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IMPLEMENTATION OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

HEARINGS

BEFORE THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

OVERSIGHT OF THE IMPLEMENTATION OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

JUNE 10 AND 14, 1976

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IMPLEMENTATION OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

THURSDAY, JUNE 10, 1976

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m. in room 3110 Dirksen Office Building, Hon. Lee Metcalf presiding.

Present: Senators Metcalf, Haskell, Stevens, and Gravel.

Also present: Steven P. Quarles, counsel.

OPENING STATEMENT OF HON. LEE METCALF, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator METCALF. Will the committee please come to order. This morning, because of the parliamentary situation, this committee is one of two committees in the Senate that is meeting. We have obtained special permission to meet until 12 o'clock. We have a long list of witnesses. Some of them have come from a long way. I hope each witness will accommodate us and the other witnesses by abbreviating his statement and summarizing it, if possible. All of the statements will be incorporated into the record in their entirety as if read.

We have opening statements. I am going to put in the record and try to accommodate all witnesses. I'm delighted to have with me this morning, two former members of our committee, Senators Stevens and Gravel who have been more influential as architects of the Alaska Native Claims Settlement Act than any other Senators and they will put their statements in the record.

[The statements of Senators Metcalf, Stevens, and Gravel follow:]

STATEMENT OF HON. LEE METCALF, A U.S. SENATOR FROM THE STATE OF MONTANA

Today's hearing is an oversight hearing of the Committee on the Interior and Insular Affairs on the Implementation of the Alaska Native Claims Settlement Act.

On January 2 of this year, the President signed the omnibus amendments to the Settlement Act upon which the Committee labored so long last year. The Committee is proud of the work accomplished in that measure. However, in February of this year, in preparation for Committee consideration of the d–2 lands legislation, committee counsel, Michael Harvey and Steven Quarles visited Anchorage to meet and discuss the legislation with the major interest groups: the State, the native community, miners, the oil and gas industry, and environmental organizations. A need for additional oversight on the implementation of the Settlement Act was a concensus opinion arising from these meetings. Accordingly, the Committee agreed to today's and Monday's hearings.

I share the perceived need for these hearings for two reasons. First, early next Congress the Committee will embark on an intensive effort to enact d–2 lands legislation—legislation which will have significant impacts on all of the parties here today. Neither you nor the Committee will likely be able to return to the Settlement Act for additional oversight attention. Accordingly this is the season for oversight work. Secondly, a number of the issues concerning the implementation of the Settlement Act will affect the positions taken by the various witnesses here today on the d–2 lands legislation. I fully recognize that your lives can be unduly complicated if many of these issues are not resolved prior to consideration and passage of further Alaska legislation. Hopefully, these oversight hearings will be a vehicle for the resolution of those issues.

I welcome your testimony and caution you to limit your oral remarks to no more than five minutes. I understand that Mr. Martin and Mr. Kito have been offered 10 minutes. However, I hope that they too will limit their remarks as much as possible. I say this because under the rules of the Senate this meeting must adjourn promptly at noon. I will inform each witness when his time has expired and expect him or her to promptly complete the testimony.

STATEMENT OF HON. TED STEVENS, A U.S. SENATOR FROM THE STATE OF ALASKA

Mr. Chairman, I commend the Senate Interior Committee for taking the time and energy to review the implementation of the Alaska Native Claims Settlement Act. That law was a unique effort to resolve the claims of Alaska's first residents. It was landmark legislation which will shape the future of Alaska for a very long time.

But as with any major measure, the Land Claims Act has not been without problems. Those of us who live with those problems on a daily basis are aware of them, but it is also important that the entire Congress be made aware of the effect and problems of that Act.

When the 92nd Congress passed the Alaska Native Claims Settlement Act, it was the culmination of many years of hard work. The Act is a great boost to the people of Alaska. Some forget that without the Claims Act we would not have the pipeline and the economic benefits that have resulted. But even without the economic boost from the oil line, the influx of capital due to the Claims Act would have carried Alaska through the recent national recession. The Act therefore was not only morally correct but economically correct.

Chief among the problems the Act has created is the flood of litigation that has resulted. The Interior Department bears the brunt of the litigation but numerous other law suits between Native corporations, between Native groups and the State, and a variety of other litigents have resulted.

This enormous number of cases costs vast sums of money, delays conveyances, confuses land status, and is not in our best interests. I urge the Interior Committee to work to establish a binding arbitration procedure which could handle many of these disputes. The exact nature and mechanisms of the arbitration can be worked out; but it is vital that some process be established so that the numerous disputes spawned by the Act can be resolved quickly and finally at a low cost.

It is also important that the problems created by Section 7i of the Act be resolved. That is the revenue sharing provision that provides for the redistribution of 70 percent of the income of each regional corporation to the other corporations. Because of the complexity of this redistribution numerous problems have resulted involving valuation, taxation, and other concerns.

This is one of the most important provisions of the Act and it should not be torn apart or rendered useless by numerous disputes. Congress should authorize a compact to be entered into by the regional corporations. The compact would be binding on the corporations on the whole range of issues involved in 7i. It should also bind the Internal Revenue Service and the State of Alaska so that the tax treatment would be equitable and clearly established. It is important to preserve the vitality of this section and we can accomplish this by providing for such a compact.

Another major problem is the question of the reservation of adequate public easements. The burden of seeking such easements under the Act falls upon the citizens of Alaska. It is up to every hiker, skier, canoer, and fisherman to

go to the BLM office, fight their way through the bureaucratic process, and try to explain how, when, how often, and how much they use a particular area. This is a tough job and because of the disparate and largely unorganized use that is made of Alaska's land it is possible that many vitally needed easements will fall through the cracks. The Bureau of Land Management has not realized the need for public awareness of the easement process and has not provided much help in reserving the easements. It is vital, if we are to insure the reservation of the easement the Act guarantees, that some central agency be designated or established to represent the Alaskan public interest. I suggest that the State with its expertise be designated as the people's representative. The State has the organization and manpower to insure that needed easements are identified and proposed. They have some knowledge already in the personnel who work for the State Department of Fish and Game and the Division of Lands and Parks. The State should also be able to do a better job of letting Alaskans know what they must do and then helping with those easements requests, coordinating them and arguing for them before the BLM Land Use Commission. I urge the Committee to take prompt steps to designate the State as such a people's representative to protect the interests of all Alaskans.

A third and possibly most important improvement which needs to be made is to accelerate the conveyance of Native and State selections. Less than one-half of 1 percent of the Native land has been conveyed in the five years since the Act was passed. The State has been seeking land since 1959 and yet less than 15 million acres have been finally conveyed. The land grants under the Statehood Act and the Claims Act were done largely to create a private land base on which Alaska's future can be built. Alaska still has a higher percentage of federal land than any other state. As the members of this Committee are well aware, federal ownership now involves more restrictions than at any tim in the past. The Statehood Act granted 104 million acres to the State so that much of that land could be conveyed to private parties to form a future economic base. The land grants under the Claims Act were made so that the Native groups could control their futures either through continued subsistance use of the land or through economic development.

But none of this can occur without increased and accelerated conveyance of Alaskans' land. We are not seeking full patent but only some form of conveyance that vests adequate ownership rights so the land can be used; conveyance so use can occur. It might be possible to make partial conveyances while withholding contested areas, or conveyances subject to later alterations. There is a way and we must do it to make sure that the State and Native groups are promptly given adequate ownership interests so that the land can be put to productive use.

In sum, the Congress is to be congratulated for the passage of the Act, but Alaska's problems still exist and will still require the attention of this Committee. As Alaskans we have a continuing duty to educate the members of the Congress on our problem. This hearing is a good step and again I congratulate you all for coming and the Interior Committee for holding these hearings.

STATEMENT OF HON. MIKE GRAVEL, A U.S. SENATOR FROM THE STATE OF ALASKA

Mr. Chairman, I would like to commend the Senate Interior and Insular Affairs Committee for making time available for this series of oversight hearings on implementation of the now four and one-half year old Alaska Native Claims Settlement Act. I consider these hearings to be a vital part of the actual implementation of that important legislation. It is important for the Congress to continue to monitor the progress of all parties: the Alaska Native community, the State of Alaska, and very importantly, the Department of the Interior in the process of successful implementation.

I am certain I speak for my colleagues in the Alaska Congressional delegation in expressing appreciation for the willingness of the Committee to stay closely involved in that process. This is an important part of the necessary and continuing communication between all those concerned with implemenation of the Act.

In light of the far-ranging and often overlapping areas of interest embodied in the provisions of this legislation, it is not surprising that implementation of the Act has revealed certain deficiencies, oversights and frustrations, particularly in securing to the Natives the benefits and rights to which the Act entitled them. A number of the deficiencies, and problems and the resulting inequities have been identified and correction has been accomplished in the recent Omnibus Bill. But other problems still exist, and new ones may arise in the course of implementing the Act. Accordingly, the purpose of these hearings is to examine whether the Settlement Act, as amended, is being implemented in accord with Congressional intent and to identify problems that may still exist in carrying out implementation.

One problem in particular that I would like to touch upon is the delay in conveying lands to the Natives. Although Section 14(a) of the Act provides that titles to lands selected by Native corporations are to be conveyed *immediately* after selection, inordinately long delays are occurring between selection of land by a Native corporation and transfer of title to the corporation. This severely limits the Natives in the planning and development of their resources which of course is essential to the life and success of the corporations. Other development concerns, as well as the Natives are hindered by these delays, such as the State of Alaska in their legislatively mandated land selections. I feel this inequity is of primary and vital concern and should be promptly corrected. If this means a re-arrangement of BLM priorities and manpower, and/or decentralization of authority in order to expedite decision-making, thereby accelerating implementation, that process should be discussed with the Secretary when he testifies before you on Monday, and the re-organization begun immediately.

I think the testimony you will be hearing over the two days of hearings will make clear that in passing the 1971 Settlement Act, Congress has enacted legislation so complex and problematic as to suggest careful review to insure equity, implementation which conforms with Congressional intent, and the identification of problems which may at some point require further legislative remedy. It is to these important ends we must address ourselves.

Senator METCALF. The first witness is Guy Martin, commissioner of natural resources, State of Alaska. Mr. Martin, we are very pleased to have you here.

STATEMENT OF GUY R. MARTIN, COMMISSIONER OF NATURAL RESOURCES, STATE OF ALASKA

Mr. MARTIN. With me is Dr. Robert Baresh. I have asked him to accompany me here today for the first time. He will probably be back here again.

I'm Guy Martin, commissioner of natural resources for the State of Alaska. Mr. Chairman, we appreciate the opportunity to be here. We will summarize our testimony this morning.

Briefly we are very happy you have turned your attention to oversight of this legislation and by and large, we think you will hear in these oversight hearings, a number of problems concerning the land claims bill. The State itself is going to raise a series of problems, some of which we will summarize and some of which we will submit for the record.

I think, speaking as one who was here during passage of the act, I hope the committee will also consider at some point in these hearings, the overall success of the Land Claims Act in terms of its policy objective. By and large, I think the committee will conclude, as has the State, that the act is successful in meeting the intentions of its framers. It has been a major force in the history of Alaska and has set in motion a chain of events and actions certain to resolve some of the most complex and controversial issues of public policy confronting any State.

Major areas of fault in the settlement, as I believe our testimony will undoubtedly indicate, are not in the overall policy directions which were anticipated or established by the act, but rather in a slowness and inefficiency in the administration of the act causing what we believe to be unacceptable delay in the institutional benefits which were intended to be created by the act. The central theme of our testimony certainly goes to this point and I will try to briefly cover several important areas.

First, Mr. Chairman, I think it can be said the primary objective of the act was certainly the just settlement of long standing Native land claims in the State of Alaska. But, a secondary theme of nearly equal importance to the State was a desire to end a period of legal uncertainty with respect to Alaskan lands and to establish rules by which the land resources of Alaska could be freed for State selection, private ownership, and designation.

In the case of Statehood selections, the Settlement Act, has presented a pattern which has now truncated Statehood selection rights by nearly ten years out of the 25-year period to which it was initially entitled. Nevertheless, we think this is proper so long as the act is administered adequately now.

Quite frankly, Mr. Chairman, we conclude that to some extent the Settlement Act has not been successful in this latter course. This latter intent of resolving other Alaskan land issues, in fact it could be, we think, argued convincingly that the land of Alaska may be more rather than less tied up with legal problems than it was prior to the settlement.

One of the problems we point out in our testimony was the problem of over-selection under the Native Settlement Claims Act in which the native corporations, under a system clearly permitted by the regulations, have selected some 45 million acres of land in excess of the entitlement under the act, for a total of something like 90 million acres. Most of these lands are not available for State selection and do not fulfill the purposes of the act as we envision it.

To remedy this situation we are suggesting in our testimony, four measures taken at the earliest possible time to relieve the land situation. First, we believe the regulations and procedures of the Interior Department should be amended to require reduction in the size of selections which are allowed. Second, we believe the manpower capability of the Bureau of Land Management must be substantially increased to allow them to carry out the responsibilities under the act. Third, we believe corporate land selections under the act should be prioritized so that those dealing with them can rely on the selections and rely on the selections which will ultimately be conveyed.

Finally, we think the Department should investigate all possible ways to improve and accelerate the interim conveyance process to native corporations so long as that process includes adequate procedures to identify easements and to protect all of the public interests.

A second related problem, Mr. Chairman, is that of easement identification, and I think I can say as an individual who has dealt with it very closely, it is among the most controversial problems in the State. As you will recall, the designation of public easements in the initial act was one of the most important policy inclusions in that

act, it provided for utility, transportation, and recreational easements, rights of passage for all Alaskan citizens.

Now, quite frankly, the establishment of the easement regulations is one of the worst chapters in the administration of this act. It took well over a year of uncertainty and indecision at the Department of the Interior; they went through three Secretaries of the Interior and several other acting officials before we got an answer on the easement regulations. During that period of time, the State took a position which was based on a balance between the desire to see the Natives get the fullest possible title, unencumbered title, to lands that they rightly received under the act, balanced against the right of the Alaskan public on certain identifiable policy grounds to gain access across these lands for public purposes. The framers of the act anticipated and added to the initial settlement. In very simple terms, the State took a middle ground regarding easements and it was one which rejected the notion of a single, inflexible standard for easement designation that blanketed all Native lands. It was a standard which tried to balance the interests of the Native corporations and of the other people of the State of Alaska.

Right now, as I say, this is one of the most controversial items in the State and it is going to be more controversial. As you know, it is under litigation, both from several of the Native corporations and from what has been called public easement defense groups. We have included in our testimony, Mr. Chairman, as many as 10 or 11 suggestions which we believe will improve the easement process now under way. I won't take the time of the committee listing those now, but I would only share with the committee our absolute feeling that unless some of these procedures are adopted and some of these changes are added in the administration of the easement regulations, we are all going to have a very difficult time with the identification of easements in the future.

The points extend over a wide spectrum. But, let me say the theme is the administration, the identification of easements being carried out by the Department of Interior, must be improved. The Alaska public, at the present time, feels I think cheated in terms of easement identification. At the same time, I think the Natives legitimately feel they have been treated in a very slow time frame with regard to identifying the regulations under which these easements will be designated and feel they have not had a standard upon which they can rely. Both sides are unhappy with the present situation and I would want to bring this to the attention of the committee and say there is probably no more important act that these oversight hearings can result in, than a firm directive to the Department of Interior to improve this process.

As I say, we are giving some suggestions for that.

Senator METCALF. I doubt if a directive from this committee would have an influence, but we would be happy to contact Secretary Kleppe.

Mr. MARTIN. Possibly repeated testimony from witnesses here will have that effect, but I think it will be borne out by both of our Senators, this is a problem that is not going to go away, and it's either going to be solved by litigation or better administration of the act.

Similarly, in a brief note, Mr. Chairman, I think we should say the Department is also responsible for designating transportation

easements, transportation corridors. This process has been going on for a long period of time and we still have not reached much of a conclusion with regard to transportation corridors. It looks like it may be going the way of the easement process.

Before summarizing our testimony, we do conclude the Department should substantially alter its decisionmaking process and administration of the Claim Settlement Act with respect to the center of decisionmaking. We found, over a period of time, too many decisions with respect to the act had been made in Washington, not enough made in Alaska, not enough authority to the Federal agencies in Alaska to carry out the Act. The easement identification process took more time than it actually should have because so much of the decision was removed from Alaska. The Alaska task force which I think the Alaska Federation of Natives leadership will talk about should probably be reorganized and spend more time in Alaska and less of its time in Washington. Overall, we think there is going to have to be more involvement with on-the-ground decisionmaking.

Another point relates to the issue of land exchanges, you will recall in its most recent amendments to the Claims Settlement Act, this committee and the Congress approved exchanges for a large and extremely complex tract of land involving the Cook Inlet region which involved one of the most difficult and knottiest legal issues that we have in the entire act.

The State has responded to that and it is now law. The State went one step further and enacted a law which set standards for future land exchanges and, quite frankly, it is an extremely, almost visionary, law. We recommend to this committee at some early time, either pick up this issue itself with respect to future land trades or ask the Department of the Interior to conform with regulations of the State. There will be needs for less complicated but still necessary land exchanges.

Mr. Chairman, in one or two other notes, let me say, although we understand these hearings were not intended to address the 17(d)(2) issue, we think it is important to at least say something about it, particularly in terms of land use cooperative planning. The State has always been a strong supporter of the Land Use Planning Commission and I expect that pattern will continue. We think one of the strongest things growing out of the act is a continued awareness that cooperation between the three major landowners, the Native corporations, the State and Federal Governments, is imperative. The Commission reflects that goal, and so, Mr. Chairman, does the bill that has been submitted by the Governor or suggested by the Governor on 17(d)(2). We believe the Congress should move early to take up the 17(d)(2) issue and we believe it should do so using as a vehicle on cooperative land systems rather than hearings on individual designated areas.

We think even in this Congress it would be advisable for this committee or for the House to take up the subject of the types of systems which might be used to designate the public interest lands, not to take up specific geographic areas, but to look at systems and try to get some answer as to the way we should approach the problem. It, like other issues in the Claims Settlement Act, has been left un-

attended for too long a period of time and it results in foreclosing the State from selecting the land under the act which it desires to do.

A similar problem, closely related, is the subject of 17(d)(1) withdrawals. You will recall, 17(d)(1) was the section in the act which allowed the Department of the Interior to make withdrawals for protective purposes, not for public interest purposes. By a series of withdrawals under that section, the Secretary has effectively withdrawn under that section, the Secretary has effectively withdrawn all public lands in Alaska from State selection. Now, while we can select there and while we believe our selections may be good, there is a substantial legal cloud over such selections. We are increasingly concerned, the termination of the withdrawals for 17(d)(1) purposes will occur only at a time when the lands that are available may not be valuable or useful to the State of Alaska.

What we are saying to the committee today is that we believe since we would like to exercise our rights to begin selecting statehood land again, we believe the Department of the Interior should begin to consider very soon a way to withdraw or alter those 17(d)(1) withdrawals, and get the State back in the business of selecting lands.

Mr. Chairman, I think with due regard to your schedule, I can terminate my remarks at this point and submit the rest of comments for testimony. I've covered other points in that testimony, I will be glad to elaborate on any points the committee desires.

Senator METCALF. Will you submit the Alaska law on land exchange or transactions, or a citation, so we can incorporate it in the record?

Mr. MARTIN. Yes, sir; I will be glad to do that.

Senator GRAVEL. I would like to compliment the Commissioner on a very fine statement. I think the staff of the committee will go over in great detail these recommendations.

Probably the greatest shortfall is in a great piece of legislation has been the timetable with which the Federal Government has been able to transfer title. I'm very well acquainted with the reservation process that we have in title insurance and the like. We transfer title all of the time. I think it is encumbent upon us to pressure the BLM, otherwise we will not see the transfer of land in this century. So, I would underscore that part of the Commissioner's statement and I commend him for a very forthright statement.

Senator STEVENS. I only have one question, Mr. Chairman. Mr. Martin, you have provided in the bill for a very strong regional corporation and presentation of the Native organizations, actions such as selections, but there is no provision in the bill for an agency to represent the public interests of the State with regard to the public easements, the recreation easements and other easements you mentioned. Would it be possible the State could undertake that identification process?

The defect is the BLM seems to be waiting for each member of the collective public to come forth and identify the areas that are actually needed. As an alternative, they have these continued easements which I don't agree with.

It seems to me we need some entity to present these areas and identify them. The Fish and Game Department ought to be able to do

it. Has that been considered to take into the State the obligation to present the public point of view? I don't mean Native or non-Native, I mean total Alaskan public point of view with regard to easements where they should be located, how extensive they should be.

Mr. MARTIN. Senator Stevens, as a practical matter that is exactly what is occurring now. I am not certain what you have in mind in terms of some formal designation of that responsibility, but as a practical matter, what occurs now is we have a State task force made up of all of the resource agencies that have knowledge of this area, and for each area that is taken up, we come forward with recommendations for easements in that area based on the knowledge of those agencies and based on the public input we received.

Senator STEVENS. I do have in my recommendation to the committee that the State be designated as the agency to locate and identify those easements. Would that be consistent with State policy?

Mr. MARTIN. It would be consistent, but we found as a policy matter throughout the process, it is difficult if not impossible for the State to satisfy all of the various pressures from the public on this issue.

We have been condemned on the one hand by the Natives for an excessive easement policy, and on the other hand by the easement defense folks for not going far enough. We are participating in it now.

If we were designated as a final authority for that, I am not sure it would resolve the difficulties that are associated with it, but it would probably better frame the status of the State as a locus for receiving information. It may not change the situation at all and I don't think we would resist taking on the task.

Senator METCALF. Thank you very much, Mr. Martin. We have a rollcall going on in the floor, we have exhausted 20 minutes. I would hope there would be a better summary so everybody can testify.

[The prepared statement of Mr. Martin follows:]

Statement on Behalf of

THE STATE OF ALASKA

By

Guy R. Martin
Commissioner of Natural Resources
State of Alaska

For the Hearings of the

SENATE INTERIOR AND INSULAR

AFFAIRS COMMITTEE

on

Oversight of the

ALASKA NATIVE CLAIMS SETTLEMENT ACT

June 10, 1976

Mr. Chairman:

Speaking not only as the representative of the State of Alaska, but as one who participated directly in the enactment of the original legislation, I appreciate the opportunity to be here and commend the committee for turning its attention to oversight of this milestone legislation. I suspect that these hearings, like most oversight hearings, will include the recitation of a multitude of problems and difficulties associated with the legislation and its administration. Indeed, the State will lay before the committee a series of problems ranging from those large and critical to those technical and bureaucratic yet I hope the committee will also take the broad view seeking to learn of the overall success and meaning of the Land Claims Act judged from the perspective of five years of experience.

By and large, I believe the committee will conclude, as has the State, that the Act is successful, and has had the meaning which was intended by its framers. It has been a major force in the recent history of Alaska, and has set in motion a chain of events and actions certain to resolve some of the most complex and controversial issues of public policy confronting any State. Major areas of fault in the settlement, as I believe this committee will discover in its hearings, will not center on the substantive results or the policy directions created by the Act, but rather on the slowness and inefficiency

of its administration, causing unacceptable delay in the institutional benefits which were intended to be created by the Act. The central theme of the State's comments will cover those areas where important objectives of the legislation have not been adequately carried out due to confusion, delay and inefficiency in administration. Clearly, from the perspective of the State, the most important of these issues is the failure of the Act to fulfill one of its most important objectives -- that of finally resolving conflicting Alaska land issues and freeing up the land of Alaska not only for Native selection but for all of the people of the State.

Over-Selection of Land

The primary objective of the Act was certainly the just settlement of long-standing and legitimate Native claims, but a secondary theme of nearly equal importance was the desire to end a period of legal uncertainty with respect to Alaska lands, and to establish rules by which the land resources of Alaska could be freed for State selection, private ownership, and national interest designation. In the case of Statehood selections, the Settlement Act, while necessary and right, represented part of a pattern which has truncated Statehood selection rights by nearly ten years out of the twenty-five year period allowed, and by millions of acres which might otherwise have gone to the State. Nonetheless, this process was

acceptable because the settlement itself was proper, and because it promised the establishment of rules and standards by which the State and its citizens could ultimately move to fulfill their Statehood Act entitlement.

In this respect, the Settlement Act has not been successful, and it might convincingly be argued that the land of Alaska, rather than being released, has become more tightly frozen and subject to a complex of legal issues. There are several specific issues associated with this problem, one of the most serious is the occurrence of Native over-selection under the terms of the Act and its regulations.

These over-selections, permitted by the regulations, have resulted in as many as 45 million acres in excess of the entitlement being selected by regional and village corporations. The results of the over-selection are manifested in several ways.

First, all those lands selected in addition to the entitlement are not available for State selection even if other legal problems were resolved. In addition, the over-selection forces all those having to deal with Native selections, such as those seeking to designate easements, or engaged in resource planning to deal with a much larger body of land than would be necessary if over-selections were limited to the entitlement, plus a reasonable margin of safety for full selection purposes. At the same time, the slowness of the interim conveyance procedure

fails to give native corporations the necessary certainty for management purposes.

To remedy this situation, the State suggests that four measures be carried out at the earliest possible time. First, the regulations and procedures of the Department should be amended to require reduction in the size of selections which are allowed at the present time. Second, the manpower capability of the Bureau of Land Management in Alaska must be substantially increased to allow them to cope with the demands of implementation of the Land Claims Act. It is the belief of the State that legitimate requests of the Bureau have gone unanswered in the budgetary process during the crucial period of administration of the Act. Third, corporation land selections must be prioritized with definiteness and finality so that all of those who must deal with or rely upon these selections can focus their actions appropriately. Finally, the Department of Interior should investigate all possible ways to improve and accelerate the interim conveyance process so long as this process includes adequate procedures to guarantee easement identification and other actions in the public interest.

Easement Identification

A controversial and complex problem closely related to that of over-selection is the designation of easements under the terms of the Settlement Act. From its beginning to its

present status, the easement identification process has not been one of the Settlement Act's finest hours. As members of this committee will recall, the designation of public easements prior to conveyance of land selected under the Settlement Act was one of the most important public interest features built into the settlement. These easements, for utility, transportation, and recreational purposes have been the source of major and ongoing difficulty in the administration of the Act. The State's comments today are directed specifically to the establishment of recreational easements, as they represent the areas of most active controversy in Alaska at the present time.

