. example: earthquake that would change a river on a parcel.

G. **LITTORAL** - The right to the use and ownership of the shore of lakes and oceans are littoral rights. In order to have littoral rights, the owners land must border upon the sea or ocean.

1. **Reliction** - When the level of the water body permanently lowers and additional land is available to the adjacent owners, the increase in the property is due to reliction.

H. **FIXTURES** - Those items which were personal property but have been attached to and become a part of real property are fixtures and pass with a deed to the property.

I. **LATERAL AND SUB-ADJACENT SUPPORT** - These rights are the rights of a real property owner to maintain his or her property as is. An adjacent property owner cannot remove soil on his/her property in a manner, which undermines the surface of the adjoining landowner.

VI. DEED REQUIREMENTS

A. **WHAT IS A DEED?** - A written instrument by which one person conveys land to another. Black's Law Dictionary definition: "a conveyance of realty; a writing signed by the grantor, whereby title to realty is transferred from one to another. A written instrument, signed and delivered, by which one person conveys...land to another."

B. **ELEMENTS OF A DEED**

1. **Must be in writing** - Statute of Frauds, which has its roots in England, requires that all conveyance of land title must be by written instrument.

2. **Competent grantor** - The grantor is the party making the conveyance, and must be named or referenced in the body of the deed. The grantor must be competent, in other words, able to understand the nature of his/her actions. The grantor must be of legal age (18) and mentally capable. The address of the grantor must be included in the deed in order to be acceptable for recording. (A.S. 40.17.030.)

3. **Words of conveyance (granting clause)** - The words of conveyance may be used to establish the type of deed made, such as a warranty deed versus a quitclaim deed. A.S 34.15.030 states that the words of conveyance for a statutory warranty deed are "conveys and warrants". A.S. 34.15.040 states the words of conveyance for a statutory quitclaim deed are "conveys and quitclaims."

4. **Grantee must be named** - The grantee is the party receiving the conveyance, and must be named. A.S. 40.17.030 requires that, in order to record a deed, the address of the grantee must be indicated on the deed. The grantee does not necessarily have to be competent, Grantee of Certainty - first & last names (not just first names)

5. **Adequate legal description** - An adequate legal description is a description that is sufficient to locate the property on the ground.

6. **Statement of consideration** - Consideration is generally the statement of payment by the grantee and the statement of receipt by grantor. The actual amount of the payment does not have to be stated. Example: "Ten dollars and other valuable consideration." Consideration can be other than monetary, for example, "love and affection" may be the appropriate consideration for a parent to pass title to a child.

7. **Signed by all grantors** - If there are more than one owner, all owners have to sign the deed. The grantee does not necessarily have to sign the deed, but some agencies require the grantee to sign to show acceptance of the deed. **(Exception:** power of attorney; statutory form for power of attorney: AS 13.26.332.)

8. **Delivery to and Acceptance by grantee** - Delivery is the act by which the property is placed within the actual or constructive possession of another. There must be a valid delivery from the grantor to the grantee. Delivery must take place before the grantor's death. Evidence of acceptance may be recordation, payment of taxes, possession of the property, or other acts of control over the property.

9. **Date of execution** - It is customary to have the date of execution, but a conveyance would not necessarily be invalid without it.

10. **Signatures notarized (acknowledged)** - A.S. 34.15.150(a) requires that the execution of land conveyances be acknowledged. A.S. 40.17.030(b) provides that a conveyance must be acknowledged before it can be recorded. The courts have held that the statutory requirements do not make the conveyance void between the parties. However, it does preclude recordation and thus its effectiveness against third parties. ***Smalley v. Juneau Clinic Bldg Corp, 493 P.2d 1296 (Alaska 1972)***

COMPLETE EXERCISE #4 ON PAGE 30

C. TYPES OF DEEDS

1. **Quitclaim deed** - A release; transfers any interest which the grantor may have, but without warranty. Statutory form for a quitclaim deed can be found in Alaska Statute 34.15.040 (See page 16-1). An example quitclaim deed is on page 16-2.

2. **Warranty deed** - Grantor will defend title to the property against any and all lawful claims and demands. Statutory form for a warranty deed can be found in Alaska Statute 34.15.030 (See page 16-1). An example warranty deed is on pages 16-3 and 16-4.

3. **Special warranty deed** - With this type of deed, the warranty is limited only to those acts committed by the grantor. Some governmental agencies use special warranty deed to convey their properties. An example is on page 16-5 and 16-6.

4. **Federal townsite deed** - A deed issued by the federal townsite trustee. The deed may be restricted or unrestricted. A restricted deed is inalienable and non-taxable. The owner must obtain approval from the Bureau of Indian Affairs before the land can be sold. Only Alaska Natives were eligible for restricted townsite deeds. All other individuals and entities received non-restricted deeds. An example townsite deed is on page 16-7. **(See Appendix F for more information on Native restricted land.)**

5. **Certificate of allotment** - A certificate of allotment is issued to a successful applicant under the Native Allotment Act of 1906. The allotment is considered the property of the allottee and his/her heirs in perpetuity. The property is inalienable and non-taxable. However, the allottee may, with the concurrence of the Bureau of Indian Affairs, convey the complete title to the land by deed. An example certificate of allotment is on page 16-8. **(See Appendix F for more information on restricted Native land.)**

6. **Deed of trust** - Used instead of a mortgage. Property is transferred to a third party trustee for the benefit of the lender, but is reconveyed upon final payment. Borrower remains in possession and is generally considered the owner. However, if the borrower defaults on the loan the trustee can deed the land to the lender. An example deed of trust is on page 16-9.

COMPLETE EXERCISE #5 ON PAGE 31.

STATUTORY DEEDS
Alaska Statutes--Title 34

Sec. 34.15.030. FORM OF WARRANTY DEED.

(a) A warranty deed for the conveyance of land may be substantially in the following form, without express covenants:

"The grantor (*here insert the name or names and place of residence*) for and in consideration of (*here insert consideration*) in hand paid, conveys and warrants to (*here insert the grantee's name or names*) the following described real estate (*here insert description*), located in the State of Alaska.
"Dated this ..... day of ....., 19....."

(b) A deed substantially in the form set forth in (a) of this section, when otherwise duly executed, is considered a conveyance in fee simple to the grantee and the heirs and assigns of the grantee, with the following covenants by the grantor: (1) that at the time of the making and delivery of the deed the grantor is lawfully seized of an indefeasible estate in fee simple to the premises described, and has the right and power to convey the premises; (2) that at the time of making and delivery of the deed the premises are free from encumbrances; and (3) that the grantor warrants the quiet and peaceable possession of the premises, and will defend the title to the premises against all persons claiming the premises. The covenants are binding upon a grantor and the heirs and personal representative of a grantor as if written in the deed.

****

Sec. 34.15.040. FORM OF QUITCLAIM DEED.

(a) A quitclaim deed may be substantially in the following form:

"The grantor (*here insert the name or names and place of residence*), for and in consideration of (*here insert consideration*) conveys and quitclaims to (*here insert grantee's name or names*) all interest which I (we) have, if any, in the following described real estate (*here insert description*), located in the State of Alaska.
"Dated this ..... day of ....., 19....."

(b) A deed substantially in the form set out in (a) of this section, when otherwise duly executed, is considered a sufficient conveyance, release and quitclaim to the grantee and the heirs and assigns of the grantee, in fee of all the existing legal and equitable rights of the grantor in the premises described in the deed.

BOOK 10 PAGE 211
Kuskokwim Recording District

QUITCLAIM DEED

AA9141

THIS INDENTURE, made and entered into this 23rd day of October, 1974, by and between the STATE OF ALASKA, party of the first part, and UNITED STATES of AMERICA, party of the second part.

WITNESSETH, that the party of the first part, in consideration of the sum of One Dollar ($1.00), lawful money of the United States and other good and valuable considerations, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the party of the second part, its successors and assigns forever, all right, title and interest in and to that lot, piece or parcel of land situate, lying and being in the KUSKOKWIM Recording Precinct, described as follows:

Lot 3 of U.S. Survey 4125, containing 0.47 acres, more or less,
located in Township 21 North, Range 48 West, Seward Meridian.

TOGETHER, with all the appurtenances and all the estate and rights of the party of the first part to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF, THE STATE OF ALASKA, the party of the first part, has caused these presents to be executed by the Acting Director of the Division of Lands, Department of Natural Resources, on the day and year first above written.

STATE OF ALASKA

By: Dale P. Tubbs
DALE P. TUBBS, Acting Director
Division of Lands
Department of Natural Resources

THE UNITED STATES OF AMERICA)
) ss:
STATE OF ALASKA)

On this 23rd day of October, 1974, before me a Notary Public in and for the State of Alaska, duly commissioned and sworn personally appeared DALE P. TUBBS, to me known and known to me to be the person described in and who executed and acknowledged the foregoing deed on behalf of the State of Alaska, as Acting Director of the Division of Lands, Department of Natural Resources. The said DALE P. TUBBS, after being duly sworn according to law, stated to me under oath that he is the Acting Director of the Division of Lands, Department of Natural Resources and has authority pursuant to law to execute and acknowledge the foregoing deed as such and that he executed and acknowledged the same freely and voluntarily as the free and voluntary act and deed of the said State of Alaska and for the Division of Lands, Department of Natural Resources.

WITNESS my hand and official seal the day and year in this certificate first above written.

Notary Public in and for the
State of Alaska

My Commission Expires: 10/15/77

KUSKOKWIM
Serial No. 75-3

RECORDED - FILED
KUSKOKWIM REC. DIST.
DATE 5 February 1975
TIME 3:00 P.M.
Requested by Bureau of Land Management
Address 555 Cordova Street
Anchorage, Alaska 99501

QCD No. 277

16-2

STATUTORY WARRANTY DEED

THE GRANTORS THEODORE J. SMITH, SIDNEY J. SMITH and FRANCIS A. SMITH d/b/a VALLEY CENTRE DEVELOPMENT COMPANY, whose address is P.O. Box 32345, Juneau, Alaska 99803, for and in consideration of TEN DOLLARS ($10.00) and other valuable considerations, in hand paid, conveys and warrants to ST. VINCENT DePAUL SOCIETY OF ALASKA, whose address is 8617 Teal Street, Juneau, Alaska 99801, the following described real estate, with right of survivorship, to-wit:

Lot 6, Block "I", Valley Centre according to Plat 518, Juneau Recording District, First Judicial District

SUBJECT, HOWEVER, TO:

1. Reservations in the U.S. Patent.

2. 1989 City and Borough of Juneau taxes, a lien not yet due or payable.

3. Conditions and restrictions, but omitting restrictions, if any, based on race, color, religion or national origin, imposed by instrument, including the terms thereof, recorded February 6, 1970 in Deed Book 93 at Page 124, as amended by instruments recorded September 19, 1972 in Book 102 at Page 947, September 19, 1972 in Book 102 at Page 948, September 19, 1972 in Book 102 at Page 950.

4. EASEMENT, including the terms and provisions thereof, in favor of Alaska Electric Light and Power Comany for underground electric lines and appurtenances, except transformers which may be above ground, created by instrument recorded August 21, 1970 in Deed Book 94 at Page 337 (affects West part).

DATED this 26th day of June, 1989.

VALLEY CENTRE DEVELOPMENT COMPANY

Theodore J. Smith

Sidney J. Smith

Francis A. Smith

THE STATE OF ALASKA)
) ss:
FIRST JUDICIAL DISTRICT)

THIS CERTIFIES that on this 26th day of June, 1989, before me, a Notary Public in and for the State of Alaska, personally appeared THEORDORE J. SMITH, SIDNEY J. SMITH and FRANCIS A. SMITH, to me known and known to me to be the persons whose names are subscribed to the foregoing instrument, and individually acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate above written.

Charles K. Doogan
Notary Public for Alaska
My Commission expires: 4-23-9

3618a

Return to:
Faulkner, Banfield, Doogan
& Holmes
302 Gold Street
Juneau, Alaska 99801

89-4186
1300
RECORDED-FILED
JUNEAU REC.
DISTRICT

JUN 27 2 02 PM '89
REQUESTED BY Faulkner Banfield
ADDRESS

16-4

33-0230

(Example - Special Warranty Deed)

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B & P

MODIFIED QUITCLAIM DEED
Municipal Trust Land
Naknek, Alaska

WHEREAS, Paug-vik Incorporated Limited, an Alaskan corporation, hereinafter CORPORATION, is the Native village Corporation for the village of Naknek, Alaska, incorporated and organized in accordance with Section 8 of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 USC 1601 et seq., as amended), hereinafter ANCSA, and the laws of the State of Alaska; and

WHEREAS, Section 14(c)(3) of ANCSA directs village corporations formed pursuant thereto, to convey, upon receipt of a patent, to any municipal corporation in the Native village or to the State of Alaska in trust, hereinafter as STATE IN TRUST, for any municipal corporation established in the Native village in the future ". . . title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs. . ."; and

WHEREAS, the CORPORATION is vested with title pursuant to Section 14(a) of ANCSA to the surface estate of certain lands in the vicinity of Naknek, Alaska as evidenced by a conveyance document from the United States Bureau of Land Management (Patent No. 50-80-0017, dated November 27, 1979 and Interim Conveyance No. 265 dated November 27, 1979); and

WHEREAS, the Native village of Naknek is not presently included within any city, thus making it appropriate that title transferred by the CORPORATION pursuant to Section 14(c)(3) of ANCSA be granted to the STATE IN TRUST for any first or second class city established in Naknek in the future; and

WHEREAS, AS 44.47.150 and the regulations promulgated thereunder (19 AAC 90) provide that the Commissioner of the Department of Community and Regional Affairs is designated to accept lands conveyed to the STATE IN TRUST by village corporations under Section 14(c)(3) of ANCSA; and

WHEREAS, the STATE IN TRUST, the CORPORATION and the residents of Naknek assembled at a village meeting have not yet considered nor agreed in writing what acreage, if less than 1280 acres, will be involved in the total reconveyance as provided by Section 14(c)(3) of ANCSA as amended by Section 1405 of the Alaska National Interest Lands Conservation Act (94 Stat. 2494); and

WHEREAS, the STATE IN TRUST is authorized by Departmental regulation 19 AAC 90.035 to accept a tender of land which only partially satisfies that corporation's acreage obligation under Section 14(c)(3) of ANCSA, and that the final acreage obligation will be determined at a later date; and

WHEREAS, the CORPORATION has tendered a conveyance of lands described in Appendix A, attached hereto, to the STATE IN TRUST, in partial satisfaction of the land conveyances required pursuant to Section 14(c)(3) of ANCSA, and said tender has been accepted by the Commissioner pursuant to 19 AAC 90.015(5) and 19 AAC 90.020; and

WHEREAS, this grant will become effective upon acceptance by the Commissioner as evidenced by the Commissioner's written endorsement hereon.

NOW THEREFORE, the CORPORATION, Grantor, as provided by AS 44.47.150(a) and 19 AAC 90.025, does hereby quitclaim and convey unto the STATE IN TRUST, Grantee, all of its rights, title and interest, if any, in and to the surface estate of the tract of land generally described as follows:

> The surface estate of that certain real property located in Surveyed Township 17 South, Range 47 West, Seward Meridian, Alaska, Section 4: the SW¼SE¼ and SE¼SW¼ and a portion of Lot 7; Section 9: Lot 3 and a portion of Lot 2 being situated at the Native village of Naknek, Alaska, which is more particulary described in Appendix A, attached hereto.

Together with all tenements, hereditaments and appurtenances, the rents, issues, and profits thereof, if any; provided, that any net revenues derived from the sale of surface resources harvested or extracted from these lands shall be paid to the Village Corporation by the Grantee or future Municipal

33-0230

Corporation: provided, however, that the word "sale", as used in the preceding sentence, shall not include the utilization of surface resources for governmental purposes by the Grantee or future Municipal Corporation, nor shall it include the issuance of free use permits or other authorization for such purposes.

Grantor does further represent and warrant that there are no liens, encumbrances, charges, or claims (other than those arising under ANCSA) affecting the surface rights to the land being conveyed herein which were created by or are the result of any action taken by the Grantor.

To have and to hold the above described property, together with the appurtenances, unto Grantee and its assigns forever.

IN WITNESS WHEREOF, the authorized corporate officer has hereunto set his hand on behalf of the Grantor this 15 day of June, 19 83.

Attachment

1. Appendix A: Property Plan and Legal Description

PAUG-VIK INCORPORATED LIMITED

ATTEST: Dolly Herrmann
Secretary

BY: Edwin Anderson
President (or Vice-President)

(Corporate Seal)

ACKNOWLEDGEMENT

STATE OF ALASKA)
)ss
Third JUDICIAL DISTRICT)

THIS IS TO CERTIFY THAT ON THE 15 day of June, 1983, before me, the undersigned Notary Public for the State of Alaska, or U. S. Postmaster, duly commissioned and sworn as such, personally came Edwin Anderson, President (or Vice-President), and Dolly Herrmann, Secretary, respectively, of Paug-vik Incorporated Limited, a corporation organized and existing under the laws of the State of Alaska, to me known to be the said officers, respectively of said Corporation, and acknowledged that the seal affixed within this MODIFIED QUITCLAIM DEED is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by the authority of its Board of Directors,
and Edwin Anderson, President (or Vice-President),
and Dolly Herrmann, Secretary, of Paug-vik Incorporated Limited acknowledged said instrument to be the free act and deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

(SEAL)

Armwella E. Jettschalk
Notary Public for Alaska
(or U. S. Postmaster)
My Commission expires: 10-16-84

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:

Gail Ozmina

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

Form 2560-7 (April 1977)

TRIPLICATE

11-7

Form 4-203
(December 1958)

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

NATIVE ALLOTMENT

June 7, 1963

It is hereby certified that, pursuant to the authority delegated to him by Order No. 541 dated April 21, 1954 (19 F.R. 2473) of the Director of the Bureau of Land Management, the Chief, Lands Section, Anchorage Land Office on May 29, 1963 approved the application, Anchorage, Serial Number 056152, of Henry J. Roehl of Dillingham, Alaska, filed pursuant to the act of May 17, 1906 (34 Stat. 197; 48 USC 357), as amended, for

Lot 1-A of the land embraced in U. S. Survey No. 3699, situated along the Dillingham-Kanakanak Road approximately two miles West of Dillingham, Alaska,

containing 2.31 acres.

Therefore let it be known that pursuant to the said act of May 17, 1906, as amended, the land above described shall be deemed the homestead of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable until otherwise provided by Congress or until the Secretary of the Interior or his delegate, pursuant to the provisions of the said act of May 17, 1906, as amended, approves a deed of conveyance vesting in the purchaser a complete title to the land.

Excepting and reserving, however, to the United States all the oil and gas in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of March 8, 1922 (42 Stat. 415).

This entry is made under Section 29 of the Act of February 25, 1920 (41 Stat. 437) and the Act of March 4, 1933 (47 Stat. 1570), and the patent is issued subject to the rights of prior permittees or lessees to use so much of the surface of said lands as is required for mining operations, without compensation to the patentee for damages resulting from proper mining operations.

