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BY THE U.S. GENERAL ACCOUNTING OFFICE

## Report To The Secretary Of The Interior

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# Alaska Land Conveyance Program--A Slow, Complex, And Costly Process

Under the Alaska Statehood Act of 1958, and the Alaska Native Claims Settlement Act of 1971, the state is entitled to receive 104 million acres of land and Alaska Native corporations are entitled to receive 44 million acres of land from the federal government. As of December 1983, the Native corporations and the state have received legal title to surveyed land for 26 of the 148 million acres

Obstacles slowing the Department of the Interior's conveyance of land include having to resolve over 8,800 pending individual Alaska Native claims for small parcels of land and surveying the boundaries of over 72 million acres of land. The land surveys at current funding levels could take over 40 years and cost over \$300 million to complete

GAO makes recommendations to the Secretary of the Interior on ways to improve the land conveyance program



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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY,  
AND ECONOMIC DEVELOPMENT  
DIVISION

B-206829

The Honorable William P. Clark  
Secretary of the Interior

Dear Mr. Secretary:

This report provides information about how much land the Bureau of Land Management has conveyed to the state of Alaska and Alaska Native corporations, what problems the Bureau is encountering in trying to convey land in a timely manner, the impact of the problems on the state and Alaska Natives, and ways the conveyance program can be improved.

This report contains recommendations to you on page 26. As you know, 31 U.S.C. 720 requires the head of a federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the Senate Committee on Energy and Insular Affairs, the House Committee on Interior and Insular Affairs, Native regional and village corporations, and other interested parties.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "J. Dexter Peach".

J. Dexter Peach  
Director

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D I G E S T

During the past 25 years, the Department of the Interior's Bureau of Land Management (BLM) has been conveying land to the state of Alaska to fulfill the state's 104 million acre entitlement under the Alaska Statehood Act of 1958. Since 1974, BLM has also been conveying land to Alaska Native corporations to fulfill the corporations' 44 million acre entitlement under the Alaska Native Claims Settlement Act of 1971. As of December 1983, 169 village corporations and 12 regional corporations were entitled to receive land and one regional corporation was not to receive any land but would be compensated monetarily. An important objective of both acts was to convey land for economic development. GAO made its review to evaluate BLM's progress in conveying the land.

Conveyance has proven to be a slow process. Once the state and the Alaska Native corporations select land they want, BLM then goes through a conveyance process to patent the land to them. As of December 31, 1983, BLM had tentatively approved for patent<sup>1</sup> 54 million acres of land to the state and had patented<sup>2</sup> 22 million acres--a total of 76 million acres, or 73 percent of the 104 million acres of the state's entitlement. BLM had interim conveyed<sup>1</sup> 27 million acres to Alaska Native corporations and patented 4 million acres--a total of 31 million acres, or 70 percent of the 44 million acres of the Alaska Native corporations' entitlement. Of the total 148 million acres BLM is to convey by patent, only 26 million had been conveyed.

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<sup>1</sup>"Tentatively approved for patent" or "interim conveyance" is a transfer of legal title of unsurveyed land that includes all reservations for easements, rights of way, or other interests imposed by law.

<sup>2</sup>A "patent" is a conveyance of title to land that has been surveyed or whose boundaries have been confirmed by other means.

According to the state, the slow process of conveying land, especially receiving patent, has adversely affected its economic development efforts. In response to a GAO questionnaire sent to all Native corporations, 95 of the 142 corporations that responded stated that their economic development objectives had been adversely affected and 80 said that their social or cultural objectives had been adversely affected by the slow speed of land conveyance.

Three obstacles are slowing BLM from quickly patenting land--pending Native land claims, navigability determinations that either have not been made or are in dispute for some lands containing waterways, and the slow and costly process of surveying land. (See p. 7.)

#### PENDING NATIVE LAND CLAIMS PREVENT PATENTING OF LAND

Under the Native Allotment Act of 1906, Alaska Native adults were entitled to select and receive up to 160 acres of land in Alaska. The Alaska Native Claims Settlement Act cut off further Native allotment applications after 1971. Before allotment applications were cut off, however, BLM was inundated with over 8,000 new applications. Allotment applications represent prior claims, and therefore, if a Native corporation or the state selected land containing a pending claim, the land cannot be patented until the claim is either certified or denied.

Over 8,800 allotment applications involving about 16,000 separate land parcels in 3,279 different townships were pending BLM certification or disapproval as of December 1983. The pending applications were preventing BLM from patenting over 11 million acres of land to the Native corporations and the state for their use.

BLM's resolution of pending applications has been slow because the number of allotment applications being processed kept changing as a result of court decisions and administrative appeals which resulted in repetitive review, adjudication, and field examinations. The process of adjudicating allotment applications, surveying, and issuing a certificate of allotment for the land is complex. Natives frequently amended their locations of allotment land which resulted in applications having

to be reexamined in the field and/or resurveyed. Further, Natives or their representatives were not required to be present at the time of field examinations and sometimes the wrong locations were examined. Affidavits to bind the applicant to a particular location once the field examinations were completed were not required. (See p. 13.)

RECOMMENDATIONS TO THE  
SECRETARY OF THE INTERIOR

GAO recommends that the Secretary of the Interior direct the Director, BLM, to

--require, after providing reasonable notice, that all amendments to Native allotment applications in a specified area be filed by a specific date and

--require the applicant, or an alternate with power of attorney, to be present when the allotment is field examined and obtain an affidavit from the applicant agreeing to the allotment location. (See p. 26.)

In a draft of this report, GAO proposed that BLM expand its field examination season as much as practical. Interior, in commenting on that draft, stated that it has recently expanded its season from 3 months to approximately 6 months, and plans to do as many field examinations each year as weather and funding permit. GAO believes a 3-month extension is reasonable and should expedite the conveyance of land.

GAO also proposed to shorten the Native allotment application processing time by legislatively establishing a 1-year deadline for Alaska Natives to file civil actions or administrative appeals on allotment applications. The Alaska National Interest Lands Conservation Act of 1980 had established a 2-year deadline for applicants to file civil actions. Interior said that a 1-year deadline for filing civil actions would be helpful. With respect to a deadline for filing administrative appeals, Interior pointed out that its current regulations establish a 30-day deadline for such filings and legislative action would not be necessary. After further analysis and discussion with Interior, GAO concluded that the reduction in processing time resulting from establishing a 1-year deadline for filing civil actions would not be significant enough to warrant a change in the law.

DETERMINING NAVIGABLE WATERWAYS:  
A DIFFICULT PROCESS

Before land selected by the Native corporations or the state can be patented, navigability determinations have to be made to determine who is entitled to the land. Alaska has over 10 million acres of land containing inland waterways. Under the statehood act, the state owns the land beneath navigable waterways that had not been set aside for a particular public purpose or program at the time Alaska became a state. This land would not apply to the state's entitlement of 104 million acres. Lands beneath nonnavigable waterways and other land not set aside for a particular public purpose or program at the time Alaska became a state remain in federal ownership unless they are either conveyed by BLM to the Native corporations or the state. These lands would apply to either the state's or the Native corporations' entitlements.

BLM and the state have been preparing reports compiling historical records on the use of waterways by geographic areas. These reports are to include information BLM can use in determining the general location of a waterway and its historical commercial use, thereby helping BLM decide whether a waterway is navigable.

However, as of December 1983, only 2 of the 14 planned reports had been completed. According to BLM and the state, personnel shortages and/or budget constraints were causing the delay. The state has a goal of completing its six reports by June 1984, and BLM wants to complete its remaining six reports by September 1984. Until these reports are completed, BLM has to make specific reviews of inland waterways in areas selected for conveyance to determine whether they are navigable. (See p. 19.)

BLM and the state disagree on the criteria for deciding whether waterways are navigable. For example, the state believes that frozen water should be considered navigable if it can be traversed by snowmobiles; BLM disagrees. Such disagreements have led to administrative appeals and litigation. As a result, lands containing waterways for which navigability determinations either have not been made or are in dispute cannot be patented to either the Native corporations or the state.



BLM estimated that about 300,000 acres of state-selected land are tied up because of these appeals and litigation. In response to a GAO questionnaire, 69 of 131 Native corporations responding said that conflicts over navigability determinations contributed to land conveyance delays. (See p. 22.)

In a draft of this report, GAO proposed that the Congress enact legislation clarifying the definition of navigable waterways in Alaska. Interior, in commenting on that draft, raised a number of legal objections to such legislation. As an alternative, Interior adopted a new submerged lands policy that it believes could resolve the problem. Under this policy, lands under larger bodies of water such as lakes (whether navigable or not) are not to be counted against the Native corporations' nor the state's entitlements under the acts. Thus, navigability determinations will not be required on larger water bodies. While we have not assessed what impact this policy will have on the 300,000 acres of state-selected land, we believe that implementing the new policy should speed up the land conveyance process. GAO is, therefore, not making a recommendation regarding this matter. (See p. 22.)

#### SURVEYING LAND SLOW AND COSTLY

The Native corporations and the state cannot receive patent to land they selected until the exterior boundaries of the land are surveyed and all privately owned land identified. Receiving patent would provide for unencumbered use of that land. As of December 1983, BLM still needed to survey the boundaries of over 72 million acres of land. BLM's goal is to complete surveys of exterior boundaries of Native lands by 1990 and of state land by 2005. BLM, however, estimated that, if annual survey funding continues at \$8 million a year, it would eventually cost over \$300 million to complete the surveys and take over 40 years.

According to BLM, it has the administrative capacity to handle more survey contracts but needs additional funds to pay for the surveys. The state said that it may be beneficial to the state to occasionally voluntarily contribute funds to expedite survey of particular lands but that it remains the overall responsibility of BLM to complete a survey of all unsurveyed lands selected by the state prior to issuance of patent. Although BLM could accept contributions from Native corporations

and the state to do additional surveying, BLM does not have a policy on how to request volunteer contributions to augment the funds it receives through its annual appropriation process. If the Native corporations and the state made contributions for surveys, the survey process could be expedited. In the past, the state contributed \$708,500 to BLM to survey five parcels of land.

In response to GAO's questionnaire, 83 Native corporations said that they would be unwilling or very unwilling to pay a portion of the land surveying costs to substantially speed up the patent process. Seventeen, however, expressed their willingness to pay for surveying costs, particularly if such costs were under \$10,000. An additional 35 said they were uncertain as to how much they would be willing to pay. (See p. 25.)

#### RECOMMENDATION TO THE SECRETARY OF THE INTERIOR

GAO recommends that the Secretary of the Interior direct the Director, BLM, to develop and implement a policy to request voluntary contributions from the Native corporations and the state so that BLM could have additional funds to do more survey work. This would benefit the Native corporations and the state because they would receive patent to the land quicker. (See p. 26.)

#### AGENCY AND STATE COMMENTS

Interior expressed concern that the report did not take into account some recent actions Interior has taken to accelerate the conveyance program as well as recent progress Interior has made in conveying land, such as accelerating the Native allotment program and extending the field examination season. GAO updated its report to recognize these accomplishments and deleted its related proposals for corrective action.

Interior expressed doubt that GAO's recommendation requiring a cutoff date for filing amendments to Native allotment applications would speed up survey work because 4,000 parcels are currently awaiting survey. GAO believes that the requirement would allow Interior to better plan its work, because Interior would then know the number and all the

locations of the allotments needing to be surveyed in an area and would be in a better position to adopt an orderly plan of survey.

Interior said that if the presence of the applicant or an alternate or an affidavit were required as recommended by GAO, the processing of many allotments would be delayed until the applicant or alternate was available or an affidavit was signed. Although Interior agreed that one of its biggest problems is the availability of applicants to accompany field examiners, it said that it would encourage but not require the presence of an applicant or his/her designee and the acquisition of an affidavit. GAO believes that to avoid reexaminations and to provide for a greater degree of finality in the process, Interior needs to ensure that the applicant or designee agrees to the location to be examined before spending scarce resources on a field examination.

Regarding GAO's recommendation to Interior concerning a policy of requesting contributions, Interior said that it has a policy of accepting money for survey and other purposes and that the Native corporations and the state are well aware of this policy. GAO believes that, if Interior had a policy to request contributions in addition to its policy to accept contributions, it may increase the funds available for doing surveys and thereby help to reduce the time to complete the survey work. (See app. V.)

The state said that GAO's recommendations to the Secretary of the Interior should help assist and expedite BLM's Native allotment review process. The state expressed concern, however, with GAO's recommendation to develop and implement a policy to request contributions from the state.

Although the state recognized the benefit of such a policy, it said that it would oppose efforts to have Interior actively request survey funds from the state. The state wants to retain the option of contributing funds only for unique circumstances. GAO did not recommend that Interior require contributions; therefore, the state would continue to retain its option to make contributions. (See app. VI.)



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ABBREVIATIONS

BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
GAO	General Accounting Office

## CHAPTER 1

### INTRODUCTION

Alaska encompasses an area of about 375 million acres, including over 10 million acres of land containing inland waterways. Before passage of the Alaska Statehood Act of 1958 (Public Law 85-508), the federal government owned and managed over 99 percent of the land. Full implementation of the statehood act and two additional major pieces of legislation--the Alaska Native Claims Settlement Act of 1971 (Public Law 92-203) and the Alaska National Interest Lands Conservation Act (Public Law 96-487)--will greatly change the land ownership patterns and land management in Alaska. Collectively, these acts provide for the federal government to convey about 104 million acres of land to the state of Alaska and 44 million acres to Alaska Natives.

#### ALASKA STATEHOOD ACT OF 1958

Alaska received little attention from the federal government after its purchase from Russia in 1867. The first statehood bill was introduced in the Congress in 1916. Numerous additional bills were submitted, but none were enacted. Forty-two years after the first statehood bill was introduced, Alaska's statehood act was signed on July 7, 1958, and a Presidential Proclamation formally admitting the new state was signed on January 3, 1959.

The statehood act entitled the state to select about 104 million acres of federal lands and granted ownership to the state of tidelands and lands beneath navigable waters not otherwise reserved at statehood. The act, as amended, provided that the state select its land within 35 years. The act did not address the Alaska Native aboriginal land claims issue that the United States had agreed to settle when the territory was purchased. In 1966, in response to the Natives' appeals that they were being denied lands to which they had aboriginal rights, the Secretary of the Interior froze further land transfers to the state until the Native land claims issue was settled.

#### ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1971

The settlement act of 1971 canceled all aboriginal land claims and, in exchange, the federal government was required to convey title to about 44 million acres of land, with both surface and subsurface rights, and pay almost a billion dollars to Alaska's Native Indian, Aleut, and Eskimo population. The act provides that title to land be conveyed to the Natives as quickly as possible. In passing the act, the Congress declared that:

1. ". . . there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims; . . .
2. ". . . the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, . . . ."

The act required that the Secretary of the Interior issue land titles to Native village and regional corporations immediately after land selections had been completed.

The act also provided a framework to establish the basic ownership pattern (regional and village corporations) through which Alaska Natives may fully participate in the social and economic life of the state and Nation. The act set forth a schedule and basis for providing money to the regional and village corporations responsible for distributing the money. When the act was passed, about 214 Native village corporations were entitled to receive land and money. Due to mergers, 169 village corporations existed as of December 31, 1983. Also, 13 regional corporations had been formed as of that date, 12 entitled to receive conveyance of lands and 1 entitled to receive money. In addition, Native groups of less than 25 Natives are entitled to receive land under the act if they incorporate under the laws of the state of Alaska. This report deals only with the Native regional and village corporations.

The regional and village corporations are organized as for-profit organizations under Alaska state laws and under the authority of the settlement act's terms. Each eligible Native is entitled to membership in both the corporation established for his or her village and the corporation for the region in which the village is located. As shareholders, the Natives are entitled to a voice in the management of and a share in the corporation's lands, assets, and income.

The settlement act also repealed the Alaska Native Land Allotment Act of 1906, as amended (34 Stat. 197, 43 U.S.C. 270), which provided that up to 160 acres of vacant, unappropriated, and unreserved nonmineral land could be allotted to any Alaskan Indian, Aleut, or Eskimo who was head of a family or 21 years or more of age and met other criteria of law and regulation.