The establishment of recreational easement regulations was one of the poorest chapters in the administration of the Settlement Act involving well over a year of uncertainty and indecision during the administration of three Secretaries of the Interior. During the consideration of these regulations, the State attempted to take a position which recognized the legitimate right of the Settlement Act corporations to take the fullest possible title to the lands provided through the Settlement Act, limited only by the designation of fair and adequate easements for all of the Alaska public, including Alaska Natives, to retain rights of passage for recreational purposes. The State did not support nor does it support now, a concept

of total easements unsupported by existing public use and having its basis in administrative ease of designation or enforcement.

To a large extent, the State's position on recreational-easement designation prevailed in the final regulations and established standards which present administrative difficulties because they require judgments with respect to present public usage in remote areas of Alaska. Such a standard, controversial both with native interests and the general Alaska public demands the very highest standards of administrative action. It is these standards which the State feels are not being maintained adequately by the Department of Interior at the present time.

In simplest terms, the State and others involved in the formation of the easement regulations took a middle ground which based easements on sensitive standards of public policy rather than a single inflexible policy which had blanket application to all conveyances under the Settlement Act. At the present time, few issues are more controversial in Alaska or more likely to destroy the harmony between Alaskans which was intended to result from the Settlement Act. If the present easement standards of the Department of Interior are to succeed, the administration of these regulations by the Department of Interior must be improved substantially and immediately. In recent meetings with those attempting to deal with the present system of easement designation, a series of important observations

and specific recommendations for change have been developed and I am listing them here briefly for the use of the Committee and the notice of the Department of the Interior. The points are as follows:

(a) Although the easement process has been slow in developing from the perspective of those directly involved in the process, the easement process has remained confusing and inaccessible to a great portion of the Alaska public desirous of seeing that recreational easements presently used are protected in the future. It will be essential for additional time to be made available in the easement process to allow an Alaska public which is only now beginning to appreciate the nature and importance of the easement process to become involved in the process and to make adequate easement designations for the future.

(b) Vastly improved notice and information procedures must be instituted by the Bureau of Land Management. The recreational easement process remains confusing and unapproachable to much of the Alaskan public. Those that do become involved in the process find that many aspects of it do not permit the layman to advance legitimate designation nominations.

(c) Easements designations must be taken up on a more orderly schedule, and one which is announced well in advance. Under present circumstances, individual areas are taken up on short notice sometimes in response to local pressures either

from the corporations or the general public, and there appears to be no advance schedule which would permit both governmental and public response to form on a planned basis.

(d) A future schedule should be prepared which focuses on regional rather than local areas. This would facilitate the application of resources of the State or of private citizens to the easement designation process and would improve the quality of planning both for recreational easements and for transportation purposes. The process should not be piecemeal.

(e) Perhaps most critical among the necessary improvements is the resolution of the over-selection problem. Those attempting to designate or adjudicate easements must now deal with selection areas which are substantially larger and less defined than those which will ultimately be conveyed. The practical effect of this situation, in view of the scale of the effort the State or public can bring to bear on the issue, is that the intent of the Act to designate full and fair easements may not be satisfied. If the over-selection issue were resolved satisfactorily, it would permit all those involved in the easement process to focus their efforts on prioritized areas and to make the easement process most meaningful.

(f) Substantially better maps must be made available to the general public if easement identification is to have any integrity. The maps presently used by BLM are difficult to

read and offer the layman little realistic opportunity to identify areas where present use is taking place.

(g) BLM manpower and money devoted to the easement designation process should be substantially increased. Specifically, the addition should provide an increasing amount of capability for BLM to evaluate and certify easements, and to make the entire easement process more meaningful to the public. In addition to better easements, the net results of an increase in BLM personnel assigned to this task would be a more expeditious conveyance of land to native corporations along with a proper identification of necessary public easements.

(h) The BLM must strive to establish and promulgate consistent interpretations of its guidelines for easement designation. According to public information received by the Alaska Department of Natural Resources, guidelines are being applied differently from one local area or region to another, making it quite difficult for Alaskan citizens, Native or non-native, to rely on consistent standards for easement designations.

(i) The identification of third party interests must improve prior to the time that interim conveyances are made. At the present time many of these interests are simply going undesignated at the time the easement process is completed in an area, and as a result, a significant number of people will find themselves landlocked and faced with expensive and protracted

litigation of uncertain outcome to establish their right of access. At the same time, corporations would remain unsure of their title for a longer period.

(j) Perhaps the overall solution to this problem is to increase the speed with which interim conveyances can be made. At the same time it will be important to provide generally for the broad protection of future easements. Although the State agrees with the corporations that floating easements do not represent an acceptable permanent policy, it may be necessary to make generalized easement designations in order to facilitate early interim conveyances pending later study and permanent designation of easements. To avoid the possibility of such a process evolving into a floating easement policy, a fixed time frame for permanent designation should be set and followed.

Mr. Chairman, the resolution of the easement issues is among the most important problems confronting the State at the present time with respect to the Settlement Act. Opinions are widely divided and deeply held, and the State could not be stronger in telling the committee that the level and quality of administrative effort given this task by the Department of Interior must be substantially improved. As you are aware, the easements issue is under litigation both by the corporations and by Alaska public easement defense groups. This situation can be expected to expand and intensify if remedial actions are not taken in the near future.

Transportation Easements

The State has been continuously concerned with this crucial aspect of the easement process, and includes it in today's testimony only because it has remained an inactive issue for so long. The State has shared with the Native corporations the strong position that few if any transportation corridors should be designated, and that a floating corridor policy is also undesirable. At the present time, the process is simply inactive, and suggests some of the indecision and lack of direction which characterized the recreational easement procedure. As in the case of all other aspects of A.N.C.S.A. administration, substantially greater effort must be undertaken in the State rather than in D.C.

Department of Interior Policy Formation and Implementation

From the very beginning of its administration of the Settlement Act, the Interior Department has followed a policy which largely centralizes decision-making regarding the Act in Washington, D.C. For many purposes, especially those which involve major policy issues, this centralization has been of some benefit, enabling the Department to utilize those individuals in the Department who are most skilled and knowledgeable regarding the Act. For a number of purposes, however, the centralization has become considerably less productive, and the recent process (in excess of a year) necessary to reach regulation

decisions on the easement issue indicates the sort of problems which are inherent in the centralization. Without specifying precise delineations, the State would suggest that the Department give serious consideration to decentralizing a number of the decisions which are necessary in the administration of the Settlement Act. The State believes that the delegation of additional decision-making authority to the State Director of the BLM and other Interior officials in Alaska would be appropriate, and we further suggest that manpower made available to agencies within the State of Alaska for Settlement Act administration be increased commensurate with budget requests in recent years. With present manpower and authority, such tasks as easement designation, surveys, disputed adjudications and others cannot be administered efficiently and on a schedule which carries out the intention of the Act in Alaska. Increases both in authority and in manpower are essential if the intent of the Act to bring stability and harmony to the land situation are to be fulfilled.

Similarly, the Alaska Task Force, which is a Department of Interior's policy body respecting the Settlement Act and other Alaskan problems, must spend a far greater percentage of its time actually in Alaska, either as a group or through its individual members. Additionally, the Task Force would profit immensurably from just one or two permanent staff positions to track these very important issues. The pool of those having

expertise with respect to the Land Claims Act and with respect to Alaskan resource issues is perilously small and increasingly out of touch, and it is important for the Department to continually refreshen and replenish its knowledge with respect to the problems which the Act must meet and overcome in the State.

Land Exchanges

Few issues could be more representative of the difficulty and complexity of post Settlement Act problems in Alaska than the land selection problems encountered by the Cook Inlet Regional Corporation, and the subsequent Cook Inlet land exchange entered into by the State, the Federal Government and the Cook Inlet Region. This exchange, controversial from the first, and challenging the abilities of numerous institutions to supply vision and flexibility adequate to resolve a massive problem, the Cook Inlet land exchange now appears to have been successful. Nonetheless, a great deal has been learned from this exchange and it will take constant vigilance to insure that its success is lasting. It is clear to the State that, although no exchange of the complexity of the Cook Inlet exchange is foreseeable for the future, land exchanges will continue to represent an important tool for resolution of difficulties following the Settlement Act.

Aside from the specific outcome of the Cook Inlet exchange, the most meaningful product to emerge from that process may well have been the passage of a state law designed to set

standards for the State's participation in future land exchanges. That legislation, copies of which will be supplied to the committee shortly, is a fair and workable statute which should allow future exchanges to take place in the public interest and with adequate public process to protect all Alaskan citizens. I believe it is incumbent upon the Department of Interior in the near future to consider specifically the question of future land exchanges and to promulgate unified regulations to carry out the provisions of Section 22(i) of the Act. These provisions, which might well be designed to track the provisions inherent in the new State law, would go a long way to set a future base of understanding for exchanges which will most certainly be necessary.

Cooperative Land Use Planning

The State of Alaska has been a continuous and ardent supporter of the Land Use Planning Commission, and was a supporter of the extension of that Commission in recent amendments to the Settlement Act. This fact is noted here for the purpose of encouraging the committee to continue to think in terms of cooperative resource management for the State of Alaska involving the Federal Government, the State, and the Settlement Act corporations. Decisions, or legislation, which tend to segregate or isolate these major Alaskan land managers one from the other can only be counter-productive in the long-run history of Alaska. Most recently, the State has advanced the notion

of cooperative resource management in its proposals for implementing the provisions of Section 17(d)(2) of the Settlement Act. Although the State understands that these hearings are not convened for the specific purpose of taking up the issue of Section 17(d)(2) public interest lands, the State would be remiss in not urging the Committee to undertake action on these important proposals at the earliest possible time. Various formulations for the legislative treatment of national public interest lands have been submitted, and during the last two years Congress has struggled unsuccessfully to find the beginning point for consideration of this issue. The State has suggested, and would suggest again in these hearings, that the issue of cooperative management systems is a good starting point. Prior to consideration of individual areas for national public interest designation and protection, the State believes that it would be entirely appropriate for the committee to have oversight hearings on the 17(d)(2) issue, asking that those advocating various formulations come forward to give an overview of their proposals on an institutional basis rather than setting out the benefits of specific management alternatives for each geographical area. Such hearings could usefully be held during the present session of Congress and be accompanied by a field trip to Alaska in which Alaskan viewpoints could be researched, and an appreciation gained of the areas proposed for 17(d)(2) classification.

Section 17(d)(1) - Withdrawals

By a series of withdrawals under Section 17(d)(1) of the Settlement Act, the Secretary has effectively withdrawn all public lands in Alaska. While the State may select in these areas, it is doubtful if any rights to its selections will attach unless and until the Secretary terminates the withdrawal of the lands selected. We are growing increasingly concerned that the termination of the withdrawals will occur only reluctantly and only on a limited basis after protracted negotiation. We hope it is not so, but we are afraid that Section 17(d)(1) is being used as the ultimate land freeze, in frustration of the State's rights granted by Congress in the Statehood Act and the Settlement Act; rights that have been frozen for the past ten years.

The State anticipates exercising its rights to complete land selections at some time in the near future. If, as we expect, we run into a bureaucratic effort to frustrate these rights, we expect to be back here with appropriate proposed legislation to prevent the Federal bureaucracy from second-guessing Congress on this matter. We hope this will not be necessary, but we are afraid it will.

Airports

The State of Alaska owns and operates a system of airports in rural Alaska which is critical to transportation there. Most of these airports are, of course, located on lands

near rural communities, that is, the Settlement Act villages. All of these lands are withdrawn, and the provisions of the Act in Section 14(g) which are designed to facilitate the transfer of these airports to the State are woefully inadequate. Under the Act, the village corporation has no duty to convey the airport facilities until after it has received a patent for the lands. This may be twenty or more years from this date. In the meantime, it is absolutely impossible to transact any significant development with respect to these airports.

In no little way, the status of these airports is literally in limbo. There is a very simple solution to the problem. It was recommended to this committee during hearings on Settlement Act amendments last year, but for unknown reasons was not included in the Amendment Act. The solution is to amend Section 3(e) of the Act to add the words "state and local" after the word "federal," and before the word "installation" on line 4 of that subsection.

Because Section 14 provides for the ultimate conveyance of installations including specifically airports, belonging to the state and local governments to those governments, this amendment of subsection 3(e) takes nothing away from the corporations that must not be conveyed away by them in any event. What it does do is take airports and other facilities out of the state of limbo to which they have been confined by the Settlement Act at this time.

Schools

The State of Alaska conducts a 100 percent State-supported school system in rural Alaska. Many of the school buildings have been constructed in the villages on federal lands which the State has selected in the past from the federal government or which the State has leased from the federal government. Section 14(g) of the Act contemplates that these school sites will be conveyed to the state government (and where appropriate, local governments), but as with airports their status is now in a state of limbo and, unless the Settlement Act is further amended, it will remain in a state of limbo until patents are issued and the lands are conveyed, a far distant prospect. The result has been substantial and harmful uncertainty and confusion in the maintenance and development of Alaska's rural school system. The amendment we have proposed for Section 3(e) of the Act would tend to cure the bulk of this problem. It will not cure all the problem of developing new schools in rural Alaska.

For a number of years now the State has greatly expanded construction of primary schools in Alaska's villages. It has this year passed legislation authorizing a $59 million bond issue for the construction of secondary schools in the villages. We would hope that either by using the school sites in those villages for which town sites have been platted, or by using the power given the Secretary under Section 22(i) under the Act, lands could be made available for these new schools

without payment. Our experience to date, however, makes us less than enthusiastic about our chances. Quite frankly, with the exception of projects in which the Federal Government has an interest, we have found it all but impossible to obtain any lands for any public purposes within the areas withdrawn for selection by the Settlement Act corporations. We do not begrudge the corporations full payment for full value received in most cases. But throughout the western United States, townsite surveys have always set aside sites for public school purposes. A project of such singular value to the residents of a village should not involve a waste of taxpayer money to acquire land which otherwise is free. We do not think we are overreaching in asking the Secretary to exercise the powers that Congress has given him. We do not think we are overstating the case when we say that he has willfully refused to do so, without even admitting that he has the power or that he will not exercise it.

Navigable Waters

Depending upon your point of view (i.e., state or federal), Alaska contains literally thousands upon thousands of miles of navigable rivers and millions upon millions of acres of navigable water bodies (state) or almost none. The Settlement Act corporations are trapped between these opposing viewpoints. The Bureau of Land Management is, in effect, attempting to compel the Settlement Act corporations to accept

as a part of their entitlement the bottoms of streams and lakes which, very probably, may later be adjudicated by the courts to be submerged lands and the property of the State of Alaska. In an effort to further complicate the issue, the Department of the Interior has purported to vest the Alaska Native Claims Appeal Board with the authority to determine navigability and, therefore, title to the submerged lands. The lawsuits which could arise from these determinations will still be going on in the 21st Century. We admit that the navigability of a number of streams and lakes may reasonably be put in issue. For the most part, however, any good faith effort to eliminate these disputes which involve representatives of the state and federal governments and the Settlement Act corporations would eliminate the vast majority of disputes in no time at all. More than a year ago a proposal was made to the Bureau of Land Management to accomplish this very result. It proposed a process, standards, and a schedule for moving cooperatively to resolve difficult navigability issues. It has never been acted upon. We cannot think of a single good faith reason why it has not been.

School, University, and Mental Health Lands

While it is probably too late to do anything about it now, except perhaps for a statement of intent and clarification, we wish to advise the committee that in addition to state lands selected under the Statehood Act which are in the village withdrawal areas, the village corporations are selecting lands that

were granted to the State as school lands, university lands, and mental health lands. This is particularly troublesome with respect to the mental health lands, because of the size of that particular grant. It is our view that only those lands granted to the State under Section 6 of the Statehood Act are available for selection by the village corporations. The matter will now have to be resolved by the courts, and suffice it to say that it should never have got there in the first place, and that we are not very happy over this result. At any event, pending the outcome of the litigation, we are particularly disturbed by the plans which appear to be developing within the Bureau of Land Management to cancel arbitrarily some of the State's mental health land selections because of over-selection. Obviously if we lose several hundred thousand acres of mental health lands to the corporations, we will not have over-selected under that grant. For this reason we believe the BLM should not alter the status of our mental health land selections until the matter has been resolved by the courts, and a word from this committee on the subject would not be amiss.

Senator METCALF. Our next witness is Sam Kito, Jr., President of the Alaska Federation of Natives.

During the course of your testimony, Mr. Kito, Senator Stevens and I may leave and we will turn over the gavel to Senator Gravel when he comes back.

STATEMENT OF SAM KITO, JR., PRESIDENT, ALASKA FEDERATION OF NATIVES

Mr. KITO. I will summarize my statement. We do have some extensive comments we will enter into the record prior to the time of closing.

My name is Sam Kito. I am president of the Alaska Federation of Natives and we wish to express our appreciation for the opportunity to testify today.

This significant piece of legislation has had a major impact not only upon the Native community, but also upon the entire State of Alaska. In the course of implementing the act, several areas of concern have developed which I wish to bring to your attention today. Please know that my treatment of these issues will be very brief, but will be covered in more detailed statements and by written and verbal testimony of the several Regional Corporations which will appear before you.

The first part is the Buckley amendment. In 1973, Congress passed the Trans-Alaska Pipeline Authorization Act to expedite construction of the Trans-Alaska Pipeline. Section 407 of that act contained a provision authorizing advance payments which were supposed to accrue at the rate of $5 million for every 6 months. To date, the Congress has not made any appropriations. At the present, there is still accordingly a deficit of $10 million in the appropriations into the Alaska Native Fund and that figure will rise to $15 million.

We understand that failure to appropriate money under the provision may have been an oversight, not an intentional decision. We urge Congress to consider the matter at the earliest possible convenient time.

During the last 4½ years, the Natives have dealt on a continuing basis with the Department of Interior in the administration of the act. Unfortunately the course of that agency's administration of the act has all too frequently been one of disappointment and frustration to the Native community. I will not dwell on each and every one of our disappointments, but indicate to you the disappointments have been many.

We would like to start with the Alaska Task Force. Many of the problems we see in the implementation of the Settlement Act result from the decisionmaking structure developed by Interior. The Settlement Act vests a great deal of administrative discretion in the Secretary of the Interior. Over the years we believe the Secretary has effectively delegated all of his authority to subordinates in the Department and eliminated his personal responsibility for implementation of the act. Most of the authority has been delegated to the so-called Alaska Task Force which consists of the assistant secretaries or deputy assistant secretaries of Interior.

We believe we have only one spokesman at Interior and that is the BIA Commissioner. Other members represent special interest groups within the Department, and we recommend to Congress that Congress join with us in insisting that Interior reorganize the administrative structure for the Settlement Act. If the Secretary is unwilling to personally assume responsibility for the administration of the act, then the responsibilities should be delegated to a single office within the Department which is at least sympathetic to the Natives' interests. If it is necessary on certain occasions to obtain the views of other offices within the Department, those views should be sought as advice to the single official who would retain the ultimate decisionmaking authority. The present structure in effect gives a veto power to anti-Native interest groups which exist within the Department of the Interior.

Regarding easements, the issue of easements is one that can no longer go unattended. There is nothing in the act which authorized the Secretary to establish floating easements across lands selected by regional and village corporations, but he has in effect done so.

Section 17(b)(1) grants the Secretary through the Federal, State Land Use Planning Commission, authority to establish only public easements across Native lands and at periodic points along the courses of major waterways. The Secretary has stretched this language and promulgated regulations dealing with linear easements along bodies of water rather than easements at periodic points.

He has also interpreted the act to permit easements to be reserved for purposes that are clearly beyond the contemplation of Congress. In effect, Interior is taking back Native lands under the device of easements that we had retained under the Settlement Act.

After much effort on the part of Alaska's Native community and the Congress, a provision dealing with late filers was enacted as part of the omnibus bill last year, it was passed into law on January 3, 1976. The regulations, from my understanding, have just been published last Friday which means, in the implementation scheme of how this enrollment is going to take place, there will be another 60 days before they become effective. So those late filers will not begin to start filing until at least the 7th of August which is 60 days after the publication date which means they have 4½ months to complete the late filing on the regulations that have just been promulgated.

Senator STEVENS. I understand they could file and if they are accepting the filings now they would be valid when the regulations become effective.

Mr. KITO. There has been no movement to go out and identify and seek those who are going to be enrolled because the regulations have not been promulgated so they will know if there are going to be any changes from the ones before, or what those changes are and the requirements. They are getting information but it is not the concerted effort that could have been from the beginning.

The 14(h) regulations have been changed. At the time we agreed to the 14(h) regulations, we submitted timely remarks which we feel were not considered in the final drafting of 14(h) regulations. We feel consideration is needed, the Department did not publish these new regulations until March 31, 1976, and we need to know the De-

partment's transactions are the same as they were previously and not retroactive taking 14(h) regulations back to the first of the year.

The interim conveyances you will hear about from other regional corporations. I would like to say we believe less than ½ of 1 percent of land has been transferred in the interim conveyance process. In addition, the Secretary is now holding a 10-percent hostage acreage on the lands held by the Natives. The BLM has indicated that the Native organizations will receive only 90 percent of the land and the remaining 10 percent will be withheld for later adjustments.

We will be commenting later on D–2 land withdrawals and when you consider that, we will make our views known regarding subsistence use of the land in Alaska.

An example of 14(h) regulation changes: The Ad Hoc Appeals Board was established under the 14(h) rules several years ago to give us administrative processes whereby we reach the decision on a certain land issue, and then it was sent to the Ad Hoc Appeals Board and from that point, sent on to the Secretary for his review and signing. Now, 14(h) takes it and moves it under hearings and appeals within the Department of the Interior and they become official and final subsequent to that process rather than having a review with the Secretary.

We feel that is a violation of the agreement that we had, a gentlemen's agreement, supposedly. Mr. Chairman, what we are saying now is, we are content to meet with the Secretary or his designee in the future and ask whether or not the Ad Hoc Appeals Board has now structured a bureaucratic level of delay which causes us additional delay prior to the time we get to the point of trying to resolve the issues and that is in the courts.

Mr. Chairman, there are other agencies within the Federal Government that are not interpreting the act in the light it was written. We are consistently having other problems not only with the Securities and Exchange Commission, but also right now with the IRS. The IRS is not willing to draft new regulations to conform with the language of the act but bending the act to fit the old regulations that, in effect, do not take into account the intent and the true meaning of the act which again, means we move into the areas of litigation from our point of view.

Mr. Chairman, we have found it necessary to go to court many times. For example, we had to sue the Department of Agriculture to contest a decision which effectively denied many Alaskan Natives rights to food stamps under the act. In another case, the eligibility of Native villages were considered. We are consistently in court, courts are expensive and time consuming.

We realize judicial review must remain available for correcting abuses. However, the various Native corporations feel they should be reimbursed by the Government for court costs and attorneys fees when administrative agencies take illegal action under the Settlement Act and they win and we lose.

We wish to advise the committee of certain developments in the administration of the act which do not directly involve the Federal Government but which are of significant concern to the Native community, that is 7(i).

We are in litigation in the Washington courts and the Alaska courts as to determination of what 7(i) is and 7(i) will be addressed by one of the other corporations here today.

The other issues, Mr. Chairman, will be covered indepth by the Regional Corporations which are going to testify. We at AFN wish to echo the concerns of the regions on these issues. Each region faces problems unique to its particular area. However, the larger concern, which is implementation of the act; they will be dealing on issues that generally affect all of the regional corporations.

The countless delays, the arbitration and lack of definition affect the lives of our Native people everyday and will surely affect their future. We appreciate this committee's willingness to listen to our grievances. We regret we must continually return to you with problems, but we constantly face adverse decisions that frustrate congressional intent.

The Settlement Act was hailed as an historic departure from the sad history of broken treaties with the Indian people. Congress indeed broke new ground. The executive branch is sadly unable to respond the same spirit.

Mr. Chairman, I think the final request I suppose we would make would be to have the committee to review those comments we bring to you today and to sift out and find if there is any way within the forseeable future we can find some mechanism in which to make the Department of the Interior more responsive in their making a determination of the implementations of this very important act to the State of Alaska and the Alaska Native people.

Senator HASKELL [presiding]. We certainly will. We will go over your testimony very closely. On the amendment, there has been no appropriations at all, is that the case?

Mr. KITO. Yes, sir.

Senator HASKELL. I think we could ask Mr. Quarles of the staff to look into that as promptly as possible and we will take the occasion to start the ball rolling. That is something we can do right away.

Mr. KITO. Thank you very much.

Senator HASKELL. Do you have any questions?

Senator GRAVEL. No.

Senator HASKELL. Thank you very much. I would have more questions, but we have to move on.

[The prepared statement of Mr. Kito follows:]

TESTIMONY

OF THE

ALASKA FEDERATION OF NATIVES, INC.

BEFORE THE

SENATE INTERIOR COMMITTEE

ANCSA OVERSIGHT HEARINGS

JUNE 10, 1976

Mr. Chairman:

My name is Sam Kito, Jr., President of the Alaska Federation of Natives, which is located on 670 West Fireweed Lane in Anchorage, Alaska. We wish to express our appreciation for the opportunity to testify on the Alaska Native Claims Settlement Act. This significant piece of legislation has had a major impact not only upon the Native Community, but also upon the entire State of Alaska. In the course of implementing the Act, several areas of concern have developed which I wish to bring to your attention today. Please know that my treatment of these issues will be very brief but will be covered in more detail by detailed statements and by written and verbal testimony of the several Regions who will appear before you.

I

THE BUCKLEY AMENDMENT

In 1973 Congress passed the Trans-Alaska Pipeline Authorization Act to expedite construction of the Trans-Alaska Pipeline. Section 407 of that Act contained a provision authorizing advance payments into the Alaska Native Fund as compensation to the Natives for delays in the construction of the pipeline. Under that provision the sum of $5,000,000 was to be appropriated every 6 months beginning June 1, 1976. To date Congress has not made any appropriations under that Act. At the present time there is

accordingly a deficit of $10,000,000 in the appropriations into the Alaska Native Fund and that figure will rise to $15,000,000 at the end of this month. We understand that the failure to appropriate money under that provision may have been an oversight and not an intentional decision. We urge Congress to consider the matter at the earliest opportunity and appropriate the monies due under that amendment.

