



APPENDIX TWO

Materials Prepared for the City of Aleknagik under a Legal Assistance Grant Administered by the Department of Community and Regional Affairs (DCRA)

Optional added title page information:

Appendix 2A: Letter from Timothy E. Troll, Beatty, Robbins & Morgan, P.B.,
to

John Gliva, DCRS, March 6, 1987

Appendix 2B: Municipal Land Acquisition and Disposal in Alaska by Timothy
E. Troll

Appendix 2C: Sample Land Disposal Ordinance



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March 6, 1987

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Dear John:

I am enclosing copies of all of the materials that I have prepared for the City of Aleknagik under the Legal Assistance Grant. Also enclosed find my memorandum regarding some of the pertinent legal issues surrounding municipal land conveyances. I believe the memorandum addresses most of the issues I outlined in my letter to you of October 22, 1986. However, I would like to briefly provide a summary of my opinions with respect to each of the questions raised in that letter:

1. What legal inferences or conclusions can be made from the replacement of a very restrictive (former A.S. 29.48.250) with a broad grant of authority (new A.S. 29.35.090)?

It is clear the Title 29 Committee and the Legislature intended to give municipalities the broadest latitude possible for managing their own land. Generally, when a law is repealed as was A.S. 29.48.250 the common law (court developed) rules that once applied to the situation are revived. At common law, the courts recognized that municipalities held property in both a "governmental" and in a "private" capacity. A municipality could not convey property held in its governmental capacity without authorization from state law. A municipality, however, could convey property held in its private capacity without restriction. Although the new A.S. 29.35.090 does not specifically grant authority to municipalities to convey property held in a governmental capacity, I believe the courts would construe this provision to grant the authority because by constitution and state statute powers granted to municipalities in Alaska are construed liberally. The common law distinction remains important because if a municipality conveys property clearly dedicated or used for a governmental purpose it must make specific findings that the purpose has been abandoned before the property can be conveyed. It is also important because property

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held in a governmental capacity may be donated or conveyed for less than fair market value only when the property will continue to be used for a public purpose. The same consideration may not apply to property held in a private capacity.

You should be aware that a dedication to public use can be made by someone other than the municipality. A situation encountered in rural Alaska is a conveyance of property from the federal townsite trustee to the municipality of property dedicated to "municipal reserve." Such property may be considered received as dedicated property which cannot be reconveyed unless there is a finding the property is not needed for municipal purposes. The distinction may also be important for transfers under §14(c)(3). A municipality, when considering selections under §14(c)(3) will often be selecting property that may be needed for some public purpose. For example, in Aleknagik I believe some land was selected for potential bridge sites and public beaches. A conveyance under §14(c)(3) can probably be considered a dedication to a specific public use. However, a city is not obligated to use the land for the purpose selected. However, before the property can be used for any other purpose it must be found that the original purpose has been abandoned or circumstances have changed such that the original purpose no longer makes sense in the context of the community. Village corporations may try to impose reversionary clauses on cities to require property conveyed under §14(c)(3) to revert to the possession of the corporation if the purpose for which it was selected is abandoned. Such clauses may be valid and cities should not accept property under such conditions.

The common law distinction between proprietary and governmental property is perhaps most important in the context of the "public purpose" provision of the Alaska constitution. That provision provides that "public land" can only be conveyed for "a public purpose." It is an open question whether land held in the proprietary capacity of the city would be subject to this constitutional provision. I feel the argument can be made, and must be made, if municipalities are going to be in a position to convey property to private individuals or businesses. I do not believe the Alaska Supreme Court would use this provision to prohibit such conveyances; the court will either use the distinction between governmental and proprietary property to get around the provision or will broadly interpret the term "public purpose" to accommodate this need. If the court were to hold otherwise, the

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result would impose severe restrictions on the development of our rural communities.

2. To what extent must the former statutory restrictions of A.S. 29.48.260 be incorporated into municipal ordinances enacted under a new A.S. 29.35.090?

The prior restrictions of A.S. 29.48.160 no longer pose any problem for municipalities, with the possible exception that a municipality may not be able to convey some of its property for less than full value.

3. Can the city under A.S. 29.35.090 convey property for less than full value?

It is clear that a city can convey property for less than full value to another governmental organization or corporation when the property will be used for a public purpose that will benefit all or a significant portion of the members of the community. The prevailing view at common law is that a municipality cannot donate or convey property for less than fair value to a private individual, business or organization that will use that property to the exclusion of others. We have no cases in Alaska discussing whether the Alaska courts will permit a municipality to convey property to a private individual business or organization for less than fair market value. In the ordinance I drafted for Aleknagik, I specifically tracked the regulations governing conveyances for less than fair market value adopted for the Alaska Municipal Lands Trustee. It is certainly questionable whether a municipality can convey property to an individual who is going to use that property only for his personal residence. However, I believe that considering the general poverty level of most people living in our villages and the fact that a municipality may be the only organization with property available in the core community that conveyances for less than fair market value may be upheld. I would recommend, however, that property not be given away, but some consideration be paid for the conveyance. The best method would probably be to use some income factor to determine the price to be paid. Certainly a conveyance for less than fair market value should not be made unless there are findings that some larger and more important public purpose justifies the conveyance.

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4. Can municipality convey land noncompetitively and if so, when and under what conditions?

Yes, a municipality can convey land noncompetitively. However, a municipality does have an obligation to its citizens to obtain the best price available for the property it desires to convey. The recognized method for obtaining the best price available is to entertain bids for the property. Certainly if the primary purpose of the conveyance is to raise money for the city then a competitive process should always be used. If a city council determines that a competitive process is not appropriate then it should make specific findings justifying this decision. Absent fraud or an obvious abuse of discretion the courts are not likely to overturn a council's decision to sell land noncompetitively. Absent any specific findings, however, the court could determine the decision was arbitrary. I believe a council could determine that a competitive sale would not be in the interests of the members of the community if it believes, and the facts justify the belief, that a competitive sale would eliminate a significant portion of the residents of the community.

5. Can a municipality convey property to a federally recognized tribal organization?

I concur with the opinion of the Attorney General that a municipality can convey property to a tribal organization. A tribal organization would, in most cases, be a legitimate non-profit organization. The important question is whether the municipality could convey the property knowing it will be used only for tribal purposes to the exclusion of non-tribal members in the community. The problem arises, I believe, only if the property the city seeks to convey or the tribal organization desires to possess is property that was used or dedicated for a public purpose. If the tribal organization wants to obtain property by donation or for some consideration less than fair market value, then the conveyance should not be made without some restriction guaranteeing the property will continue to be used to benefit all of the people of the community. If the tribal organization were willing to purchase the property at fair market value, and the property in question was proprietary property, or public property no longer useful for a public purpose, it would not be a matter of concern whether the tribal organization used the property to the exclusion of non-tribal members. If a tribal organization desires to obtain land in order to build a facility

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that will be used to the exclusion of non-tribal members then it should be willing to pay the city fair market value for that property, or acquire the property from another source. The city may donate property but only if that property will be used for a public purpose.

6. Assuming the answer to number 5 is yes, what conditions, if any, must be placed on land conveyed to a tribal organization?

No conditions need be placed on property conveyed to a tribal organization if the tribal organization purchased the property from the city in a competitive sale or for fair market value. A restriction requiring the property to be used for the benefit of all members of the community should be attached to any conveyance when the conveyance to the tribal organization is for less than fair market value.

7. Can a city convey title to a trespasser?

A city can convey title to a trespasser but again the important consideration is whether the conveyance should be made for less than fair market value. A trespass itself confers no rights in the trespasser that the city must acknowledge. A claim of adverse possession cannot be made by a trespasser because adverse possession does not apply to municipal property. A conveyance to a trespasser should not be made for less than fair market value unless there are strong equitable reasons justifying a conveyance for less than fair market value. An equal protection problem may arise if the city grants a superior claim to a trespasser when the trespasser knew or should have known that he had no right to move onto the property in question. If there is some equitable reason or some public interest, such as clearing title to property, I would recommend that the only superior right a trespasser should have is an opportunity to match the highest price offered for the property by some other individual. A city could probably grant to a trespasser some form of an occupancy right that would expire when the trespasser's use of the property had been abandoned. This occupancy right could be granted by a permit or perhaps a lease.

8. What liability are municipal officials exposed to in land conveyance decisions?

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Any property conveyance is subject to being set aside by a court if the conveyance was not made in accordance with local ordinances, state statute or the federal or state constitution. After a certain undefined period of time has passed, however, a credible defense of laches may arise. Laches is a defense when the person challenging the conveyance has waited an unreasonable length of time in order to bring his action. Generally, municipal officials, in their personal capacity, when acting in good faith and exercising discretion as municipal officials, are not liable personally for a land conveyance decision made while acting as a decision-making body.

I would now like to review briefly the land disposal ordinance I drafted under the Grant. I believe it may be helpful to you to understand the reasoning behind the provisions of the ordinance and where the language in some of those provisions was obtained.

Section 1. Authority to Dispose.

This provision merely grants to the City the power to dispose of its property.

Section 2. Disposal by Ordinance.

Section A provides that any disposal must be authorized by ordinance. This accounts for the apparent law in Alaska that a conveyance of real property is similar to an appropriation of money. The Alaska Supreme Court has held that such appropriations may only be made by ordinance. Although the common law permits conveyance by resolution, I think the decision referenced in the research makes it advisable in Alaska to require that all conveyances be authorized by ordinance. Also Section A recognizes the distinction between property held by a municipality in its private capacity and its governmental capacity. I have drafted it such that when the city council is conveying "governmental" property, that is, property that was used or dedicated to a public use, it is subject to an ordinance procedure that is somewhat more restrictive. Under normal ordinance procedure, a public hearing can be held at the same meeting at which the ordinance is scheduled for passage. My experience has been that often public comments made at such a public hearing are not fully evaluated by a city council if the public hearing is held at the same meeting at which the ordinance is scheduled for passage. Often the pressure for passage

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outweighs any comments to the contrary made by the public." For these reasons I recommend the public hearing on the ordinance be scheduled some time between the meeting at which the ordinance is introduced and the meeting at which the ordinance is scheduled for passage. Under this scheme the council has the time and opportunity to fully consider any comments made by the public and also has an opportunity at the meeting at which the ordinance is scheduled for passage to address any concerns that were specifically raised at the public hearing. Such a procedure, I believe, is appropriate because the public should have a greater opportunity to challenge conveyances of property that have been dedicated for the use of the public.

Section B merely provides that a lease of space or a short term ground lease can be disposed under a less restrictive procedure. The reasoning here is that most space leases within a municipal building are for a public purpose, most commonly a clinic or a tribal government office. However, I would recommend that a lease of space to a private individual or business for a length of time greater than a year should go through a formal ordinance process. The provision regarding short term ground leases was intended primarily to accommodate limited needs. A common example is when a contractor may be in town to construct a project and may need a place from which to stage the project. Because the use of the property is so temporary and often the lease must be passed on a schedule to accommodate the contractor's needs, a less restrictive procedure seems appropriate.

Section 3. Form of Document of Conveyance.

This provision merely requires that the document of conveyance should be in a form that can be recorded. I would recommend that any documents be reviewed by an attorney and it may be helpful to contact the recording office to determine in what form deeds and contracts and leases must be in order to be recorded.

Section B is self-explanatory. It is my recommendation that any document of conveyance specifically refer to the ordinance authorizing the conveyance so that if a question arises the legislative history behind the conveyance can be easily traced.

Section C simply provides that when the city does convey a deed it will be a quit-claim deed. A quit-claim deed merely says that the city is conveying any interest which it has, and if it

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has no interest, it conveys no interest. The other form of deed is a warranty deed. A warranty deed guarantees the title of the property conveyed. If a city conveyed warranty deeds, it would have to defend the title in court if the title was ever challenged. Title in rural Alaska is often difficult to determine because of the various laws under which land rights have accrued. I think it would be unwise for a city to give anything greater than a quit-claim deed. If a purchaser is concerned about the quality of his title, he can always bear the costs of obtaining title insurance.

Section 4. Disposal for Fair Market Value.

This section provides that all sales of property should be for fair market value unless there is some specific reason to do otherwise. In the revised ordinance, I have included a definition under paragraph A of fair market value. This definition was taken from the Alaska Administrative Code.

Paragraph B provides that fair market value can be determined from an appraisal or in a place where a city assessor may exist by the city assessor. I have also provided a provision allowing the city council to use any other method it feels appropriate to determine fair market value. This provision is included primarily because appraisals may be expensive to obtain and, in an era of declining revenues, small cities may not be able to afford such appraisals. Also, it has been my experience that land values in rural communities are so uncertain that any value attached by an appraiser is no better than a value attached by a member of the city council. Often the price that a city council may set on a piece of property may be the beginning of the determination of what fair market value is in the community. I believe that a city council, whose members have lived in the community for all their lives, may be able to attach a value to city land that is as good as or better than any value that an appraiser may be able to attach. Certainly as the community progresses and more and more land transactions on the private market are conducted, the use of an appraiser may become more appropriate.

Paragraph C tracks language from former A.S. 29.48.260 which did exempt from the provisions of that statute conveyances to the United States, the State of Alaska or political subdivision. I have added non-profit corporations or recognized tribal authorities and I believe the common law would support a

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conveyance for less than fair market value to these kinds of organizations so long as the public in general will benefit from the conveyance. This does not mean that any transfer of property to a non-profit corporation or tribal authority must be beneficial for all people in the city. It only means that a conveyance for less than fair market value must be supported by a public purpose.

Paragraph D tracks language in the Alaska Administrative Code with respect to property that can be conveyed by the Alaska Municipal Lands Trustee. I have included the language "provided the claim existed prior to the date of passage of this ordinance" to accommodate the concerns raised at the meeting we had in Aleknagik. This provision should only be used when a person has a genuine claim and a real belief that he has a right to the property. It should not be used to convey property to a trespasser because a trespasser does not have a valid claim of equitable interest. A person who knew he had no right to move onto property, or could reasonably have determined that he had no right to move onto the property should be considered a trespasser and not granted a valid claim of equitable interest. Such equitable claims may arise because property lines were difficult to determine or someone reasonably believed he had authority, say from the Townsite Trustee, to move onto a piece of vacant property. An equitable situation may exist for someone who had always lived on a townsite lot but never went through the formal process of applying to the trustee. Any ordinance conveying property under this provision should clearly state what the council believes the equitable interest to be. I recommend that a city use the staggered ordinance procedure in Section 2 to give all members of the community an opportunity to challenge the council's determination that an equitable interest does exist.

Paragraph E also tracks language in the Alaska Administrative Code with respect to conveyances of property by the Alaska Municipal Lands Trustee. Of all the provisions in this proposed ordinance this is the provision I am least comfortable with. Simply because a resident seeks a parcel of property for the construction of a residence does not confer any legal right to have the conveyance for less than fair market value. It should be emphasized that this provision is only optional and a city should elect to use it only if there are other equitable considerations or overriding public reasons to justify such a conveyance. I have changed the language from that of the ordinance as originally introduced to simply allow the council to

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determine on a case by case basis what condition subsequent it will attach to a conveyance in order to insure that the property will be used as a primary place of residence.