Section 17(d)(2) of the settlement act authorized the Secretary of the Interior to withdraw up to 80 million acres of land in Alaska for study to determine if the land should be added to existing national parks, forests, wildlife refuges, or the wild and scenic river system. Extended debate over how much land should be placed in the various protection categories, which agencies should manage the land, and what land use activities should be allowed was resolved on December 2, 1980, when



the President signed the Alaska National Interest Lands Conservation Act of 1980.

See appendix IV for additional information on the settlement act and case studies illustrating the history and status of one regional and two village corporations.

#### ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OF 1980

The Alaska lands act placed over 100 million acres of federal lands in various conservation systems managed by four federal agencies--the Bureau of Land Management (BLM), the National Park Service, the U.S. Fish and Wildlife Service, and the U.S. Forest Service. In addition, the act modified or clarified sections of both the statehood and settlement acts regarding such issues as submerged lands ownership, easements, Native allotments, state land selection period, and certain land descriptions and conveyances to the state and Alaska Natives.

#### LAND CONVEYANCE PROCESS

The Department of the Interior is the primary executive department responsible for conveying land to the state and Natives of Alaska under the statehood and settlement acts. The Secretary of the Interior delegated this responsibility to the Director, BLM.

The process of conveying land is complex and lengthy. Shortly after ratification of the statehood act in January 1959, the state began filing selection applications, and BLM began processing them. By the mid-1960's, Native protests were filed on about 90 percent of the land in the state. Consequently, the Department of the Interior stopped state conveyances in 1966 and state selections in December 1968. In December 1971, the settlement act withdrew land for Native selection, including certain land which had been selected by or tentatively approved for patent<sup>1</sup> to the state. Other land was withdrawn by the Secretary of the Interior where village and regional corporations had insufficient land withdrawn by the act to satisfy their entitlement. Once the land is selected and before it is interim conveyed<sup>1</sup> to Native corporations, BLM must determine such matters as valid existing rights (e.g. Native allotments), public easements to be reserved, and navigable waterways. Once this process is complete and proper notice of land to be conveyed has been given, the land is conveyed to the Native corporations. BLM must survey the exterior boundary of the tract conveyed or to be conveyed and any valid existing claims within the

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<sup>1</sup>"Tentatively approved for patent" and "interim conveyed" are legal terms. In general, a tentative approval or an interim conveyance is a transfer of legal title of unsurveyed land that includes all reservations for easements, rights of way, or other interests imposed by law.

boundary of the tract. Once the land is surveyed, a patent<sup>2</sup> is issued.

Since the passage of the Alaska lands act, the state can select up to 125 percent of its remaining entitlement from federal lands, including those lands selected by Native corporations or withdrawn for specific federal purposes. However, the state's right to receive title to its selections of land is subject to valid existing rights (e.g. Native allotments) and Native selection rights under the settlement act. Consequently, Native selections must be relinquished or rejected and federal withdrawals must be revoked before the lands are available for conveyance to the state. A process similar to the one used for Native corporations is followed by BLM to transfer land to the state, except that public easements are not identified or reserved.

#### PRIOR GAO REPORT

In our June 21, 1978, report, Land Title Should Be Conveyed to Alaska Natives Faster (CED-78-130), we concluded that the Natives' social development was being impeded and the self-sufficiency of their regional and village corporations was threatened because land was being conveyed to them so slowly. The report pointed out that the Department of the Interior should do more to strengthen field management and provide guidance on ways to resolve issues contributing to the delay in conveying land. These issues included easement criteria, unused federal lands, court litigation, and monitoring Native corporations.

The Department took limited action on the report's recommendations pertaining to easement criteria and unused federal lands. With respect to the recommendation on minimizing court litigation, Department officials informed us that they are giving the Native corporations and the state an opportunity to review conveyance decisions in draft form and coordinating more closely with them on conveying land. Regarding the recommendation on monitoring Native corporations, Interior's Principal Deputy Assistant Secretary-Policy, Budget, and Administration informed us on June 22, 1983, that the matter had been referred to the Department's Assistant Secretary-Indian Affairs.

This report is a followup to the June 1978 report. The prior report did not deal with BLM conveying land to the state of Alaska; however, this report deals with the conveyance of land both to the Alaska Natives and the state of Alaska.

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<sup>2</sup>"patent" is a legal term with a distinct meaning. In general, a patent represents a conveyance of title to land that has been surveyed or whose boundaries have been confirmed by other means.

## OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our review were to determine how much land had been conveyed to the state and Natives of Alaska, what problems BLM was encountering in trying to timely convey land, the impact of the problems on the state and Alaska Natives, and what needs to be done to resolve the problems.

We made our review at Department of the Interior's headquarters in Washington, D.C., and at various Interior agencies in Alaska. These agencies included BLM, Bureau of Indian Affairs (BIA), the U.S. Fish and Wildlife Service, and the National Park Service. In addition, we spoke with officials from the U.S. Forest Service, the state of Alaska, numerous Native corporations and associations, and Interior's Office of Inspector General. According to Interior's Office of Inspector General, Interior's authority to audit regional and village corporations extends only to a corporation's use of federal funds.

We interviewed agency and state officials and Native corporate officers. We also reviewed applicable legislation, regulations, policy papers, procedure manuals, judicial decisions, and adjudication files relating to BLM's land conveyance program, Native allotments, waterway navigability determinations, and cadastral<sup>3</sup> surveying. Further, we reviewed and analyzed (1) annual reports on BLM's implementing the settlement act, (2) periodic progress reports on the various activities of BLM's land conveyance program, (3) correspondence between federal and state agencies and Native entities and individuals, and (4) budgetary, staffing, and cost records and information.

Because many of the Alaska Native corporations are geographically dispersed and isolated, it was not feasible to meet with many Native corporate officials to obtain information about BLM's land conveyance program. Therefore, we sent a questionnaire to obtain Native corporation officials' views on BLM's land conveyance program. The questionnaire was pretested with two regional corporations in Anchorage and Barrow, Alaska, and four village corporations in Anchorage, Barrow, McGrath, and Wasilla, Alaska.

On December 17, 1982, we mailed questionnaires to 187 corporations; 174 were sent to village corporations and 13 were sent to regional corporations. We mailed a followup letter of January 12, 1983, to 140 corporations, both village and regional, that had not responded as of that date and from January 28 through February 3, 1983, we telephoned or tried to telephone the nonresponding corporations.

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<sup>3</sup>A showing or recording of property boundaries, subdivision lines, buildings, and related details.

As we received the completed questionnaires, we edited the responses and developed a computerized data file. We followed generally accepted procedures to assure accuracy of the data base, which included reviewing the data file for obvious errors and consistency within each questionnaire response instrument and verifying 100 percent of the data elements back to the original questionnaires. We corrected all errors before we analyzed the data.

As of May 1, 1983, we had received 142 responses, which represented 76 percent of the potential respondents. The following schedule shows the number of corporations we mailed questionnaires to and the number that responded.

<u>Type of corporation</u>	<u>Number of questionnaires mailed out</u>	<u>Number of responses</u>	<u>Percent</u>
Regional	13	13	100
Village	<u>174</u>	<u>129</u>	74
Total	<u>187</u>	<u>142</u>	76

Throughout the report, we refer to the responses to various questions. On some questions, the responses do not total 142 because some corporations did not respond to all questions or some entries were not responsive to the questions. The combined responses of the Native regional and village corporations are included as appendix I. Appendix II contains the responses from just the regional corporations, and appendix III contains the responses from only the village corporations. Our work was performed in accordance with generally accepted government auditing standards.

## CHAPTER 2

### LAND CONVEYANCE PROBLEMS

BLM has made progress in conveying land on an interim and/or tentative basis to the Native corporations and the state of Alaska since enactment of the Statehood and Alaska Native Claims Settlement Acts. However, as of December 1983, only 4 million acres of the 44 million to be conveyed have been patented to the Native corporations and only 22 million acres of the 104 million to be conveyed have been patented to the state. Three major problems are impeding the land conveyance program:

- BLM has to resolve over 8,800 Native allotment applications before 11 million acres of land can be patented.
- BLM has to determine if inland waterways within the boundaries of land selected by the Native corporations and the state are navigable.
- BLM has to survey the boundaries of over 72 million acres of land selected by the Natives and the state before it can issue patents.

BLM can take actions to speed up its conveyance of land to the state and Natives such as requiring all amendments to allotment applications to be filed by a certain date; resolving which waterways are navigable so that land can be further processed for patenting; correcting allotment locations during the field examinations; and seeking contributions from the state and Native corporations for surveys made for their benefit to speed up the survey process.

### STATUS OF CONVEYANCE

As the following table shows, the amount of land BLM conveyed to the state and the Natives of Alaska between 1978 and 1983 has increased. While the amount of land interim conveyed or tentatively approved has substantially increased, not much additional land has been patented to the state or Natives.

Status of Land Conveyance  
in 1978 and 1983

<u>Entitlement</u>	<u>Interim conveyed or tentatively approved</u>	<u>Patented</u>	<u>Total</u>	<u>Percent of entitlement</u>
-----millions of acres-----				
State of Alaska	104			
September 1978	15	20	35	34
December 1983	54	22	76	73
Alaska Natives	44			
April 1978	5	0	5	11
December 1983	27	4	31	70

BLM has established goals to patent and/or tentatively approve to the state of Alaska 13 million acres of land each year through fiscal year 1985. Also, it established a goal to interim convey and/or patent to Alaska Natives 4.5 million acres in fiscal year 1983, 2.1 million acres in fiscal year 1984, and 3.2 million acres in fiscal year 1985.

BLM officials believe that the near-term goals are achievable. However, they are doubtful if they can continue to meet the goals in the long term because the bulk of the remaining land for both the Natives and the state is encumbered by unresolved mining or allotment claims, navigability determinations, and easements and will be difficult to process for conveyance. Also, a patent cannot be issued until all private land claims and exterior boundaries are surveyed. According to BLM, meeting its goal depends on the state of Alaska providing BLM with an annual prioritized list of 13 million acres of land for it to consider for conveyance. In commenting on our draft report, the Department of the Interior stated that BLM could not meet its goals for conveying land for fiscal years 1983 and 1984 because the state did not provide BLM with sufficient conveyance priorities.

The Native settlement act gives the Natives first choice in land selection. Many Native corporations have selected substantially more land than they are entitled to in order to eventually wind up with the most valuable land. For example, the village of Kwigillingok in the Calista region has selected 197,282 acres of land, whereas its entitlement is only 115,200 acres. (See app. IV.) Any land selected by the Native corporations is not available for conveyance to the state until the Native selection is relinquished or rejected. In contrast, the state cannot select more than 125 percent of its entitlement, which has not yet been tentatively approved or patented. State officials told us that they would like to receive some of the lands that both they and the Native corporations have selected, but until the Native corporations' entitlements are finalized, the state cannot complete its land selections.

## IMPACT OF SLOW CONVEYANCE ON NATIVE CORPORATIONS

In passing the Native settlement act, the Congress declared that a fair and just settlement of all Native claims is immediately needed. The Congress also declared that the settlement should be accomplished rapidly, with certainty, and in conformity with the real economic and social needs of the Natives. The act required the Secretary to issue patent to Native village and regional corporations immediately after land selections had been completed. However, we found that many Native corporations had not been satisfied with the land conveyance process and, in some cases, had been adversely affected.

According to the questionnaire responses we received from the Native corporations, most corporations have not been satisfied by the speed of land conveyances to their corporations. (See app. I, question 8.) Of the 142 corporations responding to the questionnaire, 79 said that they were somewhat or very dissatisfied, 19 said they were neither satisfied nor dissatisfied, 41 said they were somewhat or very satisfied, and 3 corporations did not respond or the response was not applicable. Also, 62 corporations said that at the time the settlement act was passed, they expected to receive land by 1976, but only 21 corporations had received some land by 1976. (See app. I, questions 6 and 7.)

In commenting on our draft report, the Department of the Interior stated:

"We believe the questionnaire did not provide for an accurate picture of corporate satisfaction as to the speed at which conveyances currently are being made. If questions had been designed so that answers would reflect satisfaction or dissatisfaction in conveyance progress currently being made, in contrast to progress made in earlier years, we believe the results would have been much different. Many Native corporations have found that land management is costly and they are not eager to receive title to all of their land. Consequently, many Native corporations have not established conveyance priorities sufficient for us to convey at our maximum rate."

Although the questionnaire did not make a comparison between BLM's conveyance progress in earlier versus later years, we believe the questionnaire responses basically reflect the corporations' perceptions of BLM's progress. Interior is correct, however, that it has recently made good progress in conveying land on an interim and/or tentative approval basis. As of December 31, 1983, 167 village corporations and 8 regional corporations had received some land. However, little progress has been made to patent the land to the Native corporations or the state.

Of the 127 Native corporations having economic development objectives, such as developing timber resources or energy mineral exploration, who responded to our questionnaire, 95, or 75 percent, said that their corporations' economic development objectives had been adversely affected from some to a very great extent by the speed of land conveyances; 32, or 25 percent, said they were affected to little or no extent. (See app. I, question 9.) The responses of the Native corporations were as follows:

<u>Extent corporations' economic development objectives were adversely affected</u>	<u>Number of corporations</u>	<u>Percent</u>
Very great	22	17
Great	27	21
Moderate	21	17
Some	25	20
Little or no	<u>32</u>	<u>25</u>
Total	<u>127</u>	<u>100</u>

In our questionnaire, we also asked the question: To what extent, if at all, have your corporation's social or cultural objectives (for example, subsistence harvesting of natural resources) been adversely affected by the speed of land conveyance? (See app. I, question 10.) As the following schedule shows, of the 128 Native corporations having social or cultural objectives who responded, 80, or 63 percent, said that their social or cultural objectives had been adversely affected from some to a very great extent by the speed of land conveyance; 48 Native corporations said they were adversely affected from little or no extent.

<u>Extent corporations' social or cultural objectives were adversely affected</u>	<u>Number of corporations</u>	<u>Percent</u>
Very great	17	13
Great	16	13
Moderate	18	14
Some	29	23
Little or no	<u>48</u>	<u>37</u>
Total	<u>128</u>	<u>100</u>

As the following table shows, some of the 142 Native corporations that responded to our questionnaire said that interim conveyance had a detrimental impact on their corporations' use or anticipated use of the land for the following activities:



Extent to which interim conveyance  
had a detrimental impact

<u>Activity</u>	<u>Little or no</u>	<u>Some, moderate, great, or very great</u>	<u>Not sure or no response</u>
Commercial fishing and processing	95	29	18
Commercial timber	90	34	18
Commercial buildings, such as hotels and office building	70	52	20
Energy mineral exploration and production, such as oil and gas	68	42	32
Non-energy mineral exploration and production, such as sand and gravel	62	57	23
Housing or homesites	51	72	19
Agriculture	100	19	23
Subsistence harvesting	70	51	21
Non-Native hunting and fishing	71	43	28
Recreational uses, such as sightseeing, boating, and snowmobiling	74	45	23
Historical and cultural uses	72	43	27

IMPACT OF SLOW CONVEYANCE ON STATE

The Alaska Statehood Act of 1958 provided that the state select its land within 25 years. This provision was amended by the Alaska Lands Act of 1980, which extended the selection period to 35 years or 1994. As of December 1983, BLM had patented about 22 million acres of land to the state of Alaska, or about 21 percent of the state's land entitlement. Additional land has been tentatively approved to the state; however, the absence of a patent may hamper an owner's land development activities. For example, the state includes the following notification in its land disposal brochures regarding land that BLM has tentatively approved to it:

"Ordinarily, there is little risk of loss of title associated with tentatively approved land. However, there may be PRACTICAL PROBLEMS including (1) title insurance companies will not provide title insurance unless this contingency is excepted from coverage, and (2) banks will not loan money for construction on or sale of tentatively approved land."