Elizabeth B. Hucke
(Chief, Patents Section)

GPO 887735

16-8

431

VA Form 26-8259 (Home Loan) July 1974. Use Optional. Section 1810. Title 38 U.S.C. Acceptable to Federal National Mortgage Association.

ALASKA

DEED OF TRUST

THIS DEED OF TRUST, made this third day of November, 19 77, between

Rick M. Elliott & Carol J. Elliott

address is 1407 Kinnikinnick Anchorage, , as Trustor, whose State of Alaska,

Security Title & Trust Company of Alaska , as Trustee, and

Alaska Mutual Savings Bank

as Beneficiary.

WITNESSETH: That Trustor irrevocably GRANTS, BARGAINS, SELLS and CONVEYS to TRUSTEE IN TRUST, WITH POWER OF SALE, THE PROPERTY IN THE

State of Alaska, described as:

Lot Seven (7), Block Two (2), Grandview Gardens Subdivision, according to the official plat thereof, filed under Plat Number P-179-A, Records of the Anchorage Recording District, Third Judicial District, State of Alaska.

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Together with all the tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in anywise appertaining, the rents, issues, and profits thereof, SUBJECT, HOWEVER, to the right, power, and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits, and all fixtures now or hereafter attached to or used in connection with the premises herein described; and in addition thereto the following described household appliances, which are and shall be deemed to be, fixtures and a part of the realty, and are a portion of the security for the indebtedness herein mentioned:

and together with all interest therein of the Trustor and that which is hereafter acquired by him.

TO HAVE AND TO HOLD the same, with the appurtenances, unto Trustee.

For the purpose of securing performance of each agreement of Trustor herein contained and payment of the sum of $ 55,000.00 with interest thereon according to the terms of a promissory note, dated November 3, 19 77, payable to order of Beneficiary and made by Trustor, the final payment of principal and interest thereof, if not sooner paid, shall be due and payable on the first day of December 2007

And the Trustor does hereby covenant that he is lawfully seized of an indefeasible estate in fee (or such other estate, if any, as is stated herein); that said premises are free of any encumbrances except as herein otherwise recited; that he hereby warrants the usual covenants to the same extent as a statutory warranty deed under the laws of the State of Alaska and all covenants herein made, and that he will defend against any breach of any or all of the same.

VII. RECORDING SYSTEM

The recording act creates a statutory system that establishes the priority of interests in real property. The policy behind the recording act is to encourage the recordation of documents affecting interests in real property.

A. **COMMON LAW** - The early common law for the validity of a conveyance was that the first person to receive a particular interest had priority over any subsequent party acquiring that same interest. As to parties with unrecorded interests, the same priority holds true.

B. **RACE NOTICE STATUTE** - A.S. 40.17.080. Alaska has a "race notice" recording act, which gives priority to the first recorded interest made by a bona fide purchaser. (A bona fide or "innocent" purchaser is one who has purchased property in good faith for value without any notice or knowledge of any defects in the title of the seller.) If the purchaser does not qualify as a bona fide purchaser, the prior unrecorded interest will prevail in a court suit.

C. **INDEXING** - When documents are recorded at the recording office, they are time-stamped, given a reception number, and a document identification number (A.S. 40.17.070). Prior to 2001, the documents were given a Book and Page number for identification purposed. Under the Book and Page system, documents were indexed in two ways: The grantor/grantee index and the location or tract index.

1. **Grantor/Grantee** - The grantor/grantee index consists of an alphabetical listing of all the grantors with the book and page of the recorded documents and a similar list for all of the grantees. Prior to the use of the current computerized listings, there were separate books for different documents, such as deeds, mortgages, liens, etc.

2. **Location** - The location or tract index is a descriptive index under which the document is indexed based on the legal description of the property.

Now, with the State's computerized system, anyone with Internet access can search the recorders office records using a variety of search methods. For example, searches can be by plat number, survey number, subdivision name, grantor/grantee name, date, document number or by book and page. The limitation to these searches is that the computerized records only go back to about 1972. The recorders office home page can be accessed by at the following address: http://www.dnr.state.ak us. This is the Department of Natural Resources home page and there is a direct link to the recorders office from there.

D. **CHAIN OF TITLE** - Chain of title is the chronological tracing of all recorded actions that affect a particular property. The chain of title is a compilation of all of the recorded documents affecting a property and may be set out in an abstract.

1. **Federal or State Actions Prior to Patent** - Documents published in the Federal Register provide constructive notice. ***State of Alaska v. Alaska Land Title Assoc. et al, 667 P.2d 714 (Alaska 1983).*** To avoid problems, the records at the Bureau of Land Management and the Department of Natural Resources should be checked for any actions involving the subject land prior to patent. These actions should be included in the chain of title.
2. **Date of Patent** - The date of patent is the time when title passes from the sovereign into private ownership. The patent provides the initial document for recordation of subsequent sales of the patentee's interest. Beginning with the date of patent, the recording office records should be checked for the recorded patent and any subsequent conveyance by the patentee.
3. **Date of Purchase** - Once a conveyance has been made to a party, that party has the ability to make a subsequent conveyance; therefore the records should be

checked from the date of conveyance to a party and not the date the conveyance is finally recorded.

4. **Date of Grantee Recordation** - The records should be checked for the entire period of ownership up to the recordation date of a conveyance and not the date the document is signed.
5. **Wild Deeds** - Wild deeds are those documents, which are outside the chain of title. For example, deeds, which are recorded prior to patent, are classified as wild deeds. Wild deeds do not give the grantee protection against a bona fide purchaser who obtains a deed from the grantor and is the first to record his deed after the patent has been recorded. See ***Sabo v. Horvath, 559 P.2d 1038 (1976).***

E. **EXCEPTIONS TO THE RECORDING ACT** - The recording act provides protection to a bona fide purchaser against unrecorded conveyances. However, there are instances where the recording act does not provide protection to the recording parties:

1. **Invalid Delivery** - When delivery of a deed does not take place, the deed is invalid. Recordation is a presumption of delivery, but a deed may be set aside upon a showing of invalid delivery.
2. **Defective Acknowledgment** - A conveyance that has not been acknowledged or has a defective acknowledgment is not proper for recordation. (A.S. 40.17.030). With such a defect, a document is precluded from recordation and does not provide constructive notice. The conveyance is valid between the parties but is not effective against third parties.
3. **Physical Defects or Encumbrances** - The recording act has to do with paper title and does not protect the purchaser from physical defects or encumbrances.

COMPLETE EXERCISE #6 ON PAGE 32

VIII. ENCUMBRANCES

An encumbrance is a right or interest in real property held by a third party. While an encumbrance is binding and attached to real property, it does not prevent the transfer of title. Following are some examples of encumbrances.

A. **RESERVATIONS** - Reservations are the rights retained by a grantor to use the property for a specified non-existing use, for example the grantor may retain the right to build and use a 20 feet wide road along the edge of the property.

B. **EXCEPTIONS** - Exceptions are the exclusion of already existing rights or uses from the conveyance. Improper usage of the terms, reservation and exception, has caused courts to allow usage of the terms interchangeably.

C. **COVENANTS** - Agreements between the grantor and the grantee to do or not to do certain things. Covenants may be restrictive (don'ts) or affirmative (do's) and may be recorded in a separate document or included in the deed.

D. **LEASES** - A lease is a contract for exclusive possession of land for a specified period of time, for a specified price and usually for a specified purpose. A lease is a possessory interest in real estate.

E. **EASEMENTS** - An easement is the right to use the land of another for a limited use or purpose. It may be created by express grant, reservation or exception, deed, prescriptive use, reference to a plat, eminent domain and other ways. An easement is a non-possessory interest in real estate.

F. **DEED OF TRUST/MORTAGAGE** - A deed of trust is a security instrument which shows there is a debt against the property. There can be a non-judicial foreclosure with a deed of trust. In other words, there can be a foreclosure without the necessity of a court action. A mortgage is also a security interest in land but does not have the provisions for a non-judicial foreclosure.

G. **LIENS** - There may be liens against the property for the collection of money. A party who has performed labor on, or delivered materials to a property may file a lien against the property. A money judgment is also a lien on real property owned by the debtor.

H. **REVERSIONARY INTERESTS** - Title reverts or goes back to the original owner upon the happening (or non-happening) of a stated event.

I. **TAXES/ASSESSMENTS** - Property taxes are an encumbrance on the property and will have priority over all other debts in the event of a foreclosure for payment of taxes. Assessments are charges levied against property for capital improvements such as streets, sewers, water lines, etc. Assessments have second priority after taxes as to rights against the property.

J. ENCUMBRANCES THAT ARE UNIQUE TO RURAL ALASKA

1. **ANCSA 14(c) Conveyance Requirement** - Land that is conveyed to Native village corporations under section 14(a) and 14(b) of ANCSA is subject to the requirements of section 14(c). Section 14(c) requires the corporations to "reconvey" certain land to: individuals/businesses—*14(c)(1);* non-profit organizations---*14(c)(2);* local governments—*14(c)(3);* and airport operators (State Department of Transportation in most cases)—*14(c)(4).* This encumbrance appears as a "subject to" condition in the interim conveyance or patent that the village corporation receives from the Bureau of Land Management. This requirement does not apply to regional corporation lands. The requirement also does not apply to the former reserves under Section 19 of ANCSA (*Arctic Village, Venetie, Gambell, Savoonga, Tetlin and Elim*) or the "4 cities" under Section 14(h)(3)—*Juneau, Kenai, Kodiak and Sitka.*

2. **Easements reserved under Section 17(b) of ANCSA** - This section provided for the reservation of public easements on land that was conveyed to Native village and regional corporations. Through litigation it was determined that the purpose of these easements are to provide ACCESS to other public lands. These easements were identified prior to the conveyance of land to the Native corporation and are listed under the "Excepting and Reserving to the United States" portion of the conveyance to the Native corporation. These easements are referenced by an easement identification number (EIN) and shown on easement identification maps. The easements are generally unsurveyed and often difficult to locate on the ground. These maps are not recorded with the conveyance.

3. **Consent Requirement of Section 14(f) of ANCSA** - This section provides "that the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the Village Corporation." This means that the subsurface estate owner could not develop the subsurface estate without the consent of the surface owner IF the land was within

the boundaries of the Native village. Surface and subsurface estate owners have disagreed on what constitutes the village boundaries. Some believed it was all land owned by the village corporation or, at least, all land historically used by the village. A 9th Circuit Court of Appeals decision, (***Leisnoi, Inc. v. Omar Stratman***, filed Sept 8, 1998), appears to have narrowly defined the boundaries as being land actually occupied with physical structures, not historical use. The effect on this decision is that in cases of dual estate, the subsurface estate owner can use the subsurface estate without consent of the surface estate owner in areas outside the village proper.

4. **Subject to the Requirements of Section 22(g) of ANCSA:**
   If lands are conveyed to a Native corporation that were within the boundaries of a National Wildlife Refuge on December 18, 1971, such lands remain subject to the laws and regulations governing use and development of the refuge and a ***right of first refusal**** is reserved to the United States.

(*A "right of first refusal" means that the federal government would have the first opportunity to purchase the land if it were ever offered for sale or would have the opportunity to meet any other offer to purchase that is made.)

5. **RS 2477 Rights of Way** - Revised Statute 2477 is from the Mining Act of 1866, which states, *"The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted."* The act granted a public right-of-way across unreserved federal land to guarantee access as land transferred to state or private ownership. Rights-of-way were created under RS 2477 by construction and/or use of roads and trails until its repeal in 1976. There is disagreement in the federal and state sectors as to the extent and scope of these rights of way. These potential rights of ways generally do not appear on the public records.

takes a narrow view

takes a broad view

K. **PHYSICAL ENCUMBRANCES** - The following do not show up in a research of the public records, but are still encumbrances against the property:

1. **Adverse possession** - Obtaining of title by physical use and occupancy to the exclusion of the owner for a statutory period of time. The statutory period is 10 years (A.S. 09.10.030) or 7 years if there is "color of title" (A.S. 09.45.052). "Color of title" is something, such as a defective deed, which gives the appearance of good title. (**Note**: Land conveyed under ANCSA is not subject to adverse possession as long as the land is not developed, leased or sold to third parties. Such land is also exempt from real property taxes and judgments. Sec. 907 of ANILCA as amended. Native allotments and restricted federal townsite deeds are also not subject to adverse possession.)

2. **Prescriptive easement** - Creation of an easement by open use of a property for a specific purpose such as a trail or roadway for a statutory period of time. The requirements are generally the same as adverse possession.

3. **Building code violations** - Failure to comply with building codes is an encumbrance of property but would not show as a recorded document.

4. **Zoning violations** - Zoning violations constitute an encumbrance on real property but do not show up on recorded paper title.

ENCUMBRANCES

An encumbrance is a right or interest in real property held by a third party. Following are some examples of encumbrances.

Money Interest	Property Interest	Physical
Real Property Tax	Lease	Adverse Possession
Assessments	Easement	Prescriptive Easement
Deed of Trust/Mortgage	Reservations	Building Code Violation
Assignment of Rents	Exceptions	Zoning Violations
Judgments	Covenants	
Labor, Material and other liens		

NOTE: An encumbrance, in itself, does not prevent the transfer of title.

COMPLETE EXERCISE #7 ON PAGE 33

EXERCISES

Page

1. Using a Master Title Plat (MTP)..... 27

2. Reviewing an Abstract of Title and Title Insurance Policy... 28

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5. Deeds: Which are Which?..... 31

6. Recording: Case Study.....32

7. Finding the Encumbrances 33

USING A MASTER TITLE PLAT

1. Review the Master Title Plat (MTP) for Township 13 South, Range 66 West, Seward Meridian.

2. Does this appear to be a surveyed or unsurveyed township?

3. Review Interim Conveyance No. 076, Patent No. 50-76-0276 and Native Allotment Certificate No. 50-92-0670 (pages 27-1 – 27-8). Find each of these conveyances on the MTP. (Note: In IC No. 076, find the subject township and put and X in the sections conveyed. You may disregard the exclusions. Shade in the referenced patent and certificate of allotment.) Twin Hills gets the surface Estate.

4. Under the IC 076 notation, what additional notations appear on the MTP?
   SSE ~~Entry~~ Esmt
   (Subsurface estate)

5. What is the difference in the status of certificate no. 50-92-0670 and the Native allotment located just to the south in Section 21? -> never completed process - app. only!

6. In Section 35, what is PL 96-487? ~~Part of the Conduct under~~
   Topak NWR
   (Natnl wildlife Refuge)

7. What is the acreage in section 11? Why do you think it is not 640 acres?
   544.80 The body of water doesn't count.

Exercise #1

AA-6706-A
thru
AA-6706-D

INTERIM CONVEYANCE

WHEREAS

Twin Hills Native Corporation

is entitled to a conveyance pursuant to sections 14(a) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 702, 715; 43 U.S.C. 1601, 1613(a), 1621(j) (Supp. V, 1975)), of the surface estate in the following described lands:

Seward Meridian, Alaska (Unsurveyed)

T. 12 S., R. 64 W.
secs. 6 and 7, all;
secs. 18 and 19, all;
secs. 27 to 34, inclusive, all.

T. 12 S., R. 65 W.
secs. 1 to 5, inclusive, excluding the east fork of the Togiak River (Twin Hills River);
sec. 6, excluding the Togiak River;
secs. 7 to 30, inclusive, excluding the east fork of the Togiak River (Twin Hills River);
sec. 31, excluding Native allotment AA-7409;
sec. 32, excluding Native allotment AA-7414 and the east fork of the Togiak River (Twin Hills River);
secs. 33 to 36, inclusive, excluding the east fork of the Togiak River (Twin Hills River).

T. 13 S., R. 65 W.
secs. 2 to 11, inclusive, all;
secs. 14 to 23, inclusive, all;
secs. 26 to 35, inclusive, all.

T. 13 S., R. 66 W.
secs. 1 and 2, all;
secs. 3 and 4, excluding Tracts A and B of U.S. Survey 5580 and the east fork of the Togiak River (Twin Hills River);
sec. 5, excluding the Togiak River;
sec. 6, excluding Native allotment AA-6623 and the Togiak River;
sec. 7 (fractional), excluding the Togiak River;
sec. 8, excluding the Togiak River and the east fork of the Togiak River (Twin Hills River);
secs. 9 and 10, excluding Tracts A and B of U.S. Survey 5580 and the east fork of the Togiak River (Twin Hills River);
secs. 11 to 15, inclusive, all;
sec. 16, excluding the east fork of the Togiak River (Twin Hills River);
sec. 17 (fractional), excluding Native allotment AA-7330 and the east fork of the Togiak River (Twin Hills River);

Interim Conveyance No. 076

Date JAN 13 1978

sec. 18 (fractional), excluding U.S. Survey 878;
the Togiak River and the east fork of the Togiak River (Twin Hills River);
sec. 20 (fractional), excluding Native allotment AA-7330;
sec. 21 (fractional), all;
secs. 22 to 26, inclusive, all;
secs. 27 and 28 (fractional), all;
sec. 34 (fractional), excluding Native allotment AA-7415;
secs. 35 and 36, all.

Aggregating approximately 65,506 acres.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES OF AMERICA, unto the above-named corporation the surface estate in the land above-described, TO HAVE AND TO HOLD the said estate with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said corporation, its successors and assigns, forever:

EXCEPTING AND RESERVING TO THE UNITED STATES from the lands so granted:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945;

2. A right-of-way thereon for the construction of railroads, telegraph, and telephone lines, as prescribed and directed by the act of March 12, 1914, 38 Stat. 305, 43 U.S.C. 975(d);

3. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (Supp. V, 1975)); and

4. Pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (Supp. V, 1975)), the following public easements, referenced by easement identification number (EIN) on the easement maps in case file AA-6706-EE, are reserved to the United States and subject to further regulation thereby:

   a. (EIN 1 C1, C5, D9) A continuous linear easement twenty-five (25) feet in width upland of and parallel to the mean high tide line in order to provide access to and along the marine coastline and use of such shore for purposes such as beaching of watercraft or aircraft, travel along the shore, recreation, and other similar uses. Deviations from the waterline are permitted when specific conditions so require, e.g., impassable topography or waterfront obstruction. This easement is subject to the right of the owner of the servient estate to build upon such easement a facility for public or private purposes, such right to be exercised reasonably and without undue or unnecessary interference with or obstruction of the easement. When access along the marine coastline easement is to be obstructed, the owner of the servient estate will be obligated to convey to the United States an acceptable alternate access route, at no cost to the United States, prior to the creation of such obstruction.

