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Comments

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REGION-VILLAGE RELATIONS UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

by
MONROE E. PRICE*

PART II¹

II. LAND TRANSACTIONS

The Alaska Native Claims Settlement Act² locked the Regional Corporations and the Village Corporations into a strange relationship with respect to land. Not only does the Region generally own the subsurface estate to lands which are otherwise owned by the Village Corporations, but in addition there are mandated powers of consent and review that establish legal relationships between the two sets of Settlement Act entities. As patents to land begin to be conveyed to Native Corporations, difficult questions will arise in interpreting the mutual rights and duties. There is a need for, at the least, a preliminary discussion of some

* Professor of Law, UCLA. A prior version of this article was prepared for the Alaska Native Foundation as part of a series of publications designed to assist Village Corporations in understanding the Alaska Native Claims Settlement Act. Because the Act is so new and because of the paucity of judicial decisions interpreting its provisions, I have taken greater liberty than usual in stating an opinion, without great documentation, on issues of interpretation that might arise under the Act. A number of attorneys and corporate officers of Native Corporations graciously aided me in my inquiries in connection with the preparation of this article. I should like, particularly, to thank Edward Burton, Paul Gaskin, Emil Notti and William Timme, none of whom ought to bear responsibility for any of the views here expressed. During the period in which this article was in preparation, I have been of counsel to a firm which represents a Regional Corporation. I disclose this fact because some may think it accounts for a bias in this article towards Regional as opposed to Village Corporations.

1. Part I, Price, *Region-Village Relations Under the Alaska Native Claims Settlement Act*, 5 U.C.L.A.-ALASKA L. REV. 58 (1975), dealt with the financial relationships between Regions and Village Corporations. Hereinafter, the article will be cited as *Part I*.

2. Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-24 (1971) [hereinafter cited as Settlement Act]. All references to particular sections of the Settlement Act are to the notation used in Pub. L. No. 92-203, 85 Stat. 691, which is set out in the first volume of ALASKA STATUTES. For a review of the Settlement Act in general, see Comment, *Charitable Donations Under the Alaska Native Claims Settlement Act*, 3 U.C.L.A.-ALASKA L. REV. 148, 149-55 (1973).

of the more startling issues that arise under the Act so that the Village Corporations and Regions can minimize future misunderstandings.

The primary section of the Act that affects Region-Village relations with respect to land is Section 14. Like the rest of the Act, Section 14 displays the ambivalence of Congress. There is the desire to have autonomous corporations that are free to alienate their land or take other lawful action, but at the same time there is also the sense that the Village Corporations may require a guiding influence. In addition, the fact that the Region owns the subsurface of much of the land owned by the Village Corporation increases the possibility of some conflict.

One of the most difficult sections of the Settlement Act to implement is Section 14(c)(5), which provides for Regional review of certain Village Corporation land transactions. Together with the introductory language of Section 14(c), the section states:

Each patent issued pursuant to subsections (a) and (b) [which provide for the conveyance of the surface estate to the Village Corporations] shall be subject to the requirements of this subsection. Upon receipt of a patent or patents:

. . .

(5) for a period of ten years after the date of enactment of this Act, the Regional Corporation shall be afforded the opportunity to review and render advice to the Village Corporations on all land sales, leases or other transactions prior to any final commitment.³

According to the Conference Report, the purpose of the Region's review power was "to insure against fraud and overreaching."⁴

Section 14(c)(5) presents very important problems in Region-Village relations. These include defining the kinds of transactions that fall within Section 14(c)(5), the respective duties of the Village Corporation and the Regional Corporations, the standards that should govern the Regional Corporation's review, and the degree of control the Region should be able to exercise if it feels that a transaction should not take place.

A. *What transactions are covered under Section 14(c)(5)?*

Section 14(c)(5) provides that the Region must be afforded an opportunity to review and render advice on "all land sales,

3. Section 14(c)(5) will be discussed in detail below; see text accompanying notes 5-41 *infra*.

4. H.R. REP. No. 92-746, 92d Cong., 1st Sess., 42 (1971) [hereinafter cited as Conference Report]. This Report was the product of a joint House-Senate Conference Committee which resolved differences between the Senate and House versions of the Settlement Act.

leases or other transactions" of the Village Corporation. What are these "other transactions"? Does the section include only land transactions or does it also include transactions involving funds of the Village Corporation or transactions in land not patented to it pursuant to the Settlement Act? Assume a Village Corporation seeks to purchase land with funds received under Section 7(j).⁵ Must it submit that transaction to the Regional Corporation for review? What if a Village Corporation purchases land with funds obtained outside the Act and then sells it or leases it? Must that transaction be submitted to the Regional Corporation for review?

In principle, the Region's power to review and render advice seems to be linked to assets that came to the Village Corporation through the Settlement Act. Probably, only land patented to the Village Corporation (or land assets received in exchange for Act-related lands) should be covered by Section 14(c)(5) since the section speaks specifically of limitations included in Section 14 patents. A prime function of the Settlement Act seems to be to protect the Village Corporation and its shareholders from wasting the surface land resources patented to them for subsistence and other purposes.⁶ As Village Corporations transactions become more complex, the corporations will obtain land holdings totally unrelated to the basic land allocation and the subsistence function of the Act. These lands are not subject to any of the other provisions of the Act, such as the mandatory reconveyance provisions of Section 14(c)(1-4)⁷ or the exemption provision of Section 21.⁸ It seems reasonable to conclude that such unrelated land transactions are also not subject to the review provisions of Section 14(c)(5). If a Region wishes to review expenditures of Alaska Native Fund and other Section 7(j) revenues of the Village Corporation, it should do so under the budget review provisions of Section 8(b) (allowing for five year review and approval)⁹ or the

5. Section 7(j) states:

(j) During the five years following the enactment of this Act, not less than 10% of all corporate funds received by each of the twelve Regional Corporations under section 6 (Alaska Native Fund), and under subsection (i) (revenues from the timber resources and subsurface estate patented to it pursuant to this Act), and all other net income, shall be distributed among the stockholders of the twelve Regional Corporations. Not less than 45% of funds from such sources during the first five-year period, and 50% thereafter, shall be distributed among the Village Corporations in the region. . . .

6. Conference Report, *supra* note 4, at 37.

7. For the text of Section 14(c)(1)-(4), *see* note 18 *infra*.

8. Section 21(c) provides that land received under the Act shall not be subject to federal, state, or local taxation at the time of receipt. Section 21(d) provides that real property interests conveyed to any Natives, Village Corporation or Regional Corporation pursuant to the Act shall be exempt from federal, state and local taxes for a period of twenty years, unless the real property is developed or leased to third parties.

9. Section 8(b) permits the Regional Corporation to review and approve the

plan review of Section 7(1) (allowing for the Region to require a satisfactory plan).¹⁰ In terms of defining the land that is subject to Section 14(c)(5) review, it might be helpful for a Region to indicate to Village Corporations that it need not submit transactions involving purchased lands, even transactions where the purchase involves the expenditure of Section 7 funds.

