NATIVE SETTLEMENTS AND NATIVE RIGHTS: A COMPARISON OF THE ALASKA NATIVE SETTLEMENT, THE JAMES BAY INDIAN/INUIT SETTLEMENT, AND THE WESTERN CANADIAN INUIT SETTLEMENT

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ABSTRACT/RESUME

The author describes each of three recent agreements between governments and northern native peoples, the Alaska Native Claims Settlement Act of 1971, the James Bay Settlement, the COPE Agreement still in limbo. The agreements are compared in several areas, and against some potential demands from other groups researching land rights in preparation for the negotiation of claims.

L'auteur décrit trois accords récents conclus entre des gouvernements et des peuples indiens du Nord: la loi sur le règlement des revendications des autochtones de l'Alaska de 1971, la convention de la Baie James de 1975, et le réglement des droits des Inuvialuit sur des terres, l'accord COPE étant toujours dans les limbes. Les accords sont compares dans différents domaines, et contre des revendications potentielles d'autres groupes participant à des recherches sur les droits sur les terres, en vue des négociations.

INTRODUCTION

The increasing natural resource development in North America is extending into the "frontier" areas and is bringing about the loss of Natives' "traditional livelihood," culture and land. This encroachment has brought about conflict between Natives and Government. The conflict has focused on three types of claims set forth by Natives: Aboriginal rightsl (as stated in The Royal Proclamation of 1763), Indian Treaties and script settlements, and bank claims. All of the above claims have, since 1973, been divided into "specific"

and "comprehensive" claims. It is the latter that the present paper wishes to focus upon.

After the last treaty was signed in the 1920's, few non-Native people have given the issue of Native land claims any serious attention (Daniel, 1980). Contrary to the non-Native lack of interest in land claims, Natives have been consistent and vociferous in their attempts to settle land claims, particularly "comprehensive claims" (Morisset, 1979). In an attempt to resolve these claims, the Federal Government has, in the past decade, created the Office of Native Claims (ONC). However, few bands or native organizations have been prepared to directly negotiate with ONC. Data in Table I show the number of specific claims settled and the status of other Native claims in the past ten years.

The ONC was established after the Supreme Court of Canada ruled on the Nishga land claims case. It was at this time that the Federal Government reversed its official policy of refusing to recognize aboriginal rights and comprehensive land claims.

The ONC researches Native claims, receives a ruling from the Department of Justice and then recommends to the Minister of DIAND as to whether or not the claim should be granted. Final decisions are based upon legal interpretation of the claims although it could argue that "political or policy" implications are also part of the criteria.

Recently, multi-national business ventures and various governments are attempting to "extend" the economy to include lands occupied or reserved for Native people. Business firms are proposing pipelines and other forms of development that cross these otherwise "marginal" lands. Governments have been enlisted in attempts to negotiate contracts which would assign or transfer development rights to business firms. Partially as a result, the governments involved (and in some cases the courts, e.g., James Bay) have actively promoted the establishment of new Native organizations in an attempt to create a Native leadership with the capacity to legally enter into negotiations and contracts that would facilitate development (Bodley, 1975).

Native people, because of past behaviour by government and business, have come to resent and resist major developments affecting them as proposed by the multi-national firms. The present land claims are, in a sense, a process to control the techniques

TABLE I: SPECIFIC CLAIMS SUBMITTED FOR SETTLEMENT TO O.N.C. BY YEAR. [1]

	NUMBER OF CLAIMS
	0 5 10 15 20 25 30 35 40 45 50 55 60 65 70
Pre O.N.C. (i.e., 1973 & prior)	
1974	
1975	
1976	
1977	
1978	
1979	

[1] Disposition of specific claims since 1970:

12 . . . . not pursued
16 . . . . referred to another agency such as Indian Affairs Program or Provinces
22 . . . . filed by claimants with federal court
45 . . . . being reviewed for validity
72 . . . . liability denied
57 . . . . liability accepted, and settlement under negotiation
8 . . . . settled
1 . . . . negotiations terminated without settlement

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Source: Office of Native Claims, DIAND, 1980

previously used by government or business (Sanders, 1976) and to retain their way of life, or at least to control the rate and nature of change.

Negotiations with the Federal Government are nothing new to Native people, as they have been going on for well over two hundred years. The Treaties (Numbers 1 to 11) established by the Federal Government in Canada (and to a certain extent in the U.S.A.) with Natives provided for reserve lands, monetary payments, medals,

flags, and other annuities. In return, Natives would agree to surrender their claim to all other land and live in peace (Cumming and Mickenberg, 1972).

Recently, two major "treaties" have been negotiated between Canadian Natives and the Federal/Provincial Governments--The James Bay Settlement of 1975 and the more recent Western Inuit agreement in principle. Each of these agreements were, in large part, extensions and modifications of the Alaska Native Claims Settlement of 1971. To this extent, we wish to provide a description of the major issues in the three agreements and then to point out their similarities and differences.

Specifically, we will look at the Alaska Native Claims Settlement Act passed by the Congress of the United States in 1971, and in Canada the James Bay Agreement in 1975, as well as the COPE-DIAND Agreement in principle of 1978. A brief history of each settlement will be provided as well as a comparison of selected issues.[2] In addition, a brief statement with regard to the proposed Yukon and Northwest Territories Indians' claims will be introduced. We will include with an overall assessment of the claims settlements, as well as their policy implications for future Native settlements and the position of Native culture in Canadian society.

ALASKA NATIVE CLAIMS SETTLEMENT ACT (ANCSA)

Not since the 1968 Prudhoe Bay oil discovery has there been an impact on the social economic structure of Alaska as the ANCS Act. Since the purchase of Alaska by the U.S.A. from Czarist Russia in 1867, the status of the lands occupied by Natives has been a matter of controversy. However, in 1884 legislation was established in Alaska that provided that the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them. While it was established in 1955 by the federal court system that Natives did not have legal ownership rights of the lands they used and occupied in Alaska, it did affirm the right of occupancy and use. However**,** serious attempts to settle the land claims of Natives in Alaska did not begin until 1967, and then not with any real intensity until oil was found one year later. Prior to the actual development of the resources, a land freeze was implemented. Hence, we find that the

settlement with 76,000 Natives was partially a result of moral as well as political and economic forces (Forrest, 1976; Arnold, 1976; Burch, 1979).

Land:

The Natives of Alaska received title to a total of 40 million acres (11% of Alaska) with both surface and subsurface rights. The land is to be divided among 220 village and 12 regional corporations (see map 1). Specifically, the villages receive the surface estate for 18'/2 million acres of land in the 25 township areas surrounding each village. This land will be divided among the villages according to population. The villages also receive 3½ million acres divided among the villages by the Regional Corporation on "equitable principles."[3]

An additional 16 million acres (selected within the 25 township areas surrounding the villages) will be given to the Regional Corporations. This land is divided among the twelve Regional Corporations on the basis of the total area in each region (rather than on the basis of population).