II

ADMINISTRATION OF THE SETTLEMENT ACT
BY THE INTERIOR DEPARTMENT

During the last four and a half years the Natives have dealt on a continuing basis with the Department of Interior in the administration of the Settlement Act. Unfortunately, the course of that agency's administration of the Act has all too frequently been one of disappointment and frustration to the Native community. I will not today dwell on each and every one of our disappointments, but wish to bring to your attention some of the more important controversies and conflicts we have had.

ALASKA TASK FORCE

Many of the problems we see in the implementation of the Settlement Act result from the decision-making structure developed by Interior. The Settlement Act vests a great deal of administrative discretion in the Secretary of the Interior. Over the years the Secretary has effectively delegated all of his authority to subordinates in the Department and eliminated

his personal responsibility for implementation of the Act. Most of the authority has been delegated to the so-called Alaska Task Force. That group is composed of the assistant secretaries or deputy assistant secretaries of the various branches of the Department. This administrative structure is inherently biased against the Natives who are the beneficiaries of the Settlement Act. The Natives have only one spokesman on the Task Force, the BIA Commissioner. The other members of the Task Force, representing BLM, Fish and Wildlife, Congressional Relations, and the Park Service, consistently take an anti-Native point of view. Thus, the Settlement Act is turned inside out by the administrative agency and administered against the Natives' interest.

We recommend that Congress join us in insisting that Interior reorganize the administrative structure for the Settlement Act. If the Secretary is unwilling to personally assume responsibility for the administration of this Act, then the responsibilities should be delegated to a single office within the Department which is at least sympathetic to the Natives' interests. If it is necessary on certain occasions to obtain the views of other offices within the Department, those views should be sought as advice to the single official who would retain the ultimate decisional authority. The present structure in effect gives a veto power to anti-Native interest groups.

EASEMENTS

The issue of easements is one that can no longer go unattended. There is nothing in the Act which authorized the Secretary to establish floating easements across lands selected by Regional and Village Corporations, but he has in effect done so.

Section 17(b)(1) grants the Secretary (through the Federal-State Land Use Planning Commission) authority to establish only public easements across Native lands and "at periodic points along the courses of major waterways." The Secretary has stretched this language and promulgated regulations dealing with linear easements along bodies of water rather than easements "at periodic points." He has also interpreted the Act to permit easements to be reserved for purposes that are clearly beyond the contemplation of Congress. In effect, Interior is taking back Native lands under the device of easements and thereby preventing us from enjoying title to the lands we retained under the Settlement Act. The Natives have found it necessary to seek the aid of the federal court to correct the unlawful activity of the Secretary in promulgating regulations dealing with easements on Native land.

LATE FILERS

After much effort on the part of Alaska's Native Community and Congress, a provision dealing with Late Filers was enacted as part of the Omnibus Bill signed into law on 2 January 1976.

This amendment provided for enrolling qualified Natives who had missed the enrollment deadline for a period of one year beginning with the signing of the Act. This means that the enrollment period will terminate on 1 January 1977. Up to this time the Department has yet to publish regulations needed to accomplish this re-enrollment process. This administrative shortcoming, we fear, will jeopardize the effect of this enrollment opportunity. There is no excuse for not promulgating these regulations, and Interior will at best have only four months of time to complete the enrollment.

SECTION 14(h) REGULATIONS

The final regulations published by BLM do not reflect the original intent of Section 14(h) of the Settlement Act. Native input on those regulations was carefully prepared and submitted to the Secretary in a timely manner, but that input was ignored in the final regulations. The Native Community wishes confirmation that land filings made after the original filing date will be given the same consideration as those submitted by the original December 18, 1975 date. This consideration is needed as the Department of the Interior did not publish the new 14(h) regulations until March 31, 1976, three months after the original date of filing.

"IMMEDIATE" CONVEYANCES

Section 14(a), 14(b) and 14(e) of the Settlement Act all require the Secretary to take certain action on land selections

"immediately" after specific land is selected by a Native group. The Secretary continues to refuse to comply with that requirement. The Settlement Act had as a fundamental purpose the conveyance of title in selected lands to the various village and regional corporations. Although village land selections were completed more than a year ago and regional selections were completed this past December, the Secretary has to date conveyed very little land. The Native corporations want to receive title to their land and be awarded the same rights as other private property owners. To date Natives have not received what is theirs under the Act.

At the present time less than 1 percent of the land selected by village corporations has been conveyed despite the requirement in Section 14(b) that "immediately after selection by any Village Corporation," the Secretary shall issue a patent conveying the selected lands. It is now four and one-half years since enactment of ANCSA; this cannot be considered as immediate action on the part of the Secretary.

The Secretary has compounded the injury resulting from his delay by holding hostage 10 percent of the land chosen by the Natives. BLM has indicated that the Native organizations will receive only 90 percent of the land they have chosen and that the remaining 10 percent will be withheld for later adjustments. This 10 percent bank of hostage land is completely unjustifiable in light of the long delays the Secretary has taken in making conveyances.

D-2 LAND WITHDRAWALS

Land withdrawals under Section 17(d)(c) have caused the Native corporations much concern. We feel that the subsistence resources in D-2 areas must be protected for Native use. This is in keeping with the past use of the land for centuries for subsistence, which represents a beneficial form of conservation. Joint management systems must be developed. Through joint management, conflicts can be resolved in usage of the land. It is important to note that withdrawal of land for D-2 is going to have a varied effect. Therefore it is important that already existing "traditional" uses must be allowed to continue as being a priority use. The uses for which land is to be selected must be clearly outlined, and should take into consideration present compatible uses.

AD HOC APPEALS BOARD

Several years ago the Secretary established the so-called Ad Hoc Appeals Board within the Department of Interior to provide an avenue for administrative appeal of decisions affecting Native land selections. As originally constituted, this body would provide recommendations to the Secretary for final action by the Department. Recently the structure was revised so that a decision of the Ad Hoc Appeals Board becomes final without further review by the Secretarty. Our experience with that body leads us to believe that it no longer functions in a way beneficial to the Native interest. The Board serves as an additional

level of delay in the bureaucracy but does not seem to us to serve any function of correcting administrative errors. The Natives thus ask whether there is any reason to continue the existence of that Board. In many cases it simply postpones litigation which unfortunately has become the only effective tool of combatting Interior's insensitivity to the policies of the Settlement Act.

III

ADMINISTRATIVE PROBLEMS WITH OTHER EXECUTIVE AGENCIES

This Committee is well aware of the administrative problems which the Natives encountered with the Securities & Exchange Commission, and as a result of those problems the Committee last year enacted a temporary exemption of the Native corporations from the federal securities laws. Unfortunately, the problems we experienced with the SEC are not isolated. It appears that in general the federal bureaucracy responds to the Alaska Native Claims Settlement Act with rigid positions based on prior experience with other legislation and without an awareness of the policies behind the Settlement Act. For example, Native corporations are presently engaged in lengthy debate with the Internal Revenue Service over the tax treatment to be accorded our corporations. IRS seems to us to react to every issue simply by deciding what position will generate the most revenue for the United States without considering whether that position is consistent with the basic purposes of the Settlement

Act. In short, IRS tries to bend the Settlement Act to fit the Internal Revenue Code rather than adapting tax concepts developed in other circumstances to the unique situations presented by corporations organized under the Settlement Act.

IV

JUDICIAL ADMINISTRATION OF THE SETTLEMENT ACT

Native groups have frequently found it necessary to go to court to obtain relief against executive agencies that have failed to follow the spirit of the Settlement Act. For example, Natives successfully sued the Department of Agriculture to contest a decision which effectively denied many Natives benefits under the Food Stamp Act. In another case Native villages that had been declared ineligible for land benefits by Interior went to court and successfully obtained a judicial reversal of the adverse agency decision. The court record of litigations under the Settlement Act shows a consistent pattern of unlawful activity of the administrative agencies which has been set aside by the courts. That situation is not viewed by the Natives as a satisfactory way to administer the Settlement Act. Courts are both expensive and time-consuming. Administrative agencies should not require the consistent supervision of the judicial branch in order to obtain a lawful administration of Congressional acts. Natives should not be forced to expend their Settlement Act benefits in order to hire attorneys to obtain from the agencies the result that the law requires. We recorgnize that judicial

review must remain available as an option for correcting abuses of discretion by executive agencies. However, the various Native corporations feel that they should be reimbursed by the government for court costs and attorneys' fees when administrative agencies take illegal action under the Settlement Act.

V

OTHER ISSUES

We wish to advise the Committee of certain developments in the administration of the Act which do not directly involve the federal government but which are of significant concern to the Native community. One such issue is the distribution of revenues derived from the land under Section 7(i) of the Act.

Section 7(i) has become one of the most confusing issues arising out of the Alaska Native Claims Settlement Act. As it is presently written and interpreted, 7(i) is vague and definitions have not been reached as to what constitutes "revenues" to be shared among regions. Several Regions have offered alternative solutions which could be instituted to replace Section 7(i). Self-interest of each Region figures largely in the stand which they take on revenue sharing. Some Regions are rich in mineral reserves while others are "have not" Regions who would directly benefit by the Revenue Sharing Plan. Resolution of those issues will consume a lot of time, attention and money.

Several litigations are now pending involving the proper interpretation of Section 7(i).

Section 14(3) of the Alaska Native Claims Settlement Act states:

> "The Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native Village in the future. Title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs: Provided, that the amount of lands to be transferred to the Municipal Corporation or in trust shall be no less than 1,280 acres."

This section, upon examination, raises several disturbing issues. In the event that a Municipal Corporation has not been established, then the land is turned over to the State in trust for a Municipal Corporation to be established in the future. This provision allows the State to control large amounts of land, adjacent to, or circumferencing, Native lands and makes it very difficult for Native villages to plan the best usage of the village land without knowing what the future usage of "trust lands" is to be.

We want to know what assistance Interior will provide in resolving problems under this section.

Native Corporations need to know what the Department of Interior's position is on Coastal Zone Management. This position should be determined with regard to the timely implementation of the Settlement Act. A feeling of position on the State's

proposals would be very beneficial to the Native Corporations in planning uses for the land selected under the Native Claims Settlement Act.

Other issues of concern will be covered in depth by the Regions which will be testifying. AFN, Inc. wishes to echo the concerns of the Regions on these issues. Each Region faces problems unique to its particular area; however, the larger concern - IMPLEMENTATION OF THE ACT in a timely manner - faces all Natives in the State of Alaska. The countless delays, arbitration, and lack of definitions affect the lives of our Native people every day, and will surely affect their future.

We appreciate this Committee's willingness to listen to our grievances. We regret that we must continually return to you with problems, but we constantly face adverse decisions that frustrate congressional intent. The Settlement Act was hailed as an historic departure from the sad history of broken treaties with the Indian people. Congress indeed broke new ground; the Executive branch is sadly unable to respond in the same spirit. Federal agencies, primarily the Department of the Interior, continue to follow the path of the past. Promise the Natives whatever it takes in order to get their land, then break those promises to get even more of their land away from them. History need not repeat itself. The time for fulfilling the promise of the Settlement Act has not passed. The Act can be saved and the treaty fulfilled, if the Secretary will only

decide to study the Act, understand its history, and administer it as a treaty of settlement with the Natives rather than some form of unjustified giveaway of Federal lands. We urge this Committee to join us in seeking a new spirit of understanding on the part of the Secretary.

Senator HASKELL. The next witness will be Stanley Dempsey, general attorney for AMAX.

STATEMENT OF STANLEY DEMPSEY, DIRECTOR, ENVIRONMENTAL SERVICES GROUP, AMAX, INC.

Mr. DEMPSEY. In addition to my statement, I have asked the staff to distribute to you an article from the Mining Journal, a magazine published in London and a distinguished trade journal in the mining industry. I thought you might like to see how others view us in connection with restraints on increases in domestic mineral supplies.

Senator HASKELL. Is that attached to your statement?

Mr. DEMPSEY. It was passed around a minute ago.

My name is Stanley Dempsey. I am the director of the environmental services group of AMAX Inc. I also am the general attorney of AMAX's Western Law Department. I am appearing before you today on the Alaska Native Claims Settlement Act as a member of the Public Lands Committee of the American Mining Congress.

The actions this committee and the Congress will be taking with respect to Alaska and Alaskan public land matters will have a substantial impact on the manner in which the member-companies of our association are able to provide these domestic mineral resources which the Congress referred to in its Minerals Policy Act of 1970. It was for this reason the American Mining Congress sought this opportunity to address the committee on the occasion of these oversight hearings.

Mr. Chairman, there have been many studies done both in and out of Government about the short- and long-range needs of our society for minerals. The conclusions most of these studies reach are easily summarized; one, the economy of this Nation is based on minerals; two, today we must import a substantial percentage of our domestic mineral needs; and three, projections indicate that it will be necessary for us to import larger and larger percentages of our mineral requirements to meet domestic needs as time passes.

One solution to this extremely complex problem of mineral availability is to increase our domestic supplies. That was a goal the Congress had in mind in 1970, and the Nation's mining companies are working very hard to do this. I believe there is a perceptible trend within the mining industry toward the commitment of capital and manpower for domestic mineral development. Certainly that is the trend at my own company.

There are two factors which greatly affect the mining industry's ability to produce and develop domestic resources. First, we are dependent upon the geologic availability of ore deposits. No amount of money expended can make it possible to extract metalliferous ores from rocks in which they are not present. Second, if we are to find these deposits, we must be given access to the lands where they may be present. It is this question of access. Mr. Chairman, which is of special concern to us as the Congress discusses matters relating to public lands in Alaska.

The size of Alaska, and the amounts of land that are being dealt with by various aspects of the Alaska Native Claims Settlement Act

are so large as to be almost incomprehensible. The 80 million acres authorized for withdrawal under section 17(d)(2) is equivalent in area to the entire States of Idaho and Ohio or South Dakota and Louisiana.

There are pending before the Congress several bills which would increase or decrease the numbers of acres that would be included within these four land systems. I do not intend to comment specifically on any of those bills today. Instead, I will limit my remarks to the general issue of access to public lands that is a common thread running through each of the proposals.

It has been suggested that the dilemma between allowing mineral development and preserving valuable Alaskan ecosystems has been resolved by allowing the State of Alaska and the Native corporations to select the lands of greatest mineral potential. This suggestion presumes that lands not selected are less valuable for minerals.

This thinking troubles us. In fact, we have barely scratched the surface as far as inventorying Alaska's mineral potential. We simply do not know how extensive Alaska's mineral resources are, and we do not know where they are. Mineral exploration is a time-consuming and inexact business.

In my own State of Colorado, for example, mining has been a major industry for more than a century. Yet, as you know, Mr. Chairman, even today miners and mining companies expend substantial effort on exploration activities within the State, and important mineral discoveries continue to be made. Exploration technology improves and advances are made in metallurgical processing; we are certain that new discoveries will be made and new mines will become possible. The same, no doubt, will be true in Alaska.

Sound land-use planning requires an evaluation of facts. So far as knowledge of mineral resources in Alaska is concerned, not all the facts are in. It is unlikely they will be for decades.

To the extent the Congress closes the door to mineral activity in Alaska, Congress is locking away an uninventoried resource. We believe that such a policy would be poor land-use planning and would be contrary to the spirit of the Minerals Policy Act.

The American Mining Congress recognizes that there are many uses to which lands in Alaska can and should be put. We feel it is quite proper to create new national parks and wild and scenic river areas and wildlife refuges in Alaska. We also feel it is proper to keep Alaska open for mineral exploration, however.

To accommodate what might appear to be contradictory land use objectives, we ask the Congress to consider multiple use administration of these lands. The mining industry and the U.S. Forest Service have made the multiple-use concept work to the benefit of the American people on Forest Service lands. We think this model is worth emulating in Alaska.

Only a true multiple-use administrative system would permit such flexibility, and the American Mining Congress strongly endorses such a system.

The decisions on Alaska Native claims settlement matters that this committee and the Congress will be called upon to make in the next 2 years are extremely complex, and their effects will be felt by the citizens of Alaska and the Nation as a whole.

We in the American mining industry are concerned about the long-term mineral needs of this Nation. We hope that many of those needs can be filled domestically in such places as the vast virtually unexplored areas of Alaska. We believe that only by making these lands in Alaska open to mineral entry can the Congress comply with the policy set forth in its 1970 Minerals Policy Act.

On behalf of the American Mining Congress, I would like to thank the committee for giving us this opportunity to present our views.

Senator METCALF [presiding]. Thank you for your appearance, Mr. Dempsey. That is a moderate approach as far as mining is concerned on Alaska lands. I will defer to Senator Stevens.

Senator STEVENS. I have no questions, Mr. Chairman.

Senator METCALF. Mr. Dempsey, I understand your concern over the D–1 legislation. However, members of the American Mining Congress, your industry, in talking to our committee counsel in Anchorage, asked for early action on this legislation. Any eventual act would withdraw much less land than the land presently withdrawn in anticipation of this legislation. Is that true?

Mr. DEMPSEY. That is correct.

Senator METCALF. So you are requesting early action?

Mr. DEMPSEY. I think early action makes very good sense for everyone involved.

Senator METCALF. Thank you very much. Thank you for summarizing your statement. I should have made this announcement before; we have here as observers and resource persons Mr. Walt Parker, State cochairman, and John Katz, counsel, of the Joint Federal-State Land Use Planning Commission for Alaska. We appreciate their presence here.

[The prepared statement of Mr. Dempsey and article from the Mining Journal follow:]

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J. ALLEN OVERTON, JR., President

Statement of

H. STANLEY DEMPSEY
Director, Environmental Services Group
AMAX Inc.

Member, American Mining Congress Committee on Public Lands

on behalf of the

AMERICAN MINING CONGRESS

in regard to

"Alaska Native Claims Settlement Act
and Section 17 (d)(2) Land Designations"

before the

Committee on Interior and Insular Affairs

United States Senate

June 10, 1976

ALASKA NATIVE CLAIMS SETTLEMENT ACT AND SECTION 17(d)(2) LAND DESIGNATIONS

H. Stanley Dempsey, Director, Environmental Services Group, AMAX Inc. and
Member of AMC Committee on Public Lands

Mr. Chairman and Members of the Committee:

My name is Stanley Dempsey. I am the Director of the Environmental Services Group of AMAX Inc. I also am the General Attorney of AMAX's Western Law Department. I am appearing before you today on the Alaska Native Claims Settlement Act as a member of the Public Lands Committee of the American Mining Congress.

The American Mining Congress is a national association of United States companies, large and small, that produce the greater part of our Nation's metals, coal, and industrial and agricultural minerals. The member companies operate on public and privately owned lands in all of the fifty states, including Alaska.

Six years ago, the Congress enacted legislation which set forth our Nation's mineral policy objectives. In the Mining and Minerals Policy Act of 1970, Congress declared that it is the continuing policy of the Federal Government to encourage private enterprise in the development of economically sound domestic mining and mineral reclamation industries and to foster and encourage the orderly development of domestic mineral resources.

The actions this committee and the Congress will be taking with respect to Alaska and Alaskan public land matters will have a substantial impact on the manner in which the member companies of our association are able to provide these domestic mineral resources which the Congress referred to in its Minerals Policy Act of 1970. It was for this reason the American Mining Congress sought

this opportunity to address the Committee on the occasion of these oversight hearings.

Mr. Chairman, there have been many studies done both in and out of government about the short and long-range needs of our society for minerals. The conclusions most of these studies reach are easily summarized:

1. The economy of this Nation is based on minerals;
2. Today we must import a substantial percentage of our domestic mineral needs; and
3. Projections indicate that it will be necessary for us to import larger and larger percentages of our mineral requirements to meet domestic needs as time passes.

The United States Geological Survey in its report entitled "Mineral Resource Perspectives - 1975" summarizes the problem in this way:

> Our problem is simply that the United States does not have an adequate known domestic supply of all the minerals needed to maintain our society for the foreseeable future. We never have had all we needed, but in the past we could easily obtain materials from abroad. Today we meet a smaller percentage of our needs from domestic supplies . . ., and minerals from overseas are increasingly costly and, in some cases of uncertain availability. Nationalization of mines in some countries discourages participation by American mining companies; cartel agreements among the major producing nations can suddenly and dramatically raise prices or even halt supply, as has happened recently with petroleum; and "developing" nations are now competing in the world market for the purchase of mineral raw materials.

The U.S.G.S. report notes that in 1974 this country was more than 90% dependent on imports for seven commodities, 75 to 90% dependent for eight

additional commodities, 50 - 75% dependent for eight other commodities, and less than 50% dependent for seventeen commodities. Forecasts for the year 2000 indicate that we shall then be completely dependent on imports for twelve commodities, more than 75% dependent for nineteen commodities, and more than 50% dependent for twenty-six commodities. I have included in the written material I am submitting a table setting forth in detail these statistics, Mr. Chairman.

One solution to this extremely complex problem of mineral availability is to increase our domestic supplies. That was a goal the Congress had in mind in 1970, and the Nation's mining companies are working very hard to do this. I believe there is a perceptible trend within the mining industry toward the commitment of capital and manpower for domestic mineral development. Certainly that is the trend at my own company.

There are two factors which greatly affect the mining industry's ability to produce and develop domestic resources. First, we are dependent upon the geologic availability of ore deposits. No amount of money expended can make it possible to extract metalliferous ores from rocks in which they are not present. And, second, if we are to find these deposits, we must be given access to the lands where they may be present. It is this question of access, Mr. Chairman, which is of special concern to us as the Congress discusses matters relating to public lands in Alaska.

The size of Alaska, and the amounts of land that are being dealt with by various aspects of the Alaska Native Claims Settlement Act are so large as to be almost incomprehensible. The 80 million acres authorized for withdrawal under

section 17(d)(2) is equivalent in area to the entire states of Idaho and Ohio or South Dakota and Louisiana. It is approximately two million acres smaller than the combined areas of Florida and Oklahoma or Colorado and West Virginia.

There are pending before the Congress several bills which would increase or decrease the numbers of acres that would be included within these "four systems" lands. I do not intend to comment specifically on any of those bills. Instead, I will limit my remarks to the general issue of access to public lands which is a common thread running through each of the proposals.

It has been suggested that the dilemma between allowing mineral development and preserving valuable Alaskan ecosystems has been resolved by allowing the State of Alaska and the native corporations to select the lands of greatest mineral potential. This suggestion presumes that lands not selected are less valuable for minerals.

This thinking troubles us. In fact, we have barely scratched the surface as far as inventorying Alaska's mineral potential. We simply do not know how extensive Alaska's mineral resources are, and we do not know where they are. Mineral exploration is a time consuming and inexact business. In my own state of Colorado, for example, mining has been a major industry for more than a century. Yet, even today miners and mining companies expend substantial effort on exploration activities within the state and important mineral discoveries continue to be made. As exploration technology improves and advances are made in metallurgical processing, we are certain that new discoveries will be made and new mines will become economically viable. The same, no doubt, will be true in Alaska.

Sound land use planning requires an evaluation of facts. So far as knowledge of mineral resources in Alaska is concerned, not all the facts are in. And it is unlikely they will be for decades.

To the extent Congress closes the door to mineral activity in Alaska, Congress is locking away an uninventoried resource. We believe that such a policy would be poor land use planning and would be contrary to the spirit of the Minerals Policy Act.

The American Mining Congress recognizes that there are many uses to which lands in Alaska can and should be put. We feel it is quite proper to create new national parks and wild and scenic river areas and wildlife refuges in Alaska. We also feel it is proper to keep Alaska open for mineral entry, however.

To accommodate what might appear to be contradictory land use objectives, we ask the Congress to consider multiple use administration of these lands. The mining industry and the United States Forest Service have made the multiple use concept work to the benefit of the American people on Forest Service lands. We think this model is worth emulating in Alaska.

We hold out no such hope for a "prime" use arrangement where only those uses compatible with the prime use are permitted.

First, today no one is capable of determining the highest and best use, in perpetuity, of any given piece of ground. Prime use of land will vary with time. Second, if history is any guide on the matter, it is unlikely that any land designated for a prime use today will be redesignated for a different prime use at some time in the future.

Only a true multiple use administrative system would permit such flexibility,

and the American Mining Congress strongly endorses such a system.

The decisions on Alaska Native Claims Settlement matters that this Committee and the Congress will be called upon to make in the next two years are extremely complex, and their effects will be felt by the citizens of Alaska and the Nation as a whole. We in the American mining industry are concerned about the long-term mineral needs of this Nation. We hope that many of those needs can be filled domestically in such places as the vast, virtually unexplored areas of Alaska. We believe that only by making these lands in Alaska open to mineral entry can the Congress comply with the policy set forth in its 1970 Minerals Policy Act.

On behalf of the American Mining Congress, I would like to thank the Committee for giving us this opportunity to present our views.

United States' dependences on foreign sources
for some of its minerals

(Mining and Minerals Policy, 1973)

a. Less than half imported from foreign sources:

Copper
Iron
Titanium (ilmenite)
Lead
Silicon
Magnesium
Molybdenum
Vanadium
Antimony
Tellurium
Stone
Cement
Salt
Gypsum
Barite
Rare earths
Pumice

b. One-half to three-fourths imported from foreign sources:

Zinc
Gold
Silver
Tungsten
Nickel
Cadmium
Selenium
Potassium

c. More than three-fourths imported from foreign sources:

Aluminum
*Manganese
Platinum
Tin
*Cobalt
*Chromium
*Titanium (rutile)
*Niobium
Tantalum
Bismuth
Flourine
*Strontium
Asbestos
*Sheet mica
Mercury

*Commodities more than 90 percent imported.

[From the Mining Journal, May 28, 1976]

U.S. Mining Restraints

Leading economic indicators continue to show that the American economy is mounting a slow but sustained recovery from the recession. With the Dow Jones industrial average having topped 1,000 for the first time in three years, reflecting rising corporate earnings, there are firm hopes that the national economy will continue to revive.

Minerals output in 1975 reflected the recession. Although the dollar value of mining production rose to a new peak of $61,600 million, up 12% from the prior year, the increase was due primarily to higher prices for fuels. The net value of metals and non-metallics declined, with outright gains in production recorded for only some 20% of the 60 or so ores and industrial minerals surveyed.