Interim Conveyance No. 076

Date JAN 13 1978

b. (EIN 2 C1, C5, C6, D9, L) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks of the navigable Togiak River from its mouth upstream, crossing Togiak village lands where the easement is identified as EIN 10 C6, C1, D9, D1, L, and continuing across Twin Hills village lands to the northern border of section 6, T. 12 S., R. 65 W., Seward Meridian. Purpose is to provide for public use of waters having highly significant present recreational use.

c. (EIN 2a C1, C5, C6, D9, L) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks of the navigable east fork of the Togiak River (Twin Hills River) from its mouth upstream to the northern border of section 4, T. 12 S., R. 65 W., Seward Meridian. Purpose is to provide for public use of waters having highly significant present recreational use.

d. (EIN 3 C5, D9, L) A site easement upland of the ordinary high water mark in section 28, T. 13 S., R. 65 W., Seward Meridian, on the left bank of the Negukthlik River where trail EIN 5 C5 crosses the river. The site is one (1) acre in size with an additional twenty-five (25) foot wide easement on the bed of the river along the entire waterfront of the site. The site is for camping, vehicle use and staging.

e. (EIN 4 D9) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks and an easement on the entire bed of the Unzalikthluk River from the eastern border of section 36, T. 13 S., R. 65 W., Seward Meridian, downstream to the southern border of sections 35 and 36, T. 13 S., R. 65 W., Seward Meridian. Purpose is to provide for public use of waters having highly significant present recreational use.

f. (EIN 5 C5) An easement for the existing Togiak to Manokotak access trail twenty-five (25) feet in width, identified as EIN 24 C5 as it crosses Togiak village lands and as EIN 5 C5 as it continues across Twin Hills village lands from the western boundary of section 6, T. 13 S., R. 66 W., Seward Meridian, easterly to public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

g. (EIN 6 C4, D9) A one (1) acre site easement upland of the ordinary high water mark in section 4, T. 13 S., R. 66 W., Seward Meridian, on the right bank of the east fork of the Togiak River (Twin Hills River) where existing trail EIN 5 C5 crosses the river. The site is for camping, vehicle use, and staging.

h. (EIN 8 D9) A one (1) acre site easement upland of the ordinary high water mark in section 6, T. 13 S., R. 66 W., Seward Meridian, on the right bank of the Togiak River where existing trail EIN 5 C5 crosses the river. The site is for camping, vehicle use, and staging.

Interim Conveyance No. 076

Date JAN 13 1978

i. (EIN 9 C) The right of the United States to enter upon the lands hereinabove granted for cadastral, geodetic, or other survey purposes is reserved, together with the right to do all things necessary in connection therewith.

j. (EIN 10 C) Easements for the transportation of energy, fuel, and natural resources which are the property of the United States or which are intended for delivery to the United States or which are produced by the United States. These easements also include the right to build any related facilities necessary for the exercise of the right to transport energy, fuel, and natural resources, including those related facilities necessary during periods of planning, locating, constructing, operating, maintaining, or terminating transportation systems. The specific location of these easements shall be determined only after consultation with the owner of the servient estate. Whenever the use of such easements will require removal or relocation of any structure owned or authorized by the owner of the servient estate, such use shall not be initiated without the consent of the owner of such improvement; provided, however, that the United States may exercise the right of eminent domain if such consent is not given. Only those portions of these easements that are actually in use or that are expressly authorized on March 3, 1996, shall continue to be in force.

k. (EIN 11 D9) A site easement upland of the ordinary high water mark in sections 6 and 7, T. 13 S., R. 65 W., Seward Meridian, on the southwest shore of an unnamed lake. The site is three (3) acres in size with an additional twenty-five by one thousand (25 X 1000) foot extension along the shore on each side of site and a twenty-five (25) foot easement on the bed of the lake along the entire waterfront of the site and extensions. The site is for camping, vehicle use, and staging.

THE GRANT OF THE ABOVE-DESCRIBED LAND IS SUBJECT TO:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C., Ch. 2, Sec. 6(g) (1970))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him;

3. Airport lease AA-8212, containing approximately 106.2 acres, located in sections 3 and 10, T. 13 S., R. 66 W., Seward Meridian, issued to the State of Alaska, Division of Aviation, under the provisions of the act of May 24, 1928 (45 Stat. 728-729; 49 U.S.C. 211-214 (1970));

Interim Conveyance No. 076

Date JAN 13 1978

AA-6706-A
thru
AA-6706-D

4. Requirements of section 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (Supp. V, 1975)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section; and

5. The terms and conditions of the agreement dated January 18, 1977, between the Secretary of the Interior, Bristol Bay Native Corporation, Twin Hills Native Corporation, and other Bristol Bay village corporations. A copy of the agreement is hereby attached to and made a part of this conveyance document and shall be recorded therewith.

IN WITNESS WHEREOF, the undersigned authorized officer of the Bureau of Land Management has, in the name of the United States, set his hand and caused the seal of the Bureau to be hereunto affixed on this 13th day of January, 1978, in Anchorage, Alaska.

UNITED STATES OF AMERICA

Robert E. Robertson

Chief, Branch of Lands
and Minerals Operations

Interim Conveyance No. 076

Date JAN 13 1978

Form 1860-8
(July 1975)
AA-2618

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS

George E. M. Gustafson, Trustee

is entitled to a Land Patent pursuant to Section 2387 of the Revised Statutes and Section 11 of the Act of March 3, 1891 (26 Stat. 1099), as amended, and Section 3 of the Act of May 25, 1926 (44 Stat. 629), and the Act of February 26, 1948 (62 Stat. 35), for the land embraced in U.S. Survey No. 5580, Alaska, Twin Hills Townsite, comprising Tracts A and B, located on the left bank of the east channel of the Togiak River.

Containing 147.04 acres:

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES, unto the said George E. M. Gustafson, Trustee, the tracts of land above described; TO HAVE AND TO HOLD said tracts with all the rights, privileges, immunities, and appurtenances of whatsoever nature, thereunto belonging, unto the said George E. M. Gustafson, Trustee, in trust for the several use and benefit of the occupants of the Townsite of Twin Hills, Alaska, according to their respective interests, and to his successors in trust;

EXCEPTING AND RESERVING TO THE UNITED STATES

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945; and

2. A right-of-way thereon for the construction of railroads, telegraph, and telephone lines, as prescribed and directed by the Act of March 12, 1914, 38 Stat. 305.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in Anchorage, Alaska the SEVENTEENTH day of SEPTEMBER in the year of our Lord one thousand nine hundred and SEVENTY-SIX and of the Independence of the United States the two hundredth. AND FIRST.

[SEAL]

By Robert E. Lorenson
Chief, Branch of Lands
and Minerals Operations

LUTION BICENTENNIA

Patent Number 50-76-0276

27-6

AA-7330

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
ALASKA STATE OFFICE
222 WEST SEVENTH AVENUE, #13
ANCHORAGE, ALASKA 99513

NATIVE ALLOTMENT

George J. Pleasant

IT IS HEREBY CERTIFIED THAT the application AA-7330, filed pursuant to the Act of May 17, 1906, as amended, 43 U.S.C. 270-1 to 270-3 (1970), repealed with a savings provision by the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1617(a) (1988), has been approved pursuant to that Act and Section 905(a)(1) of the Alaska National Interest Lands Conservation Act of December 2, 1980 (ANILCA), 43 U.S.C. 1634 (1988), for the following-described land:

> U.S. Survey No. 7217, Alaska, situated along Togiak Bay, approximately 2 1/2 miles southeasterly of the village of Togiak, Alaska.

Containing 159.96 acres, as shown on the plat of survey officially filed August 22, 1983.

Therefore, let it be known that, pursuant to the said Act of May 17, 1906, as amended, and Section 905(a)(1) of the ANILCA, the land above-described shall be deemed the homestead of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable until otherwise provided by Congress or until the Secretary of the Interior or his delegate, pursuant to the provisions of the said Act of May 17, 1906, as amended, approves a deed of conveyance vesting in the purchaser a complete title to the land.

CERTIFICATE NO. 50-92-0670

AA-7330

EXCEPTING AND RESERVING TO THE UNITED STATES a right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 43 U.S.C. 945 (1988).

/s/ Ana M. Stafford
Ana M. Stafford
Lead Land Law Examiner
Branch of Southwest Adjudication

Dated at ANCHORAGE, ALASKA

on SEPTEMBER 2 4 1992

CERTIFICATE NO. 50-92-0670

REVIEWING AN ABSTRACT OF TITLE
AND
A TITLE INSURANCE POLICY

ABSTRACT OF TITLE

1. Review the abstract of title produced by Alaska Land Status, Inc. ***(pages 28-1 – 28-3)***

2. What is the subject of the abstract?

3. Why is the date limited from October 28, 1970 through June 7, 1994?

4. What is the scope of the project?

5. What is the disclaimer?

TITLE INSURANCE POLICY

1. Review the title insurance policy produced by Security Title & Trust Co. of Alaska. ***(pages 28-4 – 28-7)***

2. What losses or damages does the policy insure against? (in general terms)

3. What is the total maximum liability of the company to the insured?

4. How much is the premium?

5. What interest in the estate is insured?

6. Describe one of the special exceptions listed in Schedule B.

7. Review the first two general exceptions. What is a key phrase used several times in defining exceptions to coverage?

Exercise #2

David S. Manzer
President
P.O. Box 243881
Anchorage, Alaska 99524-3881
(907) 243-1993
FAX 243-7808

Alaska Land Status, Inc.

ABSTRACT OF TITLE

Produced by

Alaska Land Status, Inc.

for the

State of Alaska

Department of Community and Regional Affairs

Municipal and Regional Assistance Division

Local Boundary Commission

Subject: City of Tuluksak

Dates: From the date of the Certificate of Incorporation of the City of Tuluksak on October 28, 1970 through June 7, 1994.

Scope of Project: This Abstract of Title is a compilation of the documents on file with the Bethel District Recorder, indexing the City of Tuluksak as either a grantor or grantee during the time period listed above.

A review of the computerized Statewide Recorder's Office files via the Public Information Access System was performed on June 8, 1994 in the Office of the Anchorage Recorder. The City of Tuluksak was searched by name only and not by legal description. Any relevant entries were reviewed beginning on January 2, 1975, when the Bethel Recorder went on-line with this computer system.

A manual search was also performed of the Bethel Recorder's Index Book for the period from incorporation of the City of Tuluksak on October 28, 1970 until the Bethel District Recorder's Office files became computerized on January 2, 1975. This Index includes entries for the years 1960 through 1974. Its review was intended to reveal any documents recorded prior to incorporation that may affect title.

This research identified the documents that were gathered in the Bethel District Recorder's Office on June 15, 1994 and which are attached to this Abstract.

Disclaimer: Neither Alaska Land Status, Inc. nor its owner David S. Manzer insures, warrants or certifies title. This Abstract of Title is the result of a diligent research effort that was limited to the specific research described in the Scope of Project section above.

Government and tribal entities with similar names or spellings were also examined. However, spelling or name variations may exist that were not found during the course of this research.

Only documents that appeared to affect title to or interests in real property have been made a part of this Abstract. Specifically, satisfied liens and terminated financing statements are not listed.

Grantor	Grantee	Type of Instrument	Date of Instrument	Date of Recording	Book/Page	Property Description and Remarks
State of Alaska, Robert W. Ward, Lieutenant Governor	City of Tuluksak	Certificate of Incorporation, fouth class city	10/28/70	11/10/70	18 / 5	SM, T11N, R66W, secs. 22, 23, 26, and 27 Note: Recorded prior to computerization of Bethel Recorder's Office records.)
Tulkisarmute Inc.	City of Tuluksak	Agreement to Lease Real Property	8/10/85	10/15/85	42 / 49-52	See Appendix A, map of site plan. Note: lease of land to be conveyed under ANCSA to Tulkisarmute, Inc. Verify that conveyance took place.

POLICY OF TITLE INSURANCE

SECURITY TITLE & TRUST CO. OF ALASKA

SECURITY TITLE BUILDING
711 "H" STREET
ANCHORAGE, ALASKA 99501
277-2631

hereinafter called the Company, an Alaska corporation, for valuable consideration, and subject to the conditions and stipulations of this policy, does hereby insure the person or persons named in item 1 of Schedule A, together with the persons and corporations included in the definition of "the insured" as set forth in the conditions and stipulations, against loss or damage sustained by reason of:

1. Title to the estate, lien or interest defined in items 3 and 4 of Schedule A being vested, at the date hereof, otherwise than as stated in item 2 of Schedule A; or
2. Any defect in, or lien or encumbrance on, said title existing at the date hereof, not shown in Schedule B; or
3. Any defect in the execution of any instrument shown in item 3 of Schedule A, or priority, at the date hereof, over any such instrument, of any lien or encumbrance not shown in Schedule B;

provided, however, the Company shall not be liable for any loss, damage or expense resulting from the refusal of any person to enter into, or perform, any contract respecting the estate, lien or interest insured.

The total liability is limited to the amount shown in Schedule A, exclusive of costs incurred by the Company as an incident to defense or settlement of claims hereunder.

IN WITNESS WHEREOF, SECURITY TITLE & TRUST CO. OF ALASKA HAS CAUSED THIS POLICY TO BE AUTHENTICATED BY THE FACSIMILE SIGNATURE OF ITS PRESIDENT, BUT THIS POLICY IS NOT VALID UNLESS ATTESTED BY THE VICE PRESIDENT, ASSISTANT VICE PRESIDENT OR ASSISTANT SECRETARY.

Security Title & Trust Co. of Alaska

BY William Swindel

WILLIAM SWINDEL, PRESIDENT

Attest: James A. Mc[illegible]

☐ Vice President
☐ Assistant Vice President
☐ Assistant Secretary

SECURITY TITLE AND TRUST COMPANY OF ALASKA
CORPORATE SEAL
STATE OF ALASKA

28-4

11/17/77 pab

SCHEDULE A

ORDER NUMBER: 43431
POLICY NO. S 29297
DATE November 4, 1977 at 9:21 a.m.

AMOUNT $ 65,000.0
PREMIUM $ 392.0

1. INSURED

RICK M. ELLIOTT and CAROL J. ELLIOTT, husband and wife

2. THE TITLE TO THE FEE SIMPLE ESTATE IN SAID LAND IS AT THE DATE HEREOF VESTED IN:

THE NAMED INSURED

3. ESTATE, LIEN OR INTEREST INSURED

FEE SIMPLE ESTATE AS TENANTS BY THE ENTIRETY

4. DESCRIPTION OF THE REAL ESTATE WITH RESPECT TO WHICH THIS POLICY IS ISSUED

Lot Seven (7), Block Two (2), GRANDVIEW GARDENS SUBDIVISION, according to the official plat thereof, filed under Plat Number P-179-A, Records of the Anchorage Recording District, Third Judicial District, State of Alaska.

SCHEDULE B

DEFECTS, LIENS, ENCUMBRANCES AND OTHER MATTERS AGAINST WHICH THE COMPANY DOES NOT INSURE:

SPECIAL EXCEPTIONS

1. Reservations and exceptions as contained in the U.S. Patent.

2. Easement, including terms and provisions thereof, granted March 15, 1946 to the CITY OF ANCHORAGE to construct, maintain and operate a water system, recorded January 6, 1947 in Volume 27 at page 277. (Blanket Easement)

3. Right of Way Easement, including terms and provisions thereof, granted to CHUGACH ELECTRIC ASSOCIATION, INC., to construct, operate and maintain an electric transmission line or system by instruments recorded April 3, 1952 in Volume 70 at page 119 and April 9, 1952 in Volume 70 at page 245. (Blanket Easement)

4. Right of Way Easement, granted July 28, 1953 to CHUGACH ELECTRIC ASSOCIATION, INC., for permission to use the 20 foot right of way established by the Department of Interior; recorded January 27, 1954 in Volume 101 at page 124, and permission granted March 4, 1963 to the CITY OF ANCHORAGE to attach telephone facilities to said right of way; recorded March 12, 1963 in Miscellaneous Volume 64 at page 312. (Blanket Easement)

5. Covenants, conditions and restrictions, as established by instruments recorded in Volume 42 at page 96, Volume 42 at page 184, amended by Volume 153 at page 281 and as recited on the Subdivision Plat, substantially as hereto attached.

6. Deed of Trust, including terms and provisions thereof, dated November 3, 1977, executed by RICKY M. ELLIOTT and CAROL J. ELLIOTT, husband and wife, trustors, to SECURITY TITLE & TRUST CO. OF ALASKA, trustee, for the benefit of ALASKA MUTUAL SAVINGS BANK to secure the payment of the sum of $55,000.00 and interest or any other obligation secured thereby; recorded November 4 1977 in Anchorage Book 244 at Page 397.

NOTE: This policy is issued simultaneously with ALTA Policy No. A-10287 in the amount of $55,000.00. Any payment by the Company on said ALTA Policy shall reduce pro tanto the liability under this policy.

That portion of the liability assumed under this policy in excess of $5,000.00 has been reinsured with First American Title Insurance Company, a California Corporation pursuant to an agreement dated Jan. 1, 1977.

NERAL EXCEPTIONS

Encroachments or questions of location, boundary and area, which an accurate survey may disclose; public or private easements not disclosed by the public records; rights or claims of persons in possession, or claiming to be in possession, not disclosed by the public records; material or labor liens or statutory liens under State Acts not disclosed by the public records; water rights or matters relating thereto; any service, installation or construction charges for sewer, water or electricity.

Right of use, control or regulation by the United States of America in the exercise of powers over navigation; defects, liens, encumbrances, or other matters created or suffered by the insured; rights or claims based upon instruments or upon facts not disclosed by the public records but of which rights, claims, instruments or facts the insured has knowledge.

General taxes not now payable; matters relating to special assessments and special levies, if any, preceding the same becoming a lien.

Mining claims, reservations or exceptions in patents or in Acts authorizing the issuance thereof.

Any laws, governmental acts or regulations, including but not limited to zoning ordinances, restricting, regulating or prohibiting the occupancy, use or enjoyment of the land or any improvement thereon, or any zoning ordinances prohibiting a reduction in the dimensions or area, or separation in ownership, of any lot or parcel of land; or the effect of any violation of any such restrictions, regulations or prohibitions.

"Consumer Credit Protection", "Truth in Lending" or similar law, or failure to comply with said law(s). :End of Schedule B

CONDITIONS AND STIPULATIONS

1. The Company shall have the right to, and will, at its own expense, defend the insured with respect to all demands and legal proeedings founded upon a claim of title, encumbrance or defect which existed or is claimed to have existed prior to the date hereof and is ot set forth or excepted herein; reserving, however, the option at any time of settling the claim or paying the amount of this policy in ill. In case any such demand shall be asserted or any such legal proceedings shall be instituted the insured shall at once give notice iereof in writing to the Company at its home office and, if the insured is a party to such legal proceedings, secure to the Company, ithin ten days after service of first process upon the insured, the right to defend such legal proceedings in the name of the insured so ar as necessary to protect the insured, and the insured shall render all reasonable assistance in such defense. If such notice shall not be iven, or the right to defend secured, as above provided, then all liability of the Company with regard to the subject matter of such emand or legal proceedings, and any expense incident thereto, shall terminate; provided, however, that failure to give such notice nall in no case prejudice the claim of the insured unless the Company shall be actually prejudiced by such failure and then only to the xtent of such prejudice.