The last two million acres to be given to the Natives come from existing historical sites, e.g., cemetery sites. In addition, land will be given to each of the Native groups that are too small to qualify as a Native village. Individuals who live outside the villages (or groups) will be given the surface estate to 160 acres. Special provisions were also made with regard to four communities that were defined as traditionally Native but have since become non-native. Natives in these towns will be given land near the town but far enough away so as to allow the town to grow and expand .[4] One last clause has been written into the agreement that if the entire 40 million acres cannot be selected from the initially specified 25 township area surrounding the villages, then land near the 25 townships will be included for possible selection by Natives. Natives have control and ownership over these 40 million acres although they cannot alienate their title to it for 20 years.

To be eligible to receive land or money, a person has to be defined as an Alaskan Indian, Alaskan Eskimo, or Alaskan Aleut. This was defined as any person who is a citizen of the U.S.A., of at least one quarter degree Eskimo, Indian or Aleut (whether living in Alaska or not), and must have been born on or before, and living on, the date of enactment of the Act (December 18, 1971).

Financial:

The Natives defined as eligible will be paid $462,500,000 over an eleven year period[5] and an additional $500 million from mineral revenues received from land now owned by the State or Federal Government.[6] All of the initial monies received by Natives are to be tax exempt. However, for those monies invested which bring a profit, taxes will be assessed.

Social-Political Structure:

Natives in each of the villages are to set up a corporation (either profit or nonprofit in form) so as to be able to take title to the surface estate in the land to be owned by the village. In addition, it will administer the land and receive and administer a part of the money settlement.

Besides the village corporations, there are 12 Regional Corporations (R.C.'s) established (see map 1). The R.C.'s (must be organized on a business for profit basis) will receive all of the initial $962 million and then divide it among themselves on the basis of Native population. Each R.C. must also divide among all R.C 's 70 percent of the mineral revenues received by it. Each R.C. must distribute among the village corporations in the region not less than 50 percent of the initial settlement and 50 percent of all revenues received from the subsurface estate.

Natives who are not permanent residents of Alaska may set up a 13th R.C. which, while not receiving any land nor mineral revenues of the other R.C.'s, will receive its share of the initial $962.5 million. Each Alaska Native resident is eligible to hold membership in both a regional and village corporation. As shareholders, these individuals may take part in the management of lands and money controlled by the corporations.

Other Aspects of the Settlement:

The settlement extinguishes all claims the Natives may have had based on aboriginal use and occupancy of lands and adjacent waters. Certain lands (80 million acres) have been withdrawn by the government as potential selections by the Natives' R C., not the village corporations. These are lands that may be suitable for inclusion in a National Park (or are now in a National Forest) Forest Reserve

Wildlife Refuge, or Wild and Scenic River System. For all those lands chosen by Natives, the government maintains the right to give public access and recreational site easements so as to insure the larger public interest is protected.

SETTLEMENTS IN CANADA

Since the last "treaty" between the Chippewa and Mississauga (agreements) in 1923, there has been no comprehensive claims negotiations between natives and Government. There have been a number of specific claims (referred to in the Department of Indian Affairs as "Petitions and Complaints" or 'Claims and Disputes") that have been pursued by Natives, but it was only in the 70's when once again (as in Alaska) mineral exploration and development spurred the Federal Government into dealing with Northern Natives' comprehensive claims.

Since the 60's, Indian organizations have become an important advocate of Native claims in almost all areas of Canada. The level of expertise beyond lawyers also began to have an impact on the claims presented by Natives--people with special skills, e.g., Native languages, political analysts, anthropologists (McConnell, 1980). This change in tactics by Natives has circumvented the traditional reaction of the Federal Government to Native claims, ed., one of general negative response and attacks on the advocates, rather than addressing the issues. For example, prior to 1951 a claim against the Crown required government approval before it could be taken to court.[7] Other constraints existed, such as the authority of the Department of Indian Affairs to forbid the expenditure of band funds on claims, and forbiding personal financial contributions by Indians for the development of claims.

The James Bay Settlement is the first major contemporary land settlement with Native people that the Federal Government has made. In 1973, the Federal Government presented a policy which explicitly recognized Native claims concerning loss of traditional use and occupancy of land in areas where the Native interest has never been extinguished by treaty or superseded by law (Badcock, 1976; Crowe, 1979).

The Federal Government has taken a position that there may be legitimacy to "Indian title," "Aboriginal title," or "Usufructuary

Rights." This position by the Federal Government came about as a result of the decision made by the Supreme Court in regard to the Nisgha claims to land in British Columbia. While the Supreme Court rejected the claims of Natives, it was not on the basis of the actual claims, but rather on the basis of a technicality. Specifically, three judges ruled the Nisgha had no legal claims at this point in history. Three other judges felt that Natives did have a claim. The seventh judge ruled against the Nisgha, not on the merits of the case, but on a technicality and thus the vote stood at four against, three for. The technicality centered on the fact that if the government was to be involved in the litigation, the Attorney General of British Columbia had to give his permission and this had not been done.

To enable Natives to present their claims as effectively as possible, the Federal Government has, since 1970, provided a total of $40.7 million for claims, research and development (forty-two percent in the form of non-repayable contributions, and fifty-eight percent in loans against the settlement of claims). Until 1976, Native claims were presented directly to the Federal Government or indirectly through the Indian Claims Commission, which was established in 1969 to consult with Natives as well as to study and recommend acceptable procedures for dealing with claims. In 1976, a special representative for comprehensive claims was appointed by the Federal Government. This representative has been given a broad mandate to negotiate comprehensive claims on behalf of the govern-ment. (Indian Claims Commission-Canada, 1977) As for specific claims, the final decision and the mechanism for their settlement is handled by O.N.C., but was influenced by the deliberations between the Joint National Indian Brotherhood Cabinet Committee convened in 1974 and ending in 1978. Figure 1 illustrates the number of comprehensive claims presently before the government, and the area encompassed by each.

James Bay Settlement:

It was under the Quebec Boundaries Extension Act (1912) that extended Quebec to its present boundaries and also made clear that the Quebec Government recognized the rights of Native people. Because the Federal Government has no constitutional authority (under the British North America Act) over lands and resources of any province, it cannot pass legislation which would be contrary

FIGURE 1: COMPREHENSIVE CLAIMS. AREAS CLAIMED BY NATIVE ASSOCIATIONS

1. Committee for Original People's Entitlement (C.O.P.E.)
2. Inuit Tapirisat of Canada (I.T.C.)
3. Council for Yukon Indians (C.Y.I.)
4. Indian Brotherhood of N.W.T. (I.B.N.W.T.)
5. Metis Association of N.W.T.
6. Labrador Inuit Association (L.I.A.)
7. Naskapi Montagnais Innu Association
8. Nishga Tribal Council
9. Grand Council of Crees (of Quebec) (G.C.C.Q.)

