# THE ANNOTATED ANCSA

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## INTRODUCTION

"The Annotated ANCSA" was written by Mr. Paul Ongtooguk, presently a teacher at the Northwest Arctic Borough School District and edited by staff at the Alaska Department of Education. Mr. Ongtooguk brings to this work years of study on ANCSA-related matters, as well as a wide-ranging teaching experience on the subject.

A graduate of Nome-Beltz High School, Mr. Ongtooguk attended Northwest College in Kirkland, Washington. He received his B.A. degree in religion and philosophy in 1979. Committed to an intense course of study, he proceeded to earn another B.A. Degree from the University of Washington in the summer of 1980, this time in history. After teaching for a year at Seattle Preparatory School, while taking a substantial load of education courses, Mr. Ongtooguk received his teaching credentials in the summer of 1981. By fall he was ready to assume the responsibilities as a curriculum specialist for the Northwest Arctic School District in Kotzebue.

Because of the newness of the subject, Mr. Ongtooguk's study of the Alaska Native Claims Settlement Act was self-directed. He has stated, "While going to college, the continuing effort at self-education concerning ANCSA began. With intentions of being a teacher someday, it seemed sure that upon returning, I would be expected to teach ANCSA. The University of Washington did not offer a class on the subject, so learning about it had to be independent work.

"It seemed reasonable to assume that while I was away, all sorts of information would be taught about ANCSA through public schools, community colleges, and the University of Alaska. It was very surprising to find, on returning, that many people were just as much in the dark about ANCSA in 1981 as in 1971."

Mr. Ongtooguk: has taught ANCSA to students at Kotzebue High School since 1981. He has also taught this subject at the University of Alaska-Fairbanks Rural Alaska Honors Institute. In addition, he has held numerous in-services and presentations around the state for teachers and administrators. He has also worked closely with some of the Native corporations, holding seminars with corporation managers and shareholders.

*Note: In "The Annotated ANCSA," particularly important and/or difficult provisions of ANCSA have been selected for annotation. The annotations appear immediately after the section being discussed. It should be noted that sometimes in legal documents such as ANCSA, archaic uses of capitalization and punctuation are used. The Act is printed exactly as published, except the annotated portions are underlined for the reader's convenience. The annotations employ standard capitalization and punctuation.*

# HOW THE ALASKA NATIVE CLAIMS SETTLEMENT ACT CAME ABOUT

*By Paul Ongtooguk, 1998*

Alaska Natives have traditionally used and occupied the land of Alaska for thousands of years. According to archaeologists, anthropologists, and their own oral histories, each Alaska Native group used only those areas traditionally controlled by them. Land was generally held by the group as a whole, with perhaps the exception of individual hunting or fishing camps. These boundaries of control were not based on written documents or maps, but on actual traditions and practice.

Essentially this group ownership is what lawyers describe technically as "traditional use and occupancy." The problem with this type of ownership is that there will be no receipt or written title. This was the dilemma that Alaska Natives faced, when, in the late 1950's and early 1960's, the State and sectors of the federal government began encroaching on what was felt by Alaska Natives to be their traditional lands.

Native leaders, in 1966, formed a state-wide organization called the Alaska Federation of Natives. AFN pressed Congress towards settling the un-resolved issue of Alaska Native land ownership. Between 1966 and 1971, the struggle to resolve this issue ensued. A compromise was reached over Alaska Native land claims on the 18th of December, 1971.

The principal parties that shaped the compromise of ANCSA were the federal and state governments, the oil companies, conservationists and the Alaska Federation of Natives.

ANCSA is the most important legislation for Alaska since statehood. Its effects have been, and continue to be, felt by all the citizens of this state. Beyond our state, other countries and indigenous groups around the world are carefully following the results of this historic document.

## DECEMBER 18, 1971

The passage of this Act settled the issue of what lands Alaska Natives owned by right of traditional use and occupancy. The phrase "traditional use and occupancy" means that the land was used for subsistence and occupied for a very long time. The Act was based on the right of Alaskan Natives to the land they had used and occupied for generations and generations. The Act also stated the terms by which Alaska Natives would give up much of their land.

The date the Act actually passed is crucial to many portions of ANCSA. The issue of "New Natives," the protections of Native corporation shares and other issues are based on this date. For Alaska Natives, this is arguably the single most important date in Alaska history since statehood.

ANCSA was signed into law by President Nixon, after the Alaska Federation of Natives approved the bill by a vote of 511 delegates for, and 56 against.

## DECLARATION OF POLICY

Section 2 lays out the goals and intent of Congress by the passage of ANCSA.

> *Section 2(a) there is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims;*

Congress is simply stating that Alaska Native land claims needed to be dealt with in fairness and with justice by the United States.

> *Section 2(b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska;*

It was hoped that a congressional settlement would avoid lengthy court proceedings over Native claims. The single most important and immediate need behind the passage of the Land Claims Act was the Alaska pipeline. The oil companies, unions, construction contractors, and the state treasury were all pushing for a settlement on the land issue, so that the pipeline could be built and the oil riches would begin to flow. Passage of the Act was necessary, because the pipeline could not be built across Alaska until it was determined who owned the land.

Congress would settle Native land rights on the basis of how much money and land Alaska Natives needed.

ANCSA extinguished aboriginal title to lands in Alaska. As usual in cases of extinguishment of aboriginal title, Alaska Natives received fee simple absolute title, or traditional western title, to a smaller area of land and the sum of $962.5 million as compensation for this extinguishment.

How did Congress determine the amount that would be paid for land compensation?

Congress hoped that the ANCSA legislation would avoid long and expensive court cases. However, the Act has been a windfall for lawyers. Corporations, Native shareholders, the State, the federal government, environmentalists, and sportsmen have had conflicts over the Act, resulting in constant litigation. The intent, proper interpretation, and procedures for carrying out the various provisions of ANCSA are an area of continuous judicial review.

Congress wanted to avoid establishing any new Alaska Native institutions. The Native regional and village corporations are Native because stockholders eligibility and restrictions make them so. On January 1, 1992, however, [conf. Section 7(h)(3)) as the law now stands, those restrictions will be lifted.

The stock will then be available for public sale. If enough stock is sold to non-Natives, a corporation might soon be no more "Native" than Ford, ARCO, or EXXON. For this reason, the regional and village corporations are not permanent racially defined institutions. It should be emphasized that, although ANCSA does not create any new permanent Alaska Native institutions, it does not extinguish already existing Native governments or other organizations.

Congress did not want more reservations to be created by ANCSA. At the very time Congress was attempting to settle Alaska Native Land Claims, Midwestern states were fighting Indian reservations for valuable water rights, and northwestern states were protesting Indian fishing treaty rights. In both instances, the states were generally losing. In reaction to these court decisions, Congress wanted to avoid future recurrences of this sort by preventing the creation of reservations in Alaska. In fact, ANCSA eliminated several previously established reservations and reserves [conf. Section 19.1.] **For a comparison with a typical treaty between the United States and a tribe see the Point Elliot treaty of 1855.**

Congressional studies had been done on the economic status of Alaska Natives. It was understood that, in order to continue their traditional subsistence lifestyle, Alaska Natives would need access to large areas of land. They would also need sources of money for economic development. At the time, Alaska Natives wanted to be able to participate in the economic system of the nation. Although the sum of the $962.5 million was a somewhat arbitrary amount, it was felt that this amount would be sufficient to allow the Native corporations to establish themselves as viable entities. It was a compromise, between the Senate and the House, of what each considered to be the "economic and social needs" of Alaska Natives. The $962.5 million figure was not based on the "worth" of the land, but on what Congress felt the country could afford to pay. When Congress considered the issue of Alaska Native land ownership, they did not treat it on the basis of economic worth, as they would their own homes. Rather, they introduced the concept of economic and social need for determining the value of the land. Fredrick Paul, an attorney for the North Slope Native Association, made the point quite well in an essay dated March 20, 1969.

