

Editor's note: Reconsideration granted, decision sustained as modified, See 106 IBLA 26 (Dec. 7, 1988); Board decision vacated by Aug. 1, 1991 stipulation and order in Toghotthele Corp. v. Lujan No. 89-1763, See 120 IBLA 324 (Sept. 12, 1991)

CITY OF NENANA

IBLA 85-688

Decided June 24, 1987

Appeal from a decision of the Alaska State Office, Bureau of Land Management, dismissing protests to land disposition pursuant to village selection application F-14903-A.

Reversed.

1. Alaska Native Claims Settlement Act: Native Land Selections:
Generally

When a Native village corporation and a class I municipal corporation are separate corporate entities, the provisions of 43 CFR 2650.6(a) do not apply to permit the Native corporation to select for conveyance those public lands located within 2 miles of the boundaries of the lands administered by the municipal corporation (commonly referred to as the city limits).

APPEARANCES: Julia B. Bockmon, Esq., Steven Silver, Esq., Anchorage, Alaska, for appellants; Lloyd Benton Miller, Esq., Anchorage, Alaska, for Toghotthele Corporation; Dennis J. Hopewell, Esq., Deputy Regional Solicitor, Office of the Regional Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The City of Nenana, Alaska (Nenana, City), appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated May 9, 1985, dismissing two protests to proposed conveyance of land within the City limits to the Toghotthele Corporation (Toghotthele).

Nenana was incorporated as a first-class city by a district court order dated November 17, 1921, and was thus a first-class city on December 18, 1971, the date of enactment of the Alaska Native Claims Settlement Act (ANCSA).

Section 11 of ANCSA, 43 U.S.C. § 1610(b)(1) (1982), identified Nenana as a Native village and the Bureau of Indian Affairs (BIA) has certified it

for benefits under that Act. 43 U.S.C. § 1610(b)(2) (1982). Toghoththele is a Native village corporation organized by Native residents of Nenana. 43 U.S.C. § 1607(a) (1982). Toghoththele is therefore eligible for land selection pursuant to ANCSA, 43 U.S.C. § 1613 (1982).

On November 7, 1974, Toghoththele filed selection application F-14903-A, for the surface estate of lands in the vicinity of Nenana. Following application amendments filed by Toghoththele, on February 11, 1980, BLM issued a decision approving conveyance of certain lands within 2 miles of the boundary of the City to Toghoththele.

On November 2, 1984, through counsel, Nenana sought information about land status determinations being made pursuant to section 3(e) of ANCSA, 43 U.S.C. § 1602(e) (1982), and settlement negotiations between BLM and Toghoththele regarding Alaska Railroad lands for which the City had exercised an option to purchase. The City protested further consideration of conveyance of these Alaska Railroad lands within Nenana City limits to Toghoththele. BLM responded by letter dated December 7, 1984, advising Nenana that it intended to proceed with section 3(e) determinations. On January 3, 1985, Nenana filed an appeal. BLM moved to dismiss the appeal, arguing that the December 7 letter was not an appealable decision, and that the City's appeal was not timely. On March 6, 1985, this Board issued an order dismissing the appeal and remanding the case to BLM "with instructions to consider the City's protest and make such resolution thereof as is indicated in a form which will serve as a proper basis for appeal by any party adversely affected thereby." ^{1/} Nenana augmented its protest by letter dated March 25, 1985.

On May 9, 1985, BLM issued a decision rejecting Nenana's protests and reiterating its prior finding that the Native village and Nenana were one and the same. BLM also held Nenana's protests to be untimely because Nenana had prior actual knowledge of the proposed conveyance of lands within 2 miles of

^{1/} Both Toghoththele and BLM continue to contend Nenana's appeal is untimely and subject to dismissal. This contention was previously rejected by this Board, in the order dated Mar. 6, 1985, in which the Board found:

"(1) that the Bureau's decision of February 11, 1980, was not properly served appellant [City of Nenana], that it did not encompass all of the matters raised by this appeal, and that the failure of service was not cured by publication of the decision in the Federal Register because the City was directly affected and its address and agent for service were known to the Bureau, or readily ascertainable; (2) that the letter to the Bureau dated November 2, 1984, by counsel on behalf of the City was clearly a protest to which the Bureau has made no adequate response; and (3) the letter dated December 7, 1984, from the Bureau's Deputy State Director for Conveyance Management to the Mayor of the City of Nenana was not an appealable decision as such, and was not so intended."