2. In the event of final judicial determination by a court of competent jurisdiction, under which the estate, lien or interest insured is efeated or impaired by reason of any adverse interest, lien or encumbrance not set forth or excepted herein, claim may be made as erein provided. A statement in writing of any loss or damage, for which it is claimed the Company is liable, shall be furnished to the ompany at its home office within sixty days after such loss or damage shall have been ascertained. No right or action shall accrue ith respect thereto until thirty days after such statement shall have been furnished and no recovery shall be had unless an action shall ave been commenced thereon within one year after the expiration of said thirty days. Any rights or defenses of the Company against named insured shall be equally available against any person or corporation who shall become an insured hereunder as successor f such named insured.

3. The Company may at any time pay this policy in full, whereupon all liability of the Company shall terminate. Every payment nade by the Company, exclusive of costs incurred by the Company as an incident to defense or settlement of claims hereunder, shall educe the liability of the Company by the amount paid. The liability of the Company shall in no case exceed the actual loss of the nsured and costs which the Company is obligated to pay. When the Company shall have paid a claim hereunder it shall be subrogated o all rights and remedies which the insured may have against any person or property with respect to such claim, or would have if this olicy had not been issued, and the insured shall transfer all such rights to the Company. If the payment made by the Company does iot cover the loss of the insured, such subrogation shall be proportionate. Whenever the Company shall be obligated to pay a claim inder the terms of this policy by reason of a defect in the title to a portion of the area described herein, liability shall be limited to the roportion of the face amount of this policy which the value of the defective portion bears to the value of the whole at the time of the liscovery of the defect, unless liability is otherwise specifically segregated herein. If this policy insures the lien of a mortgage, and laim is made hereunder, the Company may pay the entire indebtedness and thereupon the insured shall assign to the Company the nortgage and the indebtedness secured thereby, with all instruments evidencing or securing the same, and shall convey to the Comany any property acquired in full or partial satisfaction of the indebtedness, and all liability of the Company shall thereupon termnate. If a policy insuring the lien of a mortgage is issued simultaneously with this policy and for simultaneous issue premium as provided n rate schedule, any payment by the Company on said mortgage policy with respect to the real estate described in Schedule A hereof hall reduce pro tanto the liability under this policy. All actions or proceedings against the Company must be based on the provisions of this policy. Any other action or actions or rights of action that the insured may have or may bring against the Company with respect o services rendered in connection with the issuance of this policy, are merged herein and shall be enforceable only under the terms, conditions and limitations of this policy.

4. The following terms when used in this policy mean: (a) "named insured": the persons and corporations named as insured in Schedule A of this policy; (b) "the insured": such named insured together with (1) each successor in ownership of any indebtedness secured by any mortgage shown in Item 3 of Schedule A, (2) any owner or successor in ownership of any such indebtedness who acquires title to the real estate described in Item 4 of Schedule A, or any part thereof, by lawful means in satisfaction of said indebtedness or any part thereof, (3) any governmental agency or instrumentality which insures or guarantees said indebtedness or any part thereof, and (4) any person or corporation deriving an estate or interest in said real estate as an heir or devisee of a named insured or by reason of the dissolution, merger, or consolidation of a corporate named insured; (c) "date hereof": the exact day, hour and minute specified in Schedule A; (d) "public records": records which, under the recording laws, impart constructive notice with respect to said real estate; (e) "home office": the office of the Company at the address shown herein; (f) "mortgage": mortgage, deed of trust, trust deed, or other security instrument described in Schedule A.

SECURITY TITLE & TRUST CO. OF ALASKA

SECURITY TITLE BUILDING
711 "H" STREET
ANCHORAGE, ALASKA 99501
277-2631

TITLE COMPANY'S LIABILITY

Case Study: Bear Fritz Land Company v. Kachemak Bay Title Agency

Facts of the case: In 1984 the Coopers owned a parcel of property in Homer known as Fritz Subdivision, Unit 2. While the Coopers were making improvements on the parcel, a representative of the Army Corps of Engineers (Corps) inspected the site and ordered the Coopers to stop construction. The Corps believed the parcel included wetlands that the Coopers needed a permit to fill.

The Coopers applied for a wetlands permit in October 1984. On April 23, 1985, the Corps sent the Coopers copies of a proposed permit that allowed them to fill certain areas in the subdivision. The permit became effective on May 2, 1985, the date on which it was signed by the Chief of the Corps' Regulatory Branch. It was valid for three years from the date of issuance. The Coopers never recorded the permit.

During the permitting process, the Coopers apparently were negotiating the sale of the subdivision to Bear Fritz Land Company (Bear Fritz). On May 1, 1985, Bear Fritz obtained from Kachemak Bay Title Agency, Inc. and Ticor Title Insurance Company (collectively, Ticor) a preliminary commitment for title insurance on the property. On May 8, Bear Fritz executed an agreement to purchase the lots. At the end of May the parties closed the sale. On August 22, Ticor sent Bear Fritz a title insurance policy.

Bear Fritz claims it first learned of the wetlands permit in 1989 or 1990 while negotiating the sale of two lots in the subdivision. The permit had already expired. Bear Fritz filed a third-party complaint against Ticor, claiming that Ticor's failure to disclose the permit in the title policy and the preliminary commitment was a breach of its contract with Bear Fritz, and negligence on which Bear Fritz reasonably had relied in closing the deal. Ticor moved for summary judgment.

Other information:

1. The title policy insured against "...any defect, liens, encumbrances on, said title existing at the date hereof, not shown in Schedule B."
2. The title company did not specifically list an exception for wetland designations in Schedule B.
3. The policy did state that "defects, liens, encumbrances and other matters against which the company does not insure include: ...Any laws, governmental acts or regulations, including but not limited to zoning ordinances, restricting, regulating or prohibiting the occupancy, use or enjoyment of the land or any improvement thereon..."
4. Bear Fritz claimed that both the general insuring clause and the governmental regulation exception were vague and ambiguous.
5. Bear Fritz claimed that the property's wetlands status and the permit restrictions are a "defect in, or lien or encumbrance on" the title and should be covered by the policy.

HOW WOULD YOU DECIDE THIS CASE? WHY?

Exercise #3

TRUE OR FALSE?
Questions About Deeds

Read each situation and decide if the **bold** statement is true or false.

1. Sam conveyed his property to Pam. Pam is only 10 years old. The deed was in hand written form. ***This is a valid transfer.*** T

2. Susan issued a deed to Ralph but forgot to include a description of the property. The parties know what property was intended to be conveyed. ***This is a valid transfer.*** F

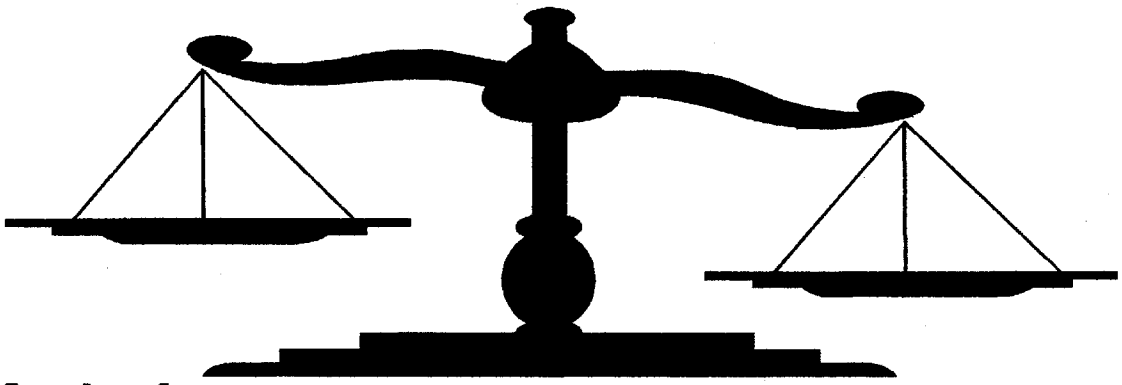
3. Ralph and Susan own a parcel of land jointly. Ralph was out of the country and Susan decided to sell the property. She issued a deed to Sam with only her signature. ***This is a valid transfer.*** F

4. Sarah prepared a deed to transfer her property to her grandson Jake. The deed appears to be in proper form and is signed. Sarah died without ever telling anyone about the deed and it was never recorded. ***The property belongs to Jake.*** T

5. Sam issued a deed to his cousin Ham. There is a question as to whether Ham is mentally competent. There is no date of execution on the deed. ***This is not a valid deed.*** T

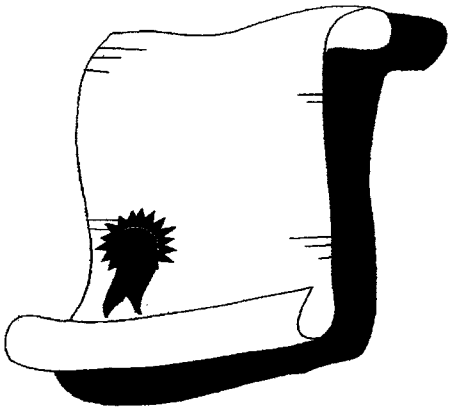
6. Bill sold some property to Bob for $100,000. However, the deed contained an assertion that the land was sold for "$1 and other valuable consideration." The deed was properly notarized but not recorded. ***This is a valid deed between the parties..*** T

7. Ross wanted to "donate" a parcel of land to the City of Despair. He issued a deed to the City for the parcel and mailed it to the City. Upon receiving the deed in the mail, the City checked the description and noticed it was on the Department of Environmental Conservation's contaminated property list. ***The City has to accept the deed because it was officially delivered through the U.S. mail system.*** F



Exercise #4

Deeds—Which are Which?



1. Federal townsite deed
2. Deed of trust
3. Quitclaim deed
4. Warranty deed
5. Certificate of allotment
6. Special warranty deed

3 a release, no warranty

5, 6 warranty is limited

5 is inalienable and non-taxable

~~4~~, ~~2~~ 5 may be restricted or non-restricted

~~3~~ 4 grantor defends title against all claims

2 used instead of a mortgage

6 property is transferred to a third party trustee

5 issued under the Act of 1906

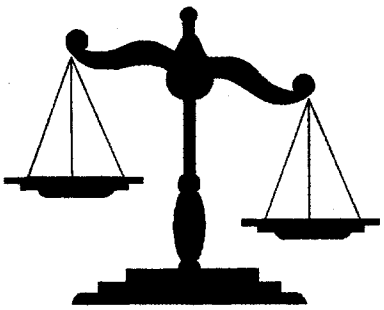
4 statutory form may be used

2 ~~3~~ trustee holds for benefit of lender

Note: There may be more than one answer

Exercise #5

The Effect of Recording on Title and Rights
Case Study



In 1960, Mack received a patent from the federal government for his homestead claim. The patent was for 160 acres and was described as the NW1/4 of Section 1. Mack recorded the patent in 1960. In 1970, Mack sold the NW1/4 of the NW1/4 of his homestead to Zack. Mack gave a properly executed quitclaim deed to Zack. Zack never recorded the deed. Zack never placed any improvements on the 40 acres he purchased although he planned to build a cabin there someday. In 1980, Mack moved outside and in 1990, he died. His estate went to his only surviving son, Mack Jr. Even though Junior was aware that Mack had sold 40 acres to Zack, he also knew that Zack had never recorded the deed. Junior sold the entire 160 acre homestead to Donald on January 14, 1995. Donald was not aware of the sale of the 40 acres to Zack. Donald recorded the deed, which was for the entire 160 acres. The deed was recorded on January 15, 1995. In the meantime, Zack decided he was getting to old to build a cabin so he deeded the NW1/4 of the NW1/4 of Section 1 to his daughter, Zelda, the consideration being "love and affection'. The deed was issued on January 13, 1995 and Zelda recorded the deed on January 16, 1995.

Who do you think has the best claim to the NW1/4 of the NW1/4 of Section 1? Why?

Exercise #6

FINDING THE ENCUMBRANCES

1. Review Interim Conveyance No. 076 (in exercise #2, Pages 27-1 thru 27-5).

2. Are there any exceptions or reservations? List one or two. Yes
   1) ditches & canals 2) construction of railroads

3. How many ANCSA 17(b) easements are listed?
   11

4. What type of <u>lease</u> is the conveyance subject to?
   Airport

5. What is meant by conveyance being subject to the "Requirements of section 14(c) of the Alaska Native Claims Settlement Act…?" (last page of the conveyance)

6. Now review the two "Releases of Interest" (following this page) which were issued by the Bureau of Land Management. What encumbrances have been eliminated?

7. What other encumbrances may be eliminated in the future? How?

Exercise #7

AA-6706-EE
AA-6706-A
through
AA-6706-D

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

RELEASE OF INTEREST

Twin Hills Native Corporation

On January 13, 1978, Interim Conveyance No. 076 was issued to Twin Hills Native Corporation pursuant to Secs. 14(a) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1613(a), 1621(j), for the surface estate of those lands listed therein, such conveyance having been granted by the United States of America, unto the above-named corporation with certain reservations of interests made to the United States; now hereto comes the United States of America and releases forever the below-listed interests, or portions thereof formerly reserved and numbered in Interim Conveyance No. 076, and described as follows:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945;

2. A right-of-way thereon for the construction of railroads, telegraph and telephone lines, as prescribed and directed by the Act of March 12, 1914, 38 Stat. 305; 43 U.S.C. 975(d);

Public easements designated pursuant to Section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616), described as follows:

i. (EIN 9 C) The right of the United States to enter upon the lands hereinabove granted for cadastral, geodetic, or other survey purposes is reserved, together with the right to do all things necessary in connection therewith; and

j. (EIN 10 C) Easements for the transportation of energy, fuel, and natural resources which are the property of the United States or which are intended for delivery to the United States or which are produced by the United States. These easements also include the right to build any related facilities necessary for the exercise of the right to transport energy, fuel and natural resources, including those related facilities necessary during periods of planning, locating, construct: operating, maintaining, or terminating transportation systems. The specific location of these easements shall be determined only after consultation with the owner of the servient estate. Whenever the use of such easement will require removal or relocation of any structure owned or authorized by the owner of the servient estate, such use shall not be initiated without the consent of the owner of such improvement: provided, however, that the United States may exercise the right

of eminent domain if such consent is not given. Only those portions of these easements that are actually in use or that are expressly authorized on March 3, 1996, shall continue to be in force.

UNITED STATES OF AMERICA

Robert W. Faithful IV

Robert W. Faithful IV
Acting Assistant to the State
Director for Conveyance Management

through
AA-6[illegible]

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF ALASKA)
Municipality of Anchorage) ss:
)

On this 7th day of March, 1983, before me, a Notary Public, in and for the said Municipality and State, came Robert W. Faithful III, to me personally known to be the identical person described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same to be his free and voluntary act and deed, for the uses and purposes therein mentioned.

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

Frankie A. Pedreon
Notary Public in and for the
State of Alaska
Residing at 3607 Wesleyan Dr.
Anchorage, AK 99504

(SEAL)

My commission expires: May 13, 1986

AA-6706-EE
AA-6706-A
thru
AA-6706-D

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

RELEASE OF INTEREST

Twin Hills Native Corporation

On January 13, 1978, Interim Conveyance No. 076 was issued to Twin Hills Native Corporation pursuant to Secs. 14(a) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), 1621(j) (Supp. V, 1975), for the surface estate of those lands listed therein, such conveyance having been granted by the United States of America, unto the above-named corporation with certain reservations of interests made to the United States; now hereto comes the United States of America and releases forever the below-listed interests, or portions thereof formerly reserved and numbered in Interim Conveyance No. 076, as public easements designated pursuant to Section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b), and described as follows:

a. (EIN 1 C1, C5, D9) A continuous linear easement twenty-five (25) feet in width upland of and parallel to the mean high tide line in order to provide access to and along the marine coastline and use of such shore for purposes such as beaching of watercraft or aircraft, travel along the shore, recreation, and other similar uses. Deviations from the waterline are permitted when specific conditions so require, e.g., impassable topography or waterfront obstruction. This easement is subject to the right of the owner of the servient estate to build upon such easement a facility for public or private purposes, such right to be exercised reasonably and without undue or unnecessary interference with or obstruction of the easement. When access along the marine coastline easement is to be obstructed, the owner of the servient estate will be obligated to convey to the United States an acceptable alternate access route, at no cost to the United States, prior to the creation of such obstruction;

b. (EIN 2 C1, C5, C6, D9, L) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks of the navigable Togiak River from its mouth upstream, crossing Togiak village lands where the easement is identified as EIN 10 C6, C1, D9, D1, L, and continuing across Twin Hills village lands to the northern border of section 6, T. 12 S., R. 65 W., Seward Meridian. Purpose is to provide for public use of waters having highly significant present recreational use;

IC# 076
RECORDED _____
BOOK _____ PAGE____

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thru
AA-6706-D

c. (EIN 2a C1, C5, C6, D9, L) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks of the navigable east fork of the Togiak River (Twin Hills River) from its mouth upstream to the northern border of section 4, T. 12 S., R. 65 W., Seward Meridian. Purpose is to provide for public use of waters having highly significant present recreational use; and

e. (EIN 4 D9) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks and an easement on the entire bed of the Ungalikthluk River from the eastern border of section 36, T. 13 S., R. 65 W., Seward Meridian, downstream to the southern border of sections 35 and 36, T. 13 S., R. 65 W., Seward Meridian. Purpose is to provide for public use of waters having highly significant present recreational use.

UNITED STATES OF AMERICA

Robert W. Faithful IV

Robert W. Faithful IV
Acting Assistant to the State
Director for Conveyance Management

AA-6706-EE
AA-6706-A
thru
AA-6706-D

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF ALASKA)
Municipality of Anchorage) ss:
)

On this 27th day of June, 1983, before me, a Notary Public, in and for the said Municipality and State, came Robert W. Faithful III, to me personally known to be the identical person described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same to be his free and voluntary act and deed, for the uses and purposes therein mentioned.

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

Frantic A. Pedersen
Notary Public in and for the
State of Alaska
Residing at 3407 Wesleyan Dr.
Anchorage, Ak

(SEAL)

My commission expires: May 13, 1986

APPENDICES

Appendix A

GLOSSARY OF COMMON TERMINOLOGY IN RURAL LAND TITLE

Prepared by
Alaska Department of Community & Regional Affairs
Division of Municipal & Regional Assistance
Land Management & Mapping Program

GLOSSARY

The following common terms may be used in discussions of rural land title.

Acre - A unit of measurement of land that contains 43,560 square feet (about 209 feet by 209 feet).

Accretion - The gradual deposit of soil along the edge of a river or stream which results in an addition of land to the upland owner.

ANCSA -The Alaska Native Claims Settlement Act; a law passed on December 18, 1971, to "settle aboriginal land claims" in Alaska.

ANILCA - Alaska National Interest Lands Conservation Act; a law passed on December 2, 1980. Designated national interest lands and also amended sections of ANCSA.

Avulsion - A sudden loss or addition to land by the action of water, or a sudden change in the bed or course of a stream. There is no change of boundary if avulsion occurs.

BLM - Bureau of Land Management, Department of Interior

Bundle of Rights - A term used in regard to the ownership of property. It means the whole range of rights of ownership and use that may be conveyed, individually or collectively, for a parcel of land.

Certificate of Allotment - Legal document issued to a successful applicant for an allotment under the terms of the Native Allotment Act of 1906. The allotment is considered the property of the allottee and his/her heirs in perpetuity.