> *"Why is it that if the sovereign wants to build a road over a white man's property, automatically one knows that the sovereign must pay him its value; but when the sovereign wants Indian lands, one worries about the need of the Indians and justifies payment and the amount thereof by the criterion of need?"*
>
> *Klondike '70*

Although not all of the land is rich in mineral resources, twelve billion dollars in oil was extracted from those same lands in 1981. Some may feel, therefore, that the amount was too small. It may be noted that aboriginal title did not usually involve subsurface rights.

Several Alaskan Native leaders and AFN were generally opposed to reservations and reserves. They felt corporations would give Alaskan Natives more direct control. The power of the federal government, as demonstrated through the BIA on reservations, was considered an unacceptable option. AFN attorney, Barry Johnson, urged the corporation structure as the preferable alternative, as early as 1968, at the U.S. Senate Interior Committee meetings held in Anchorage.

## DEFINITIONS

Section 3 defined many of the terms used within ANCSA. The reader who reviews these definitions will avoid needless confusion concerning many parts of the ANCSA document.

> *Section 3(a) "Secretary" means the Secretary of the Interior;*

This refers to the Secretary of the Interior. The office is within the President's cabinet. The Secretary of the Interior is appointed by the President with Senate approval.

It is useful to note the many roles and the powerful effect the office of the Secretary of the Interior has had on ANCSA, as you read through this text.

> *Section 3(b) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Native.*

This defines who is an Alaska Native for the purpose of ANCSA. The standard practice of the Bureau of Indian Affairs is to consider any Native American of one-fourth or more Native blood to be eligible for Federal Services. Persons of one-fourth Native blood would include those who had at least one full-blooded grandparent. However, any blood combination resulting in at least one-fourth Native blood would qualify.

It is worthwhile to explain the exception to this provision. The Metlakatla Indian Community is in a unique position regarding ANCSA. The Metlakatla Reservation of Annette Island in Southeast Alaska was the only Alaska reservation or reserve not extinguished by ANCSA. Since that community preferred to stay as a reservation, they receive no benefits from ANCSA [conf. Section 19 (a)].

> *Section 3(b) (continued) ... It also includes, in the absence of proof of a minimum blood quantum any citizen of the United States who is regarded as an Alaskan Native by the Native village or Native group of which he claimed to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Any decision of the Secretary regarding eligibility for enrollment shall be final;*

There was another way to be considered Native. If your village said you were a Native, you were a Native. This subsection has often been informally called the "Aleut provision." Flore Lekanof, an Aleut leader, was a strong advocate of this language. Flore pushed this provision as a means to protect many Aleuts from having to do long, involved genealogical researches. It should be remembered that Russians and other Europeans had been in the Aleutians for over 200 years. During that time, they lived and intermarried with Aleut families. This language benefited not only Aleuts, but many other Alaska Natives who otherwise would have been excluded from ANCSA.

> *Section 3(c) "Native village" means any tribe, band, clan, group, village, community or association in Alaska listed in Section 11 and 16 of this Act, or which meets the requirements of this Act, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives;*

This says that Sections 11 and 16 of ANCSA list the Native villages for the purpose of ANCSA. In Section 11 and 16, the qualifying villages and communities which could become village corporations were identified.

What is the difference between a village and several Native families living in close proximity?

For ANCSA, a village was defined as twenty-five or more Alaska Natives on the 1970 census.

> *Section 3(g) "Regional Corporation means an Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of this Act;*

Regional Corporations are defined by Alaska business law and some of the provisions of ANCSA. There are two major controls on how regional corporations are set up and conduct business. The first set of controls are the state laws of Alaska concerning corporations. The second controls are those found within ANCSA. These regulations are special rules, many of which are not found anywhere else in the world. These particular rules are often difficult to interpret, as well as difficult to carry out.

> *Section 3(h) "Person" means any individual, firm, corporation, association, or partnership;*

Whenever ANCSA uses the term person, it may be referring to an actual person or to a corporation, depending on context.

The concept or idea of a corporation is often difficult to grasp. We may know one when we see it, but describing one can be confounding. The above definition can be more easily understood, if it is reversed and we think of a corporation as a person. In many respects, the law treats corporations like persons. Like any other "person," a corporation can apply for and receive credit from a bank. A corporation has a "birth certificate" in the form of its charter, which is issued by the state. The "birth certificate" or charter gives a place and time of birth. Unlike a person, a corporation does not have to

die. It can "live on" indefinitely. "Death" occurs only when assets (if any) are sold and the corporation is dissolved.

> *Section 3(j) "Village Corporation" means an Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village in accordance with the terms of this Act.*

A village corporation represents a Native community for ANCSA purposes. The village corporations are under the same restraints as the regional corporations. They are also controlled by Alaska state business law and by the Alaska Native Claims Settlement Act. ANCSA provisions for village corporations differ, however, in some important ways from provisions for regional corporations.

## DECLARATION OF SETTLEMENT

Section 4 is a critical provision of the Alaska Native Land Claims Settlement Act. It is here, according to ANCSA, that Alaska Natives' claims to any traditional land rights beyond the settlement made by the act are extinguished.

> *Section 4(a) All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to Section 6 (g) of the Alaska Statehood Act, shall be regarded as an extinguishment of all aboriginal title thereto, if any.*

The term aboriginal is derived from a Latin word which literally means "from the beginning."

The purpose of this provision is to remove any question of the validity of conveyances of public land in Alaska made by the federal government prior to ANCSA. This phrase "if any" is used to avoid the necessity of actually determining the legal validity of the Native claims to aboriginal title in the land already transferred to other persons or to the State under the Statehood Act.

The Alaska Tlingit and Haida tribes had a good case against the U.S. government and began legal procedures in 1929. The government had created the Tongass National Forest out of a large part of their traditional lands. If the tribes could not get their land back, they at least wanted to receive compensation or payment for the land. Although taking over thirty years for the Court to make a decision, in 1959, the U.S. Court of Claims decided that the land did in fact belong to them. Yet, it is important to note that no effort was made to return the land. Instead, the Court awarded a cash settlement based on the value of the land at the time it was taken.

Alaska Natives, the State, federal officials, oil companies, and Congress, in particular, all wished to avoid this type of lengthy court proceedings. Delaying oil development until a court case was decided

was neither the wish of Alaskan Natives or the government. The process of settling land ownership over the rest of Alaska would have been a lengthy process.

*Section 4(b) All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting and fishing rights that may exist, are hereby extinguished.*

There are at least two viewpoints as to what Section 4(b) extinguishes or ends.

One viewpoint holds that the intent of this language is to deal with land title alone. If so, it might be abridged to read, "All aboriginal title ... based on use and occupancy . . . including those based on aboriginal hunting and fishing rights that may exist, are hereby extinguished." If this section is read or interpreted in this manner, the only issue addressed is land title. Aboriginal hunting and fishing rights are not dealt with.

A second viewpoint would interpret this provision along these lines. "All aboriginal titles ... including any aboriginal hunting and fishing rights that may exist, are hereby extinguished." This would hold that aboriginal hunting and fishing rights were also ended when the Alaska Native Claims Settlement Act passed into law. The important issue to be settled is the question of what Alaska Native rights were extinguished: hunting, fishing, and land rights or only land rights?