The records were then remanded to BLM with instructions for BLM to consider Nenana's protest and to issue an appealable decision. As a result, BLM issued its May 9, 1985, decision, which is now on appeal here. We again affirm that this appeal was filed timely. The motions to dismiss are denied.

its borders and had failed to act in a timely manner. 2/ The City then filed this appeal. 3/

In its statement of reasons for appeal, Nenana contends that section 22(1) of ANCSA, 43 U.S.C. § 1621(1) (1982), does not permit conveyance of land within 2 miles of the City to the Native corporation, and that this provision is an absolute statutory bar to conveyance which is consistent with the purposes of ANCSA. Nenana claims the exception to section 22(1) of ANCSA, found at 43 CFR 2650.6(a), is contrary to the statute, improperly promulgated, and not sustainable. Nenana believes the regulation should therefore be declared invalid or accorded no force and effect (Statement of Reasons at 15). Alternatively, Nenana asserts the regulation is inapplicable, because the existence of two separate corporate entities, Nenana and Toghoththele, do not bring the regulation into play.

Toghoththele responds that, being a Native corporation, it is entitled to the land it has selected. Toghoththele further argues the regulation does not require a Native community to be coextensive with a city. Toghoththele finds 43 CFR 2650.6(a) to be applicable, entitling it to select land within the Nenana City limits, as well as within 2 miles of the limits. It argues the BIA certification of enrollment is sufficient to establish that the majority of the population of Nenana was Native in 1971, for the purpose of applying ANCSA. Toghoththele asserts that, unlike the City of Cordova and the Native community of Eyak, described in Appeal of Eyak Corp., 1 ANCAB 132, 83 I.D. 484 (1976), the Natives of Nenana have always been functionally integrated into the City. Finally, Toghoththele maintains that the Board has no authority to declare invalid a duly promulgated regulation by a finding that the exception stated in 43 CFR 2650.6(a) was not a permissible implementation of section 22(1).

In an answer filed by BLM, BLM also asserts Toghoththele fulfills the requirements of the exception to section 22(1) of ANCSA set out in 43 CFR 2650.6, because the Native village was established before it became coextensive with the non-Native community. BLM insists the exception created by regulation is binding, citing Eyak, 1 ANCAB at 144, 83 I.D. at 490.

2/ BLM is correct with respect to lands previously conveyed, and the dissenting opinion presents an eloquent statement regarding the reasons this Board would dismiss an appeal as to those lands. However, we can find no basis for finding Nenana is now estopped from raising an objection to the conveyance at issue or future conveyances because it failed to object to past conveyances in a timely manner. With respect to the lands here in issue, there can be no question that the Nenana appeal is timely.

3/ The parties have submitted numerous supplemental pleadings in this appeal. It is within the Board's discretion to allow late filed pleadings in appropriate circumstances. Tagala v. Gorsuch, 411 F.2d 589 (9th Cir. 1969). See also Pressentin v. Seaton, 284 F.2d 195, 199 (D.C. Cir. 1960); Mendas Cha-Ag Native Corp., 93 IBLA 250 (1986); L. B. Blake, 67 IBLA 103, 104 n.1 (1982); Jack Sedman, 25 IBLA 277, 278 (1976); T. T. Cowgill, 19 IBLA 274, 275 (1975).

The question of whether Toghothle qualifies as a Native village corporation is not in issue and need not be addressed. What is in issue is the effect of section 22(1) of ANCSA on selections by Toghothle. This section states:

Notwithstanding any provision of this chapter, no Village or Regional Corporation shall select lands which are within two miles from the boundary, as it exists on December 18, 1971, of any home rule or first class city (excluding boroughs) or which are within six miles from the boundary of Ketchikan.