The state's constitution contains provisions that encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the

public interest. The utilization, development, and conservation of all natural resources belonging to the state, including land and waters, were to be for the maximum benefit of its people. The state wished to select the resource-rich lands in order to stimulate economic development and create a year-round local economy. However, according to a Deputy Commissioner, Department of Natural Resources, the state's efforts to economically develop land have been impeded by the slowness of land conveyance. BLM did not agree with the Deputy Commissioners' position. In commenting on our draft report, the Department of the Interior stated that:

"We take exception to the statement of the Deputy Commissioner, Alaska Department of Natural Resources. In FY 1983, BLM conveyed 10 million acres to the State and has programmed 5 million acres for FY 1984. This acreage is based solely on priorities submitted by the State. Although we had the capability to convey 13 million acres to the State in FY 1983 and 1984, in both years the State provided insufficient conveyance priorities to meet these capabilities. BLM can only convey as many acres as the State prioritizes."

A report by the Division of Internal Audit, Office of the Governor, state of Alaska, entitled The Department of Natural Resources Needs To Improve Their Procedures for Selling Tentatively Approved Land, dated January 1982, stated that:

"Officials of nine primary lending institutions such as banks, savings and loan banks, and credit unions told us they require title insurance on construction loans and would not, on their own, lend construction money with a title exclusion like the one made for tentatively approved lands."

The report also contained the following examples of problems being faced by holders of tentatively approved land:

"A Soldotna couple purchased a five acre lot in 1978 and began constructing a home on the property with their own money. On July 13, 1981, the couple listed their property for sale at \$65,000 with a Soldotna realtor and at the same time, applied for a loan to complete the house from a Soldotna lending institution. The lending institution would not loan money on the property because the land was tentatively approved and the realtor, through the advice of an attorney, cancelled the listing upon learning that the land was tentatively approved."

"Another individual purchased a lot on tentatively approved land in Soldotna in July 1981 and constructed a driveway in preparation for constructing a home. When he became aware of the title problems associated with tentatively approved land, he stopped construction and the developer refunded the money he had paid for the lot plus the cost of the driveway. He said that in addition to the financing problems he did not want to invest more of his own money in construction not knowing if or when the State would receive Federal patent.

"A Soldotna realtor stopped selling tentatively approved land and cancelled previous sales because of legal advice concerning possible adverse legal responsibilities and concern that selling property in tentatively approved status would be a disservice to purchasers. The realtor reported that she lost about \$10,000 in commissions and selling expenses when the sales were cancelled, because she had sold eight of 28 lots.

"A developer who owned 28 lots on tentatively approved land in Soldotna was one of the parties whose land was delisted by the realtor. The developer was not aware that the land was only tentatively approved. The developer told us he thought Federal patent had been issued on the 28 lots in 1977. When he became aware that the land was only tentatively approved, he stopped selling the property."

#### NATIVE ALLOTMENT APPLICATIONS

The Native allotment act provided that the Secretary of the Interior could allot up to 160 acres of land to an Alaska Native living in Alaska who was the head of a family or 21 years of age. The land could be allotted into as many as four 40-acre parcels. Allotting land to individual Natives under the Native allotment act ended in 1971 when the 1906 act was repealed by the Alaska Native Claims Settlement Act.

Applications for land pending at the time the Native settlement act was passed were to continue being processed. Later, section 905 of the Alaska Lands Act of 1980 legislatively approved, with certain exceptions, Native allotment applications regardless of what stage of certification the allotment process was in. Section 905 was passed to resolve problems BLM was having with approving the Native allotment applications. To initiate implementation of section 905, BLM set up a special work force of about 20 people for 6 months. More than 5,000 protests were filed by various parties. Case files that had been closed for years had to be reinstated, reviewed, and in

many cases reprocessed. Applicants were also given an opportunity to change the locations of their allotments, many times to lands previously interim conveyed to the state, Native corporations, or others.

Until the late 1960's, Natives had made very few applications for allotments. Lack of effort to implement the Native Allotment Act of 1906, cultural and language barriers, and the isolation of rural Alaska Natives were contributing factors. About 1968, BIA and the Alaska Legal Services Corporation realized that the pending settlement act would end the allotment program and began a drive to get applications. In 1970, BIA and the Rural Alaska Community Action Program jointly implemented an allotment assistance program. Over 8,000 applications were accumulated by December 18, 1971, the deadline for filing applications, whereas there had been only 51 applications between 1906 and 1960.

Since allotments to the Natives represent a prior claim, any Native corporation- or state-selected land containing a pending Native allotment cannot be patented until the allotment application is either certified or disapproved. If a Native's allotment is certified, the Native corporations and the state are conveyed other land. Thus, the entire land conveyance process is affected by pending Native allotment applications.

As of December 31, 1983, there were over 8,800 allotment applications from Natives involving about 16,000 separate land parcels in 3,279 different townships still pending certification or disapproval. The Native corporations and the state have selected over 11 million acres of land within 2,533 of these townships, but until the Native allotment applications are finalized, this land cannot be patented to the Native corporations or the state.

The process of adjudicating allotment applications, surveying, and issuing a certificate of allotment for the land is complex. The situation has been further complicated and prolonged by litigation, appeals, and policy changes. The result has been that the number of applications being processed is continually changing, causing cases already processed to be readjudicated and BLM to perform additional field examinations.

### Litigation and appeals

Over a dozen legal points and events since the passage of the settlement act in 1971 have resulted in the repetitive review, adjudication, and field examination of allotment cases. The number of applications being processed has continually changed. For example, during May 1974 some applications were found in the Nome office of the Rural Alaska Community Action Program. BIA did not accept them because they did not meet certain criteria, and the Interior Board of Land Appeals upheld BIA's decision. Some of the applicants sued. A stipulation was reached between Alaska Legal Services Corporation and the

Regional Solicitor on behalf of BLM to accept the applications. However, as of February 1984, the matter was not yet fully settled because the exact number of allotment applications that may be applicable under this class action suit is not known because some of the applications may have been duplicated.

In another case, BIA did not accept some applications filed on time by the Natives because certain criteria had not been met. The Interior Board of Land Appeals agreed with BIA's position, and the applicants sued. The court held that since the Natives used and occupied the claimed lands prior to the state's making its selection, the Natives had preference right. The court required BLM to hold a fact-finding hearing on the applications. As of December 31, 1983, approximately 222 allotment applications on file were affected by this decision, none of which had been settled. A BLM official told us that if the Natives' preference rights are confirmed, BLM will have to recover the land improperly conveyed to the state. This official also stated that the state will be asked to provide a quitclaim deed<sup>1</sup> to the land and if the state refuses, then the case will be referred to the Justice Department for resolution in the courts.

Other allotment litigation matters have involved such issues as whether (1) an applicant had used and occupied the land continuously for 5 years, (2) the heir of a deceased applicant can amend the deceased Native allotment's description, and (3) an applicant must satisfy the 21-year-old requirement at the time of application or at the time of certification. These cases could involve more than 1,500 applications.

In a draft of this report, we proposed that, to shorten the Native allotment processing time, the Congress enact legislation to establish a 1-year deadline for filing civil actions or administrative appeals by amending Section 905 (a)(1) of the Alaska National Interest Lands Conservation Act (Public Law 96-487, 94 Stat. 2371). The act currently allows a 2-year deadline for filing civil actions. Interior in commenting on the draft report said that it would be helpful to have the civil action appeal period shortened by 1 year. With respect to a deadline for filing administrative appeals, Interior pointed out that its current regulations establish a 30-day deadline for such filings and legislative action would not be necessary. After further analysis and discussion with Interior officials, we concluded that, although reducing the deadline for filing civil actions by 1 year would shorten the processing time, a 1-year reduction was not significant enough to warrant the Congress enacting new legislation.

### Policy changes

Policy changes within the Department of the Interior have also resulted in handling the same cases many times and changed

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<sup>1</sup>A legal instrument used to release one person's right, title, or interest to another without providing any guarantee or warranty of title.

the number of cases being processed. For example, BLM policy concerning claims based on the Native Allotment Act of 1906 required proof of substantially continuous use and occupancy of the land for 5 years. This use allows for seasonal use, potentially exclusive of other users, for such purposes as hunting, fishing, or berry picking. To implement this use and occupancy requirement, BLM policy required visual confirmation of a cabin, campsite, or other evidence that the Native applicant had actually used the land. However, in 1972, the Assistant Secretary, Land and Water Resources, publicly told Native leaders at a meeting in Anchorage that BLM's substantial use and occupancy policy would become more lenient. As a result, BLM changed its policy to liberalize the Department's interpretation of what constitutes continuous use and occupancy. In most cases, this meant readjudication and new field examinations of all cases already closed.

#### Errors in allotment application locations

BLM is having difficulty verifying boundaries in the Natives' allotment applications because Natives keep changing the locations' descriptions. In addition, BLM has not established cutoff dates for the Natives to make changes to their allotment locations as provided in the Alaska Lands Act of 1980. By not establishing cutoff dates, BLM is extending the Native allotment processing time and not bringing a degree of finality to the allotment process.

The Congress tried to resolve the problem of inaccurate allotment applications when it enacted the Alaska lands act. Section 905 permits an allotment applicant to amend the land description contained in the application if it does not describe the land the applicant intended to claim. The section also provides that the Secretary of the Interior may require that all allotment amendments in a specified area be made by a specified date after the required notice has been given to the affected allotment applicants. The date cutting off further amendment of land descriptions in allotments would allow BLM to efficiently carry out its survey work for the specified areas.

When the drive to get allotment applications filed before the settlement act cutoff was over, BIA set up a crash processing program in Sacramento, California, to review the more than 8,000 applications, assure that they were filled out properly with accurate land descriptions, and certify that the applicant is an eligible Native. However, this crash processing program resulted in many errors in the applications, especially in the land descriptions, giving BLM problems in processing the allotment applications.

According to the Native Allotment Council (an organization of federal, state, and Native agencies), 40 to 50 percent of the 8,800 Native allotment applications did not accurately describe the location of the allotment. In one case, cited by a

representative of the Tanana Chiefs Conference (an organization in the Doyon Native regional corporation), the actual location of an Evansville village allotment was 200 miles from that described in the application. In another case, the vice president for lands in the Doyon, Limited, Native regional corporation said that the land description in one application was 80 miles on the other side of the North Pole.

The acting District Manager, BLM Fairbanks District Office, stated that correcting errors may cause an allotment to overlap other already approved allotments or land conveyed to Native corporations or the state. As a result, new field examinations must be performed, conflicts resolved, and new surveys performed. For example, a Native in the Bristol Bay Region village of New Stuyahok applied for an allotment of 160 acres. However, two already approved allotments overlapped the area that the Native had applied for, and one side of the allotment is bounded by land conveyed to the state. Therefore, BLM does not have 160 acres to convey, and if the claim is valid it may have to reacquire land from the state to satisfy the Native's claim. In a recent decision relating to this matter (State of Alaska vs. Marcia Thorson and Phyllis Westcoast, 76 IBLA 264 (1983)), the Interior Board of Land Appeals ruled that BLM retained jurisdiction to convey a Native allotment on land tentatively approved for patent to the state where the provision of the Alaska lands act (section 906 (c)) made confirmation of all tentative approvals of state land selections subject to valid existing rights. This could eliminate the need to reacquire title from the state. However, according to Interior the state has recently requested reconsideration of this decision.

In another example, there was not enough land to allow for all the 40-acre allotments various Natives applied for in the village of Bethel. The allotments were for sites traditionally used for fishing, which were much smaller than 40 acres. If the claims are determined to be valid, BLM may not be able to satisfy all of the Natives' allotment requests.

BLM, BIA, Alaska Legal Services Corporation, and several Native organizations have taken steps to help resolve problems being encountered in the allotment process. For example, BLM policy is to have the field examiner try every possible way to have applicants or their representatives present during the field examination. However, BLM may still encounter problems under this policy. For example, in the Calista region, an applicant was not available at the time of the field examination. Her husband showed the field examiner the location of the allotment and agreed it should be for 80 acres. The applicant subsequently claimed that the allotment should be for the full 160 acres authorized under the allotment act. As of December 31, 1983, BLM was attempting to work out an agreement with the applicant.

In several other instances, BLM staff was unable to get applicants or their representatives to agree not to change the

designated locations after field examination. In an effort to halt recurring challenges to allotment locations, BIA and the Alaska Legal Services Corporation have agreed to develop an affidavit that will bind the applicant to a particular location once the field examination is completed. Fort Yukon resorted to offering applicants \$20 each for their participation in field examinations. The Tanana Chiefs Conference sent representatives along with BLM to seven villages in the 1982 field examination season to ensure that allotments were correctly located and resolve conflicts. Conference representatives told us that they intend to continue this practice until all allotments in the Doyon Region are field inspected and ready for survey. While BLM is having some success in the Doyon Region resolving problems with changing allotment locations, the problem is still prevalent in most other regions.

Regarding the duration of field examinations, the conference representative thought BLM examinations should be done on a year-round basis. BLM does not agree that a year-round program is possible because of adverse weather conditions and personnel safety.

In a draft of this report, GAO proposed that BLM expand its field examination season as much as practical. Interior, in commenting on that draft, stated that it has recently expanded its season from 3 months to approximately 6 months, and plans to do as many field examinations each year as weather and funding permit. GAO believes a 3-month extension is reasonable and should expedite the conveyance of land.

The Department of the Interior stated that if funding and staffing are obtained, BIA intends to resolve most of the types of cases discussed above in the next 2 years and all of them by the end of fiscal year 1989. It added that this effort is being coordinated with BLM and is expected to significantly improve the conveyance process.

#### Questionnaire responses relating to allotment applications

According to the questionnaire responses we received from the Native corporations to a question on factors contributing to delays in receiving land from BLM, 62 percent of the Native corporations that responded said that unsettled allotment claims contributed from some to a very great extent to delays in their getting land from BLM. (See app. I, question 11.) A summary of the corporations' responses follows.



<u>Range of responses</u>	<u>Number of corporations</u>	<u>Percent of respondents</u>
Little or no extent	41	31
Some to moderate extent	39	29
Great to a very great extent	44	33
Not sure	<u>9</u>	<u>7</u>
Total	<u>133</u>	<u>100</u>

Our questionnaire also asked if the Native corporations had ever been involved in administrative appeals or litigation concerning the settlement act, and what was the nature and/or purpose of the action. (See app. I, question 21.) In response, 30 corporations, or 47 percent, of the 64 corporations that were involved in appeals or litigation told us that they had been involved in actions involving allotment eligibility or relocations.

#### COMPLETING WATERWAY NAVIGABILITY DETERMINATIONS IS A SLOW PROCESS

Inland waterways cover over 10 million acres of land in Alaska. BLM has not determined, however, how much of the land is covered by navigable water. Under the Alaska statehood act, land under a navigable waterway that was not set aside for a particular public purpose or program at the time Alaska became a state became the property of the state at the time of statehood, and the acreage of such water bodies was not charged against the state's entitlement. While lands beneath navigable waterways not otherwise set aside for a particular public purpose or program at statehood belong to the state, lands under nonnavigable waterways remain federally owned until they are either conveyed to the state under other provisions of the statehood act or to the Native corporations under the settlement act. Thus, until BLM knows which of Alaska's waterways are navigable, it does not know what land belongs to the state.

#### Historical waterway reports

According to an Interior document, making navigability determinations at specific locations is a slow process that may take BLM up to 3 years to complete. In July 1979, BLM and the state agreed to prepare waterway reports, by geographic areas, to identify all waterways within the state, except the Arctic (north of the Brooks Range), the Aleutian Islands, and southeast Alaska, and to provide a historical record of use. These reports are to include information BLM could use in determining the general location of a waterway and its historical commercial use and, thereby, help BLM decide whether a waterway is navigable. The state subsequently decided to do the study on the Arctic. The Aleutian Islands have few, if any, waterways, and if a waterway needed to be reviewed for navigability, it could be reviewed and reported on quickly. Lands in southeast Alaska

were withdrawn<sup>2</sup> prior to the statehood act, and therefore, land under navigable waters, if any, did not pass to the state on its admission to the Union. Also, southeast Alaska has few inland waterways. BLM and the state are preparing reports on the following areas as shown:

<u>BLM</u>	<u>State</u>
Kuskokwim	Lower Yukon
Tanana	Central Yukon
Upper Yukon	Koyukuk
Upper Yukon - Canada	Bristol Bay
Kotzebue Sound	Gulf of Alaska
Norton Sound	Arctic
Kodiak - Shelikof	
Cook Inlet	

In December 1980, BLM's Alaska state office established a goal that waterway reports for all waterways would be prepared by the end of fiscal year 1982. This deadline has now been extended to the end of fiscal year 1984. However, two officials told us that as of December 31, 1983, only two waterway reports had been completed, the Upper Yukon and the Kodiak-Shelikof. According to a BLM official, the state had not completed any of its waterway reports. BLM officials told us that personnel shortages and staff reassignments were the reasons they had not completed any more reports. The state's budget was cut, preventing it from doing more work on the waterway reports. The state's budget for navigability work was cut from \$1.1 million in fiscal year 1982 to \$590,000 in fiscal year 1983. The state has a goal of completing all of its waterway reports by June 1984.