The confusing language in this section has muddied an already murky subject, that of Alaska Native hunting and fishing rights. It is also important to realize that subsistence use is definitely protected by Congress in the Marine Mammal Protection Act of 1972, in Alaska National Interest Lands Conservation Act in 1980, and in other actions of Congress. The difference between aboriginal rights and subsistence use is yet to be finally determined.

*Section 4(c) All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission are hereby extinguished.*

## ENROLLMENT

*Section 5(a) The Secretary shall prepare within two years from the date of enactment of this Act a roll of all Natives who were born on or before, and who are living on, the date of enactment of this Act. Any decision of the Secretary regarding eligibility for enrollment shall be final.*

This provision states that Alaska Natives, born on or before the 18th of December, 1971, were eligible to receive stock. Alaska Natives born after this date do not receive stock. This is the "New Native" or "afterborn" provision. All living Alaska Natives born on or before the 18th of December, 1971, when ANCSA became law, were eligible to become share, holders in the regional and village corporations. The first Alaska Native born on the 19th of December, 1971 also became the first New Native. This controversial provision means that "New Natives" have no assured role or rights under ANCSA.

It should be noted that the Native corporations retain the remaining lands shared by Alaska Natives. At present, "New Natives" can only hope for inherited stock in order to participate in the direction of their respective village and regional corporations and, thus, participate only indirectly in the future of the land.

As the law now stands, there is a split between the "have" and the "have not" Alaska Natives. By 1991, since most Natives will be under 20 years old, over 50 percent of Alaska Natives may not be shareholders. A number of people consider this to be unfair. The unborn generations of Alaska Natives have had their land rights and possibly their hunting and fishing rights sold. They will suffer all the negative consequences of ANCSA and yet may not receive any of the benefits.

Should this apparent incongruity be addressed? And if so, how? One popular suggestion that is possible is to issue equal stocks to "New Natives," but the nature of stocks and corporations makes this suggestion virtually unworkable. Stocks are pieces of paper representing a percentage of ownership in a corporation. If stocks are issued as "New Natives" are born, but the corporation does not grow in value at the same pace, the value of the existing stock will be diluted. In other words, the cash value of the stock will go down if the profits and/or market value do not increase at the same speed as new shares are issued.

One method that might avoid devaluing everyone's shares might be to allow "New Natives" to purchase shares at full market value. With some of the poorer producing corporations, such an option might allow most "New Natives" to become members of their corporations. Would they be willing to take such a financial risk? In some of the more well-managed and/or resource-rich corporations, only a few wealthy New Natives would be financially capable of such stock purchases.

In either case, it can be easily argued that it is not equitable to give shares and representation to one group of Alaska Natives and yet, on the basis of an arbitrary date, to deny those same benefits and rights to others.

It also should be noted that at this present time, corporations hold the remaining 44 million acres of land that were retained by Natives for their own use. "New Natives," since they have no say in the corporation, are without power to affect the control of these lands. Some feel that this is good reason for creating a new organization which would hold most of the traditional lands. An Alaska Native

would automatically receive membership into this Native land organization when born. Such membership would only go to Alaska Natives [conf. Section 2 (b)].

There is another point of view regarding this issue. Historically, land granted to Native Americans in settlement of land claims was placed in reservation status in trust for the Natives as a tribe or group. Congress and certain Alaskan Natives found the reservation approach unacceptable. At the time ANCSA was passed, Congress also felt that no new types of racial institutions should be established. Thus, it would have been contrary to stated philosophy to issue corporation shares to future generations of Alaska Natives on a continuing basis. It was felt that the corporations and money provided by ANCSA would afford Natives control over their futures. It was assumed that Native children would receive the benefits of ANCSA through their parents and that, as owners of the land, Alaska Natives could create such institutions, as they felt appropriate, to protect the land for the benefit of future generations.

*Section 5(b) The roll prepared by the Secretary shall show for each Native, among other things, the region and the village or other place in which he resided on the date of the 1970 Census enumeration, and he shall be enrolled according to such residence. Except as provided in subsection (c), a Native eligible for enrollment who is not, when the roll is prepared, a permanent resident of one of the twelve regions established pursuant to subsection 7 (a) shall be enrolled by the Secretary in one of the twelve regions, giving priority in the following order to--*

*(1) the region where the Native resided on the 1970 census date if he had resided there without substantial interruption for two or more years;*
*(2) the region where the Native previously resided for an aggregate of ten years or more;*
*(3) the region where the Native was born; and*
*(4) the region from which an ancestor of the Native came:*

*The Secretary may enroll a Native in a different region when necessary to avoid enrolling members of the same family in different regions or otherwise avoid hardship.*

To help the shareholder enlist in a regional and village corporation, a set of priorities were set up for enrollment.

Although the enrollment process is now closed, the criteria of the enrollment process is interesting to review. (1) An Alaska Native could enroll in a corporation if he lived within its boundary in 1970. This provision, however, "caught" a number of Alaska Natives who were temporarily living in urban areas at the time. They had enrolled in the nearest corporation as a convenience and to avoid being left out of participation. What many shareholders did not realize was that they could not later transfer their corporate shares "back home" when they moved. (2) An Alaska Native might choose to belong to the corporation of a community where he or she had lived for 10 years. (3) Another possibility was to join

the corporations where you or your parents were born. (4) The final possibility was to join the 13th Regional Corporation. The 13th Regional Corporation was created for Alaska Natives who were, at that time, nonresidents of Alaska.

Non-resident Alaska Natives were not required to join the 13th Regional Corporation. They were eligible to join other regional and village corporations based on the previously noted conditions. The 13th Regional Corporation shareholders received more money initially, but the corporation did not receive any land under ANCSA.

Does this all seem confusing? Consider that every Alaska Native had only a limited amount of information upon which to make such a monumental decision. Every eligible Alaska Native faced the question, "In which corporation shall I enroll?"

This was also the time when the corporations were just coming into existence. They were attempting to elect officers, set up business, and learn the incredibly complicated regulations that govern the ANCSA corporations. Over two-hundred new corporations were being created at the same time Alaska Natives were finding out about enrollment. Because the enrollment process was so broad, shareholders often had a number of corporations from which to choose.

Few shareholders had the information to make an intelligent choice among these strange and unknown corporations. The selection of which corporation to join was rarely based on potential for business success. In rural Alaska, it seems the primary reason for selecting a corporation was that the corporate boundaries encompassed "home."

*Section 5(c) A Native eligible for enrollment who is eighteen years of age or older and is not a permanent resident of one of the twelve regions may, on the date he files an application for enrollment, elect to be enrolled in a thirteenth region for Natives who are non-residents of Alaska, if such region is established pursuant to subsection 7(c). If such region is not established, he shall be enrolled as provided in subsection (b). His election shall apply to all dependent members of his household who are less than eighteen years of age, but shall not affect the enrollment of anyone else.*

## ALASKA NATIVE FUND

*Section 6(a) There is hereby established in the United States Treasury an Alaska Native Fund into which the following moneys shall be deposited:*

I. *$462,500,000 from the general fund of the Treasury, which are authorized to be appropriated according to the following schedule:*

a) *$12,500,000 during the first fiscal year in which this Act becomes effective;*

b) *$50,000,000 during the second fiscal year;*

c) *$70,000,000 during each of the third, fourth, and fifth fiscal years;*

*d)$40,000,000 during the sixth fiscal year; and*
*e)$30,000,000 during each of the next fiscal years.*

This section details how $462,500,000 of the $962.5 million total was to be paid to the corporations. The payment was to occur over an eleven-year period.