43 U.S.C. § 1621(1) (1982).

The implementing regulatory exception attacked by Nenana provides:

(a) Notwithstanding any other provisions of the act, no village or regional corporation may select lands which are within 2 miles from the boundary of any home rule or first class city (excluding boroughs) as the boundaries existed and the cities were classified on December 18, 1971, or which are within 6 miles from the boundary of Ketchikan, except that a village corporation organized by Natives of a community which is itself a first class or home-rule city is not prohibited from making selections within 2 miles from the boundary of that first class or home-rule city, unless such selections fall within 2 miles from the boundary of another first class or home-rule city which is not itself a Native village or within 6 miles from the boundary of Ketchikan. [Emphasis added.]

43 CFR 2650.6(a).

Nenana asserts that, because section 22(1) of ANCSA begins with the phrase "[n]otwithstanding any other provision," section 22(1) controls with respect to any section of ANCSA conflicting with section 22(1), and any conflicting regulation, including 43 CFR 2650.6(a). According to Nenana's interpretation, section 22(1) bars village corporations, like Toghothle, from selection of lands within 2 miles from the boundaries of a first-class city, such as Nenana, as those boundaries existed on the date of enactment of ANCSA, i.e., December 18, 1971.

[2] BLM and Toghothle insist, correctly, that the statute and the regulation are reconcilable. Regulations are entitled to a presumption of validity and will not be overturned unless they are found to be plainly inconsistent with the underlying purposes of the enabling legislation. Giancara v. Johnson, 335 F.2d 372, 375 (7th Cir. 1964), cited by United Mine Workers v. Kleppe, 561 F.2d 1258, 1263 (7th Cir. 1977). The regulation, as written, permits Native village corporation land selections within 2 miles of a city in cases where the corporation was organized by Natives of a community which is itself a first-class or home-rule city. See Eyak, 1 ANCAB at 145-49, 83 I.D. at 490-93 (1976). In Eyak, a Native village corporation (not listed in ANCSA) qualified under section 11(b)(3) of ANCSA and was subsequently

annexed by the City of Cordova, a first-class or home-rule city which was not legislatively designated as a Native village. ^{4/} It was found that the Native village corporation did not, by reason of annexation, merge with the Cordova municipal corporation. As a result of the 2-mile rule, Eyak Corporation was not able to select land pursuant to the 43 CFR 2650.6(a) exception, because the two corporations remained separate entities, and the regulation only applies in those cases where the Native and municipal corporations are essentially one and the same.

The decision in Eyak is an important precedent which provides the basis for our decision in this case. In Eyak, the State of Alaska contended, as appellant does here, that section 22(1) of ANCSA presents an absolute bar to the conveyance of land selected within 2 miles of the first-class city, leaving the Department without authority to consider whether Eyak Corporation was qualified under the regulatory exception in 43 CFR 2650.6(a). The State contended, as Nenana now does, that the regulation contradicts section 22 of ANCSA. The Eyak decision addressed the question why the exception was inserted in the regulation:

The exception described in 43 CFR 2650.6(a) * * * was intended to take cognizance of a factual circumstance wherein the community of a Native Village Corporation is essentially one and the same as community of the municipality being comprised of a majority of Native residents and being also a first class or home-rule city as of Dec. 18, 1971.

1 ANCAB at 148, 83 I.D. at 492.

Consistent with Eyak, we find the regulation is applicable in those cases where the corporate entity for a first-class city and the Native corporation are essentially one and the same or because a Native corporation has sought and received class I city status.

In the case before us, the Native community existed before the City developed in and around it, although one cluster of Native dwellings was specifically annexed by the City in 1959. The original Nenana townsite did not encompass the Native townsite, St. Marks Mission Native Village community. Toghothlele, the corporation formed by the Native citizens of Nenana, is not "a community which is itself a first class or home-rule city." We find there has been no merger of these two corporate entities in fact or in

^{4/} The distinction between a village listed in section 11 of ANCSA, 43 U.S.C. § 1610(b)(1) (1982), and an unlisted village has a bearing on our decision only to the extent that we find Congress has recognized Nenana as a Native village. This, coupled with the BIA certification that the Natives qualified for benefits under the Act, renders unnecessary a hearing to determine whether the members of Toghothlele qualify as a Native village. The only question is the application of section 22(1) of ANCSA to the selections made by Toghothlele. There is no question of eligibility.

law, and therefore the regulation at 43 CFR 2650.6(a) does not apply in this case. ^{5/}

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision finding those lands described in village selection application F-14903-A suitable for conveyance is reversed.