I believe this provision should only be used when the council determines that the income level of most of the members of the community is such that they could not afford the property at its fair market value and that a corresponding public interest in developing the community, providing places for new residents or alleviating overcrowding should exist. The provision should only be used if the city is the only organization that can make the land available, and the pressure to make the land available is such that the city cannot reasonably wait a longer period of time for some other organization like the village corporation to come along and make land available. You will also notice that I changed the term "bona fide" to "domiciled." The reasons for this change become clear in Paragraph F.

Paragraph F defines the term "domiciled city resident" and this language also tracks language found in the Alaska Administrative Code with respect to transfers of land by the Alaska Municipal Lands Trustee. The term "domiciled" however, has a recognized legal meaning, which is "physical presence in the location with a subjective intent to remain." A city council could determine "subjective intent to remain" from such objective criteria as it may deem appropriate. The council could set the criteria and obtain the information from an application for lot purchases. The provisions of A.S. 15.05.020 relate to residency for purposes of voting; many of the standards set out in the statute are domiciliary standards.

It is important to recognize that prior restrictions on eligibility like "residency" remain potentially volatile sources for litigation. To the extent a residency requirement is attached, and the city council feels it must put some time period on residency, I would recommend a period of 30 days. The state currently uses a period of six months for eligibility to receive a permanent fund dividend and I would recommend that this six-month period be the upper end of any residency time period, unless a council finds some compelling reason to make the period longer. Again, in any ordinance authorizing the conveyance a council should make specific findings and refer to the facts justifying the residency requirement. The ordinance authorizing the conveyance should also set forth the purpose of the

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conveyance and it must be clear from the ordinance that the purpose of the conveyance and the residency requirement make sense together.

Often a city council's concern about conveying land to residents can be alleviated by post conveyance restrictions. Restrictions such as a "proving up" requirement or limiting lot sales to one per person will limit speculation in city property and will reduce the interest of non-residents in acquiring property within the community.

Section 5. Disposal Methods.

The disposal methods set forth under Section 5 are merely provided as examples. Paragraph D makes it clear the examples are not to be considered exclusive. This language tracks similar language found in the Anchorage Municipal Code regarding real property disposals.

Section 6. Exchange of Property.

This section was added after the meeting at Aleknagik simply to make it clear that a city may exchange property with another person or organization. If the property to be exchanged is going to be used by some organization for a public purpose, a fair market value determination would be superfluous because the public benefit is in the continued use of the property and not in the money to be obtained. I also provided that fair market value would not be necessary if the exchange resolves conflicts of title or secure public easements or rights-of-way for the city. I believe these are public interests that may be so overriding that a city could determine it need not incur the expense of determining fair market value because the conveyance should be made regardless of value.

My approach in developing this whole ordinance was to keep it as unrestrictive as possible. Prior to the enactment of A.S. 29.55.090 many municipalities had intricate ordinances regarding disposals of property in order to get around the restrictive provisions of the prior statute. Because those provisions no longer exist, an ordinance regarding disposal of municipal property should merely define the outer perimeters of the city's authority. The city council should have the widest latitude possible for managing city property. I believe this disposal ordinance allows a council to develop any procedure it

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feels is appropriate to fit a particular conveyance situation, rather than trying to fit a particular conveyance situation into the ordinance. By requiring all conveyances to be authorized by ordinance the public is assured adequate notice and an opportunity to complain about any particular conveyance. Each conveyance transaction should be carefully reviewed by the council and by the city attorney. This disposal ordinance allows the council to be as free or as restrictive as possible with any particular conveyance and the facts of each particular situation will dictate how free or how restrictive a council should be. My recommendation, and the policy I used at St. Marys, is to use a lease wherever possible, particularly when the property to be conveyed was to an outside business or commercial interest. A lease is preferable because the city retains ownership.

I want to convey to both you and Laura my appreciation for being selected for this project. I hope the material and information I have provided will be useful and please don't hesitate to contact me if you require additional information or advice.

Sincerely,

BEATY, ROBBINS & MORGAN, P. C.

Handwritten signature of Timothy E. Troll in cursive script.

Timothy E. Troll

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MUNICIPAL LAND
ACQUISITION AND DISPOSAL
IN ALASKA

Prepared by Timothy E. Troll
BEATY, ROBBINS & MORGAN, P.C.

1987

Through a Legal Assistance Grant to the City of Aleknagik
Administered by the State of Alaska Department of
Community and Regional Affairs, Municipal and Regional
Assistance Division

Revised and updated 2008.

State of Alaska
Department of Commerce, Community, and Economic Development
Division of Community & Regional Affairs





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MUNICIPAL LAND ACQUISITION AND DISPOSAL IN ALASKA

I. INTRODUCTION

Rarely do local governments have the opportunity to acquire at no cost large undeveloped tracts of land. In Alaska, municipalities have been the beneficiaries of several important pieces of legislation which provide for transfers of property to municipal ownership. The first such law was the State land grant program, which allowed municipalities to select State owned land within the municipal boundary¹. More important for the future, however, are the Alaska Native Townsite Act (ANTA) and Section 14(c)(3) of the Alaska Native Claims Settlement Act (ANCSA).²

The possession of this undeveloped land creates a conveyance problem for local governments. If municipalities retain these conveyances for public use, local community development could be severely inhibited. It will be incumbent upon municipalities in the future to convey portions of municipal land holdings into private ownership. Municipalities, however, do not enjoy the same freedom in the real estate market as private individuals. A number of legal obstacles must be avoided in order to convey municipal property to private individuals; these obstacles multiply when municipal officials attempt to implement public policy through the vehicle of land disposal. This paper analyzes some of the more significant legal obstacles and highlights some common conveyance problems municipalities may face. Particular attention is given to the unique context of small rural municipalities.

II. ALASKA STATUTES 29.35.090

Municipalities as political subdivisions of the state derive only those powers granted by state government. Conveyances of property received by municipalities, regardless of the intent of the granting legislation, must comply with authority granted by state law.³ The first legal obstacle is the nature of the power granted by the state. In Alaska this power is granted in AS § 29.35.010(8) which simply states that all municipalities have the power "to acquire, manage, control, use and dispose of real and personal property" The power to acquire and dispose of land is limited by AS § 29.35.090, which states: "The governing body shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land by the municipality." AS 29.35.090 is one of the significant changes enacted in the major revision of Title 29 passed by the Alaska legislature in 1985.⁴ The predecessor to AS 29.35.090 strictly confined the municipal power to dispose of land⁵. The comprehensive nature of the change represents a complete reversal of the legislative attitude toward municipal land conveyance. The change also presents important questions of legal interpretation.

A. Legislative History of AS 29.35.090

The law on municipal land conveyances prior to the enactment of the Title 29 revision was found at AS 29.48.260. This statute limited municipalities to disposing land "no longer required for municipal purposes."⁶ The governing body was also required to establish a formal procedure for the disposal of property that must include



"A number of legal obstacles must be avoided in order to convey municipal property to private individuals; these obstacles multiply when municipal officials attempt to implement public policy through the vehicle of land disposal."



“AS 29.35.090 completely sweeps aside all the restrictions of the prior law. However, because AS 29.35.090 is but one part of a major revision of the statutory law governing Alaska local governments, the legislative history surrounding this particular change is limited.”

provisions for property appraisals by qualified appraisers, thirty days public notice prior to any conveyance, conveyance only by auction or sealed bid, and voter ratification of any conveyance of property valued at \$25,000 or more.⁷ Exceptions to these limitations were made for conveyances to other governments,⁸ conveyances of property originally acquired from the state⁹ and conveyances to persons who agreed to "operate a beneficial new industry" on the property conveyed.¹⁰

AS 29.35.090 completely sweeps aside all the restrictions of the prior law. However, because AS 29.35.090 is but one part of a major revision of the statutory law governing Alaska local governments, the legislative history surrounding this particular change is limited. In 1980 the state legislature established a committee to review the existing statutory law governing municipalities and to recommend appropriate changes.¹¹ One of the primary goals of the committee was to simplify procedures and to maximize local control over local affairs.¹² The committee considered the then existing statute governing municipal land disposal as creating "undue complexities" and recommended a simple requirement that municipalities establish a procedure by ordinance.¹³ The committee particularly desired to eliminate the \$25,000 value limit for voter ratification because it was unrealistic.¹⁴

Although the revisions to Title 29 recommended by the committee took several years to pass through the legislature,¹⁵ AS 29.35.090 survived unchanged and apparently stirred little controversy or comment in legislative committees or on the floor of either house. It can therefore

be assumed the legislature intended that local governments in Alaska should be as free as possible to decide for themselves how land should be acquired and disposed.

B. Interpretative Effect of a Comprehensive Change

The question raised is whether the sweeping nature of the change permits municipalities to dispose of property, with all the discretion and freedom a private person would have. The answer to this question will likely depend upon the weight the Alaska courts accord to the common law rules governing municipal property disposal. Courts generally construe a repeal of a statute as reviving the common law as it existed before the statute was enacted.¹⁶ The repeal of the prior restrictive statute on municipal land disposal and its replacement with a broad grant of authority could therefore mean that governing bodies are not entirely free to dispose of property as they see fit but are now restricted to the extent those restrictions are found at common law.

III . COMMON LAW PRINCIPLES APPLICABLE TO MUNICIPAL PROPERTY

The common law power of a municipality to acquire and dispose of land is constructed on a distinction between land held in a proprietary capacity and land held in a governmental capacity.¹⁷ The common law recognized that local governments acted in two different capacities, one which is governmental and the other which is private or corporate.¹⁸ Powers incident to the former include the power to regulate, police and collect taxes; the latter include primarily the authority to provide public services such as water, sewer and harbors.¹⁹ Land that was acquired or dedicated by a municipality to promote a governmental responsibility is

considered public land and must be used for the purposes for which it was devoted.²⁰ At common law "public land" could only be disposed if the municipality was granted specific authority to do so by the state.²¹ However, land acquired and owned by the municipality for the purpose of promoting a distinctly corporate function is considered "private land" and can be disposed by the governing body without special authority from the state.²² The theory is that the state grants a municipality the power to incorporate and by the terms of its creation a municipality possesses the same capacity to dispose of property that an individual has who possesses the authority to contract.²³

The distinction between the two "capacities" of a local government is often academic and difficult to apply in particular situations.²⁴ It is unclear whether the Alaska courts have adopted this distinction between privately held and publicly held property for the purpose of determining the authority of a municipality to acquire and dispose property. Now that the former statutory restrictions imposed by statute have been removed the leading case in Alaska may be *Seltenreich v. Town of Fairbanks* decided in 1953.²⁵ In *Seltenreich* the U.S. District Court for Alaska drew heavily upon the governmental - proprietary distinction to determine whether the city government had properly conveyed a tract of land formerly used as an airport. Quoting extensively from secondary sources the court said:

The general rule ... is that property held in a governmental capacity, i.e. for a public use, cannot be sold without legislative authority ... but is otherwise as to property held in a private capacity and not devoted to any special public use.²⁶

The court stated that property held by a municipal corporation in its proprietary capacity ordinarily may be alienated without the consent of the legislature.²⁷ On appeal, the Ninth Circuit affirmed but considered the distinction between governmental and proprietary capacities unnecessary to its affirmation.²⁸ The Ninth Circuit drew upon statutory language providing that a city council could dispose of public property no longer required for municipal purposes to uphold the decision of the Fairbanks City Council to convey the airport property.²⁹

The only other case found in Alaska touching upon the character in which a municipality may hold property is *Libby v. City of Dillingham*.³⁰ In *Libby*, the Alaska Supreme Court in dicta stated: "... the general rule is that municipalities may acquire and hold land only for a public purpose."³¹ If, in this short statement, the Alaska Supreme Court has dismissed the common law distinction between holding land in a governmental capacity and holding land in a proprietary capacity significant implications may result.

These implications become apparent when considered in light of the legislative grants under which Alaskan local governments have acquired land.



"The question raised is whether the sweeping nature of the change permits municipalities to dispose of property, with all the discretion and freedom a private person would have. The answer to this question will likely depend upon the weight the Alaska courts accord to the common law rules governing municipal property disposal."

IV. MUNICIPAL LAND ACQUISITION IN ALASKA

Prior to the passage of ANCSA many municipalities acquired title to undeveloped property through the state land grant program. This program entitled municipalities to select up to ten percent of the vacant unappropriated state selected land within the municipal boundary.³² The intent of the land grant program was to allow for public and private settlement and development of local land.³³ Although the land grant program remains available, most municipalities in the state incorporated shortly before or after the passage of ANCSA and do not have access to the program. Most of the land within the boundaries of municipalities incorporated since 1971 was selected by local village corporations under ANCSA and is no longer available for state selection under the Statehood Act for possible reconveyance to the municipality. For the vast number of municipal governments the acquisition of undeveloped land will come directly from the federal government pursuant to ANTA, or as the result of the federal obligation imposed by ANCSA on village corporations to reconvey certain land to municipal corporations.

A. Alaska Native Townsite Act

Although the Alaska Native Townsite Act was repealed in 1976,³⁴ it nevertheless remains a significant source of undeveloped land for municipalities. The ANTA permitted unincorporated Native communities to petition the federal government to survey their community and give deeds to residents of the community.³⁵ Provision was also made in the law to set aside land for such public uses as cemeteries.³⁶ After surveys were completed, municipalities were given title

to property set aside in the plan of survey for municipal reserve; municipalities can also obtain title to all vacant lots in subdivided portions of townsites.³⁷ As a result of recent litigation, municipalities can also receive title to all unsubdivided portions of a townsite survey.³⁸

Vacant lots, unsubdivided portions of townsite surveys and possibly even land designated for municipal reserve can be considered land transferred to the municipality to provide for future residential growth. Few municipalities, if any, consider this property to be obtained solely for governmental use.

B. Alaska Native Claims Settlement Act

Municipalities whose jurisdictions include land selected by an ANCSA village corporation are entitled under Section 14(c)(3) of that act to select land needed for community expansion, public rights-of-way and for "other foreseeable community needs."³⁹ Under the original Act, municipalities were entitled to "no less than 1280 acres."⁴⁰ The Act was amended by the Alaska Lands Act and now the amount of acreage received by a municipality is determined through negotiation between the municipality and the local village corporation, although the operative figure is still 1280 acres.⁴¹ The intent of this provision is not to deprive the local village corporation of potential profitable uses for its property and arguably the only land that should be transferred to a municipality under Section 14(c)(3) is land needed for public use. Most of the land to be selected under this provision should be to accommodate recognized public uses such as community buildings, rights-of-ways, cemeteries and waste disposal sites.⁴² Whether a municipality could select land for future residential development, and whether



"The distinction between the two 'capacities' of a local government is often academic and difficult to apply in particular situations. It is unclear whether the Alaska courts have adopted this distinction between privately held and publicly held property for the purpose of determining the authority of a municipality to acquire and dispose property."

a village corporation could deny such a claim, are open questions.