The original intent of this section may have been to gradually bring the Native corporations into their full financial responsibilities. This would allow Alaska Natives the time to develop the skills necessary to manage in the world of multimillion dollar transactions.

Although Congress immediately extinguished all Alaska Native rights to traditional land [conf. Section 4], it did not, in return, immediately pay Alaska Natives. Congress set up a time- payment plan which it felt the country could afford. It was also felt that the Native corporations should have a period of time in which to gain experience in managing their assets.

*Section 6(b) None of the funds paid or distributed pursuant to this section to any of the Regional and Village Corporations established pursuant to this Act shall be expended, donated, or otherwise used for the purpose of carrying on propaganda, or intervening in (including the publishing and distribution of statements) any political campaign on behalf of any candidate for public office. Any person who willfully violates the foregoing provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned for not more than twelve months, or both.*

Normally, when a Native tribe or group has received money as a part of a settlement for loss of property or rights which may exist, that money is theirs to use as they see fit. However, Section 6 (b) states that no part of the $962.5 million could be spent to persuade politicians or individuals to vote for issues which favored the Native corporations. This provision is contained in virtually every piece of federal legislation appropriating public money, the idea being that it would be questionable for public money to be used to promote special interest political purposes. The language of this section does not prevent money resulting from profits generated by ANCSA from being used for political purposes.

State and local politicians were concerned that Alaskan Natives were receiving this large cash settlement and would use the money to aid those politicians who had promoted the land settlement and defeat those who had opposed it. Therefore, Section 6 (b) prevented the possibility of Alaskan Natives using ANCSA money as economic clout to influence state politics.

## REGIONAL CORPORATIONS

*Section 7(a) For purposes of this Act, the State of Alaska shall be divided by the Secretary within one year after the date of enactment of this Act into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the*

*contrary, such regions shall approximate the areas covered by the operations of the following existing Native associations:*

1. *Arctic Slope Native Association (Barrow, Point Hope);*
2. *Bering Straits Association (Seward Peninsula, Unalakleet, Saint Lawrence Island);*
3. *Northwest Alaska Native Association (Kotzebue);*
4. *Association of Village Council Presidents (southwest coast, all villages in the Bethel area, including all villages on the Lower Yukon River and the Lower Kuskokwim River);*
5. *Tanana Chiefs Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokwim Tanana River);*
6. *Cook Inlet Association (Kenai, Tyonek, Eklutna, Iliamna);*
7. *Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula)*
8. *Aleut League (Aleutian Islands, Pribilof Islands, and that part of the Alaska Peninsula which is in the Aleut League);*
9. *Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez, and Seward);*
10. *Tlingit-Haida Central Council (southeastern Alaska, including Metlakatla);*
11. *Kodiak Area Native Association (all villages on and around Kodiak Island); and*
12. *Copper River Native Association (Copper Center, Glennallen, Chitina, Mentasta).*

Any dispute over the boundaries of a region or regions shall be resolved by a board of arbitrators consisting of one person selected by each of the Native associations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Native association involved.

The Alaska Native Claims Settlement Act is unique in that traditional Native lands are not retained by the traditional government of the Native group. Instead of conveying Native lands to the IRA or traditional council governments, Native regional and village corporations were created to hold the land and to invest the money.

Why did Congress decide to take this novel approach to Native lands in Alaska? Why were Alaska Natives dealt with differently in 1971 than "Lower 48" Indian tribes had been dealt with for the previous 20 years? To understand the reason why Congress created regional and village corporations,, it is necessary to recall the political situation in the late 1960's and early 1970's.

It has already been noted in the comments on Section 2 (b), regarding the permanent racially defined institutions, that regional and village corporations will not necessarily be "Native" after 1991. The law now reads that, following 1991, the stock in those corporations may be purchased by anyone including other corporations. If enough of the stock is purchased publicly, the Native corporations will not remain under Native control.

Congress, according to Section 2, was specifically trying to avoid creating permanent racially defined institutions. They did not recognize traditional Native groups with ANCSA. In fact, through Section 19, Congress eliminated several reservations or reserves that previously existed in Alaska.

There are several reasons for Congress' using a novel approach to settle the Native land issue in Alaska. First, during the late 1960s and early 1970s, the Bureau of Indian Affairs was coming under sharp criticism by both Congress and Indian tribes for its bureaucratic and inept handling of its responsibilities.

The BIA was originally organized to protect and serve American Indians. It was supposed to be an advocate for American Indians while attempting to carry out federal Indian policy.

However, during the late 1960s there was growing evidence of pork barrel programs designed to help administrators and contractors. A great deal of money that should have gone to American Indians was actually benefiting others, especially resource industries operating on reservations.

There were numerous complaints of the BIA approving mineral and timber contract sales at far below fair market value on tribal lands. These contracts were lucrative for the exploiting companies, while depriving the tribes of fair and needed revenues. BIA run schools were also criticized for attempting to assimilate Indian children and smother tribal loyalty.

Congress and many Alaska Natives, therefore, tried to develop an approach which would leave Alaska Natives in sole control of their land and money without BIA intervention. It was feared that if the land became a reservation and the money was turned over to a traditional government, the BIA might have had control.

Apparently the idea of regional corporations was first officially considered by the Alaska Land Task Force in 1967. Later, the corporate concept was argued for by Barry Johnson, the attorney representing AFN. This took place before the Senate Interior Affairs Committee in 1968.

The idea was to allow Alaska Natives to determine their own futures, with all the risks and responsibilities associated with choosing one's own direction, self-determination. There is no evidence of anyone involved in the ANCSA process, either Native or non-Native, having objected to corporations before ANCSA became law.

> *Section 7 (b) The Secretary may, on request made within one year of the date of enactment of this Act, by representative and responsible leaders of the associations listed in subsection (a), merge two or more of the twelve regions: Provided, That the twelve regions may not be reduced to less than seven and there may be no fewer than seven Regional Corporations.*

There could be no fewer than seven regional corporations. This is an unusual provision, which is accompanied by an interesting explanation in the legislative history.

This provision was written to benefit the people of the State. If all the regional and village corporations had merged, such a super Native corporation would have had $962.5 million in cash assets and ownership of 44 million acres of land. As a single corporation, Alaska Natives would have been the largest private land holders in Alaska. Only the federal and state governments would have had more land under a single authority. The legislative history states that:

> *"The corporate organizations provided for in the bill are intended to avoid the creation of one or more giant corporate entities, based on ethnic origin, that might become, in effect, the third level of government in the State."*
>
> *92nd Congress, 1st Session, 1971*

The economic clout of a single corporation could have easily been translated into a considerable political force. That was unlikely, but even a merger by a number of the regional corporations would have produced a corporation with tremendous potential power. In spite of all the division and disagreement among the thirteen regional corporations, they are often a decisive factor in state politics.

Section 7(d) Five incorporators within each region, named by the Native association in the region, shall incorporate under the laws of Alaska a Regional Corporation to conduct business for profit, which shall be eligible for the benefits of this Act so long as it is organized and functions in accordance with this Act. The articles of incorporation shall include provisions necessary to carry out the terms of this Act.

This provision requires that the regional corporations be incorporated as profit-making businesses, rather than as nonprofit corporations.

> *Section 7(h)(1) ... for a period of twenty years after the date of enactment of this Act the stock ...may not be sold, pledged, subjected to a lien or judgment execution, assigned in present or future, or otherwise alienated.*

Until 1991, the shareholders' stock in their village or regional corporation is restricted. It cannot be sold or transferred in any way. There is an exception to this rule which will be discussed later.