9A. Naskapi of Schefferville

10. Northern Quebec Inuit Association (N.Q.I.A.)

Source: Office of Native Claims, DIAND, 1980

to provincial options in the area of resource development.

During 1965, the Quebec Provincial Government formally noted that it was conducting studies in the James Bay area of Quebec (see map 2) for potential hydro development. However, it was not until 1969 that a tripartite committee (Indians of Quebec Association, Quebec Government, Federal Government) was formed to handle potential claims problems.[8]

Substantive negotiations did not take place until 1973 when the Natives were granted an interlocutory injuction and work on the project was temporarily halted (James Bay Agreement, 1975). It was at this time that the Quebec Provincial Government made an initial offer of settlement to Quebec Crees and Inuit. Concurrently (1974), the Grand Council of the Cree decided to handle negotiations on their own rather than allowing the Indians of Quebec Association to carry out the negotiations.

Cree are defined as those legally defined Indians as stated in the Indian Act.[9] However, it also includes nonlegally defined Cree (as of November, 1974) and their descendants. At present, it is estimated that about 200 nonlegally defined Cree are in the area. An Inuit is defined as any individual (at the time of the signing) possessing a disc number or is of one quarter Inuit blood and was born in Quebec, or ordinarily a resident of Quebec, or is considered an Inuk by the community to which he/she claims affiliation and such other persons as may be agreed upon.

Land:

The eventual agreement (James Bay Agreement, 1975) creates three different categories of land in Northern Quebec within a territory of 410,000 square miles (60% of the total area of Quebec) (see map 2). The general residential pattern of Cree (Indian) is below the 55th parallel, while the Inuit live above the 55th parallel. While the overall settlement focuses on the more general ethnic residential pattern, groups living outside this general pattern are to be taken into consideration.

Category I will be inhabited only by Cree and Inuit (or others by their consent). The Cree will be allocated 2,000 square miles as reserves. Of this total, 120 square miles will be reserved for the Crees of Great White River (above the 55th parallel). The remainder

will be for all other Crees below the 55th parallel to be assigned on a basis proportionate to the population.[10]

The Inuit of Fort George (south of the 55th parallel) are also entitled to part of this total land area based on their total population of Natives involved. The total amount of land would be about 20 square miles of Category I land. The Inuit of Quebec (north of the 55th parallel) will receive 3,250 square miles in Category I land.

Approximately 1275 square miles of Category I land given to the Cree will be administered under the Indian Act. The remainder of Category I land is to be under provincial jurisdiction over such lands but subject to legal safeguards in favour of the James Bay Cree (Inuit of Quebec).

All land in Category I except that being administered under the Indian Act cannot be sold or ceded except to the Province of Quebec. In addition, Quebec owns all the mineral and subsurface rights of Category I land but extraction of these minerals cannot take place without the consent of the particular band or Inuit community. [11]

A second category of land, 25,030 square miles, (Category II) was established for the exclusive use of the James Bay Cree south of the 55th parallel. This exclusive use is limited to such traditional activities as hunting, fishing, and trapping. A similar area (35,000 square miles) was established north of the 55th parallel for exclusive use of Inuits.

Land in Category II can be taken away by Quebec for the purposes of development provided such lands are replaced or if Native people wish, compensated.[12] The remainder of the area under consideration (Category III) are those lands to which all people (Native and non-Native) have access under ordinary provincial laws and regulations. However, Natives will receive special consideration in that they will be able to hunt, fish, and trap the year around as well as reserving specific wildlife species for the Natives' use. There are other restrictions that are applicable to non-Natives but are not enforced for Natives in the area, e.g., they can cut wood in this area without paying a stumpage fee.

Financial:

Two hundred twenty-five million dollars will be paid to the

natives of Northern Quebec over the next twenty years. One hundred fifty million dollars will be paid to the Inuit for renouncing their land claims by the Federal and Provincial Governments as well as the Crown corporations involved. The first payment of $75 million ($42,250,000 by the Federal Government, $32,750,000 by the Provincial Government), by way of indemnities, will be made over a ten-year period. The second $75 million will be paid by the James Bay Energy Corporation as royalties on hydroelectric power generating capacity installed after projects now underway are completed.[13]

An additional $75 million will be given to the Native people in a lump sum payment of Quebec Government debentures. There will be no tax on the capital amounts paid to the Native people under the terms of the overall agreement. All the monies to be paid to Natives are placed in a corporation or other legal entities established under Quebec law. These entities are to be controlled by the Native people, federal and provincial representation and a board of directors (Rouland, 1979, James Bay Agreement, 1975).

An indirect financial compensation to Native people centers on a plan for a guaranteed income. This program financed by the Quebec Government, will offer a guaranteed income as well as financial incentives to all people who wish to maintain their traditional way of life.

Social-Political Structure:

The Cree and Inuit communities of the region will be selfadministered. The local councils established will have a structure similar to those of municipalities elsewhere in Quebec.[14] With these exceptions, the entire region (see map 2b) will be under the jurisdiction of the Municipality of James Bay. Native involvement in the regional municipality occurs in that the Cree have three members to the council and the municipality will have three members. This council is known as the ZONE Council and will have power to pass bylaws (subject to veto by the James Bay Municipality). North of the 55th parallel, thirteen Inuit communities will form the Kativik Regional Government.[15] The basic interest of these regional governments centers on some aspects of Category II land.

A Native development corporation will be established which will be owned and administered by Native people. A portion of the

funds would be divided among the local communities for community use and local development. A portion of the shares of the corporation could be owned on a collective basis by the communities and a portion could be held by individual Native shareholders with a prohibition to alienate such shares for a period of twenty years.

Other Aspects of the Settlement:

A joint body, the James Bay Advising Committee on the Environment, will be created to review environmental problems of the region. The Cree, Federal and Provincial Governments will appoint four members each. A thirteenth member will be the chairperson of the Hunting, Fishing, and Trapping Coordinating Committee.[16]

The James Bay Development Corporation established a James Bay Native Development Corporation in an attempt to promote economic and social development of the Cree. This corporation (with Native and government representation) will try to aid and stimulate various kinds of commercial and industrial development for Cree. A Joint Economic and Community Development Committee will review and make recommendations concerning the various programs related to the social and economic development of the Cree people.