BLM and state disagreement  
over navigability criteria results  
in delays in conveying land

The state and BLM do not always agree on what is a navigable waterway. While the Submerged Lands Act of 1953 does not define navigable waterways, various administrative appeals and judicial decisions have provided some guidance in determining navigability. Decisions have been made that a waterway is navigable if it is used or susceptible of being used as a highway of commerce over which trade and travel were or may be conducted in the customary modes of water trade and travel. Other decisions state that navigability is based on the natural or ordinary condition of the waterway at the time of statehood, and the waterway must be usable by vessels which float on water from one location to another location.

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<sup>2</sup>"Withdrawn" means that land was reserved for a specific use by the federal government, such as national parkland, refuge, grazing, or forestry.

BLM's Alaska state office navigability criteria state that waterways are navigable if

- the location and physical character of the waterway in 1959 were suitable for waterborne commerce,
- waterborne craft customarily used in the general area for travel and transportation were or could have been used on the waterway, and
- the use of waterborne craft on the waterway met or could have met the needs of the local area for travel and transportation services.

BLM and the state agree on certain conditions that determine if a waterway is navigable but disagree on others. For example, they agree that a river is navigable when there have been frequent trade, travel, and commerce or where a lake with a settlement is connected to it. Instances where BLM and the state disagree that a waterway is navigable include the following complex issues, briefly stated for purposes of this report.

- Rivers where limited trade, travel, and commerce have occurred and primary access is by another route such as a highway.
- Rivers and lakes where little or no trade, travel, and commerce have occurred because of remote location but the waterway could support such use.
- Rivers where guided or unguided hunting or fishing occurs.
- Rivers where primary use is recreational, such as rafting.
- Rivers and lakes that can be used by planes with floats.
- Rivers and lakes that can be or are used by snowmobiles or planes with skis when frozen.

Because the state and BLM disagree on what constitutes a navigable waterway, the state believes that court cases (test cases) are needed to establish criteria. The state has identified specific test cases to take to court to get navigability criteria clarified. In the past, BLM has generally agreed with this approach. Recently, Interior told us that because the courts have not been consistent in their resolution of navigability disputes, BLM is reconsidering the use of test cases in the courts as a means of settling such disputes.

The state filed a suit in April 1981 involving use by planes with floats and winter use by planes with skis at Slopbucket Lake. The U.S. District Court in Anchorage, Alaska,

issued a partial decision on May 12, 1983, that floatplane use does not constitute commerce for navigability determinations. On August 15, 1983, the state appealed the decision and on August 31, 1983, the federal government filed a motion opposing the state's appeal. The state is also considering suits involving certain lakes near Iliamna that are used by planes with floats or skis and certain waterways at Minto Flats used during the winter. The state's navigability project leader told us that the court cases will eventually resolve the navigability criteria disagreements but that any appeals will be slow and costly.

Impact on state and Native corporations

BLM estimates that about 300,000 acres of land already selected by the state are not being further processed for conveyance because these lands contain waterways involved in navigability disputes (appeals and litigation) with the state. The disputes are primarily about floatplane use and waterway use in its frozen state. BLM does not have a similar estimate for Native selected lands involving litigation or appeals.

As the following table shows, based on a questionnaire 69 Native corporations said that conflicts over navigability determinations contributed some to a very great extent to land conveyance delays. (See app. I, question 11.)

<u>Range of responses</u>	<u>Number of corporations</u>	<u>Percent of respondents</u>
Little or no extent	53	40.4
Some to moderate extent	44	33.6
Great to very great extent	25	19.1
Not sure	<u>9</u>	<u>6.9</u>
Total	<u>131</u>	<u>100.0</u>

Our questionnaire also asked if the corporation had ever been involved in administrative appeals or litigation concerning the settlement act, and what was the nature and/or purpose of the action. (See app. I, questions 20 and 21.) In response, 23 corporations, or 36 percent, of the 64 corporations that were involved in appeals or litigation told us that they had been involved in actions involving waterways being determined navigable or non-navigable.

In a draft of this report, we proposed that if the progress of litigation does not adequately define navigable waterways in Alaska and the Congress wishes to reduce litigation on this question, the Congress should enact legislation providing definitions of navigable waterways in Alaska.

Interior, in commenting on the draft report, strongly encouraged deletion of this proposed recommendation to the

Congress pointing out in part that legislating a definition will not resolve any of the differences of opinion that exist today and that the rights of Alaska may be violated. As an alternative, Interior, in November 1983, adopted a new policy regarding the chargeability of submerged lands against the entitlements of Native corporations and the state. Under this new policy, submerged lands that are meanderable in accordance with the BLM's 1973 Manual of Surveying Instructions will not be considered part of the Native corporations' nor the state's entitlement. Thus, land underneath water bodies that are greater than 50 acres in size or 198 feet in width will generally not count toward the Native corporations' or the state's entitlement. Navigability determinations will not be required on these larger water bodies, and therefore, such determinations should no longer delay BLM from conveying land.

As of December 31, 1983, BLM was developing regulations to implement the new submerged land policy and expected to complete them by December 1984. BLM is negotiating a memorandum of understanding with the state to reach an agreement to implement the new policy. We believe Interior's new policy will help resolve the problems described with determining navigability of waterways and, thus, precludes the need for legislative action.

#### LAND SURVEYS HAVE BEEN SLOW AND COSTLY

BLM has not issued patents on about 40 million acres of the 44 million acres of land the Alaska Native corporations are entitled to, nor has it issued patents on 82 million acres of the 104 million acres the state of Alaska is entitled to. BLM cannot issue patent to the land until the exterior boundaries of the land are surveyed and all valid private property interests identified. BLM has a goal of completing the surveys of all exterior boundaries of Native lands by 1990 and all exterior boundaries of state land by 2005. BLM estimates that if funding remains at prior years' levels of \$8 million,<sup>3</sup> more than 40 years will be needed to complete surveying the land. The time frames could be reduced if BLM would request and receive contributions from the state and Native corporations to offset some of BLM's surveying costs. The state has contributed to survey costs in the past, and some Native corporations have expressed their willingness to pay for surveying costs.

#### Status of surveys

BLM's Division of Cadastral Survey, which is responsible for surveys on public land, told us that it has surveyed the exterior boundaries of one-third of the townships in the state, including 44 percent of the state-selected land and 70 percent of the Native-selected land. However, still to be surveyed in these townships are 22,000 small parcels of land consisting of

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<sup>3</sup>Excludes about \$2 million held in reserve by headquarters for personnel leave.

16,000 Native allotments and 6,000 other miscellaneous types of parcels, such as cemetary sites, homesteads, historical locations, and trade and manufacturing sites. The division also estimates that about 23,600 to 29,500 mineral claims may have to be surveyed and excluded from the remaining acres available for conveyance to the state or Natives. These small tracts of land must be surveyed to resolve whether any valid claims to the land exist before the land can be patented.

Cost of survey work

On the basis of historical records, BLM's Alaska State Director estimates that it will cost over \$300 million to complete the needed surveys. These estimated costs are in current dollars and do not take into account inflation. The division expects costs to be higher because court decisions involving allotments may increase the number of allotments BLM has to survey. The following table shows cadastral survey's remaining survey workload, and BLM's estimated cost to complete the work.

Cadastral Survey Workload  
Per Fiscal Year 1984 Budget Program Package

<u>Category</u>	<u>Quantity</u>	<u>Estimated cost</u>
		(000 omitted)
Native corporations' land	14,000,000 acres	\$ 28,000
State land	58,000,000 acres	60,000
Native allotments	16,000 tracts	144,000
Other small tracts and exclusions	6,000 tracts	48,000
Municipal boundaries	204 villages	<u>20,700</u>
 Total		 <u>\$300,700</u>

The costs to survey an acre of land vary, depending on the terrain, type of survey, number of markers (monuments) placed, and type of equipment used. BLM's costs per acre for land surveyed ranged from \$1.69 to \$15.97 during 1980 to 1982. Costs for surveying land are lower in areas where there is relatively easy access, the terrain is flat, and the autosurveyor (a helicopter-borne survey machine) can be used. Costs are higher in southeast Alaska where there are drastic topographic changes and the land is heavily forested. For example, one survey BLM contracted out in southeast Alaska cost \$73 per acre, while two other survey costs exceeded \$50 per acre.

BLM's Alaska state Director stated that in order to achieve established goals, a funding level of about \$15 million would be required. According to BLM officials, BLM's section which

contracts for surveys has the capability to handle a substantial increase in its workload if funds are available.

Other funding sources

The Federal Land Policy and Management Act of 1976 (Public Law 94-579) gives the Secretary of the Interior the authority to accept outside funding for BLM services, such as surveying. According to the Chief, Division of Cadastral Survey, BLM can accept contributions for surveying from Native corporations and the state to speed up the conveyance of land to them. For example, in 1982, BLM accepted voluntary contributions of \$708,500 from the state of Alaska to cover the contract costs for five surveys of land that had been tentatively approved for patent to the state. Although Native corporations and the state may benefit by occasionally volunteering to contribute funds to expedite BLM's survey of particular lands, it remains BLM's responsibility to complete a survey of all unsurveyed lands selected by the Native corporations or the state before issuing a patent. BLM officials said that they are not opposed to requesting contributions for surveys but have reservations about how to determine who should be requested to make a contribution for the survey work done.

As the following table shows, 83 Native corporations who responded to our questionnaire said that they would be unwilling or very unwilling to pay a portion of land surveying costs to substantially speed up patent. (See app. I, question 18.) A summary of all the corporations' responses follows:

<u>Range of responses</u>	<u>Number of corporations</u>	<u>Percent of responses</u>
Very willing	2	1.4
Willing	6	4.2
Neither willing nor unwilling	45	31.7
Unwilling	38	26.8
Very unwilling	45	31.7
No response or not applicable	<u>6</u>	<u>4.2</u>
Total	<u>142</u>	<u>100.0</u>

However, 13 corporations said that they would be willing to pay surveying costs if the costs were below \$10,000; 2 would pay if the costs were under \$50,000; 1 would pay if the costs were under \$100,000; and 1 would pay surveying costs if the costs were under \$500,000. An additional 35 corporations said that they were uncertain as to how much they would be willing to pay. (See app. I, question 19.)

CONCLUSIONS

BLM has made progress in conveying land on an interim and/or tentative basis to the Native corporations and the state of

Alaska since 1978. However, BLM is experiencing problems with its land conveyance program, such as resolving allotment claims, determining navigability of waterways, and surveying land, that will have to be resolved before the process can be finalized and patent issued to the state and the Natives of Alaska for their land entitlements.

We believe that, to shorten the Native allotment processing time and bring a degree of finality to the allotment process, BLM needs to take certain actions to speed up the allotment process.

Since BLM has the capability to handle more contracts for surveys, BLM's land surveying process could be expedited if the Native corporations and the state would make voluntary contributions for surveys made for their benefit. The state has made such contributions and some Alaska Native corporations said that they would be willing to pay the survey costs. Contributed funds, together with annual BLM appropriations for surveys, could help speed up the patent process.

#### RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR

We recommend that the Secretary of the Interior direct the Director, BLM, to

- require, after providing reasonable notice, that all amendments to Native allotment applications in a specified area be filed by a specific date;
- require the applicant, or an alternate with power of attorney, to be present when the allotment is field examined and obtain an affidavit from the applicant agreeing to the allotment location; and
- develop and implement a policy to request contributions for surveys from the Native corporations and the state.

#### AGENCY AND STATE COMMENTS AND OUR EVALUATION

Interior expressed concern that our report did not take into account some recent actions it has taken to accelerate the conveyance program as well as recent progress it has made in conveying land. We updated the report to recognize these accomplishments.

Interior expressed doubt that our recommendation requiring a cutoff date for filing amendments would speed up survey work because more than 4,000 parcels are currently awaiting survey. We believe that the requirement would allow Interior to better plan its work. Interior would know the number and location of the allotments needing survey in an area and would be in a better position to adopt an orderly plan of survey as intended



by Section 905(c) of the Alaska National Interest Lands Conservation Act of 1980.

Interior said that if the presence of the applicant or an alternate and a signed affidavit were required as recommended by us, the processing of many allotments would be delayed until the applicant or a signed affidavit were available or an affidavit was signed. Although Interior agreed that one of its biggest problems is the availability of applicants to accompany field examiners, it said that it would not require the presence of the applicant or the designee and the acquisition of an affidavit. We believe that to avoid re-examinations and to provide for a greater degree of finality in the process, Interior needs to ensure that the applicant or designee agree to the locations to be examined before scarce resources are spent on a field examination.

Regarding our recommendation that Interior have a policy of requesting contributions, Interior said that it already has a policy of accepting money for survey and other purposes and that the Native corporations and the state are well aware of this policy. Interior estimates that it will take over \$300 million to complete the needed surveys of Native corporation and state land and may take as long as 40 years at current funding levels. While we are aware of Interior's policy of accepting contributions, we believe that if Interior more actively solicited contributions for its land survey program, it may increase the funds available for doing surveys and, thereby, help to reduce the time to complete the survey work. (See app. V.)

The state said that our recommendations to the Secretary of the Interior to give notice and require that amendments to Native allotments be filed by a specific date and require the presence of the applicant (or authorized representative) during the field examination should help assist and expedite BLM's Native allotment review process. The state expressed concern, however, with our recommendation that the Secretary develop and implement a policy to request contributions from the state. Although the state said that it may benefit the state to occasionally voluntarily contribute funds to expedite survey of particular lands, it said that it would oppose efforts to have Interior actively request survey funds from the state and that it should retain the option to contribute funds only for unique circumstances. (See app. VI.)

For a more detailed discussion of agency and state comments and our evaluation, see apps. V and VI, respectively.

COMBINED REGIONAL AND VILLAGE NATIVECORPORATIONS' RESPONSES TO OUR QUESTIONNAIRE<sup>1</sup>BUREAU OF LAND MANAGEMENT'S  
LAND CONVEYANCE PROGRAM

1 Are you a village or regional Native corporation?  
(Check one)

<input type="checkbox"/> Village	129
<input type="checkbox"/> Regional	<u>13</u>
	142

2 What was the enrollment population of your corporation when it was declared eligible for Settlement Act benefits?  
(Check one)

<input type="checkbox"/> 25 - 99	24
<input type="checkbox"/> 100 - 199	34
<input type="checkbox"/> 200 - 399	41
<input type="checkbox"/> 400 - 599	17
<input type="checkbox"/> 600 or more	26

3 What is the current enrollment population of your corporation?  
(Check one)

<input type="checkbox"/> Fewer than 25	0
<input type="checkbox"/> 25 - 99	23
<input type="checkbox"/> 100 - 199	32
<input type="checkbox"/> 200 - 399	42
<input type="checkbox"/> 400 - 599	20
<input type="checkbox"/> 600 or more	25

4 If your corporation is a village corporation, how many Natives currently reside in the village year-round (disregard temporary absences for hunting, fishing, school, etc)? (Check one)

<input type="checkbox"/> Fewer than 25	12
<input type="checkbox"/> 25 - 99	25
<input type="checkbox"/> 100 - 199	34
<input type="checkbox"/> 200 - 399	32
<input type="checkbox"/> 400 - 599	13
<input type="checkbox"/> 600 or more	11
<input type="checkbox"/> Not a village corporation	13
No response	2

<sup>1</sup>We sent 187 questionnaires to Alaska Native corporations and received 142 responses. This appendix contains selected excerpts from the questionnaire relating to the Bureau of Land Management's land conveyance program. Other responses from the Alaska Native corporations were contained in a prior report entitled Information on Alaska Native Corporations (GAO/RCED-83-173, August 16, 1983). For use in this report, the questions have been renumbered and reorganized. Also, except where specifically noted, the responses included in this appendix cover combined region and village responses. Some of the responding 142 corporations did not answer all questions.