This section is one of the "1991 issues" that has received much attention from the media. It is of great concern to Alaska Natives. Title or ownership of regional and village corporation stock is restricted by this section. It cannot be sold or used as collateral against a loan. It may not be taken by a court if a Native shareholder declares bankruptcy. It also may not be given away. These restrictions apply until the end of 1991.

> *Section 7(h)(1) (continued) . . . Provided that such limitation shall not apply to transfers of stock pursuant to a court decree of separation, divorce, or child support.*

The exception mentioned above covers transfers of stock based on court decisions involving divorce and/or child support.

This exception to the restriction on the control of Native corporation stock might seem insignificant at first glance. However, at least one regional corporation has reported that 25 percent of its stock, which has been subject to this provision, has gone to non-Natives. This is a point of concern to Alaska Native leaders and people, because the Native corporations also hold the last traditional lands of Alaska Natives. If the corporations are lost, those lands will also be lost.

Draft resolution number five of AFN's "1991" proposals specifically addresses this concern. If the resolution is passed by Congress and then approved by the shareholders, it would not allow non-Natives to own Native corporation stock.

> *Section 7(h)(2)(b) ... in the event the deceased stockholder fails to dispose of his stock by will and has no heirs under the applicable laws of intestacy, such stock shall escheat to the Regional Corporation.*

It is important for every stockholder to make out a will and decide who will inherit his or her stock. A shareholder can choose to divide up the stock among several people, including non-Native inheritors. AFN's fifth and eighth draft resolutions, if approved by Congress and voted by shareholders of a corporation, would prohibit non-Native ownership of stock.

Generally, on the back of stock certificates, there is a place for shareholders to name who should inherit their stock and the number of shares they should receive. After filling out the back, the shareholder should sign the document in the presence of a notary public.

> *Section 7(h)(3) On January 1 of the twenty-first year after the year in which this Act is enacted, all stock previously issued shall be deemed to be canceled and shares of stock of the appropriate class shall be issued without restrictions . . .*

This essentially states that the restricted shares, the shares Alaska Natives cannot buy or sell, will be traded in 1992 for unrestricted shares which can be sold. This portion of Section 7 of ANCSA is one of the key reasons for "1991" becoming a major topic of discussion. The stock now owned by Alaska Natives is very restricted. Transferring ownership of stock is only possible through inheritance, divorce, and child support.

After 1991, the stock will be reissued with no restrictions. Many Alaska Native leaders fear that, if enough stock is sold on the open market, Alaska Natives will lose control of their corporations. With the loss of control of the corporation, control over traditional lands will also be lost. Alaska Natives will be able to address these issues more easily if AFN's eight resolutions are passed by Congress.

*Section 7(j) Seventy per centum of all revenues received by each Regional Corporation from the timber resources and subsurface estate patented to it pursuant to this Act shall be divided annually by the Regional Corporation among all twelve Regional Corporations ...*

Seventy percent of the net profits which come from timber and mining (gas, oil, coal, minerals, etc.) is to be divided among the twelve regional corporations every year. A great deal of litigation among the twelve regional corporations occurred over this section. Legal fees costing millions of dollars were spent to decide what Section 7(i) intended and how to implement it.

When the fruitlessness and expense of such legal action became apparent, Native corporation leaders held a series of meetings on how to carry out the Section 7 (i) requirements.

The outcome of the meetings was a document, over 200 pages in length, on how to work with Section 7 (i). Briefly, the corporations decided that a carefully qualified list of expenses could be deducted from the profits involved. The remaining "qualified net profits" are then to be shared among the regional corporations.

This is one of the most unusual provisions ever imposed upon a business organization. What were the reasons for developing this unique structure of intercorporation sharing? A large part of the rationale of Section 7(i) was based on a sense of fairness. Alaska Native leaders and Congress realized that many of the regional corporations would acquire land with few timber or natural resource values, while a few corporations have rich potentials. Through this provision, it was hoped that most Alaska Natives would receive some of the benefits from developing those resources.

Practical obstacles have emerged from Section 7(i) because of the high percentage of revenue sharing. Although a regional corporation will share 70 percent of its profits from resource exploitation, the other corporations do not share the cost and risks of bringing these resources to market. The regional corporations, which share the 70 percent of profits on resource development, receive considerable benefits, but experience none of the considerable associated hazards. Therefore, Section 7 (i) serves to dampen the incentive for timber and resource production by the Native Regional Corporations. Marginal resource potentials may go untapped, while only the highly profitable efforts may be pursued.

Section 7(i) underscores the unique role Congress originally envisioned for the Native corporations. The Native corporations were not seen merely as profit-making institutions, but also as vehicles to provide for a degree of equity among Alaska Natives. A number of the corporations have overcome tremendous obstacles to meet the first goal.

Overall, however, the gap between "have" and "have not" Alaska Natives seems to have been widened with the corporations.

*Section 7 (i) (continued) . . . of this subsection shall not apply to the thirteenth regional Corporation.*

The 13th Regional Corporation does not receive Section 7 (i) money. The reason for excluding the Thirteenth Regional Corporation is that it received no lands under ANCSA, since it represents Alaska Natives living outside the State. With no lands, it has no potential for contributing to Section 7 (i) revenues.

*Section 7(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 shall be distributed among the stockholders of the twelve Regional Corporations.*

Individual Alaska Native shareholders received a small portion of the ANCSA monies as direct payments. By the end of 1976, the regional corporations had received about 300 million dollars as payment for extinguished land claims. The corporations were, in turn, required to distribute at least ten percent of that money to shareholders. The corporation payments to shareholders, under this provision, averaged less than 500 dollars per shareholder. Several corporation leaders noted that such payments cut into the potential start-up and operating capital, as the new businesses were just beginning.

*Section 7(j) (continued) . . . corporate funds received by each of the 12 Regional Corporations under Section 6 (Alaska Native Fund), and under subsection (i) (revenue from the timber resources and subsurface estate . . . ) Not less than 45% of funds from such sources during the first five years and 50% thereafter shall be distributed among the Village Corporations ...*

Under the terms of Section 7(j), the village corporations are to receive half of Section 7(i) money that goes to their respective regional corporations.

The At-Large shareholder is one who holds regional, but no village, corporation stock. These shareholders are to receive an equitable or fair percentage of Section 7(j) money also.

*Section 7(j) (continued) . . . In the case of the Thirteenth Regional Corporation, if organized, not less than 50% of all corporate funds received under Section 6 shall be distributed to the stockholders.*

The Thirteenth Regional Corporation was formed after considerable legal difficulty. One half of its portion of the $962.5 million went directly to shareholders. Section 7(j) distributions do not apply to the Thirteenth Regional Corporation. This is because it does not contribute to or share in Section 7 (i) mineral and timber resources. Perhaps, beyond the monetary figures and the actual process of Section 7 (j) distributions, there are other important lessons to learn. The complicated accounting demanded by ANCSA is a costly handicap for the Native corporations. The task of accurately tracking funds, while conducting the usual business of making a profit, is more than some regional corporations and most village corporations are capable of handling.

Section 7(j) once again demonstrates that the financial health of each corporation has a direct impact on the other ANCSA corporations. Section 7(j) is a financial web which connects all the regional and village corporations.

*Section 7(l) 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.*

During the first five years of ANCSA, funds distributed to a village corporation could have been withheld until the village submitted a plan for the use of the money that was satisfactory to the regional corporation. The village corporation had to have regional corporation approval on their financial plans. The paternalistic or protective nature of the regional corporation over the village corporation is evident in this subsection. There was strong objection to this arrangement in some regions.