COMMITTEE ON ORIGINAL PEOPLES' ENTITLEMENT (COPE)

The history of COPE is short (1970) and, although it has performed a vital role for all Inuit in the North, it now only represents the interests of Western Inuit. The initial role of COPE was one of research to provide: (1) a united voice for all original peoples of the Northwest Territories and, (2) to work for the rights of the original people. Part of their efforts resulted in the massive three volume Land Use and Occupancy Mapping. This represents traditional land use, identification of specie, and occupancy of Inuit in the Western Arctic (COPE/Government Working Paper, 1978) (see map 3a).

However, with the emergence of the Inuit Tapirisat (1972) representing Eastern Inuit, COPE focused its efforts on the Western region and began to take on a political role for Inuit (Inuit Tapirisat of Canada, 1974; 1976). The test of their political role came when they began to carry on negotiations with the Department of Indian

Affairs and Northern Development over land settlements in the Western Arctic.

After the initial land claim "agreement" was signed by the Liberal Government, they were defeated and the Progressive Conservatives came into power. Within one year they were defeated and the Liberals were re-elected. By early 1981 COPE broke off negotiations on a final accord with the Federal Government and accused Ottawa of "bad faith in negotiations." COPE claims that internal documents from the Department of Indian Affairs demonstrate that the Minister wanted to unilaterally make changes in the agreement and force Natives to accept "compromises."

Land:

Inuit will receive title in fee simple to 4,200 square miles of land selected in the Western Arctic Region[17] in blocks of 700 square miles near each of six communities.[18] They will also receive a single block of 800 square miles of land (with rights described above) in the Cape Bathurst area (see map 3b).

An additional 32,000 square miles (less any mineral rights) will be selected from the Husky Lake area (10,000 square miles) and from traditional lands of the Inuvialuit in the Western Arctic (22,000 square miles). The Inuit will also receive fee simple to the beds of all lakes, rivers, and other water bodies in the lands selected.[l9]

Title to Inuvialuit lands may not be conveyed except to other Inuvialuit individuals or corporations controlled by Inuit or to the Crown's right in Canada. Any lands expropriated by the Federal Government will be covered by alternative lands, considered acceptable by the Inuit or by monetary compensation.

The lands selected are within the Western Arctic Region and are selected from those lands that have been traditionally used and occupied by Inuit.[20] In addition, several criteria were used for final selection: (1) import to Inuit for traditional pursuits, (2) import for Inuit for development, e.g. tourism, (3) historic Inuit sites or burial grounds, (4) areas that might be future Inuit community sites, and (5) lands that do not contain proved oil and gas reserves. All land selected shall be transferred to the Inuvialuit Land Corporation.

There will also be a Land Use Planning Commission[21] and Land Use Applications and Review Committee for the Western Arctic Region. The Commission will prepare a land use plan (and coastal planning) as well as assess any large scale or long term activities in the area. The Committee (a technical committee) will advise government on the administration of land use regulations as well as develop systems and procedures for administering environmental controls.

Financial:

The Federal Government will make capital transfer payments to either the Inuvialuit Investment Corporation or the Inuvialuit Development Corporation. The schedule of capital transfer payments will begin in 1981 with an initial payment of ten million dollars. From 1982 to 1984 annual payments of $1 million will be made. Five annual payments of $4 million will be made from 1984 to 1989. Then, from 1990 to 1993 annual payments of $16 million will be made. A final payment of $21 million will be made in 1994. The total value (1978 dollars) is $45 million. The financial compensation paid to the Inuit is to be tax exempt but any income earned from this money will be subject to taxes.

Indirect economic benefits for the Inuit have also been outlined in the Agreement. These agreements center on (1) the Federal Government to take measures so as to establish Inuit priority with respect to employment and contracts in the region, and (2) the implementation of specific loans, training programs and marketing assistance. These programs shall only last until the year 2000. In order to enhance Inuvialuit participation in resource development, the Federal Government will allow the Development Corporation a specified number of prospecting permits (10) and mining claims (25).

Individuals eligible to participate in the settlement are those defined as Inuvialuit. This means those people known as Inuvialuit, Inuit, or Eskimo who claim traditional use and occupancy of the land in the Western Arctic Region and are represented by COPE. The specific criteria stated to establish eligibility is that as of the date of the settlement legislation that person is alive, a Canadian citizen and is of Inuvialuit ancestry and was born in the Western Arctic Region and/or that area of the Yukon Territory traditionally used and occupied by the Inuvialuit and/or Inuvik, or has been a

resident of the above areas for at least ten years or, if under ten years of age, is ordinarily a resident in the above areas.[22] The estimated number of people who meet these criteria is 2,500.

Each person enrolled in the Inuvialuit Land Rights Settlement will share equally in the benefits received by various corporations. Thus, each person enrolled will be entitled to receive a life interest only in the same number of equity shares which will not be transferable. Children of Inuvialuit enrolled under the Settlement will be entitled to share equally in all of the benefits of the settlement except they will become entitled to receive a life interest in equity shares in the Investment Development Corporation upon reaching the age of 18 years.

Social-Political Structure:

The Agreement provides for the establishment of a number of Inuit corporations. The Inuvialuit Development Corporation will act as a holding corporation of the Inuvialuit Investment Corporation and will carry on business ventures and investments. The Inuvialuit Land Corporation will hold and control title to Inuvialuit lands. Each community will also establish a non-profit community corporation.

The equity shares in the Inuvialuit Land Corporation will be owned by the Inuvialuit Development Corporation. Any profits that result from developments of Inuit lands will be equally shared by all Inuit through the various corporations.

Other Aspects of the Settlement:

A basic goal of the Settlement is to protect and preserve the Arctic wildlife and environment. Hence, a number of provisions have been included to insure the maintenance of the Arctic ecosystem.

A second factor is that individuals who are not enrolled in the Settlement as Inuit yet can demonstrate that they have hunted and trapped in the area will be allowed (until their death) to continue their activities. A third major component in the Settlement is the creation of a social development program pertaining to social concerns such as housing, health, welfare, education, and mental health. The Federal Government will provide the programs up to $500,000 per year to a total of $7.5 million.

The following three "proposals" are at very rudimentary stages with regard to actual negotiations with the Federal Government. However, the fact that they exist and are being taken seriously by the government suggests that Native ownership and their claims are a force to be reckoned with.

Council for Yukon Indians (CYI):

In 1973, the Yukon Indian Brotherhood presented their proposal to the Federal Government relative to the problems of Northern development. Along with the Yukon Indian Brotherhood, the Yukon Association of Non-Status Indians formed the CYI to negotiate the proposal. While there are specific points in the original (1973) proposal that have changed since then, much of it has remained intact (Yukon Native Brotherhood, 1973).