Residential development is one of the few potential profit making opportunities available to a village corporation. However, because many people in Alaska's villages live on the margins of poverty few people may be able to afford lots sold for fair market value. Villagers often cannot compete with outside interests for valuable residential land. City governments concerned about the availability of land for local residents may seek to select land from the village corporation to fulfill this perceived community need, and such a selection would appear to be justified under the "community expansion" provision of Section 14(c)(3). Several partial 14(c)(3) reconveyances in rural villages have already been spurred by the need to provide land for federal public housing projects.⁴⁵ To date rural municipalities have shouldered the burden of providing land for residential development.

C. Other Sources of Undeveloped Land

Some municipalities have received land grants from other sources. The Railroad Townsite Act and the Presidential Townsite Act have benefited communities located on the Alaska Railroad or the highway system.⁴⁴ The provisions of these acts are similar to ANTA. A few communities that grew around missions and later incorporated received land from churches. Much of this land was deeded without restriction as to use.⁴⁵

V. POSSIBLE LIMITATIONS IN ALASKA ON THE COMMON LAW OF MUNICIPAL PROPERTY DISPOSAL

Several limitations on the common law

rules governing municipal land conveyances may exist in Alaska. Most of these potential limitations are found in the Alaska Constitution, the most important of which is the public purpose clause.

A. Public Purpose Clause of the Alaska Constitution

The public purpose clause of the Alaska Constitution is found at Article IX, Section 6 and is important because it specifically provides that "public property" may not be transferred "except for a public purpose." The Supreme Court said in *Libby* that all property acquired by the municipality is acquired for a public purpose and arguably this statement dismisses the common law distinction between private purpose and public purpose property.⁴⁶ The immediate hurdle such a rule presents is whether the general authority to dispose property granted by state statute is specific enough to allow for the disposal of property acquired for a public purpose.⁴⁷ Ordinarily a general power to sell property is not construed to authorize the sale of property held in a governmental capacity, although authorities differ on this question.⁴⁸ The rule is generally the opposite with respect to the authority to sell property held in a proprietary capacity.⁴⁹ In light of the Constitutional direction that municipal powers in Alaska are to be construed liberally, the courts in Alaska would probably consider the general grant of authority sufficient to dispose of municipal property regardless of its governmental or proprietary character.⁵⁰ However, even if the distinction is valid for the purpose of a general authority to dispose, a problem still exists if all municipal property can only be disposed for a public purpose. The language in *Libby* could be read to impose such a limitation. The question is important



"Most of the land within the boundaries of municipalities incorporated since 1971 was selected by local village corporations under ANCSA and is no longer available for state selection under the Statehood Act or possible reconveyance to the municipality."



because, as discussed above, much of the undeveloped land, which may be acquired by municipalities, should be developed, subdivided and conveyed to private individuals or organizations for residential or commercial purposes. Results may differ depending upon whether the Court focuses on the "public" in public land or the "public" in public purpose of Article IX, Section 6.

The Alaska Supreme Court accords a very generous construction to the term "public purpose"⁵¹; a legislative determination that a public purpose is served has a strong presumption of legality.⁵² The court has said on several occasions that it will not interfere with such a legislative finding unless it clearly appears the finding is arbitrary and without any reasonable basis in fact.⁵³ The court has also declined the invitation to define "public purpose" preferring to leave definitions to the particular facts presented by each case.⁵⁴ It is clear that not all members of the public need to benefit in order for a public purpose to be sustained; nor is a public purpose defeated simply because a private entity will realize a significant advantage.⁵⁵ However, a public purpose may not be recognized when that purpose is merely incidental.⁵⁶ It appears the Alaska courts may be using a sliding scale approach to the public purpose question. If the stated public purpose is a legitimate public purpose then the particular conveyance will be placed on the scale and a determination made in light of the facts of each case whether the public purpose is served significantly or merely incidentally.

Most municipal land conveyances are likely to satisfy the public purpose test. However, a conveyance of land to an individual which the individual will use to the exclusion of all others in the community is arguably not a conveyance for a public

purpose. A conveyance of property to a corporation whose purpose is merely commercial is arguably not a conveyance for a public purpose. Each of these conveyances may promote the general purpose of community development, but the connection is only tangential and the Alaska court could void the conveyance. The Alaska legislature apparently recognized the private nature of such conveyances in the former law on municipal land disposal when it specifically recognized exceptions for conveyances of land acquired from the state and for land to be conveyed to a beneficial new industry.⁵⁷

A municipality is arguably not the intended beneficiary of all the land transferred to it under ANTA or ANCSA. The municipality has an obligation to transfer some of this land into private ownership. The critical question is whether the public purpose clause will defeat such transfers into private ownership despite the apparent intent of ANTA or ANCSA. The answer is uncertain. Many rural communities suffer from depressed and cyclical economies and from housing shortages and overcrowding.⁵⁸

For the immediate future municipal governments in many communities may be the only entity that can make land available for private residential or commercial development. The court may consider these surrounding facts to find a public purpose adequately served despite the fact a private individual is the primary beneficiary.

The alternative argument is that a public purpose inquiry is not relevant when the land at issue is held by the municipality for the purpose of accommodating private residential or commercial development. Such

land is arguably held in the proprietary capacity of the municipality and is not affected with the incidents of a trust to make the land "public land" for purposes of Article IX, Section 6. Unfortunately, the only case in Alaska that may support this reasoning is *Seltenreich*, which was decided prior to statehood.⁵⁹

VI. CONSTITUTIONAL LIMITATIONS ON DISCRIMINATORY CONVEYANCES

Assuming the public purpose clause of the Alaska constitution will not prevent a conveyance of municipal property into private ownership, the equal protection clauses of the Alaska Constitution and the United States Constitution may still pose significant hurdles. Land is a finite resource and the demand for it is potentially infinite. As a practical matter, municipalities will often need to limit the number of people who can acquire municipal property. Restricting eligibility is an inherently discriminatory act creating a class of people who can receive a government benefit and a class of people who cannot. The creation of these two classes may be subject to analysis by the courts under the equal protection clauses of the two constitutions.⁶⁰

Conveying land is fundamentally a resource allocation problem and the simplest legally acceptable means for conveying property is to permit the market system to determine eligibility. Property is simply conveyed to the individual offering the highest price. The prior provisions of Title 29 by requiring auctions or bids and fair market value as the basis for establishing price essentially allowed the market to determine who could acquire municipally disposed land.⁶¹ Because the market system is competitive, it theoretically provides an

equal opportunity to all who desire to acquire the particular resource. In reality, however, the market system allocates resources on the basis of wealth and can result in discrimination against the less fortunate members of society. Government intervention is often necessary to correct this inherent imbalance. And so, local governments in Alaska have implemented land disposal laws that compromise the competitive aspect of the market system in favor of some particular group. Such government supported favoritism incurs the risk of falling into the legal tar pit of equal protection.

Among the more popular limits placed upon eligibility to acquire municipal land is the restriction of local residency. Other restrictions imposed or considered by municipalities include sale procedures that favor low-income persons, non-landowners, long-time residents, heads of households and Alaska Natives.

An examination of these classifications under the microscope of equal protection must begin with an understanding of the context in which many of them are found: that context is rural Alaska. Alaska is predominately a rural state and most of its communities are small, relatively homogenous communities.⁶² Many of these communities have populations that are predominately Alaska Native.⁶³ Many have a history in a particular location dating back thousands of years.

The justification for restricting eligibility to acquire municipal land can be varied. Most rural residents live at or below the poverty level and depend upon seasonal employment and a subsistence lifestyle.⁶⁴ If a municipality allows the market to determine who can purchase property a good possibility exists



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that much of the property sold could fall into the hands of wealthier people who have no real stake in the community. Many rural communities also have significant transient populations made up primarily of seasonal workers, government employees or teachers.⁶⁵ These temporary residents often hold the best paying positions in the community and tend to be financially better-off than most permanent residents.⁶⁶ A municipality that cannot limit its land conveyances to bonafide residents may preside over the demise of the community as land holdings become increasingly controlled by nonresidents. For communities that are primarily Native the consequences are particularly significant. Political control of the community may be at stake because relative wealth in rural areas tends to favor non-Natives.⁶⁷

It has been and is likely to continue to be important for many rural municipalities to control who can acquire land from municipal holdings and to make land available on terms within the financial reach of local residents.

A. The Federal Equal Protection Standard

The Federal courts nearly always uphold legislative classifications distinguishing between persons who are similarly situated when the distinctions drawn do not involve a "suspect classification" like race⁶⁸ or restrict the exercise of a fundamental right like voting⁶⁹ or impinge upon a basic necessity of life like access to welfare or health care benefits.⁷⁰ If the distinctions drawn fall into one of these categories, the federal courts will apply a strict scrutiny standard and require a "compelling state interest" to justify the classification.⁷¹ Also the distinction drawn must be necessary to accomplishing the goal.⁷² However, if a classification falls

outside the sphere of strict scrutiny, the federal courts will only require a rational relationship between the classification and the goal to be achieved.⁷³ The inquiry follows a two-tier analysis.⁷⁴

B. The Alaska Equal Protection Standard

The standard of review for classifications under the equal protection clause of the Alaska constitution is a means-end test and is considerably more rigorous than the standard applied by the federal courts.⁷⁵ The Alaska standard was firmly established in *State v. Erickson*⁷⁶ and generally requires a determination 1) whether the classification is aimed at fulfilling a legitimate government purpose; 2) If so, whether the classification bears a fair and substantial relationship to the stated government purpose; and 3) whether the importance of the government purpose served by the classification outweighs the deprivation of any rights caused by the classification.⁷⁷ When fundamental federal rights or suspect categories are involved, the results of the Alaska test will be essentially the same as requiring a compelling state interest.⁷⁸ However, under the Alaska test, the rights involved need not be fundamental in order for a classification to fail; the classification is balanced against the "importance" of the right in question.⁷⁹ Also, of particular significance, the Alaska courts, unlike their federal counterparts, will not hypothesize a legitimate government goal in order to sustain a relationship between the classification and the goal. The Alaska courts will only look to the articulated goals of the legislation in question and determine whether the relationship between the classification and the articulated goal is rational.⁸⁰

VII. CONSTITUTIONALITY OF CLASSIFICATIONS RESTRICTING ELIGIBILITY TO ACQUIRE MUNICIPAL PROPERTY

A. Residency

The history of Alaska has been marked by government policies granting residential preferences. These preferences have been the subject of considerable public attention and judicial scrutiny. Most residential preferences have not survived the close examination of the Alaska Supreme Court.⁸¹ However, despite the number of Alaska cases discussing residency requirements; the law relating to their validity is far from settled. The Alaska equal protection standards under which a residency requirement will be examined are broad enough to allow a court to reach nearly any decision it desires.

Residency as a basis for eligibility to acquire a government benefit can be either "simple" or "durational." To the extent the law in question grants a benefit to a resident as opposed to a non-resident, without reference to any prior length of residency, it can be deemed a "simple" residency requirement. If, however, the law grants a benefit to individuals based upon prior length of residency it may be a "durational" residency requirement. The distinction can be critical: a durational requirement is more likely to invoke a strict scrutiny equal protection examination.

The first question to resolve, however, is whether any residency requirement attached to a municipal land conveyance can be valid. The leading case considering the constitutionality of a residency requirement in a municipal land conveyance is *Gilman v. Martin*⁸² in which the Alaska Supreme Court struck down a land sale conducted by the Kenai Peninsula Borough.

The sale procedure adopted by the Borough incorporated a one year residency requirement to establish eligibility for land purchase.⁸³ The Borough also discounted the sale price five percent for each year of residency in the Borough up to a maximum fifty percent discount.⁸⁴ These preferences in the sale procedure were adapted from similar preferences granted to state residents in land sales conducted by the Alaska Department of Natural Resources.⁸⁵ The ordinance authorizing the land sale at issue in *Gilman* stated the purpose of the sale was to sell selected parcels to "adjoining property owners or to leaseholders so as to resolve existing controversies regarding access and title."⁸⁶ The court reviewed the classification (residency) in relation to the stated purpose of the sale (to resolve controversies regarding access and title) and held the sale violated the proscriptions of equal protection because the classification "did not bear a substantial relation to the purpose of the ordinance."⁸⁷

The purpose of the sale was the initial focus of the court's inquiry. In *Gilman*, the Borough argued it could distinguish residents from non-residents because the intent of the initial grant of land from the state to the Borough was to permit residents to acquire land.⁸⁸ The court noted, however, this was not the stated purpose of the legislation and held the residency requirement bore no relationship to the purpose of resolving controversies regarding access and title because a majority of landowners within the Borough were non-residents.⁸⁹ Residents and non-residents had similar problems with access and title and were thus "similarly circumstanced." There was no rational reason to deny non-residents the benefits of the sale.⁹⁰



"An examination of these classifications under the microscope of equal protection must begin with an understanding of the context in which many of them are found: that context is rural Alaska. Alaska is predominately a rural state and most of its communities are small, relatively homogenous communities."



“A municipality that cannot limit its land conveyances to bonafide residents may preside over the demise of the community as land holdings become increasingly controlled by non-residents.”

The Court intimated in *Gilman* that its decision may have been different if the Borough had stated in its ordinance that the purpose of the sale was to benefit residents.⁹¹ However, in a footnote the court quoted from Justice Brennan's concurring opinion in *Zobel v. Williams*⁹² in which he stated that “discrimination on the basis of residence must be supported by a valid... interest independent of the discrimination itself.”⁹⁵ In most cases it will likely be difficult to conceptually distinguish the validity of the interest from the validity of the discrimination. It is unclear how the court would have decided the case if the articulated purpose of the sale in *Gilman* was to benefit residents.

Municipalities are organized by and exist for the purpose of benefiting their residents, and a land sale limited to residents is probably not a violation of equal protection. Any person is entitled to become a resident and, once a resident, have equal access to the benefits provided by the municipality. The major equal protection problem likely to occur with a residency requirement is whether the length of time a person has lived inside the municipal boundary is used to determine whether a person is or is not a resident. Time can be used to test for the “bonafides” of residency, but the longer the length of time, the more a residency requirement will look like a durational qualification.⁹⁴

At one time durational residency requirements triggered the “strict scrutiny” of the Alaska courts which realistically meant that any legislative classification based upon length of residency would not survive challenge.⁹⁵ When the Alaska Supreme court in *State v Erickson*⁹⁶ rejected the traditional “two-tier” equal protection test of the United

States Supreme Court in favor of a single test, the stage was set for a reconsideration of durational residency requirements. In *Williams v. Zobel* the court held durational residency requirements would no longer be automatically subject to strict scrutiny, but would be measured against the *Erickson* standard.⁹⁷ The burden is placed on the government to demonstrate that any durational classification is related to a legitimate government objective.⁹⁸

It is apparent from *Gilman* that the use of the *Erickson* standard will not materially change the result that most durational residency requirements will fail. In *Gilman* the court held the residency discount scheme based on length of residency did not rationally further any legitimate state purpose.⁹⁹ Durational residency requirements are always likely to fail because legitimate government purposes for establishing such requirements are rare, or will impinge upon the federally protected right to travel.¹⁰⁰

Although the standards used by the court to determine the validity of a residency requirement limiting access to municipal land conveyances are broad enough to allow for almost any decision, there are certain steps a municipality can take to minimize the risk of judicial rejection.