Similarly, the "other transactions" language should not be interpreted to apply to transactions such as a purchase of stock by the Village Corporation or an investment in Treasury notes. As a whole, Section 14 deals with land and the conveyances of land, while Section 7 controls transactions in money. Thus it appears that Congress intended that Section 14 be limited only to land transactions. A Region ought to make it clear, therefore, in guidelines distributed to the Village Corporations, that such non-land transactions will not be reviewed under Section 14(c)(5).¹¹

Another issue is the scope of Section 14(c)(5) review, even assuming that the section is confined to land transactions. Probably a broad interpretation of the scope of review would be justified. Any transaction which affects the value of the land to shareholders and to the corporation should be covered by the provision. Under such a view, before a Village Corporation grants an easement it should afford the Region an opportunity to review and advise. Similarly, if a Village Corporation enters into a joint venture and puts up its land as its contribution to capital in exchange for a participation in the venture, then the transaction

initial Village articles of incorporation, as well as amendments, and the annual Village budgets for the first five years:

The initial articles of incorporation for each Village Corporation shall be subject to the approval of the Regional Corporation for the region in which the village is located. Amendments to the articles of incorporation and the annual budgets of the Village Corporations shall, for a period of five years, be subject to review and approval by the Regional Corporation. The Regional Corporation shall assist and advise Native villages in the preparation of articles of incorporation and other documents necessary to meet the requirements of this subsection.

For a detailed discussion of this section, see *Part I passim*.

10. Section 7(1) allows the Regional Corporation to withhold funds due a Village Corporation until the Village submits a satisfactory plan for the use of the money:

Funds distributed to a Village Corporation may be withheld until the Village has submitted a plan for the use of the money that is satisfactory to the Regional Corporation. The Regional Corporation may require a village plan to provide for joint ventures with other villages, and for joint financing of projects undertaken by the Regional Corporation that will benefit the region generally. In the event of disagreement over the provisions of the plan, the issues in disagreement shall be submitted to arbitration, as shall be provided for in the articles of incorporation of the Regional Corporation.

For a detailed discussion of this provision, see *Part I passim*.

11. Sample guidelines are set out in part V(A) *infra*.

should be subject to Regional review and advice. If the Village mortgages its land or puts it in trust as collateral for a loan, that transaction should also be submitted to the Region. Where there is litigation concerning property and the Village Corporation desires to settle the litigation, the settlement should be subject to review and advice, to the extent that it involves the land of the Village Corporation. Similarly, an agreement to give a group of individuals, including shareholders of the Village Corporation, exclusive subsistence rights in an area of land also should be subject to review and advice. However, if a Village Corporation obtains an unsecured loan, the Region perhaps may not have the right to review and advise, even if the creditor may ultimately look to the land in executing judgment.

Timber contracts could be included under Section 14(c)(5), since timber is traditionally considered part of the surface estate until cut.¹² If sand and gravel are determined to be surface resources, then transactions involving them would be subject to Section 14(c)(5) review.¹³

Are all land transactions, even the smallest, subject to review? What if the Village Corporation builds individual housing on its land and leases it to Native shareholders? Must each lease be submitted to the Region for approval? Under the wording of Section 14(c)(5), the Region has the power to require review of each transaction prior to final commitment. Regional Corporations might issue guidelines, however, exempting from the review requirement certain leases that do not raise the danger of waste of substantial corporate assets.¹⁴ For example, reassignment of subsistence areas or leases to shareholders for one year terms or short term permits to enter the Corporation's land might be exempted by the Region.

A very sensitive question is whether the Region, through the plan-requirement of Section 7(l)¹⁵ can bind the Village Corporation's land assets. The plan requirement might be interpreted as placing a duty on the Village Corporation to develop and present a comprehensive plan for its assets. The first sentence of the section simply refers to "a plan for the use of the money" forthcoming

12. *Union Bag & Paper Corporation v. Mitchell*, 177 F.2d 909 (5th Cir. 1949); *Stockel v. Elich*, 112 Cal. App. 648, 297 P. 595 (1931).

13. The Alaska courts have not addressed this specific issue. However, a relatively recent Oregon case which considered the meaning of a deed reserving "sub-surface rights" concluded that since sand and gravel are normally so closely related to the soil and so nearly a part of the very surface, they are reasonably and ordinarily considered a part of the soil and as belonging to the surface estate rather than as part of the minerals or mineral rights by the parties to a transfer of interests in land. *Whittle v. Wolff*, 249 Or. 217, 437 P.2d 114 (1967).

14. Sample guidelines are set out in Part V(A) *infra*.

15. For the language of Section 7(l), see note 10 *supra*.

from the Region. But can any plan be satisfactory without making some reference to the Village Corporation's land assets? For example, could a Region require in a plan that the Village use Section 7(j)¹⁶ distributions to improve the productivity of Village land for the benefit of persons living in or near the Village? Or more directly, could the Region require in the plan a commitment that the Village Corporation will retain its land base so that the Section 7 funds can be best (in the opinion of the Region) used? On the face of it, such interpretations might seem inconsistent with Section 14(c)(5), which gives the Region only a review power when land transactions are involved. But the second sentence of Section 7(l) lends support to the more general sense of the Region's power.¹⁷ Only if a plan contains some statement concerning all of a Village Corporation's Settlement Act-related assets can there be a satisfactory determination of what joint ventures should be fashioned for the benefit of the Region generally.

B. *Does the Region have the power to review Village conveyances or reconveyances under Section 14(c)(1) through (4)?*

Section 14(c)(1) through (4) requires that the Village Corporation convey title to the occupants of the surface estate used as a primary place of residence, primary place of business, subsistence campsites or for other purposes.¹⁸ Clearly these are

16. For the text of Section 7(j), see note 5 *supra*.

17. The second sentence of Section 7(l) is:

The Regional Corporation may require a village plan to provide for joint ventures with other villages, and for joint financing of projects undertaken by the Regional Corporation that will benefit the region generally.

For the complete language of Section 7(l), see note 10 *supra*.

18. Section 14(c)(1)-(4) provides:

. . . Upon receipt of a patent or patents:

(1) The Village Corporation shall first convey to any native or non-native occupant, without consideration, title to the surface estate in the tract occupied as a primary place of residence, or as a primary place of business, or as a subsistence campsite, or as headquarters for reindeer husbandry;

(2) The Village Corporation shall then convey to the occupants either without consideration or upon payment of an amount not in excess of fair market value, determined as of the date of . . . initial occupancy and without regard to any improvements thereon, title to the surface estate in any tract occupied by a non-profit organization;

(3) The Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future, title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, an appropriate rights-of-way for public use, and other foreseeable community needs: Provided, That [*sic*] the amount of lands to be transferred to the Municipal Corporation or in trust shall be no less than 1,280 acres;

(4) The Village Corporation shall convey to the Federal Government, State or to the appropriate Municipal Corporation, title to the surface

“other transactions” involving land patented to the Village Corporation and would come within the meaning of Section 14(c)(5).¹⁹ But is there some reason why they should be excluded? A Village Corporation might argue that because the reconveyances in Section 14 are a matter of law, they should not be subject to Regional review. Arguably, these are not lands patented to the Village Corporation but only lands held in trust for those who have a statutory entitlement under Section 14.

However, the dangers of fraud and overreaching which are mentioned in the Conference Report²⁰ apply to the Section 14 reconveyances as certainly as they do to other transactions. Particularly because such conveyances are for no consideration,²¹ it is important to determine whether or not the land should be distributed. There may be cases, for example, where the Village Corporation does not adequately determine whether a place is a “primary place of business.”²² It may apply an erroneous standard to determine whether a site is indeed the business’s primary site, and the applicant may fraudulently state the size of the tract occupied. Therefore, a Region should be empowered to request submission to it of all records dealing with Section 14 reconveyances prior to final commitment.