The extent of the ultimate recovery within the U.S. mining industry may be muted, however, by the cumulative results of certain national policies. In particular, the environmental, occupational health, and safety legislation of recent years have had a dampening effect on mining. One recent prime example was the decision announced on April 14 to drop the $3,500 million Kiaparowits power plant project in Utah. As planned by a consortium of electric companies, the 3,000 megawatt plant would have been the largest U.S. coal-fired plant, consuming around 9.0 million tonne/year of coal. The controversial facility would have been sited on federal lands near scenic areas, and would have supplied electricity to Arizona and southern California. The decision not to proceed is attributable to environmental protests, regulatory limitations and rapidly rising capital investment estimates.

The continuing inability of the present Congress, controlled by the Democrats, to agree with President Ford Administration on an orderly natural resources development plan creates prospects for continuing import dependency on ores and fuels above the practical minima that might be otherwise attainable. The likelihood is that this set of circumstances will continue at least until 1977, when the results of the forthcoming national elections may be felt.

There are numerous examples of how restrictions are slowing down the historical growth rates of the American mining industry. For example, restrictive land use policies are delaying the opening of major coal reserves on federal lands lying west of the Mississippi River. Legislation imposing land use controls on open-cast coal mining has been passed by both Houses of Congress in 1974 and 1975, but was vetoed each time by President Ford. A third attempt was turned back by the House Rules Committee in April, and it is unlikely that a bill on this subject will emerge again before next year. In the last version of this law, a reclamation fee of 35 cent/s ton was proposed to raise funds for restoration of work-out surface mines, and new mines on federal coal lands in arable river valleys were forbidden. Definitive legislation of the leasing and use of this coal is needed from Washington, D.C., to provide the guidelines for tapping this important energy reserve, which is being counted on for much of the new coal to be mined in the next few decades.

In a separate move, the Senate has passed a bill to ban mining in National Parks. Proponents of the measure were not deterred by the fact that it would prevent mining of the only commercial nickel deposit in the U.S., at Glacier Bay in Alaska, as well as causing the closure of mines in Death Valley, California, that have been sources of borates and talc since the last century. It is not expected that this action will lead to a public law in this session of Congress.

Various existing laws governing air and water purity are being revised, with direct impact upon mining and smelting operations. Pending changes include numerous proposed amendments to the Clean Air Act of 1970. Although the ultimate amendments may be slightly modified, the present amendments would designate extensive regions where existing air quality conditions could not be downgraded. Pollution control equipment employing the best available current technology would be required for power plants, put intermittent controls would not be allowed, which means stack gas scrubbers for flue gas desulphurisation. In the Senate text of the amendments, steel mills and power plants would have until 1979 to meet state emission requirements.

New controls over toxic substances, affecting asbestos and mercury products amongst others, are being reviewed in the House Commerce Committee and have already been passed in the Senate. The proposals would allow the Environmental

Protection Agency to restrict the use and manufacture of all chemical substances found threatening human health or the environment.

In this vein, the federal law suit against Reserve Mining Corporation concerning asbestos particle discharges may be moving to a compromise solution. In March, 1975, the federal appellate court had ruled that the asbestos-bearing tailings being dumped into Lake Superior from the Reserve Mining taconite plant at Silver Bay, Minnesota, did constitute a health hazard, but one that was neither imminent nor certain. Instead of requiring closure of the plant, the court required that dumping should be shifted to an onshore site. Failing agreement on a suitable site, the company could be required to close the plant within one year. The court also held that Reserve Mining, a subsidiary of Armco Steel and Republic Steel, must reduce the emission of asbestos particles into the air, with the company and Minnesota state authorities agreeing upon the type of facilities to be installed within two years. Meanwhile the U.S. District Court has ruled Reserve Mining to be liable for all interim expenses incurred in furnishing safe drinking water to those communities relying on Lake Superior as their water source.

Another serious handicap facing the American extractive industries is the absence of a coherent national energy policy. Problems stem from the uncertainty generated and because of the anti-business sentiment that underlines many Congressional efforts to shift more power to the federal government.

The ironically titled Energy Policy and Conservation Act, fashioned after much manoeuvring between President Ford and Congress last year, reflects little credit on either party. It indicates the apathy and cynicism that grip Americans when energy questions are raised as public policy issues. Crude oil price reversals to a weighted average of $7.66/barrel have set the price of U.S. production, accounting for 60% of consumption, at barely half of world, i.e. OPEC, levels and thereby encouraged continuing disregard for fuel conservation in America.

Attempts to decontrol natural gas prices have seemingly failed for 1976. A Senate bill including long-term price decontrol was passed in late 1975, but a very dissimilar bill passed the House in early 1976, and prospects for a compromise this year are growing increasingly remote. Coupled with the loss of the depletion allowance last year, and the threat of vertical and horizontal breakup, or divestiture, the American multinational energy companies remain under siege from Congress.

ELUSIVE COAL TARGETS

Coal production goals are slipping, as long-term planning remains very difficult. Recent calculations by the Federal Energy Administration estimate that coal output may rise at 5% per annum from 640 million tonnes in 1975 to 1,040 million tonnes in 1985. However, coal production will not rise that fast, says the FEA, if its use in electric power generation remains uncertain, and if major environmental and transportation issues—such as coal slurry pipelines—are unresolved. More coal could be produced, but will not be because the markets are limited primarily by the growth in electric power and synthetic fuels.

The major expansion in coal production is anticipated from the western states, increasing from 92 million tonnes in 1974 to about 380 million tonnes in 1985. Surface mining will continue to be the main method employed, which will in turn require clarifying legislation on leasing and using coal lands held by the federal government.

It is estimated by most sources that coal deposits on federal lands account for half of the national total of reserves, but present production from those lands now under lease amounts to only about 3% of national production. Both Houses of Congress have passed bills amending the Mineral Leasing Act of 1920 and revising the procedures on the leasing and mining of coal deposits on federal lands, but Ford Administration proposals were rejected in the process. A veto in due course on the conference bill is anticipated later this year.

Productivity has been declining steadily in this decade, with output per man-day down to 15.2 s tons, against 17.6 s tons in 1974. Output from underground mines was 9.5 s ton/man-day (11.3 s tons in 1974), and that from surface mines was 30.0 s ton/man-day last year (33.2 s tons in 1974). Productivity has declined steadily in this decade, due in large measure to the demands of safety and health legislation passed in 1969. The steep drop of OMS in 1975 is also attributable to

the 1974 United Mine Workers contract that required the addition last year of an extra helper at each coal face, for the operation of continuous miners, and in roof-bolting, as well as additional training for new miners now required by the Mine Enforcement and Safety Administration.

The industry also faces a further substantial increase in working costs following the House passage of a "black lung" welfare benefits package that is likely to receive Senate approval about now. The National Coal Association, representing the mining industry, estimates the cost of this bill at $10,500 million over the next 15 years. The measure expands the existing pneumoconiosis programme to cover all miners who have worked 30 years in an underground bituminous mine prior to mid-1971, whether or not they are afflicted. Similar benefits are conferred on widows of miners killed in accidents after 17 years of service. Funds are to be raised by a tonnage charge levied on the mining companies.

Meanwhile, the U.S. Supreme Court is to rule on the *Sierra Club v. Kleppe* suit that has halted new surface mining of coal in the northern Great Plains, covering parts of Montana, Wyoming, North and South Dakota. The case involves whether the environmental impact statements filed by the Interior Department have met the requirements of the National Environmental Policy Act, or whether a special regional statement on environmental impact is required.

Given all of the above, what is the outlook for new legislation affecting the American mining industry? During the remaining weeks of the 94th Congress, fore-shortened because of the summer Presidential nominating conventions and early adjournment to allow election campaigning, it is probable that Congress will send to the President for his approval (or veto) bills extending black lung welfare benefits, requiring the pre-market testing of toxic substances, Clean Air Act amendments requiring heavy capital commitments by industry to comply and, possibly, oil company divestiture legislation.

With the advent of a new Congress and an elected President next year, early items on the legislative agenda should include federal coal land leasing and reclamation standards, and offshore management bills. These will include comprehensive outer continental shelf management provisions for oil and gas, and a deepsea hard minerals act for manganese modules.

Because Democratic control of the Senate is assured after the next election, and because the Democrats are expected to retain control of the House (where they now have a two-to-one majority), there is no reason to expect any bills vetoed in 1976, or allowed to die when Congress adjourns, not to return in 1977 with the 95th Congress.

The recent General Electric-Utah International merger, and the purchase for $162 million by Atlantic Richfield of 27% of Anaconda may be expected to receive the usual careful attention of the Antitrust Division of the Justice Department, but the main battlefront is probably going to remain on the energy divestiture front. Kennecott has not yet yielded control of Peabody Coal, and the Congressional attack on the major oil companies goes on.

Efforts to create a new Department of Natural Resources may succeed in time, with several departments expected to contribute portions of their responsibilities. Included could be the Interior Department's Bureau of Mines and U.S. Geological Survey, as well as certain autonomous federal agencies. One such body, the Energy Research and Development Administration, formerly the Atomic Energy Administration, is expected to continue its rapid growth owing to national interest in nuclear power, solar energy, synthetic gas and oil from coal, and other "exotic" fuel sources.

There is no doubt that the American mining and metallurgical industries possess the requisite technology to reduce growing national dependence upon imported mineral supplies. Despite inflation, the capital requirements for new plant and equipment can be raised from conventional sources—with the exception of funding for synthetic liquid fuels, where a federal role of some form must be agreed. Moreover, current open-market prices are not unattractive, excepting oil and natural gas owing to their price-controlled status.

However, the U.S. national tendency to give preference to economic and social priorities that restrain the full use of American mineral resources will mean a continuing reliance upon world markets for supplies of ores and fuels that might under other circumstances be produced from domestic sources at comparable or lower costs. The probability looms that this cost-benefits trade-off

will not be much altered until another serious raw materials supply crisis such as the 1973–1974 Arab oil embargo is repeated, and current policies are reassessed.

Senator METCALF. The next witness is Jack Hession of the Sierra Club.

Mr. Hession, we are delighted to have you here.

STATEMENT OF JACK HESSION, ALASKA REPRESENTATIVE, SIERRA CLUB

Mr. HESSION. I appreciate the opportunity to be here. I'm Jack Hession. I'm the Alaskan representative of the Sierra Club. I live in Anchorage. I will summarize my statement in the interest of time here.

Basically, we have two concerns as the act is administered. One, the interim management of d–2 lands; and two, a couple of aspects associated with the Native selections. We are worried about interim management of the d–2 lands of course because it has been 5 years now. It looks like there will be one more session of Congress in which to address the issue.

In the next 2 years certain things could happen, lands could be lost altogether, d–1 lands could be damaged by mining and there are certain trespass and vehicle abuses going on.

Let me discuss one of those aspects that is the question of the d–1 lands. d–1 lands have been set aside pending Bureau of Land Management classification for various kinds of uses under public land laws. This Committee intended the d–1 lands would be protected against the land rush and wholesale appropriation under the archaic public land laws following enactment of ANCSA and the lifting of the land freeze.

There are approximately 13.7 million acres of public interest lands within the boundaries of areas the Department of the Interior is recommending to the committee as new national parks, refuges, and wild rivers. Within the boundaries of areas proposed by conservationists for the same purposes, there are about 19.9 million acres. The problem for interim management of these proposals is the d–1 lands within them are open to entry under the mining law of 1872.

Many millions of acres of these d–1 lands were originally d–2, fully meriting that status, but were changed to d–1 as part of the out-of-court settlement between the State and Interior. A prime example of former d–2 and now d–1 lands is found in he North Fork of the Koyukuk River Valley in the proposed gates of the Arctic National Park.

When the Secretary's national interest lands bill was submitted to Congress on December 18, 1973, there were 150 mining claims. Since that time, 540 new mining claims under the 1872 mining law have been filed in the North Fork Koyukuk d–1 and in other d–1 lands in the Ambler River watershed.

Although I do not have the figures, it is quite likely that mining claims have been filed in d–1 tracts within the other d–2 proposals. We think that the d–1 lands so exposed should be withdrawn from all forms of private appropriation while this committee studies the national interest land proposals.

Inasmuch as the Secretary has the authority to make much protective withdrawals, but has been unwilling to exercise it, we suggest that this committee direct him to withdraw these lands immediately from entry under the mining laws until December 17, 1978. Submitted with this statement is a map showing the d–1 lands. [Map was retained in the committee files.]

I would emphasize, Mr. Chairman, we have just gone through legislation to close six existing units of the National Park System and there is a potential we will get ourselves into the same situation in Alaska.

The two aspects of Native selections I mentioned deal with recreational easements and the question of certain withdrawals on Admiralty Island. Inasmuch Mr. Martin talked at length about easements, I will focus on the problem on Admiralty Island. I am reading now from page 13.

Under ANCSA, native residents of Juneau and Sitka, organized in separate corporations, are eligible to select one township of 23,040 acres each. As a result of the land selection regulations adopted by Interior, and its final decision under those regulations, individual lawsuits have been filed against the Department by the two corporations, by the Village Corporation of Angoon on Admiralty Island, and by the Sierra Club.

Under Section 14 of the Act, the two urban corporations select one township from public land surrounding and in reasonable proximity to their respective cities. Nonetheless, Interior promulgated regulations which permitted the corporations to nominate land as far as 50 miles away from their communities across miles of open water to a distant island.

Both the Juneau and Sitka groups made their nominations at the outer limit of the 50 miles, in the same area on Admiralty Island. Interior also waived its own regulations to allow the Juneau corporation to nominate acreage on Admiralty beyond even the 50-mile limit. Thus, Interior made withdrawals not authorized by the act.

The priority nominations on Admiralty were opposed by the villagers of Angoon who live on the island, by the State of Alaska and by the Sierra Club. Angoon was opposed to planned logging of the watersheds around these bays by the two corporations, because the forests and streams there provide critical habitat for the fish and game upon which the villagers depend. The State of Alaska and the Sierra Club also preferred that this critical habitat be preserved, along with the natural and recreational values of the landscape.

Faced with the opposition to the priority nominations on Admiralty, Interior nevertheless went ahead with some final withdrawals for Juneau and Sitka which the Department hoped would be acceptable to all concerned.

However, Juneau and Sitka maintained that not enough of their priority selections were allowed in the complex of bays and inlets on West Admiralty. The villagers of Angoon opposed the withdrawals around Hood Bay and in the Favorite Bay watershed. The Sierra Club likewise objected to any selections in the Kootznahoo Inlet, Mitchell Bay, Favorite Bay, Hood Bay, Chaik Bay complex.

These four groups have taken their objections to Federal District Court. The Juneau and Sitka corporations are suing to reinstate their

original priority selections. Angoon wants the withdrawal near them vacated in favor of other areas. So does the Sierra Club.

We very much regret that this matter has had to be referred to the courts and we made every effort to avoid a legal confrontation. At the beginning of the controversy, we discussed the issues with the leadership of the Juneau and Sitka corporations, and with Sealaska, the Regional Corporation for the Natives of southeast Alaska which, at that time, also had proposed selections on Admiralty contiguous to the nominations of Juneau and Sitka.

We proposed that we, they, and the State ask Interior to withdraw alternative areas containing comparable timber volumes. Our offer was declined and we could not accept their priority selections. We did, however, endorse their other nominations closer to Juneau and Sitka.

A long and costly legal contest is obviously not in the interest of any of the parties. Fortunately, there is another way of achieving the economic development goals of the two urban corporations, protecting the subsistence resources and cultural values of the Angoon villagers, and preserving the splendid natural landscape of Admiralty that is the focus of all this controversy.

Congress can simply amend the Act to insure that the Juneau and Sitka corporations receive an equivalent amount of timber elsewhere than on Admiralty Island.

The leadership of Sealaska is to be commended for accommodating the State and National interest at the same time as it realized all of its other land selection objectives in the Tongass National Forest. We are confident that a comparable solution to the present legal controversy can also be worked out by this committee.

The committee should take a look at Admiralty Island as a whole. We have been involved in tremendous controversy over the years. We think it would be appropriate for this committee to direct the Forest Service and the Department of the Interior to study that island and report back to you gentlemen for a final decision. I think that is in the interest of all concerned. Thank you very much.

Senator METCALF. Thank you very much.

Senator GRAVEL. I, over the Fourth of July recess, will be traveling in the southeast extensively and will personally look to the Admiralty Island problem and the suggestion made by the Angoon people who were in my office not long ago saying they had developed some sites they thought were economically more attractive than the existing selection. If that is the case, then certainly the Federal Government, in my view, will accommodate itself.

Mr. HESSION. That is very encouraging to hear, Senator.

Senator METCALF. Thank you, Mr. Hession, for cooperating with the committee in our arduous schedule this morning.

[The prepared statement of Mr. Hession follows:]

STATEMENT OF JACK HESSION, ALASKA REPRESENTATIVE, SIERRA CLUB

My name is Jack Hession, and I am the Alaska representative of the Sierra Club. My home is in Anchorage, Alaska. The Sierra Club is a national environmental organization of 162,000 members, with chapters in nearly every state, including Alaska, where 650 of our members live.

Natural resource issues in Alaska are at the forefront of the Sierra Club's national conservation effort. We welcome this opportunity to discuss with the Committee some issues associated with the administration of ANCSA. We do so in light of the fast-approaching December 18, 1978 deadline for consideration of the national interest or "d–2" land proposals which, of course, are an integral part of the complex omnibus legislation under discussion here today.

It is increasingly apparent that this committee will have only one session of Congress left in which to decide the disposition of approximately 146,000,000 acres of uncommitted federal lands remaining after Native and state selections. One of the reasons we hope that the Committee will begin consideration of this issue—including hearings this session, if possible—is that during the time leading up to the Committee's final decision, some exceptionally important national interest lands may be lost altogether, others will be subject to unrestricted appropriation under the mining laws, and all of the d–2 areas could be damaged by inappropriate surface use. Let me discuss each of these three aspects of interim management in turn.

CONFLICTS WITH STATE SELECTIONS, PRESENT AND FUTURE

At the moment, the most important problem is the overlap of state land selections with public lands recommended by the coalition of Alaska and national conservation groups in Senate bill S. 1688 for addition to the four national conservation systems.

Approximately 9.88 million acres are in conflict. The state seeks tentative approval and ultimate patent to these lands; conservationists seek Congressional consideration of these same lands, and, we hope, their retention in federal ownership as units of the National Park, Wildlife Refuge, and Wild and Scenic River Systems.

Some of these lands were identified by the state in its pre-emptive selection of 77 million acres in January 1972. The rest were originally withdrawn in March 1972 by Interior at the direction of this Committee as national interest lands, or are now part of S. 1688 as introduced by Chairman Jackson. They were later changed to state selection status as part of the out-of-court settlement of the state-federal lawsuit over Interior's d–2 withdrawals.

Because the state's January 1972 selections were made in defiance of a Congressionally-directed 90-day withdrawal of the public lands, and the subsequent out-of-court settlement was actually a politically expedient arrangement not binding on the Congress, we think that this Committee can review any of the state's selections, despite the state's claim to them. It has been our position that the lands in conflict should not be transferred to state ownership until such time as this Committee and the Congress have had a chance to consider all of the competing legislative proposals for final disposition of these areas.

Chairman Jackson has written repeatedly to the Secretary of the Interior with requests that the status quo be maintained pending Committee review. And Senator Haskell stressed the same concern during an oversight hearing he chaired on the interim management of the d–2 lands in December of 1974. Senator Haskell said then:

"I think the Department would be ill advised to go ahead and patent land where there are two opposing Congressional views; where there is no problem, by all manner of means, go ahead but I can see us bumping heads, maybe. I do not know enough about this yet but I can see us bumping heads rather severely over something like this."

And again:

"When you have all this here which has absolutely no conflict on it, I would suggest that you proceed where you have absolutely no conflict because, if you start proceeding where you do have it, we may bump heads."

Senator Haskell suggested a common-sense formula: Interior should convey title only to those public lands not in conflict, while reserving public ownership of conflict lands pending Congressional study. Yet now we find that Interior is nevertheless going ahead with conveyances of these disputed lands to the state, in defiance of this Committee's numerous requests.

The federal lands already conveyed and those scheduled for conveyance are some of the most important of all the national interest areas this Committee will be reviewing. Thus far, Interior has transferred 2.4 million acres to the state within areas conservationists propose as new units of the National Park and Wildlife Refuge Systems.

Areas conveyed to the State (tentative approval and patent)

Conservationists' proposed d–2 unit:	Acres
Togiak National Wildlife Refuge	184, 000
Lake Clark National Park	1, 059, 840
Mt. McKinley National Park additions	311, 040
Alaska Peninsula National Wildlife Range	46, 080
Hoholitna-Holitna Wild Rivers	460, 800
Nowitna National Wild River	184, 320
Melozitna National Wild River	69, 120
Delta National Scenic River	23, 040
Total conflict lands conveyed to the State as of May, 1976	2, 338, 240

Nine of the conservationists' other proposals contain 7.4 million acres of federal land identified by the state, but which Interior has not yet transferred:

Federal land identified by the State of Alaska, 1972

Conservationists' proposed d–2 unit:	Acres
Gates of the Arctic National Park	2, 465, 280
Arctic National Wildlife Range additions	875, 520
Mt. McKinley National Park additions	184, 320
Lake Clark National Park (remaining State-identified land)	3, 255, 600
Alaska Peninsula National Wildlife Range	253, 440
Melozitna National Wild River	115, 200
Delta National Scenic River	46, 080
Nelchina-Tazlina National Wild Rivers	207, 360
Susitna National Wild River	138, 240
Total conflict lands identified but not tentatively approved as of May 1976	7, 541, 040

Within the conservationists Lake Clark National Park proposal, for example, Interior has turned over to the state public land west of the Alaska Range where the most valuable park, wildlife, and river-oriented recreation values are found. This western area is one of the finest de facto wilderness areas in Alaska, and the park proposal as a whole has the potential of being one of the great national parks.

But as a result of the department's giveaway to the state, Interior's National Park/National Preserve encompasses for the most part exceptionally mountainous, glacier-clad terrain that, while scenically stunning contains relatively little wildlife habitat. For example, nearly all of the Mulchatna caribou herd's most critical habitat—its calving grounds—as well as its other range is not included. Protection of this and other critical wildlife habitat is one of the primary reasons for the larger conservationist proposal.

If this Committee is to consider the merits of adding these contested lands to the four national conservation systems, it must take whatever action is necessary to prevent Interior from conveying title to them to the state at this time. One way the Committee can preserve all its options is to order that the disputed lands be withdrawn from further disposition until December 18, 1978, the date Congress set for completing its review of the national interest lands. We urge that this action be taken.

Submitted with this statement is a map showing the disputed lands. [Map was retained in committee files.]

There is a comparable problem with respect to potential state selections of alternate townships within the 25-township village withdrawals. The state must wait until completion of the Native village and regional corporations' selections before making its own in the alternate townships. State selection is optional, of course.

When Congress included in ANCSA the provision which enables the state to make this kind of selections, it might not have been aware of the implications for the national interest lands, which at that time had yet to be withdrawn. But now that the d–2 legislation is before Congress, there is a potential problem stemming from state selections within 25-township withdrawals adjacent to or within the d–2 areas.

The state's ability to create a "checkerboard" pattern of land holdings could result in an intermingling of federal, state, and Native ownership that would make coherent land management difficult to achieve. This has been the unhappy experience with checkerboarding in the western states. Accordingly, we recommend that this Committee allow state identification of lands in those 25-township village withdrawals within or adjacent to proposed units of the four systems, but that Interior be directed not to transfer title pending Committee review of the various d–2 proposals.

PUBLIC INTEREST OR "D–1" LANDS

A related problem of interim management is the protection of the lands withdrawn under Section 17(d) (1) of ANCSA. These have been set aside pending Bureau of Land Management classification. For various kinds of uses under the public land laws. This Committee intended that the "d–1" lands be protected against a land rush and wholesale appropriation under the archaic public land laws following enactment of ANCSA and the lifting of the "land freeze."

There are approximately 13.7 million acres of public interest lands within the boundaries of areas the Department of the Interior is recommending to the Committe as new national parks, refuges, and wild rivers. Within the boundaries of areas proposed by conservationists for the same purposes, there are about 19.9 milliion acres. The problem for interim management of these proposals is that the d–1 lands within them are open to entry under the Mining Law of 1872.

Many millions of acres of these d–1 lands were originally d–2, fully meriting that status, but were changed to d–1 as part of the out-of-court settlement between the state and Interior. A prime example of former d–2 and now d–1 is found in the North Fork of the Koyukuk River valley in the proposed Gates of the Arctic National Park. When the Secretary's national interest lands bill was submitted to Congress on December 18, 1973, there were 150 mining claims. Since that time 540 new mining claims under the 1872 mining law have been filed in the North Fork Koyukuk d–1 and in other d–1 lands in the Ambler River watershed. Although I do not have the figures, it is quite likely that mining claims have been filed in d–1 tracts within the other d–2 proposals.

We think that the d–1 lands so exposed should be withdrawn from *all* forms of private appropriation while this Committe studies the national interest land proposals. Inasmuch as the Secretary has the authority to make much protective withdrawals, but has been unwilling to exercise it, we suggest that this Committee direct him to withdraw these lands immediately from entry under the mining laws until December 17, 1978.

Submitted with this statement is a map showing the d–1 lands within Interior's and conservationists' national interest land proposals.

OTHER PROBLEMS OF INTERIM MANAGEMENT: OFF-ROAD VEHICLE USE AND TRESPASS

All-terrain vehicle use on d–2 lands continues to be a major problem. At last year's oversight hearings on the d–2 lands, Dr. Edgar Wayburn, speaking on behalf of the coalition of Alaskan and national conservation groups, outlined instances of off-road vehicle damage to the national interest lands. In response to this Committee's inquiry, the BLM has stated that "the area of greatest concern [in interim management of the d–2 lands] to both BLM and the other [d–2] agencies relates to fragile areas where the use of off-road vehicles can cause serious damage if not controlled."

Yet while the problem is recognized by all, these agencies have yet to agree on a program designed to halt present misuse and prevent future abuses. No ORV regulations for the d–2 areas have been formulated by the BLM, and although BLM asked the other d–2 agencies for a list of areas which should be considered for closure to ORV's, no areas have actually been closed; this in spite of documented damage to the public lands. As a result, surface values will continue to be degraded, as is happening in the Kantishna Hills area within the proposed north addition to Mt. McKinley National Park.