In several regions, there were village corporations that were in a much better financial situation than the local regional corporation. If one corporation should advise the other, it would probably have been better to reverse the direction of Section 7 (1) and have the village corporations overseeing the regional corporation.

*Section 7(o) . . . Each audit report of a fair and reasonably detailed summary thereof shall be transmitted to each shareholder.*

An audit is a report which checks to see if the corporation has their financial records in correct order. When this report or audit is finished, a copy is to be sent to each shareholder, so they will understand how their corporation is doing. There are two points that seem to reoccur, concerning Section 7 (o), when corporation leaders and shareholders discuss ANCSA. One issue is the high cost of the annual audit and the second is the usefulness of the annual reports to Native shareholders. Before considering the issues surrounding annual reports and audit, let's review what these documents are and what they are intended to do.

The annual report is the most important printed document a corporation sends out to its shareholders each year. The annual report and the financial audit it contains are also among the most difficult aspects of the corporate system to comprehend. In a sense, the annual report is a sort of report card concerning the financial condition of the corporation. Unfortunately, it is usually written in language the average shareholder finds difficult to understand.

An audit is an examination of the records of a company. Audits are done to ensure that the company is following standard business record keeping practices. The audits done for the annual reports are done by independent accounting firms hired for that purpose. Both the audit and the auditor's report are a required part of every shareholder's report.

Shareholder reports, as originally intended, were designed to allow the shareholder to make intelligent decisions about the investment potential and health of its corporation. In the case of the Native corporations, the money was automatically invested by Congress on behalf of Alaska Natives. Congress also placed a twenty-year restriction on stock transfers. In light of these actions, the shareholder report becomes even more important. For the Native shareholder, the annual report is like the panel of gauges on a vehicle. The annual report can tell you about the condition of your corporation.

Unfortunately, the language and structure of the reports is often too confusing for most shareholders. Shareholder reports are so complicated and filled with technical business language that it is questionable if five percent of the Alaska Natives who receive them can actually understand what the report says. Corporation leaders note that the legal requirements concerning how and what an annual report says prevent them from making the reports easier to read and understand.

In an attempt to address the issue of informing stockholders of the corporation's conduct and position, newsletters and shareholder meetings are common. A problem that often arises, however, is that shareholder meetings and newsletters may ignore past failures and present difficulties. If financial concerns are addressed, they are usually portrayed in a positive light. In. the better Native corporations, newsletters and shareholders meetings not only inform, but they also seek direction from their shareholders. Because the shareholders are locked in, the Native corporations have a greater obligation to explain their financial condition and goals in terms shareholders can understand.

> *Section 7(o) (continued) . . . Each audit report . . . shall be transmitted to . . . the Secretary of the Interior and to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives.*

The annual reports are to go to the Secretary of the interior and to two committees in Congress. What is the intent of sending the regional corporations reports to these government offices? Were they to be a watch dog to monitor the progress and problems of the corporations? The legislative history that accompanies ANCSA states that the Native corporations would not be subject to federal supervision. It also clearly points out that no trust relationship was being established. The corporations were not to be directed by the government, but their progress was to be monitored.

The Secretary of the Interior and the Interior Affairs Committees were not to blame for the difficulties faced by many of the Native corporations. However, they did fail to warn Native shareholders of the imminent risks facing their corporations. These shareholders are, by congressional restrictions, unable to avoid financial disaster by selling their stock. This is an option open to shareholders of other types of corporations. Native shareholders cannot escape the hold of potential bad management by selling their stock, until after 1991.

In some respects, these shareholders are like passengers on a bus, in which they may change the driver, but they cannot get off. It is also very difficult for them to influence the destination of the bus.

## VILLAGE CORPORATIONS

*Section 8(a) The Native residents of each Native village entitled to receive lands and benefits under this Act shall organize as a business for profit or nonprofit corporation . . .*

The villages were required to form in order to receive title to their land and the compensation for lands lost. Although the villages had the option of becoming either profit or nonprofit corporations, they all chose the profit-making status.

*Section 8(b) 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 articles of incorporation comprise a legal document which sets up the rules and control under which the corporation will be run. This document establishes the relationship between the shareholders, the corporation, and the people who will manage the corporation.

The articles of incorporation lay out the basic arrangement of powers and responsibilities between the shareholders and the corporation. Anything put into the articles of incorporation cannot be changed without the consent of the shareholders.

This section established the Regional Corporation as an overseer of the village corporation during the first five years of their existence.

*Section 8 (c) The provisions concerning stock alienation, annual audit, and transfer of stock ownership . . . providing for Regional Corporations in Section 7 shall apply to Village Corporations.*

Village corporation stocks, like the regional corporation shares, may not be sold or exchanged until after 1991. Village corporations are also required to perform annual audits. For many of the village corporations, the cost of annual or yearly reports have consumed the small portion of cash that they received from the land settlement.

The cost of the annual report for these village corporations amounts to "destructive testing." In destructive testing, such as automobile collision safety research, the vehicle is demolished in the process of discovering if it has been correctly designed. A similar process has occurred with the smaller village corporations. The cost of determining how much money they possess and where it is, is consuming the money itself.

## REVENUE SHARING

Section 9 determines how the government revenues from the extraction of oil on public lands will be shared by the state and federal governments with Alaska Natives.

Section 9(d) sets aside two percent of the money received by the United States for mineral leases and mineral development, to be paid into the Alaska Native Fund, which was part of the money used to pay the monetary settlement provisions of ANCSA.

> *Section 9(d)(2) 2 percentum of all rentals and bonuses shall be deducted and paid into the Alaska Native Fund.*

Previous to the Alaska Native Land Claims Settlement Act, the State of Alaska and the federal government simply sold mineral rights.

> *Section 9(g) The payments required by this section shall continue only until $500,000,000 have been paid into the Alaska Native Fund. Thereafter the reservation required in patents under this section shall be of no further force and effect.*

This provision limits the payments into the Alaska Native Fund under Section 9 (d), to 500 million dollars. After that amount has been paid into the fund, the payment of mineral proceeds terminates.

## STATUTE OF LIMITATIONS

> *Section 10(a) . . . any civil action to contest the authority of the United States to legislate on the subject matter or the legality of this Act shall be barred unless the complaint is filed within one year of enactment of the Act …*

If anyone had serious enough concerns about the legality of ANCSA, they had one year to file suit against it.

> *Section 10(b) In the event that the state initiates litigation or voluntarily becomes a party to litigation to contest the . . . legality of this Act, all rights of land selection granted to the State by the Alaska Statehood Act shall be suspended ...*

Alaska had been allowed 102 million acres of land with statehood. Congress said these selections would not continue if the State went to court against ANCSA.

Section 10(b) indicates the level of hostility the State initially had to Alaska Native Land Claims. Congress waved a very big stick with this provision. This would have involved millions of acres of potentially resource-rich lands. The State decided that accepting the Claims Act was a lesser evil than the imposition of such a freeze.

## WITHDRAWAL OF PUBLIC LANDS

*Section 11(a)(1) The following public lands are withdrawn, subject to valid existing rights, from all forms of appropriation 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.*

Section 11(a) immediately withdrew and set aside a block of land, including and surrounding each Native village, to allow land for selection by the village corporation. This reservation was to be made before any land was set aside for national interest lands, except for national defense purposes.