C. *How can the review function be performed when the Region participates in the transaction?*

On many occasions there will be land transactions between the Region and Village Corporations. Sometimes these will be voluntary; other times a Village may be required under Section 7(1) to convey land as part of a joint project between the Village and the Region.²³ Obviously, the fact that the Region is participating in the transaction means that it cannot objectively participate in the review and advice procedure. If the Region has a duty to review all transactions, then it should determine a way to obtain an independent assessment of transactions with Village Corporations in which it has a specific interest. A review by an outside appraiser might be a suitable substitute.

estate for existing airport sites, airway beacons, and other navigational aids, together with such additional acreage and/or easements as are necessary to provide related services and to insure safe approaches to airport runways;

19. For the complete language of Section 14(c)(5), see text accompanying note 3 *supra*.

20. Conference Report, *supra* note 4, at 42.

21. Section 14(c)(1)-(4); see note 18 *supra*.

22. Section 14(c)(1); see note 18 *supra*.

23. Section 7(1) empowers the Region to require joint projects between Village and Region. For the complete text of section 7(1) see note 10 *supra*.

But there is a more difficult question. The conflict of interest of the Region may incapacitate it to make a decision whether or not to review. The review power is a discretionary one but the Village Corporation may have a right to an unbiased exercise of discretion. The Regions might establish a neutral mechanism to perform the Section 14(c)(5) function in all cases when a Region-Village transaction is involved. This mechanism is especially necessary because of the Region's status as a subsurface owner.²⁴ Conflicts are so inherent in the Act that it would require a mechanism totally different from that established by Congress to avoid them. Where the conflict is particularly important, the Region should disclose it as part of its review or decision not to review.

D. *Is the Region required by the Act to undertake the review and advice function?*

The statute carefully states that the Region must be "afforded the opportunity" to review and render advice to the Village Corporations.²⁵ The statute falls short of stating that the Region must review and advise the Village Corporations.

The wording is typical of the Act and of the reluctance of the Congress to establish mandatory relationships between the Village and the Regional Corporations. Indeed, the language of Section 14(c)(5) should be read in conjunction with the language of Section 7(l)²⁶ and Section 8(b).²⁷ In each case the Region seems to have the power to require information, but not a mandatory duty to perform the function.

Although the Region can elect not to review any transactions, can it arbitrarily pick and choose among those it will review? Suppose a Village Corporation wishes to sell a parcel of land and is concerned that there is overreaching. If it proffers the transaction to the Region for review and advice, can the Region refuse to do so? Consistent with the view that the Region may waive the review and advice power altogether, it apparently may also do so in specified instances. It may limit its review to those occasions when it, the Regional Corporation, has reason to believe that the Village Corporation may be injured.

24. As will be discussed below, Section 14(f) gives the Region the ownership rights to the subsurface estates in all lands patented to the Village Corporations. See text accompanying note 44 *infra*.

25. Section 14(c)(5); see text accompanying note 3 *supra*.

26. For the language of Section 7(l), see note 10 *supra*.

27. For the language of Section 8(b), see note 9 *supra*.

E. *What duty arises when the Region actually undertakes the task of reviewing Village Corporation transactions?*

It is only when the Regional Corporation undertakes the review and advice process that it may become liable. Here, as with budget review,²⁸ the Region can be held liable if it is negligent and if the Village Corporation relies on the advice that the Regional Corporation gave. The Conference Report may itself have been somewhat misleading on this point, for it specifically stated that the Regional Corporation would "insure against fraud and overreaching."²⁹ Undoubtedly, the Congress did not mean for the Region to be an insurer in the sense that it would be strictly liable for faulty advice. Given the structure of Region and Village Corporation under the Act, any harsher interpretation would be unfair, particularly to at-large shareholders. The land-holding distinction between Village and non-Village shareholders is already a source of discord. The perceived discrimination of the Act, providing some Region enrollees with additional land, as Village Corporation shareholders, would be exacerbated if the Region were required to guarantee the Village shareholders against fraud and overreaching.³⁰

As part of its review and advice function, the Region should be held to a duty to act in a timely manner or waive the right. A Village Corporation may submit adequate information on a transaction only to see it languish at the Region's offices. One remedy for the Village Corporation is to seek to consummate the transaction notwithstanding the failure of the Region to provide advice. All that the Village must do is provide the opportunity for review. But if the Region contends that it is still undertaking the review, financial institutions, purchasers, and escrow officers may not be willing to complete the transaction. Under such special circumstances, the Village Corporation could seek an order from a court requiring the Region to act or a determination from a court stating that the Region has had an adequate opportunity to conduct its Section 14 review.

The Village Corporation is entitled to protection against disclosure of confidential information gained by the Regional Corporation in the course of the review and advice process. In some circumstances, where the Region and the Village are competitors,

28. See *Part I* at 74-75.

29. Conference Report, *supra* note 4, at 42.

30. The advice of the Region should be viewed as less than the advice of an accountant auditing books. The Region should clearly delineate the scope of its inquiry and the limits to the value of its advice so that the Village can better evaluate how to act as a consequence of the advice. But only where there is fraud or gross negligence should there be any ground for recovery of damages by the Village Corporation on behalf of its shareholders.

the Village Corporation may insist that the review be conducted by an agreed-upon third party rather than the Region itself because of the perils of disclosure of such confidential information.

F. *How broad is the duty of the Village to afford the Region an opportunity to review its land transactions?*

The statute states that the Village must afford the Region an opportunity to review and advise.³¹ We have already discussed the kinds of transactions which are subject to this Village duty.³² What if the Region indicates that it does not wish to review land transactions of its Village Corporations? If there is a clearly stated policy for such transactions, in writing, and in the possession of the Village Corporation, then it would not be required to submit the intended transaction to the Regional Corporation for review and advice. Absent such a policy, it would be the better practice to notify the Regional Corporation of the transaction and afford the Region an adequate opportunity for review.

What is the scope of the Village's duty? What constitutes an opportunity for review? One must assume that the statute contemplates an opportunity for meaningful review; otherwise the statute would be totally without meaning. Obviously a Village Corporation would not be in compliance with the statute if it notified a Region that it had only three days to assess and review a complex transaction involving hundreds of thousands of dollars. The opportunity must be "adequate" in terms of time and material disclosed.

A meaningful review might involve disclosing to the Region information that the Village Corporation may wish to keep private. For example, when land is given as collateral for a debt, the Region may wish to have information on the propriety of the debt and the ability of the Village Corporation to fulfill its commitment to the creditors. Where land is the Village contribution to a joint venture, Regional review and advice cannot be adequately given unless the Region is aware of the scope of the joint venture, its likelihood of fruition, and the character and record of the co-venturers.

The Regions may, on the other hand, prefer a more superficial type of review, because of the unreimbursed cost of performing the task in a more sophisticated fashion.³³ Obviously, too, a

31. Section 14(c)(5); see text accompanying note 3 *supra*.

32. See text accompanying notes 5-24 *supra*.

33. See text accompanying note 38 *infra*.

demand for information cannot be complied with by the Village Corporation unless there is the assurance of confidentiality.