5 Once you get all or almost all of the lands you selected, to what extent, if at all, will they be used for the following activities? Include uses by the corporation, individual share holders, and non-share holders (Check one box for each activity)

Activity							No response or not applicable
	To little or no extent	To some extent	To a moderate extent	To a great extent	To a very great extent	Not sure	
Commercial fishing and processing	47	25	22	11	19	8	10
Commercial timber	76	19	15	9	12	4	7
Commercial buildings, such as hotels and office buildings	38	42	30	9	1	14	8
Energy mineral exploration and production, such as oil and gas	50	29	18	9	5	24	7
Non-energy mineral exploration and production, such as sand and gravel	30	36	21	27	13	10	5
Housing or homesites	13	39	42	28	12	3	5
Agriculture	72	32	9	3	2	16	8
Subsistence harvesting	4	19	18	27	67	1	6
Non-Native hunting and fishing	56	43	19	5	2	10	7
Recreational uses, such as sightseeing, boating, & snowmobiling	30	39	37	12	15	4	5
Historical and cultural uses	21	31	31	24	18	11	6
Other (Specify)							
Reindeer grazing	0	0	0	2	0	0	140

6 At the time the Settlement Act was passed approximately when did your corporation expect to receive land from BLM? (Check one)

- 1972 - 1973 22
- 1974 - 1976 40
- 1977 - 1979 23
- 1980 - 1982 16
- 1983 - 1985 5
- 1986 - 1991 2
- 1992 or later 1
- Did not know when to expect to receive all land 30
- No response or not applicable 3

7 When did your corporation first receive some land from BLM? (Check one)

- 1972 - 1973 0
- 1974 - 1976 21
- 1977 - 1979 52
- 1980 - 1982 38
- Have not received any land to date 29
- No response or not applicable 2

8 Are you satisfied or dissatisfied with the speed of land conveyances to your corporation? (Check one)

- Very satisfied 12
- Somewhat satisfied 29
- Neither satisfied nor dissatisfied 19
- Somewhat dissatisfied 40
- Very dissatisfied 39
- No response or not applicable 3

9 To what extent, if at all, have your corporation's economic development objectives been adversely affected by the speed of land conveyances? (Check one)

- To a very great extent 22
- To a great extent 27
- To a moderate extent 21
- To some extent 25
- To little or no extent 32
- Corporation does not have economic development objectives 13
- No response or not applicable 2

10 To what extent, if at all, have your corporation's social or cultural objectives been adversely affected by the speed of land conveyance? (Check one.)

- To a very great extent 17
- To a great extent 16
- To a moderate extent 18
- To some extent 29
- To little or no extent 48
- Corporation does not have social or cultural objectives 11
- No response or not applicable 3

11 To what extent, if at all, do the following factors contribute to delays in your corporation getting land from BLM? (Check one box for each factor)

Factors contributing to delays							No response or not applicable
	To little or no extent	To some extent	To a moderate extent	To a great extent	To a very great extent	Not sure	
Corporation eligibility determination	92	10	9	5	6	9	11
Excess Federal lands being made available for selection	71	19	12	4	9	13	14
Conflicts over easements	46	32	22	15	11	6	10
Conflicts over navigability determinations	53	31	13	10	15	9	11
Allotment claims not settled	41	22	17	22	22	9	9
Lack of accurate surveys	42	23	12	12	30	13	10
Unpatented mining claims	87	11	4	5	5	19	11
Overall complexity of the land conveyance program	34	22	21	20	26	12	7
Cultural differences between your corporation and BLM	71	18	10	8	6	15	14
Your corporation not wanting the land conveyed	103	7	4	3	4	10	11
Your corporation not effectively organized to receive lands	100	17	4	3	0	7	11
Other (Specify)							
<u>Does not lend itself to summarization.</u>	0	0	0	0	11	0	131

12 BLM can reserve easements through lands conveyed to Alaska Native corporations. Do your conveyed lands have reserved easements? (Check one)

- Yes (Continue to question 13) 80
- No (Go to question 14) 12
- Not sure (Go to question 14) 16
- No response or not applicable 34

13 To what extent, if at all, do easements adversely affect the following activities or anticipated uses of your corporation's land? (Check one box for each activity.)

Type of Activity	To little or no extent	To some extent	To a moderate extent	To a great extent	To a very great extent	Not sure	No response or not applicable
Land development projects	39	13	11	4	7	3	65
Subsistence harvesting	38	14	7	6	9	4	64
Non-Native hunting and fishing	32	18	9	5	9	6	63
Recreational uses, such as sightseeing, boating and snowmobiling	35	17	11	5	7	5	62
Historical and cultural uses	35	20	5	5	8	5	64
General management of conveyed land	25	15	8	6	20	3	65
Controlling trespass	13	14	12	7	28	4	64
Other (Specify)							
Does not lend itself to summarization.	0	0	2	0	5	0	135

14 Do any of your shareholders still have allotment claims? (Check one)

- Yes (Continue to question 15) 111
- No (Go to question 17) 15
- Not sure (Go to question 17) 12
- No response or not applicable 4

15 To what extent, if at all, is your corporation assisting your shareholders in finalizing their allotment claims? (Check one)

- Little or no extent (Go to question 17) 40
- Some extent 29
- Moderate extent 17
- Great extent 19
- Very great extent 6
- No response or not applicable 31

16 What kind of assistance are you giving individual Natives to help them to finalize their allotment claims? (Check all that apply)

- Technical 41
- Legal 12
- Administrative 43
- Financial 2
- Other (Specify) <sup>a/</sup> 7

<sup>a/</sup> Does not lend itself to summarization.

17. Presently, most lands are conveyed with an interim title. Your corporation will receive final title or patent to your selected lands once cadastral surveys have been completed. To what extent, if at all, does interim conveyance have a detrimental impact on your corporation's use or anticipated use of the land for the following activities? (Check one box for each activity.)

Type of Activity	To little or no extent	To some extent	To a moderate extent	To a great extent	To a very great extent	Not sure	No response or not applicable
Commercial fishing and processing	95	13	9	2	5	6	12
Commercial timber	90	16	6	3	9	6	12
Commercial buildings, such as hotels and office buildings	70	25	10	10	7	7	13
Energy mineral exploration and production, such as oil and gas	68	19	9	10	4	18	14
Non-energy mineral exploration and production, such as sand and gravel	62	24	13	11	9	10	13
Housing or homesites	51	26	23	12	11	8	11
Agriculture	100	10	5	1	3	9	14
Subsistence harvesting	70	15	13	10	13	7	14
Non-Native hunting and fishing	71	18	12	4	9	13	15
Recreational uses, such as sightseeing, boating, and snowmobiling	74	18	12	8	7	9	14
Historical and cultural uses	72	25	8	4	6	11	16
Other: (Specify)	0	0	0	0	1	0	141
_____							
_____							

18. How willing or unwilling would your corporation be to pay a portion of land surveying costs to substantially speed up patent? (Check one)

- Very willing 2
- Willing 6
- Neither willing nor unwilling 45
- Unwilling 38
- Very unwilling 45
- No response or not applicable 6

19. About how much land surveying costs would your corporation be willing to pay? (Check one)

- None 83
- Less than \$10,000 13
- \$10,000 to \$49,999 2
- \$50,000 to \$99,999 1
- \$100,000 to \$199,999 0
- \$200,000 to \$499,999 1
- \$500,000 or more 0
- Uncertain 35
- No response or not applicable 7

20. Has your corporation ever been involved in administrative appeals or litigation concerning the Settlement Act?  
(Check one)

- |  |    |
|--|----|
| <input type="checkbox"/> Yes (Continue to question 21) | 64 |
| <input type="checkbox"/> No                            | 71 |
| No response  | 7  |

21. What is the nature and/or purpose of these administrative appeals or litigation? (Check as many as apply)

- |  |    |
|--|----|
| <input type="checkbox"/> Corporation eligibility   | 21 |
| <input type="checkbox"/> Land being conveyed or available for conveyance to your corporation | 40 |
| <input type="checkbox"/> Waterways being determined navigable or non-navigable               | 23 |
| <input type="checkbox"/> Easements being reserved  | 27 |
| <input type="checkbox"/> Allotment eligibility   | 19 |
| <input type="checkbox"/> Allotment relocations   | 11 |
| <input type="checkbox"/> Land development activities by your corporation                     | 11 |
| <input type="checkbox"/> Merger activity by your corporation                                 | 6  |
| <input type="checkbox"/> Surface water rights  | 9  |
| <input type="checkbox"/> Other (Specify Does not lend itself to summarization.)              | 14 |

REGIONAL NATIVE CORPORATIONS<sup>1</sup>RESPONSES TO OUR QUESTIONNAIRE<sup>1</sup>BUREAU OF LAND MANAGEMENT'S  
LAND CONVEYANCE PROGRAM

1 Are you a village or regional Native corporation?  
(Check one)

- |                                   |    |
|-----------------------------------|----|
| <input type="checkbox"/> Village  | 0  |
| <input type="checkbox"/> Regional | 13 |

2 What was the enrollment population of your corporation when it was declared eligible for Settlement Act benefits?  
(Check one)

- |                                      |    |
|--------------------------------------|----|
| <input type="checkbox"/> 25 - 99     | 0  |
| <input type="checkbox"/> 100 - 199   | 0  |
| <input type="checkbox"/> 200 - 399   | 0  |
| <input type="checkbox"/> 400 - 599   | 0  |
| <input type="checkbox"/> 600 or more | 13 |

3 What is the current enrollment population of your corporation?  
(Check one)

- |  |    |
|--|----|
| <input type="checkbox"/> Fewer than 25 | 0  |
| <input type="checkbox"/> 25 - 99       | 0  |
| <input type="checkbox"/> 100 - 199     | 0  |
| <input type="checkbox"/> 200 - 399     | 0  |
| <input type="checkbox"/> 400 - 599     | 0  |
| <input type="checkbox"/> 600 or more   | 13 |

4 If your corporation is a village corporation, how many Natives currently reside in the village year-round (disregard temporary absences for hunting, fishing, school, etc)? (Check one.)

- |  |    |
|--|----|
| <input type="checkbox"/> Fewer than 25             | 0  |
| <input type="checkbox"/> 25 - 99                   | 0  |
| <input type="checkbox"/> 100 - 199                 | 0  |
| <input type="checkbox"/> 200 - 399                 | 0  |
| <input type="checkbox"/> 400 - 599                 | 0  |
| <input type="checkbox"/> 600 or more               | 0  |
| <input type="checkbox"/> Not a village corporation | 13 |

<sup>1</sup>We sent questionnaires to 13 Alaska Native regional corporations and received 13 responses. This appendix contains the questions relating to the Bureau of Land Management's land conveyance program. Other responses from the Alaska Native corporations were contained in a prior report entitled Information on Alaska Native Corporations (GAO/RCED-83-173, August 16, 1983). For this report, the questions have been renumbered and reorganized. Some of the responding corporations did not answer all questions.



5 Once you get all or almost all of the lands you selected, to what extent if at all will they be used for the following activities? Include uses by the corporation, individual share holders, and non-share holders (Check one box for each activity)

Activity	To little or no extent	To some extent	To a moderate extent	To a great extent	To a very great extent	Not sure	No response or not applicable
Commercial fishing and processing	5	3	2	0	1	0	2
Commercial timber	5	1	4	0	1	0	2
Commercial buildings, such as hotels and office buildings	6	4	1	0	0	0	2
Energy mineral exploration and production, such as oil and gas	0	3	3	3	3	0	1
Non-energy mineral exploration and production, such as sand and gravel	0	1	2	5	4	0	1
Housing or homesites	2	3	4	2	0	0	2
Agriculture	8	2	1	0	0	0	2
Subsistence harvesting	1	2	2	1	5	0	2
Non-Native hunting and fishing	3	6	2	0	0	0	2
Recreational uses, such as sightseeing, boating, & snowmobiling	3	4	3	1	0	0	2
Historical and cultural uses	2	2	6	1	0	0	2
Other (Specify)							
<u>Reindeer grazing</u>	0	0	0	1	0	0	12
_____							

6 At the time the Settlement Act was passed, approximately when did your corporation expect to receive land from BLM? (Check one)

- 1972 - 1973      0
- 1974 - 1976      6
- 1977 - 1979      5
- 1980 - 1982      0
- 1983 - 1985      0
- 1986 - 1991      0
- 1992 or later      0
- Did not know when to expect to receive all land      1
- Not applicable      1

7 When did your corporation first receive some land from BLM? (Check one)

- 1972 - 1973      0
- 1974 - 1976      4
- 1977 - 1979      7
- 1980 - 1982      0
- Have not received any land to date      1
- Not applicable      1

8 Are you satisfied or dissatisfied with the speed of land conveyances to your corporation? (Check one)

- Very satisfied      3
- Somewhat satisfied      4
- Neither satisfied nor dissatisfied      0
- Somewhat dissatisfied      4
- Very dissatisfied      1
- Not applicable      1

9. To what extent, if at all, have your corporation's economic development objectives been adversely affected by the speed of land conveyances? (Check one.)

- To a very great extent 3
- To a great extent 1
- To a moderate extent 2
- To some extent 4
- To little or no extent 2
- Corporation does not have economic development objectives 0
- Not applicable 1

10. To what extent, if at all, have your corporation's social or cultural objectives been adversely affected by the speed of land conveyance? (Check one.)

- To a very great extent 2
- To a great extent 1
- To a moderate extent 0
- To some extent 6
- To little or no extent 3
- Corporation does not have social or cultural objectives 0
- Not applicable 1

11. To what extent, if at all, do the following factors contribute to delays in your corporation getting land from BLM? (Check one box for each factor.)

Factors contributing to delays	To what extent?						Not applicable
	To little or no extent	To some extent	To a moderate extent	To a great extent	To a very great extent	Not sure	
Corporation eligibility determination	11	0	1	0	0	0	1
Excess Federal lands being made available for selection	8	3	0	0	1	0	1
Conflicts over easements	1	4	3	3	1	0	1
Conflicts over navigability determinations	4	2	2	1	3	0	1
Allotment claims not settled	2	3	3	3	1	0	1
Lack of accurate surveys	3	3	0	3	3	0	1
Unpatented mining claims	4	2	1	4	1	0	1
Overall complexity of the land conveyance program	4	3	2	3	0	0	1
Cultural differences between your corporation and BLM	9	2	0	0	1	0	1
Your corporation not wanting the land conveyed	8	1	0	1	2	0	1
Your corporation not effectively organized to receive lands	11	0	1	0	0	0	1
Other (Specify)	0	0	0	0	1	0	12
_____							
_____							

12. BLM can reserve easements through lands conveyed to Alaska Native corporations. Do your conveyed lands have reserved easements? (Check one.)

- Yes (Continue to question 13) 10
- No (Go to question 14) 1
- Not sure (Go to question 14) 0
- Not applicable 2

13 To what extent, if at all, do easements adversely affect the following activities or anticipated uses of your corporation's land? (Check one box for each activity.)