A related problem is trespass on d–2 lands and on associated d–1 lands, almost 20 million acres of which, as previously noted, are within conserva-

tionists' d–2 proposals. Trespass involves such activities as illegal cabins, mining claims, and other unauthorized entry.

For example, in the Fairbanks District of the BLM, there were 31 cases of trespass on d–2 lands as of April of this year. Numerous others on d–1, Native withdrawals and state selections were also recorded.

One of the most significant d–2 trespasses is the case of a hunting guide who constructed a cabin and filed an illegal mining claim along the upper Charley River within the Yukon-Charley National Rivers proposal after the land had been withdrawn for d–2 purposes. He has refused to cooperate with the BLM in removing his cabin, which he uses for his clients, and has sought the assistance of Rep. Young and Senator Stevens in preventing the BLM from successfully prosecuting this case. I am submitting copies of correspondence in the case for inclusion in the hearing record.

A similar situation exists in the southern half of the state (excluding Southeast). For example, in the Lake Clark area, which the Committee dealt with last session in the Cook Inlet land exchange, there have been numerous cases of trespass. Residents of the Port Alsworth area were discovered supplying their saw-mill from a federal power reserve which is now proposed for the Lake Clark National Park. Another trespass case involved the cutting of timber around a lake for the purpose of constructing a hunting camp.

But the most flagrant case in the Lake Clark area involves the current attempt of an Anchorage attorney to squat along the Chilikadrotna River, one of the finest and most pristine wild rivers in the state. In the spring of this year he flew in 18 tons of supplies and equipment and a large tracked vehicle called a Nodwell to Turquoise Lake in the Lake Clark National Park proposal. He then hauled the supplies across national interest lands to state-identified (1972) lands just outside the d–2 boundary, where he apparently intends to construct a large cabin or lodge. The BLM has issued a notice of eviction, since pending conveyance of title to the state, the lands remain in federal ownership. Political pressure has already been brought to bear on BLM on behalf of this individual.

Conservationists have proposed this same area of state-identified land for inclusion in the Lake Clark National Park, because of the outstanding wilderness and recreation resourses of this river. There are, for example, no other cabins or developments along the entire river. It is vital that this clear violation of Congressional intent be successfully prosecuted.

Lack of funds is perhaps the major stumbling block to adequate interim management of the d–2 and d–1 lands. Since 1972, BLM's budget has been increased $9.6 million for ANCSA administration. There has been no increase for general land management purposes other than increases to account for inflation.

We recommend that this Committee take the following steps to insure that the d–2 and associated d–1 lands receive sufficient interim protection:

1) A supplemental appropriation to BLM for fiscal year 1977 sufficient to staff an adequate interim management program.

2) In the event the BLM Organic Act fails to pass Congress this session, special authority should be granted to the BLM for interim management of the d–2 lands.

3) A direction to the Interior Department that this Committee expects the BLM and the "four systems" agencies to coordinate their efforts regarding surface protection of the national interest lands. For example, these agencies should move in an expeditious manner to develop ORV regulations and to close sensitive areas to off-road vehicle use. National Park and Fish and Wildlife Service personnel could be assigned to BLM as liaison staff in BLM's interim mangement program to work directly with BLM field personnel.

4) A request that Interior submit quarterly reports on the mangement of the d–2 and associated d–1 lands during the period of Congressional study of these lands.

We are submitting additional material for the hearing record.

There are several issues surrounding the conveyances of land selected by Native corporations. Of major concern to us are the question of recreational easements and the problem of Interior's withdrawals on Admiralty Island for land selections by the urban Native corporations of Juneau and Sitka.

RECREATIONAL EASEMENTS

No one provision of ANCSA—with the possible exception of certain questionable village eligibility nominations—has caused more public controversy than the regulations Interior has promulgated on access to publicly-owned rivers, streams, lakes, and coastlines. Native corporations and the Alaska Federation of Natives have filed suit against Interior, as has the Alaska Public Easement Defense Fund, a coalition of recreational groups. Given this controversy, it would be useful if Congress would clarify its intent, in ANCSA, that the public be provided "a full right of public use and access." Thus, an amendment to the Act is desirable.

The Sierra Club believes that Interior's regulations are, on the whole, inadequate, although there are good provisions, such as the continuous easement along the coast. There are two basic flaws in the regulations. One is that linear easements will be reserved along the banks of rivers and streams only where there has been "highly significant" past recreational use by the public. The other is that there are no linear easements on lakeshores: only site easements on lakes over 640 acres and no easements whatever on smaller lakes unless they have "unusual recreational or transportational value."

Interior has compounded the problem by placing the entire burden on the general public to identify all necessary easements by documenting past use in elaborate detail. This procedure has never been tried before, anywhere in the country, and is not working; the BLM has received very little public comment. As a result, the minimum easements that Interior is reserving for access to publicly-owned waters will be almost totally inadequate.

Linear easements are necessary for continued public use of the bodies of water in question. Virtually all water-related recreation and travel requires shoreline access. For example, canoeists and kayakers must come ashore to scout rapids and perhaps portage; fishermen walk along the banks; float-plane pilots beach their planes there. All travelers on rivers, lakes, and along the coast may be forced ashore by bad weather, darkness, fatigue, or a capsize in Alaska's icy waters. Campsites at five- or ten-mile intervals, as Interior apparently intends (the final guidelines are silent on the intervals), are obviously inadequate to take care of these contingencies.

At the same time as we think only linear easements are practical under Alaska conditions, we are fully aware of Native concerns in this matter, having talked to various Native leaders. The Natives oppose linear easements because they fear that poaching of game on Native-owned lands would thereby be facilitated, and maintain that any easements reserved ought to be purchased.

Our answer to the poaching argument is that linear easements are intended to preserve access only to the publicly-owned waters and the fish therein; hunting is not a use permitted within the easement. Poachers will doubtless trespass on Native-owned lands, without regard to the presence or absence of easements. To the Alaska poacher or bandit guide, the issue of who owns the land is irrelevant. Even the wildlife of Mt. McKinley National Park and Katmai National Monument is not safe from these unscrupulous hunters. Thus denying easements will not halt poaching.

As for the demand that the public purchase these easements, this is not consistent with the wording or intent of the Act. Public easements are mandated prior to conveyance of title. And although these easements can be considered "free" to the public, the Act itself is exceptionally generous with regard to the amount of land and money granted. We feel Congress's directive that public easements be reserved was eminently reasonable, in the context of the Act as a whole.

Accordingly, we recommend that the Act be amended to mandate continuous easements around lakes of significant size and along streams and rivers which support anadromous fish or which can be floated by raft, canoe or kayak. In an attempt to control poaching, linear easements could be reserved for non-mechanized users only, with the more mobile travelers in motorized craft or float-planes being restricted to the periodic site easements unless they have the landowner's permission to use the linear easements.

INTERIOR'S WITHDRAWALS FOR THE NATIVE CORPORATIONS OF SITKA AND JUNEAU

Under ANCSA, Native residents of Juneau and Sitka, organized in separate corporations, are eligible to select one township or 23,040 acres each. As a result of the land selection regulations adopted by Interior, and its final decision under those regulations, individual lawsuits have been filed against the department by the two corporations, by the village corporation of Angoon on Admiralty Island, and by the Sierra Club.

Under Sec. 14 of the Act, the two urban corporations select one township from public land "surrounding" and "in reasonable proximity to" their respective cities. Nonetheless, Interior promulgated regulations which permitted the corporations to nominate land as far as 50 miles away from their communities across miles of open water to a distant island. Both the Juneau and Sitka groups made their nominations at the outer limit of the 50 miles, in the same area on Admiralty Island. Interior also waived its own regulations to allow the Juneau corporation to nominate acreage on Admiralty beyond even the 50-mile limit. Thus Interior made withdrawals not authorized by the Act.

The priority nominations on Admiralty were opposed by the villagers of Angoon, who live on the island, by the state of Alaska, and by the Sierra Club. Angoon was opposed to planned logging of the watersheds around these bays by the two corporations, because the forests and streams there provide critical habitat for the fish and game upon which the villagers depend. The state of Alaska and the Sierra Club also preferred that this critical habitat be preserved, along with the natural and recreational values of the landscape.

Admiralty is well known for its wildlife, wilderness, and scenic resources. In the central portion of the island is found a system of tidal inlets (salt chucks), bays, estuaries, and fresh and salt water lakes that is unique in the nation. Kootznahoo Inlet-Mitchell Bay, for example, has been nominated as a national marine sanctuary. Admiralty has the densest concentration of bald eagle nest sites in the nation, and the finest brown bear habitat in the Tongass National Forest. Marine mammals are numerous; on occasion humpback whales enter the Kootznahoo Inlet complex. And the salmon resource, upon which the Angoon villagers and the wildlife depend, is outstanding. An account of the island's natural splendor by Skip Wallen and Rich Gordon of the Juneau Group of the Sierra Club is attached to this statement for inclusion in the hearing record.

Faced with the opposition to the priority nominations on Admiralty, Interior nevertheless went ahead with some final withdrawals for Juneau and Sitka which the department hoped would be acceptable to all concerned. However, Juneau and Sitka maintained that not enough of their priority selections were allowed in the complex of bays and inlets on west Admiralty. The villagers of Angoon opposed the withdrawals around Hood Bay and in the Favorite Bay watershed. The Sierra Club likewise objected to any selections in the Kootznahoo Inlet-Mitchell Bay-Favorite Bay-Hood Bay-Chaik Bay complex.

These four groups have taken their objections to federal district court. The Juneau and Sitka corporations are suing to reinstate their original priority selections. Angoon wants the withdrawal near them vacated in favor of other areas. So does the Sierra Club.

We very much regret that this matter has had to be referred to the courts, and we made every effort to avoid a legal confrontation. At the beginning of the controversy, we discussed the issues with the leadership of the Juneau and Sitka corporations, and with Sealaska, the regional corporation for the Natives of southeast Alaska, which at that time also had proposed selections on Admiralty contiguous to the nominations of Juneau and Sitka. We proposed that we, they, and the state ask Interior to withdraw alternative areas containing comparable timber volumes. Our offer was declined, and we could not accept their priority selections. We did, however, endorse their other nominations closer to Juneau and Sitka.

A long and costly legal contest is obviously not in the interest of any of the parties. Fortunately, there is another way of achieving the economic development goals of the two urban corporations, protecting the subsistence resources

and cultural values of the Angoon villagers, and preserving the splendid natural landscape of Admiralty that is the focus of all this controversy: Congress can simply amend the Act to insure that the Juneau and Sitka corporations receive an equivalent amount of timber elsewhere than on Admiralty Island.

One other area of critical environmental concern is West Chichagof-Yakobi Island. Like Admiralty, this area is unquestionably of national significance and we recommend that it too not be made available for selection by the Sitka corporation.

There is a recent precedent for a Congressional solution to the selection problem. As previously noted, the Sealaska regional corporation had also identified approximately 40,000 acres of forested land adjacent to the Juneau and Sitka corporations' nominations surrounding the bays and inlets of west Admiralty. Sealaska at that time had proposed an amendment to ANCSA authorizing it to select from national forest lands in lieu of unreserved public lands. Sealaska, which has organized the Southeast Alaska Native Timber Corporation (SANTCO), wanted to put together a large, contiguous block of commercial timber on Admiralty in cooperation with the Juneau and Sitka corporations, both members of SANTCO.

After considering Sealaska's request, Congress declined to authorize selections on Admiralty, in recognition of the island's superlative natural values and the opposition of the Native villagers of Angoon, the state of Alaska and conservationists. Sealaska was also asked by Congress to work with the state to insure that the watershed of the Situk River (near Yakutat) was protected. The leadership of Sealaska is to be commended for accommodating the state and national interest at the same time as it realized all of its other land selection objectives in the Tongass National Forest. We are confident that a comparable solution to the present legal controversy can also be worked out by this Committee.

Beyond the resolution of the present litigation is the question of the future of Admiralty itself. The island will remain vulnerable to additional timber sales, either long- or short-term, and other developments incompatible with its *de facto* wilderness status. Additional political and legal conflict over disposition of the island is highly probable. Meanwhile, the Forest Service refuses to give it consideration for reserved status, and in fact seems determined to destroy this superb wilderness.

We therefore recommend that this Congress establish Admiralty as a wilderness study area. This would mandate a study, including the all-important analysis of policy alternatives, followed by a Congressional decision. Only in this way can all the people of Alaska and the nation, through Congress, participate in deciding the fate of this magnificant national treasure.

FEDERAL-STATE LAND USE PLANNING COMMISSION'S NATIONAL INTEREST LAND RECOMMENDATIONS

We have one final observation on the administration of ANCSA. At the present time, the Federal-State Land Use Planning Commission for Alaska is preparing its final d–2 recommendations for submission to Congress prior to the next session. We continue to be concerned over the method the Commission is using in arriving at its final conclusions, for it is fundamentally flawed, and as a result the d–2 recommendations will flow not from a true planning process, but from one predominantly political in motivation. Congress, which has appropriated millions of dollars to fund operation of the Commission, will not have been well served.

What the Commission is basically doing wrong is proceeding to make recommendations prior to a thorough analysis of the various alternative ways available for dealing with the d–2 lands. Instead it has already adopted, in November of last year, what is usually referred to as the "fifth system" approach, which involves a minimum amount of national interest lands in the four conservation systems, with the majority in a new or "fifth" system involving joint state-BLM management. This "new system" is a political creature of the state of Alaska and the BLM.

In short, the Commission is putting the cart before the horse. It is advocating a fifth system, when what it should be doing for this Committee is providing

an analysis of the various alternatives for allocating the d–2 lands, and the social, economic, and environmental implications of each. Instead of lobbying this Committee for its dubious fifth system proposition, the Commission should be engaged in the planning tasks for which it was established.

U.S. Department of the Interior,
Bureau of Land Management,
State Office,
Anchorage, Alaska, January 6, 1976.

Memorandum to: Activity Leader, Resource Planning, U.S. Fish & Wildlife Service, Anchorage, Alaska.
From: State Director, Bureau of Land Management.
Subject: All-Terrain Vehicles.

Surface damages, caused by all-terrain vehicles/off-road vehicles (ATV/ORV) within D–2 areas, have been a continuing topic at our coordination meetings. At the December 8, meeting each agency was requested to review its D–2 proposals and based upon repeated or threatened damage caused by ATV/ORV use, recommend to Bureau of Land Management whether the area should be closed in its entirety to ATV/ORV use, or closed on a selective basis by season or type of ATV/ORV.

A followup meeting on this matter was held in the offices of Fish and Wildlife Service with representatives of this office, National Park Service, Bureau of Outdoor Recreation and Forest Service on December 22. At that time it was requested that BLM reaffirm its December 8 request for advice and assistance for moving aggressively into management of ATV/ORV use to prevent damage.

In the past State and Federal agencies and concerned individuals have notified Bureau personnel of areas where ATV/ORV have caused surface damage. This information, in combination with damages observed by BLM, has been the basis for action. Each agency carefully reviews "notices of intent" for oil and gas exploration on dual withdrawn Native/D–2 areas, and has recommended special stipulations to prevent damage to the environment or harassment of fish and wildlife. These activities primarily are limited to large mineral exporation companies. Yet ATV/ORV use by the independent miner and prospector, as well as recreationist engaged in sports hunting and fishing, guiding, and general bush travel, can result in surface damage. Damage can also result from using equipment at seasons or in terrain, where little damage would take place with the same use at other seasons.

In order for BLM to proceed, with either selective or complete closure of an area to ATV/ORV use, several steps must be completed:

First, we need the concerned D–2 agencies' advice, recommendation and support that ATV/ORV damage now, or expected, is severe and that immediate positive action to regulate ATV/ORV use is needed for the area.

Second, the Regional Solicitor must be contacted to make sure that the desired objective can be achieved. For example, areas may not be *closed* to reasonable access for mining or exploration activities authorized by the 1872 mining laws. There are, however, basic responsibilities which can be used to regulate ATV/ORV use to prevent undue damage to the surface and to fish and wildlife resources.

Third, BLM planning and classification procedures require seeking active participation and discussion with State and local governments, public, and affected user groups.

Your strong support of an unified ATV/ORV management policy would provide the basis for BLM to move aggressively into an "action" program. Although the final management responsibility of D–2 lands rests with Congress, we feel that BLM's interim active protection of the land and its resources is of paramount importance.

Certainly good communications between our agenices is a must. Recent events in our trespass program point out a need for more efforts in effective communications. After a notice of trespass had been issued, the trespassers contacted the D–2 agency concerned to seek support for their unauthorized use. The trespassers received the impression that had that D–2 agency been the land manager, the trespass proceedings would not have been started. Obviously it is in everyone's best interest to insure that both BLM and the future probable management

agency have the same objectives. Accordingly, we believe it mandatory that there be substantial unanimity among the D–2 agencies and the State that serve damage has, or will, result in specific areas without a positive ATV/ORV management program. BLM is prepared to proceed with such a program. For D–2 areas where you feel that surface damage warrants area-wide action, we can develop jointly a cooperative program to start appropriate classification or regulation of ATV/ORV use. A similar request will be made for assistance from the Alaska Division of Lands and the Alaska Department of Fish and Game.

Should there be no substantial unanimity that there are D–2 areas needing special action, the BLM will continue to pursue aggressively the ongoing program of active identification and follow-through of surface damage on a case-by-case basis.

CURTIS V. MCVEE.

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
ALASKA AREA OFFICE,
Anchorage, Alaska, February 12, 1976.

Memorandum to: Alaska Planning Group, Washington, D.C.

Thru: Director, National Park Service, Director, Bureau of Outdoor Recreation, Director, Fish and Wildlife Service.

From: Chief, Alaska Field Office, Bureau of Outdoor Recreation, Alaska Area Director, National Park Service, Alaska Area Director, Fish and Wildlife Service.

Subject: Interim Management of d–2 Lands.

We are concerned about the implications of the attached memorandum from the State Director, Bureau of Land Management, regarding interim management of d–2 lands.

BLM has requested that the Four Systems agencies recommend whether areas should be closed to ATV use. In the second paragraph on page two they list the d–2 agency recommendation as a necessary step to closure. Verbally, at the last December 8, 1975 meeting they made it clear that without such a d–2 agency recommendation they would not take action.

We feel that this situation clearly reflects the BLM attitude toward protection of d–1 and d–2 lands within the Secretary's proposals, i.e. a minimum of involvement until these areas—problems included—are passed on to other agencies. BLM consistently opts for the minimum rather than the maximum degree of protection possible within avenues available to it, and then only when confrontation can no longer be avoided.

A further example is found in actions—or lack thereof—in relation to trespass cabins. BLM has followed its procedures for identification and notification of individuals clearly in trespass through construction of cabins or other structures, but has failed to take final action. Delays in this case are likely to result in deeper entrenchment by the parties involved and greater difficulty in eliminating the trespass—whether for BLM or another agency.

We believe that BLM has both the authority and responsibility for protecting d–2 lands and is not aggressively discharging this responsibility. We should not be required to provide specific recommendations for closure, denial of permit, etc., before BLM will take action. BLM should be responsible for preventing or stopping all damage possible on its own initiative and not require our prompting. We will, of course, continue to report all damage we see to the State Director of BLM.

Regarding specific d–2 agency recommendations for curtailment of ATV use, BLM has pointed out that it was we who wanted in on the decision making and promoted the Memorandum of Understanding which lets us review all requests for leases, permits, etc. They maintain this is the same thing. We reject this. We acknowledge that total protection is not possible and that some activity must continue. When activity is to take place we, as proposed future land managers, should be in on the decisions as to what will go on and how it will be done. This has no parallel to being asked to recommend specifically what area should be protected from damage. All areas should be protected from damage.

People in and outside government have accused BLM of neglecting its responsibility for protection of d–2 lands. One point BLM uses in defense is that it has

asked d–2 agencies for recommendations with the implication that the d–2 agencies are partially to blame for lack of protection because we have not made recommendations.

We recommend that the Assistant Secretary for Fish and Wildlife and Parks clearly state the position of his agencies; namely that we believe all d–2 lands should be protected from damage by the Secretary of the Interior and that their protection is a BLM responsibility. We urge that the full range of authority and responsibility with respect to d–2 lands be determined without delay and that BLM provide protetcion to the maximum extent possible.

WILLIAM R. THOMAS,
Chief, Alaska Field Office, Bureau of Outdoor Recreation.

BRYAN HARRIS,
Alaska Area Director, National Park Service.

GORDON W. WATSON,
Alaska Area Director, Fish and Wildlife Service.

Attachment.

STATE OFFICE,
Anchorage, Alaska, February 25, 1976.

Memorandum to: Project Leader, Alaska Task Force, National Park Service
Anchorage, Alaska.
From: State Director, Bureau of Land Management.
Subject: Interim Management of d(2) Areas.

As a follow-up to our meeting yesterday concerning interim management of the d(2) areas, I want to clarify earlier correspondence on all-terrain vehicles (re memo, January 6, 1976).

It was not our intention to infer in previous correspondence and discussions that BLM would not initiate action to regulate ORV use on d(2) areas without a favorable recommendation by the appropriate d(2) agency. A recommendation is not mandatory, however, I believe a closure action is significant and should be coordinated with the appropriate d(2) agency since it may establish a man-agreement precedent for the area. Input from the d(2) agencies will also assist BLM in selection of areas which need attention first, and your recommendations and support will certainly help BLM.

BLM has been conducting ORV inventories and will initiate action based on this data. This effort together with assistance from the d(2) agencies will provide the maximum protection to the d(2) areas.

BLM program increases have been approved for accelerating the transfer of public lands to the Native corporations. We are still basically operating with the same program base as prior to ANCSA for management of lands and resources. So what may appear on the surface to be a minimum involvement is BLM's full resource capability.

Our trespass program has increased many fold since the passage of ANCSA, and BLM will continue to aggressively identify unsanctioned uses, notify the users they are in trespass and pursue remedial action. Intensive trespass training sessions are being conducted in the Districts this week to improve our efficiency on trespass matters.

It is our understanding that BLM is clearly responsible for management of the d(2) areas and BLM will exercise this responsibility. My staff and our District Managers have been advised of the necessity to manage the d(2) areas to insure that these lands are not altered in a manner to limit alternatives for future management.

If you have further concerns or questions, please give me a call.

CURTIS V. MCVEE.

ANCHORAGE, ALASKA.

Mr. CURTIS V. MCVEE,
State Director, Bureau of Land Management, Anchorage, Alaska.

DEAR CURT: Recently your office has made requests for any information we may have on illegal or adverse land-uses of lands proposed for inclusion in one of the "Four Systems."

Attached is a list of what we consider to be land-use violations. We have listed those occurrences observed in the course of our studies of proposed wild

and scenic river areas on (d)(2) and (d)(1) lands. We have deleted some trespass cabins which have already been reported and investigated by your resource area personnel.

We would appreciate being kept informed on the status of these occurrences and what actions your agency has taken or intends to take.

Sincerely,

PAT POURCHOT,
(For William R. Thomas, Chief Alaska Field Office).

Enclosure.

Area: Beaver Creek National Wild River

Land-Use "Violation"

1. Recent cabin construction in trespass near Brigham Creek.
2. Vehicle tracks and related erosion problems along Beaver Creek winter trail along Wickersham Creek from continued use by recreational ATV's in summer months.
3. Vehicle tracks and related erosion problems in Nome Creek area from continued use by recreational ATV's in summer months.

Area: Birch Creek National Wild River

Land-Use "Violation"

1. Older trespass cabin along river ten miles below South Fork used for winter trapping.
2. Recent construction of trespass cabin in the South Fork confluence area along Birch Creek.
3. Vehicle tracks and crude trails from mining operations above proposal area down Harrison Creek to Birch Creek confluence.
4. Heavy sedimentation of Harrison Creek and Birch Creek below Harrison Creek confluence past several summers due to placer mining operations in the Harrison Creek streambed above the proposal area.
5. Vehicle tracks along upper Birch Creek from Steese Highway presumably by summer ATV recreationists.

Area: Fortymile National Wild and Scenic River

Land-Use "Violation"

1. Vehicle tracks and related erosion problems along Mosquito Fork from Taylor Highway from continued recreational ATV use in summer and fall months.
2. Staking of mining claims along river in closed (d)(2) areas.
3. Heavy sedimentation of Lost Chicken Creek and South Fork below Lost Chicken confluence past several summers due to placer mining operations within proposal area.
4. Deposition of overburden and tailings from placer mining in active river channel along Fortymile near Steel Creek confluence.
5. Recent vandalism of historic cabins and telegraph stations in river area and removal of historic relics and implements.

Area: Arctic National Wildlife Refuge

Land-Use "Violation"

1. Active trespass cabins used in guiding operations on unnamed lake adjacent proposed Wind Wild River near Keche Mountain. Also ATV use has caused tracks and some erosion problems in the vicinity of the cabins.

Area: Porcupine National Forest

Land-Use "Violation"

1. Active trespass cabin along lower Sheenjek River, proposed as a wild river.

Area: Katmai National Park

Land-Use "Violation"

1. Abandoned National Marine Fishery Service fish counting camp along American Creek three miles north of Coville Lake and dump site two miles

north of Coville Lake. Animals have caused further unsightly damage and littering.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT,
April 21, 1976.

NOTICE TO REMOVE UNAUTHORIZED STRUCTURES

Mr. HUGH WHITE,
Attorney at Law,
Anchorage, Alaska.

Your maintenance of unauthorized storing of building materials and track vehicle on the SW¼NW¼, Sec. 25, T. 7 N., R. 29 W., located along the Chilikadrotna River, Seward Meridian, Alaska, is in violation of the Act of February 25, 1885 (23 Stat. 321; 43 U.S.C. 1061), or the Act of June 28, 1934 (49 Stat. 1976; 43 U.S.C. 315f), which prohibit enclosure or assertion of right to use or occupy United States public land without bona fide claim, color of title or specific authority.

You are allowed 60 days from receipt of this notice within which to: (a) remove the structure(s); (b) show you have authority to continue maintenance, if such is the case; or (c) apply for such authority. If, within this time, you do not remove same or show or obtain proper authority to continue maintenance, the matter may be brought to the attention of the United States Attorney for appropriate action.

District Manager, Anchorage District Office, Anchorage, Alaska.

ALASKA PLANNING TEAM,
Anchorage, Alaska, January 5, 1976.