R. W. Mullen
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge.

^{5/} It is noted that theories concerning this Board's authority to declare Departmental regulations invalid have been volunteered by the parties in response to dicta appearing in the concurring opinion in George E. Krier, 92 IBLA 101, 103 (1986), a decision issued during the briefing period for this appeal. These arguments are not reached by this decision and are not addressed for that reason.

ADMINISTRATIVE JUDGE VOGT DISSENTING:

I dissent. In my opinion, this appeal should be dismissed as untimely. In its order of March 8, 1985, in IBLA 85-246, the Board found that the Bureau of Land Management (BLM)'s February 11, 1980, decision approving land selections for Toghoththele Corporation 1/ was not properly served on appellant City of Nenana. The Board's disposition of that appeal indicates it had found that, because appellant was not served, it was relieved of the obligation of filing an appeal within the 30-day regulatory appeal period. 43 CFR 2650.7(d). The Board's order directed BLM to consider appellant's November 2, 1984, letter as a protest and to issue a new decision that could be appealed. It did not address the question whether appellant had actual notice 2/ of the 1980 decision sometime prior to November 2, 1984, which is the earliest date appellant can, under any interpretation, be viewed as having appealed BLM's decision. It is incumbent upon the Board to address that question in this appeal because the Board has held that, where a party has not been served but has actual notice of a decision, the party's time for appeal runs from the date of actual notice. Nabesna Native Corp., Inc. (On Reconsideration), 83 IBLA 82 (1984); Sharon Long, 83 IBLA 304 (1984). There is evidence in the record that appellant had actual knowledge, for a considerable period of time prior to November 2, 1984, that Toghoththele Corporation had made selections within 2 miles of appellant's boundary. Appellant's November 2, 1984, letter, its letter of December 4, 1984, to the Deputy State Director for Conveyance Management, BLM, and its statement of reasons all evidence longstanding knowledge of this fact. Further, in its statement of reasons, appellant states that it had been "negotiating with Toghoththele Corporation as to the lands that Toghoththele is required to reconvey to the City under section 14(c) of ANCSA, 43 U.S.C. § 1613[(c)(3)];" 3/ (Statement of Reasons at 2). Such lands would necessarily have included lands within 2 miles of appellant's boundary.

In addition to this actual knowledge, appellant is charged with knowledge of the applicable laws and regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Section 12(a) of ANCSA, 43 U.S.C. § 1611(a) required that all village land selections be made within 3 years

1/ Toghoththele Corporation is the corporation organized by the Native residents of the Native Village of Nenana pursuant to section 8 of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1607.

2/ I use "actual notice" in the sense of "notice in fact," as the Board has previously used it, see infra, rather than as it is used in 43 CFR 2650.7(d), where it seems to mean only "notice by service."

3/ Section 14(c)(3) provides:

"[T]he Village Corporation shall then [after certain other required conveyances] 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, and appropriate rights-of-way for public use, and other foreseeable community needs."

from December 18, 1971. 43 CFR Part 2650 set out procedures for Native land selections under ANCSA and for decisions by BLM "proposing to convey lands," which were to become final unless appealed within 30 days of service or publication in the Federal Register. 43 CFR 2650.7(d), 2650.8. Therefore, appellant is charged with knowledge that Toghoththele must have made its selections by December 1974 and that BLM's decisions regarding those selections would follow. The selection at issue here was approved by BLM on February 11, 1980, and published in the Federal Register on February 14, 1980, 45 FR 10039. ^{4/} Also, as required by 43 CFR 2650.7(d), it was published once a week for 4 consecutive weeks in a local newspaper of general circulation. Further, not only were Toghoththele's selections approved by BLM, but conveyances to Toghoththele were begun. A number of acres within 2 miles of appellant had been conveyed to Toghoththele long before appellant's letter of November 2, 1984. A July 15, 1982, BLM memorandum (Exhibit D to BLM's September 2, 1986, brief) shows that as of that date, 1,580 acres of that description had been conveyed. Those conveyances were recorded in the public records. It is apparent that appellant knew or should have known that Toghoththele had made its selections and that BLM had acted on those selections, even to the extent of having conveyed much of the land, long before November 2, 1984. In fact, it appears from the record that appellant was well aware of what was going on but chose not to act until 1984 when its negotiations with Toghoththele over section 14(c) reconveyances took a turn for the worse. ^{5/}