Type of Activity	To little or no extent	To some extent	To a moderate extent	To a great extent	To a very great extent	Not sure	Not applicable
Land development projects	4	3	3	0	0	0	3
Subsistence harvesting	5	1	1	1	2	0	3
Non-Native hunting and fishing	2	5	1	0	2	0	3
Recreational uses, such as sightseeing, boating, and snowmobiling	2	4	2	0	2	0	3
Historical and cultural uses	2	4	2	1	1	0	3
General management of conveyed land	1	2	2	1	4	0	3
Controlling trespass	0	3	1	1	5	0	3
Other (Specify)	0	0	1	0	0	0	12
_____							
_____							

14 Do any of your shareholders still have allotment claims? (Check one)

- Yes (Continue to question 15) 12
- No (Go to question 17) 0
- Not sure (Go to question 17) 0
- Not applicable 1

15 To what extent, if at all, is your corporation assisting your shareholders in finalizing their allotment claims? (Check one)

- Little or no extent (Go to question 17) 3
- Some extent 4
- Moderate extent 3
- Great extent 1
- Very great extent 1
- Not applicable 1

16 What kind of assistance are you giving individual Natives to help them to finalize their allotment claims? (Check all that apply)

- Technical 7
- Legal 2
- Administrative 8
- Financial 0
- Other (Specify) 1
- Advocacy

17. Presently, most lands are conveyed with an interim title. Your corporation will receive final title or patent to your selected lands once cadastral surveys have been completed. To what extent, if at all, does interim conveyance have a detrimental impact on your corporation's use or anticipated use of the land for the following activities? (Check one box for each activity.)

Type of Activity	To little or no extent	To some extent	To a moderate extent	To a great extent	To a very great extent	Not sure	Not applicable
Commercial fishing and processing	11	1	0	0	0	0	1
Commercial timber	9	1	1	0	1	0	1
Commercial buildings, such as hotels and office buildings	6	4	0	1	1	0	1
Energy mineral exploration and production, such as oil and gas	7	2	0	1	2	0	1
Non-energy mineral exploration and production, such as sand and gravel	8	2	0	1	1	0	1
Housing or homesites	5	3	2	1	1	0	1
Agriculture	11	0	1	0	0	0	1
Subsistence harvesting	12	0	0	0	0	0	1
Non-Native hunting and fishing	8	2	0	0	2	0	1
Recreational uses, such as sightseeing, boating, and snowmobiling	9	1	0	0	2	0	1
Historical and cultural uses	10	1	0	0	1	0	1
Other (Specify)	0	0	0	0	0	0	13
_____							
_____							

18. How willing or unwilling would your corporation be to pay a portion of land surveying costs to substantially speed up patent? (Check one)

- Very willing 0
- Willing 0
- Neither willing nor unwilling 3
- Unwilling 5
- Very unwilling 4
- Not applicable 1

19. About how much land surveying costs would your corporation be willing to pay? (Check one)

- None 7
- Less than \$10,000 2
- \$10,000 to \$49,999 0
- \$50,000 to \$99,999 0
- \$100,000 to \$199,999 0
- \$200,000 to \$499,999 0
- \$500,000 or more 0
- Uncertain 3
- Not applicable 1

20. Has your corporation ever been involved in administrative appeals or litigation concerning the Settlement Act?  
(Check one)

- |  |    |
|--|----|
| <input type="checkbox"/> Yes (Continue to question 21) | 12 |
| <input type="checkbox"/> No                            | 1  |

21. What is the nature and/or purpose of these administrative appeals or litigation? (Check as many as apply)

- |  |    |
|--|----|
| <input type="checkbox"/> Corporation eligibility   | 7  |
| <input type="checkbox"/> Land being conveyed or available for conveyance to your corporation | 10 |
| <input type="checkbox"/> Waterways being determined navigable or non-navigable               | 8  |
| <input type="checkbox"/> Easements being reserved  | 8  |
| <input type="checkbox"/> Allotment eligibility   | 8  |
| <input type="checkbox"/> Allotment relocations   | 4  |
| <input type="checkbox"/> Land development activities by your corporation                     | 5  |
| <input type="checkbox"/> Merger activity by your corporation                                 | 2  |
| <input type="checkbox"/> Surface water rights  | 4  |
| <input type="checkbox"/> Other (Specify) Does not lend itself to summarization.              | 3  |

VILLAGE NATIVE CORPORATIONS<sup>1</sup>RESPONSES TO OUR QUESTIONNAIRE<sup>1</sup>BUREAU OF LAND MANAGEMENT'S  
LAND CONVEYANCE PROGRAM

1 Are you a village or regional Native corporation?  
(Check one)

<input type="checkbox"/> Village	129
<input type="checkbox"/> Regional	0

2 What was the enrollment population of your corporation when  
it was declared eligible for Settlement Act benefits?  
(Check one)

<input type="checkbox"/> 25 - 99	24
<input type="checkbox"/> 100 - 199	34
<input type="checkbox"/> 200 - 399	41
<input type="checkbox"/> 400 - 599	17
<input type="checkbox"/> 600 or more	13

3 What is the current enrollment population of your corporation?  
(Check one.)

<input type="checkbox"/> Fewer than 25	0
<input type="checkbox"/> 25 - 99	23
<input type="checkbox"/> 100 - 199	32
<input type="checkbox"/> 200 - 399	42
<input type="checkbox"/> 400 - 599	20
<input type="checkbox"/> 600 or more	12

4 If your corporation is a village corporation, how many Natives  
currently reside in the village year-round (disregard temporary ab-  
sences for hunting, fishing, school, etc)? (Check one)

<input type="checkbox"/> Fewer than 25	12
<input type="checkbox"/> 25 - 99	25
<input type="checkbox"/> 100 - 199	34
<input type="checkbox"/> 200 - 399	32
<input type="checkbox"/> 400 - 599	13
<input type="checkbox"/> 600 or more	11
<input type="checkbox"/> Not a village corporation	0
No response	2

<sup>1</sup>We sent questionnaires to 174 Alaska Native village corporations and received 129 responses. This appendix contains the questions relating to the Bureau of Land Management's land conveyance program. Other responses from the Alaska Native corporations were contained in a prior report entitled Information on Alaska Native Corporations (GAO/RCED-83-173, August 16, 1983). For this report, the questions have been renumbered and reorganized. Some of the responding corporations did not answer all questions.

5. Once you get all or almost all of the lands you selected, to what extent, if at all, will they be used for the following activities? Include uses by the corporation, individual share holders, and non-share holders. (Check one box for each activity.)

Activity	To little or no extent	To some extent	To a moderate extent	To a great extent	To a very great extent	Not sure	No response
Commercial fishing and processing	42	22	20	11	18	8	8
Commercial timber	71	18	11	9	11	4	5
Commercial buildings, such as hotels and office buildings	32	38	29	9	1	14	6
Energy mineral exploration and production such as oil and gas	50	26	15	6	2	24	6
Non-energy mineral exploration and production, such as sand and gravel	30	35	19	22	9	10	4
Housing or homesites	11	36	38	26	12	3	3
Agriculture	64	30	8	3	2	16	6
Subsistence harvesting	3	17	16	26	62	1	4
Non-Native hunting and fishing	53	37	17	5	2	10	5
Recreational uses, such as sightseeing, boating, & snowmobiling	27	35	34	11	15	4	3
Historical and cultural uses	19	29	25	23	18	11	4
Other (Specify)							
_____	0	0	0	1	0	0	128
_____							

6. At the time the Settlement Act was passed, approximately when did your corporation expect to receive land from BLM? (Check one)

- 1972 - 1973 22
- 1974 - 1976 34
- 1977 - 1979 18
- 1980 - 1982 16
- 1983 - 1985 5
- 1986 - 1991 2
- 1992 or later 1
- Did not know when to expect to receive all land 29
- No response 2

7. When did your corporation first receive some land from BLM? (Check one)

- 1972 - 1973 0
- 1974 - 1976 17
- 1977 - 1979 45
- 1980 - 1982 38
- Have not received any land to date 28
- No response 1

8. Are you satisfied or dissatisfied with the speed of land conveyances to your corporation? (Check one)

- Very satisfied 9
- Somewhat satisfied 25
- Neither satisfied nor dissatisfied 19
- Somewhat dissatisfied 36
- Very dissatisfied 38
- No response 2

9 To what extent, if at all, have your corporation's economic development objectives been adversely affected by the speed of land conveyances? (Check one.)

- To a very great extent 19
- To a great extent 26
- To a moderate extent 19
- To some extent 21
- To little or no extent 30
- Corporation does not have economic development objectives 13
- No response 1

10 To what extent if at all, have your corporation's social or cultural objectives been adversely affected by the speed of land conveyance? (Check one)

- To a very great extent 15
- To a great extent 15
- To a moderate extent 18
- To some extent 23
- To little or no extent 45
- Corporation does not have social or cultural objectives 11
- No response 2

11 To what extent, if at all, do the following factors contribute to delays in your corporation getting land from BLM? (Check one box for each factor.)

Factors contributing to delays	Extent of Contribution						No response
	To little or no extent	To some extent	To a moderate extent	To a great extent	To a very great extent	Not sure	
Corporation eligibility determination	81	10	8	5	6	9	10
Excess Federal lands being made available for selection	63	16	12	4	8	13	13
Conflicts over easements	45	28	19	12	10	6	9
Conflicts over navigability determinations	49	29	11	9	12	9	10
Allotment claims not settled	39	19	14	19	21	9	8
Lack of accurate surveys	39	20	12	9	27	13	9
Unpatented mining claims	83	9	3	1	4	19	10
Overall complexity of the land conveyance program	30	19	19	17	26	12	6
Cultural differences between your corporation and BLM	62	16	10	8	5	15	13
Your corporation not wanting the land conveyed	95	6	4	2	2	10	10
Your corporation not effectively organized to receive lands	89	17	3	3	0	7	10
Other (Specify)							
<u>Does not lend itself to summarization.</u>	0	0	0	0	10	0	119

12. BLM can reserve easements through lands conveyed to Alaska Native corporations. Do your conveyed lands have reserved easements? (Check one)

- Yes (Continue to question 13) 70
- No (Go to question 14) 11
- Not sure (Go to question 14) 16
- No response or not applicable 32



13 To what extent, if at all, do easements adversely affect the following activities or anticipated uses of your corporation's land? (Check one box for each activity.)

Type of Activity	To little or no extent	To some extent	To a moderate extent	To a great extent	To a very great extent	Not sure	No response or not applicable
Land development projects	35	10	8	4	7	3	62
Subsistence harvesting	33	13	6	5	7	4	61
Non-Native hunting and fishing	30	13	8	5	7	6	60
Recreational uses, such as sightseeing, boating, and snowmobiling	33	13	9	5	5	5	59
Historical and cultural uses	33	16	3	4	7	5	61
General management of conveyed land	24	13	6	5	16	3	62
Controlling trespass	13	11	11	6	23	4	61
Other (Specify)							
<u>Does not lend itself to summarization.</u>	0	0	0	0	5	0	123

14 Do any of your shareholders still have allotment claims? (Check one)

- Yes (Continue to question 15) 99
- No (Go to question 17) 15
- Not sure (Go to question 17) 12
- No response 3

15 To what extent, if at all, is your corporation assisting your shareholders in finalizing their allotment claims? (Check one.)

- Little or no extent (Go to question 17) 37
- Some extent 25
- Moderate extent 14
- Great extent 18
- Very great extent 5
- No response or not applicable 30

16 What kind of assistance are you giving individual Natives to help them to finalize their allotment claims? (Check all that apply)

- Technical 35
- Legal 10
- Administrative 37
- Financial 2
- Other (Specify)<sup>a/</sup> 6

<sup>a/</sup> Does not lend itself to summarization.

17. Presently, most lands are conveyed with an interim title. Your corporation will receive final title or patent to your selected lands once cadastral surveys have been completed. To what extent, if at all, does interim conveyance have a detrimental impact on your corporation's use or anticipated use of the land for the following activities? (Check one box for each activity)

Type of Activity	To little or no extent	To some extent	To a moderate extent	To a great extent	To a very great extent	Not sure	No response
Commercial fishing and processing	84	12	9	2	5	6	11
Commercial timber	81	15	5	3	8	6	11
Commercial buildings, such as hotels and office buildings	64	21	10	9	6	7	12
Energy mineral exploration and production, such as oil and gas	61	17	9	9	2	18	13
Non-energy mineral exploration and production, such as sand and gravel	54	22	13	10	8	10	12
Housing or homesites	46	23	21	11	10	8	10
Agriculture	89	10	4	1	3	9	13
Subsistence harvesting	58	15	13	10	13	7	13
Non-Native hunting and fishing	63	16	12	4	7	13	14
Recreational uses, such as sightseeing, boating, and snowmobiling	65	17	12	8	5	9	13
Historical and cultural uses	62	24	8	4	5	11	15
Other: (Specify)	0	0	0	0	1	0	128
_____							
_____							

18 How willing or unwilling would your corporation be to pay a portion of land surveying costs to substantially speed up patent? (Check one)

- Very willing 2
- Willing 6
- Neither willing nor unwilling 42
- Unwilling 33
- Very unwilling 41
- No response 5

19 About how much land surveying costs would your corporation be willing to pay? (Check one)

- None 76
- Less than \$10,000 11
- \$10,000 to \$49,999 2
- \$50,000 to \$99,999 1
- \$100,000 to \$199,999 0
- \$200,000 to \$499,999 1
- \$500,000 or more 0
- Uncertain 32
- No response 6

20. Has your corporation ever been involved in administrative appeals or litigation concerning the Settlement Act?  
(Check one)

- |  |    |
|--|----|
| <input type="checkbox"/> Yes (Continue to question 21) | 52 |
| <input type="checkbox"/> No                            | 70 |
| No response  | 7  |

21. What is the nature and/or purpose of these administrative appeals or litigation? (Check as many as apply)

- |  |    |
|--|----|
| <input type="checkbox"/> Corporation eligibility   | 14 |
| <input type="checkbox"/> Land being conveyed or available for conveyance to your corporation | 30 |
| <input type="checkbox"/> Waterways being determined navigable or non-navigable               | 15 |
| <input type="checkbox"/> Easements being reserved  | 19 |
| <input type="checkbox"/> Allotment eligibility   | 11 |
| <input type="checkbox"/> Allotment relocations   | 7  |
| <input type="checkbox"/> Land development activities by your corporation                     | 6  |
| <input type="checkbox"/> Merger activity by your corporation                                 | 4  |
| <input type="checkbox"/> Surface water rights  | 5  |
| <input type="checkbox"/> Other (Specify) Does not lend itself to summarization.              | 11 |

NATIVE CORPORATION CASE STUDIESBACKGROUND

The Alaska Native Claims Settlement Act, enacted December 18, 1971, was intended to settle the Alaska Native Indian, Aleut, and Eskimo claims of aboriginal title to land their families had lived on for generations. Under the act, all aboriginal land claims were to be canceled in exchange for conveyance of title to approximately 44 million acres of land and a monetary settlement of \$962.5 million to about 78,800 Alaska Natives.

The Department of the Interior is the primary executive department responsible for implementing the act and its amendments. The act requires the Secretary of the Interior to (1) withdraw (or set aside) additional public lands for Native selection if the lands withdrawn by the settlement act were insufficient to permit a village or regional corporation to select the acreage it is entitled to select, (2) survey selected areas, (3) reserve public easements on land selected by Native corporations, and (4) convey land titles. The Secretary delegated responsibility for distributing the \$962.5 million to the Bureau of Indian Affairs and the responsibility for conveying the land to the Bureau of Land Management. All of the \$962.5 million had been distributed as of December 10, 1981. About 31 million acres, or 70 percent, of the 44 million acres had been interim conveyed or patented as of December 31, 1983. BLM cannot issue patent for the lands, however, until it surveys the lands' exterior boundaries and identifies all valid private property interests. As of December 31, 1983, only about 4 million of the 44 million acres had been patented.

The act also provided a framework to establish the basic ownership pattern (regional and village corporations) through which Alaska Natives may fully participate in the social and economic life of the state and Nation. Under the act, money was to be received on a schedule and basis set forth in the act and was to be administered through regional and village corporations. When the act was passed, about 214 Native village corporations were entitled to receive land and money under the act. A number of the corporations merged, and there was a total of 174 village corporations as of July 31, 1983. Also, 13 regional corporations had been formed as of that date. As of December 31, 1983, there were still 13 regional corporations but the number of village corporations had decreased to 169.