CURTIS V. MCVEE,
State Director, Bureau of Land Management,
Anchorage, Alaska.
(Attention of Robert W. Arndorfer).

DEAR MR. MCVEE: In response to your 12/29/75 request for information on ATV/ORV damage on d–2 lands, our comments will concern the activity in the Tanada and Copper Lakes area. The ORV activity in this area is one of long standing use. Hunters and fishermen, primarily, have used ORV's to get from various access points along the Nabesna Road (vicinity of Long Lake, Rock Lake, Jack Lake and Jack Creek) to Tanada and Copper Lakes and points beyond. Some of the trails originate in the Jack Lake area which is within the north unit of the Wrangell Mountains National Forest proposal and extend on into the Wrangell Mountains-St. Elias National Park proposal area; others originate outside of these areas.

The tracks and trails left by the ORV's has been observed on the various recon flights made over these areas during the past three years. We have never conducted a field investigation of ORV use in these areas or prepared a report. Thus, BLM has not been officially notified nor have any special recommendations been made to date. The last time the area was observed was in July of 1975. No report was given to BLM by the Forest Service.

These uses have been of long standing, pre-dating ANCSA and thus no stipulations have ever been recommended or prepared by the Forest Service to cover these uses due to the nature of the activity. There is no doubt that ORV use has occurred since ANCSA went into effect, but it is merely a continuation of past uses.

The damage has occurred primarily because there have been no enforceable ORV regulations in effect. It is not a matter of stipulations at this point.

Prevention of future damage will depend on the development of ORV regulations by BLM which are practical and enforceable and have been subject to public involvement procedures. Field investigation will be necessary to determine actual extent of current damage, potential damage, effects in other resource values, practical routes, types of ORV's which can be used (if any) and seasonal considerations.

Our reply has been necessarily general due to the nature of the situation. Nevertheless, I hope it has been helpful to you.

Sincerely yours.

B. A. COSTER, *Project Director.*

79-784 O - 77 - 6

MAY 11, 1976.

Memorandum to: SD (910).
From: DM–F.
Subject: Trespass Report for April.

I. Fortymile Resource Area—AK–027

5–302 *Ed Gelvin—Charley River D–2 (NPS)*
Mr. Gelvin has until 6–1–76 to effect settlement.

5–309 *Richard Burton—Chicken D–2 (BLM)*
Residence on mining claim. Needs further investigation.

5–310 *Robert McCombs—Chicken D–2 (BLM)*
Has applied for mineral patent.

5–311 *Larry Taylor—O'Brien Creek D–2 (NPS)*
Needs further investigation.

5–312 *Sarge Waller—Yukon/Kandik D–2 (NPS)*
Notice delivered 4–14–76. Expected relinquishment by 5–15–75.

5–314 *Farrel Bruce—Taylor Highway D–1*
Needs further investigation.

5–316 *Unknown—Liberty Creek D–2 (BLM)*
Cabins on Taylor Highway. Needs investigation.

5–317 *Unknown—40 Mile Creek D–2 (BLM)*
Cabins on Taylor Highway. Needs investigation.

5–318 *Dave James—Northway—Regional Deficiency*
Not verified. Needs investigation.

5–319 *Unknown—Mosquito Fork D–1*
Needs investigation.

5–321 *William Warwick—Fortymile River D–2 (BLM)*
Needs investigation. Cabin on mining claim.

5–322 *Louis Waite—Eagle Village Selection*
Needs further investigation.

5–409 *George Van Wyhe—Charley River—D–2 (NPS)*
Intends to settle this winter.

5–420 *Jack Boone—Eagle—Village Withdrawal*
Has ceased all operations. Trespass ceased. Case closed.

6–505 *Floyd Miller—Northway—Village Deficiency*
Power line route mapped on aerial photos. In for appraisal.

5–513 *U.S. Army—Tower Bluff—State Selected*
Checked 4–24–76. Clean up complete. Case closed.

5–515 *Dave James—Northway—Village Withdrawal*
Qualifies under 14(c)(1) of ANCSA. No further action planned at this time.

5–516 *Larry Ranney—Riverside—Village Withdrawal*
Cabin removed. Some site cleanup left.

5–517 *Bill Seaton—Alaska Highway—D–1*
Statutory life expired on T & M Site because of refusal to pay survey costs. Needs further investigation.

5–518 *Terry McMullin—Eagle—Village Withdrawal*
Qualified under 14(c)(1) of ANCSA. No further action planned at this time.

5–522 *Charley Edwards—Eagle—Native Allotment*
Believed to qualify under 14(c)(1) of ANCSA. Needs further investigation.

5–523 *Unknown—South Forke Ladue River—D–1*

5–524 *Unknown—South Fork Ladue River—D–1*

5–525 *Unknown—Ladue River—D–1*
Three cabins reported by trapper who did not build them. He wants a SLUP to use them as line cabins. Needs further investigation.

5–526 *Unknown—Yukon River/Nation River—D–2 (NPS)*

5–527 *Unknown—Diamond Fork/70 Mile River—Reg. Deficiency*

5–528 *Unknown—Yukon River/Nation River—D–2 (NPS)*

5–529 *Unknown—Yukon River—D–2 (NPS)*

5–530 *Unknown—Yukon River/Glenn Creek—D–2 (NPS)*

5–531 *Unknown—Yukon River—D–2 (NPS)*
All require further investigation to determine ownership.

5–601 *Brad Snow—Nation River—D–2 (NPS)*
Made contact to negotiate agreement, however, Mr. Snow uncooperative. Case will be followed up.

5–602 *Unknown—Nation River—D–2 (NPS)*
Needs investigation.

5–603 *Unknown—Nation River—D–2 (NPS)*
Needs investigation.

5–612 *James Scott—Dennison Fork—D–2 (BLM)*
Scott failed to contact to effect settlement by 4–15–76. He is believed to have left the country. Cannot get to site until after break up to effect seisure and clean up.

4–622 *Tom Goggins—Eagle—Village Selection*
Trash left on highway. Contacted on 4–14, has agreed to move school bus on Yukon River.

5–625 *Unknown—Charlie River—D–2 (NPS)*
A-frame cabin. Owner unknown. Needs further investigation.

5–626 *William Chester—Scottie Creek—D–1*
Requires further investigation.

II. Yukon Resource Area—AK–028–

5–403 *Unknown—Elliot Highway—Utility Corridor*
Needs investigation.

5–404 *Eric Melfy—MP 58 Elliot Highway—Utility Corridor*
Needs investigation.

5–405 *Unknown—MP 51 Elliot Highway—Utility Corridor*
Needs investigation.

5–407 *Unknown—MP 97 Steese Highway—D–2 (BLM)*
Needs investigation.

5–414 *John Petsold—Yukon/Big Salt River—D–1*
Needs further investigation.

5–417 *Arthur Post—MP 45 Elliot Highway—Utility Corridor*
Petition from residents of the area to clean up the site. Mr. Post in custody of authorities. Cabin posted.

5–502 *Unknown—North Fork Koyukuk—D–1*
Needs investigation.

4–509 *Paul Wieler—Kantishna—D–2 (NPS)*
Excessive mining damage not evident. Investigated. No trespass. Case closed.

4–510 *James Nautau—Boulder Creek—D–1*
Excessive damage mining access. Notice of trespass mailed. Agreement for rehab drafted and sent.

5–511 *Unknown—MP 28 Elliot Highway—Utility Corridor*
Needs investigation.

4–512 *Fred Wilkerson—Mammoth Creek—D–1*
Excessive mining damage—constructed a ditch. Needs further investigation.

5–605 *Ed Gelvin—Central—D–1*
Part of airstrip on NRL. AM to contact Gelvin in person.

7–607 *Melvin Edwin—S. of Rampart on Yukon—Village Selection*
House logs cut. Notice to cease trespass sent. No further effeort to be expended. Case closed.

5–609 *Roy Stolts—East Twin Lake—D–1*
Trespass basically resolved in a meeting of 9–12–75. Will continue surveillance.

5–610 *Jim Farmer—Ruby—Village Selection*
Notice to remove unauthorized improvements sent 9–29–75. Needs follow-up action.

5–615 *Unknown—Beaver/Bringham Creek—D–2 (BLM)*
Reported by BOR. Needs investigation.

5–616 *William Buries—Sheenjek River—Native Allotment*
Cabin on Native allotment. Needs further investigation.

5–617 *Unknown—Birch Creek/South Fork—D–2 (BLM)*

5–618 *Unknown—Birch Creek—D–2 (BLM)*
Cabins reported by BOR. Needs investigation.

5–620 *Orville L. Scott—Old Minto Lake—NA application*
Cabin on Native allotment. Notice to remove sent. Mr. Scott appeared in office—given until 6–6 to remove structure.

4–621 *Digicon Alaska, Inc.—Kandik Basin—D–2 (NPS)*
1.5 miles seismic line. Notice of trespass sent. Working with company to rehab.

8–623 *Unknown—59 Mile Elliot Highway—D–1*
Chain across access road. Investigation needed.

4–627 *Digicon Alaska Inc.—Kandik Basin—Reg. Def.*
Initial report and notice sent. Company willing to rehab areas.

5–628 *Dennis Quinn—Ester Dome—State Sel.*
Reported 4–28, investigated and Quinn contacted. Need decision that mining claim nul and void.

III. Arctic-Kobuk Resource Area–AK–026–

5–401 *Richard Hayden—Grayling Lake—Utility Corridor*
Needs follow-up to letters sent.

5–503 *Dan Rowdy—Tenayguk River—D–2 (NPS)*
Trespass Notice attempted to be delivered in person 9–30–76. Needs follow-up.

5–507 *Ed Robb—Squirrel River—D–2 (F&WS—BLM)*
Notice to remove unauthorized structure delivered by certified mail on 10–7–75. Needs follow-up. Cabin looked at on 4–20.

5–508 *Ray Ferguson—Noatak River—D–2 (F&WS—BLM)*
Notice to remove unauthorized structure delivered by certified mail 10–17–74. Needs follow-up.

5–535 *Buck Maxson—Noatak River—D–2 (F&WS—BLM)*
Notice of trespass delivered by certified mail 6–25–75. Ownership in question. Needs further investigation.

5–539 *Ernest Gustafson dba Ft. Davis Roadhouse—Nome-Village Sel.*
Mining claim occupancy. Needs further investigation.

5–608 *Gene Joiner—Nigikpalvgruviak Creek—D–2 (USFS)*
Needs investigation. Inventoried 4–20.

5–611 *Earl Merchant—Salmon Lake—D–1*
Needs investigation.

4–613 *Ukpeagvik Inupiat Corporation—Pt. Barrow—Village Sel.*
Investigation continuing.

SUMMARY

	Fortymile	Yukon	A-Kobuk	Total
D–1	7	7	1	15
D–2	19	7	5	31
Native allotment	1	2	0	3
Native withdrawal	9	4	2	15
State selection	1	1	0	2
Utility corridor	0	5	1	6
Total	37	26	9	72

CASE STATUS SUMMARY

		Investigation		Settlement				
	Needed	Pending	Active	Notice	Offer	Pending	Inactive	Closed
D–1	11	3					1	2
D–2	19	1		4		5		
Native allotment		1				1	1	
Native withdrawal	4	1	1	1	1	1	5	1
State selection		1						1
Utility corridor	4		1	1				
Total	38	6	3	6	1	7	7	4

Other

Man caused fire was investigated on 4–27. Seventymile Trail was observed from air on 4–28.

Types of trespasses

1. Agriculture
2. Fire
3. Grazing
4. Minerals & Materials
5. Occupancy
6. Right-of-way
7. Timber
8. Unlawful Enclosure
9. Water
10. Other

WHITING & BLANTON,
Fairbanks, Alaska, August 7, 1975.

Mr. ROBERT PRICE,
Regional Solicitor, Department of the Interior,
Anchorage, Alaska.

DEAR MR. PRICE: As I told you in our telephone conversation of this date, I represent Mr. Ed Galvin. Find enclosed copies of all letters and material received by him. As I told you, he has been on this property since 1966 and has a cabin thereon. He did not feel it necessary in those days to file a claim, but finally filed a mining claim May 15, 1973.

As you can see by the enclosed, a trespass notice has been served him and he has only been given a short time to do anything about this problem.

At the present time he cannot get into the area because the little landing strip has been washed out, so he needs additional time, if nothing else. In addition to that, the National Park Service representatives, named Phil Brown and another man, had a meeting in Circle on the 6th of August and they were proposing that it might be possible to leave the cabin there in Mr. Galvin's name under the theory that he had been there so long he had become part of the land and his cabin added to rather than subtracted from the natural environment. In effect they suggested that his cabin had become a fixture to the land.

We need time in order to remove things in the event that there is no way for him to keep his cabin. Of course the most desirable thing would be for him to be permitted to maintain his cabin there, even if he did not have title to the land. Would you assist us in any way possible. Thank you.

Yours truly.

H. BIXLER WHITING.

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C. January 20, 1976.

Hon. THOMAS S. KLEPPE,
Secretary of the Interior, U.S. Department of the Interior,
Washington, D.C.

DEAR TOM: A constituent of mine has contacted me with a problem which I feel merits your personal attention. Mr. Ed Gelvin entered Federal land near Copper Creek, Alaska, in 1966 with intent to obtain title to the land for a headquarters site for his guiding business. Before he could file on the land, Secretary Udall imposed the land freeze and Mr. Gelvin was unable to take steps to obtain the land.

Mr. Gelvin, his wife, and four children are heavily dependent upon this land. They hunt from the site and the animals they kill provide much of their food supply. The guiding parties they lead from this site provide much-needed cash. The improvements they have made are meager—a small landing strip and a 16-foot by 16-foot cabin built to hold supplies only after repeated bear attacks made tents impracticable. These improvements are the result of years of time and energy. The attached letter from other residents in the area will show you

the nature of the operation Mr. Gelvin is running and will highlight the fact that he is an honest, responsible individual.

It is my understanding that the Bureau of Land Management is trying to evict the Gelvins with the intent to remove their improvements and revegetate the site. This action is being pushed because the land is inside the proposed Yukon Charley National Wild River.

I urge you to stop this eviction and provide the Gelvins with some rights in the land. To permit this family to be evicted would achieve little—the site is a minute portion of the proposed park and continued occupancy would have little or no effect on visitors to that park. The area has been changed, for better or worse, and it would not be possible to reestablish a true wilderness. Closing the strip would eliminate an emergency landing site for Alaska's many pilots. Evicting the Gelvins from the land would cause needless hardships to this family. The land is so vital to them and the benefits of any eviction so limited that fairness would seem to require the eviction be stopped.

Mr. Gelvin is not trying to steal this land from the Government. If the land freeze had not intervened, he probably would have the patent by now. He simply was caught in the morass of bureaucratic confusion resulting from the land freeze. I urge you to halt the eviction proceedings and give Mr. Gelvin a long-term lease or a life estate so he can enjoy the improvements he has made.

Thank you for your consideration.

With best wishes,

Cordially,

TED STEVENS, *U.S. Senator.*

Enclosures.

U.S. DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
November 19, 1975.

ROY: The Gelvin-lawyer letter still bothers me, and since I am named in it, and have established contact with many BLM operatives in the State, District, and Area offices, I want to be damned sure that my version of what happened gets across, not haphazardly, but in systematic fashion.

Because Gelvin had received a trespass notice, he asked our opinion of what it all meant during the 6th Aug. mtg. We said we would track it down with BLM, noting that they had full management authority, and were particularly concerned about trespass matters on d(2) land. We contacted Timmons and Williams and got the explanation from them that Gelvin had not replied to Registered Mail letters, therefore they had to resort to personal-service method of serving trespass notice, with deadline for removal of goods, etc., from cabin. They said they would prefer to talk to Gelvin and work out an arrangement that would protect BLM interests and land-management imperatives, at the same time easing Gelvin's problem of unseasonable removal of goods, equipment, etc. I asked if I should simply encourage Gelvin to contact them, making no commitment for BLM, but with the notion that there might be some relief on getting stuff out of the Charley if communications were opened, rather than no response to letters, which lack of response forced the notice-serving procedure with arbitrary deadline date. This was agreeable to Timmons and Williams. At our next trip to Circle, we relayed this info to Gelvin, and he did indeed get intouch with the area office, and a solution was worked out giving Gelvin some leeway, but establishing BLM's prerogatives.

This was the extent of the official-matter discussion. That we evidenced interest in Gelvin's problem, and expressed hope that a workable solution could be devised was a matter of simple civility, explicitly divorced from official positions, prerogatives, legality, and so on.

I doubt that this kind of confusion can be avoided, especially where substantial matters of law and economics are at stake. People hear what they want to hear and they transpose official and personal communications to meet their needs, particularly if a lawyer can grasp a straw thereby. But each such incident of confusion should by specially treated if we are to retain credibility with BLM on interim mgt., coop agreements on Fagle (or other) historic pres'n, etc.

I would appreciate it if you could show this letter to Jules Tileston.

BILL BROWN.

DECEMBER 3, 1975.

Hon. TED STEVENS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STEVENS: Further reference is made to your inquiry on behalf of Mr. Ed Gelvin who has occupied national resource land in Alaska since the mid 1960's and now wishes to legalize his occupancy.

Our State Director reports that Mr. Gelvin, who is a guide, has been hunting, fishing, trapping, and prospecting on the Charley River in this particular area (sec. 24, T. 1 S., R. 21 E., F.M.) since 1966.

The land was withdrawn from all forms of appropriation, except locations for metalliferous minerals, on January 17, 1969, by Public Land Order 4582. Thereafter, the land was again withdrawn from all forms of appropriations under the public land laws (including location and entry under the mining laws) by Public Land Order 5179 of March 9, 1972, for inclusion in the Yukon-Charley National Rivers legislative proposal.

On July 7, 1972, Mr. Gelvin recorded a placer mining claim location notice which was dated May 15, 1972. His cabin and airstrip were located by a Bureau employee on May 3, 1973.

A decision declaring the mining claim location notice null and void ab initio was issued by our Fairbanks District Office on June 30, 1973. Mr. Gelvin appealed the decision, and on October 15, 1973, the Department's Board of Land Appeals dismissed the appeal for failure to file a statement of reasons.

Our District Manager issued a notice to Mr. Gelvin on July 8, 1975, allowing him until August 8 to remove his improvements. On August 25, Mr. Gelvin met with our District Manager and was given until May 1, 1976, to remove his improvements.

Although Mr. Gelvin has used the land since 1966, he did not construct permanent improvements until after the land had been withdrawn for a substantial length of time.

The purpose of Public Land Order 5179 was to maintain the lands and resources in their present condition until Congress has considered the proposals for the four national systems. The construction of new improvements is not maintaining the lands and resource in their existing condition, and we believe we would be remiss in our management if we did not take action to this matter.

Sincerely yours,

GEORGE L. TURCOTT, *Associate Director.*

STATE OFFICE,
Anchorage, Alaska, December 4, 1975.

Hon. DON YOUNG,
House of Representatives,
Washington, D.C.

DEAR MR. YOUNG: This is in further response to your inquiry of October 15, 1975, concerning Mr. Ed Gelvin of Central, Alaska.

Mr. Gelvin has apparently been using an area on the Charley River since 1966 for hunting, fishing, trapping and prospecting. He may still do so; no action has been taken to close the area to these activities.

Mr. Gelvin recorded a mining claim location notice in July, 1972. This was found to be null and void. The lands had been withdrawn from all forms of appriation, except locations for metalliferous minerals, by Public Land Order 4582 (January 17, 1969) and from all forms of appropriation by Public Land Order 5179 (March 9, 1972).

A Notice to Remove Unauthorized Improvements was sent to Mr. Gelvin because of improvements he had placed on the land in late 1972 or early 1973. Mr. Gelvin met with our Fairbanks District Manager, August 25, 1975, and they agreed that Mr. Gelvin would have until May 1, 1976, in which to respond to the Notice to remove unauthorized structures.

This land is included in the Yukon-Charley National Rivers legislative proposal. The purpose of Public Land Order 5179 was to maintain the lands and resources in their present condition until Congress has considered the proposals for the four national systems.

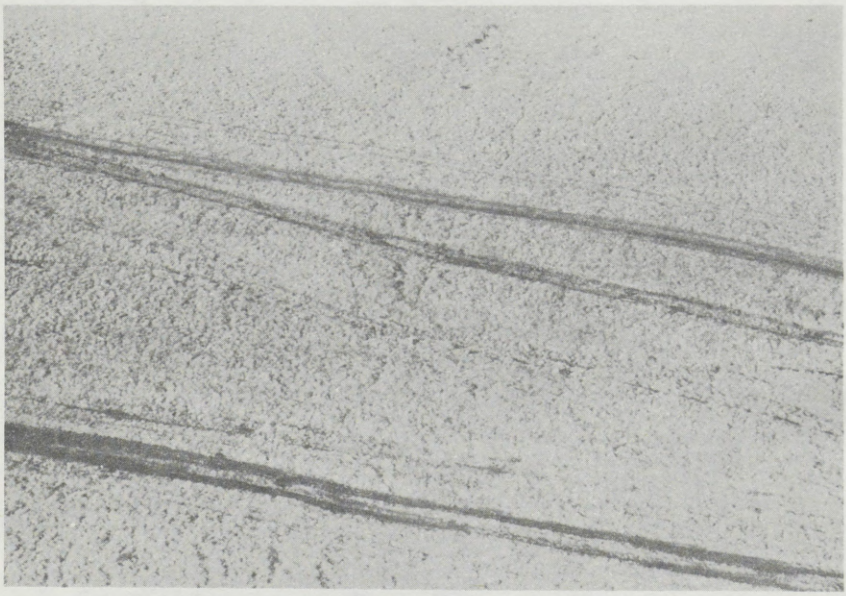
We believe we would be remiss in our management of these lands if we did not act to maintain the condition of the lands and resources.

Sincerely yours,

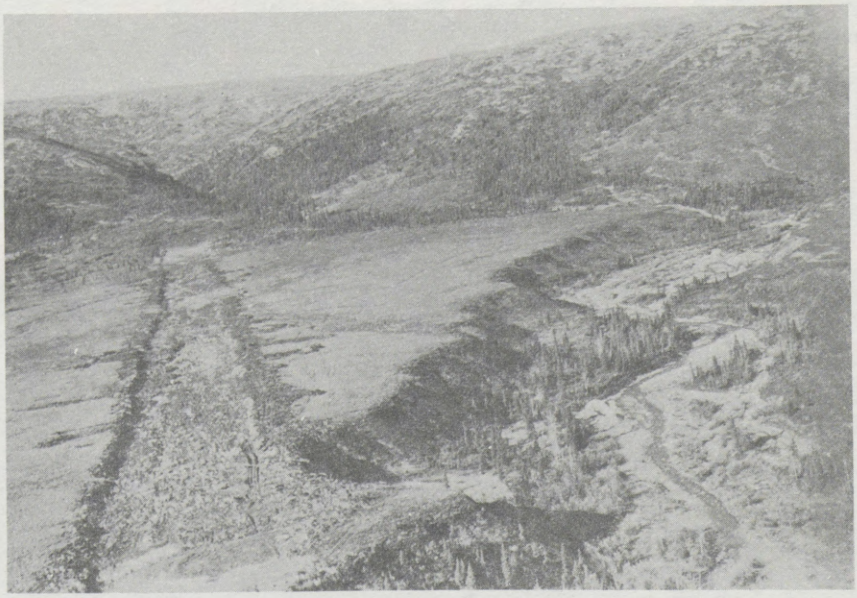
CURTIS V. MCVEE, *State Director.*



Mining of streambed, Kantishna Hills area



Damage to Tundra from tracked vehicles, Kantishna Hills area



Road construction across Tundra, Kantishna Hills area

ALASKA COALITION ANALYSIS OF THE STATE ADMINISTRATION'S NATIONAL INTEREST LAND PROPOSAL AS REQUESTED BY SENATOR HASKELL

The lack of legislative language and the knowledge that hearings in Alaska may result in changes to the state administration's national interest land proposals make it difficult to fully analyze their suggestion for an *Alaska Cooperative Management Act of 1976*. Nonetheless it is possible for us to comment at this time on the broad principles underlying this proposed legislation.[1]

Throughout the United States there is a need for cooperative management among landowners. Factors such as the fragility of arctic and sub-arctic ecosystems; the irreversibility of large scale development projects; the large territories that many Northern animals require to obtain food; and the subsistence life style of rural residents, make this need even stronger in Alaska. The concept of cooperative management means that adjacent landowners seek mutual agreements to protect their own holdings. Any legislation that gives the state a role in the economic development of natural resources on federal land, rather than protection of state lands adjacent to federal lands and vice versa, is not cooperative management.

When the state completes the selection of its land entitlement under the Statehood Act, it will own 104.2 million acres of land plus 45 million acres of oil rich tidal and submerged lands. This acreage is roughly equal to the combined areas of California and Nebraska. In addition to this generous land grant, the state receives 90% of the royalties from mineral leases on federal land. When Native and state land selections are completed, approximately 60% of the state will remain in federal ownership. This is a smaller percentage than in Nevada (86.5%), Utah (66%), and Idaho (63%). Given the state's large land holdings and the realization that other states have a larger percentage of federal owner-

[1] This statement represents the Alaska Coalition's preliminary analysis of the State's national interest land proposals which Senator Haskell requested at the November 21, 1975 Senate Interior Committee hearings. The Alaska Conservation Society may submit further comments at a later date.

ship, it does not seem proper to give Alaska unprecedented jurisdiction over much of the remainder of the public domain within the state.

Large areas of Alaska in state, Native, and federal ownership have already been designated for purposes of economic development. The intent of Congress in legislating the national interest land withdrawals was to make additions to the national conservation systems in order to fully protect outstanding natural areas.

There was no intention to create a new category of multiple use lands. Section 17(D)(2) of the Alaska Native Claims Settlement Act authorized the withdrawal of lands which "the Secretary deems are suitable for addition to or creation as units of the National Park, Forest, Wildlife Refuge and Wild and Scenic Rivers Systems."