*Section 11(b)(2) Within two and one-half years from enactment of this Act, the Secretary shall review all of the villages listed in subsection (b) (1) hereof, and a village shall not be eligible for land benefits under subsections 14 (a) and (b), and any withdrawal for such village shall expire, if the Secretary determines that*

*(A) less than twenty-five Natives were residents of the village on the 1970 census enumeration date as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance; or*

*(B) the village is of a modern and urban character, and the majority of the residents are non-Native.*

Section 11(b) includes a list of villages assumed to qualify as Native villages eligible to receive land under the Act. The Secretary had the power to add or remove villages from the list within two and a half years, if it had been shown that errors were made in the list of villages meeting the criteria required by the Act.

## NATIVE LAND SELECTION

Even the most casual glance at Section 12 will help a person to appreciate the tremendous challenge the corporations and their land managers face. This is in the present tense, because the selection and conveyance or the transfer of land will not be completed until the late 1980s, or possibly later. It is a very difficult responsibility to wisely select the traditional land, which will be retained by Alaska Natives for future generations.

The southeastern portions of Alaska are excluded from the standard land selection formula. Natives in southeast Alaska received a much smaller amount of land from the settlement. A court decision had already been made concerning the land which had been taken for the Tongass National Forest.

## CONVEYANCE OF LANDS

> Section 14(a) . . . the Secretary shall issue to the Village Corporation a patent to the surface estate in the number of acres shown in the following table:

If the village had on the 1970

It shall be entitled to a patent census enumeration date a lands equal to Native population between:

- 25 and 99 69,120 acres.
- 100 and 199 92,160 acres.
- 200 and 399 115,200 acres.
- 400 and 599 138,240 acres.
- 600 and more 161,280 acres.

Simply put, the population of a Native village in 1970 determined how much land they would receive.

This entire section, Section 14 (c) (1-5), is one of the major challenges faced by village corporations. Reconveying land title or transferring land title from the village corporation to individuals, businesses, school, and churches within the village is complicated. The process is made further difficult, because holding title to property is often a new concept in many villages. Finally, the issue of reconveyance deals with a highly valued resource in rural Alaska-that of land.

> *Section 14(c)(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 as is necessary for community expansion and appropriate rights-of-way for public use . . .*

Section 14(c) establishes requirements for the distribution of a portion of land received by the village corporation under ANCSA. First, the village corporation was to give to any occupants of the village the land used by that occupant as his home, his primary place of business, or his subsistence campsite. Next, the village corporation was to transfer to any non-profit organization, either for free or upon payment of fair market value as the corporation chose, title to the land occupied by that organization.

If there was a municipal corporation in the village, the village corporation had to transfer to that municipal corporation the remaining improved land on which the village is located, plus additional land needed for municipal expansion. If no municipal corporation has yet been organized in the

village, then that land was to be placed in trust with the State for future establishment of a municipal government.

It was the intent of ANCSA that Native individuals and families would be given title to the land they lived on and used. Congress felt that it would be better for villages to decide which land was being used by which family through their corporations, rather than by some cumbersome federal bureaucracy. The village corporations were required to set aside land for a future municipal corporation. Otherwise, all of the land in the village would be in private ownership, and there would be no land available for public, municipal purposes, such as schools, roads, and airports.

An issue has arisen from this section of ANCSA. Some traditional governments have objected to giving up to the State their most valuable community lands. In some villages, the people contend that they own the land and that no law should force them to give their land up.

> *Section 14(f) 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 . . . 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.*

Section 14(f) provides that the regional corporation receives the subsurface mineral rights to the land selected by the village corporations. The regional corporation can explore, develop, or remove minerals from under these lands only with the consent of the village corporation.

> *Section 14(h)(5) The Secretary may convey to a Native, upon application within two years from the date of enactment of this Act, the surface estate not to exceed 160 acres of land occupied by the Native as a primary place of residence on August 31, 1971 . . .*

The Allotment Act was extinguished with the passage of ANCSA. This section, however, allowed Alaska Natives who lived outside a village or municipality a mechanism to acquire the land they were living on.

## THE TLINGIT-HAIDA SETTLEMENT

Section 16(c) The funds appropriated by the Act of July 9, 1968 (82 Stat - 307), to pay the judgment of the Court of Claims in the case of Haida Indians of Alaska . . . are in lieu of the additional acreage to be conveyed to qualified villages listed in Section 11.

In this section of the Act, the villages in southeast Alaska listed in Section 16 (a) were allowed to select 23,040 acres each, a significantly smaller acreage than villages in other parts of Alaska were allowed.

The money received by the Tlingit and Haida Indians under their earlier lawsuit against the federal government was considered to make up for the lesser acreage received by these southeast villages under ANCSA.

## JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA

> Section 17 (a) (7) The Planning Commission shall . . . (f) establish a committee of land-use advisors to the commission, made up of representatives of commercial and industrial land users, recreational land users, wilderness users, environmental groups, Alaska Natives, and other citizens.

The structure of this advisory body reflects the various, interest groups involved in writing the Land Claims Settlement Act. The federal and state governments each appointed co-chairmen to take part in the overall joint Federal State Land Use Planning Commission for Alaska.

The land use advisors included representatives from commercial and industrial land users. The oil companies were the most significant part of this group. Recreational land users primarily looked after the concerns of sport hunters and fishermen. Wilderness users and environmentalists were included, as were Alaska Natives. All of the groups played roles of varying importance in formulating the compromise package known as ANCSA.

> *Section 17(b)(1) The Planning Commission shall identify public easements across lands selected by Village Corporations and the Regional Corporations and at periodic points along the courses of major waterways which are reasonably necessary to guarantee international treaty obligations, a full right of public use and access for recreation, hunting, transportation, utilities, docks, and such other public uses as the Planning Commission determines to be important*

Section 17(b)(1-3) requires that appropriate easements for public access across regional and village corporations be identified by the Land Use Planning Commission and reserved by the Secretary before patents to the land can be issued to the Native corporations.

> *Section 17(d)(2) The Secretary . . . is directed to withdraw . . . up to, but not to exceed, eighty million acres of unreserved public lands in the State of Alaska which the Secretary deems are suitable for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Scenic Rivers systems . . .*

Section 17(d)(2) directed the Secretary of the Interior to withdraw no more than 80 million acres of Alaska land to add to the conservation units of the United States.

From this section of ANCSA the chain of events were started which culminated in the Alaska National Interest Lands Conservation Act of 1980. ANILCA went beyond the original limit of Section 17 (d) (2) and created over 100 million acres of new conservation lands in Alaska.

The Alaskan conservation lands, such as parks, preserves, wildlife refuges, etc., which were acquired with this legislation, doubled the size of such protected lands in the United States. It was this section which largely silenced the objections of conservationists and environmentalists to a Native land claims settlement.

**This article provides a more detailed history of this important section of ANCSA: http://www.ankn.uaf.edu/guy.html*

## REVOCATION OF THE INDIAN ALLOTMENT AUTHORITY IN ALASKA

*Section 18(a) No Native covered by the provisions of this Act ... may hereafter avail himself of an allotment under the provisions of the Act of February 8, 1887.*

This stated that the Allotment Act would end on the day ANCSA became law. The Indian Allotment Act allowed individual Alaska Natives to acquire title to up to 160 acres of land. The restriction on these allotments was that the land could not be sold without government permission. The process of completing and filing bureaucratic paperwork was often both imposing and confusing for many Natives. Only 80 allotments had been issued by 1960. Most of these were in southeast Alaska. (A similar act, the Native Townsite Act, of 1926, allowed Alaska Natives to receive restricted title to townsite lots. Only 500 acres were held in Native townsite ownership by 1967.)