By 1976 a draft "Agreement in Principle" was drawn up by Natives in the Yukon (both status and nonstatus) and a committee acting on behalf of the Federal Government. From what little documentation and evidence is available, it would seem that Cabinet approved and accepted the agreement but it was rejected by the membership of the Yukon Indian organization.

Like the previous agreements we have discussed, the Agreement would extinguish Native land rights. The basic philosophy of the document (Together Today for our Children Tomorrow) would be to guarantee Indian identity and to provide Indians with an economic base equal to those of other citizens. Certain lands would be allocated to Indian people for their residential use, traditional pursuits, historic preservation and economic development. Land selections would be made prior to a final settlement. Some land (1,200 square miles) would be given Natives fee simple while other lands (17,000 square miles) would give Natives exclusive hunting, fishing and trapping rights. After the land settlements are made, an Indian controlled corporate structure (similar to that in Alaska) would take over.

With regard to fiscal affairs, the document only makes reference to a gross royalty on all natural resources. However, additional documents suggest that there would be a cash compensation ($70 to $90 million over a long period of time) as well as tax exemptions for certain lands. Five years after the initial agreement was drafted

there has been no further agreements between the Council of Yukon Indians and the government.

Metis Association of the N.W.T.:

In 1977, the Metis made their formal proposal (Our Land, Our Culture, Our Future) to the Government of Canada with regard to their claims in the North. The central philosophy of this proposal is to preserve the land and the culture. This proposal, unlike others we have discussed, does not make a distinction between the lands to be retained by Metis and those to be given up. Ownership is conspiciously absent from the document. Rather, they focus on the issue of CONTROL. Control of land would take place by action of a Native land use regulatory board. All lands under the control of this group would be subject to the veto with regard to any proposed development for the land (Daniels, 1979).

There would be a cash payment as compensation for past losses. Some proportion (as yet unspecified) of this money would be distributed to older people now, while the remainder would be invested for future use--a kind of "Heritage Fund" for the North. A second financial compensation, similar to the James Bay Agreement, would be in the form of a guaranteed annual income for those who prefer to retain and live in the traditional lifestyle.

Indian Brotherhood of N.W.T.:
(March, 1978 they changed their name to Dene Nation)

In 1976, the Dene proposed their Agreement (Dene Declaration) in principle on land claims. Their proposal seeks a formal recognition of their rights as a people and a political entity. They demand the right to recognition, self-determination and ongoing growth and development as a people and as a nation. The Federal, Territorial and various Provincial Governments have reacted negatively against such a proposal.

The underlying notion is that aboriginal title to Native land must be officially recognized and not extinguished. They wish to retain ownership and control over much of their traditional land. The Dene would have total control over decisions concerning developments on their land.

Financial arrangements would be in two forms. One, any developments on Dene land would result in some payment to Dene.

Two, the Government of Canada would compensate the Dene for past use of their land.

In both of the above cases, the Federal Government has recognized the legitimacy of the land claims but rejects the "political" component of the claims. Recently the Federal Government has refused to continue discussions with the two separate groups (Metis and Dene). Only if they merge into one group will the Federal Government continue negotiations.

Summary:

Since 1973 the Federal Government has publically indicated that they recognize comprehensive land claims and will "negotiate" settlements but, at the same time, it continues to support development projects that threaten the land and which Natives argue is the very basis of Native culture and survival. Natives are told they must make one of two choices in terms of development: development as industry and government dictate it, or return to a total subsistence living. They are not given a third (and viable) alternative, which is to control development (and control of land is an integral part) and use it as a tool to evolve their own society.

Non-natives assume that economic growth is an unquestionable good and large-scale resource extraction is necessary. This policy was most forcibly stated in the 60's by Diefenbaker, but it still remains the guide-line for today.[23] As Hamelin (1979) points out:

> . . . white colonization of Canada has not permitted the indigenous peoples to develop fairly and that an excessive degree of dependence has been created . . . . A logical method of redressing the situation would be to provide the Amerindians with powerful economic means, the utilization of which they could decide for themselves. (P. 202)

There are four methods that traditionally have been used to resolve the conflicts that now exist between Natives and non-Natives: administrative, litigation, legislative and negotiation. The administrative procedure is to form a "commission" to study the problem and advise government. Commissions generally do not have the power to make decisions, only recommendations. Cummings (1976) clearly

demonstrates that litigation is also unacceptable. The courts must take a yes-no approach to the claims, when it would seem that this is an unacceptable approach to the problem. In addition, litigation is expensive, time-consuming, and abounds with "technical uncertainties" which require further litigation. Legislation allows the parties to resolve the issue without taking a yes-no approach, and encompasses the fourth alternative--negotiation. (Pimlott, et al., 1973)

Because of the stance the Federal Government took in 1969, Natives have looked to the courts for a settlement. However, partially because of the decisions involved in the James Bay and Nishga cases, they are now moving toward a legislative negotiated approach. It remains to be seen whether or not the Federal Government will agree with such a procedure.

The negotiations now taking place have three different perspectives which can guide their approach in the negotiations. extinguishment, modified extinguishment and recognition of Native title to land (Hunt, 1978). To date, all of the negotiations entered into have taken the first perspective.

The settlements discussed above have one common element--the surrenders made by Native people. In the settled cases, the Natives ceded, released, surrendered and conveyed all their Native claims, rights, titles, and interests to the land under consideration and under the settlement all claims, rights, titles, and interest will cease to exist. In return for the above, the Natives received land, financial compensations, and special promises or programs.

The settlements are predicated on the assumption that "assimilation" is inevitable and necessary. The settlements have built-in clauses which suggest that by the turn of the century, Natives will have integrated into the larger social system and thus no longer warrant special attention. All three settlements move on the implicit assumption that Native culture is dying and it will only be a short time before complete acculturation takes place.

Prior to the COPE-DIAND Agreement the proposals for settlements of Native claims in the Canadian North have included proposals to restructure the Northwest Territories' government. Natives have also argued that the Northwest Territories be divided into new political regions in which the Native populations would have the dominant voice in political matters.

This approach was considered explicitly in the Carrouthers Commission of 1966-77 (Canada 1966) and implicitly in the Berger

Report (1977) and rejected by both. While the Northwest Territories' government has always opposed such an approach, the Federal Government has only recently stated its position in its publication of "Political Development in the Northwest Territories." The approach basically agrees with the territorial government's position and it argues that problems of political development are matters separate from the resolution of Native land claims.

The passage of the ANCS Act in 1971 would set the stage in terms of the contents of settlements to be used by the Canadian government.[24] The Federal Government has tried to implement a non-adversarial adminstrative approach to the settlements. This approach has been based on the Federal Government's definition of their relationship to Native people--trust, guardian/ward (Daniel, 1980). Litigation has not been chosen by the Federal Government as an appropriate process to the settlement of Native claims. Using the non-adversarial-administrative approach, the Federal Government felt that settlements would be made easily and cheaply without lengthy negotiations or court battles.