The national conservation systems can provide for compatible land uses such as subsistence resource harvesting; protection of cultural values; recreation; sport hunting; and scientific research. The Kobuk Valley National Monument Proposal, for example, is designed to protect the area's natural, historical, and subsistence values. What legitimate, compatible uses are there that these systems cannot provide? A basic premise of the argument for a new category of multiple use lands is that in Alaska it is not necessary to be so restrictive of land use. But in fact, the fragility of Northern ecosystems makes national conservation system protection more necessary and appropriate there than perhaps anywhere else in the nation. The basis of land protection often is outright prohibition of certain uses. The Alaskan state government has recognized this principle in its position opposing a pipeline across the coastal plain of the Arctic National Wildlife Range. The national conservation systems provide a proven, time tested approach to protect the national interest lands. The assertion that these systems cannot adapt to unique Alaskan conditions such as subsistence harvesting, and that Congress will not exercise any oversight function after creating new parks and refuges is incorrect.

A new multiple use system would not provide the necessary protection for the national interest lands. Once open to exploitation, even if under strict guidelines, there is a great risk of irreversible damage to the land for future uses. Federal and state enforcement of environmental stipulations on the trans-Alaska oil pipeline, for example, is proving inadequate: massive fuel oil spills have occurred; sewage treatment plans that have been installed in construction camps without proper permits have been malfunctioning; stream beds have been severely disturbed at pipeline crossings; wildlife are being illegally fed and killed at many camps. There is apparently neither knowledge of arctic and sub-arctic ecosystems or the enforcement capability to prevent industrial developments such as pipelines or mining from causing the destruction of the national interest lands.

The proposed mechanism for administering this new category of multiple use lands would be a joint federal-state commission. This commission concept has serious ramifications for the integrity of the national conservation agencies as well as the protection of lands in Alaska. Such a commission would give the state a very strong voice in the management of federal lands over which it would normally have no legal control. For example, the commission would be able to authorize highways and pipelines across National Parks and Wildlife Refuges. The commission's authority to decide land use policies for land administered by a federal agency would undoubtedly conflict with the agency's organic act an previous Congressional directives.

The state interest, by definition, does not overlap completely with the national interest. When state and federal interests conflict, the commission approach could co-opt the federal policy making process with private interests strongly influencing the commission. Experience with the grazing boards established under the Taylor Grazing Act illustrates how local economic interests can dominate management decisions on federal lands. At best, when state and national interests conflict there would be stalemate in management, with each government vetoing the commission's decisions as it affects their lands. To insure local input into management decisions, regional advisory boards can be established for the Park Service and the Fish and Wildlife Service. For example, establishment of a National Park Service Alaska Region, instead of including Alaska in the Pacific Northwest Region, would be an effective way to insure that the Park Service's operations consider Alaskan needs and ideas.

A major flaw with the commission approach is that management policies on jointly controlled lands could change with every turnover in the state and federal administrations or legislatures. Political influences, rather than more objective land management goals, would unduly control the national interest lands. The statutory protection provided by inclusion in the national conservation systems would make it much less likely that hasty and unwise changes in land use would take place. We emphasize here again that the intent of Congress was to make additions to the national conservation systems and not to create a new category of multiple use lands.

It is important to know who defines the boundaries of the "cooperative management zones" and on what basis. How this was done for the state's proposal is not very clear. If carried to its logical conclusion, the proposal for a joint commission could extend jurisdiction over most of the state and not just those areas now before Congress as national interest withdrawals. Otherwise, to merely place zones around national interest land proposals would make meaningful planning very difficult. At the very least, one would think that areas such as the Kenai Peninsula, all of the North Slope, and Southeastern Alaska would be included by the proponents of a joint commission.

Another major concern is the possibility that the state could select title to any of the proposed "Alaska Resource Lands" subject only to a veto of the joint commission's federal cochairman or the Secretary of the Interior. Thirty-five million acres of the statehood grant have yet to be selected. If the state decided not to take title to lands selected in 1972 but not yet tentatively approved for conveyance by the Interior Department, the amount of land the state could still select would be even greater. The "Alaska Resource Lands" could conceivably become part of the pool from which the state could select its remaining entitlement. Although Congress would have assigned a use to the lands, chosen a federal agency to manage the area, and appropriated funds for management, the land could become state property.

The joint commission proposal does not provide any effective mechanism for cooperative management among landowners. In contrast to the commission proposal, there already are examples of true cooperative management in Alaska. The agreement between the Association of Village Council Presidents, Calista Corporation, and the U.S. Fish and Wildlife Service is an example of the type of approach that is both desirable and practical (attached as Appendix A). The Arctic Slope Corporation proposal for a Nunamiut National Park presents another possible approach. Task forces of all affected landowners should be created to deal with such issues as protection of the Arctic caribou heard. Instead of achieving cooperative agreements, the commission would decide management policies and then dictate them to government agencies. Agency-commission cooperation could become a problem and agencies would have no bargaining position to work with adjacent landowners. The commission would become another bureaucratic layer in the management of Alaskan lands.

The role of private landowners is another facet of the need for cooperative management that is not adequately addressed. While the state and federal governments would be legally bound to participate in the cooperative management zones, private landowner involvement would be voluntary. How effective would commission policies be if private land owners do not cooperate?

Cooperative management is a good idea. But small core areas surrounded by multiple use lands would be a cumbersome, ineffective way to compensate for shortsightedness in not delineating the proper boundaries and acreages for the new National Parks, Wildlife Refuges, and Monuments. The resulting parks would consist mostly of rock and snow or a single eye catching feature with ecologically significant and fragile complementary areas excluded from full protection. Such a system would lead to the destruction of the values Congress intended to protect as has happened in the Redwoods and Everglades National Parks. These parks are unmanageable because they are too small and development on adjacent lands threatens to destroy the parks. Total acreage and the location of boundaries designed to encompass whole ecosystems are just as important in the national interest land deliberations as management provisions. The original boundaries of Mt. Kinley National Park, for example, did not include the Southern flank of the mountain and important wildlife habitat to the North and West. Now Congress is faced with the need to protect these lands by adding them to the park.

One wonders what criteria the state government used to decide what areas should be parks and what areas should be multiple use lands. The preliminary recommendations give no indication of being guided by a scientific, ecosystem approach. Alaskan and national conservationists did a great deal of work to identify the lands now recommended in S. 1688 as meriting National Park, Monument, Wildlife Refuge, and Wild and Scenic River status. The proposals seek to protect, to the extent possible, complete ecosystems and create logical management units. The unique quality of these lands argues for the strongest possible federal protection as a counter balance to the current and future development pressures upon Alaska's resources. There is a danger that untested new planning and management system proposals will be used to justify minimizing the size of areas Congress safeguards through placement in the national conservation systems. The national conservation systems provide a proven and appropriate management approach to protect the national interest lands.

APPENDIX A

Cooperative Management Agreement Between Association of Village Council Presidents and Calista Corporation and the United States Fish and Wildlife Service

This cooperative management agreement, made and entered into this twenty-fourth day of April, 1974, by and between the Association of Village Council Presidents (AVCP), Calista Corporation (CALISTA), and the U.S. Fish and Wildlife Service (USFWS), Department of the Interior, Witnesseth:

Whereas, AVCP, on behalf of regional Native villages, is vitally concerned with the conservation of fish and wildlife resources and maintenance of all other water and land resources essential to sustaining life and maintaining the culture of Native people.

Whereas, the USFWS, as authorized by Section 4 of the Act of October 15, 1966, 80 Stat. 669 (16 USC 668dd) is responsible for administration and management of fish and wildlife habitat, land, and other natural resources of the Clarence Rhode National Wildlife Range and the Cape Newenham, Nunivak, and Hazen Bay National Wildlife Refuges, which includes maintaining good habitat conditions for fish and wildlife and proper use of the land in concert with other recognized uses and users of the land.

Whereas, it is the mutual desire of AVCP, the Calista Corporation, and USFWS to recognize their responsibility for lands withdrawn from the range or refuges of the Yukon-Kuskokwim Delta under provisions of ANCSA and also to recognize their mutual concern but separate responsibilities for managing other regional resources in the best interests of the people of the Delta, State of Alaska, and the United States.

Whereas, it is understood by the parties hereto that Calista has conducted hearings preliminarily to drafting a first draft of rules and regulations that will ultimately govern the use and development of Native lands selected by village corporations within the above refuges.

The USFWS agrees:

1. To recognize Native people residing in or adjacent to the above refuges range as being dependent upon animal and plant resources and the need to give high priority to protecting subsistence needs essential to sustaining and maintaining the Native life style and/or culture.

2. To consult with all Calista, AVCP and village corporations within the region on the formulation of any refuge regulation involving hunting, fishing, trapping, or any other public uses affecting Native people.

3. To recognize village corporations as being jointly responsible for managing habitat or lands selected and patented from the range or refuges in accordance with provisions of ANCSA.

4. To make or sanction no plant or animal introduction on refuge or range lands until there has been an invetigation of its effect on other resources and a consideration of its desirability as a management measure.

5. To furnish AVCP and the Calista Corporation with copies of various reports, plans, correspondence, and material prepared by the USFWS pertinent to fish and wildlife management or refuges or the range and relating to this Agreement. These will include special reports, plans, and recommendations for any regulatory changes deemed necessary to protect fish and wildlife habitat.

AVCP and Calista agree:

1. To establish an advisory council composed of village representatives that will be available to advise, make recommendations and review refuge management plans and proposed regulations governing uses of refuge and range lands.
2. To recognize the USFWS as the agency responsible for the management of all refuge and range lands of the Yukon-Kuskokwim Delta.
3. That with the approval of village corporations, the USFWS will be permitted access to Native lands for the purpose of making studies or investigations designed to improve fish and wildlife management programs on the Yukon-Kuskokwim Delta.
4. To keep the USFWS informed of plans for road construction, reindeer grazing, or other developmental activities affecting the region's fish and wildlife resources.
5. To cooperate with the USFWS in the development and implementation of conservation programs designed to benefit the regional fish and wildlife resources.

The USFWS, Calista, and AVCP agree:

1. That all questions pertaining to cooperative work of the three parties arising in the field will be first resolved by the Advisory Council and Refuge Manager-in-charge, and matters of disagreement that cannot be resolved at equivalent levels will be referred to the Alaska Area Director of the USFWS and Directors of AVCP and Calista for final decision.
2. To meet at least once annually or more often, if necessary, to discuss matters of mutual concern relating to subjects relevant to this management agreement.
3. To enter into supplemental agreements for the development of land-use plans and programs designed to improve the socio-economic status of and to benefit the people of the region and also to improve and develop the fish and wildlife resources of the region.
4. To take appropriate action in conformity with Federal and State laws which is necessary for the protection of the subsistence needs of the Native people. To consult with one another, to evaluate the supply of fish and animals and needs measured by (a) degree of dependence, (b) residency, and (c) means of taking.
5. In compliance with Equal Employment Opportunity laws and regulations, education-training programs leading to professional employment of Natives in the wildlife management field will be coordinated with appropriate agencies and implemented as soon as feasible.
6. That nothing in this Agreement shall make or obligate the USFWS, AVCP or Calista to expend any of their respective funds. USFWS shall not be obligated for future payment of money in excess of appropriations authorized by law.
7. That this Agreement shall become effective as soon as it is signed by parties hereto and shall continue in force for five years unless either party upon thirty (30) days notice indicates in writing the intention to terminate upon a date indicated.
8. That six (6) months prior to the termination date of this agreement, all parties will review its provisions so as to mutually develop, if desired, a new agreement with whatever modifications are agreed upon.
9. That amendments to this Agreement may be proposed by either party and shall become effective upon written approval of the other parties.
10. That each and every provision of this Agreement and subsidiary agreements developed under its guidelines is subject to the laws of the United States and the State of Alaska.

In witness whereof, the parties hereto have executed this Agreement as of the date first written.

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS,
By /s/ EDWARD HOFFMAN, Sr.,
Director, AVCP.

CALISTA CORPORATION,
By /s/ RAYMOND C. CHRISTIANSEN,
Its President.

U.S. FISH AND WILDLIFE SERVICE,
By /s/ GORDON W. WATSON,
Alaska Area Director, USFWS.

Senator METCALF. Our next witness is Tim Wallis, vice president of Doyon Limited.

STATEMENT OF TIM WALLIS, VICE PRESIDENT, DOYON LIMITED

Mr. WALLIS. Mr. Chairman, members of the committee, my name is Tim Wallis. I'm vice president of Doyon Limited. I am accompanied today by Counsel Emanuel Rouvelas. I would like to thank you for this opportunity to discuss the problems being encountered in the implementation of the Alaska Natives Claims Settlement Act.

My testimony today is to address section 7(i) of the act. The problems involved in implementing section 7(i) are many and complex. Virtually all the Regional Corporations have or will become involved in expensive and protracted litigation. In addition to the inherent disincentives involved in separating economic benefits from responsibility for resource development, the uncertainties surrounding section 7(i) compound the disincentive to economic development.

Let me identify some of the general problem areas that have arisen in the context of section 7(i), recognizing that these general categories do not reflect the complexity of the issues. More detailed material is set forth in the written statement and attached exhibits submitted to the committee.

The issues of section 7(i) are; one, what types of transactions and what forms of revenue are required to be shared? For example, does a transaction in which a Regional Corporation develops a natural resources which is subsequently used by that corporation fall within section 7(i), or does the section extend only to transactions in which the corporation contracts to have its resources developed?

Two, does the revenue to be shared mean the dollar equivalent of the value of the resource in place or is it intended that the revenue and/or losses from the extractive process also be distributed?

Three, does revenue mean gross revenues or net revenues?

Four, if net revenues only are required to be shared, what deductions may be taken? Are the deductions taken in full against first revenues received or amortized on some basis?

Five, does consideration received for exploration, or for options or rights of first refusal to lease or develop land in the future, constitute revenue? What if there is no resource development? Since development may not occur, are distributions from such contracts to be deferred, or are distributions to be made and subsequently recaptured if there is no development?

Six, does consideration received for surface damage constitute revenue?

Seven, does consideration other than monetary consideration constitute revenue? Such consideration can include technical services, preferential employment, scholarships, and other social services.

Eight, do revenues have to be shared on a project basis or an aggregate basis? For example, can losses on one project be used to offset the revenues from other projects in determining the amount of the distribution?

Nine, are revenues to be distributed as the cash is received by the developing corporation, or must a lump-sum distribution be made when a contract is consummated?

Ten, when do distributions have to be made? Is interest to be charged for late distributions? If so, from when and at what rates?

Eleven, is sand and gravel a surface or subsurface resource?

Twelve, what impact will the perpetual revenue sharing have on frustrating the policies of section 7(h)(3) which provides that after 1991, the Regional Corporations will become normal Alaska business corporations with fully alienable stock? The current difficulties of 7(i) will be accentuated and the objective of section 7(h)(3) will be impaired by depriving corporate management and shareholders of control of a substantial portion of the revenues and density of each corporation.

These constitute a sampling of the general issues that section 7(i) has generated. Each new transaction creates new issues. I suspect that no uniform rules will be equitable in each situation and that a case-by-case resolution will be required.

In conclusion, the uncertainties of section 7(i) are frustrating the accomplishment of the purpose of the act. One of the primary purposes of the act is to effectuate a rapid settlement, with minimal litigation, thereby creating a climate in which the Natives can expeditiously develop their resources and achieve economic independence.

Instead, section 7(i) creates a lawyers' and accountants' dream and a Regional Corporation's nightmare. It will be literally decades before the issues are completely resolved. The cost, both in terms of dollars and acrimony between the Regional Corporations, will be substantial. The section results in the diversion of resources which should be put to more beneficial use. It also makes impossible long-range corporate planning and is a disincentive to economic development. Thank you.

Senator METCALF. Thank you very much, Mr. Wallis. As a member of the State legislature, I understand you have raised some very hard questions which do not have any easy answers. The purpose of this hearing is to have those questions raised and section 7 is one of the most difficult and complex sections, and we appreciate your appearance here to tell us about some of the difficulties we have in this section.

Senator STEVENS. If the Congress should authorize the Regional Corporations to enter into a binding compact on the interpretation of 7(i) which would also be binding on IRS, do you think it would be possible to reach such an agreement?

Mr. WALLIS. I do not know, Senator Stevens.

Senator METCALF. Are you anticipating a binding contract from the various Regional Corporations? This is a kind of revenue sharing?

Senator STEVENS. It is revenue sharing. It seemed to me at the time we foresaw some of these problems, not all. I think it could be resolved within a time frame and agreement reached and have that binding on the State and Federal Government too.

There is internal conflict between the corporations as producers and receivers and the public interest could be protected that way and avoid a great deal of litigation. I am not sure it would solve all of the problems, but it would solve some of them.

Senator METCALF. Thank you very much, Mr. Wallis, for your appearance here and thank you for giving us your assistance at all times in this innovative legislation.

[The prepared statement of Mr. Wallis and accompanying exhibits follow:]

STATEMENT OF TIM WALLIS, VICE PRESIDENT, DOYON LIMITED

Mr. Chairman, members of the Committee, my name is Tim Wallis. I am Vice President of Doyon, Ltd. I am accompanied by Counsel, Emanuel Rouvelas. Thank you for this opportunity to discuss problems being encountered in the implementation of the Alaska Natives Claims Settlement Act.

My testimony today is addressed to Section 7(i) of the Act. Section 7(i) provides that "Seventy (70) per centum of all revenues received by each Regional Corporation from the timber resources and subsurface estate patented to it pursuant to this chapter shall be divided annually by the Regional Corporation among all twelve (12) Regional Corporations organized pursuant to this section according to the number of Natives enrolled in each region pursuant to section 1604 of this title."

The problems involved in implementing Section 7(i) are many and complex. Virtually all the Regional Corporations have or will become involved in expensive and protracted litigation. In addition to the inherent disincentives involved in separating economic benefits from responsibility for resource development, the uncertainties surrounding section 7(i) compound the disincentive to economic development.

Let me identify some of the general problem areas that have arisen in the context of section 7(i), recognizing that these general categories do not reflect the complexity of the issues. More detailed material is set forth in the written statement and attached exhibits submitted to the Committee.

SECTION 7(i) ISSUES

1. What types of transactions and what forms of revenue are required to be shared? For example, does a transaction in which a Regional Corporation develops a natural resource which is subsequently used by that Corporation fall within section 7(i), or does the section extend only to transactions in which the Corporation contracts to have its resources developed?

2. Does the "revenue" to be shared mean the dollar equivalent of the value of the resource in place or is it intended that the revenue and/or losses from the extractive process also be distributed?

3. Does revenue mean gross revenues or net revenues?

4. If net revenues only are required to be shared, what deductions may be taken? Are the deductions taken in full against first revenues received or amortized on some basis?

5. Does consideration received for exploration, or for options or rights of first refusal to lease or develop land in the future, constitute revenue? What if there is no resource development? Since development may not occur, are distributions from such contracts to be deferred, or are distributions to be made and subsequently recaptured if there is no development?

6. Does consideration received for surface damage constitute revenue?

7. Does consideration other than monetary consideration constitute revenue? Such consideration can include technical services, preferential employment, scholarships, and other social services.

8. Do revenues have to be shared on a project basis or an aggregate basis? For example, can losses on one project be used to offset the revenues from other projects in determining the amount of the distribution?

9. Are revenues to be distributed as the cash is received by the developing Corporation, or must a lump-sum distribution be made when a contract is consummated?

10. When do distributions have to be made? Is interest to be charged for late distributions? If so, from when and at what rates?

11. Is sand and gravel a surface or subsurface resource?

12. What impact will the perpetual revenue sharing have on frustrating the policy of section 7(h)(3) which provides that after 1991 the Regional Corporations will become normal Alaska Business Corporations with fully alienable stock? The current difficulties of 7(i) will be accentuated, and the objective of section 7(h)(3) will be impaired by depriving corporate management and shareholders of control of a substantial portion of the revenues and destiny of each Corporation.

These constitute a sampling of the general issues that section 7(i) has generated. Each new transaction creates new issues. I suspect that no uniform rules will be equitable in each situation and that a case-by-case resolution will be required.

CONCLUSION

The uncertainties of section 7(i) are frustrating the accomplishment of the purpose of the Act. One of the primary purposes of the Act is to effectuate a rapid settlement, with minimal litigation, thereby creating a climate in which the Natives can expeditiously develop their resources and achieve economic independence.

Instead, section 7(i) creates a lawyers and accountants dream and a Regional Corporation's nightmare. It will be literally decades before the issues are completely resolved. The cost, both in terms of dollars and acrimony between the Regional Corporations, will be substantial. The section results in the diversion of resources which should be put to more beneficial use. It also makes impossible long-range corporate planning and is a disincentive to economic development.

Thank you.

EXHIBIT—ACCOUNTING PROBLEMS

GENERATED BY SECTION 7(i)

CHAPTER VIII

SECTION 7(i)

Accounting for Inter-Regional Distributable Resource Revenue

Sub-Issues

1. Value of Natural Resource In-Place vs. Extractive Process
2. Applicable Revenue Resources
3. Gross vs. Net Revenue
4. Depletion and Eligibility for Tax Benefits Derived Therefrom
5. Revenue Before/After Depletion and Income Taxes
6. Resource Revenue Trust Funds
7. Accountability on Project Basis
8. Fair Market Value for Tax and Financial Reporting

A. *Background Information*

Section 7(i) of ANCSA states that 70% of all revenues received by each regional corporation from the timber and subsurface estate conveyed to it are to be distributed among all 12 regional corporations. The definition of the term "revenues" and how they are to be calculated and accounted for presents a very significant problem in implementing the provisions of this section of the Act.

In order to develop recommendations for an accounting policy for these issues, five basic premises can be identified. They are:

(1) *Uniformity.*—To ensure compliance with the financial reporting and determination of inter-regional distribution amounts under Section 7(i), all regional corporations should adhere to a uniform and consistent set of accounting policies and procedures for these transactions.

(2) *Inter-Regional interest.*—Despite the fact that individual regional corporations will receive title to specific lands, each regional corporation (except the 13th regional corporation, if formed) has a direct economic interest in the right to receive revenue from the timber and subsurface estate of lands patented to all regional corporations. Therefore, each regional corporation serves as a constructive trustee which administers and protects the economic interests of other regional corporations.

(3) *Fair and equitable.*—As envisioned in earlier drafts of ANCSA, the need for inter-regional sharing and distribution of natural resource revenues did not exist since there was to be only one statewide Native corporation which would have held title to the surface estate of the entire 40 million acres. The change in the structure of the settlement to a distribution of the subsurface estate among 12 regional corporations required revenue sharing provisions if benefits from the development of natural resources were to be equalized. While the desire for fairness and equality should be a strong consideration in the development of

an accounting policy, the statute as finally drafted may preclude total equality in all transactions.

(4) *Compliance mechanism.*—It is in the best interest of all regional corporations to have a means of ensuring that the policies and procedures related to the implementation and application of Section 7(i) are followed. Since the Act does not provide for an enforcement mechanism for compliance with this section of the Act, all regional corporations could minimize possible litigation by working together to establish a compliance procedure and mechanism.

(5) *Simplicity.*—It is in the best interest of all regional corporations to work towards a simple (rather than complex) set of uniform accounting policies relevant to Section 7(i).

B. *Issues*

1. *Value of Natural Resources In-Place vs. Extractive Process.*

One of the basic issues relating to the definition of revenues as used in Section 7(i) has to do with whether the revenue to be shared was meant to be the dollar equivalent of the value of the resource in-place (in unextracted or unharvested state) or whether revenues and/or losses from the processes of extraction or harvesting were also intended to be distributed.

2. *Applicable Revenue Sources.*

A second issue, closely related to the problem identified above, has to do with defining what forms of revenues and what types of transactions are subject to the inter-regional distribution of revenues.

3. *Gross vs. Net Revenue.*

Regardless of the disposition of issues #1 and #2 above, a third issue exists: Does the term "revenues" as used in Section 7(i) mean gross revenues or a net figure equivalent to gross revenues minus allowable expenses? Related to this issue is the question of what expenses, if any, are allowable deductions from gross revenues. The issue addresses the problems of determining a distributable revenue figure before consideration of two additional issues—depletion and income taxes—which will be discussed in issues #4 and #5 below.

4. *Depletion and Eligibility for Tax Benefits Derived Therefrom.*

Since revenues to be distributed under Section 7(i) are generated from the development of natural resources, depletion allowances affect both the resource-owning corporation and the recipient corporations. The basic issue is who is entitled to claim how much depletion and what are the consequences of alternative interpretations of this section of the Act.

5. *Revenue Before/After Depletion and Income Taxes.*

Issues #1 through #4 and their alternatives lead up to the fifth issue: Should distributable revenues for purposes of Section 7(i) be determined before or after allowances for depletion and income taxes?

6. *Resource Revenue Trust Funds.*

A question exists concerning the character of the resource revenue distributed among regional corporations under Section 7(i). Do these revenues constitute trust funds? If so, how should a regional corporation administer its custodial responsibilities to ensure that it has cash available to make the inter-regional distributions?

7. *Accountability on Project Basis.*

Is distributable revenue to be determined on the basis of resource development projects taken as a whole or individually? Stated another way, can looses generated by one development project be used to offset the revenues from another development project in determining the inter-regional distribution amount under Section 7(i)?

8. *Fair Market Value for Tax and Financial Reporting.*

For both tax and financial statement purposes, the "fair market value" of the timber resources and subsurface estate patented to each regional corporation must be determined. At issue are the methods and problems associated with the determination of fair market value and the alternative financial statement presentations for such values given the revenue distribution requirements of Section 7(i).

C. *Alternative Treatments*

1. *Value of Natural Resources In-Place vs. Extractive Process.*

(*a*) In analyzing an interpretation which represents the philosophy that revenue to be shared was intended to be only the value of the resource in-place, one is faced with the practical problem of determining what that value is. For passive development activities where a regional corporation sells the rights to

the resource and receives cash payments in the form of bonuses or royalties, this value is determinable; i.e. the actual receipts from this arms-length transaction define the value of the resource in-place better than any other way.

However, the problem becomes significantly more difficult if a regional corporation which develops a resource itself and is vertically integrated in its operations so that the corporation not only harvests the resource but also converts it into a marketable state. The resource may never actually be sold at any marketable state; i.e., oil extracted and refined by the corporation which is then used as fuel for an electric generating plant also owned and operated by the corporation. This situation could also exist with a wholly-owned subsidiary, affiliated company or joint venture.