For these reasons, the circumstances here must be distinguished from those at issue in Kodiak-Aleutian Chapter of the Alaska Conservation Society v. Kleppe, 423 F. Supp. 544 (D. Alaska 1976), affirmed in relevant part sub nom. Stratman v. Watt, 656 F.2d 1321 (9th Cir. 1981). In that case, the court held that notice of a BLM decision by publication was insufficient to give notice to holders of Federal grazing leases on land subject to selection by certain Native villages, because the lessees held valuable property interests, and their names and addresses were easily ascertainable. The court concluded that, because the lessees had not been served with the decision,

^{4/} Other notices of approvals of conveyances to Toghoththele were published at 44 FR 61660 (Oct. 26, 1969); 45 FR 46911 (July 11, 1980); 48 FR 45473 (Oct. 5, 1983); and 49 FR 30140 (July 26, 1984).

^{5/} Appellant's statement of reasons states at pages 2-4:

"As part of those negotiations the City had been willing to forego challenging Toghoththele's entitlement to lands based on section 22(1) in exchange for a satisfactory agreement with Toghoththele under section 14(c) for lands necessary to meet community expansion and other foreseeable needs. * * * In the last year, the negotiations focused on those lands owned by the Alaska Railroad but claimed by Toghoththele under section 3(e) of ANCSA, 43 U.S.C. § 1602(e). * * * In late 1984 it became apparent that Toghoththele, the Railroad, and the State of Alaska were moving towards a settlement as to entitlement under section 3(e) to railroad lands without consideration or participation by the City. In order to protect its interests, the City * * * filed a protest with BLM asserting Toghoththele's lack of entitlement under section 22(1) of ANCSA."

they were not precluded from challenging it in court, even though they had not exhausted their administrative remedies. Nothing in the court's decision indicates that the lessees were less than prompt in initiating their challenge to the BLM proceedings once they became aware of them.

Generally, where a person has knowledge of facts that ought to put him on inquiry, and he fails to inquire, he is chargeable with notice of all facts which, by proper inquiry, he might have ascertained. He has no right to willfully close his eyes to information within his reach and then claim lack of notice. *E.g.*, Wollensak v. Reiher, 115 U.S. 96, 99 (1985); Simmons Creek Coal Co. v. Doran, 142 U.S. 417, 437-43 (1892); Wecker v. National Enamel and Stamping Co., 204 U.S. 176, 185 (1907). In Simmons Creek Coal Co., the Supreme Court stated:

Each case must be governed by its own peculiar circumstances, and in that in hand we think appellant either had actual knowledge, or actual notice of such facts and circumstances, as by the exercise of due diligence would have led it to knowledge of complainant's rights, and that if this were not so, then its ignorance was the result of such gross and culpable negligence that it would be equally bound.

142 U.S. at 439-40.

In my opinion, the circumstances of this case present a situation similar to that addressed in Simmons Creek Coal Co. Appellant, whether or not it had knowledge of the precise 1980 decision at issue here, certainly had enough knowledge to put it on inquiry. Therefore, its failure to act in a timely manner now precludes it from attempting to divest Toghothele of property interests which accrued to it when its selections were approved. *Cf.* Wisnak, Inc. v. Andrus, 471 F. Supp. 1004, 1009 (D. Alaska 1979). ("The plaintiff [Native group]'s rights in any particular parcel of land did not vest until it filed its land selections.")

What the majority does here, *i.e.*, excuse the obligation of appellant to file a timely appeal, at the expense of Toghothele and its property interests, is the same sort of disposition which recently led the United States District Court for the District of Columbia to reverse a decision of the Interior Board of Indian Appeals (IBIA). Prieto v. United States, 655 F. Supp. 1187 (D.D.C. 1987). In that case, the district court held that the Bureau of Indian Affairs (BIA) and IBIA had improperly considered an untimely challenge by Riverside County, California, to an acquisition of land in trust for an Indian. BIA had considered the county's attempt to appeal, 9 months after BIA's decision, as a "complaint," just as BLM, upon direction from the Board in its 1985 order, considered appellant's November 2, 1984, letter as a "protest." In rejecting BIA's action, the court in Prieto stated: "[T]his new label in no way decreased the unfairness to plaintiff in reopening a final decision, or lessened the harm to society generally in its need for repose." 655 F. Supp. at 1192. The court was also concerned that property interests had arisen in the Indian, as property interests have here

accrued to Toghoththele. It noted: "Obviously, an agency is much freer to change a decision when the change will not snatch back vested property rights." 655 F. Supp. at 1192.