Until recently, Indians have chosen to approach the claims issues from an adversarial approach. Their past dealings with the Federal Government have more than adequately convinced them that anything less than an adversarial approach (forcing the government into the courts) would mean their claims would, as they have for the past hundred years, be unresolved. They have argued that administrative (and, in some cases, legislative) settlements are subject to the constraints of time and space, e.g., political considerations may result in a "good" settlement at one time with one group, but not at a different time and place. The adversary approach-lends itself to the litigation process, but Natives have been hampered in their efforts because of a lack of money and "evidence."

From the two approaches outlined above, a form of negotiations (some structured, some unstructured) has emerged with legislative authority to implement the settlement. However, the government has viewed the negotiation process as a form of implementing broad social and economic policies. On the other hand, some Natives have been accused of using the process of negotiation as a forum for promoting political ideologies. Until there are clear rules of pro-

cedure as to how the negotiations should proceed, the terms of reference and agreements as to how decisions are to be made, the negotiation-legislative process is also doomed to failure. The Federal Government, in the negotiations, must be willing to compromise in final settlements; Natives have been forced to compromise for the past one hundred years.

The Government of Canada is committed to an Extinguishment Approach. It intends to retain ownership and control of nonrenewable resources. It has, however, been willing to negotiate ownership and control of some renewable resources and of some lands to be transferred to Native groups.

The second major obstacle for agreement between the Federal Government and Native groups lies in the area of political control. In the cases where Native people propose political control (along racial lines), the government has flatly rejected these proposals. On the other hand, the Federal Government is willing to discuss decentralization to local communities and residence requirements for political participation.[25]

Natives have become adamant that any settlement made will provide for some maintenance of identity and self-determination while at the same time allow for orderly development in such a manner that it helps them. They have tried to accomplish the above by utilizing a negotiation stance that has the following elements: ownership of land, special hunting/trapping rights, access and use of traditional lands, financial compensation and finally some mechanism to ensure Native participation (at all levels) in the development process.

Thus far, government and businesses have objected to meeting all of these conditions or only minimally meeting some of the conditions. However, it is equally clear that Native people are convinced that these conditions must be met if Natives are to achieve the difficult goals of preservation of identity and integration into mainstream Canadian society.

NOTES

1. "Aboriginal title" is generally interpreted as the territorial range rights of an identifiable nomadic group over a wide but definable area. The concept has not been defined in Canadian, British, or International law (Brown and Maguire, 1979).

2. For a more legalistic interpretation of land claims, and for comparisons with land claims outside North America, see Hunt (1978).

3. The regional corporations have received the subsurface estate of the 22 million acres patented to the villages.

4. Subsurface rights for all land in this last two million acre category are held by the Regional Corporation.

5. The funds will come from the U.S. Treasury.

6. This is basically two percent of the revenues from mineral leasing activities on both state and federal level.

7. The reader should consult the Debates of the House of Commons, Canada January 29, 1953, p. 1471.

8. The Northern Quebec Inuit Association has always acted for the Inuit of the area.

9. The area is inhabited by about 20,000 including 6,000 Crees and 4,000 Inuits.

10. The Eastman Band will be given an additional 20 square miles of reserve land and an additional 30 square miles of Category II land. Moreover, the band will obtain a further 75 square miles of Category I and 100 square miles of Category II land.

11. Soapstone deposits will be owned by the Natives.

12. Quebec has the right to take away up to 5,000 square miles from the Inuit for the purpose of development without being obliged to replace such lands or compensate the Inuit.

13. If the corporation by the end of 1986 has undertaken no new power projects, the Quebec Government will be obligated to pay the second $75 million.

14. These are communities situated on Category I land.

15. Each community will have one councillor on the regional government.

16. A government/native body that has been created to govern the harvesting activities of Native people in the region.

17. The region is defined to the west by the political Yukon/N.W.T. boundary. Although this omits the Yukon North Slope, coast and offshore, that area is part of the traditional region that the Inuit continue to use. The southern boundary follows the tree line. The South Eastern portion separates the land use area of the Paulatuk and Homan Inuvailuit from that of the Inuit of Coppermine and Cambridge Bay. This boundary is carried north along a meridian to preserve the symmetry and integrity of the region.

18. This includes all minerals, whether solid, liquid or gaseous as well as all granular materials.

19. Some exceptions are made, e.g., navigable rivers. In addition, the Inuvialuit must provide sand and gravel needs for communities and the municipal needs of Inuvik and Tuktayaktuk.

20. This was determined by the Land Use and Occupancy Study that preceded the settlement.

21. This committee will have two Inuit, one from each of the Federal and Territorial Governments and a fifth to be appointed by the Minister of Indian and Northern Affairs.

22. An enrollment authority, comprising two representatives of COPE and one from the Federal Government, will be responsible for the entire enrollment process. Any person wishing to appeal a decision of this committee may do so at the Federal Government's expense.

23. I am indebted to one reviewer of this manuscript, who pointed out that it may be premature to view these settlements as guided by policy. Rather, he argued that it could be participants trying to put words to a direction in which they discover themselves to be moving while in the process of nego-tiating. Thus the directing "force" may be the cumulative impact of a theatre of legal adversaries in a particular context.

24. The Canadian Government used the United States Indian Claims Commission as a model upon which they built the ONC, even though they recognized differences in the nature of claims being presented by Natives.

25. Even though the settlements are very similar, the impact upon Natives may be differential because of the difference between state and provincial political, economic and legal structures. The impact of the borough struc-ture upon Natives' social and economic well-being is thoroughly discussed by Morehouse & Leask (1980).