This issue of the adequacy of information again highlights the ambivalent relationship between Village Corporation and Region. The Settlement Act seems to establish the two entities as separate independent corporations, placing only mild advisory functions on the Region. Yet Regions that push the language of the Act to its limits may attempt to exercise a far greater influence over the business transactions of the Village Corporations, treating them almost as subsidiaries. This tension, as indicated above, comes from the relationship between Section 7(1) and Section 14(c)(5).³⁴ Section 7(1) suggests that the Act-originated resources of the Village Corporation are somehow available to the Region for generally beneficial projects. Given that possibility, a more stringent kind of review under Section 14(c)(5) seems more reasonable, and a demand for supporting information more justifiable.

G. *What powers may a Region have to stop or discourage a transaction of which it disapproves?*

The Act seems to suggest that the Village Corporation's only duty is to permit review. Once it has given the Region an adequate opportunity for review, the Village Corporation arguably can do what it wishes. It can follow or reject the Region's recommendations. The apparent intent of the Act is that the Village Corporation be well advised; after that, it has the freedom to act as it chooses. But an adverse review by the Region might have some consequences, especially if the transaction is an important one. For example, an adverse review might serve to aid a stockholder action against the Village Corporation.

The Region, as owner of the subsurface estate may disapprove³⁵ a transaction because it adversely affects the Regional subsurface estate, and it may so notify the purchaser or lessee of the land. Furthermore, if the Region disapproves of the transaction, it could use its power under Section 7(1)³⁶ to withhold funds from the Village Corporation on the ground that no plan for the use of funds due under Section 7(1) which includes the disapproved transaction would be satisfactory to the Regional Corporation.

If the Region feels strongly enough, it could sue in state court on behalf of the Village Corporation shareholders to block the

34. See text accompanying notes 15-17 *supra*.

35. Section 14(f); see text accompanying note 44 *infra*.

36. For the language of Section 7(1), see note 10 *supra*.

transaction on the theory, yet to be tested, that the Act gives it a quasi-fiduciary relationship to those stockholders. Obviously, a Regional Corporation will not wish to use the more draconian remedies very often; basically, the Act stresses consultation, flow of information and advice. Once the Region has had an opportunity to review and advise, its task is largely done. The very ambivalence of the Act toward any strong controls over the Village Corporations suggests caution.

H. *What happens when a Village Corporation fails to provide an adequate opportunity for review and advice relating to a land transaction?*

Land transactions involving Village Corporations may occasionally take place without notice to the Regional Corporation. These may occur by accident, by design, or because the Village Corporation is unaware of the scope of Section 14(c)(5) in terms of the transactions covered.

It is unclear what remedy there should be, and for whom, when a Village Corporation enters into a land transaction without notifying its Regional Corporation. Under some circumstances, the transaction might be voidable—for example, if it can be demonstrated that a transaction was for less than fair consideration.³⁷ Another possibility is that failure to seek Regional review could be the basis for an action against the Village Corporation by a shareholder.

As a consequence of these dire possibilities, it will probably become customary, in major transactions, to demand proof of compliance with Section 14(c)(5). An escrow officer may refuse to clear property where there is no proof that a Section 14 review has been afforded. Banks and other lenders may refuse to extend credit where a transaction has not been reviewed under Section

37. At common law, adequacy of consideration was ordinarily not important; any detriment, no matter how economically inadequate would support a promise. *Mullen v. Hawkins*, 141 Ind. 363, 40 N.E. 795 (1895) (the execution of a quitclaim deed by one who denied that he had any interest, at the insistence of one who promised to pay \$50 therefor, was held sufficient consideration). While in extreme cases, a tendency may be observed to refuse to apply the rule, Corbin states that the tendency has not been carried very far. Such cases can be explained on the ground that the court feels that there was no bargain in fact and that the stated consideration was a mere pretense. See 1 A. CORBIN, CONTRACTS § 127 (1950). However, the flexibility of the common law concepts of fraud, duress, misrepresentation, and undue influence have at times enabled courts to avoid contracts shown to be unconscionable by reason of gross inadequacy of consideration. *Schaeffer v. Moore*, 262 S.W.2d 854 (Mo. 1953) (low price paid for land found so unconscionable as to indicate fraud); *Jackson v. Seymour*, 193 Va. 735, 71 S.E.2d 181 (1952) (inadequacy of price paid for real property would result in constructive fraud).

14(c)(5). Lenders wishing to have Village Corporation land as security may require proof of Section 14(c)(5) compliance. Conceivably it might be a defense in a foreclosure of a secured loan to a Village Corporation that the Region did not have an adequate opportunity to review the mortgage itself.

I. *May the Region charge a Village for performance of the Section 14(c)(5) review and advice function?*

As previously indicated, the possible expense to the Region of conducting a review under Section 14(c)(5) is an argument against an obligatory review function.³⁸ Related is the issue of mandatory imposition of review costs by the Region on the Village Corporation.

If the Region carefully and thoroughly performs its review function, the expense might be quite substantial. Suppose a Village Corporation wishes to enter a joint venture with another corporation, contributing land for the building of a sawmill near the Village site. A review of the transaction by the Region could be quite comprehensive. The assessment of the transaction in economic terms might be difficult. Perhaps a feasibility study by an independent expert would be necessary. In addition, the Region might construe its powers to include a review of the social and environmental impact of the sawmill on the residents of the Village Corporation. For the Region to bear the cost of such reviews on a frequent and continuing basis might tax the patience of the shareholders of the Region, particularly non-Village shareholders who would not benefit from the transactions.

There are several possible solutions. First, the Region could interpret its right to have an "adequate opportunity" to review to include a right to have the Village prepare an adequate feasibility study of the transaction before submitting it to the Region for review and advice. Under this solution, the Village Corporation would bear the cost of preparing the supporting documents.

Second, the Region might conduct fairly extensive studies and charge those studies to a Village Corporation account. As will be recalled, all Alaska Native Fund moneys and all moneys that are redistributed from subsurface revenues come to the Region before being redistributed to the Village Corporations under Section 7(j) of the Act.³⁹ A Region could determine that

38. See text accompanying note 33 *supra*.

39. As discussed in *Part I* at 60-63, the distribution of income to the Villages is controlled by the Regions, under Section 6(a), (c) (Alaska Native Fund), Section 7(i) (subsurface revenues), and Section 7(j), (k) (distributions to the Village Corporations).

a portion of the funds to be redistributed to Village Corporations under Section 7(j) could be withheld to meet the expenses of adequate Section 14(c)(5) reviews. Indeed, the Region might argue that the performance of adequate reviews benefits the Region generally and that Section 7(l) therefore specifically gives it the authority to withhold Village Corporation distributions for this purpose.⁴⁰ However, such a posture might imply a more paternalistic function for the Regional Corporations than either the Regions or the Village Corporations are willing to tolerate. There is little indication that the financial health of a particular Village Corporation is considered a matter that benefits the Region generally within the meaning of Section 7(l).

Third, and a more reasonable position, would have the Region conduct a basic, formal review without charging the Village Corporation, together with an offer to conduct a more complete review on a reimbursable basis if the Village so desired. The formal review would consist of an inspection of the papers to assure that they were in order and, perhaps, an in-staff assessment regarding possible overreaching or fraud. The Region would inform the Village Corporation of the basis for its advice and the limited nature of the review.

Fourth, the Region could conduct whatever review it considered necessary for a particular transaction and absorb the cost. If the Region could not tax the Village for the cost of complex reviews, it would be discouraged from undertaking careful and thorough assessments. But, as indicated, a Village Corporation should not be forced to pay high costs for feasibility reviews, particularly when the Village Corporation already has an adequate basis for a business transaction. One might argue that the Regional Corporation should absorb such costs because it has been funded by Congress to perform the statutory functions assigned to it in the Act. In the Senate version of the Settlement Act, a duty to approve land transactions of Village Corporations was imposed on the Services Corporation.⁴¹ It could be argued that this function, in modified form, was transferred to the Region and that certain of the funds which would have been assigned to the Services Corporation were assigned to the Region for that purpose.