The regional and village corporations are organized as for-profit organizations under Alaska state laws and under the authority of the settlement act's terms. The act sets requirements on such matters as the distribution of funds received by the regional corporations to stockholders and village corporations, approval by the Secretary of the Interior of the original articles of incorporation, and stockholders' rights. The act does not set any express limitations on the use of funds

distributed by the regional corporations to the village corporations. The regional corporations can expend and invest funds consistent with the authority granted by the corporate bylaws, articles of incorporation, and Alaska laws not otherwise inconsistent with the act.

Each eligible Native is entitled to membership both in the corporation established for his or her village and in the corporation for the region in which the village is located. As shareholders, the Natives are entitled to a voice in the management of and a share in the lands, assets, and income which are owned and managed by the corporations. Although the Natives have ownership and control over their lands, the act provides that they cannot sell their shares of corporation stock to outsiders until 20 years after December 18, 1971.

The following examples illustrate the history and status of one regional and two village corporations.

#### Calista Regional Corporation

The Calista Regional Corporation is located in western Alaska. Its borders are the Bering Sea to the west, Bering Straits and Doyon Regional Corporations to the north, Cook Inlet Regional Corporation to the east, and Bristol Bay Regional Corporation to the south. The inhabitants are mostly Yup'ik Eskimos. The largest village of the regional corporation is Bethel and the population of all the 56 villages comprising the Calista Regional Corporation is 13,306, second largest of the 13 Native corporate regions. The population is supported largely by resource harvesting and subsistence activities. The regional corporation has invested in the tourist, housing, land, seafood, and service industries. The first year the corporation made a profit was 1982, reversing a 10-year trend in which it lost nearly \$30 million. Some statistics on the region follow.

Corporate name--Calista Corporation  
 Date of incorporation--June 1, 1972  
 Number of shareholders--13,306  
 Native allotments--2,466 (2,129 have not been finalized)  
 Monetary settlement--\$166,100,326.12<sup>a</sup>  
 Status of land conveyed as of December 1983:  
   Amount of entitlement-- 6,214,932 acres  
   Amount interim conveyed<sup>b</sup>--4,745,700.50 acres  
   Amount patented<sup>b</sup>--913.28 acres  
 Total land conveyed--4,746,613.58 acres<sup>c</sup>

<sup>a</sup>Includes interest earned prior to disbursement to the corporation. Approximately half of this money was to be redistributed among the village corporations based on population and to regional stockholders at large who were not members of a village.

<sup>b</sup>The first land conveyance in the region was in January 1979. The corporation had refused to accept conveyances prior to 1979.

<sup>c</sup>The regional corporation has been interim conveyed the subsurface estate of 4,129,557.71 acres of this land. The surface estate of 4,746,613.58 acres has been interim conveyed to the village corporations.

The Calista region's large tracts have been surveyed, but the large tracts of land contain many small tracts, such as townsites, mining claims, and allotments, which have not been surveyed. BLM has no plans to survey the small tracts in the region in 1984 or 1985 because BLM's priority for surveying land in the region is low. Until the small tracts are surveyed, however, BLM cannot patent the interim conveyed land to either the village corporations or the regional corporations. Without patent, both the regional and village corporations may have difficulty selling, leasing, developing, or otherwise using the land for a number of purposes.

Some of the 2,129 Native allotments that are pending, even though approved by the Alaska National Interest Lands Conservation Act of 1980, must be field inspected and surveyed again because the locations have been amended. Until the allotment locations have been finalized, the land cannot be patented.

#### Village of Kwigillingok

Kwigillingok, 1 of 56 villages within the Calista region, is located on Kuskokwim Bay about 80 miles south of Bethel and is within the boundaries of the Yukon Delta National Wildlife Refuge. Village residents are primarily Yup'ik Eskimos, who are involved in such activities as subsistence harvesting, employment at canneries, commercial fishing in Bristol Bay, trapping, and the National Guard. The financial position of the village corporation and its economic development activities are unknown since annual financial statements have not been submitted to BIA since 1977. Some statistics on the village follow.

Corporate name--Kwik Incorporated  
 Date of incorporation--December 21, 1973  
 Number of shareholders--229  
 Native allotments--102 (94 have not been finalized)  
 Navigable waterways--3  
 BLM planned surveying--none scheduled  
 Status of land conveyed as of December 1983:  
   Amount of entitlement--115,200 acres  
   Amount of land selected--197,282.18 acres  
   Amount interim conveyed--96,286 acres  
   Amount patented--0.18 acres  
 Total land conveyed--96,286.18 acres

Appeals filed by the state of Alaska and Kwik, Incorporated, on BLM's navigability determinations and easements to be

reserved were the major reasons why BLM did not convey land to the village corporations for more than 2 years.

The following is a chronological list of major actions:

April 4, 1980 - A draft decision to issue conveyance was sent to the village corporation.

April 28, 1980 - BLM held a meeting with corporate officials and village residents to review the draft decision to issue conveyance.

September 26, 1980 - The decision to issue conveyance was published in the Federal Register.

October 23, 1980 - The state of Alaska filed an appeal on the decision to issue conveyance because certain waterways were, in its opinion, navigable.

October 28, 1980 - Kwik, Incorporated, and Calista Corporation filed appeals on easements reserved.

December 21, 1981 - The state's appeal was dismissed at the request of the state.

January 29, 1982 - The appeals of Kwik, Incorporated, and Calista Corporation were dismissed.

December 27, 1982 - An interim conveyance to 96,286 acres and a patent to 0.81 acres were issued to Kwik, Incorporated.

### Village of Minto

The village of Minto is located in the Doyon region about 40 miles northwest of Fairbanks on the east bank of the Tanana River. Village residents are mostly Tanana Indians who engage in subsistence harvesting and seasonal employment, such as firefighting and construction jobs in Fairbanks. Although the corporation operated profitably in 1981, the financial position of the corporation subsequent to this date is not known because it has not submitted any financial statements since 1981. Some statistics on the village follow.

Corporate name--Seth-de-ya-ah Corporation

Date of incorporation--July 30, 1973

Number of shareholders--287

Native allotments--41 (31 have not been finalized)

Navigable waterways--1

BLM planned surveying--township boundaries have been surveyed. Parcels within the townships may be surveyed in 1985 or 1986.

Status of land conveyed as of December 1983:

Amount of entitlement--115,200 acres

Amount of land selected--135,177.18 acres

Amount interim conveyed<sup>a</sup>--107,380 acres  
Amount patented<sup>b</sup>--0.29 acres  
Total land conveyed--107,380.29 acres

<sup>a</sup>December 27, 1982.

<sup>b</sup>December 29, 1982.

Before the settlement act of 1971, three applicants for Native allotments agreed with the village of Minto to relinquish their allotments so the village could move to the area where the allotments were located. The old town site was crowded and was susceptible to flooding. The village moved, housing and a school were built, and the state granted money for construction of an electric cooperative and a lodge. Subsequently, a suit was filed by the Alaska Legal Services Corporation on behalf of the allotment applicants claiming that the relinquishments were obtained by either fraud or coercion. An agreement between the village council, the village corporation, the village lands committee, BIA, and the applicants was reached on April 25, 1983, whereby the applicants agreed to relinquish their rights to about 140 acres of land so the land could be interim conveyed and later patented to the village corporation. The village corporation is seeking early receipt of interim conveyance and patent of the lands so it can start carrying out its new housing development plans. BLM was not informed of the agreement until mid-June 1983. According to BLM officials, the land should be interim conveyed in fiscal year 1984.





## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

GLE - 1 K

Mr. J. Dexter Peach  
Director  
Resources, Community and Economic  
Development Division  
U.S. General Accounting Office  
441 G. Street, N.W.  
Washington, D.C. 20548

Dear Mr. Peach:

We appreciate the opportunity to comment on the General Accounting Office (GAO) draft report entitled "Alaska Land Conveyance Program--A Slow, Complex, and Costly Process" (GAO/RCED 84-14) in which recommendations are made to the Secretary of the Interior and the Congress. We offer the following comments for your consideration.

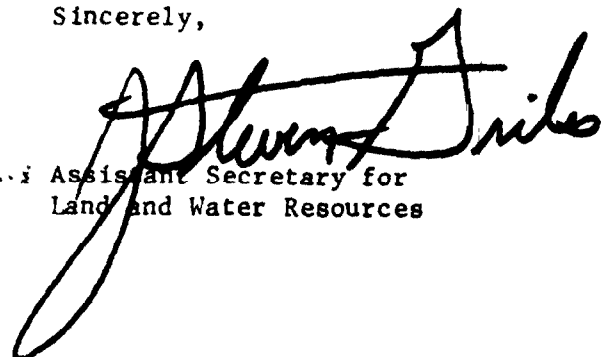
The report did not take into account the substantial amount of accomplishments in the last quarter of FY 1983, in which 3 million acres were conveyed to the State of Alaska, 3.3 million acres were conveyed to the Native corporations and survey was requested on 1,000 Native allotment parcels. We suggest GAO update the report to show this progress. Neither did the report reflect the fact that the Bureau of Land Management (BLM) greatly accelerated the Native allotment program and has extended the field examination season.

Enactment of legislation to shorten deadlines for filing civil actions would be helpful. We believe the 30-day deadline as established in the regulations is appropriate and should not be changed for administrative appeals.

A major portion of the report discusses navigability issues. Rather than enact legislation to define "navigable waterways", we believe the new administrative policy that is now being implemented is preferable. This policy is the one announced by the Secretary in August 1983, regarding the chargeability of submerged lands against the entitlements of the Native corporations and the State. The report should be updated to show this action.

There are two enclosures attached. Enclosure 1 addresses each recommendation in more detail. Enclosure 2 points out specific technical changes necessary for clarification of certain items in the report.

Sincerely,



Deputy Assistant Secretary for  
Land and Water Resources

Enclosures (2)

GAO Note: page references in this appendix have been changed to correspond to page numbers in the final report.

[GAO COMMENT: The report has been subsequently updated to reflect information provided by Interior to show its progress in conveying land to the Native corporations and the state as of December 31, 1983. The agency addressed the above issues in more detail in enclosure 1 of its comments. Rather than briefly address the agency's summary comments here, we have addressed both the agency's summary comments and its detailed comments on an issue-by-issue basis. Where appropriate, we made specific technical changes Interior recommended to clarify the report.]

Department of the Interior Response to GAO Recommendations in Draft  
Report entitled "Alaska Land Conveyance Program--A Slow, Complex, and  
Costly Process (RCED 84-14)

I. Recommendations to the Secretary of the Interior.

RECOMMENDATION:

Direct the Director, BLM to, "after providing reasonable notice in the manner prescribed by Section 905(c) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), require that all amendments to Native allotment applications be filed by a specific date."

RESPONSE:

This recommendation does not appear to follow the content of the narrative on page 16 of the report which states Section 905 of the ANILCA provides that the Secretary may require all allotment amendments in a specified area be made by a specified date. While we are prepared to process allotments on an area basis, we can see no advantages and many disadvantages to having all amendments to Native allotment applications filed by a specific date, as the report recommends.

We have already implemented a plan whereby Native allotment applications are adjudicated by geographic areas to correspond with the cadastral survey work plan. Letters requesting amendments be filed by a certain date are being sent to the applicants on a case-by-case basis as their claim is adjudicated. This process allows the Bureau of Land Management (BLM) to process cases in an orderly manner, without creating the massive workload which would occur if all amendments in an area are submitted by a specific date.

Requiring a cut off date for filing amendments, in a specified area, would allow for a more orderly method for future planning purposes, but it is doubtful it will speed up survey work as there is currently a backlog of more than 4,000 Native allotment parcels awaiting survey.

[GAO COMMENT: Our proposal in the draft of this report did not include the phrase "in a specified area." To be consistent with section 905(c) of the Alaska lands act and the narrative in the draft report, we have added the phrase "in a specified area" to our recommendation. Interior states that it has already implemented a plan whereby Native allotment applications are adjudicated by geographic areas to correspond with the cadastral survey work plan and it is sending letters to applicants on a case-by-case basis requesting amendments to be filed by a certain date. Section 905(c) provides that:

"The Secretary may require that all allotment applications designating land in a specific area be amended, if at all, prior to a date certain, which date shall be calculated to allow for orderly adoption of a plan of survey for the specified area, . . ."  
(Underscoring supplied.)

Thus, the thrust of section 905(c) is to enable Interior to provide for a more orderly method for future planning purposes. Although requiring a cutoff date for filing allotment amendments in a specified area may not necessarily speed up the survey work, knowing how many allotments and where they are located would help Interior to better plan its survey work. Accordingly, we believe Interior would be better able to adopt an orderly plan of survey if it knew all the amendments to allotment applications in a specified area, rather than finding this information out gradually. We believe that if our recommendation is implemented, it will reduce conflicts arising because of subsequent allotment amendments and the requirement for repeat field examinations. Also, as Interior stated, this would allow for a more orderly method for future planning purposes.]

RECOMMENDATION:

Direct the Director, BLM to "expand the field examination season as much as practical."

RESPONSE:

We have implemented this recommendation to the maximum extent practical, extending the season from 3 months to approximately 6 months. A program of conducting year-round field examinations is impractical. The season is dependent upon the weather, as many applicants need to prove their use and occupancy by evidence that is on the ground. The surveyors now go to the field as early as March or April, or as soon as weather permits, and they stay until the snow falls. Some winters are very severe, others are mild. Several years ago, field examinations were conducted during the winter months. It was later found that many had to be re-examined when the ground was visible. In Fiscal Year 1983, BLM greatly accelerated its Native allotment program. The purpose of the new emphasis was to complete as many applications as possible up to requesting the survey. BLM's goal, which was met for FY 1983, was 3,700 allotment parcels. Requests for surveys on an additional 2,500 parcels will be completed this year. Delays are not occurring in field examinations. There is currently a backlog of more than 4,000 parcels awaiting survey. The BLM will continue to do as many field examinations each year as weather and funding permit.

[GAO COMMENT: We agree with Interior's comments that conducting year-round field examinations is impractical for allotment applications where verification of substantial use and occupancy must be made and the ground is not visible. Since our proposal was to expand the field examination season as much as practical and Interior stated that BLM will continue to do as many field examinations each year as weather and funding permit, we have not recommended any further action.]

RECOMMENDATION:

Direct the Director, BLM to "require the presence of the applicant, or an alternate with power of attorney, at the time an allotment is examined and/or obtain an affidavit from the applicant agreeing to the allotment location."

RESPONSE:

For the past 9 years, the BLM has diligently tried to assure the presence of the applicant, or a designee, at the time of field examination. As the areas to be examined are scheduled well in advance of the actual season, many things can happen to prevent the applicant or the designee from being there. If the field examiner cannot locate the applicant to verify location of the claim, the person adjudicating the case writes to the applicant, imposing time frames and asking for verification of the location of the claim as examined, prior to requesting survey. On occasion, we have requested and received affidavits. However, we do not believe requiring an affidavit is necessarily a solution to speeding up the process of conveying land to the Native corporations and the State. If presence of the applicant or an alternate, or an affidavit were required, the processing of many allotments would be delayed until the applicant or alternate were available or an affidavit was signed. One of our biggest problems is the availability of the applicants to accompany the field examiner. Therefore, we intend to encourage, but not require, participation by the applicant or his designee and the acquisition of an affidavit regarding the allotment location.

[GAO COMMENT: Interior's comments on our recommendation deal primarily with the problem of assuring the presence of the applicant, or a designee, at the time of a field examination, adding that this is one of their biggest problems. We can understand BLM's frustration with trying to get an applicant, or a designee, present at the time of a field examination. The thrust of our recommendation, however, was that an affidavit should be obtained at the time the allotment is field examined and the applicant or the applicant's designee with power of attorney is present. Such an affidavit would bind the applicant to a particular location once the field examination is completed. Accordingly, we revised our recommendation to emphasize the need for BLM to get an affidavit. We believe that requiring an affidavit will speed up the process of conveying land to the Native corporations and the state. If an applicant amends his or her allotment location after field examination, the application has to be reprocessed. As the examples in the narrative of

our draft report show, this can result in conflicts with other already approved allotments, re-examinations in the field, and/or resurveying. We recognize that obtaining affidavits is not the sole solution to speeding up the overall conveyance program, but it is one of the problems with the allotment process and we believe that implementation of our recommendation will help.]