First, a residency requirement should not make reference to prior length of residency. If a time reference is desirable it should remain short. A thirty day requirement will probably not be questioned; a longer requirement should be justifiable in the context of the community. The time reference should only be used to determine

who is a resident, not to distinguish among residents. A problem in many rural communities is that populations fluctuate with the seasons. The summer may draw a transient population of seasonal workers, and the winter is ushered in by the return of teachers. A requirement of physical presence in the community for a period longer than thirty days may be justified to eliminate these persons who are not true inhabitants of the community.

A simple residency requirement in which determinations of eligibility are based upon a person's domicile, without reference to prior length of residency, is probably the best course to follow. Domicile is often described as a "bonafide" residence; it contains an objective requirement of physical presence and a subjective intent requirement.¹⁰¹ A simple residency requirement will likely increase the administrative burden of determining who is and who is not a resident, but this burden must be weighed against the possibility that a time reference will create a questionable durational requirement and increase the possibility the land conveyance will be challenged.

Second, cities should not become too preoccupied with pre-conveyance eligibility requirements because the same goal can often be achieved with post-conveyance restrictions. Contracts or deeds that require the construction of a habitable dwelling within a prescribed period or limiting sales to one lot per person reduce the likelihood of land speculation. Easier payment terms for low income persons will make it easier for most rural residents to purchase property. Options of first refusal allow the City to limit the amount of property owned in the community by non-residents. These

post-conveyance restrictions are not clouded with the legal uncertainty of pre-conveyance eligibility requirements because they are elements of the bargain that do not preclude a person's option to participate.¹⁰²

Third, each conveyance authorization should have a clear legislative history. The Alaska Supreme Court has made it clear under the Erickson equal protection standard that articulated reasons supporting a classification will provide the focus for judicial inquiry. The courts will no longer hypothesize conceivable legislative purposes or imaginable facts to sustain classifications.¹⁰³ If the legislative record does not reveal a legitimate purpose, or in the case of residency, does not reveal a legitimate purpose other than benefiting residents, the court may reject the conveyance. A governing body can create a legislative history by incorporating detailed findings into its resolutions or ordinances. The findings should set forth the local problems which the eligibility requirement addresses and the reasons the governing body believes the requirements selected will be effective. A record in the form of minutes or recorded testimony from public hearings can also help demonstrate that the findings are based upon reasonable perceptions of community needs.

Fourth, the relationship between the classification and the legislative purpose should be clear. If the primary purpose of a land sale is to raise money for the city or increase the local property tax base, residency becomes an irrelevant classification. If, as is the case in many rural communities, the city desires to make land available to relieve overcrowding in existing homes, residency has a clear relationship to purpose.





B. Other Eligibility Requirements

The analysis of any eligibility requirement for a government benefit will suffer the same equal protection analysis as residence. Restricting government benefits to low income people has always been recognized as a legitimate government purpose¹⁰⁴ and restricting a land conveyance or granting price relief to low income persons would probably be sustained. Conveying land to a local housing authority for the development of low income housing should also survive judicial scrutiny.¹⁰⁵ To the extent overcrowding is a legitimate community problem, a strong argument can be made that relieving overcrowding is an objective important enough to justify depriving persons who already have property from obtaining additional acreage.

C. Restricting Conveyances to Alaska Natives

Most rural communities are predominately populated by Alaska Natives and in recent years many of these communities have become concerned about the future of Native control and influence in their own communities.¹⁰⁶ A critical focus of this concern is land. If non-Natives are permitted to own land in the community the Native character of the village will diminish and Natives may potentially lose political control of the community.¹⁰⁷ This phenomenon is already apparent in many of the state's larger regional centers. The village is central to most of the Native cultures in the state and its loss may be tantamount to loss of the culture. To combat this trend

some Native villages have been examining alternatives for preserving Native control, including restricting municipal land conveyances to Natives.¹⁰⁸

Federal programs benefiting Natives generally survive equal protection scrutiny because the federal constitution endorses a "special relationship" between Natives and the Federal government.¹⁰⁹ This special relationship is political and not based on racial distinctions.¹¹⁰ The Alaska constitution, however, does not recognize a similar relationship and the state attorney general has taken the position that a state classification favoring Alaska Natives cannot be sustained under the equal protection analysis of Alaska law.¹¹¹

Following the attorney general's opinion, the Alaska Supreme Court issued a decision, *McDowell v. State*,¹¹² which cast further doubt on the ability of the state or its political subdivisions to make preferential land disposals to Alaska Natives. In *McDowell*, the court struck down a rural preference (which operated in practice as a Native preference) to take fish and game resources for subsistence purposes under Article VIII, Sections 2, 15 and 17 of the Alaska Constitution. Article VIII, Sections 17, the uniform application clause (discussed separately below), is directly relevant to land disposals by the state and municipalities. The court in *McDowell* noted that this section of the constitution may require even "more stringent review" of a [statute or ordinance] than does the equal protection clause in cases involving natural resources.¹¹³ Thus, the bar against restricting municipal conveyances only to Alaska Natives is likely

set higher than originally contemplated by the attorney general.

D. Conveyance to a Tribal Organization

Most rural municipalities also have federally recognized tribal governments within their jurisdiction that serve the same Native population. Many of these tribal governments are organized under the Indian Reorganization Act¹¹² and are capable of receiving title to real property. An alternative to conveying property to Native individuals is a conveyance to the tribal government for reconveyance to tribal members. Again, the state attorney general has taken the position that such conveyances are prohibited by the Alaska constitution unless the conveyances contain restrictions to assure the property conveyed will be used for public purposes on a nondiscriminatory basis.¹¹³ And again, the McDowell decision suggests that restricting municipal conveyances to grantees based upon their tribal status would likely run afoul of both the equal protection and uniform application clauses of the Alaska Constitution.

VIII. ALASKA CONSTITUTION, ARTICLE VIII, SECTION 17

Article VIII, Section 17 of the Alaska constitution may be the sleeper in the entire debate surrounding the Alaska equal protection standard and municipal land conveyances. The provision states: "Laws and regulations governing the use and disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation." The records of the Alaska Constitutional Convention provide no clue as to the precise meaning of the provision but the Alaska Supreme Court in *Gilman* intimated the provision may require that any restrictive classification attached to a municipal land conveyance may have to withstand "stringent review" under the equal protection clause of the Alaska Constitution.¹¹⁴ Accordingly, any municipal land conveyance that is not made available equally to all residents of the state, certainly to all residents of the municipality, may have to be justified by a compelling interest, and the fit between the means and the interest served will have to be very close. As discussed above, the decision in *McDowell* strongly reinforces the foregoing analysis. Because disposals of municipal land necessarily implicate the uniform application clause, they face even more stringent review than ordinances that implicate the equal protection clause alone.



"A governing body can create a legislative history by incorporating detailed findings into its resolutions or ordinances. The findings should set forth the local problems which the eligibility requirement addresses and the reasons the governing body believes the requirements selected will be effective."

IX. OTHER RESTRICTIONS GOVERNING MUNICIPAL LAND DISPOSALS



A. Conveyance Required by Ordinance

The current statutes require only that a formal procedure governing municipal land acquisition and disposal be adopted by ordinance.¹¹⁵ At common law when general legislation is enacted by ordinance specific acts may be taken by resolution.¹¹⁶ If a state requires land be sold pursuant to procedure established by ordinance, then a municipality can authorize individual sales by resolution.¹¹⁷ However, this rule may not apply in Alaska. In *Thomas v. Bailey*¹¹⁸ the Alaska Supreme Court held that a conveyance of land was an "appropriation" for the purpose of determining whether the state could be forced by initiative to make land available to the public.¹¹⁹ The court, relying on the constitutional prohibition against using initiatives to force appropriations, held that the term "appropriations" did not refer exclusively to expenditures of money, but could include land particularly when, as in Alaska, land is a primary asset of the state treasury.¹²⁰

Alaska statutes require municipal appropriations to be authorized by ordinance.¹²¹ As such the *Daily* case is strong support for the proposition that each sale of land by a municipality must be authorized by ordinance. Sales approved by resolution or mere vote of the governing body may be voidable.

B. Conveyance for Fair Market Value

The general rule at common law is that a municipality has no power, unless conferred by constitution, statute, or charter to donate municipal money for private use to any individual or corporation having no connection with the municipality.¹²² The rule

also applies to conveyances of municipal property, except that donations of municipal property are generally allowed when the conveyance will further a public purpose and will promote the general public welfare.¹²³

Also, donations of property held in a governmental capacity have been upheld when the donation was made to another government or to a charitable institution and the property would continue to be used in a manner consistent with the public welfare.¹²⁴ Otherwise, it has been held that a municipality may not dispose of property without consideration.¹²⁵ However, donations have been upheld when made to satisfy an equitable claim, or claims founded in justice and supported by a moral obligation.¹²⁶

The rule in Alaska is uncertain. Although the Court in *Gilman* could have addressed the issue whether the residency reduction offered by the Kenai Peninsular Borough constituted an unauthorized donation of the difference between the reduced price and fair market value, the issue was not presented.¹²⁷ The attorney general has taken the position that conveyances for less than fair market value are legal as long as there is some consideration, and the consideration is not so insignificant that the conveyance amounts to a gift.¹²⁸ The Alaska Supreme Court in *Wright v. City of Palmer* stated that it will generally defer to a legislative determination that a public purpose is served unless the particular act "amounted to the pledging of credit or the giving away of assets without any discernible benefit".¹²⁹

Whether property conveyances can be made for less than fair market value is a concern to many rural municipalities. Such conveyances may often be necessary to clear title or to restore order to the community. The passage of ANCSA and the

lawsuits holding up transfers under ANTA may have stopped land conveyances, but they did not stop community growth and expansion. The result is that many people moved onto and built on land whose eventual ownership was uncertain.¹⁵⁰ Now that municipalities may acquire much of this property there is pressure to convey such property to the occupants at no cost. Also, as discussed above, municipal councils are also concerned that conveyances for fair market value will make property in the community too expensive for many people in the community to purchase. The result is that younger people who have grown up in and have strong family ties to the community may not be able to acquire land in the community upon which to build homes and raise families.

Although the Alaska courts have not spoken on the issue, a case can be made that conveyances for less than fair market value are legal. The Alaska constitution provides that municipal powers are to be construed

liberally.¹⁵¹ This provision was included to contravene the operation of the common law principle known as Dillon's rule, which essentially provides that a municipality has only those powers expressly granted by the legislature.¹⁵² The proceedings of the Constitutional Convention indicate the delegates intended municipalities to have any power not expressly prohibited by the constitution or the legislature.¹⁵³ As such, the power to dispose property should include the power to convey it for less than fair market value for any purpose so long as all persons similarly situated are treated equally. Such a power would also be consistent with other statements of policy in the constitution favoring settlement of the land.¹⁵⁴ To the extent a conveyance for less than fair market value can only be made to further a public purpose, the court's liberal view of "public purpose" may be large enough to encompass the concern of municipalities to make land available to local residents at an affordable price.¹⁵⁵



Whether property conveyances can be made for less than fair market value is a concern to many rural municipalities. Such conveyances may often be necessary to clear title or to restore order to the community. The passage of ANCSA and the lawsuits holding up transfers under ANTA may have stopped land conveyances, but they did not stop community growth and expansion. The result is that many people moved onto and built on land whose eventual ownership was uncertain.



FOOTNOTES

¹ Alaska Stat. §§ 29.65.010 - 29.65.140 (1985) .

² Alaska Native Townsite Act, Act of May 25, 1926, 44 Stat. 629 [formerly codified at 43 U.S.G. S 733], repealed by the Federal Land Management Policy Act, Act of Oct. 21, 1976, 90 Stat. 2744, 43 U.S.C. 6 1701; Alaska Native Claims Settlement Act, 43 U.S.C. 6 1613(c) (3) (1971).

³ E. McQuillin, *Municipal Corporations* S 28.37 (rev. 3rd ed. 1981).

⁴ 1985 Alaska Sess. Laws 6 10 ch. 74.

⁵ Alaska Stat. § 29.4860 (1972) *repealed by* 1985 Alaska Sess. Laws § 88 ch. 74.

⁶ Alaska Stat. § 29.48.260 (a) (1972) *repealed by* 1985 Alaska Sess. Laws § 88 ch. 74.

⁷ Alaska Stat. § 29.48.260 (b) (1972) *repealed by* 1985 Alaska Sess. Laws § 88 ch. 74.

⁸ Alaska Stat. § 29.48.260 (c) (1972) *repealed by* 1985 Alaska Sess. Laws § 88 ch. 74.

⁹ Alaska Stat. § 29.48.260 (d) (1972) *repealed by* 1985 Alaska Sess. Laws § 88 ch. 74.

¹⁰ Alaska Stat. § 29.48.260 (e) (1972) *repealed by* 1985 Alaska Sess. Laws § 88 ch. 74.

For a general discussion of Alaska Stat. § 29.48.260 and its predecessors see Op. Atty. Gen. (Nov. 21, 1983).

¹¹ The committee was chaired by Senator Arliss Sturgelewski and was composed of various legislators and municipal officials.

¹² Letter from Gerald L. Sharp to Timothy E. Troll (December 8, 1986) (discussing goals of Title 29 Technical Revision Committee). Gerald L. Sharp served on the Title 29 Technical Revision Committee.

¹³ The report of the Title 29 Technical Revision Committee to the general committee regarding the proposed change to the prior law that later became codified at Alaska Stat. § 29.35.090 (1985) states: "Since other laws, both federal and state, which provide land to municipalities contain conflicting requirements for use and disposal it is felt that this created undue complexities as it now reads. It is eliminated in favor of a simple requirement that a procedure be established by ordinance." Taken from *Drafted Changes Recommended by the Technical Committee, Dec. 6, 1980*. The only other legislative history found discussing Alaska Stat. § 29.35.090 (1985) states: "The governing body is required by ordinance to establish a formal procedure for acquisition and disposal of land. The provisions authorizing a municipality to acquire, hold and dispose of real property are deleted as unnecessary. The provisions dealing with the requirements which must be met in the formal procedure established for disposal of land have been eliminated to provide more flexibility. The provisions dealing with restricting land to agricultural use have been deleted." *Memorandum to Representative Goll, Chairman, Community and Regional Affairs Committee, from Tamara Brandt Cook, Deputy Director, Div. of Legal Services*, 15, 1985 at 29.