Of the alternatives described above, the most reasonable appears to be the third, providing for a basic review without cost

40. The language of Section 7(l) which would provide the basis for this argument is:

The Regional Corporations may require a village plan to provide . . . for joint financing of projects undertaken by the Regional Corporation that will benefit the region generally.

41. S. 35, 92d Cong., 1st Sess., § 9(d)(1) (1971).

together with the offer of a more complete review on a reimbursable basis. Regions might be encouraged to enter "land management" contracts with the Village Corporations in which one service would be the complete assessment, for compensation, of the appropriateness of a particular transaction. Also reasonable would be some variant of the first alternative (Village-prepared feasibility studies), in which by guideline, the Region would state how extensive it expects supporting documentation to be when it receives a transaction for review and advice.⁴²

As indicated earlier, a Region which did not receive the needed documentation could refuse to certify, in those cases where compliance with Section 14(c)(5) was essential, that it had received "an adequate opportunity" to review the transaction.⁴³ In some cases, the refusal of the Region to state that the Village Corporation had complied with Section 14(c)(5) might prevent the transaction from taking place.

III. SECTION 14(f): MINERAL DEVELOPMENT AND VILLAGE CONSENT

Section 14(f) gives the Regional Corporations the subsurface estate in most of the lands belonging to the Village Corporations; however, the Villages do retain a great deal of influence over the development of the subsurface. Section 14(f) provides:

When the Secretary issues a patent to a Village Corporation for the surface estate in lands pursuant to subsections (a) and (b), he shall issue to the Regional Corporation for the region in which the lands are located a patent to the *subsurface estate* in such lands, except lands located in the National Wildlife Refuge System and lands withdrawn or reserved for national defense purposes, including Naval Petroleum Reserve Numbered 4 [*sic*], . . . : Provided, That the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the Village Corporation.⁴⁴

This part of the Settlement Act raises several issues of great importance in Village-Region relations.

The statute tries to accomplish something quite difficult, namely, to mediate and find a middle ground between the interests of the surface owner of the land—the Village Corporation—and the interests of the subsurface owner—the Region. The Region obviously has an incentive to develop and remove the subsurface minerals; indeed, it may have a responsibility to other

42. Sample guidelines are set out in Part V(A) *infra*.

43. See text accompanying note 37 *supra*.

44. Section 14(f) (emphasis added). Section 14(f) will be discussed in detail below; see text accompanying notes 45-57 *infra*.

Regions to do so.⁴⁵ On the other hand, the Village Corporation must have some power to protect the surface against undue intrusion by the owner of the subsurface.

The problem is not peculiar to the Settlement Act. Under general property principles, the owner of the subsurface estate has a reasonable right of access and, indeed, some right to use the surface, without compensation, if it is necessary to extract, develop or explore for the subsurface right.⁴⁶ But the Settlement Act has its own special quality and rationale. The relationship between the surface and subsurface owner under this legislation is not the same as that between the ordinary owner of the surface estate and the owner of a mineral interest.

The main reason for this difference is found in the purpose of Congress in granting only the surface estate to the Village Corporation. Each Village Corporation has received large amounts of land, partly on the theory that the Village Corporation will be able to maintain the opportunity for a subsistence way of life for some of its members.⁴⁷ Romantic or not, part of the basis for the curious split in the Act between Region and Village Corporations is the notion that the ancient patterns of dependence on the land are deserving of protection. By and large, the Village Corporations are the likely keepers of this tradition.

Villages are obliged to take land in and around their core township.⁴⁸ And the Act provides that if there is not enough land in these areas, the Secretary of the Interior is obliged to provide land similar in character to the Village lands.⁴⁹ The important point is that Village and Regional land selections both were fashioned in part on the theory that there would be subsistence values to be protected by the Act. This is a primary reason for the similar character requirements. The framers of the Act recog-

45. Section 7(i) provides that 70% of the revenues from the subsurface estate shall be divided among the twelve Regional Corporations; *see* note 39 *supra*.

46. *Chicago, Wilmington & Franklin Coal Co. v. Minier*, 127 F.2d 1006 (7th Cir. 1942), *cert. denied* *Howell v. Chicago, Wilmington & Franklin Coal Co.*, 317 U.S. 669, 87 L. Ed. 538 (1942); *Northern Cheyenne Tribe v. Hollowbreast*, 349 F. Supp. 1302 (D. Mont. 1972). Such rights do not require, or depend upon, a covenant to make compensation. *Marvin v. Brewster Iron Mining Co.*, 55 N.Y. 538 (1874).

47. Conference Report, *supra* note 4, at 37.

48. Section 14(c)(3) (*see* note 18 *supra*) and Section 11(a) (*see* notes 49 and 52 *infra*).

49. Section 11(a)(3)(A) provides:

If the Secretary determines that the lands withdrawn by subsections (a)(1) and (2) hereof are insufficient to permit a Village or Regional Corporation to select the acreage it is entitled to select, the Secretary shall withdraw three times the deficiency from the nearest unreserved, vacant and unappropriated public lands. In making this withdrawal the Secretary shall, insofar as possible, withdraw public lands of a character similar to those on which the village is located and in order of their proximity to the center of the Native village. . . .

nized that the Natives, as part of their subsistence patterns, used land ranging far beyond the specific sites of their Villages.⁵⁰

A. *What is the meaning of "boundaries" in Section 14(f)?*

The Act's emphasis on subsistence patterns indicates that the Village has a kind of primacy under the legislation that is not typical of common law relationships between surface and subsurface owners. Given this emphasis, it would seem that the "boundaries" of Section 14(f) should be interpreted broadly. "Boundaries" could conceivably have a very specific and restricted meaning, namely, the narrow borders of the Village settlement itself, including only its principal dwellings, church and cemetery.⁵¹ But so restricted a meaning would conflict with a primary function of the village corporation and with the underlying purpose of the Act to provide a land settlement to meet the social needs of the Natives.

If the Region could, without consent, enter upon the lands of the Village Corporation, and disturb subsistence-related aspects of the surface so that it could reach the subsurface, the purpose and vitality of the Village Corporation would be threatened. Thus, the term "boundaries" in section 14(f) should be read to include all the lands patented to the Village Corporation within the Section 11(a)(1) withdrawal areas.⁵² However, the "boundaries" probably should not include the lands withdrawn by the Secretary of the Interior pursuant to Section 11(a)(3), since they are likely to be distant from a Village Corporation site and unrelated to the subsistence activities of the Village.⁵³

B. *How broad is the Village Corporation's power to consent?*

It could be argued that the consent provision of Section 14(f) amounts to a veto power in the Village Corporation. Conceivably,

50. Conference Report, *supra* note 4, at 37.

51. Section 14(f) protection might also be read as applying only to the former reserves that were converted to Village Corporations under Section 19 of the Act. Only these reserves, in a literal sense, had formal, surveyed boundaries.