Chain of Title - The series of conveyances affecting a parcel of land from the original source of title down to the present owner.

Cloud - Anything which makes it difficult to prove clear title to a parcel of land.

Deed - Legal document used to convey title to property.

Deed of Trust - Used instead of a mortgage as security for a loan. Property is transferred to a third party trustee who holds the deed of trust until the loan is paid off. If the borrower defaults on the loan, the trustee can deed the land to the lender.

Easement - A right to use (for a specific purpose) land that is owned by someone else.

Encumbrance - A right or interest in real property held by a third party.

Eminent Domain - The power of a governmental body to take private property for a public purpose for fair market value.

Erosion - The gradual eating away of the soil by the action of water current. Results in a loss of land to upland owner.

Fair market value - The price of something that is established when a willing and knowledgeable seller makes a deal with a willing and knowledgeable buyer.

14(c) Conveyances - Land conveyances (or reconveyances) required under Section 14(c) of the Alaska Native Claims Settlement Act of 1971 to eligible individuals, organizations and cities from Native village corporations.

Improved land - Land that has been changed from its original state and made more valuable by those changes.

Interim conveyance - A document issued to a Native corporation by BLM to show proof of land ownership until a survey can be done and patent issued. Land descriptions in interim conveyances are usually based on protracted surveys.

Lease - Written permission from the owner of land allowing another to use the land for a specific purpose and for a specific period of time.

Legal Description - A description of the outline of a parcel of land that sets it apart from any other area of land.

Lien - An encumbrance against real property for the collection of money.

Littoral Rights - Rights concerning properties abutting an ocean, sea or lake. Usually having to do with the use and enjoyment of the shore.

Map of boundaries - A map showing proposed 14(c) conveyances which is sent to the BLM for survey.

Metes and bounds - A method of land description based on distances and directions.

MLT - The Municipal Lands Trustee (Commissioner of the Department of Community and Regional Affairs); the person who is responsible for managing ANCSA 14(c)(3) land, in those villages that are not cities, that is conveyed to the State of Alaska to hold in trust of a future city.

Native allotments - Parcels of land that have been or will conveyed to individual Natives under the 1906 Allotment Act.

"1991" Amendments - A set of amendments to ANCSA which were passed in 1987. "1991" is referred to because of certain changes that would have occurred in 1991 if the amendments were not enacted. Provides certain protections for Native corporation land.

Ordinance - A local law enacted by a municipality or tribal government.

Patent - A document that is used by the government (federal or state) to transfer title to surveyed land.

Plat - A map of an area showing survey information about that area.

Permit - Allows use or entry upon a parcel of land for a limited purpose and a limited time. A permit is usually not transferable and may be revoked by the land owner.

Quitclaim deed - a written instrument which transfers any interest a person may have in property to another without warranty.

Real Property - Land, buildings and other permanent structures located on the land.

Reconveyance - In ANCSA, a transfer of land to the person or agency qualifying under section 14(c).

Reliction - Process of gradual exposure of land by permanent recession of a body of water. The upland owner gains land.

Regional corporation land - Land conveyed to one of the incorporated Native regional corporations under the terms of the Alaska Native Claims Settlement Act.

Riparian rights - The rights of the owners of land on the banks of watercourses, relating to the water, its use, and ownership of the land beneath the water.

Right-of-way (ROW) - A right to cross land for a specific purpose.

Section - A division of land established by federal survey that is one square mile (640 acres). There are 36 sections in a township.

Site control - An enforceable right to use a parcel of land. A deed, lease, or easement are the most common forms of site control.

Subsurface estate - The interest or ownership that one has in the land below the surface and everything of value therein.

Surface estate - The interest or ownership that one has in the surface of the land and everything of value upon it.

Title - The official record which represent ownership in property

Township - A division of land established by federal survey that is that is six miles square. There are 36 sections in a township.

Townsite - Land in a community which was surveyed under the federal townsite laws.

Village corporation land - Land conveyed to an incorporated Native village corporation under the terms of the Alaska Native Claims Settlement Act.

Warranty deed - Deed in which the grantor guarantees clear title.

Appendix B

TITLE INSURANCE

Prepared by
Pacific Northwest Title
Formerly Stewart Title Company of Alaska

PACIFIC NORTHWEST TITLE

Formerly Stewart Title Company of Alaska

TITLE INSURANCE:

A contract of indemnity against loss resulting from defects in or liens upon the title to a specific parcel of property. A loss prevention line of insurance based on a risk elimination concept. Most other types of insurance are based on a risk assumption concept and protect against loss from a future event. Title insurance protects against loss from past events in the chain of title.

While title insurance is protecting from defects in title as disclosed in the chain of title, there are hidden risks that are still covered that may not be disclosed in the public records. For example:

A. Forged deeds, releases or wills, fraud or false impersonation
B. Undisclosed or missing heirs
C. Instruments executed under invalid or expired powers of attorney
D. Mistakes in recording or indexing
E. Deed by persons of unsound mind
F. Deeds by minors
G. Deeds by persons supposedly single, but in fact married

Title insurance is produced in 2 steps:

1. Preliminary Commitment: A report issued after the completion of a title search, that shows the condition of title before a sale or loan transaction. This report discloses all liens, encumbrances and exceptions against the title. These exceptions must be cleared by the closing agent to the satisfaction of the Title Department, or else remain on the title policy to be issued.

2. Title Policy: This is issued after the closing and recording of the sale or loan transaction. There are 2 types of policies - Owner's and Lender's.

   A. Owner's Policy: This policy is issued to the buyer, assuring that title was conveyed by the seller and is subject to any encumbrances and exceptions to title that were not cleared by the closing agent.

   B. Lender's Policy: This policy is issued to the lender, assuring that their deed of trust or mortgage is a valid and enforceable lien against the title and assuring the mortgage's respective lien position; ie - 1st, 2nd, 3rd etc. This policy is also issued subject to any other encumbrances and exceptions to title that were not cleared by the closing agent.

3201 C Street, Suite 110 • Anchorage, Alaska 99503-3961 • (907) 561-5122 • FAX: (907) 261-2202

Standard Coverage Policy

A. This policy insures against defects that are ascertainable from an examination of the public record.

B. Schedule B shows the matters excluded from coverage under the heading Standard Exceptions. The items listed as Special Exceptions are items of public record and are excluded from coverage. In addition to these exceptions, the policy form contains certain exclusions from coverage and is subject to conditions and stipulations shown on the policy jacket.

C. This policy is used primarily for an individual or other legal entity purchasing property and insured under an Owner's policy. It is also used commonly by second mortgage lenders.

D. The affirmative coverage afforded by a standard policy is:

1. Title to the estate or interest is vested as shown in Schedule A
2. Any defect in or lien or encumbrance on the title
3. Unmarketability of the title
4. Lack of a right of access to and from the land

(All subject to the Exceptions on Schedule B)

Extended Coverage Policy

A. This policy includes all the protection of a standard policy plus additional risks. It extends the coverage to include defects not only from the public records but also from an defects disclosed by an asbuilt survey or an inspection of the land and from making an inquiry of persons in actual possession. It also extends coverage against mechanics liens that may gain priority over the insured's estate.

B. In Schedule B, the Special Exceptions, are items of public record or items disclosed by an asbuilt survey, inspection or inquires of those in possession, and are excluded from coverage.

C. This policy, is primarily used by a first mortgage lender and is commonly referred to as the "ALTA" policy. Extended coverage can be used for an Owner's policy, but a special survey known as an ALTA/ACSM survey must be provided and can prove quite costly and there is also an additional premium charged for the additional risk of an Owner's policy.

D. The affirmative coverage afforded by an extended policy is:

1. Title to the estate or interest is vested as shown in Schedule A
2. There is no defect in or lien or encumbrance on the title
3. The title is marketable
4. The property has a right of access
5. The mortgage is valid and enforceable
6. The mortgage is prior to any lien or encumbrance
7. The mortgage is prior to any statutory lien for services, labor or material
8. The assignment of the mortgage is valid and enforceable

(All subject to the Exceptions on Schedule B)

Other Definitions

Title Plant: A geographically filed assemblage of title information which is to help in expediting title examinations, such as copies of previous title examinations, tax searches, and copies or take-offs of the public record. This assemblage is broken into 2 parts:

1. Property Index - All documents recorded and having a legal description are posted to a file/index representative of each parcel of property in the respective recording district.

2. General Index - All documents recorded and not having a legal description, or reference to a previous document of record that had a legal description, are posted by name to this index.

Title Search: A search and review of all recorded documents affecting a specific piece of real property to determine the present condition of title. This search is made by utilizing the title plant.

Property Profile (aka Listing Package): An information package for a specific parcel of property, containing the last deed of record, all outstanding deeds of trust, any subdivision covenants, the plat of the subdivision and if available, an asbuilt survey.

Asbuilt Survey: A survey performed on a specific parcel of property showing the improvements as built and located thereon in relation to the boundary lines of the property. The purpose of this survey is to discover if there exists any encroachments of the improvements into any easements or other property or if any outside improvements encroach onto the surveyed property. It also assists in determining if the improvements are in violation of any subdivision covenant setbacks or zoning setbacks.

Fee Simple Title: The highest degree of ownership which a person can have in real estate. An interest in real estate which gives an owner unqualified ownership and full power of disposition.

Tenancy by the Entirety: A form of ownership by husband and wife whereby each owns the entire property. In the event of the death of one, the survivor owns the property without probate.

Tenancy in Common: An undivided ownership in real estate by two or more persons. The interests need not be equal, and, in the event of the death of one of the owners, no right of survivorship in the other owners exists.

Pacific Northwest Title 1997

Appendix C

OWNERSHIP AND MANAGEMENT OF NAVIGABLE AND PUBLIC WATERS

Prepared by
Alaska Department of Natural Resources
Division of Mining and Water Management

?olicies and Procedures on:

OWNERSHIP AND MANAGEMENT OF NAVIGABLE AND PUBLIC WATERS

Alaska Department of NATURAL RESOURCES

• January, 1995

State ownership of the beds of navigable waters is an inherent attribute of state sovereignty protected by the United States Constitution. Utah v. United States, 482 U.S. 193 (1987). Under the doctrine that all states enter the Union on an equal footing with respect to sovereign rights and powers, title to the beds of navigable waters in Alaska vested in the newly formed State of Alaska in 1959. In addition, under the Alaska Constitution and the public trust doctrine, all waters in the state are held and managed by the state in trust for the use of the people, regardless of navigability and ownership of the submerged lands under the Equal Footing Doctrine.

The purpose of this paper is to describe the State of Alaska's policies and procedures for identifying and protecting the state's title to the beds of navigable waters. In addition, this paper outlines the legal and policy considerations which guide the ownership and management of submerged lands and public waters.

IDENTIFYING AND PROTECTING STATE TITLE TO THE BEDS OF NAVIGABLE WATERS

dentification and management of the beds of ıavigable waters is an important policy of the State of Alaska. In 1980, the state established ı comprehensive navigability program to espond to federal land conveyances and land nanagement activities under the Alaska Statehood act, the Alaska Native Claims Settlement Act (ANCSA), and the Alaska National Interest Lands Conservation Act ANILCA). Pursuant to the provisions of those ıcts, the federal government has issued ıavigability determinations for thousands of akes, rivers, and streams throughout the state n an effort to determine whether the state or ederal government owns the submerged ands. Navigability determinations are also nade prior to many state land disposals to nsure that adequate public use easements are eserved.

The basic purpose of the state's program is to rotect the public rights associated with ıavigable waters, including, in particular, the state's title to the submerged lands. Because state and native land selections and federal conservation units blanket the state, navigability questions have arisen for rivers, lakes, and streams throughout Alaska. The navigability of many of those waterbodies has already been established. There are hundreds of others, however, where navigability is not yet determined.

To help resolve these navigability disputes, a major goal of the state's navigability program is to identify the proper criteria for determining title navigability in Alaska and to gather sufficient information about the uses and physical characteristics of individual waterbodies so that accurate navigability determinations can be made as disputes arise. Other important aspects of the program include monitoring federal land conveyance and management programs to identify particular navigability disputes, seeking cooperative resolution of navigability problems through negotiations and legislation, and preparing for statewide navigability litigation.

RIPARIAN RIGHTS AND STATUTE OF LIMITATIONS

Disputes over ownership of submerged lands in Alaska have arisen under a variety of circumstances. The principal source of the disputes in Alaska is the survey and acreage accounting system used by the federal government for conveying land to the state and native corporations.

The standard procedures for surveying and conveying federal land are found in the Manual of Instructions for the Survey of the Public Lands of the United States, generally known as the BLM Manual of Surveying Instructions. Under those procedures, consistently used in every public land state except Alaska, only uplands are surveyed and conveyed in fulfillment of acreage entitlements, not submerged lands. The survey rules require that all lakes 50 acres or larger, and rivers and streams three chains (198 feet) in width or wider, regardless of navigability, be meandered and segregated (excluded) from the surveyed public lands. Only the surveyed uplands are conveyed. The acreage of meandered rivers, lakes, and streams is not included in computing the amount of land involved in the conveyance.

In Alaska, however, the federal government had not consistently followed these survey rules. Until 1983, the federal government treated submerged lands the same as uplands. All bodies of water that were considered non-navigable by the federal government, regardless of size, were surveyed as though they were uplands and the acreage of submerged lands was charged against the total acreage entitlement.

Because of these conveyance procedures, the navigability of waterbodies in Alaska has been an issue of contention since the enactment of the Alaska Statehood Act and ANCSA. In addition to the problems caused by a lack of information about many waterbodies, the situation was exacerbated by the narrow definition of navigability used by the federal government. Hundreds of rivers, lakes, and streams considered navigable by the state were determined non-navigable by the federal government.

In 1983, following years of negotiations, lawsuits and legislative attempts to solve the navigability problems created by the unusual survey and conveyance procedures in Alaska, the State of Alaska, the United States Department of the Interior and the Alaska Federation of Natives (AFN) agreed that the standard rules of survey should be followed for land conveyances in Alaska. The effect of that decision was to treat Alaska surveys and land conveyances like federal land surveys and conveyances in other states. The recipients of conveyances from the federal government are charged only for the amount of public land that is calculated by the survey, which does not include the areas of meandered rivers, lakes and streams.

The use of these survey procedures has eliminated many of the problems associated with the federal land conveyance programs in Alaska. Submerged lands are no longer being conveyed to fulfill acreage entitlements. With the exception of lakes smaller than 50 acres and streams narrower than 198 feet, navigability determinations are no longer being made prior to federal land conveyances. Determinations of ownership of submerged lands can be put off until a natural resource use or conflict requires resolution, such as issuance of an oil and gas lease, mining claim, or a gravel sale.

Through the joint efforts of the State of Alaska, AFN, and the Department of the Interior, the 1983 decision to use the standard survey procedures for land conveyances in Alaska was legislatively approved in August 1988 when the United States Congress passed legislation (94 Stat. 2430) amending Section 901 of the Alaska National Interest Lands Conservation Act, codified at 43 U.S.C. 1631. The 1988 amendment, sometimes referred to as the Alaska Submerged Lands Act, requires that the standard rules of survey in the BLM Manual of Surveying Instructions be used for all federal surveys under the Alaska Statehood

Act and ANCSA. The 1988 amendment also repealed the Section 901 statute of limitations that would have required the state to file a lawsuit within a very short period of time in order to preserve its title to the beds of navigable waters conveyed to native corporations by the federal government as a result of erroneous navigability determinations, poor maps, surveys or whatever.

Even with this legislation, a major problem concerning navigability decisions made by the federal government under the old system remains unresolved. At issue are the hundreds of erroneous non-navigability decisions and the resulting submerged land conveyances made to ANCSA corporations in previous years. In addition, to comply with the meandering requirements of the BLM Survey Manual, the federal government is still required to make navigability determinations for lakes smaller than 50 acres and rivers or streams narrower than 198 feet in width to determine if these waters must be meandered.

NAVIGABILITY CRITERIA

The greatest hurdle to overcome in the state's efforts to identify and manage navigable waters has been the long-standing differences of opinion between the State of Alaska and the United States regarding the application of the test for determining title navigability. Navigability is a question of fact, not a simple legal formula. Variations in waterbody use that result from different physical characteristics and transportation methods and needs must be taken into account. There are many legal precedents for determining navigability in other states based upon the particular facts presented in those cases. In Alaska, though, we are just beginning to get the final court decisions that are necessary to provide legal guidance for accurate navigability determinations.

The physical characteristics and uses of a waterbody used by the state for asserting navigability, commonly referred to as navigability "criteria", are based upon legal principles that have been established by the federal courts. These criteria are applied to rivers, lakes, and streams throughout the state and take into account Alaska's geography, economy, customary modes of water-based transportation, and the particular physical characteristics of the waterbody under consideration.

The federal test for determining navigability was established over a hundred years ago. In the landmark decision of The Daniel Ball, 77 U.S. (19 Wall.) 557, 563, (1870), the Supreme Court declared:

> Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways of commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

Although The Daniel Ball test is accepted as the correct standard for determining navigability, there has been a lot of disagreement over application of many of the terms and phrases used in The Daniel Ball test to the specific uses of Alaska's lakes, rivers and streams. The State of Alaska uses the following interpretation of that test as the basis for its navigability program.

❖The Waterbody Must Be Usable As a Highway For the Transportation of People or Goods.

Interpreting the requirements that navigable waterbodies be used or usable as "highways of commerce", the courts have ruled that the central theme of title navigability is that the waterbody be capable of use as a highway which people can use for transporting goods or for travel. Neither the types of goods being transported nor the purpose of the travel are important in determining navigability. Transportation on water associated with recognized commercial activities in Alaska, such as mining, timber harvesting, and trapping is evidence of navigability. The use of waterbodies for transportation in connection with natural resources exploration or

levelopment, government land management, nanagement of fish and game resources, or scientific research is also evidence of navigability. Travel by local residents or visitors for the purpose of hunting, fishing, and trapping, or as a means of access to an area can be used to establish navigability. The same holds for recreational transportation, ncluding personal travel and professionally guided trips.

❖Waters Which Are Capable of Being Used For Transporting Persons and Goods, Although Not Actually Used, Are Navigable.

It is not necessary that a waterbody be actually used for transportation to be found navigable. It is enough that it is susceptible, or physically capable, of being used. Whether a waterbody is susceptible of use for transportation depends upon the physical characteristics of the water course such as length, width, depth, and, for a river, current and gradient. If those physical characteristics demonstrate that a waterbody could be used for the transportation of persons or goods, it is legally navigable.

The susceptibility element of title navigability is very important for the identification of navigable waterbodies in Alaska. Because of Alaska's sparse population and lack of development, there are hundreds of remote rivers, lakes, and streams where there is little or no evidence of actual use. Because of their physical characteristics, however, many of these remote waterbodies could be used for transporting people or goods if there was a need. Under these circumstances, they are considered legally navigable.

❖Transportation Must Be Conducted In the Customary Modes of Trade and Travel On Water.