¹⁴ Sharp, *supra* note 12.

¹⁵ The original revision was introduced in the legislature in 1981 and finally became law in 1985.

¹⁶ *See eg. Woods v. Woods*, 133 Cal. App. 3d 966, 184 Cal. Rptr. 471 (1982); *Hennigh v. Hennigh*, 309 P.2d 1022 (Mont. 1957); 2A Sands, *Sutherland Statutory Construction*, § 50.01 (19).

¹⁷ *See generally* 10 E. McQuillin, *Municipal Corporations* §§ 28.01-28.49 (rev. 3rd ed. 1981); 2A C. Antieau, *Municipal Corporation Law*, §§ 20.00-20.44 (1984); 0. Reynolds, *Handbook of Local Government Law* 434-443 (1982); Annot., 47 A.L.R. 3d 19 (19); Annot., 141 A.L.R. 1447 (1973).

¹⁸ *Seltenreich v. Town of Fairbanks*, 103 F. Supp. 319, 13 Alaska 582, 593 (1952) *aff'd* 211 F.2d 83, 14 Alaska 568 (9th. Cir. 1954).

¹⁹ *See Seltenreich v. Town of Fairbanks*, *supra* at 13 Alaska 593-595.

²⁰ 10 E. McQuillin, *Municipal Corporations* §§ 28.37 (rev. 3rd ed. 1981).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Pullen v. Oregon Industrial Dev. Corp.*, 240 Or. 583, 402 P.2d 240; 2A C. Antieau, *Municipal Corporation Law*, § 30.34 (1984). For some purposes it could be argued that drawing a distinction between governmental and proprietary property is irrelevant. All the power, property and offices of a municipality constitute a public trust to be administered by its governing body. 2 E. McQuillin, *Municipal Corporations* § 10.31 (rev. 3rd ed. 1981). A governing body exercises its powers only in the public interest. The power to convey property carries the same duty regardless of the classification of the particular parcel of property. Even



if the property to be conveyed can be characterized as proprietary, a governing body should not convey it without a determination that the property will not be needed for some public or governmental use. A similar examination must occur before governmental property can be considered abandoned and available for conveyance. See eg. *Seltenreich v. Town of Fairbanks*, 211 F.2d 83, 14 Alaska 568, 571 (9th Cir. 1954).

²⁵ 103 F. Supp. 319, 13 Alaska 582, 593 (1952) *aff'd* 211 F.2d 83, 14 Alaska 568 (9th Cir. 1954).

²⁶ *Id.* at 595

²⁷ *Id.* at 596

²⁸ 14 Alaska 568, 571

²⁹ *Id.*

³⁰ 612 P.2d 33 (Alaska 1980)

³¹ *Id.* at 40.

³² Alaska Stat. 29.65.010-29.65.140 (1985). For a general survey of municipal land acquisition see Institute of Social and Economic Research, *Changing Ownership and Management of Alaska Lands* (October 1985).

³³ Alaska Stat. §§ 29.65.100 (1985) .

³⁴ Federal Land Management Policy Act, Act of Oct. 21, 1976, 90 Stat. 2744, 43 U.S.C. § 1701.

³⁵ See D. Case, *Alaska Natives and American Laws* 157 -168 (1984); Alaska Native Foundation, *Village Land*

Reconveyance Planning 195-200 (1986).

³⁶ Alaska Native Foundation, *Village Land Reconveyance Planning* at 199 (1986) .

³⁷ *Id.*

³⁸ *Aleknagik Natives, Ltd. v. United States*, No. A77-200 (D. Alaska March 19, 1985). The District Court held that vacant unsubdivided townsite lots were not available for village corporation selection under ANCSA. The result is that much of this vacant unsubdivided property will be deeded to municipalities. On appeal the Ninth Circuit affirmed the decision of the District Court. *Aleknagik Natives, Ltd. v. United States*, No. 85- 4116 (9th Cir. Jan. 12, 1987).

³⁹ 43 U.S.C. § 1613(c)(3) (1971).

⁴⁰ *Id.*

⁴¹ Act of Dec. 2, 1980, P.L. 96-487 § 1405.

⁴² See Alaska Native Foundation, *Village Land Reconveyance Planning* 69-71 (1986) .

⁴³ *Id.* at 81.

⁴⁴ *Id.* at 196.

⁴⁵ A specific example would be St. Mary's, Alaska. The United States deeded property to the Catholic Bishop to operate a school in St. Mary's. Upon incorporation of the City of St. Mary's in 1967 the Bishop reconveyed over one hundred acres to the new city.

⁴⁶ 612 P.2d at 40.

⁴⁷ 2A C. Antieau, *Municipal Corporation Law*, §§ 20.32 (1984).

⁴⁸ 10 E. McQuillin, *Municipal Corporations* §§ 28.40 (rev. 3d ed. 1981).

⁴⁹ *Id.*

⁵⁰ Alaska Const. Art. X, Sec. I provides: " A liberal construction shall be given to the powers of local government units." See also Alaska Stat. § 29.25.400.

⁵¹ See eg. *Suber v. Alaska State Bond Comm.*, 414 P.2d 546 (Alaska 1966); *Lien v. City of Ketchikan*, 383 P.2d 546 (Alaska 1966). Alaska Const. Art. IX, Sec. 6 provides: "No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose."

⁵² *Walker v. State Mtg. Ass'n.*, 414 P.2d 245 (Alaska 1966); *Suber v. Alaska State Bond Comm.*, *supra* note ⁵¹;

DeArmond v. Alaska State Dev. Corp., 376 P.2d 717 (Alaska 1962).

⁵³ See cases cited at note 52.

⁵⁴ *Wright v. City of Palmer*, 468 P.2d 326 (1970).

⁵⁵ *Suber v. Alaska State Bond Comm.*, *supra* note 51.

⁵⁶ See *Wright v. City of Palmer*, *supra* 468 P.2d at 330; *accord* *Allydon Realty Corp. v. Holyoke Housing Auth.*, 23 NE 2d. 665, 667 (Mass. 1939). Care should be taken to distinguish between the terms "public purpose" and "public use." The two terms are often used interchangeably, but "public use " is a more restrictive term. The discussion often arises in the context of eminent domain cases. A "public purpose" is often broad and can be satisfied if the



public will generally be served; a "public use" contemplates a continuing measure of local government control and possessory use. *See generally*, 2A C. Antieau, *Municipal Corporation Law*, §§ 20.02 (1984).

⁵⁷ Alaska Stat. § 29.48.260 (d), (e) (1972) *repealed by* 1985 Alaska Sess. Laws § 88 ch. 74.

⁵⁸ *See e.g. Ceñaliulrit Coastal Management Program, Conceptually Approved Draft* (Jan. 1984) ch. 3-1; Frank Orth & Associates, Inc. and Stephen R. Braund & Associates, *Village Economies of the Lower Yukon* (Dec. 15, 1983); Alaska Department of Community and Regional Affairs, Division of Community Planning, *Problems and Possibilities for Service, Government in the Alaska Unorganized Borough* (Sept. 1981) p. 16.

⁵⁹ *Seltenreich v. Town of Fairbanks*, 103 F. Supp. 319, 13 Alaska 582, 593 (1952) *aff'd* 211 F.2d 83, 14 Alaska 568 (9th. Cir. 1954). The legislative history surrounding Article IX, § 6 is scarce, but the minutes of the Alaska Constitutional Convention record the following conversation:

SMITH: Mr. President, once again I don't have an amendment and I ask the question merely to get the Committee thinking into the record. Was it the intent of the Committee here to prohibit the sale of public property for other than public purposes? I see that you have here: "No tax shall be levied or appropriation of public money made or public property transferred, except for a public purpose." And, of course, in the resources article we make it possible to transfer property from the state public domain to private individuals. I simply wanted to either get this before Style and Drafting or get the Committee thinking on record. NERLAND: Mr. Smith, the committee took into consideration Section 9 of resources, and it was the feeling of the committee that the transfer of public property, when money was being received for it, would constitute a public purpose. It was not the intent of this Committee to interfere with the operation of your Section 9 in resources. 3 Proceeding of the Alaska Constitutional Convention at 2334.

⁶⁰ U.S. Const. amend. XIV, § 1; Alaska Const. art. 1, § 1.

⁶¹ *See* Alaska Stat. § 29.48.260 (d), (e) (1972) *repealed by* 1985 Alaska Sen. Laws § 88 ch. 74. ⁶² *See* T. Morehouse, G. McBeath and L. Leask, *Alaska's Urban and Rural Governments* 117-137(1984).

⁶³ *Id.*

⁶⁴ *See* authority cited *supra* note 58.

⁶⁵ *See* authority cited *supra* note 58.

⁶⁶ *See* authority cited *supra* note 58.

⁶⁷ *See* authority cited *supra* note 58; for discussion of political control in predominately Native communities *see* T. Berger, *Village Journey* 137-154 (1985) and T. Troll, *Local Government in Rural Alaska: Self Determination, Sovereignty and Second Class Cities*, Alaska Native News (Sept. 1985).

⁶⁸ *Bakke v. Regents of California*, 438 U.S. 265 (1978)(quota system for minority students held unconstitutional).

⁶⁹ *Dunn v. Blumstein*, 405 U.S. 330 (1972) (one year residency requirement to vote unconstitutional).

⁷⁰ *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974); *Shapiro v. Thompson*, 394 U.S. 618 (1969).

⁷¹ *See Williams v. Zobel*, 619 P.2d 422, 440 (Alaska 1980) *reversed* *Zobel v. Williams* 457 U.S. 55 (1982) (Connor J. dissenting) (discussing the, Federal equal protection standard).

⁷² *See e.g. Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307 (1976) (upholding law requiring retirement of uniformed police officers at age fifty).

⁷³ *See Williams v. Zobel*, 619 P.2d at 441.

⁷⁴ *Id.* at 440.

⁷⁵ *Irby-Northface v. Commonwealth Elec. Co.*, 557 P.2d. 557, 562 n. 3 (Alaska 1983) (Rabinowitz J. dissenting) (lowest level of scrutiny to be employed under Alaska's equal protection clause is more stringent than the minimum federal standard). For a thorough analysis of the Alaska equal protection standard and a comparison with the federal standard *see* M. Wise, *Equal Protection Analysis in Alaska*, 3 Alaska L. R. 1(1986).

⁷⁶ 574 P.2d. 1 (Alaska 1978). The new Alaska equal protection analysis was first announced and applied in *Isakson v. Rickey*, 550 P.2d 379 (Alaska 1976).

⁷⁷ *Id.* at 12.

⁷⁸ *Id.*



⁷⁹ See *Williams v. Zobel* 619 P.2d at 439 (Connor J. dissenting)

⁸⁰ *Id.* at 441.

⁸¹ See e.g. *Williams v. Zobel*, 619 P.2d 422 (Alaska 1980) (durational residency requirement for tax exemptions held unconstitutional) but see *Irby-Worthface v. Commonwealth Elec. Co.*, 557 P.2d. 557, 562 n. 3 (Alaska 1983) (Alaska resident bidder preference statute upheld)

⁸² 662 P.2d 120 (Alaska 1983).

⁸³ *Id.* at 122.

⁸⁴ *Id.*

⁸⁵ *Id.* at 127.

⁸⁶ *Id.* at 126.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 126 n. 6.

⁹³ *Id.*

⁹⁴ *Zobel v. Williams* 457 U.S. 55, 70 (1982) (Brennan J. concurring) ("length of residence may, for example, be used to test the bona fides of citizenship-end allegiance and attachment may bear some rational relationship to a very limited number of legitimate state purposes.")

⁹⁵ *Williams v. Zobel*, 619 P.2d at 426.

⁹⁶ 574 P.2d at 10, see also *Isakson v. Rickey* 550 P.2d 359, 362-63 (Alaska 1976).

⁹⁷ 619 P.2d at 427.

⁹⁸ *Id.*

⁹⁹ 662 P.2d at 129. Shortly after the decision in *Gilman* the Attorney General concluded the state's land disposal program was unconstitutional. Op. Atty. Gen. (Jan. 1, 1984) (effect of *Gilman* on state land disposal program.), see also Op. Atty. Gen. (July 15, 1985) (can the state give preferences to local residents in land disposals?).

¹⁰⁰ *Zobel v. Williams* 457 U.S. 55, 70 (Brennan J. concurring) ("But those instances in which length of residence could provide a legitimate basis for distinguishing one citizen from another are rare") The right to travel is primarily the federal interest in free interstate migration. The Alaska Supreme Court has demonstrated some reluctance to recognize the existence of such a constitutionally protected right to travel preferring to construe some of the U.S. Supreme Court decisions on durational residency requirements as applying to other constitutionally protected rights. See *Williams v. Zobel*, 619 P.2d at 425. Although the U.S. Supreme Court did not specifically reverse the Alaska Supreme Court's decision in *Williams v. Zobel* on a right to travel basis, the underlying implication was that a violation of a right to travel occurred. See 457 U.S. 55 (separate opinions of Brennan J. and O'Connor J.).

¹⁰¹ *Hicklin v. Orebeck*, 565 P.2d 159, 171 (Alaska 1977). A good discussion of the domicile test can be found in Op. Atty. Gen., (August 28, 1979).

¹⁰² A post conveyance restriction should, however, be supported by a legitimate government objective and should not amount to an unreasonable restraint upon alienation. Post conveyance restrictions are incorporated into some conveyances made to individuals by the Municipal Lands Trustee. Alaska Admin. Code tit. 19 S90.460 (4) (Sept. 1979).

¹⁰³ *Williams v. Zobel* 619 P.2d at 441 (Connor J. concurring).

¹⁰⁴ See *Suber v. Alaska State Bond Committee*, 414 P.2d at 552 citing *Carmichael v. Southern Coal & Coke Co.*, 301 US. 495, 515 (1937); *Roe v. Kervick*, 42 N.J. 191, 199 A.2d 834, 846 (1964).

¹⁰⁵ See Op. Atty. Gen., (May 28, 1981) and Op. Atty. Gen. (May 6, 1981) (Municipal conveyances to regional housing authorities).

¹⁰⁶ See T. Berger, *Village Journey* 137-154 (1985) and T. Troll, *Local Government in Rural Alaska: Self Determination, Sovereignty and Second Class Cities*, Alaska Native News (Sept. 1985).

¹⁰⁷ See T. Morehouse, G. McBeath and L. Leask, *Alaska's Urban and Rural Governments* at 162 (1984) and T. Troll, *Local Government in Rural Alaska: Self Determination, Sovereignty and Second Class Cities*, Alaska Native News (Sept. 1985), Alaska Native News (Sept. 1985).

¹⁰⁸ See Op. Atty. Gen., (May 1, 1984) (legality of conveyance of municipal property to a tribal organization); Op. Atty. Gen., (May 6, 1981) (legality of conveyance of municipality to



Federal government for reconveyance to individual natives).