As the Act drew closer to passage, some Native associations urged their people to file allotments before ANCSA became law. The Native people who belonged to such a region were fortunate. These associations tried to help their people find the applications, properly complete and return them before the Allotment Act ended. In 1985, thousands of allotment applications were still being processed by the BIA and Bureau of Land Management. Many of those applications are being challenged by the National Park Service.

## REVOCATION OF RESERVATIONS

*Section 19(a) . . . the various reserves set aside . . . for Native use . . . are hereby revoked.*

This section states that, with one exception which will be addressed later, all reserves and reservations in Alaska were ended when ANCSA passed.

Several reserves or reservations were extinguished by this section, including those for the villages of Wales, Unalakleet, Venetie, Tetlin, Elim, Gambell, Savoonga, Arctic Village, Noorvik and Tyonek.

*Section 19(a) (continued) . . . This section shall not apply to the Annette Island Reserve . . . and no person enrolled in the Metlakatla Indian Community of the Annette Island Reserve shall be eligible for benefits under this Act.*

This amounts to an exception to the previous exception. Annette Island Reserve was the only reservation not extinguished by the ANCSA. It is the only surviving reserve in Alaska today. The leadership and majority of residents of this primarily Tsimshian Indian community wanted no part of ANCSA. They wanted to keep their reserve intact, despite how appealing the cash benefits looked at first.

> *Section 19(b) Notwithstanding any other provision of law or of this Act, any Village Corporation or corporations may elect within two years to acquire surface estates in any reserve set aside for the use or benefit of its stockholders or members prior to the date of enactment of this Act . . . In such event, the Secretary shall convey the land to the Village Corporation or Corporations, subject to valid existing rights as provided in subsection 14 (g), and the Village Corporation shall not be eligible for any other land selections under this Act or to any distribution of Regional Corporation funds pursuant to Section 7, and the enrolled residents of the Village Corporation shall not be eligible to receive Regional Corporation stock.*

The villages, which had their reserves or reservations extinguished, were allowed two options. Their first choice was to become a standard village corporation like any other. Each eligible Native resident of the village could receive 100 shares of village corporation stock and 100 regional corporation shares. The village corporation would then receive its share of surface land, according to the number of residents in 1970, as described in Section 14 (a) of ANCSA. These village corporations also received their share of the $962.5 million settlement.

This second option was most advantageous to villages that had large former reserves or reservations. Venetie, Arctic Village and Tetlin all chose their former reservation lands, which amounted to over one million acres of land. The villagers of Elim received title to their former reserve of over 330,000 acres of land. The villages of Gambell and Savoonga took title to their entire island of St. Lawrence, which is midway between Russia and Alaska.

It should be emphasized that these villages received more land by choosing the second option, but they received none of the $962.5 million cash settlement. As a result, they face a continuing cash flow problem.

Residents from these villages did have the option of becoming At-Large shareholders in the local regional corporation. As at-large regional shareholders they would receive regional stock and no village corporation shares.

## ATTORNEY AND CONSULTANT FEES

> *Section 20(d)(4) The amounts for services rendered shall not exceed in the aggregate $2,000,000, of which not more than $100,000 shall be available for the payment of consultant fees.*

Simply put, Section 20(d)(4) said that lawyers and consultants would receive no more than two million dollars from ANCSA. This figure may strike one as exorbitant, but it was actually a low figure for attorney fees. Many village and regional corporations have faced crippling attorney fees as they attempt to carry out this provision. The Berger Report quotes 35 million dollars in estimated legal costs to the Native corporations.

## TAXATION

*Section 21(a) Revenues originating from the Alaska Native Fund shall not be subject to any form of Federal, State, or local taxation at the time of receipt by a Regional Corporation, Village Corporation, or individual Native through dividend distributions or in any other manner. This exemption shall not apply to income from the investments of such revenues.*

Section 21(a) stated that the $962.5 million, which Native Corporations or individual Natives would receive, could not be taken back by government through taxation.

*Section 21(b) The receipt of shares of stock in the Regional or Village Corporations by or on behalf of any Native shall not be subject to any form of Federal, State, or local taxation.*

Section 21(b) said that the stocks could not be taxed or considered in the financial assets of an Alaska Native for income tax purposes.

*Section 21(c) The receipt of land . . . shall not be subject to any form of Federal, State, or local taxation…*

Section 21(c) provides that the land received under ANCSA will not be taxed as income. If the land is later sold, only the increase in value from the time the land is received would be considered as income.

*Section 21(d) Real property interest conveyed, pursuant to this Act . . . shall be exempt from state and local real property taxes for a period of twenty years after the date of enactment of this Act.*

This section stated that the land would not be taxable until after 1991, twenty years after ANCSA became law.

Alaska Native leaders, working with our state's representatives and senators in Congress, were able to change this. In 1980, when the Alaska National Interest Lands Conservation Act was passed, it included new language for the Section 21 (d) provision. Section 904 of ANILCA said that the land would not be taxable until twenty years after it was conveyed to the Native corporations.

The concept behind Section 21(d) was that the Native corporations would be allowed enough time to select, research, and then develop management plans for their land, before the land became taxable.

Conveyance of title to the 44 million acres is taking much longer than anyone anticipated. Much of the land remained outside of the hands of the corporations in 1985. To carry out the original intent of this provision, Congress changed it to say Native land would not be taxable until twenty years after the Native corporations receive it.

This change of the provision has, in some cases, changed the management goals of the corporations concerning conveyance. Before the change, most of the corporations were attempting to acquire title to the highest quality lands in their regions as quickly as possible. However, with this change, the earlier the corporation receives title to the land, the more quickly it becomes vulnerable to taxation. Some corporations are now spending more time reviewing land actions and thereby slowing down conveyance.

## MISCELLANEOUS

*Section 22(g) If a patent is issued to any Village Corporation for land in the National Wildlife Refuge System, the patent shall reserve to the United States the right of first refusal if the land is ever sold by the Village Corporation . . .*

This section states that if the village corporations received title to their land and it was inside the boundaries of the newly created wildlife refuges and if the village corporation ever decided to sell any part of their land, the United States government would get the first chance to buy it. "Right of first refusal" means the federal government would have the first opportunity to buy that particular Native land if it is ever put up for sale.

The government would still have to offer equal or more money than a competitor. "Right of first refusal" does not allow the government the right to force such a sale.

*Section 22(g) (continued) . . . every patent issued by the Secretary pursuant to this Act which covers lands lying within the boundaries of a National Wildlife Refuge on the date of enactment of this Act shall contain a provision that such lands remain subject to the laws and regulations governing use and development of such Refuge.*

This portion of Section 22(g) stated that if the village corporation selected land from within a wildlife refuge, that land would have to be treated just like its surrounding refuge. Refuge laws would apply to those village lands also.

*Section 22(1) Notwithstanding any provision of this Act, no Village or Regional Corporation shall select lands which are within two miles from the boundary . . . of any home rule or first class city . . .*

This provision prevents regional or village corporations from selecting lands within two miles of the boundaries of a home rule or first class city. This reduced the likelihood that villages near established cities would be able to select urban land for speculative purposes.

## REVIEW BY CONGRESS

> *Section 23 . . . At the beginning of the first session of Congress in 1985 the Secretary shall submit, through the President, a report of the status of the Natives and Native groups in Alaska, and a summary of actions taken under this Act, together with such recommendations as may be appropriate.*

Section 23 tells the Secretary of the Interior to develop a "report card" on how the Alaska Natives and the Land Claims Act have done. This report card is to go through the President to Congress.