A finding of navigability does not require use or capability of use by any particular mode of transportation, only that the mode be customary. The courts have held that customary modes of transportation on water include all recognized types and methods of water carriage. Unusual or freak contrivances adapted for use only on a particular stream are excluded. Customary modes of trade and travel on water in Alaska include, but are not limited to, barges, scows, tunnel boats, flat-bottom boats, poling boats, river boats, boats propelled by jet units, inflatable boats, and canoes. In places suitable for harvesting timber, the flotation of logs is considered a customary mode of transportation.

The mode of travel must also be primarily waterborne. Boats which may be taken for short, overland portages qualify. The courts have ruled that the use of a lake for takeoffs and landings by floatplanes is insufficient, in and of itself, to establish navigability.

Without expressly rejecting the claim, at least two court decisions in Alaska have suggested that winter travel on the surface of a frozen river or lake is probably not evidence of navigability. The rivers involved in the two adjudicated cases were both found navigable based upon summer use by boats, however, and it appears likely that most waterbodies in Alaska that are used as highways in winter can also be travelled by at least small boats in the summer. Because of this, the state need not rely upon winter travel to support navigability.

❖Waters Must Be Navigable In Their Natural and Ordinary Condition.

A waterbody which can be used for transportation only because of substantial man-made improvements to the condition of the watercourse is not navigable for title purposes. However, if transportation does or could occur on the waterbody even without the improvements and the improvements would only make transportation <u>easier</u> or <u>faster</u> or possible for <u>larger boats</u> (e.g., dredging), it is still considered navigable for title purposes.

The presence of physical obstructions to navigation (rapids, falls, log-jams, etc.) does not render a waterway non-navigable if the obstruction can be navigated despite the difficulties or if the obstruction can be avoided by other means, such as portaging, lining, or poling. A waterbody is also navigable even if seasonal fluctuations do not allow it to be navigated at all times of the year. However, a waterbody which is only navigable at infrequent and unpredictable periods of high water is not normally considered navigable. The fact that a waterbody may be frozen for

everal months of the year does not render it .on-navigable if it is navigable in its unfrozen ondition.

•Title Navigability Is Determined As Of 'he Date Of Statehood.

'o be considered navigable for title purposes, he waterbody must have been navigable in 959 (when Alaska became a state). This lement of the navigability test focuses on the hysical characteristics of the waterbody and 'hether those characteristics have changed ignificantly since statehood. Most 'aterbodies have not physically changed nough since statehood to alter their avigability. Assuming there have been no ignificant changes in the physical haracteristics of the waterbody, a waterbody hat is navigable today would be considered egally navigable in 1959 as well. Exceptions ıight include the creation, by natural or man-ıade causes after statehood, of a totally new ake, river, or canal now used for navigation. uch a waterbody would not be considered avigable for title purposes. Conversely, a 'aterbody which was navigable in 1959 but, ecause of natural or man-made physical hanges, is no longer navigable in fact would till be considered navigable for title purposes.

VAVIGABILITY CRITERIA DISPUTES

ecause of differing legal interpretations of ourt navigability decisions, several aspects of ne criteria used by the state to determine avigability have been disputed by the federal overnment. As a direct result of these riteria disputes, many waterbodies considered avigable by the state have been determined .on-navigable by the federal government.

'he major criteria dispute has been over the ype or purpose of the transportation required o establish navigability. The federal overnment has asserted that a waterway ıust be used, or capable of use, for ransporting commerce to be considered avigable. Other, "noncommercial" ransportation uses are not considered ufficient to establish navigability. In this ontext, the federal government has claimed hat the only relevant "commercial" ransportation is the distribution of goods for sale or barter, or the transportation for hire of people or things. The federal government has admitted that professionally guided transportation on Alaska's rivers, lakes and streams constitutes commerce, but nevertheless has argued that the waters are not being used as a navigable "highway" when recreation is involved, but rather more as an amusement park. The federal government has therefore claimed that waters used only for commercial recreation are legally nonnavigable even though they may be navigable in fact.

Through the work of the state's navigability program, this definition has been repeatedly rejected by the courts, most recently in the Gulkana River case. Alaska v. United States, 662 F.Supp.455 (D.Alaska 1986), affirmed sub nom. Alaska v. Ahtna, Inc., 891 F.2d 1401 (9th Cir. 1989). Applying the correct definition of navigability, many of the submerged lands that the federal government attempted to convey to ANCSA corporations should have been recognized as belonging to the state. The state appealed many conveyances to protect its title. As occurred in the Kandik-Nation Rivers appeal, Appeal of Doyon, 86 I.D. 692 (ANCAB 1979), Alaska Native Corporations also found it necessary to challenge erroneous federal determinations of non-navigability to insure they would not be deprived of any portion of their entitlement by being charged for submerged land owned by the state.

The federal government has also argued that aluminum boats, boats propelled by jet units, inflatable boats, and canoes are not customary modes of travel for the purpose of determining navigability in Alaska. As a result, many waterbodies navigated by these types of watercraft have been found legally non-navigable by the federal government. The claim is that these boats represent post-statehood technological advances, are too small to be considered "commercial", or that most "commercial" use of the watercraft developed after statehood.

Another navigability dispute involves remote, isolated lakes. The federal government has found many of these lakes legally non-navigable, even though they are physically capable of being navigated. The federal

overnment's contention is that a navigable onnection to another area is necessary to nake travel on a remote lake worthwhile.)therwise, the federal government views the ack of development in the area around the solated lake as an indication that the lake will ever be used for commercial transportation.

'o resolve these navigability criteria disputes, he state has actively pursued a limited umber of court cases challenging particular indings of non-navigability by the federal overnment. With the sole exception of loatplanes, the courts have agreed with the avigability criteria presented by the State of laska and have rejected the limitations uggested by the federal government. These ases include:

Gulkana River. In this case, both in the U.S.)istrict Court and on appeal to the U.S. Court f Appeals, the federal courts rejected the ederal government's restrictive interpretation f the phrase " highway of commerce" in the itle navigability test. The federal district ourt stated that to demonstrate navigability, : is only necessary to show that the waterbody s physically capable of "the most basic form of ommercial use: the transportation of people or oods." Because the Gulkana River can be sed for the transportation of people or goods, he Gulkana River was found navigable. laska v. United States, 662 F.Supp.455 D.Alaska 1987). On appeal, the court of ppeals affirmed the district court's finding of avigability. Alaska v. Ahtna, Inc., 892 F.2d 401 (9th Cir. 1989). The court of appeals ound that the modern use of the Gulkana iver for guided hunting, fishing, and ightseeing trips is a commercial use and, ince the physical characteristics of the river ave not significantly changed since 1959, rovides conclusive evidence that the river was usceptible of commercial use at statehood. 'he court also found that modern inflatable afts can be used to establish navigability. In pril 1990, the United States Supreme court lenied a request by Ahtna, Inc. to reconsider nd overturn the court of appeals decision. 'he Gulkana River precedent is now binding n all future navigability determinations in laska.

Kandik and Nation Rivers. In this dministrative appeal, the State of Alaska and Doyon Limited, an ANCSA regional corporation, successfully established that the use or susceptibility of use of a river or stream by an 18-24 foot wooden riverboat capable of carrying at least 1,000 pounds of gear or supplies is sufficient to establish navigability. Based upon the use of these types of boats for the transportation of goods and supplies by fur trappers, as well as extensive historic and contemporary canoe use, the court found the Kandik and Nation rivers, in Interior Alaska, navigable. Appeal of Doyon, 86 I.D.692 (ANCAB 1979).

Alagnak River. In this federal district court case, the Alagnak River, the Nonvianuk River, Kukaklek Lake and Nonvianuk Lake were all found navigable. These interconnected waterbodies are located in the Bristol Bay region of Alaska, south of Lake Iliamna. Their primary transportation use is for commercially guided hunting, fishing, and sightseeing and for government research and management. They also serve as a means of access for local residents to their homes and to the surrounding areas for subsistence hunting and fishing. After several years of litigation, the federal government conceded that these rivers and lakes are navigable. Alaska v. United States, No. 82-201 (D.Alaska Feb. 2, 1985).

Matanuska River. The recommended decision in this administrative appeal agreed with the State of Alaska's position that post-statehood commercial river rafting operations are sufficient to establish navigability. Based upon that type of use, the administrative law judge who heard the case recommended that the Matanuska River, in Southcentral Alaska, be found navigable. The Secretary of Interior, over the state's objections, assumed jurisdiction over the case and stayed implementation of the recommended decision. No action has been taken in the case since that time. Appeal of Alaska, No. 82-1133 (IBLA Rec. Decision Aug. 18, 1983)

Slopbucket Lake. The state claimed that the extensive use of floatplanes on Slopbucket Lake, a twenty acre lake adjacent to Lake Iliamna, was sufficient to establish navigability. The federal courts rejected this view. The courts reasoned that floatplanes do not use the lake as a navigable highway; they just take off and land there. Alaska v. United

States, 754 F.2d 851 (9th Cir.) cert denied, 106 S. Ct. 333 (1985).

IDENTIFICATION OF NAVIGABLE WATERS

Even if the criteria for determining navigability in Alaska were totally agreed upon, it still would be difficult to prepare a complete list of all of the navigable lakes, rivers, and streams in the state. Much of Alaska has not yet been surveyed and many maps are inaccurate and out-of-date. It is an immense and complex task simply to identify and locate all of the thousands of named and unnamed lakes, rivers, and streams in the state which might be considered navigable. Furthermore, once a potentially navigable lake, river, or stream has been identified, detailed information about its size and uses is necessary for an accurate navigability determination. Because of Alaska's undeveloped and remote character, gathering navigability information is both time consuming and expensive. Finally, administrative navigability determinations made by the state or the federal government are always subject to legal challenge, since only the courts can authoritatively determine title to submerged lands.

Despite these difficulties, both the state and the federal government are frequently called upon to issue navigability determinations. Although the requirement that BLM adhere to the meandering requirements of the BLM Survey Manual has eliminated the need for navigability determinations on the larger rivers, lakes, and streams, which must now be meandered regardless of navigability, navigability determinations are still required for the smaller rivers, lakes, and streams to determine if they are to be meandered at the time of survey. Because of this, some navigability determinations are still made for nearly every federal land conveyance under ANCSA or the Alaska Statehood Act. The management plan for nearly every federal Conservation System Unit (CSU) also addresses the navigability issue.

Federal navigability determinations are reviewed by the state to insure that available information sources were used and interpreted correctly. Where the federal government determines non-navigable a waterbody which is considered navigable by the state, the state may provide the government with supplemental information about the uses and characteristics of the waterbody to obtain a redetermination of navigability. Under some circumstances the state needs to make its own navigability determinations, such as for a oil and gas lease sale, land disposal, material sale, mining claim, or another use of state land or resources requiring a determination of ownership of submerged lands within the affected area.

For large, undeveloped regions of Alaska there may be little or no accurate waterbody use or physical characteristics information available for making navigability determinations. When information is lacking, and it must make a navigability determination, the state is forced to rely solely upon the physical characteristics shown on maps and aerial photographs. In these cases, the state identifies as navigable all streams depicted on the U.S.G.S. maps with double lines (generally at least 70 feet wide) and having an average gradient over the length of the stream of no more than 50 feet per mile. With rare exceptions, the state's experience has been that streams of this type are deep enough and wide enough to be navigable by boats carrying persons or goods and must, therefore, be considered legally navigable. Streams depicted with single lines, although narrower in width, may also be listed as potentially navigable if they have gradients of substantially less than 50 feet per mile and are at least 10 miles.

If there is no public use or physical characteristics information readily available for lakes, those lakes which are shown on maps and aerial photographs as having a navigable water connection with other navigable waters, or which are accessible by short overland portages, are considered navigable regardless of the size of the lake. These lakes are part of a system of interconnected navigable waters. If a lake is totally isolated, it will be included on the state's navigability maps if it is at least 1 1/2 miles long. That length insures that the lake can be used as a "highway". Future judicial decisions interpreting the "highway" requirement for isolated lakes could shorten or

engthen this 1 1/2 mile "rule of thumb."

The state recognizes that, under some ircumstances, lakes smaller than 1 1/2 miles ong can be and are used as navigable ighways. In those cases, when known, these maller lakes are also depicted on the state's avigability map. Moreover, as a matter of dministrative policy and convenience only, he state may sometimes make an exception to he 1 1/2 mile standard in the extremely wet egions of the state, including some areas in he Yukon-Kuskokwim Delta, Yukon Flats, nd on the North Slope. In these areas, an solated lake might need to be 2-3 miles long to e included on the state's navigability maps. lthough smaller lakes in these areas are apable of being used for transportation and hould be found navigable by the courts, the tate has decided to concentrate its limited esources in protecting the larger waterbodies irst.

NAVIGABLE WATERS WITHIN PRE-STATEHOOD FEDERAL WITHDRAWALS

lthough disputes over which waters in laska are navigable are the most frequent ause of submerged land ownership disputes, here is another major legal issue which poses threat to Alaska's sovereign claim to the eds of navigable waters. Even where avigability is conceded, the federal overnment often contends that title to the ubmerged lands did not vest in the state if he area was withdrawn or reserved by the ederal government on the date of statehood. Within native conveyance areas, the federal overnment has used this claim of "reserved ubmerged lands" to justify its attempts to onvey the beds of navigable waters in ulfillment of the native entitlements. Within tate selections, the federal government has sed the same claim to charge the acreage of ubmerged lands against the state's ntitlement.

The state strongly disagrees with this federal laim and has actively pursued a number of ourt challenges to resolve the issue. In ddition to numerous appeals from federal lecisions to convey or charge for the beds of avigable waters, the state was actively nvolved as a friend of the court in one case before the United States Supreme Court and continues to be involved in another Supreme Court case which presents this issue. The pending case is United States v. Alaska, U.S. Supreme Court 84 Original (filed June, 1979).

On June 8, 1987 the Court issued its decision in Utah v. United States, No. 85-1772 (filed Oct. 14, 1986). In this case the federal government, in 1976, issued oil and gas leases for land underlying Utah Lake, a navigable waterbody located in Utah. The suit sought a declaratory judgement that Utah, rather than the United States, holds the lands under navigable waters in the territories in trust for future states, and, absent a prior conveyance by the federal government to third parties, a state acquires title to such land upon entering the Union on an "equal footing" with the original 13 states.

The Supreme Court held that title did pass to the state upon Utah's admission to the Union. They held that there is a strong presumption against finding congressional intent to defeat a state's title, and, that in light of the longstanding policy of the federal government's holding land under navigable waters for the ultimate benefit of future state absent exceptional circumstances, an intent to defeat a state's equal footing entitlement could not be inferred from the mere act of the reservation itself. The United States would not merely be required to establish that Congress clearly intended to include land under navigable waters within the federal reservation, but would additionally have to establish that Congress affirmatively intended to defeat the future state's title to such land.

This decision has significant ramifications within Alaska, since over 95 million acres - more than 25% of the total area of the state - was enclosed within various federal withdrawals and reservations at the time Alaska became a state.

NAVIGABLE WATERS WITHIN ANILCA CONSERVATION SYSTEM UNITS

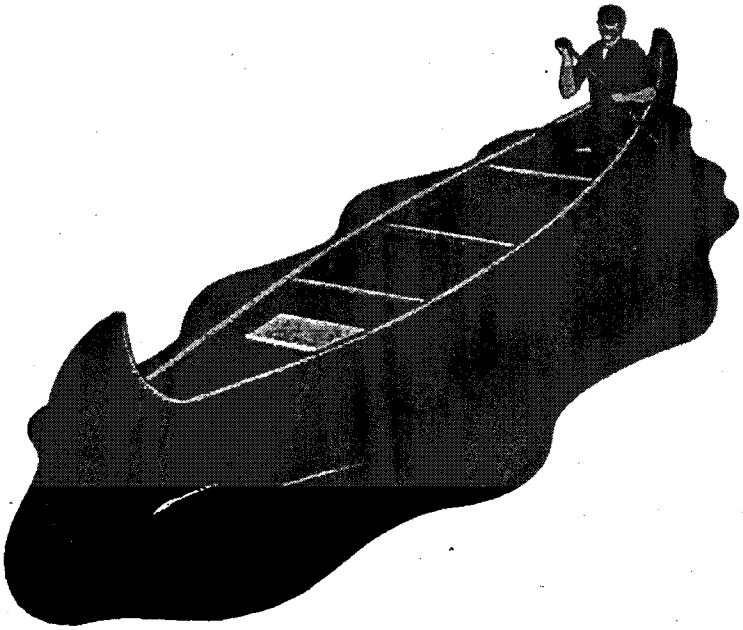
On December 2, 1980, the Alaska National Interest Lands Conservation Act became law. This act created or added 104.3 million acres to various federal conservation system units. Because these "withdrawals" occurred after

he date of statehood, there is no disagreement ›etween the state and federal governments hat navigable waters within the various :SU's are owned by the state. However, there s some disagreement on the amount of ıuthority the federal land managers may have o regulate these state owned submerged ands.

:he U.S. Constitution gives Congress certain imited powers to control uses on state owned ubmerged land. These are known as the 'roperty Clause, Navigational Servitude and he Commerce Clause. The extent of these ›owers involves complex legal questions. Iowever, even assuming that Congress has he power to regulate state-owned submerged ands in Alaska, the United States Supreme :ourt has ruled that Congress may choose not o exercise that power, thus leaving regulation otally up to the state. Escanaba Co. v. :hicago, 107 U.S. (17 Otto.) 678 (1883). Vhether Congress has done that can only be letermined by examining the federal laws passed by Congress dealing with Alaska lands. Another possibility is that the state and federal governments have concurrent jurisdiction, sharing the authority to regulate submerged lands.

In ANILCA, Congress did not take away the state's power to regulate state-owned submerged lands within federal CSU's in Alaska. Numerous provisions in ANILCA recognize and respect the state's authority over state-owned land. In some cases, however, Congress may have attempted to give the federal land managers some concurrent authority to regulate navigable waters within CSU's.

The state, where possible, cooperates with rather than confronts the federal land managers. This cooperation often takes the form of a memorandum of understanding that discusses management issues and how they will be resolved. Differences do occur, however, over issues such as column management and restrictions on mining.



LEGAL AND POLICY GUIDELINES GOVERNING MANAGEMENT OF SUBMERGED LANDS AND PUBLIC WATERS

PUBLIC TRUST DOCTRINE

The state has special duties and management constraints with respect to state-owned land underlying navigable waters. These special duties and management constraints arise from the Alaska Constitution. The Alaska Constitution contains numerous provisions embracing the principles commonly known as the public trust doctrine. The public trust doctrine is remarkable both for its age and for its vigor. Rooted in the customs of the seafaring Greeks and Romans, it has evolved to become one of the most effective safeguards of public rights. Basically, the trust reflects an understanding of the ancient concept that navigable waters, their beds and their banks, should be enjoyed by all the people because they are too important to be reserved for private use.

In America, the concept of public rights to public waters was recognized since the early days of the Massachusetts Bay Colony where the great Pond Ordinance of 1641 guaranteed the right to fish and fowl in ponds greater than 10 acres, along with the freedom to pass through private property to do so.