52. Section 11(a)(1) provides:

(1) The following public lands are withdrawn, subject to valid existing rights, from all forms of appropriations under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, as amended: (A) The lands in each township that encloses all or part of any Native village identified pursuant to subsection (b); (B) The lands in each township that is contiguous to or corners on the township that encloses all or part of such Native village; and (C) The lands in each township that is contiguous to or corners on a township containing lands withdrawn by paragraph (B) of this subsection. The following lands are excepted from such withdrawal: lands in the National Park System and lands withdrawn or reserved for national defense purposes other than Naval Petroleum Reserve Numbered 4. . . .

53. For the text of Section 11(a)(3)(A), see note 49 *supra*.

the Village Corporation could use Section 14(f) to make considerable financial demands on the subsurface owner before giving consent. While such a view would protect the subsistence values to the utmost, it is incompatible with the intricate balance of the Act.

The term "consent" in Section 14(f) should be read as meaning "reasonable consent," with reasonableness having reference to the role of the Village Corporation and the conflicting strains in the Act itself. Reasonableness means that the Village Corporation cannot veto exploration which would not affect subsistence values or traditional sites, nor can it demand compensation except as a substitute for the value of the surface estate lost. A veto would be appropriate, for example, where exploitation would destroy a cemetery or sacred place.

The Village Corporation can employ the consent provision to protect the subsistence interests of its members. It can seek compensation for any disturbance of the surface estate. Its rights are thus somewhat greater than those of the common law owner of the surface interest when confronted by the owner of the mineral interest in land. The owner of a subsurface right usually has an implied right of access and an implied right to use and, indeed, destroy, the surface for the purpose of gaining access to the subsurface interest.⁵⁴ However, the Region should not have such extensive rights.

The above interests are probably the only ones that should be asserted by the Village Corporation. The Region holds the subsurface as if in trust for the stockholders of its own and other Regional Corporations.⁵⁵ The Settlement Act determined that the subterranean wealth of Alaska should be shared by all the Regions, without regard to the particular location of a resource.⁵⁶ If a Village Corporation seeks to gain compensation for its consent in excess of the damage to the surface estate, then the Village is infringing on the rights of other Alaska Natives in other Regions.

C. *What is the relationship between Section 14(f) and Section 14(c)(5)?*

As owner of the subsurface, the Region has certain rights that the Village Corporation cannot convey to third parties when it sells or leases the surface. But in the process of drafting a conveyance of the surface, the Village Corporation may purport to affect the

54. For further discussion of this point, see text accompanying note 46 *supra*.

55. Section 7(i); see note 39 *supra*.

56. *Id.*

rights of the Region as a subsurface owner. If the Region reviews the transaction it may, if it does not object, in effect ratify a clause affecting its own subsurface ownership rights.

An example may clarify the problem. Assume that under Section 14(f) the Village Corporation can only withhold consent for exploration if such withholding is reasonable (*i.e.*, the Region promises to care properly for the surface, etc.). Assume then that in a conveyance the Village purports to give the transferee a veto power over mineral development. Clearly, without Regional consent to this provision the Village Corporation is selling something it does not have and so the purchaser ordinarily cannot rely on the provision. The contract is then given to the Region under Section 14(c)(5) for review and advice. If the Region reviews the transaction without objecting to the provision, it may be held to have consented to the conveyance of the veto power.

Obviously it would be desirable for a Region as a matter of course to restate its interest in the contract and to put each party on notice that the review process does not include the consent to any such transfer by the Region.⁵⁷

IV. WHAT HAPPENS TO REGION-VILLAGE RELATIONS IN 1992?

It may seem premature to look to 1992 in terms of Village-Region relationships, but that date is not so far distant. Actions taken now may ameliorate problems that can arise then. It is not possible to say precisely what will occur on the magic date but some insight into the relevant problems might be helpful.

On January 1, 1992, all stock in the Regional and Village Corporations will be canceled and new shares of stock will be issued by those corporations.⁵⁸ The new stock will not necessarily have the restrictions on alienation now required by the Settelement Act.⁵⁹

Not all aspects of Region-Village Corporation relationships will be affected. First, the Act does not place a time limit on the seventy-thirty split of timber and subsurface revenues.⁶⁰ If it did, a Region might be inclined to wait until the 1990's to extract a valuable resource. That would be contrary to the intent of the Act that all Natives should share, more or less equally, in the subsurface revenues. Second, the State of Alaska may not have completed payment of the \$500 million under the revenue

57. See sample guidelines set out in Part V(A) *infra*.

58. Section 7(h)(3).

59. *Id.*

60. Section 7(i); see note 39 *supra*.

sharing provisions of Section 9.⁶¹ These payments will continue past 1992 if necessary.

As a result, the Regional Corporation, or whoever has acquired control of it, will apparently still have the duty to pass fifty percent of the proceeds under Section 7(j) to the Village Corporations or their successor entities and the non-Village shareholders.⁶² Presumably, if a Village Corporation had been dissolved, the Section 7(j) obligation would no longer exist with respect to that Corporation.

The Regional Corporation or its successor would also continue to have the powers listed in Section 7(l),⁶³ including the power to require joint ventures among the Village Corporations. In addition, certain joint ventures initiated by the Region prior to 1992 could continue past that date.

If these rights and powers continue past 1992, as it seems they will from the face of the Act, Regions and Villages may find themselves with strange partners. A huge conglomerate could acquire control of a Region's Section 7(l) powers and attempt to control the Village Corporations as if they were subsidiaries.⁶⁴

For this reason Regions and Villages, when considering joint ventures under Section 7(l), should make provision for a variety of future occurrences if the joint venture may be of long duration. The joint venture agreement should indicate what will occur, if anything, in 1992, and what will happen if one of the partner corporations is acquired by a non-Settlement Act entity; appropriate contingency plans for such occurrences should be formulated.⁶⁵

V. PLANNING

Some Regions and Village Corporations may seek to avoid the problems that may arise haphazardly in Region-Village rela-

61. Section 9 provides that the Alaska's contribution of \$500,000 to the Alaska Native Fund will be derived from royalties, rentals and bonuses received from mineral sales and leases.

62. For the text of Section 7(j), *see note 5 supra*.

63. For the language of Section 7(l), *see note 10 supra*.

64. By holding the power to require a "satisfactory" plan for the use of Section 7(j) funds, an oil company, for example, could conceivably force concessions from the Village Corporations concerning rights-of-way. Similarly, the power to require Village Corporation participation in joint projects might result in a diversion of Village Corporation land and money into enterprises that would interfere with the subsistence uses of the Village Corporation land.

65. A Village Corporation may be particularly concerned about the future of the Regional Corporation, since the Region, or its successor, will be receiving revenues that are due to the Village Corporation. Since Village shareholders are also shareholders in a Region, they will have some control over the future of the Region; but if such shareholders keep their Village Corporation stock and sell the Region stock, that power will obviously be reduced. One way that the issue can

tionships as a result of the ambiguities and uncertainties in the Settlement Act. Village Corporations will probably want assurance that they will receive the expertise and management advice they need for land transactions, so that the funds intended for their benefit are well used. Regional Corporations may wish to avoid the dangers of conflicts of interest that are inherent in certain of their relationships with the Village Corporations.⁶⁶ They may also seek to minimize potential liability to Village Corporations and Village shareholders for negligent performance of their Settlement Act responsibilities.⁶⁷ And the Region will also desire to manage its affairs so that it does not discriminate among its shareholders.

Achieving these goals requires a great deal of thought, planning and, perhaps, changed corporate and institutional relationships. Some suggestions for planning follow.