¹⁰⁹ U.S. Const. art. I, § 8, cl. 3; art. II, § 2, cl. 2.

¹¹⁰ See D. Case, *supra* note 35 at 3.

¹¹¹ See opinions cited at note 108 *supra*.

¹¹² 25 U.S.C. S 476 (1934). The Indian Reorganization Act was made fully applicable to Alaska in 1938. D. Case, *supra* note 35 at 373.

¹¹³ Op. Atty. Gen., (May 1, 1984).

¹¹⁴ 662 P.2d at 125.

¹¹⁵ Alaska Stat. § 29.35.090 (1985)

¹¹⁶ *Jewett v. Luau-Nyack Corp.*, 338 N.Y.S.2d 874 (Ct. App. 1972) cited in note 13, Municipality of Anchorage v. Frohne, 568 P. 2d 3, 6 (Alaska 1977).

¹¹⁷ *Jewett v. Luau-Nyack Corp.*, 338 N.Y.S.2d 874 (Ct. App. 1972).

¹¹⁸ 595 P.2d 1 (Alaska 1979).

¹¹⁹ *Id.* at 9.

¹²⁰ *Id.* at 8.

¹²¹ Alaska Stat. 6 29.25.010(4).

¹²² See generally 10 E. McQuillin, Municipal Corporations § 28.43 (rev. 3d ed. 1981); 2A C. Antieau, Municipal Corporation Law, § 20.30 (1984).

¹²³ 10 E. McQuillin, Municipal Corporations 6 28.43.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ See 2 E. McQuillin, Municipal Corporations § 39.24.

¹²⁷ Phone conversation with Adrienne P. Fedor March 2, 1987 attorney representing appellants.

¹²⁸ Op. Atty. Gen (Nov. 21, 1983) (Municipal land disposal questions).

¹²⁹ 468 P.2d 331.

¹³⁰ The migration onto land whose ownership was unresolved particularly affected unsubdivided portions of Native townsites, see D. Case, *supra* note 35 at 159.

¹³¹ Alaska Const. art X, § 1.

¹³² V. Fischer, *Alaska's Constitutional Convention* 126-127 (1975).

¹³³ *Id.*

¹³⁴ Alaska Const. art VIII, § 1 provides: "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

¹³⁵ See cases cited at note 51 *supra*. The conversation from the proceedings of the Alaska Constitutional convention cited *supra* note 59 would support the proposition that municipal property could be conveyed to private individuals for less than fair market value as long as "money was being received for it."

Appendix Two C

SAMPLE LAND DISPOSAL ORDINANCE

2c



BE IT ENACTED BY THE CITY COUNCIL FOR THE CITY OF ALEKNAGIK THAT CHAPTER 4.3 and 4.4 OF TITLE IV OF THE CODE OF ORDINANCES OF THE CITY OF ALEKNAGIK ARE HEREBY REPEALED AND REPLACED WITH THE FOLLOWING NEW SECTION 4.3:

Sections:

1. Authority to Dispose
2. Disposal by Ordinance
3. Form of Document of Conveyance
4. Disposal for Fair Market Value
5. Disposal Methods
6. Exchange of Properties

Section 1. Authority to Dispose.

The City may dispose of real property in any manner not prohibited by law.

Section 2. Disposal by Ordinance.



A. The City may dispose of real property or any interest in real property only by ordinance. An ordinance disposing property used or formally dedicated to public use may be approved only upon a finding by the City Council that the property is no longer used or useful for a public use. The City Council shall conduct a public hearing on the question whether the property is no longer used or useful for a public use. The ordinance approving the disposition may not be considered for passage at the same meeting at which the public hearing is held.

B. A lease of space within a municipal building or a short term ground lease of one year or less may be treated as a disposal of personal property subject to the provisions of Chapter 4.5 of this title.

Section 3. Form of Document of Conveyance.

A. The document of conveyance must be in a recordable form permitted by State Statute, and approved as to form by the City Attorney;

B. The document of conveyance must be signed by the Mayor or, in the Mayor's absence, the Vice Mayor, attested by the City

Clerk, and contain a specific reference to the Ordinance authorizing the conveyance.

C. All sales of real property shall be by quit claim deed.

Section 4. Disposal for Fair Market Value.

A. Except as provided in subsection B of this section, all disposals of City real property shall be for no less than the fair market value of the interest disposed. The City may accept in exchange for real property any consideration of sufficient value not prohibited by law. For the purposes of this title, "fair market value" means the price attributable to a parcel of property, including the value of any survey which identifies and describes the property, which a willing and knowledgeable buyer would pay and which a willing and knowledgeable seller would accept, with respect to that parcel.

B. Fair market value may be determined from an appraisal prepared by a qualified appraiser or the city assessor, or the City Council may determine the fair market value by any other means it deems appropriate.





C. The City may dispose of real property for less than fair market value to the United States, the State of Alaska or any political subdivision thereof, a non-profit corporation or association, or a recognized tribal authority, upon a finding by the City Council that the disposal will allow the use of the real property for a public purpose beneficial to the City.

D. The City may convey real property for less than fair market value to a person who has a valid claim of equitable interest in the property or in an improvement located upon the property, provided the claim existed prior to the date of passage of this ordinance.

Section 5. Disposal Methods

For disposals of real property under this chapter, the City Council may select any of the following disposal methods:

A. Direct negotiations with interested parties who seek to acquire real property owned by the City.

B. The City Council may invite sealed bids, specifying the time and place for receiving bids and the minimum acceptable bid. The City Council may offer real property for sale or lease

specifying that if no higher price is offered the land shall be conveyed pursuant to a pre-existing contract or lease at sale or lease at the minimum bid amount.

C. The City Council may invite proposals to purchase or lease real property for a fixed price. The invitation may specify the basis upon which proposals shall be evaluated, which may include but not be limited to the quality of the proposed development of the land and its benefit to the community, the qualifications and organization of the proposers, the value of the proposed improvement to the land and the rents or resale prices to be charged by the proposer.

D. City Council may dispose of real property by any other method not specifically prohibited by law.

Section 6. Exchange of Property

The City may exchange real property with any person for other property of equivalent fair market value. A determination of fair market value shall not be necessary if the exchange is with the United States, the State of Alaska or any political subdivision thereof, a non-profit corporation or association, or



Appendix Two C



a recognized tribal authority and the City Council finds the exchange will allow the use of the real property for a public purpose beneficial to the City. A determination of fair market value shall not be necessary if the exchange will resolve conflicts of title or secure for the City necessary public easements and rights of way.

PASSED AND APPROVED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL FOR THE CITY OF ALEKNAGIK THIS _____ DAY OF _____, 1987.

INTRODUCTION: _____

PUBLIC HEARING: _____

CITY OF ALEKNAGIK

Mayor _____

ATTEST: _____
City Clerk

- 6 -

* The City may exchange property for less than fair market value upon a finding that other public benefits will be served by the exchange.



ORDINANCE 87- _____
AN ORDINANCE OF THE CITY OF ALEKNAGIK
AMENDING TITLE IV, CHAPTER 4.1
OF THE CODE OF ORDINANCES
FOR THE CITY OF ALEKNAGIK

BE IT ENACTED THAT TITLE IV, CHAPTER 4.1 OF THE CODE OF ORDINANCES FOR THE CITY OF ALEKNAGIK IS AMENDED AS FOLLOWS:

Section 3. Procedural Requirements

A. The City may acquire and hold real property by warranty or quit claim deed, easement, grant, permit, license, deed of trust, mortgage, contract of sale of real property, plat dedication, lease, tax deed, will, or any other lawful means of conveyance or grant. Real property shall be held in the name of "City of Aleknagik". Unless otherwise provided by law, all acquisitions of real property shall be approved by resolution of the City Council.

B. Upon authorization from a specific resolution of the City Council, the Mayor may act on [its] behalf of the City in the acquisition of real property or an interest in real property when [that] the property acquired for valuable consideration or is part of a program of grants under which the City may receive [only a limited amount of acreage] real



ORDINANCE 87- _____
AN ORDINANCE OF THE CITY OF ALEKNAGIK
AMENDING TITLE IV, CHAPTER 4.1
OF THE CODE OF ORDINANCES
FOR THE CITY OF ALEKNAGIK

BE IT ENACTED THAT TITLE IV, CHAPTER 4.1 OF THE CODE OF ORDINANCES FOR THE CITY OF ALEKNAGIK IS AMENDED AS FOLLOWS:

Section 3. Procedural Requirements

A. The City may acquire and hold real property by warranty or quit claim deed, easement, grant, permit, license, deed of trust, mortgage, contract of sale of real property, plat dedication, lease, tax deed, will, or any other lawful means of conveyance or grant. Real property shall be held in the name of "City of Aleknagik". Unless otherwise provided by law, all acquisitions of real property shall be approved by resolution of the City Council.

B. Upon authorization from a specific resolution of the City Council, the Mayor may act on [its] behalf of the City in the acquisition of real property or an interest in real property when [that] the property acquired for valuable consideration or is part of a program of grants under which the City may receive [only a limited amount of acreage] real



Section 5. Rights and Power of City. [Delete]

Section 6. Sites for Beneficial New Industries. - [Delete]

Section 7. Federal and State Aid. [Delete]

PASSED AND APPROVED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL FOR THE CITY OF ALEKNAGIK THIS _____ DAY OF _____, 1987.

INTRODUCTION: _____

PUBLIC HEARING: _____

CITY OF ALEKNAGIK

Mayor

ATTEST: _____
City Clerk

a/q01/EV



ORDINANCE 87-_____
AN ORDINANCE OF THE CITY OF ALEKNAGIK
AMENDING TITLE IV, CHAPTER 4.2
OF THE CODE OF ORDINANCES
FOR THE CITY OF ALEKNAGIK

BE IT ENACTED THAT TITLE IV, CHAPTER 4.2 OF THE CODE OF ORDINANCES FOR THE CITY OF ALEKNAGIK IS AMENDED AS FOLLOWS:

Section 1. Eminent Domain

The City may exercise the powers of eminent domain and declaration of taking in the performance of a power or function of the City in accordance with the procedures set out in A.S.09.55.250 - 09.55.460. [Prior approval from the Department of Community and Regional Affairs is required as provided in AS.29.73.020.]

Section 2. Ordinance and Vote Required

The exercise of the power of eminent domain or declaration of taking shall be by ordinance which shall be submitted to the qualified voters at the next regularly scheduled general election or a special election called for that purpose. [A majority vote is required for approval of the ordinance. A majority of the votes on the question is required for approval of the ordinance.]



PASSED AND APPROVED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL FOR THE CITY OF ALEKNAGIK THIS ____ DAY OF _____, 1987.

INTRODUCTION: _____

PUBLIC HEARING: _____

CITY OF ALEKNAGIK

Mayor

ATTEST: _____

City Clerk



ORDINANCE 87-_____
AN ORDINANCE OF THE CITY OF ALEKNAGIK
AMENDING TITLE IV, CHAPTER 4.5
OF THE CODE OF ORDINANCES
FOR THE CITY OF ALEKNAGIK

BE IT ENACTED BY THE CITY COUNCIL FOR THE CITY OF ALEKNAGIK
THAT CHAPTER 4.5 OF TITLE IV OF THE CODE OF ORDINANCES OF
THE CITY OF ALEKNAGIK SHALL BE REDESIGNATED CHAPTER 4.4 AND
AMENDED AS FOLLOWS:

Section 1. Personal Property Disposition by Value.

B. Personal property valued at more than ONE THOUSAND
DOLLARS (\$1,000.00) [but less than TWENTY-FIVE THOUSAND
DOLLARS (\$25,000.00) shall be disposed of in the manner
provided for land valued under TWENTY-FIVE THOUSAND DOLLARS
(\$25,000.00) as provided in Chapter 4.3 of this code] may be
disposed of by any method provided for in Chapter 4.3,
Section 5 of this code after approval by resolution of the
City Council.

C. [Delete]

PASSED AND APPROVED BY A DULY CONSTITUTED QUORUM OF THE
CITY COUNCIL FOR THE CITY OF ALEKNAGIK THIS _____ DAY OF
_____, 1987.

INTRODUCTION: _____

PUBLIC HEARING: _____

CITY OF ALEKNAGIK

Mayor

ATTEST: _____
City Clerk

A/Q04/ev



CONTRACT FOR SALE OF LAND

THIS AGREEMENT is made between the CITY OF _____, a municipal corporation" hereinafter designated as City, and _____, hereinafter designated as Buyer.

WITNESS: The City agrees to sell and the Buyer agrees to purchase the following real property (land) on the terms and subject to the conditions specified in this agreement, and subject to any reservation restrictions and rights-of-way of record: [*insert property description*]

1. PURCHASE PRICE: Buyer agrees to pay a total purchase price of _____ Dollars (\$ _____), the money to be paid as follows: [*insert terms of payment*]

2. SPECIAL CONDITIONS: (a) Buyer agrees to construct and occupy a house on the land described above before the ___ day of _____, 20___. If the Buyer does not construct and occupy a house on the land by the date specified, the agreement will be in default. Upon default of this provision, the City may exercise a right of reverter and repossess the land and any improvements on the land.

3. RIGHT OF FIRST REFUSAL: For seven years (7) after the date title is transferred from the City to Buyer, the City reserves the option to purchase the land together with all improvements if the Buyer chooses to sell during this period. Buyer will notify the City in writing of Buyer's intent to sell. The City will have thirty days (30) from date of Buyer's notification to exercise its option to purchase the land together with all improvements on the land. The fair market value of the land and all improvements on the land will be the price established for sale

LAND SALE CONTRACT Page 2 of 7



as determined by an appraisal of a qualified appraiser or by agreement between the City and Buyer. City will also have the option to purchase the property by matching any price offered by any other person. Buyer will notify City of the price offered and City will have thirty (30) days to respond with an equivalent offer.

4. WAIVER: City may waive any condition or right in this agreement. All waivers must be in writing and approved by Resolution of the City Council. A waiver of one condition or right will not be a waiver of any other condition or right.

5. PREMATURE PAYMENTS: Buyer may at any time make payments in addition to any installment payments. However, additional payments are voluntary and will not excuse Buyer from making all payments on the date due.

6. POSSESSION: Buyer shall be entitled to occupy the land from the date of this agreement unless Buyer's interest in this agreement and the land is forfeited as provided in this agreement. City may at any time enter on the land, without entering any buildings on the land, and post Notices of Non-Responsibility as provided for in A.S. 34.35.065.

7. BUYER'S COVENANTS: Buyer agrees to pay any taxes and assessments on the property occurring after the date of this agreement; and Buyer agrees to hold the City harmless if there are any liens or other encumbrances against the property. Buyer agrees to pay any credit reporting fees, recording fees, title insurance, administrative costs or other fees incident to this agreement.