By 1821, American courts were pronouncing the law of public trust as we know it today. This does not mean that no water-related development can take place. The public trust doctrine permits states to improve waterways by constructing ports, docks and wharves, thus furthering the purposes of the trust. Generally speaking, the people's trust rights may be alienated only in ways that further overall trust uses, and in relatively small parcels.

Illinois Central Railroad Company v. Illinois, 146 U.S. 387,452 (1982), involved a grant by the State of Illinois of one thousand acres of the bed of Lake Michigan, constituting the entire harbor of the City of Chicago, to the Illinois Central Railroad. The U.S. Supreme Court held that the grant was revocable, that the state held the land in trust for the public, and that it was powerless to relinquish its rights as trustee.

The court went on to say that land underlying navigable waters is much more than a simple property right.

> [I]t is a title different in character from that which the state holds in lands intended for sale. It is different from the title which the United States holds in the public lands which are open to preemption and sale. It is a title held in trust for the people of the state that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties... The trust devolving upon the state for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by a transfer of the property.

In the 19th century the purposes of the trust were generally described as "commerce, navigation and fishery." This was logical because the major waterways were essential highways of commerce. But as other values became increasingly important, courts began to recognize recreation and environmental protection among the purposes for which the trust exists. As a California court said in 1971, "with our ever increasing leisure time...and the ever increasing need for recreational areas it is extremely important that the public need not be denied use of recreational water...the rule is that a navigable stream may be used by the public for boating, swimming, fishing, hunting and all recreational purposes." People ex rel. Baker v. Mack, 19 Cal. App. 3d 1040, 1044 (1971).

The Alaska constitution provides protections

similar to the public trust doctrine protections hat cannot be disregarded by the legislature r overruled by the courts. Article VIII, Sec. 3 provides; "Wherever occurring in their natural tate, fish, wildlife and waters are reserved to he people for common use." After reviewing he public trust doctrine in Owsichek v. State, Guide Licensing, 763 P.2d 488 (Alaska 1988), he Alaska Supreme Court explained that "the ommon use clause was intended to engraft in ur constitution certain trust principles uaranteeing access to the fish, wildlife and vater resources of the state."

n CWC Fisheries, Inc. v. Bunker, 755 P2.d .115 (Alaska 1988), the Alaska Supreme Court pplied the public trust doctrine to tidelands, olding that, even after conveyance, the title emains subject to continuing public asements for purposes of navigation, ommerce and fishery.

The 1985 Alaska legislature recognized the onstitution application of public trust doctrine rinciples in Alaska. In an Act relating to the ublic or navigable waters of the state, the egislature found that "the people of the state ave a constitutional right to free access to the avigable or public waters of the state" and hat the state "holds and controls all navigable r public waters in trust for the use of the eople of the state". 85 SLA Ch. 82. In the ame act, the legislature ruled that submerged ands are "subject to the rights of the people of he state to use and have access to the water or recreational purposes or any other public urpose for which the water is used or capable f being used consistent with the public trust."

Courts in other states over the years have lefined in somewhat different ways the public ses that are permitted and protected by the ublic trust as it applies to submerged lands. n reviewing these other cases, it can clearly e seen that through time an ever expanding lefinition of the public uses protected by the ublic trust doctrine is being adopted. The California Supreme Court recently held that:

> Although early cases had expressed the scope of the public's right in (lands subject to the public trust) as encompassing navigation, commerce and fishing, the permissible range of public uses is far broader, including the right to hunt, bathe or swim, and the right to preserve the (public trust) lands in their natural state as ecological units for scientific study. City of Berkeley v. Superior Court of Alameda, 606 P.2d 362, 365 (Cal. 1980)

It is clear under the Alaska Constitution that the State of Alaska has the responsibilities of a trustee with respect to management of land underlying navigable waters. Moreover, the Alaska legislature has adopted a broad view of the public uses protected or permitted by the public trust. Accordingly, the Alaska Attorney General's Office has determined that, until the Alaska Supreme Court rules on the question, the state should assume that a broad definition of public rights protected by the Alaska Constitution and the public trust doctrine applies in Alaska, similar to the one adopted by the California Supreme Court. 1982 Atty. Gen. Op. No. 3 (June 10, 1982).

PUBLIC WATERS

It is not only the beds of navigable waters in Alaska that are reserved in public ownership for public use. Under article VIII, Section 3 of the Alaska Constitution, all waters occurring in their natural state are reserved to the people for common use. Article VIII, Section 14 of the Alaska Constitution also provides for the broadest possible access to and use of state waters by the general public.

> Section 14. Access to Navigable Waters. Free access to the navigable or public waters of the state, as defined by the legislature, shall not be denied any citizen of the United States or resident of the state, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

Pursuant to this grant of authority, the Alaska State Legislature, in AS 38.05.365(12), defined "navigable waters" as follows:

> "navigable waters" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal sea

or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes.

This definition of navigable waters does not define state ownership of submerged land in Alaska. The definition of navigability for ownership purposes was discussed earlier in this paper. This definition, however, does define what types of waterbodies in Alaska are available for public use under the Alaska statutes.

The Alaska State Legislature has broadly construed the constitutional protections for public use of the waters of the state. In an Act 85 SLA chap. 82, codified as AS 38.05.128) relating to the navigable or public waters of the state, the state legislature found:

(a)The people of the state have a constitutional right to free access to the navigable or public waters of the state.

(b) Subject to the federal navigational servitude, the state has full power and control of all of the navigable or public waters of the state, both meandered and unmeandered, and it holds and controls all navigable or public waters in trust for the use of the people of the state.

(c) Ownership of land bordering navigable or public waters does not grant an exclusive right to the use of the water and any rights of title to the land below the ordinary high water mark or subject to the rights of the people of the state to use and have access to the water for recreational purposes or any other public purposes for which the water is used or capable of being used consistent with the public trust.

(d) This Act may not be construed to affect or abridge valid existing rights or create any right or privilege of the public to cross or enter private land.

Thus, under the Alaska Constitution and this statute, any surface waters capable of use by the public defined in AS 38.05.365(12) are available to the public, irrespective of streambed ownership. Further, such public use is not considered a taking and is not subject to inverse condemnation action. Private ownership is subject to the public rights that are protected by the public trust.

In two Montana Supreme Court cases involving the nature of public rights where the submerged lands are privately owned, the court rules that public portaging, anchoring, and other uses incidental to the use of the water are allowed. The court also found that if travel on the water or streambed is obstructed, the public is allowed to use the adjacent private land to portage around the barrier in the least intrusive way possible, avoiding damage to the property holder's rights. However, the public does not have the right to enter into or trespass across private property in order to enjoy the recreational use of state-owned waters. The State of Alaska agrees with this ruling and believes a similar ruling would be made by our state courts.

BOUNDARIES OF NAVIGABLE WATERS

The state is often asked where public ownership of water bodies ends and private ownership begins. There are two types of water body boundaries to address: 1) non-tidal water boundaries and 2) tidal water boundaries. Non-tidal boundaries are boundaries of lakes, rivers, and streams. Tidal boundaries are the boundaries along any body of water which is influenced by the rise and fall of the tides.

Non-tidal Water Boundaries

The boundary between public and private ownership is the **"Ordinary High Water Mark"** which is defined in 11 AAC 53.900(23) as being - The mark along the bank or shore up to which the presence and action of the non-tidal water are so common and usual, and so long continued in all ordinary years, as to

eave a natural line impressed on the bank or shore and indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics. Also see the Alaska State Supreme Court definition in Department of Natural Resources v. Pankrantz 538 P.2d 984, 988-89 (Alaska 1975). The ordinary high water line can usually be observed by the layman simply by noting the vegetation line or well defined stream banks.

Tidal Water Boundaries

The boundary between tidal water bodies and private/public owned uplands is the **Mean High Water Line**. Mean high water line as defined by 11 AAC 53.900(15) is: The tidal datum plane of the average of all the high tides, as would be established by the National Geodetic Survey, at any place subject to tidal influence.

This line is not readily observable because it is a line of known elevation which intersects the land surface. The mean high water line can be a considerable distance below the vegetation line because extreme high water will denude the beach above the line of mean high water. The only way that the location of mean high water line can be accurately determined is by differential leveling from known bench marks or by operating a tide gauge for a sufficient period of time to determine the mean high water elevation. The line of mean high water line can be approximated by time coordinated observations of the daily predictions for high and low waters, predicted by NOAA, as they relate to the published mean high water elevation. This method can be highly unreliable because small errors in the predictions or observations can transform into large errors in the horizontal location; this is especially true in areas where the beach gradient is very flat.

It is important to note that in some areas, such as Prince William Sound, the mean high water line boundary is considerably higher than the current mean high water line because the boundary became fixed at the 1964 pre-quake location. In this instance the boundary between state-owned tidelands and the uplands would be established at an elevation which equals the sum of the mean high water elevation plus the published amount of uplift or, in some cases, submergence.

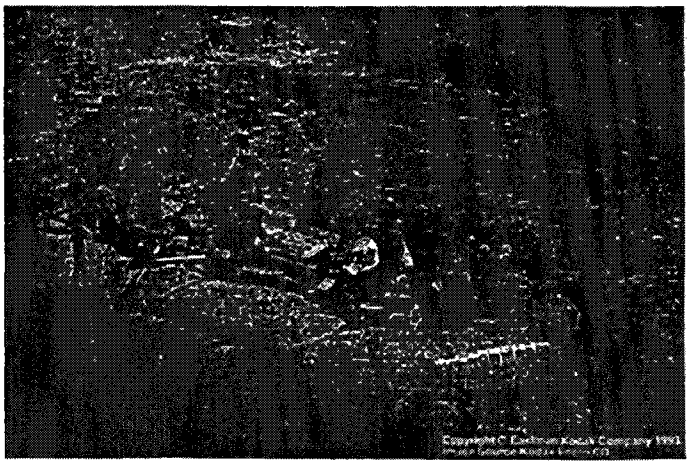
CONCLUSION

This paper describes the state's policies and procedures for managing and protecting state submerged lands and public waters. As further legal and practical developments occur in this area, these policies and procedures will be reexamined by the state and, if necessary, appropriate changes will be made.

Where can I get more information?

Public Information Center
3601 C Street, Suite 200
Anchorage, AK 99503-5929
(907) 762-2261
FAX: 762-2236

Division of Mining and Water Mgt.
3601 C Street, Suite 800
Anchorage, Ak 99503-5935
(907) 762-2575
FAX: 562-1384



Prepared by:
Division of Mining and Water Management
Navigability Section

Appendix D

WATER RIGHTS IN ALASKA

Prepared by
Alaska Department of Natural Resources
Division of Mining and Water Management

Alaska Department of Natural Resources

Division of Mining & Water

Water Resources Section

Water Rights In Alaska

What Are Water Rights?

A water right is a legal right to use surface or ground water under the Alaska Water Use Act (Alaska Statute 46.15). A water right allows a specific amount of water from a specific water source to be diverted, impounded, or withdrawn for a specific use. When a water right is granted, it becomes attached to the land where the water is being used for as long as the water is used. If the land is sold, the water right transfers with the land to the new owner, unless the Department of Natural Resources (DNR) approves its separation from the land. In Alaska, land owners do not have automatic rights to ground water or surface water. For example, if a farmer has a creek running through his property, he will need a water right to protect his use. Using water without a permit or certificate does not give the user a legal right to use the water.

How Do I Obtain Water Rights?

To obtain water rights in Alaska, you should submit an application for water rights to the DNR office in the area of the water use. After your application is processed, you will be issued a permit to drill a well or divert the water. Once you have established the full amount of water that you use beneficially and have complied with all of the permit conditions, a Certificate of Appropriation will be issued. This is the legal document that establishes water rights.

What Costs Are Involved?

An application for water rights must be accompanied by the filing fee of $50 for the use of 5,000 gallons per day (gpd) or less; $100 for the use of more than 5,000 gpd but less than 30,000 gpd; $200 for the use of 30,000 gpd or more but less than 100,000 gpd; $300 for the use of 100,000 gpd or more but less than 500,000 gpd; $500 for the use of 500,000 gpd or more but less than 1,000,000 gpd; $1,000 for the use of 1,000,000 gpd or more <u>except</u> $1,500 for the use of 1,000,000 gpd or more outside of the hydrologic unit from which it was removed (hydrologic units are based on the most current U.S.G.S. Hydrologic Unit Map of Alaska). To ensure that the public is notified of proposed water uses, you are required to pay the cost of a legal advertisement in at least one issue of a local newspaper in the area of the proposed water use. Public notice is required if the appropriation is over 5,000 gallons per day; if it comes from an anadromous fish stream; or if the water source has a high level of competition among water users. In addition, water right permit, water right certificate, and temporary water use permit holders are subject to an annual $50 administrative service fee for any non-domestic use of more than 500 gpd. Domestic water users of less than 1,500 gallons per day are exempt from the annual fee.

Why Should I Apply For Water Rights?

1. If you have water rights, you have legal standing to assert those rights against conflicting water users who do not have water 2. A person with water rights has priority to use water over persons who later file for water rights from the same source.

3. Anyone who diverts, impounds, or withdraws water, or uses a significant amount of water without a permit or certificate is guilty of a misdemeanor (AS 46.15.180). A significant amount of water is defined by 11 AAC 93.970(14) as:

The use of more than 5,000 gallons of water in a single day from a single water source; or,

The regular daily or recurring seasonal use of more than 500 gallons of water per day for 10 days or more per year from single water source; or,

The non-consumptive use of more than 30,000 gallons of water per day (0.05 cubic feet per second) from a single water source; or,

Any water use that might adversely affect the water rights of other appropriators or the public interest.

4. By filing for water rights, you provide valuable information about water use and water availability in Alaska. This information allows state water managers to estimate present uses of water, determine how much water is available from streams and aquifers in the state, protect established water right holders, prevent over-appropriation of water sources, and manage the state's water resources.

What Other Water Resources Authorizations Are Available From The Department of Natural Resources?

Dam Safety: If your water use requires you to construct a dam that impounds 50 acre-feet of water and is at least 10 feet high, or is at least 20 feet high, or poses a threat to life and property, a certificate of approval is needed. A separate application form and the fee prescribed by 11 AAC 05 should be filed with the Division of Mining & Water Management.

Instream Reservation: If you do not want to remove water from its source, but want to make sure that enough water is available for a particular use, you should apply for an instream reservation to maintain a specific flow in a stream or water level in a lake. An instream flow reservation application can be made to protect fish and wildlife habitat, migration, and propagation; recreation and park purposes; navigation and transportation purposes; and sanitary and water quality purposes.

How Do I Obtain Authorization For Short-Term Water Use? (Temporary Water Use Permit)

A temporary water use permit may be needed if the amount of water to be used is a significant amount, the use continues for less than five consecutive years, and the water to be used is not already appropriated. This permit does not establish a water right but will avoid conflicts with fisheries and existing water right holders. The application fee for a temporary water use permit is the same as for a water right.

Where Can I Get More Information?

More information about water rights is available from fact sheets on Glacier Ice Harvesting, Instream Water Reservations, Dam Safety, Federal Reserved Water Rights, and Water Right Administrative Service Fee. Copies of this information and application forms are available at the offices listed below. Applications should be submitted to the DNR office in the area of the water use. To have an application form sent to you, contact one of the offices below with your mailing address.

Department of Natural Resources
Public Information Center
3601 C Street, Suite 200
Anchorage, AK 99503-5929
Telephone: (907) 269-8400
Fax: 269-8901

Water Resources Section
Northern Region

3700 Airport Way
Fairbanks, AK 99709
Telephone: (907) 451-2700
Fax: 451-2751
Jack Kerin

Southcentral Region
3601 C Street, Suite 800
Anchorage, AK 99503-5935
Telephone: (907) 269-8624
Fax: 562-1384
Kellie Litzen

Southeast Region
400 Willoughby Avenue, 4th Floor
Juneau, AK 99801
Telephone: (907) 465-3400
Fax: 586-2954
John Dunker

Mat-Su / Copper Basin Area
1800 Glenn Highway, Suite 12
Palmer, AK 99645
Telephone: (907) 745-7200
Fax: 745-7112
Carol Compton

This web site is under construction.

Other Related Web Sites

Alaska Department of Fish and Game

Alaska Department of Environmental Conservation

Return To:

MINING & WATER HOME PAGE

ALASKA D.N.R. HOME PAGE

STATE OF ALASKA HOME PAGE

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Send comments and mail to ***Kellie Litzen***

This Page Last Updated by Kellie Litzen on 11/08/96

Appendix E

TIDE AND SUBMERGED LAND OWNERSHIP

Prepared by
Alaska Department of Natural Resources
Division of Land

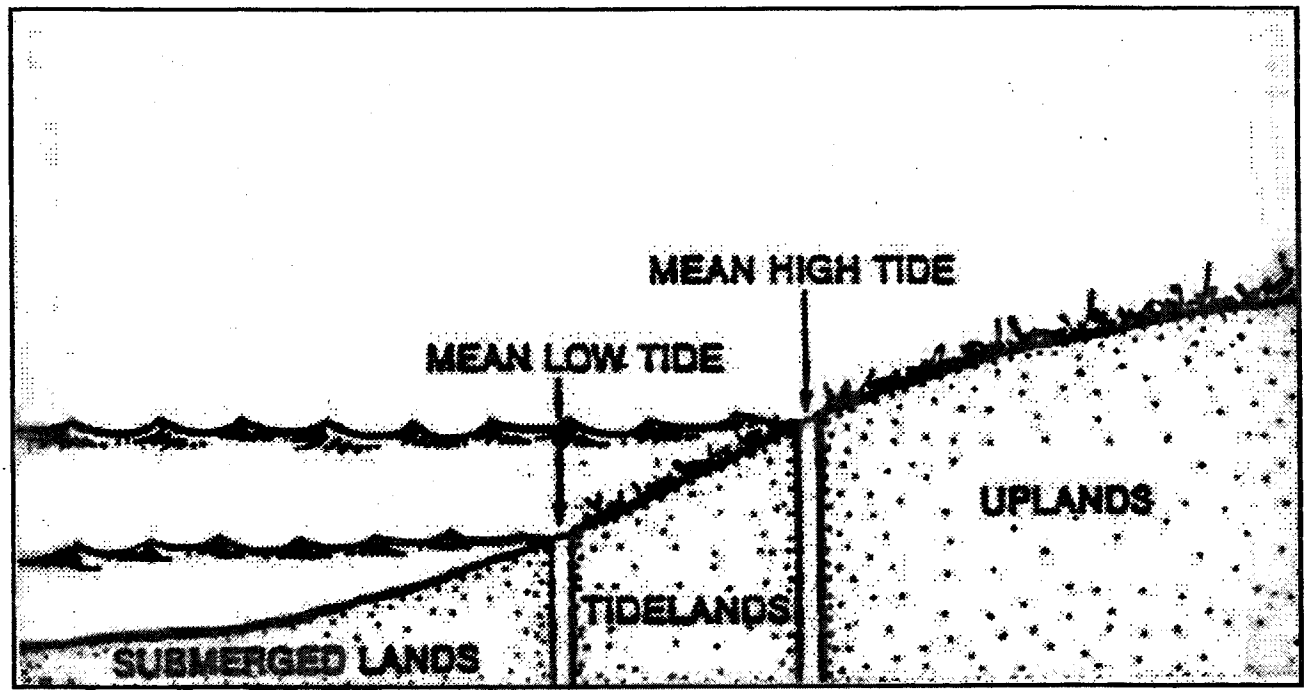
Fact Sheet

Title: Tide & Submerged Land Ownership

Alaska Department of NATURAL RESOURCES
Division of Mining, Land & Water
January 2000

What are "tide and submerged" lands?