The district court in Prieto expressed what I believe to be the most serious fault with the majority's decision here: "The IBIA's lofty concerns for 'due process' apparently extended only as far as Riverside County's due process * * * Due process for plaintiff, an American Indian who comes under the special protection of this nation's laws and this particular Department's regulations, apparently went by the wayside." 655 F. Supp. at 1193. Although the majority here, and the Board in its 1985 order, are rightly concerned with due process for appellant, the majority forgets that Toghoththele is also entitled to due process.

I also disagree with the majority's disposition of this appeal on the merits. The majority holds that in order for the exception to section 22(1) of ANCSA, set out in 43 CFR 2650.6(a), to apply, "the corporate entity for a first-class city and the Native corporation [must be] essentially one and the same because a Native corporation has sought and received class I city status," and finds that "there has been no merger of [Toghoththele and the City of Nenana] in fact or in law." It is not legally possible for these two corporate entities to be one and the same. One is a creature of Alaska State law and one is a creature of Federal law. The Alaska Native Claims Appeal Board (ANCAB) held in Appeal of Eyak Corp., 1 ANCAB 132, 148; 83 I.D. 484, 492 (1976), that the community of a Native village corporation and the community of a municipality must be essentially one and the same in order for the Native corporation to qualify for the exception. Even assuming that the majority's holding is intended to reiterate the Eyak holding, *i.e.*, that the communities of these two entities, rather than the entities themselves, must be essentially one and the same, I do not agree that Eyak mandates, or even supports, the result reached by the majority.

In Eyak, ANCAB stated that, in order for the community of Eyak, a Native village not listed in section 11 of ANCSA, 43 U.S.C. § 1610, and the community of the City of Cordova to be essentially one and the same for purposes of 43 CFR 2650.6(a), the city must have been comprised of a majority of Native residents on December 18, 1971. ANCAB's discussion indicates that the majority-Native requirement was derived from the requirements of ANCSA regarding eligibility of unlisted villages for benefits under the act. ^{6/} 1 ANCAB at 148, 83 I.D. at 492. ANCAB went on to hold that the village and city were not essentially one and the same because the village was outside the boundaries of the city on December 18, 1971. 1 ANCAB at 149, 83 I.D. at 493. I believe that Eyak is properly read to require only that a Native

^{6/} Because Eyak was not a village listed in ANCSA, 43 U.S.C. § 1610(b)(1), the Secretary was required to find, *inter alia*, that the majority of its residents were Native in order for it to be eligible for benefits under ANCSA. 43 U.S.C. § 1610(b)(3)(B). Nenana, on the other hand, was a listed village. Therefore the Secretary was not required to find that a majority of residents were Native unless he found that the village was of a modern and urban character. 43 U.S.C. § 1610(b)(2)(B). *See* 43 CFR 2651.2(b)(4).

village meet the eligibility requirements of ANCSA and be within the city, i.e., a part of the city community, as of December 18, 1971, in order to qualify for the exception in 43 CFR 2650.6(a). This interpretation most nearly comports with the language in the regulation describing a qualifying entity, i.e., "a village corporation organized by Natives of a community which is itself a first class or home-rule city." Under this interpretation, only two facts are relevant to this appeal: (1) the Native Village of Nenana was certified as eligible for benefits under ANCSA (see 38 FR 26218 (1973), and (2) it was located within the City of Nenana on December 18, 1971.

Eyak might be read to hold that the Natives of any village, listed or unlisted, must comprise the majority of the residents of a first class city in order for the exception in 43 CFR 2650.6(a) to apply. It cannot be read, as the majority reads it, to require that there be a merger of the village corporation and the municipal corporation.

Anita Vogt,
Administrative Judge,
Alternate Member.