Buyer further covenants that the property will be used only by Buyer as a primary place of residence for a period of ____ years after deed is conveyed from City to Buyer. Any change of use during this period must be approved in writing by the City Council for City. Any change of use without said prior approval shall constitute a default under this agreement.

8. CITY'S COVENANTS: City makes no covenants or warranties and will convey to Buyer a statutory quitclaim deed upon final payment as detailed in this agreement.

LAND SALE CONTRACT
Page 3 of 7



9. CITY'S PRIVILEGES: If Buyer fails to pay any taxes or assessments, or other fees charged against the property, the City may pay said taxes, assessments or fees for the Buyer. Buyer agrees to repay the City on demand all sums paid by City together with interest at the rate of ___ percent per annum from the time City paid the taxes or assessments. Any sums paid by the City pursuant to this provision shall be secured by this agreement.

10. BUYER'S PRIVILEGES: In the event the City has failed to pay an obligation pertaining to the property, the Buyer may pay the obligation and upon satisfactory proof of said payment will be credited a like dollar amount on the purchase price agreed to in paragraph one.

11. DEFAULT: Time is of the essence to this agreement. Default will occur if Buyer fails to pay any sum when it becomes due under this agreement or fails to perform any other obligation required to be performed by Buyer.

12. LATE PAYMENTS: Acceptance by the City of any payment made by Buyer after the payment was due shall not constitute a waiver by the City of its right to the full and timely payment of subsequent payments due by Buyer or City's right to accelerate under this agreement.

13. ACCELERATION: If any payment is late, City may accelerate this agreement and demand payment of the remaining balance due on the purchase price set forth above in paragraph one.

14. NOTICE OF DEFAULT & DECLARATION OF FORFEITURE: If Buyer defaults, as defined above, the City may send to the Buyer a Notice of Default by certified mail, return receipt requested, at the buyer's address listed on this agreement. The notice shall contain a detailed statement of the default complained of. If Buyer fails to cure the default within thirty (30) days after the mailing of the Notice of Default, the City may forfeit and terminate the Buyer's interest in this agreement by sending to the Buyer by certified mail, return receipt requested, a Declaration of Forfeiture describing the default complained of and reciting the date upon which the Notice of Default was mailed to Buyer and at what address.



15. SURRENDER OF POSSESSION: If Buyer's interest is forfeited and terminated by the City, Buyer agrees to immediately surrender the possession of the property, together with all structures fixed to the property, to the City by removing all persons and personal property not belonging to the City from the boundaries of the property. In the event Buyer fails to surrender possession of the property, the City may remove all personal property belonging to Buyer to a place of storage, such removal and storage to be at the risk of the Buyer.

16. RETENTION OF PAYMENTS: In the event of a Declaration of Forfeiture by the City, all monies paid by the Buyer under this agreement may be retained by the City and applied as rent for the value of the use and occupancy of the property. Upon any resale of the property, City will deliver the value received for any structures on the property constructed by Buyer, less administrative costs of the sale.

No provisions of this agreement shall be construed as an election of any remedy which the City might have for breach of this agreement.

17. BINDING ON SUCCESSORS: The parties agree that the provisions of this agreement will apply to and bind the heirs, executors, administrators, assigns or any successor in interest of the parties. If the Buyer is more than one person, all obligations, promises, conditions, covenants and warranties are joint and several. The use of the singular herein shall include the plural.

18. NOTICES: Buyer may direct all notices, correspondence and payments to City at P.O. Box ____, _____ Alaska 99 ____, attention City Clerk. All notices required by this agreement may be sent to Buyer at the address below and said address shall constitute the location for any service upon Buyer. The Buyer may at any time instruct the City to send any notices, in particular, Notices of Default and Declaration of Forfeiture to Buyer at another address, provided such instructions are mailed to the City at the address above by certified mail, return receipt requested, or delivered in person to the City Clerk.

19. INTEGRATED AGREEMENT: This agreement as signed by the parties constitutes the entire agreement between them. Any



LAND SALE CONTRACT
Page 5 of 7

modifications or amendments to this agreement must be in writing and approved by resolution of the City Council for the City of _____.

20. AUTHORIZATION: This agreement is entered into by City pursuant to authorization of Ordinance _____ passed by the City Council for the City of _____ on _____.

DATED: _____ DATED: _____

CITY OF _____ **BUYER**

Mayor
P.O. BOX 33
Aleknagik, Alaska 99555

ADDRESS:

STATE OF ALASKA)
) ss.
_____ Judicial District)

On this _____ day of _____ 20 __, before me the undersigned Notary Public, personally appeared _____ known to me to be the individual described in and who executed the foregoing instruments for the CITY OF as Mayor, and acknowledged to me that s/he understood the contents of the instrument, was duly authorized to sign the instrument and did sign the instrument as a free and voluntary act for the uses and purposes therein described.

WITNESS my hand and seal the day and year hereinabove written.

Notary Public for Alaska
My Commission expires: _____



LAND SALE CONTRACT
Page 6 of 7

STATE OF ALASKA)
) ss.
____ Judicial District)

On this day of _____ 20__, before me the undersigned Notary Public personally appeared _____ known to me to be the individual described in and who executed the foregoing instruments as BUYER, and acknowledged to me that s/he understood the contents of the instrument was duly authorized to sign the instrument and did sign the instrument as a free and voluntary act for the uses and purposes therein described.

WITNESS my hand and seal the day and year hereinabove written.

Notary Public for Alaska
My Commission expires: _____



SAMPLE INSTALLMENT LANGUAGE

1. PURCHASE PRICE: Buyer agrees to pay a total purchase price of _____ Dollars (\$ _____), the money to be paid as follows: _____ dollars (\$ _____) upon execution of this agreement the remainder to be paid over a period of _____ years at _____ percent interest per annum (_____ %), in monthly installments of _____ dollars (\$ _____) beginning _____, 20__ and due on the _____ day of each month thereafter. The monthly installments shall continue until the entire indebtedness is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable on _____.



CONTRACT FOR SALE OF LAND



THIS AGREEMENT is made between the City of Aleknagik hereinafter designated as "City" and _____ hereinafter designated as "Buyer".

WITNESS: The City agrees to sell and the Buyer agrees to purchase the following real property (land), together with all improvements, fixtures, and equipments, attached to or situated thereon, on the terms and subject to the conditions specified in this agreement and subject to any reservation, restrictions and rights of way of record:

1. Purchase Price: Buyer agrees to pay a total purchase price of _____ dollars (\$_____), the money to be paid as follows:

2. Possession: Possession shall be given to buyers upon execution of this agreement.



3. Buyer's Cost: Buyer agrees to pay any of the following costs:

- a. Any taxes and assessments on the property occurring after the date of this agreement;
- b. Any credit reporting fees;
- c. Any recording fees associated with the recording of this contract or the deed from City to Buyer;
- d. Title Insurance.

4. City's Costs: City agrees to pay the following costs;

- a. Any legal fees associated with the preparation of the deed from City to Buyer.

5. Binding On Successor: The parties agree that the terms of this contract will apply to and bind their heirs, executors, administrators, assigns, or any successor in interest of the parties. If the buyer is more than one person, all obligations, promises, conditions, covenants and warranties are joint and several.

6. Deed: City shall convey to Buyer a Quit Claim Deed to the property described above upon final payment of the purchase described in paragraph one.

7. Right of First Refusal: Buyer grants to City the first option to purchase the property back from Buyer, together with all improvements thereon, should Buyer decide at a later date to sell the property.



Buyer shall submit to City any offer to sell the above described property and City shall have thirty (30) days from receipt of the offer to accept or reject the offer. Buyer shall also submit to City any offers to purchase the above described property and City shall have thirty (30) days from the receipt of said offer to respond with an equivalent offer acceptable to buyer. All acceptances or responses from City will expire thirty (30) days from the date of receipt of the offer unless the Buyer in writing extends the period. City may waive the right of first refusal, provided such waiver is in writing. Buyer shall mail all offers to City, pursuant to Section 9 regarding Notices.

The right of first refusal granted to City shall expire years from the date of this agreement or upon the sale of the above described property by Buyer.

8. Waiver: Waiver by City of any default in the performance by Buyer of any of the terms, covenants, or conditions contained in this agreement, shall not be deemed a continuing waiver of the same or any subsequent default. Any waiver of rights accruing under this agreement to the City or Buyer shall be in writing.

9. Notices: Any notices which are required of this agreement, or which either City or Buyer may serve upon the other, shall be in writing and shall be deemed served when



delivered personally or when deposited in the United States mail, postage prepaid, return receipt requested addressed to Buyer at _____ or addressed to City at P.O. Box 33, Aleknagik, AK 99555, attention City Clerk.

10. Default: Time is of the essence to this agreement. Default will occur if Buyer fails to pay any sum when it becomes due under this agreement or fails to perform any other covenant required to be performed by Buyer. Neither the extension of time of payment of any sum to be paid hereunder nor any waiver by City of rights to declare this contract forfeited for any breach thereof shall in any manner affect the right of City to cancel this contract and retain all sums paid thereunder as liquidated damages for default by Buyer.

Upon default, the City may declare the entire contract price, or the remaining balance, due and payable.

11. Integrated Agreement: This agreement as signed by the parties constitutes the entire agreement between them. Any modification or alteration of this agreement shall not be valid unless evidenced by a duly signed writing supported by consideration additional and independent from the consideration for this agreement.

12. Authorization: This agreement is entered into by the City pursuant to authority granted by Ordinance _____ passed and approved by the City Council for the City of Aleknagik on _____.



Dated: _____ Dated: _____

CITY OF ALEKNIGAK: _____ LESSEE: _____

Mayor
P.O. Box 33
Aleknagik, AK 99555 ADDRESS: _____

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

On this _____ day of _____ 20__, before me the undersigned Notary Public, personally appeared _____ known to be to be the individual described in and who executed the foregoing instruments for the CITY OF ALEKNAGIK as Mayor, and acknowledged to me that s/he understood the contents of the instrument, was duly authorized to sign the instrument and did sign the instrument as a free and voluntary act for the uses and purposes therein described.

WITNESS my hand and seal the day and year hereinabove written.

Notary Public for Alaska
My Commission expires: _____

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

On this _____ day of 20__, before me the undersigned Notary Public, personally appeared _____ known to be the individual described in and who executed the foregoing instruments as BUYER and acknowledged to me that s/he understood the contents of the instrument, was duly authorized to sign the instrument and did sign the instrument as a free and voluntary act for the uses and purposes therein described.

WITNESS my hand and seal the day and year hereinabove written.

Notary Public for Alaska
My Commission expires: _____





LEASE CONTRACT

THIS lease, made this _____ day of _____, 20__ by and between the City of Aleknagik, a municipal corporation, hereinafter referred to as "City" and _____, herein called "Lessee".

City for and in consideration of the rent specified to be paid by Lessee, and the covenants and agreements made by the Lessee, hereby leases the following described property:

To have and to hold unto said Lessee on the following terms and conditions:

1. Term: The terms of this lease shall be _____ years beginning on the ___ day of _____, 19__, and ending on the ___ day of _____, 19__, except as otherwise provided herein.

2. Rental: Lessee agrees to pay City as rent for the above described property the sum of _____ dollars (\$_____) for the full terms hereof which rental shall be paid in installments as follows: _____ dollars (\$ _____) upon execution of this lease, and _____ dollars (\$_____) on the ___ day of _____



each and every month until the termination of this lease, without delay, deduction or default.

3. Purposes: Said property shall be used for _____ and for no other purpose whatsoever without the written consent of City.

4. Buildings and Improvement: Lessee may, at Lessee's sole cost and expense, make such changes, alterations or improvements (including the construction of buildings) as may be necessary to fit said premises for such use, and all buildings, fixtures and improvements of every kind or nature whatever installed by Lessee, shall remain the property of Lessee, who may remove the same upon the termination of the lease, provided, that such removal shall be done in such a manner as not to injure or damage the property; and provided further that should Lessee fail to remove said buildings, fixtures or improvements as above provided, City at its option may require Lessee to remove the same. In the event that said Lessee shall fail to remove said buildings, fixtures and improvements after receipt of notice from City, City may remove the same and dispose of the same as it sees fit, and Lessee agrees to sell, assign, transfer and set over to City all of Lessee's right, title and interest in and to said buildings, fixtures, improvements and any personal property not removed by Lessee, for the sum of one dollar (\$1.00) Lessee further agrees that should City remove said buildings, fixtures and improvements as above provided, that Lessee will pay City upon

demand, the cost of such removal, plus the cost of transportation and disposition thereof.

5. Taxes: Lessee shall pay any taxes and assessments upon personal property, buildings, fixtures and improvements belonging to Lessee and located upon the property, and all leasehold and possessory interest, taxes levied or assessed by any property taxing authority.

6. Repairs and Maintenance: Lessee represents that Lessee has inspected and examined the property and accepts the property in its present conditions and agrees that City shall not be required to make any improvements or repairs whatsoever in or upon the property or any part thereof; Lessee agrees to make any and all improvements and repairs at Lessee's sole cost and expense, and agrees to keep said properties safe and in good order and condition at all times during the term hereof, and upon expiration of this lease, or any earlier termination thereof, the Lessee will quit and surrender possession of said premise as quietly and peaceably and in good order and condition as the same was at the commencement of this lease, reasonable wear, tear and damage by the elements excepted; Lessee further agrees to lease the property, free from all nuisance and dangerous and defective conditions.

7. Assignment and Mortgage: Neither the property nor any portion thereof shall be sublet, nor shall this lease, or any interest therein, be assigned, or mortgaged by Lessee, and any attempted assignment, subletting, or mortgaging shall be of





no force or effect, and shall confer no rights upon any assignee, sublessee, mortgagee or pledgee.

In the event that Lessee shall become incompetent, bankrupt, or insolvent, or should a guardian, trustee, or receiver be appointed to administer Lessee's business or affairs, neither this lease nor any interest herein shall become an asset of such guardian, trustee or receiver, and in the event of the appointment of any such guardian, trustee, or receiver this lease shall immediately terminate and end.

8. Liability: Lessee shall save City harmless from any loss, cost or damage that may arise out of or in connection with this lease or the use of the property by Lessee, or his agents, or employees, or any other person using the property; Lessee agrees to deliver to City upon the execution of this lease, two executed copies of a continuing public liability and property damage insurance policy, satisfactory to City, indemnifying and holding City harmless against any and all claims, in the amount of _____ dollars (\$_____) for injury to anyone person, and _____ dollars (\$_____) for property damage, and shall keep the same in force during the term of this lease;

10. Mechanics Liens: Lessee agrees that at least five (5) days before any construction work, labor or materials are done, used or expended by Lessee or on Lessee's behalf by any person, firm or corporation by any contractor, that Lessee will post and record, or cause to be posted and recorded as provided

by law a notice of non-responsibility on behalf of City, giving notice that City is not responsible for any work, labor or materials used or expended or t o be used or expended on the property.