Tidelands include the land between mean (average) high and mean low tide. Submerged lands are seaward of mean low tide to three miles offshore. The tide and submerged lands include all land between the mean high tide line and three miles offshore of the mean low tideline.



Who owns tide and submerged lands in Alaska?

The State of Alaska owns most of the tide and submerged lands along its coastline. The submerged Lands Act of May 22, 1953 states that all lands permanently or periodically covered by tidal waters up to, but not above, the line of mean high tide and seaward to a line three geographical miles distant from the coast mean low tideline is owned by the state.

Can the state sell or lease its tide and submerged land?

As a general rule, the State cannot sell tide and submerged land. However, certain cities and individuals or corporations may acquire title to tide and submerged land occupied or developed on or before January 3, 1959, the date Alaska was admitted to the union. There are several programs under which a lease of state tidelands may be acquired.

Can I use state tide and submerged lands, even if the state doesn't own the uplands?

Yes, you can use state tide and submerged land, even if the uplands are not owned by the state. However, you must remember that you only have the right to use the land from mean high water seaward. You are also expected to respect the upland owner's rights and treat the land with care.

Does the federal government own tidelands adjacent to its conservation units, such as National Parks?

The question has been raised that the United States may own tidelands adjacent to certain federal withdrawals that exist prior to statehood. However, that question was answered on June 8, 1987 when the U.S. Supreme Court issued its decision in Utah v. United States. This decision established that federal land withdrawals made prior to statehood did not include land under navigable waters.
In that decision, the Supreme Court affirmed the longstanding policy that the federal government holds land under navigable waters for the ultimate benefit of a future state. In order for this not to be the case, congress would have to specifically include the land and clearly state that it intended that the state would not have title to it.

Tide and submerged lands were not included in any pre-statehood federal withdrawals within Alaska and there is no indication that Congress intended to take away the State of Alaska's title. The state therefore received title to all the tide and submerged lands at statehood.

Additionally, in the Alaska National Interest Lands Conservation Act, Congress did not take away the state's power to regulate state-owned submerged lands within or adjacent to federal Conservation System Units in Alaska. Many provisions in ANILCA recognize and respect the state's authority over state-owned land.

Where the uplands are within federal conservation units, the state has cooperated with federal land managers wherever possible. As a result, some special use restrictions may apply. Sometimes this cooperation is formally set out in a memorandum of understanding that discusses management issues and how they will be resolved.

For additional information contact:

Department of Natural Resources
Division of Mining, Land & Water

Southcentral Regional Office
550 West 7th Avenue, Suite 900-C
Anchorage, AK 99501
Phone: 907-269-8503

Southeast Regional Office
400 Willoughby Avenue, 4th Floor
Juneau, AK 99801
Phone: 907-465-3400

Northern Regional Office
3700 Airport Way
Fairbanks, AK 99709
Phone: 907-451-2700

Appendix F

RESTRICTED NATIVE LAND

Prepared by
Association of Village Council Presidents, Inc.
Real Estate Services

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS, INC.
REAL ESTATE SERVICES
P.O. Box 219 * Bethel, AK 99559 * 543-3521 * 1-800-478-3521

Restricted Native Land
General Information

Generally, Allotment Lands are acquired under the 1906 Allotment Act, and Restricted Townsite Lots under the 1926 Townsite Act. These are the acts that specifically include Alaskan Natives who were no included in earlier legislation.

The Alaska native Claims Settlement Act repealed the 1906 Native Allotment Act. Only individuals who applied for land before December 18, 1971, are eligible to receive allotment land under the 1906 Act.

Many people with Native Allotments and/or Restricted Townsite Lots are uncertain what their ownership really means, and what limitations are part of that ownership. Natives who acquire Allotment Land or Restricted Townsite Lots from the government have Restricted Land. This means they cannot sell, lease, or otherwise convey that land without Bureau of Indian Affair (BIA) approval. Restricted also means that land is non-taxable, inalienable, and not subject to state and/or local laws. (Unlike regional and village corporation lands, allotments and restricted townsite lots will remain tax-exempt until changed by Congress.)

A.V.C.P.'s Real Estate Services assists in managing restricted townsites and Native allotments. We advise, counsel, and offer technical assistance on all individual land matters. Our primary concern is that the Native landowner receive the highest, best benefit from the land. Real estate services are provided at no cost to the landowner. Landowners do no need to hire an attorney too acquire the services available from the A.V.C.P. Realty.

Informational sheets describing each land transaction procedure are available at our office.

ivantages of having a restricted deed:

- Restricted deeds cannot be taxed. If the State of Alaska or City starts taxing property, your land will not be subject to those taxes. Your land will be "tax-exempt" from all taxes.

- Income from the land cannot be taxed. If you rent, lease or sell the land, the money you make cannot be taxed (just the interest), and you dc not need to report it to the IRS.

- The land cannot be seized, taken away, trespassed upon, or be subject tc liens. Your land is protected by the Federal Government from authorized seizure by the State, Federal and City governments for anything (not even the IRS). No-one can trespass on the land, or else they'll be in trouble with the Federal Government (examples of trespassing are building things on your land without your permission like steambaths, homes, power and telephone poles, etc.). No-one, not even the IRS, can place "liens" (papers that say someone owes you money) against your land.

- Restricted land owners get free real estates services and counseling. Sometimes you can get free financial services if you make money off you land. We give free assistance if you want to sell, lease, rent or gift-deed your land. We make sure all the paperwork is done right;, and acceptable to the BIA that **must** approve such things **first** before they are done.

- BIA must approve all transactions (sales, leases, rights-of-ways, rents, gift deeds, mortgages, etc.). This is only to insure that you are getting the best deals, that the paperwork is done correctly, that you aren't being cheated, and that it is in you est interest. We make sure no-one is forcing you to sell or leave you land.

Restricted" on restricted lands doesn't mean "restricted" by the meaning o: he word. If actually means "protection" from losing your land. The U.S overnment realized that is was easy for Natives to lose their lands throug axation and other ways so they decided that Native could choose to hav heir land protected by the BIA through those "restrictions."

lot of people have concerns regarding 1991 and Native allotments, believin hat allotments will also become taxable along with ANCSA lands today llotment and townsite lot deeds all contain language which say that suc ands are "non-taxable" and will remain untaxable until Congress say therwise. While there are provisions for ANCSA lands to be taxed in 1991 othing yet has been done to tax restricted Native allotments and townsit ots then or in any other year in the future.

f you get "unrestricted" title (deed), your land will be taxable, and Socia ecurity, or any public assistance agency, could use it as a factor to reduc our benefits, if you get any. A.V.C.P. won't be able to help if you want t ell your land, or want to get rid of trespassers. We also can't do anythin f someone wants to take your land away by means of seizures, liens, etc. e can't help even if it's a little problem, even though we would really lik o. Native shouldn't ever receive land in "unrestricted" status, unless the now how to take care of themselves, and know all about the odds and ends c eal estate ownership.

DEFINITIONS

- Allottee: Beneficial owner. Individual Native who enjoys rights of property ownership.

- Allotment: Individually owned, restricted land under sole jurisdiction of the Secretary of the Interior (Bureau of Indian Affairs [BIA]). Maximum of 160 acres in no more than four parcels in various locations.

- Approved allotment: An allotment which meets all requirements, and will be surveyed before a Certificate is issued. Bureau of Land Management (BLM) will notify the applicant by letter that "approval" has been given, following a favorable field examination.

- Certificate: Legal document that conveys beneficial possession of land. In the case of Native allotments, the Certificate contains a patent number. The land is held in restricted status by the allotment owner, and is protected against alienation and taxation by the U.S. Government. A certificate is similar to a patent.

- Conflict: Situation where more than one claim has been filed on a piece of land. Conflicts must be resolved before an application can proceed.

- Field Exam: Investigation performed by BLM. Verifies location, use, and occupancy. Land examined is determined by that described in the "Application for Native Allotment Lands."

- Pending Allotment: Native allotment application which has been filed and is awaiting the approval of the BLM. If a conflict exists with other claims, conveyance of the allotment can be delayed.

- Restricted Land: Protected against taxation and alienation, and cannot be conveyed or encumbered without approval by the Secretary of the Interior (BIA). Not subject to state and/or local laws and ordinances.

- Survey: Determination of boundaries. Performed by BLM based on the field examiner's report. Follows the field exam and often can be many years after it.

0. Unrestricted Land: Removed from protected status in a manner approved by the Secretary of the Interior (BIA). Taxable, alienable and no longer under BIA's jurisdiction.

The following is information on the services that are provided by the AVCP Realty Department on restricted land.

Our ANILCA staff work on Native Allotments on conflicts (selections of land where two or more people applied that overlap each other), amended legal descriptions for land in wrong locations, missing acreage or parcels, affidavits or witness statements, letting BLM know on name changes, death verifications, checking with allottees if the lands are in the right locations before surveys and reconstructed applications for people who filed Native allotments but their applications were lost. These things that need to be corrected before Bureau of Land Management (BLM) can work on the land where they will issue title to the land.

PARTITIONS

Heirs of a deceased allottee can do a partition for their inherited Native alloment or townsite lot. If an adequate aliquot parts or metes and bounds description is not possible, a survey is necessary and required. The survey costs will be at the landowners expense to procure the services of a registered land surveyor. The heirs will issue deeds to each heir for their respective portions. All heirs have to agree to what tract of land they will be getting. In order to accomplish a partition, a Certificate of Allotment, Townsite Deed and Probate Order is needed. All processing of paperwork will be accomplished by the realty staff at the BIA or 93-638 contract office, where all land transactions are held involving restricted Native lands. An appraisal will be done for each tract of the land by the BIA Appraisal staff. If the tracts of land are not of equal value, the heirs can make one of the following adjustments:

a) Waive any differences in value.
b) Payment in cash for the excess in value.
c) Adjust acreage so that each partitioner will have lands equal in value, although the number of acres may vary.

Along with the appraisal request, an archeological inventory request will be submitted. The BIA Archeological staff will do an inventory to determine that there are no historical remains on the property that will hold up the process.

SUBDIVISIONS

For landowners that want to subdivide their property, the landowner will hire their own surveyor, at their expense, to complete preliminary plat for review by the city planning commission. After that is completed, the original plat is completed with the Certificate of Ownership and Dedication block for signature by the landowner(s), Surveyor/Engineers Statement for the survey, approval block for the city planning commissions signature, approval block for the BIA Juneau Area Director. Also the plat has to state on it that the plat is not subject to taxation. Once the plat is submitted to BIA and approved, the plat is recorded and the land is advertised for sale. The landowner can make Conditions, Covenants & Restrictions for the subdivision if they wish to do so. Th

owner has the choice of doing Negotiated Cash Sales or Negotiated Deferred Payment Sales before the advertisement of the land for sale. (these will be covered below) The landowner needs to take into consideration the providing of the main electrical pole(s) and providing access to the property. For roads, the roads have to be certain widths and height before the city will accept the dedication and before they can provide services such as maintenance on the road, water & sewer deliveries, fire department vehicles, school buses, etc. The subdivision process is costly and time consuming and will take time before the first sales are done.

SALES

Sales of restricted land have to be at the appraised price or above the appraised price. If the amount offered is below the appraised price, it will not be accepted. There are three types of sales: Advertised Sales, Negotiated Cash Sales and Negotiated Deferred Payment Sales. These transactions take time, with Advertised Sales taking the longest. For ones that are being purchased by non-natives or corporations/city/companies, we have to wait for archeological inventories to be done because the restrictions will be removed when the title is conveyed to the purchaser. Only natives can retain restrictions on the land, if they are found to be incapable of handling the land and do not really understand the difference between unrestricted and restricted land.

1. Advertised Sales are when you don't have a buyer for the land but you want to sell your land. We need to know if it is for all your land, a portion or if you are selling land from your subdivided property. The advertisement package has to be approved by BIA before we advertise it in the newspapers in Bethel, Anchorage or Fairbanks. We also have lists of interested buyers that ask to be notified if we advertise land for sale. The advertised sale will be posted in the newspapers for 30 days. After 30 days, the realty office handling the sale, will open it for bids. All bids are collected and accept the ones that are at or above the appraised market value. The landowner has the choice of whose bids they will accept. After the acceptance, the realty office prepares the paperwork for either the negotiated cash sale or negotiated deferred payment sale.

2. Negotiated Cash Sale are when the whole amount of the sale price is paid in full. The purchaser is asked to write a letter of offer to purchase stating the purchase price. The paperwork is prepared and the payment collected. The payment is held in suspense till approval of the deed by the Juneau Area Director. If for any reason, the sale is disapproved, the money can be returned to the purchaser. The owner and the purchaser have an appeal process they car use if they feel the disapproval was not justified.

3. Negotiated Deferred Payment Sales are when the owner okays the purchaser to make monthly payments till the land is

paid in full. An offer to purchase is required from the purchaser and should contain the purchase price, down payment amount and the terms of the note (interest rate, payment frequency, payment due date and length of the note). The minimum down payment shall be at least 20% of the purchase price up to and including a sales price of $75,000.00; sales over $75,000.00 will require a minimum down payment of at least 10%. Payment of the balance of the agreed upon consideration shall be in equal installments, including interest. These installments may be paid over a term of years acceptable to the landowner, but not more than 20 years. The number of years will be determined greatly upon a combination of several things, such as, the wishes of the landowner, the sales price, and the long range best interests of the Native landowner as determined during couseling. When the amount owed is paid in full, the deed is forwarded to BIA Juneau for the Area Directors signature and recorded in the appropriate recording offices.

LEASES

Leases can be done for all or portions of land. There has to be an interested party before we can do leases. If there is no interested party we can advertise the land for lease. The land can be leased by anyone, company, corporation, city or other businesses. The lease payment has to be for the appraised rental value set by the BIA appraisal staff. Payment can be yearly or monthly. Most landowners prefer monthly payments on leases. Land can be leased to family members for no money. Lease for no monetary consideration only applies to sisters, brothers, daughters, sons, grandparents or parents. The terms of the lease can be from couple months to 25 years. Any provisions can be added to the standard BIA lease as long as it is agreed by both parties. Leases are reviewed every five years to determine if the rental value may have changed. For businesses, liability insurance is necessary for the term of the lease.

HUD leases are also done for portions of Native allotments or townsite lots. We prefer that portions of land be used because if the landowners should default in their payment and lose the house and the land that is being leased, they will have the other portion of their lot to live on. HUD leases are usually 25 years with a automatic renewal for 25 years, if the homebuyers have not paid in in full in the first 25 years. If the house is built before the paperwork is done, the house is in trespass. If it is the landowners wish to complete the paperwork, we will work it out. If someone else lives on the lot, the landowner has an option of selling that portion of the land, asking for the house to be moved off, or see if the city or corporation could trade it for other lands. The last option is at the discretion of the city or corporation but has been done before.

GIFT DEEDS

Gift Deeds are when an owner or owners give part or all of their land to a family member or family members. When land is given to a family member, no money is involved - it is given for "Love and Affection". The landowner(s) still need to know what the value of the land they are giving away is worth. The gift deed procedure of conveying land only applies to family members - sisters, brothers, mother, father, grandparents. It can be applied to other relatives such as nieces, nephews, aunts, uncles, etc - under the "special relationship" category but it is up to BIA if they will approve it or not. The land can be conveyed with restrictions or in fee. The grantee is counseled on the difference between unrestricted and restricted land and then the realty specialist determines if the restrictions should be retained based on their counseling.

MORTGAGES

Restricted land can be used as collateral when obtaining a loan. All or portions of the land can be used. The landowner will be counseled that in the event they default on their loan, the land can be taken away to settle the debt. Once the BIA Juneau Area Director approves the mortgage application and loan and the landowner defaults and foreclosure is done, the land is immediately fee property and can be sold or taken by the lending institution to settle the debt owed. We encourage the landowner to work out all the arrangements with the lending institution before we do our paperwork. We will give assistance to the lending institution during the whole process to make sure everything that is required gets done. We do not recommend that a landowner apply for mortgage for $15,000.00 using land as collateral that has been appraised at $30,000.00. We try to make sure that the land is at or little above the loan amount.

RIGHTS-OF-WAYS/EASEMENTS

Anyone or any company can apply for a right-of-way or easement on restricted property. A right-of-way or easement can be sidewalks, roads, water/sewer lines, telephone poles, electric poles or anything that will go through restricted property. This is a very time consuming project. Please see the handout on rights-of-ways and easements for the procedures and process of obtaining either of the above.

TRESPASSES

If anyone is on or puts anything on your land without you permission or damages any part of the land without asking first AVCP Realty (or any other contractors) on behalf of the landowne can ask to remove, pay rent or damage costs. For land that ha title already, if the trespasser does not respond, the case i forwarded to the BIA Indian Rights Protection Officer in Juneau fo his review and action. He will in turn forward the case to the BI attorney for their opinion and action. For Native allotments tha are pending (that have not been approved yet), the case is referre to BLM for their action. For land that falls within the wildlif

refuge, it is turned over to the Fish & Wildlife Refuge that has jurisdiction over that land. The BIA or contractor try to resolve the trespass problem by with turning it into leases or sales but if it is not resolved it is turned over to BIA for their action.

REMOVAL OF RESTRICTIONS

Any landowner or landowners can remove restrictions from their Native allotment or townsite lot. The landowner needs to know that the services provided free of charge will no longer be available to them by the BIA or the contractor. The landowner will be counseled and the consequences of removing restrictions explained to them. Some landowners remove restrictions from land before applying for mortgage because it is less time consuming just dealing with the bank but mortgage can be done without removing the restrictions. See the information sheet for detailed information on the process of removing restrictions.

PROBATES/WILLS

Probates are done for Native landowners when they die. The family history is gathered and addresses obtained for the Administrative Law Judge. He makes a decision on who inherits the property based on the information provided, if there was a will or not and on the value of the land. If the land or lands are worth less than $50,000.00 the surviving spouse inherits it. If the land(s) are worth more than $50,000.00, the spouse and the children inherit the land.

Wills are prepared for landowners who want to give their land to a certain family member(s). The will is submitted along with the probate information when it is submitted to the Law Judge. We try to encourage landowners to make wills to prevent fractionations in the future. If a landowner has 12 children and leaves no will, a townsite lot will be divided between 12 children and as they die, their children inherit their portion. Soon the tiny townsite lot is owned by 50 or more people and is not worth much to the landowners. Wills and probates are done by Agnes Roland and Clement Joseph. If anyone wants to make a will, please contact them and they will travel to your village to help you.