RECOMMENDATION:

Direct the Director, BLM to "develop and implement a policy based on existing authority under the Federal Land Policy and Management Act of 1976 to request contributions from the State and Native corporations for surveys made for their benefit."

RESPONSE:

The BLM already has a policy of accepting money for survey and other purposes. The Native corporations and the State are well aware of this policy.

[GAO COMMENT: We recognize that BLM already has a policy for accepting money for surveys and other purposes. However, a BLM official told us that BLM does not have a policy to request voluntary contributions. Extended delays in the conveyance of land to the Natives and the state of Alaska could be avoided if additional funds were available to pay some or all of the costs of surveying such lands. Voluntary contributions and the use of private surveyors approved by BLM are ways to expedite the surveying.]

As stated in the report, BLM estimates that it will take over \$300 million to complete needed surveys of Native corporation and state lands and may take as long as 40 years at current funding levels. In view of the large workload and limited funding available, we believe that BLM should develop and implement a policy to request or more actively try to obtain money from the Native corporations and the state for surveys.]

II. Recommendations to the Congress

RECOMMENDATION:

"To help resolve the Native allotment problem, we recommend that the Congress enact legislation limiting the time within which administrative appeals or civil actions may be filed after a certain date by adding the following to section 905 (a)(1) of the Alaska National Interest Lands Conservation Act (Public Law 96-487, 94 Stat. 2371):

'Provided, That any appeal filed with the Secretary or any civil action commenced to prove compliance with the December 18, 1971, filing requirement under this section, shall be barred unless filed one year after the effective date of this amendment or ninety days after the final adverse determination by the Secretary, whichever is later. The Secretary shall provide reasonable notice of this requirement through the public media and, if necessary, by other means designed to reach affected applicants in remote areas of the state of Alaska. Such notice shall be made within sixty days of the effective date of this amendment.'

RESPONSE:

Section 902 of ANILCA established a 2-year deadline for filing civil actions, and current Departmental regulation (43 CFR Part 4) sets a 30-day deadline for filing administrative appeals. Included in any new amendment should be a requirement that administrative remedies must be exhausted. It would be helpful to have the civil action appeal period shortened but we believe the current deadline set for filing administrative appeals is appropriate and need not be changed.

[GAO COMMENT: As discussed on page 15, we are not making this recommendation.]

RECOMMENDATION:

"If the progress of litigation does not adequately define navigable waterways in Alaska and the Congress wishes to reduce litigation on this question, we recommend that the Congress enact legislation providing definitions of navigable waterways in Alaska by amending the Submerged Lands Act (43 U.S.C. 1301) by adding:

'(1) The term 'navigable waterways' when applied to waters in the State of Alaska for purposes of resolving claims under the Alaska Statehood Act, Pub. L. 85-508, as amended, and the Alaska Native Claims Settlement Act, Pub. L. 92-203, as amended, means waterways that as of the date of Statehood were (1) frequently, occasionally, or to a limited extent used or susceptible of being used in their natural and ordinary condition as highways for commerce over which trade and travel was or may be conducted in the customary modes of trade and travel.'

RESPONSE:

We strongly encourage deletion of this entire recommendation to Congress. Legislating this definition will not resolve any of the differences of opinion that exist today. The general definition recommended as an amendment to the Submerged Lands Act is an almost word for word adoption of the standard used by the courts for over 100 years, having its first articulation in The Daniel Ball, 10 Wall. 557 (1870). The only difference is the insertion of the words "frequently, occasionally, or to a limited extent". Thus, this amendment is unnecessary.

If the amendment were to include language which alters the historical definition, we would oppose it for the following reasons:

1. It is not clear that Congress has the power to alter the definition applied by the courts.

Thus, under Pollard's Lessee the State's title to lands underlying navigable waters within its boundaries is conferred not by Congress but by the Constitution itself.

State Land Board v. Corvallis Sand and Gravel Co.,  
429 U.S. 363, 374 (1977).

2. To narrow the definition would violate the rights of the State, to expand it would violate the rights of the Natives, either probably resulting in a "taking", which would require the payment of compensation.
3. The amended definition cannot be confined to Alaska, since it would then violate the Equal Footing Doctrine, under which all states enter the Union with the same rights to submerged lands beneath navigable waters.
4. It has been suggested in dicta in court opinions that a new state does not acquire submerged land per force of the Submerged Lands Act, but by operation of the Equal Footing Doctrine; hence, an amendment to the Act would have no effect on the rights of the State. See State Land Board v. Corvallis, supra, footnote 4, p. 373.
5. The legislation would operate retroactively, which would necessarily result in numerous takings, for which compensation would be required.

In August 1983, the Department proposed a new policy in regard to the chargeability of submerged lands against the entitlements of Native corporations and the State; this was approved on November 28, 1983. Under this new policy, neither the Native corporations nor the State will be charged for submerged lands that are meanderable in accordance with the BLM's 1973 Manual of Surveying Instructions. Generally speaking, this means they will not be charged for waterbodies that are greater than 50 acres in size or 198 feet in width. This means that no navigability determinations will be required on these larger waterbodies. Such determinations will be a matter to be resolved between the Native corporations and the State. Therefore, such decisions would will longer generate delays in conveyances.



We are aggressively pursuing regulations which will address the issue of chargeability of submerged lands. We believe this is a more favorable solution than the enactment of new legislative definitions.

[GAO COMMENT: As discussed on pp. 22 and 23, we are not making this recommendation.]

RECOMMENDATION:

"If the Congress intends that use in Alaska by other than waterborne craft or using a waterway when frozen constitutes navigable use then it should add:

'(2) Use of a waterway in Alaska by other than waterborne craft shall constitute navigable use when that is the customary mode of trade and travel, and

'(3) Use of a waterway in Alaska when frozen shall constitute navigable use when that is the ordinary condition of the waterway and commerce customarily occurs over the waterway when frozen.'

On the other hand, if the Congress does not intend that use by other than waterborne craft or using a waterway when frozen constitutes navigable use then it should add:

'(2) Use of the waterway by other than waterborne craft or used when frozen shall not constitute navigable use.'

RESPONSE:

We strongly encourage deletion of recommendations to Congress regarding waterborne craft and the use of water in its frozen state. Any attempt to define such uses legislatively could have major implications in all other states. Furthermore, as discussed above, we feel the administrative resolution being developed will resolve more of the issues than the proposed legislative definition of navigability, without the risk of prejudicing more than one hundred years of court decisions on navigability outside of Alaska.

[SEE ABOVE GAO COMMENT]

Additional Comments or Specific Changes Needed for Clarification of  
Items in Draft of a Proposed Report Entitled "Alaska Land Conveyance  
Program--A Slow, Complex, and Costly Process"

GENERAL COMMENTS

[GAO COMMENT: The agency furnished additional general and specific comments in its package of comments to us to help clarify the report. Where appropriate, the report was changed or modified to reflect the agency's suggestions.]

# ALASKA

**BILL SHEFFIELD, GOVERNOR**

## **DEPARTMENT OF NATURAL RESOURCES**

**OFFICE OF THE COMMISSIONER**

**POUCH M  
JUNEAU, ALASKA 99811  
PHONE:**

**465-2400**

December 2, 1983

Mr. Hugo Walter  
U.S. General Accounting Office  
Box 18  
701 C Street  
Anchorage, Alaska 99513

Dear Bill:

Enclosed is the draft report you furnished Commissioner Wunnicke for review and a memorandum prepared by Gary Gustafson commenting on the draft. I think his review will be useful to you.

I need to update Mr. Gustafson's memorandum by informing you that the Department of Interior has formally adopted the riparian rights decision announced in a speech by former Secretary Watt. It was issued on November 21.

Sincerely,



Robert D. Arnold  
Deputy Commissioner

Enclosures

cc: Tom Hawkins, DLWM

GAO Note: Page references in this appendix have been changed to correspond to page numbers in the final report.

## MEMORANDUM

## State of Alaska

DEPARTMENT OF NATURAL RESOURCES, DIVISION OF LAND AND WATER MANAGEMENT

TO Tom Hawkins  
Director *TJ Hawkins*

DATE November 16, 1983

FILE NO

TELEPHONE NO 265-4314

FROM Gary Gustafson *Gus*  
Policy and Procedures Unit Manager

SUBJECT GAO Draft-Alaska Land  
Conveyance Program

Per your request, I have thoroughly reviewed the draft General Accounting Office (GAO) report entitled Alaska Land Conveyance Program - A Slow, Complex and Costly Process. I have noted typographic and major factual errors in red on the attached draft. In addition, the GAO makes several recommendations in the draft report which could have significant impacts upon the state. These recommendations are identified and discussed below.

[GAO COMMENT: The Deputy Commissioner informed us that he was responding for the Governor and that his comments would represent comments from the state of Alaska. Typographic and major factual errors pointed out by the state were corrected in the report.]

DOI Administrative Changes

The draft report accurately concludes that the many small tract interests (particularly Native allotments) in Alaska are a major reason why the land conveyance process to the state and Native corporations has not occurred in a more expeditious manner. The GAO recommends that the Secretary of Interior adopt administrative procedures to: a) give notice and require that amendments to Native allotments be filed by a specific date; b) expand the field examination season; and c) require the presence of the applicant (or authorized representative) during the field examination. These recommendations should help assist and expedite BLM's Native allotment review process.

[GAO COMMENT: Primarily information and no evaluation is necessary.]

However, another GAO recommendation to develop and implement a policy (under authority of FLPMA) to request contributions from the state and Native corporations for survey funds could have adverse impacts upon the state. Although it may benefit the state to occasionally voluntarily contribute funds so as to expedite survey of particular lands (as was done in 1982), it remains the overall responsibility of the Department of Interior to complete a survey of all unsurveyed lands selected by the state prior to issuance of patent (Section 906(g) of the Statehood Act). Any new survey policy promulgated by DOI should recognize this responsibility. I perceive that state survey contributions should be forthcoming only under unique circumstances, and only if identified by the state in advance. The state should oppose efforts to have DOI actively request survey funds from the state, although we should retain the option to contribute funds for survey in unique circumstances (after advance notice to BLM).

[GAO COMMENT: Although the state said that our recommendation to develop and implement a policy to request contributions from the Native corporations and the state could have adverse impacts upon the state, the state also recognized the benefit of such a policy in limited situations. As pointed out by the state, BLM is required to do the survey work. We believe our recommendation, if implemented, would help BLM convey land faster to the state if the state helped fund some of the survey work. We did not recommend that BLM develop a policy to require the state to make contributions.]

#### Legislation

The GAO draft report also recommends that Congress enact legislation to a) amend Section 905(a)(1) of ANILCA to limit the time within which administrative appeals or civil actions may be filed for Native allotment decisions; and b) amend the Submerged Lands Act to define the term "navigable waterways."

The recommendation to amend Section 905(a)(1) of ANILCA, as proposed on page 15, is confusing and will not accomplish the desired objective. I suggest the proposed amendment be reworded as follows:

"The Bureau of Land Management shall not accept any additional Native allotment applications made pursuant to the Act of May 17, 1906 (34 stat 197, as amended) and pending before the Department of Interior on or before December 18, 1971, unless the application is held by an authorized government agency and is received by the Bureau of Land Management within one year after the effective date of this amendment. The Bureau of Land Management shall provide notice of this requirement to the Bureau of Indian Affairs. Such notice shall be made within 60 days of the effective date of this amendment."

This revised amendment would establish a final cut-off date for BLM acceptance of all Native allotment applications, including those filed by Rural Cap, Alaska Legal Services or BIA. This will preclude the "discovery" of any more applications held by BIA in an old file drawer somewhere. I believe BIA is the only government entity capable of still submitting Native allotment applications, because Alaska Legal Services is a party to the Barr settlement.

[GAO COMMENT: As discussed on page 15, we are not making this recommendation.]

Although the GAO recommendation to congressionally define "navigable waters" could be of considerable benefit, it is difficult to conceive that the DOI would support any such legislation that might result in adopting a navigability definition consistent with the state's position.

[GAO COMMENT: As discussed on pp. 22 and 23, we are not making this recommendation.]

#### Summary

The draft GAO report is perhaps most noteworthy for what it doesn't include. There are at least three major land conveyance issues which the report almost completely ignores: Native overselection reductions, BLM survey prioritization, and implementation of the Secretary of Interior's "riparian rights" decree.

[GAO COMMENT: When we started our field work we talked to congressional, Interior, state, and other appropriate officials to determine which issues to address. The issues we ultimately selected were based upon their suggestions.]

The report notes on page 8 that certain Native corporations have selected substantially more land than they are entitled to. However, the report incorrectly states that "land selected by the Native corporations is not available for selection by the state" and "until the Native corporation's entitlements are finalized the state cannot complete its land selections." Actually, the state can select lands also selected by Native corporations. Furthermore, Native corporation entitlement figures are already finalized.

[GAO COMMENT: The report was changed on page 4 to reflect that the state can select lands also selected by Native corporations.]

The GAO should recommend that DOI adopt regulations to reduce Native corporation overselections in excess of 125 percent of remaining entitlement. This action could free well over a million acres for immediate conveyance to the State of Alaska and is consistent with the overselection ceiling already placed on the state by Section 906(f) of ANILCA.

[GAO COMMENT: We did not develop sufficient information during our review to comment on the state's recommendation because this issue was not pursued in depth. (See above comment for why we did not address this issue.)]

Tom Hawkins  
November 16, 1983  
Page 3

Last summer, then Secretary James Watt announced that the DOI would stop charging submerged land acreage against the state's overall land entitlement if such lands lay under waters of 50 acres in size (lakes) or waterways wider than 198 feet (streams). Known as the "riparian rights" policy, this decree could save the state and Native corporations millions of acres of entitlement. Unfortunately, this policy has not yet been implemented. The longer it takes to implement this policy, the more land that the state stands to lose as the conveyance process continues unabated. The GAO should recommend that this policy be immediately implemented by DOI, preferably by Secretarial directive.

[GAO COMMENT: The Department of the Interior's new policy to not charge submerged land acreage against the land entitlements of the Native corporations and the state was approved November 28, 1983, and regulations to address the issue are being prepared. Also, BLM has drafted a memorandum of agreement and sent it to the state for review which will further define the policy and get agreement on its implementation. Because of the action taken by Interior, the recommendation suggested by the state would be inappropriate at this time.]

It is also surprising that the GAO report does not recommend that BLM do a better job of coordinating state, Native corporation and Native allotment survey priorities. At the present time it is evident that this failure to more closely coordinate survey efforts is resulting in an inefficient use of limited BLM survey funds and contributes to delays in state and Native corporation receipt of patent. GAO should recommend that BLM coordinate its Native allotment survey workload priorities more closely with state and Native corporation survey priorities.

In summary, the draft GAO report does a reasonable job of identifying many problems associated with the BLM land conveyance process. However, perhaps due to the detailed ANCSA corporation questionnaire (Appendix I), the report seems to emphasize Native corporation conveyance problems rather than those experienced specifically by the state (i.e. overselection reductions). Although many of the recommendations outlined in the draft report can be supported by the state, additional findings and recommendations from the GAO would be useful to address Native overselection reductions, BLM survey priority coordination and implementation of the Secretary of Interior's "riparian rights" policy.

GG:jam

Attachment

[GAO COMMENT: The state of Alaska correctly notes that the report does not make recommendations regarding Native land over-selections or that BLM should do a better job of coordinating state, Native corporation, and Native allotment survey priorities. These two issues were not within the scope of our review, and therefore, we did not develop them during the field work. (See previous comment on page 64 for why we did not address these issues.)]

The state was also concerned that we seemed to emphasize Native corporation conveyance problems rather than those experienced by the state. We do not believe we emphasized Native corporation problems. Instead, we confined our review to the most significant problems BLM was experiencing with the overall conveyance program. Further, finalizing allotments, navigability issues, and surveying problems also affect BLM's conveying land to the state as well as to the Natives.]



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