11. Termination by City: City may terminate this lease at any time if it should be determined by its City Council that public necessity and convenience requires it t o do so, by serving upon Lessee in the manner herein provided a written notice of its election to so terminate, which notice shall be served at least _____(____) days prior to the date in said notice for such termination.

12. Default: In the event that Lessee shall be in default of any rent or in the performance of any of the terms or conditions herein agreed t o be kept and performed by Lessee, then in that event, City may terminate and end this lease, forthwith, and City may enter upon said premises and remove all persons and property therefrom, and Lessee shall not be entitled to any money paid hereunder or any part thereof; in the event City shall bring a legal action to enforce any of the terms hereof or to obtain possession of the property by reason of any default of Lessee, or otherwise, Lessee agrees to pay City all costs of such action, including attorney's fees plus the sum of _____ dollars (\$_____).

13. Holding Over: In the event that Lessee shall hold over and remain in possession of the property with the written consent of the City Council such holding over shall be deemed





to be from month to month only, and upon all of the same rents, terms, covenants and conditions as contained herein.

14. Notices: Any notices which are required hereunder or which either City or Lessee may desire to serve upon the other, shall be writing and shall be deemed served when delivered personally, or when deposited in the United States mail, postage pre-paid, return receipt requested, addressed to Lessee at _____ or addressed to City at P.O. Box 33, Aleknagik, AK 99555, attention Mayor.

15. Advance Rental: City acknowledges receipt of the sum of _____ dollars (\$_____), which shall be credited by City to the last months installment of rent to become due hereunder.

16. Waiver: Waiver by City of any default in performance by Lessee of any of the terms, covenants, or conditions contained herein, shall not be deemed a continuing waiver of the same or any subsequent default herein,

17. Compliance With Laws: Lessee agrees to comply with all laws, ordinances, rules and regulations which may pertain or apply to the property or the use thereof.

18. City May Enter: Lessee agrees that City, its agents or employees, may enter upon the property at any time during the term or any extension hereof for the purposes of inspection, digging test holes, making surveys, taking measurements, and doing similar work necessary for the preparation of plans for the construction of buildings or



improvements on said premises, with the understanding that said work will be performed in such a manner as to cause minimal interference with the use of the property by a Lessee.

19. Successors In Interest: All of the terms, covenants and conditions contained herein shall continue, and bind all successors in interest of Lessee herein.

20. Authority: This lease is entered into by the City pursuant to authority granted by Ordinance _____ passed and approved by the City Council of Aleknagik on _____.

Dated: _____ Dated: _____

CITY OF ALEKNIGAK: LESSEE:

Mayor
P.O, Box 33
Aleknagik, AK 99555 ADDRESS: _____

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss:
)

On this _____ day of _____ 19____, before me the undersigned Notary Public, personally appeared _____ known to be to be the individual described in and who executed the foregoing instruments for the CITY OF ALEKNAGIK as Mayor, and acknowledged to me that s/he understood the contents of the instrument, was duly authorized to sign the instrument and did sign the instrument as a free and voluntary act for the uses and purposes therein described.

WITNESS my hand and seal the day and year hereinabove written.

Notary Public for Alaska
My Commission expires: _____



QUITCLAIM DEED

THE GRANTOR, City of _____, a municipal corporation in the State of Alaska, pursuant to authorization of Ordinance _____ approved by the City Council on _____, 20 __, for the sum of _____ and other valuable consideration, conveys and quitclaims to _____, all interest which it has, if any, the following described property:

Dated: _____ CITY OF _____

Mayor

STATE OF ALASKA)
) ss.
_____Judicial District.)

THIS IS TO CERTIFY that on this the ____ day of _____ 20__ before me the undersigned a Notary Public for the State of Alaska personally appeared known to me to be the Mayor for the City of _____, and executed the foregoing document upon acknowledging that his act was duly authorized by ordinance of the City Council for the City of _____.

WITNESS my hand and official seal this _____ day of 19__ at _____, Alaska.

NOTARY PUBLIC FOR ALASKA
My Commission Expires:





OCCUPANCY PERMIT

THE CITY OF _____, a municipal corporation in the State of Alaska, pursuant to authorization of Ordinance ___ approved by the City Council on _____ 20__, grants to _____ a right to the continued use and occupancy of all structures and improvements located on the following described property:

This right extends only to those structures and improvements existing on the above described property as of the date of this permit and shall continue for a period of _____ years from the date of this permit or until the use of said improvements and structures is abandoned, whichever occurs first. Abandonment shall occur if in the determination of the City Council of _____ the structures and improvements remain vacant or unused for a period of _____ years. The rights granted by this permit are personal and shall not extend to the heirs, executors or assigns of the grantee. The rights granted by this permit are subject to the power of eminent domain or the right of the City, upon ninety (90) days notice to grantee, to remove the structures and improvements at City's expense to another location when in the determination of the City Council the public interest requires said removal. The rights granted by permit do not extend to structures or improvements constructed after the date of this permit.



Upon expiration of this permit, the City may require at grantee's expense the removal of any structure and improvements on the above described property, or the City may take possession of said structures and improvements and dispose of the same in any manner it deems appropriate, with or without compensation to grantee.

Dated: CITY OF _____

Mayor

STATE OF ALASKA)
) ss.
_____) Judicial District.

THIS IS TO CERTIFY that on this the ___ day of 20 ___ before me the undersigned a Notary Public for the State of Alaska personally appeared _____ known to me to be the Mayor for the City of _____, and executed the foregoing document upon acknowledging that his act was duly authorized by ordinance of the City Council for the City of _____.

WITNESS my hand and official seal this ___ day of 20 ___ at _____, Alaska.

NOTARY PUBLIC FOR ALASKA
My Commission Expires:



**ORDINANCE 87-10
AN ORDINANCE OF THE CITY OF ALEKNAGIK, ALASKA
PROVIDING FOR THE CONVEYANCE OF CERTAIN
PROPERTY TO THE ALEKNAGIK TRIBAL GOVERNMENT**

BE IT ENACTED BY THE ALEKNAGIK CITY COUNCIL, AS FULLOWS:

Section 1. Classification.

This is a non-code ordinance.

Section 2. Recitals.

(a) The City of Aleknagik received title to Lot 1, Block 2, U.S.S. # 3309 from the Townsite Trustee, United States Department of the Interior on December 4, 1984.

(b) On February 5, 1933 the Aleknagik Tribal Council was awarded a grant in the amount of \$350,000 from the United States Department of the Interior, Bureau of Indian Affairs, in order to construct a community hall for the residents of Aleknagik.

(c) In order to facilitate the construction of the Hall, the City Council on April 6, 1983 agreed to permit the Tribal Government to construct the hall on the property described above. A community hall was needed by the residents of Aleknagik and if the City Council did not permit the construction of the hall the grant award would have been withdrawn.

(d) The Tribal Council has requested the City to transfer title to the property upon which the hall is located now that the City is in a position to convey title.

(e) The Tribal Council is a governing body recognized by the United States Government and is a non-profit organization. Although only Alaska Native residents of the City of Aleknagik are entitled to membership in the Tribe, the Tribal Government has maintained and operated the hall for the use and benefit of all the residents of the City of Aleknagik.

Section 3. Findings.

(a) The City Council has considered the present use of the property described above and has examined the existing and potential land need of the City government and the residents of the Community, and hereby finds that the best use of the above described land, because of its location and tradition of use, is for a community hall. The continued use of the property for a community hall and the continued operation of the hall by the Aleknagik Tribal Government will benefit the residents of the City of Aleknagik.

(b) The property described above is not needed for any other foreseeable public or city purpose.

(c) The Aleknagik Tribal Government is a recognized tribal authority and a non-profit organization and pursuant to Title IV, Chapter 4.3, Section 4 the conveyance of the property described above may be for less than fair market value.

Appendix Two I



(d) The conveyance of the property to the Aleknagik Tribal Government will help the Tribal Government obtain funds to continue providing service to the residents of the City of Aleknagik.

Section 4. Authorization.

The Mayor is authorized to convey and quitclaim to the Aleknagik Tribal Government all interest which the City has in that property described as Lot 1 B, Block 2,s subdivision of Lot 1, Block 2, U.S.S. 3309, provided the Aleknagik Tribal Government covenants in writing to keep the property open and available for use by all the residents of the City of Aleknagik on a non-discriminatory basis.

PASSED AND APPROVED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL FOR THE CITY OF ALEKNAGIK THIS _____ DAY OF _____, 1987.

Introduction:

Public Hearing:

Mayor

ATTEST:

City Clerk

public notice

* * * * *

ON TUESDAY, MARCH 16, 1987 THE CITY COUNCIL WILL HOLD A PUBLIC HEARING AT THE CITY HALL, AT 7:30 P.M. FOR THE PURPOSE OF HEARING PUBLIC COMMENTS ON THE PROPOSED PASSAGE OF ORDINANCE 87-1 0. ORDINANCE 87-1 0 PROPOSES THAT THE CITY SELL TO THE TRIBAL COUNCIL THE LAND UNDERNEATH THE TRIBAL COUNCIL BUILDING. A COPY OF THE ORDINANCE AND THE CONTRACT FOR SALE IS AVAILABLE FOR PUBLIC VIEWING AT THE CITY CLERK'S OFFICE FROM 9:00 A.M. TO 5:00 P.M. COPIES WILL ALSO BE AVAILABLE AT THE PUBLIC HEARING. EVERYONE IS ENCOURAGED TO ATTEND AND THE MEETING WILL CONTINUE UNTIL EVERYBODY WHO WANTS TO SPEAK HAS BEEN HEARD.

THE ORDINANCE APPROVING THE SALE OF THE LAND TO THE TRIBAL COUNCIL IS SCHEDULED FOR FINAL PASSAGE AT THE REGULAR CITY COUNCIL MEETING ON TUESDAY, APRIL 14, 1987.

* * * * *





QUITCLAIM DEED

THE GRANTOR, City of Aleknagik, a municipal corporation in the State of Alaska, pursuant to authorization of Ordinance 87-10 approved by the City Council on April 14, 1987, for the sum of ten dollars and other valuable consideration, conveys and quitclaims to the Aleknagik Tribal Government, all interest which it has, if any, in the following described property:

Lot 1B, Block 2, a subdivision of Lot 1. Block 2, U.S.S. # 3309, Aleknagik, Alaska.

SUBJECT TO the declaration of covenant which shall run with the land and be binding upon the grantee and all other parties and persons claiming through the grantee herein that the property above described shall be used for the benefit and use by all the residents of the City of Aleknagik, for a period of fifty (50) years from the date of this deed.

DATED: CITY OF ALEKNAGIK

Mayor

STATE OF ALASKA)
) ss.
Third Judicial District.)

THIS IS TO CERTIFY that on this the _____ day of 19__ before me the undersigned a Notary Public for the State of Alaska personally appeared _____ known to me to be the Mayor for the City of Aleknagik, and executed the foregoing document upon acknowledging that his act was duly authorized by ordinance of the City Council for the City of Aleknagik.

WITNESS my hand and official seal this day of _____ 19__ at Aleknagik, Alaska.

NOTARY PUBLIC FOR ALASKA
My Commission Expires:

Appendix Two K

APPENDIX 2K: Other Documents

2k

Appendix 2K1:	
Application for Lot Purchase	207
Appendix 2K2:	
Ordinance Approving Land Exchange in Aleknagik	209





**CITY OF ALEKNAGIK
APPLICATION FOR LAND PURCHASE**



APPLICATION MUST BE ACCOMPANIED BY A TEN DOLLAR (\$10.00)
NON-REFUNDABLE FEE

PLEASE COMPLETE THE FOLLOWING:

Date: _____ Lot Desired: _____

Name: _____

Address: _____

1. Age: _____
2. Occupation: _____
3. Property owner in Aleknagik? _____
4. Have you been a resident in Aleknagik for at least __ days? _____
5. Is this the only application from your household? _____
If the answer is no, please explain.

6. Where are you registered to vote?
7. What plans have you made to construct a house on the lot you wish to purchase?
8. Do you own property in any other community? If so, for what do you use this property?
9. How long have you lived in Aleknagik?

STATEMENT:

I hereby state that all the above information is true and correct. I understand that my application will not be considered by the City Council if it is found that any information I have provided is not true.

Signature of Applicant

Date



ORDINANCE APPROVING LAND EXCHANGE IN ALEKNAGIK



**CITY OF ALEKNAGIK, ALASKA
ORDINANCE 87-**

**AN ORDINANCE PROVIDING FOR THE CONVEYANCE OF CITY
PROPERTY INTERESTS IN EXCHANGE FOR THE ACQUISITION
OF OTHER PROPERTY AND PUBLIC RIGHTS OF WAY**

BE IT ENACTED BY THE ALEKNAGIK CITY COUNCIL, AS
FOLLOWS:

Section 1. Classification.

This is a non-code ordinance.

Section 2. Recitals.

(a) The heirs of Peter Krause have a recognized claim to certain property within the city limits of the City of Aleknagik by virtue of Native Allotment application # A 054491;

(b) The extent of the Native Allotment obstructs surveyed rights of way and public access and creates conflicts of title between the Native Allotment and the City of Aleknagik and between the Native Allotment and other residents of the City;

(c) The extent of the Native Allotment obstructs planned future access to a public sanitary landfill;

Section 3. Findings

(a) An exchange of property is the most expedient and fair means to resolve the property conflicts and acquire the property necessary to secure public easements;

(b) The property owned by the City of Aleknagik selected for exchange with the heirs of Peter Krauss is not needed for any other foreseeable public purpose of greater importance to the residents of the City than securing public easements, rights of way and access to a proposed sanitary landfill;

(c) The value to the City of Aleknagik and its residents of the land and rights to be received is equivalent to or exceeds the value of the land to be conveyed.



Section 4. Property Exchange.

The exchange of interests in land is to be made with the United States Department of the Interior, Bureau of Indian Affairs, trustee for the heirs of Peter Krauss. The City will convey to the Bureau of Indian Affairs approximately 2.9 103 acres of land and in exchange will receive approximately .7 14 1 acres of land and approximately 5.6336 acres of easements and public rights of way in accordance with the plat attached hereto as Attachment “A”. Attachment “A” is incorporated by reference into and made a part of this ordinance.

Section 5. Authorization.

The Mayor is authorized to convey and quitclaim to the Bureau of Indian Affairs all interest which the City has in the 2.9103 acres described above and on Attachment "A" and is authorized to accept on behalf of the City of Aleknagik all interest which the Bureau of Indian Affairs and the heirs of Peter Krauss have in the .7141 acres of land and 5.6336 acres of easements and public rights of way described above and on Attachment “A”.

Section 6. Prior Ordinance.

This ordinance supersedes and replaces Ordinance 86- of the City of Aleknagik.

PASSED AND APPROVED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL FOR THE CITY OF ALEKNAGIK THIS ___ DAY OF _____, 1987.

Introduction:

Public Hearing:

Mayor

ATTEST:

City Clerk