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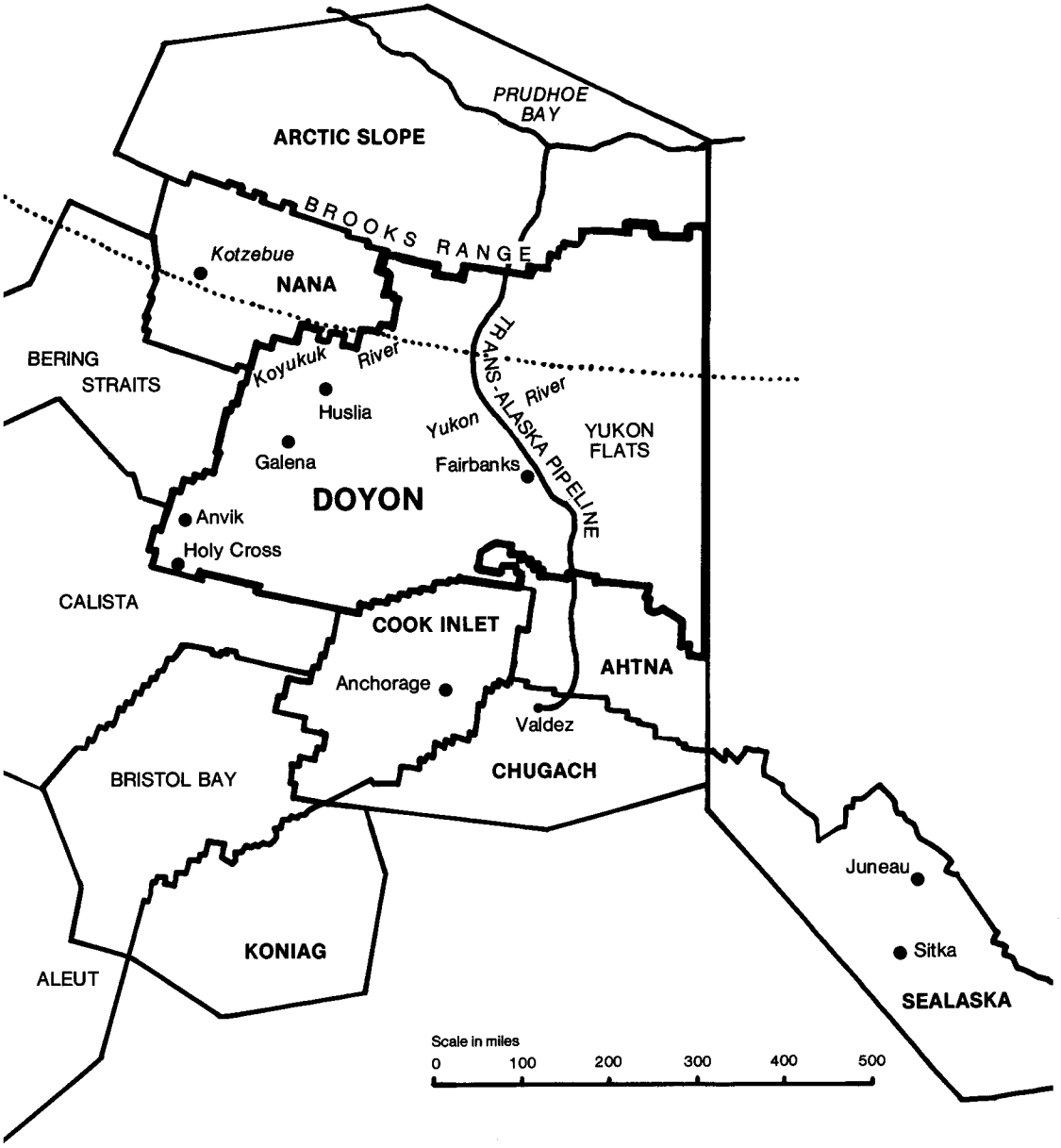
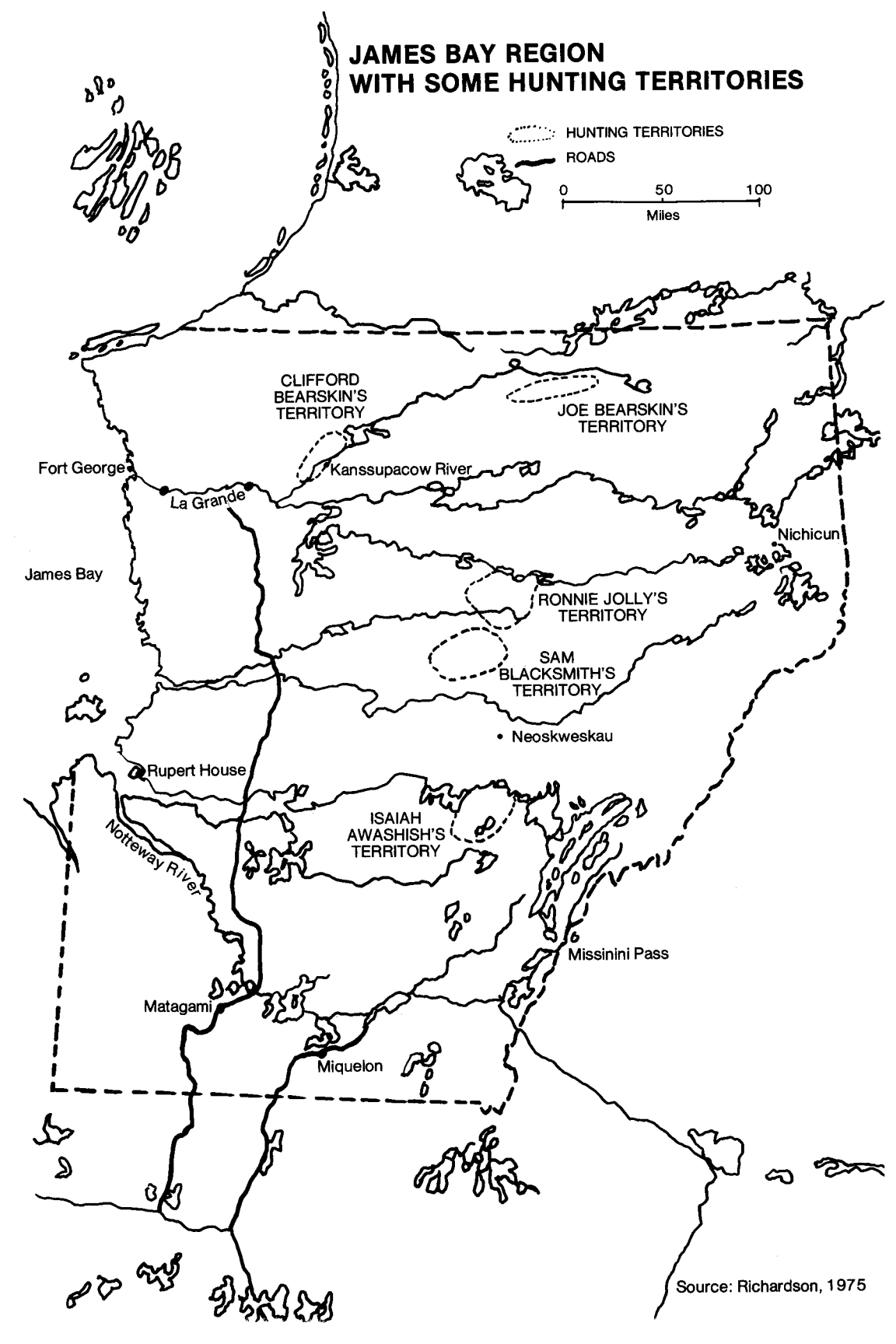
NATIVE DEVELOPMENT CORPORATIONS AND REGIONS IN ALASKA