A. Guidelines

As has been emphasized throughout this article, the Settlement Act provides very few standards to guide the Regions and the Village Corporations in the implementation of the Region's review, approval and withholding powers under Sections 14(c)(5), 8(b) and 7(l). One great step forward would be for the Regions, working with the Village Corporations, to develop standards that would guide the Regions in exercising their discretion. If a Region does develop such guidelines, it should give the Village Corporations a thorough opportunity to study them and comment on them. If such guidelines are then adopted by the Board of the Region, a Village Corporation could later argue that the Region is acting arbitrarily if it fails to follow the guidelines.

Well-designed guidelines will help Village Corporations understand the purpose and value—as well as the limits—of review by the Regions. It also will help Village Corporations understand what will be expected of them.

In Part I of this article, the financial management powers of the Region under Section 8 and Section 7 of the Act were described. Section 8, it was indicated, dealt primarily with annual administrative budgets.⁶⁸ Section 7 dealt with more comprehensive financial plans for the use of income received by the Village

be resolved would be for the Regional Corporation to purchase from the Village Corporation its right to receive funds under Section 7(j). That would terminate the relationship between Village and Region except for outstanding joint ventures.

66. As has been discussed above, Sections 8(b), 7(l), 14(c)(5) and 14(f) have created relationships between Regional and Village Corporations that will doubtless produce certain differences of opinion. See Part I, *passim*, and text accompanying notes 3-57 *supra*.

67. See Part I at 73-75 and text accompanying notes 28-30 *supra*.

68. See Part I at 65-66.

Corporations.⁶⁹ In the following example, the Regional Corporation would distinguish between an administrative budget and an investment and operations budget. The administrative budget would be reviewable only for five years after the submission of the first budget.⁷⁰

1. General Administrative and Pre-Operational Costs

- a. The Village Corporation shall submit to the Region a budget of the proposed expenditures.
- b. The Village Corporation shall submit, accompanying the budget, a written narrative to include the following matters, where applicable:⁷¹
 - 1) Any pre-submission contracts which the Village Corporation has entered into;
 - 2) The goals and objectives sought to be accomplished by the proposed expenditure of funds;
 - 3) A general outline of any planning programs to be engaged in by the Village Corporation;
 - 4) Details of any contractual arrangements to be entered into by the Village utilizing the funds;
 - 5) Resumés of personnel intended to be hired, if such persons are known, or job descriptions for any positions under the budget;
 - 6) An authorizing resolution from the Board of Directors of the Village Corporation, approving and adopting the budget and other documents submitted.
- c. The administration of the Region shall:
 - 1) Review any budget documents submitted to insure sound planning and sound business judgment;
 - 2) Review the submitted resumés of persons to be hired and, where appropriate, discuss with the Village any difficulties foreseen in the hiring of such personnel in light of the work program of the Village;
 - 3) Advise the Village Corporation of any additional expenditures that are foreseen but not reflected in the budget.

69. *Id.*

70. As discussed in *Part I* at 72, the five-year period should start to run with the submission of the first budget by a Village Corporation.

71. Preparation of some of these items may be considered somewhat onerous for a newly created Village Corporation, but after the first year the format will be more routine. In addition, fulfillment of these requirements will help the Village Corporation management to develop proper budgetary and administrative habits, so that when the five years of Section 8(b) have passed, the Village will be able to adequately handle its own budgetary analysis.

- d. The administration shall assist, where practical, the Village Corporation to develop a budget document that will comply with these guidelines.
- e. In no event shall the administration approve and make any distribution which would exceed the interest to be earned on the capital of the corporation in a one year period. Interest shall be computed at 7% per annum even though more may be being earned at the time of the request. The administration also shall not approve any budget that will impair the capital of the Village Corporation.
- f. The administration shall approve such budgets and authorize the distribution of funds only in those cases where the Village budget reflects sound business judgment and planning, and is appropriate in light of the goals and objectives of the Village as well as the needs and resources of the applicant Village Corporation, other Village Corporations in the vicinity, and the Region.
- g. Should the Village Corporation and the administration be unable to agree, the Village Corporation may request a review by the Board of Directors of the Region of the decision of the administration.
- h. The Village Corporation shall be able to make such changes in the approved budget as may be necessary so long as the change does not exceed 10% of the line item. Notification of any changes must be given to the Region. Prior approval of the Region must be obtained for any change in excess of 10% for a line item.

2. Investment and Operation Budget Guidelines

The Board of Directors establishes the following procedures to be followed by any Village Corporation applying for a distribution of funds in excess of the general administration and pre-operational costs.

- a. For any proposal submitted by a Village Corporation, the following materials will be submitted to the administration of the Region for review:⁷²
 - 1) A resolution of the Board of Directors of the Village Corporation, approving and adopting the proposal and all supporting documents.

72. *Id.* Even though there is no time limit on the Region's power to require submission of an investment and operations budget (Section 7(1); see note 10 *supra*), the compilation of these materials should aid the Village Corporation in deciding how to spend its Section 7(j) income. See *Part I* at 65-66.

- 2) A complete and detailed budget of the proposal including the utilization of any non-Settlement Act funding, and commitments therefor, where applicable.
- 3) A feasibility study of the proposal which shall include the following:
 - (a) Financial statements
 - (1) For acquisition of an operating business:
 - balance sheets for past three years;
 - income statements for past three years;
 - statement of changes in financial position.(Where balance sheets and income statements are not available, then income tax returns for past three years should be submitted.)
 - (2) For commencement and establishment of new business:
 - pro forma income statement;
 - financial arrangements—*i.e.*, other long term debt assumption, etc.
 - (b) Narrative
 - (1) History of current business, outlining present personnel, background of owner and manager, etc.
 - (2) Prospects for future operations.
 - (3) Proposed management and operational aspects for next two years, including personnel to be hired and any arrangements that have been made.
 - (c) Goals and objectives
 - (1) Analysis of alternative investments.
 - (2) Return to be expected.
- b. Upon receipt of the proposal, the administration shall review for completeness and technical accuracy. For any additional data required, the administration shall notify the Board of Directors of the Village Corporation.
- c. The Investment Advisory Board shall review and evaluate the proposal for soundness, both on its own merits and in light of other similar operations in the vicinity. The prospect of joint ventures with other Village Corporations or the Region (or both) will also be considered. The Investment Advisory Board shall make its report to the Region.
- d. Where the proposal entails the development or utilization of lands selected by the Village Corporation, then the proposal shall also be submitted to the Lands Advisory

Board for review and evaluation. The Lands Advisory Board shall also report its evaluation and recommendations to the Board of Directors of the Region.

- e. The Board of Directors shall review the proposal as well as the evaluation and recommendations of the Investment Advisory Board. The Board of Directors shall take such action as it deems to be in the best interests of the Village Corporation and its shareholders. The Board shall review with special care any proposals submitted by an interim Board of Directors, and if there appears to be a reasonable possibility that the interim board is not representative of all the shareholders, or if the procedures which were followed in selecting the interim board did not include a significant number of shareholders, then the Board of Directors may request the resubmission of the proposal by an elected Board.
- f. No distributions to the Village Corporations of any portion of their capital shall be made without the approval of the Board of Directors of the Region.