JAMES BAY REGION
WITH SOME HUNTING TERRITORIES
HUNTING TERRITORIES
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BEARSKIN'S
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JOE BEARSKIN'S
TERRITORY
Fort George
Kanssupacow River
La Grande
Nichicun
James Bay
RONNIE JOLLY'S
TERRITORY
SAM
BLACKSMITH'S
TERRITORY
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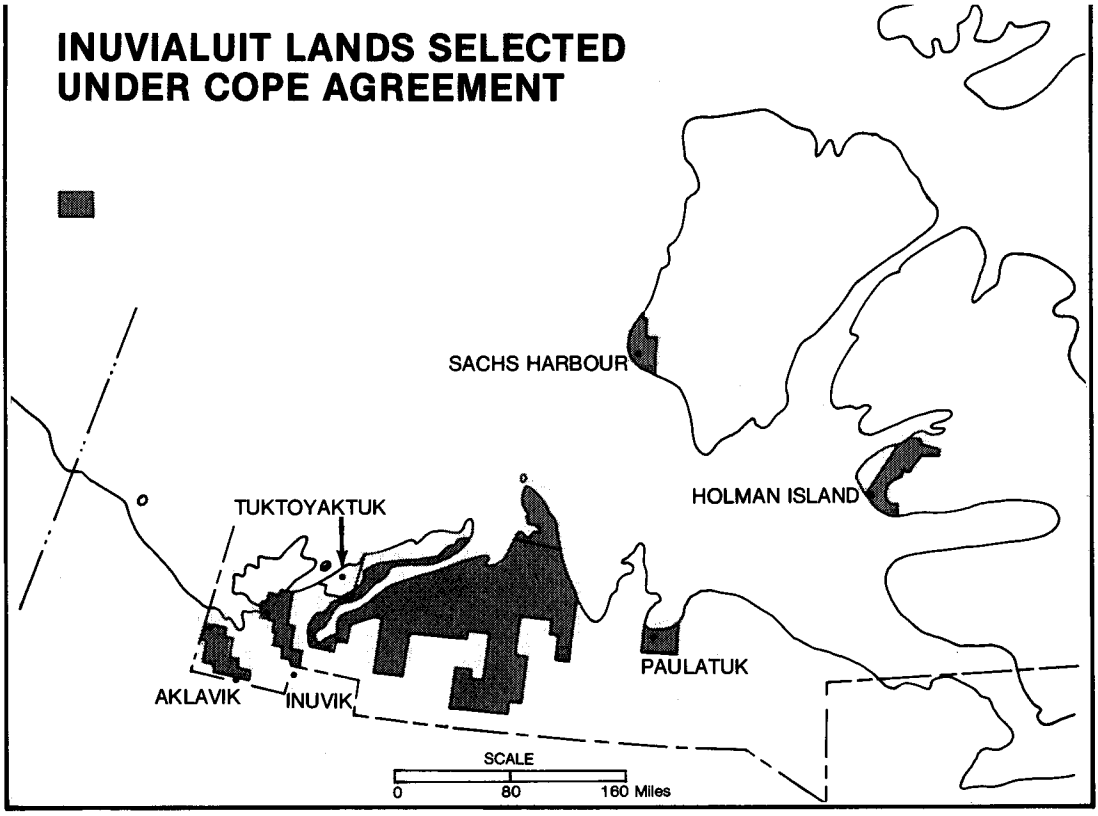
Source: Richardson, 1975


INUVIALUIT LANDS SELECTED UNDER COPE AGREEMENT
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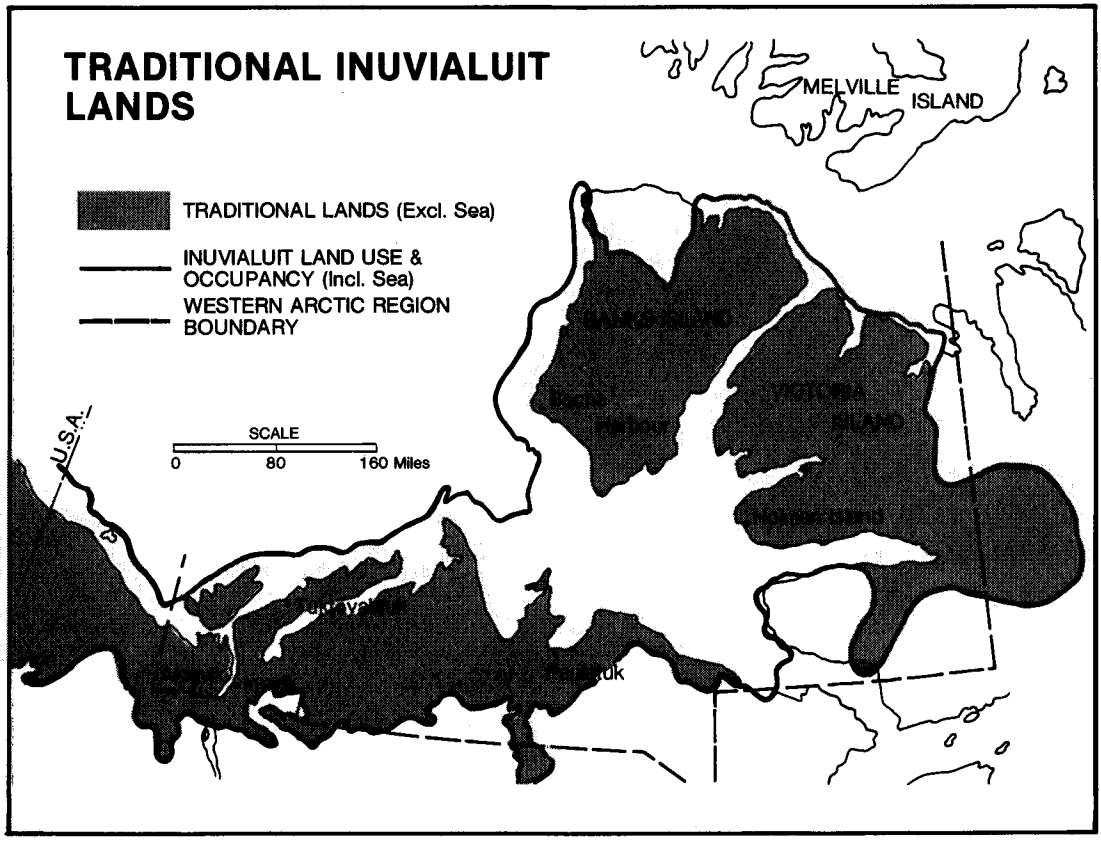
TRADITIONAL INUVIALUIT LANDS
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