3. Section 14(c)(5) Guidelines

The Region could include in its guidelines its policies and standards for land transactions affected by Section 14(c)(5).⁷³ These could include:

- a. Exempt and excluded transactions (*e.g.*, subsistence-type timber cutting permits, assignments of home sites to shareholders, Section 14(c) reconveyances, purchases of land with Village funds).
- b. Format for submission, including requirements, if any, for stockholder approval or Village Corporation Board approval.
- c. Documentation requirements (appraisals, independent assessments).
- d. Level of Region review (circumstances in which the staff of the Region, as opposed to the Regional Board of Directors can undertake the review).
- e. Scope of Regional review (the purposes of the review).
- f. Reimbursability of review and advice functions if the Village Corporation will be charged.
- g. Requirement, if any, for assessment of noneconomic factors (including the environmental or social impact of the proposed transaction).

73. For the text of Section 14(c)(5), see text accompanying note 3 *supra*.

4. Section 14(f) Guidelines

A Region, in consultation with its Village Corporations, may also develop guidelines concerning the rights of the surface and subsurface owner under Section 14(f).⁷⁴ Since the rights of the other Regions may be affected (as a result of Section 7(i)),⁷⁵ the Region may also wish to circulate Section 14(f) guidelines to the other 11 Regions for comment. As part of its review and advice function under 14(c)(5), the Region may wish to insure that a purchaser of the surface estate from the Village Corporation has notice of the guidelines.

Guidelines might speak to the various ambiguities in Section 14(f), including the following:

- a. The boundaries of the Native Village;
- b. The easements implied by Section 14(f);
- c. The circumstances, if any, when the Village Corporation can veto exploration, development or removal;
- d. The circumstances, if any, when the Regional Corporation will compensate the Village Corporation for damage to the surface estate;
- e. The notice that the Region must give the Village Corporation before asserting its Section 14(f) rights;
- f. The change in relationship, if any, between the surface and subsurface owners if the Region or Village alienates its estate.

B. *Contracts*

The Regional Corporation can also clarify many of the ambiguities in the Act by contract with the Village Corporations. Some Regions are considering, or already implementing, land management contracts, in which the Region assumes many of the duties that, in the Senate precursor to the Settlement Act, were in the Services Corporation.⁷⁶ The resulting "land management corporation" could, in consultation with the Village Corporation and its shareholders, develop comprehensive plans for the Village Corporation, generate possible land-related ventures and conduct feasibility studies to determine their viability. Under the contract, the Region could ensure compliance with Section 7(l)⁷⁷ and Section 14(c)(5).⁷⁸ The Village Corporations would pay for the ser-

74. For the text of Section 14(f), see text accompanying note 44 *supra*.

75. Section 7(i) provides for a division of 70% of the timber and subsurface revenues received by each Region among all twelve Regions. See note 39 *supra*.

76. S. 35, 92d Cong., 1st Sess., §§ 8, 11 (1971); see Part I at 64 n.26.

77. For the text of Section 7(l), see note 10 *supra*.

78. For the text of Section 14(c)(5), see text accompanying note 3 *supra*.

vices. In the contract, the Region and the Village Corporation would specify, with far greater clarity, the nature of the Region's obligation to advise the Village Corporation on its land transactions. Under such a contract, the responsibility of the Region would almost certainly be in excess of its responsibility under the Act, but it would be compensated for its services.

Similarly, a Region could contract with the Village Corporations to perform some investment services.⁷⁹ The investment services would primarily involve a designated portion of the funds to which the Village Corporation would be entitled under Section 7(j). In offering the investment service, the Region would probably be required to comply with the relevant state and federal legislation protecting prospective investors.⁸⁰ Participation in such a plan would probably fulfill the Village Corporation's Section 7(l) obligations in most cases.⁸¹

These contractual approaches are valuable steps for the Regions and Village Corporations to take. But there is the possibility of conflicts of interest. A Village Corporation may know that if it does not voluntarily join an investment program offered by the Region, it may be compelled to join under the joint venture provisions of Section 7(l).⁸²

With respect to land management arrangements, it may seem inappropriate to the Village Corporation if the Region, as generator and participant in a land transaction, also maintains the "review and advice" function of Section 14(c)(5).⁸³ A Village Corporation may insist that there be an impartial and independent review as part of a land management arrangement.

C. *Joint Ventures and Special Purpose Corporations*

Another class of possible solutions involves the creation of new entities. One such entity would be a Land Management Corporation. The Board of Directors of the Corporation would contain a member of each Village in the Region. The Region itself would also be represented on the Board of Directors. This new corporation would contract with the Village Corporations and with

79. Under S. 35, 92d Cong., 1st Sess., § 10 (1971), which was the Senate version of the Settlement Act, an Alaska Native Investment Corporation would have been created to provide investment advice to the Village Corporations.

80. See, e.g., the Investment Advisors Act of 1940, 15 U.S.C. §§ 80(b)(1-21) (1970), enacted to regulate the conduct of persons who for compensation advise others as to the value of securities and the desirability of buying or selling securities.

81. For the text of Section 7(l), see note 10 *supra*.

82. *Id.*

83. For further discussion of this point, see text accompanying note 23 *supra*.

the Region to advise and assist the Village Corporations. The Region could, in a sense, delegate its Section 14(c)(5) review and advice function to the new corporation. It could indicate that any Village land transaction that came before the Land Management Corporation would automatically comply with the "adequate opportunity" requirements of Section 14(c)(5). In some circumstances, the Region might find it appropriate to use the Section 7(l) withholding power to obtain participation by the Village Corporations in the new corporation.

Clearly such a corporation would take a variety of forms. It need not be confined to a single Region. Not all Village Corporations in a Region would have to belong. The representation on the Board of Directors could reflect a spectrum of political, economic and social realities.⁸⁴

D. *In-House Reorganization*

Short of creating joint ventures and new corporations, a Region might give some thought to clarifying and identifying transactions so as to avoid conflicts of interest as much as possible. A special land management division in the Region might be seen as an improvement over a situation where the same staff performs land management functions for Region and Village Corporation alike. It will not infrequently be the case that the land department of a Region will have conflicting mandates if it is trying to assist and advise the Village Corporation as well as the Region. Planning for transportation corridors, for resource development, and for selections of land often involves conflicting needs when the interests of both the Region and the Village Corporations are considered. Sometimes appropriate disclosure of the conflict is sufficient. In the larger Regions, a separate, fairly insulated Village land department might be charged with the review and advice tasks of Section 14(c)(5).

84. A recent amendment to the Settlement Act (Pub. L. No. 94-204; January 2, 1976) authorizes intra-regional corporate mergers. This legislation was designed to facilitate corporate solutions for Village Corporations that lack the funds and manpower to remain functioning entities on their own. The monetary allocations, in many cases, have proved too small to produce the necessary revenue for management, and ultimately, the payment of taxes. The new legislation provides that the Section 14(f) right to consent to subsurface development will be conveyed to an entity composed of the residents of the Native village being merged or consolidated. A plan of merger or consolidation might provide the Native residents with additional powers, but probably these would be mutually negotiated with the Region. A merger among Village Corporations would be subject to the review and advice power of Section 14(c)(5), since some transfer of land would be involved. Clearly, the merger will be one of the most comprehensive techniques for altering the current Region-Village relationships, especially for those Villages that presently are too weak to take any independent action.

Without the elaborateness of contract or joint venture, a Village Affairs department of a Region could undertake a variety of advocacy and assistance functions. The department might also assist in providing adequate and independent legal services for the Village Corporations. The Village Affairs department could be carefully and separately budgeted with certain basic services absorbed by the Region and others charged back to the Village Corporations.