(*b*) An alternative interpretation to the value of the resource in-place is a definition which includes the profits and/or losses from the extractive or development process as part of the revenues to be distributed. For example, if oil is worth $1/barrel in the ground plus an additional $1/barrel at the well head, and if the costs of bringing the oil to the surface are 80¢/barrel, this interpretation would mean that the 20¢/barrel profit on the extractive process is distributable as revenue under Section 7(i) in addition to the value in-place of $1/barrel.

While this alternative does not necessarily require a determination of the value of the resource in-place, other significant problems are created:

(1) To what extent are profits and/or losses attributable to the extractive process to be shared if the regional corporation develops the resource beyond its first marketable state?

(2) What happens if the resource is harvested but never sold and is used by the corporation in another one of its business activities?

(3) What expenses are allowable offsets against gross revenues?

2. *Applicable Revenue Sources.*

While it is impossible to anticipate all forms of transactions which could conceivably become subject to the inter-regional distribution provision of Section 7(i) for purposes of illustrating the range of alternatives and the problems associated with each, the following alternative forms of transactions are present.

In general, natural resource revenues can be recognized in one of two basic methods: passive transactions or active operational transactions.

(*a*) Passive Transactions. Examples of these types of transactions include royalty agreements, land leases or rentals, competitive or non-competitive bonuses, resource survey or exploration contracts, etc. All of the above, and other examples which could be cited, require only passive involvement of the regional corporation which owns the resource. Transactions involving the sale or exchange of mineral resources is another type of transaction which would appear to involve the generation of resource revenues on a passive basis.

(*b*) Active Operational Transactions. These transactions relate to the active operational development of a natural resource by the regional corporation. They can be further complicated for purposes of Section 7(i) compliance if they are conducted by a subsidiary company of the regional corporation or by an affiliated company or joint venture. The question raised in issue #1 discussed earlier applies: How does one handle a series of transactions when a resource is extracted and transformed into a usable and marketable state and subsequently used by the regional corporation in other corporate operations?

In all probability, all regional corporations will, at some point in time, be involved with both passive and active development transactions. With each transaction the question must be asked: Does this transaction (and the revenue derived as a result) fall within the definitional guidelines of Section 7(i)?

If the answer is yes, each transaction presents a different set of problems in determining how much revenue is subject to distribution. First the issue raised previously relative to revenue equivalent to the value of the resource in-place vs. profits from the extractive process must be resolved. Beyond that issue, however, there are numerous other problems which could be associated with any of the forms of either active or passive transactions discussed above. A few of these problems include:

(1) Substitutions of cash proceeds for in-kind or other non-monetary considerations.

(2) Transactions conducted at less than arms-length which could influence the amount of royalty, bonus, etc. to be received.

(3) Contracts or agreements set up which defer consideration (either cash or in-kind) until future periods.

(4) Expenses incurred in order to generate resource revenue which could be used to reduce the total distributable revenue.

These potential problems demonstrate the complexity and magnitude of the issue and some of the considerations necessary to determine whether or not a specific form of resource revenue transaction is subject to the Section 7(i) distribution.

3. *Gross vs. Net Revenue.*

The term "revenues" has no specific accounting or legal definition which implies whether it is a "gross" or a "net" concept. Therefore, the language of the Act could be interpreted either way. The consequences of these two definitions are significant:

(*a*) The interpretation of revenue as "gross" would mean that a regional corporation which owns a resource would be required to distribute 70% of gross receipts without any deductions for ordinary and necessary business expenses incurred in order to generate those revenues. This potentially puts the corporation in a significant cash flow pinch and could preclude development of much of the resources patented to the Native corporations.

(*b*) A more reasonable interpretation of the language of the Act would be that something other than "gross" revenues was intended. Recognizing the alternatives available relevant to issues #1 and #2 plus the fact that even the term "net revenue" cannot be specifically defined from an accounting or legal standpoint, such an interpretation presents additional problems.

If it is assumed that gross revenue is not what Congress intended, what alternative approaches are available to determine a "net revenue" figure?

If the resolution of issue #1 is that the value of the resource in place is to be distributed, it appears that only expenses attributable to realizing that revenue figure should be offset against gross receipts in determining the net figure before depletion and taxes. For example, if resource revenues are derived through royalties, allowable expenses to be offset against royalty income would be as follows:

(1) Direct Costs. Costs incurred in the process of obtaining and servicing specific royalty agreements, generally limited to expenditures for outside legal, accounting, consulting, or other professional services.

(2) Variable Overhead. Corporate overhead costs which can be attributed on an incremental basis to the royalty agreement. These costs would generally include allocations of administrative and clerical salary costs.

(3) Non-Project Pre-Development Costs. Possible costs necessary for the marketing of the resource in its undeveloped state. Examples of such costs include expenses connected with preliminary mapping, surveying, and seismic analysis of the resource lands. Such costs probably would be allocated among all potential development projects and amortized over a period of time equivalent to the expected time frame of revenue recognition. (This topic will be discussed again in relation to the question of accountability on a project basis in paragraph C.7.)

In summary, the gross value of the resource in place minus the above expenses which are viewed as being necessary to realize the value of the resource in place leaves a "net" revenue figure before consideration of depletion and taxes.

If the resolution of issue #1 is such that results of operations dealing with the extractive or development process are to be distributed under Section 7(i), gross revenues, including additional revenues resulting from the extractive process, should be offset by the following expenses in determining a net figure before depletion and taxes:

(1) Direct Costs of Production
(2) Production Overhead
(3) Allocation of Corporate General and Administrative Costs
(4) Amortization of Intangible Development Costs
(5) Amortization of Non-Project Pre-Development Costs.

There are obviously other alternatives too numerous to mention which would be allowable given the language of the Act. The calculation of a net figure before depletion and taxes may be defined at many various levels of offsetting expenses.

4. *Depletion and Eligibility for Tax Benefits Derived Therefrom.*

(*a*) A brief introduction to the subject of depletion as both an economic concept and a tax concept is required in order to understand fully the problem of who is eligible to take depletion allowances.

As an economic concept, depletion is based on the fact that the extraction of minerals exhausts the "value" of those minerals. The concept recognizes that the value of a resource is reduced as the resource is "harvested," and to the extent of this decrease in value, both the revenue from the sale of the resource and the book value of the asset should be reduced.

There are two methods of calculating depletion: by cost or by percentage.

Normally, the value of a resource is determined by its "fair market value," or what the cost is of acquiring the resource. For example, assume a man pays $100 for a deposit of gravel, extracts it, and sells it for $150. To determine his net income or profit from the transaction, he must subtract the $100 that he paid for the gravel from the $150 he received from its sale, for a net income or profit of $50.

The regional corporations will have paid no cash for the resources they receive. Thus, there is no cash investment on which to determine their cost basis and alternative means will have to be considered in determining the fair market value of the property if they wish to take cost depletion allowances.

Even if the regional corporations were not able to establish a cost basis of the property, depletion is still a valid concept economically for the corporations because harvesting the resources results in the loss of a nonreplaceable unit of the resource being harvested. The assets of the corporation are being depleted even though this depletion is not a cash expense of the corporation.

Current federal income tax law introduces an alternative method of computing depletion based on percentages of the revenues produced through mineral harvesting without reference to the cost of the mineral. This concept originated as a means of recognizing the value of minerals that were "discovered" after the acquisition of the property. Since the value of the mineral being depleted is often greatly in excess of the cost of the property acquired before the extent of mineral deposits were proven, a depletion deduction based on sales of minerals is provided in tax law to eliminate the necessity of a taxpayer having to sell appreciated mineral deposits (at capital gain rate) before extraction to achieve comparable tax results.

The percentages that are allowed the taxpayer vary depending upon the mineral being extracted. For oil and gas, the taxpayer is allowed to subtract 22% of the gross revenues from the resources as percentage depletion. For gold, silver, copper, iron ore and oil shale, the figure is 15%. For gravel, pumice, sand and shale, the taxpayer is allowed to subtract 5% of the gross revenues. There are other percentages for other minerals, but the concept is always the same.

If the taxpayer is using percentage depletion, his deduction cannot be more than 50% of the "net income" of the property before depletion. For example, if the operator of an oil well received $100 from the sale of the oil, he would be allowed to take a deduction for percentage depletion of $22 ($100×22%=$22). However, if his costs of producing that oil were $70 so that his net income from the property before the depletion was $30 ($100—$70=$30), his deduction for depletion would be limited to 50% of his net income, or $15.

This limitation on percentage depletion does not apply to cost depletion. That is, if the taxpayer had actually paid $22 for the oil which he sold for $100, he would be able to take the deduction for his cost even though this deduction exceeded 50% of his net income from the property.

(*b*) Related to the subject of eligibility to claim depletion allowances, the basic question is: Are the regional corporations which receive distributions of resource revenue harvested by other corporations under the provisions of Section 7(i) allowed to take a deduction for depletion in computing taxable income from this revenue?

While there is no question as to the eligibility of regional corporations to take either percentage depletion or cost depletion (to the extent that there is fair market value of the resource assigned at date of receipt) on those revenues from the surface and subsurface estate patented to and retained by that corporation, the question as to the eligibility to take depletion on those revenues received from other corporations is a more difficult issue.

In order to be eligible for a depletion deduction, a taxpayer must have an "economic interest" in the property under the provisions of the Internal Revenue Code. Under Regulation 1.611–1(b)(1) an economic interest is defined as follows: "An economic interest is possessed in every case in which a taxpayer has acquired by investment any interest in mineral in place or standing timber and

secures, by any form of legal relationship, income derived from the extraction of the mineral or the severance of the timber, to which he must look for the return of his capital. A person who has no capital investment in the mineral deposit or standing timber does not possess an economic interest merely because through a contractual relation he possesses a mere economic or pecuniary advantage derived from production. For example, an agreement between the owner of an economic interest and another, entitling the latter to compensation for extraction or cutting does not convey a depletable economic interest. Further, depletion deductions with respect to an economic interest of a corporation are allowed to the corporation and not to its shareholders."

The original position of the federal income tax authorities was that only the land owner or the one holding legal title to the mineral in place had an economic interest entitling him to a depletion deduction. In 1927, the Internal Revenue Service recognized that an equitable title resulted in an economic interest before the legal title was obtained. In a 1930 ruling, the IRS refused to recognize an overriding royalty retained by a sub-lessor to be an economic interest. That ruling was, however, revoked as a result of the Supreme Court's decision in *Palmer v. Bender*, 287 US 551 (1933).

The court stated: "The language of the statute is broad enough to provide, at least, for every case in which the taxpayer has acquired, by investment, any interest in the oil in place, and secures, by any form of legal relationship, income derived from the extraction of the oil, to which he must look for a return of his capital."

In the *Kirby Petroleum* case, 326 US 599 (1946), the court ruled: "Economic interest does not mean title to the oil in place but the possibility of profit from the economic interest dependent solely upon the extraction and sale of the oil."

In a later case, *Southwest Exploration Co.*, 350 US 308 (1956), a taxpayer was allowed to take a deduction for depletion even though it had neither a fee ownership nor a leasehold interest in the land from which the oil was taken. In this case upland owners were paid a percentage of net profits for the right to drill through their property to reach oil deposits lying off the coast of California. The Supreme Court ruled that even though there was not a "property right" in the oil itself, tax law deals with economic realities, not legal abstractions.

The court remarked: "Southwest contends that there can be no economic interest separate from the right to enter and drill for oil on the land itself. Since the upland owners did not themselves have the right to drill for off-shore oil, it is argued that respondent—who has the sole right to drill—has the sole economic interest. It is true that the exclusive right to drill was granted to Southwest, and it is also true that the agreements expressly create no interest in the oil in the upland owners. But the tax law deals in economic realities, not legal abstractions, and upon closer analysis it becomes clear that these factors do not preclude an economic interest in the upland owners."

Returning to the definition of "economic interest" as found in Internal Revenue Code Regulation 1.611–1(b)(1), it can be seen that the regional corporations which are potentially to share depletion under Section 7(i) must establish two things:

(1) The corporations must have acquired an investment in the minerals in place.

(2) The corporations must have secured, by any form of legal relationship, income derived from the extraction of the mineral or severance of timber.

Whether or not the corporations which are receiving revenue under 7(i) have acquired that right by investment is a debatable subject.

On the one hand, returning to the rationale of the *Southwest Oil* case, it is apparent that if upland owners have an economic interest in oil not located on their property, then similarly regional corporations would have an economic interest in the natural resources which are not patented to them, but whose revenues they share.

On the other hand, it could be argued that the relationship between the "distributing" regional corporation and the "recipient" corporations is such that the right to receive revenue was not acquired by capital investment, but through legislation resulting in the right to receive revenue without the accompanying

economic interest. This argument would preclude the recipient corporations from taking depletion on receipts from other corporations.

The consequences of these alternatives are demonstrated as part of the numerical examples in paragraph C.5.

(c) If it is held that an economic interest does exist which gives the recipient regional corporations the right to claim depletion allowances on resource revenues received from other regional corporations, an additional issue is raised: Do the recipient corporations have a cost basis in the natural resources equal to fair market value at date of receipt? If no cost basis exists, then the recipient corporations would be limited to taking percentage depletion for tax purposes. If there is a cost basis shared among all corporations, the recipient corporations could elect to take cost depletion to the extent the deduction exceeds percentage depletion.

Under Section 21(c), the basis for computing gain or loss on sale or other disposition of land or interest in land for purposes of any federal, state or local tax imposed on or measured by income will be the fair market value of such land or interest in land at time of receipt. This provision gives a cost basis for depletable assets equal to the fair market value at date of receipt. For those resources that can be valued at their date of initial receipt, the distributing corporation should be allowed to deduct an amount equal to the "cost depletion" of those resources in computing the taxable revenue resulting from the development of the resources.

The issue here is whether or not the recipient corporations as a result of their revenue rights under 7(i) also have "an interest in land" as that term is used in Section 21(c) which would entitle them to claim cost depletion on the distributed revenues.

Under Section 21(c) any corporation which receives land or an interest in land also receives a taxable basis in that land or interest in land equal to its fair market value at date of receipt. While "land or interest in land" is not precisely defined, it appears that the right to receive revenue as described under Section 7(i) could constitute an "interest in land" sufficient to give the recipient corporations a cost basis for purposes of computing cost depletion.

There are at least two explanations which might justify the concept that the right to receive revenue constitutes an "interest in land."

The first of these concepts involves the theory of "equitable ownership." Under this theory, each of the 12 regional corporations would be considered to have an equitable ownership in the lands patented to any one regional corporation. The theory can be based upon a history of the Act. Testimony before Senate and House Committees and bills proposed prior to the passage of the Act indicate that all regions were to share in the "equitable ownership" of timber resources and subsurface estate patented to each of the regional corporations. In many of the early drafts of the Act, one central investment corporation owning all resources was envisioned. When 12 regional corporations were established instead of one, the concept that all shareholders would have some interest in the resources of all land was embodied in the revenue sharing provisions of Section 7(i).

The difficulty with the equitable ownership theory is that it might imply that the corporation which receives a patent to the surface and subsurface estate would be subject to the direction and control of the other corporations that share in the "equitable" ownership of that property. The situation might develop where a group of regional corporations could dictate resource development policies to the land-holding corporation.

If the equitable ownership theory is rejected as not being the intent of the Act, it still may very well be argued that the right to receive revenue under Section 7(i) does constitute an "interest in land." If the right to receive revenue from the development of resources is considered a property interest and if the term "interest in land" encompasses all property interest identified with that land, then Section 7(i) revenue would have a cost basis equal to fair market value.

For those revenues where the resources had no identifiable fair market value at date of receipt and where percentage depletion would give a high deduction, the right to take cost depletion is insigninficant. However, in situations where a

fair market value has been identified and where the percentage depletion would not be as high as the cost depletion, the tax liability that would otherwise be due on revenues received by a recipient regional corporation would be reduced.

5. Revenue Before/After Depletion and Income Taxes.

This issue is: Are inter-regional distribution amounts to be calculated on revenue before or after deductions for depletion and income taxes?

In developing the alternative that the distribution amounts should be *before* allowances for depletion and taxes, it could be argued that the distributing corporation suffers no financial loss a a result of the depletion of the natural resources as it paid no cash for the subsurface estate patented to it. This argument ignores legal costs of acquisition as well as surveying and mapping costs.

On the other hand, in support of the concept that the distribution amounts should be calculated *after* depletion and taxes, one could argue that the distributing corporation has suffered a diminution in the value of its resources and therefore should be allowed to reduce the distribution amount accordingly. Furthermore, income tax expense is a necessary business expense and should be deductible in determining the distribution amounts after having taken into account the income tax effect of depletion.

The Act appears to permit either of the alternative interpretations and possibly many more. The term "revenues" in Section 7(i) can be defined either before or after depletion and taxes without violating any traditional legal or accounting principles. Section 7(j) mentions "net income" in reference to inter-regional distributions to be made from sources other than natural resource operations. However, one could argue that the wording of Section 7(j) in the use of the term "net income" (which is generally understood in the financial community to mean profits after taxes) also applies to Section 7(i) for reasons of consistency.

For purposes of demonstrating the differences between the two basic alternatives as well as the impact of depletion pass through (discussed in paragraph C.4), four numerical examples are presented. The examples are structured to show comparative end results on the distributing corporation and the 12 recipient corporations in the following areas:

(1) Net Income
(2) Final Cash Position
(3) Taxes Paid
(4) Depletion Utilization

The figures do not reflect the distributions which the corporations must make to comply with Section 7(j).

The four examples presented on the following pages are:

Example I.A.—Distributable revenue based on revenue *before* depletion and taxes *with* a pass through of depletion to recipient corporations.

Example I.B.—Distributable revenue based on revenue *before* depletion and taxes *without* a pass through of depletion to recipient corporations.

Example II.A.—Distributable revenue based on net income *after* inter-regional distributions, depletion and taxes, *without* depletion pass through.

Example II B.—Distributable revenue based on net income *after* inter-regional distributions, depletion and taxes with an add-back of depletion amounts for cash distribution purposes, without depletion pass through. Essentially, this is an *after* tax, *before* depletion model where the impact of depletion is important for the determination of tax liability.

For comparative purposes, the data shown below shall be used in all four examples:

Gross receipts, distributing corporation	$150
Allowable expenses, not including interregional distributions, depletion and taxes	50
Distributable revenue, before interregional distributions, depletion and taxes	100
Percentage depletion available: 22% of $150	33
Cost depletion available	0

Percentage depletion shall be used in the examples, with the 50% limitation on net income before depletion. The zero cost depletion assumes that the fair market value of the natural resources at the date of receipt was not determinable; therefore a zero cost basis exists. (Refer to paragraph C.8.)

COMPARATIVE RESULTS OF INTERREGIONAL DISTRIBUTION ALTERNATIVES

	Net income	Final cash position		Taxes paid	Depletion available	Depletion utilized
		Amount	Percent			
Example I.A:[1]						
Distributing corporation	$10.0	$19.9	30	$10.1	$9.9	$9.9
Recipient corporations	23.4	46.5	70	23.5	23.1	23.1
Total	33.4	66.4		33.6	33.0	33.0
Example I.B:[2]						
Distributing corporation	7.5	22.5	39	7.5		15.0
Recipient corporations	35.0	35.0	61	35.5		0
Total	42.5	57.5		42.5	33.0	15.0
Example II.A:[3]						
Distributing corporation	26.5	59.5	89	26.5	33.0	33.0
Recipient corporations	7.0	7.0	11	7.0	0	0
Total	33.5	66.5		33.5	33.0	33.0
Example II.B:[4]						
Distribution corporation	18.5	51.5	77	18.5	33.0	33.0
Recipient corporations	15.0	15.0	23	15.0	0	0
Total	33.5	66.5		33.5	33.0	33.0

[1] Distributable revenue=revenue before depletion and taxes with a passthrough of depletion to recipient corporations.
[2] Distributable revenue=revenue before depletion and taxes without a passthrough of depletion to recipient corporations.
[3] Distributable revenue=net income after distributions, depletion, and taxes. No depletion passthrough.
[4] Distributable revenue=net income after distributions, depletion, and taxes, with an add-back of depletion for cash distribution purposes. No depletion passthrough.

Example I.A

[Distributable revenue=Revenue before depletion and taxes depletion pass through to recipient regional corporations]

Distributing corporation:	
Distributable revenue, before depletion and taxes	$100.0
Less interregional distribution	70.0
Net revenue after distribution, before depletion and taxes	30.0
Less—	
Depletion (30 percent of $33)	9.9
Total	20.1
Income taxes at 50 percent	10.1
Net income	10.0
12 recipient corporations:	
Revenue received	70.0
Less—	
Depletion (70 percent of $33)	23.1
Total	46.9
Income taxes at 50 percent	23.5
Net income	23.4

Analysis—Example I.A

1. Cash position of distributing corporation:	
Distributable revenue before depletion and taxes	$100.0
Less—	
Interregional distribution	70.0
Income taxes	10.1
Net cash position	19.9
2. Cash position of 12 recipient corporations:	
Revenue received	70.0
Less income taxes	23.5
Net cash position	46.5
3. Total taxes paid:	
Distributing corporation	10.0
12 recipient corporations	23.5
Total	33.6
4. Depletion utilization:	
Total depletion available	33.0
Total depletion utilized:	
Distributing corporation	9.9
12 recipient corporation	23.1
Total	33.0

Example I.B

[Distributable revenue=Revenue before depletion and taxes, no depletion pass through to recipient regional corporation]

Distributing corporation:	
Distributable revenue, before depletion and taxes	$100. 0
Less interregional distribution	70. 0
Net revenue after distribution, before depletion and taxes	30. 0
Less—	
Depletion	[1] 15. 0
Total	15. 0
Income taxes at 50 percent	7. 5
Net income	7. 5
12 Recipient corporations:	
Revenue received	$70. 0
Less—	
Depletion	0
Total	70. 0
Income taxes at 50 percent	35. 0
Net income	35. 0

Analysis—Example I.B

1. Cash position of distributing corporation:	
Distributable revenue, before depletion and taxes	$100.0
Less—	
Interregional distribution	70.0
Income taxes	7.5
Net cash position	22.5
2. Cash position of 12 recipient corporations:	
Revenue received	70.0
Less income taxes	35.0
Net cash position	35.0
3. Total taxes paid:	
Distributing corporation	7.5
12 recipient corporations	35.0
Total	42.5
4. Depletion utilization:	
Total depletion available	33.0
Total depletion utilized:	
Distributing corporation	15.0
12 recipient corporations	0
Total	15.0

[1] Limited to 50 percent of net revenue before depletion and taxes. This limitation would not exist if cost depletion allowances were available as opposed to percentage depletion used in the examples.

Example II.A

[Distributable revenue = Net income after distribution, depletion and taxes]

Distributing corporation:		
Distributable revenue, before depletion and taxes	$100.0	
Less 30 percent not subject to interregional distribution	30.0	$30.0
Revenue subject to interregional distribution	70.0	-----
Less—		
Interregional distribution	[1] 14.0	-----
Depletion	[2] 28.0	5.0
Total	28.0	25.0
Less income taxes at 50 percent	14.0	12.5
Net income	14.0	12.5
12 recipient corporations:		
Revenue received	14.0	
Less depletion	0	
Total	14.0	
Less income taxes at 50 percent	7.0	
Net income	7.0	

[1] Interregional distribution equals net income, as determined through use of a simultaneous equation.

[2] Depletion limited to 50 percent of taxable income before depletion.

Analysis—Example II.A

1. Cash position of distributing corporation:	
Distributable income, before depletion and taxes	$100.0
Less—	
Interregional distribution	14.0
Income taxes	26.5
Net cash position	59.5
2. Cash position of 12 recipient corporations:	
Revenue received	14.0
Less income taxes	7.0
Net cash position	7.0
3. Total taxes paid:	
Distributing corporation	26.5
12 receipient corporations	7.0
Total	33.5
4. Depletion utilization:	
Total depletion available	33.0
Total depletion utilized:	
Distributing corporation	33.0
12 recipient corporations	0
Total	33.0

Example II.B

[Distributable revenue=Net income after distributions, depletion and taxes with an add-back for depletion]

Distributing corporation:		
Distributable Revenue, before depletion and taxes	$100.0	
Less 30 percent not subject to interregional distribution	30.0	$30.0
Revenue subject to interregional distribution	70.0	
Less—		
Interregional distribution	[1] 30.0	
Depletion	[2] 20.0	13.0
Total	20.0	17.0
Less income taxes at 50 percent	10.0	8.5
Net income	10.0	8.5
12 recipient corporations:		
Revenue received	[1] 30.0	
Less depletion	0	
Total	30.0	
Less income taxes at 50 percent	15.0	
Net income	15.0	

[1] Interregional distribution equals net income after depletion and taxes plus an an add-back for depletion. ($10.0 plus 20 equals $30).
[2] Depletion limited to 50 percent of taxable income before depletion.

Analysis—Example II.B

1. Cash position of distributing corporation:	
Distributable revenue, before depletion and taxes	$100.0
Less—	
Interregional distributions	30.0
Income taxes	18.5
Net cash position	51.5
2. Cash position of 12 recipient corporations:	
Revenue received	30.0
Less income taxes	15.0
Net cash position	15.0
3. Total taxes paid:	
Distributing corporation	18.5
12 recipient corporations	15.0
Total	33.5
4. Depletion utilization:	
Total depletion available	33.0
Total depletion utilized:	
Distributing corporation	33.0
12 recipient corporations	0
Total	33.0

Reviewing the comparative results of the four examples, some observations are:

(1) The final cash position of the distributing corporation is maximized by Example II.A and minimized by Example I.A.

(2) Total taxes paid are essentially equal for Examples I.A, II.A, and II.B. Example I.B represents an inefficient use of depletion allowances, due to the 50 percent limitation with no pass through, resulting in excess income tax expense.

(3) Examples II.A & II.B tend to diminish the importance of the depletion pass through issue since any unused depletion at the inter-regional level would generally be used to offset the 30 percent of revenues not subject to inter-regional distributions, assuming the 50 percent limitation on taxable income is not reached. Therefore, unused depletion might not exist without the pass through provisions. As demonstrated by Example II.B, the depletion pass through concept could be important to avoid excessive payments of income tax on a total combined basis when percentage depletion limitations are reached within the distributing corporation.

(4) The calculation procedure depicted in Example II.A could create a situation where no distribution would result. For example, assume gross receipts from value of oil in-place equal $150, allowable offsetting costs equal to $50, and cost depletion available based on fair market value of the resources at date of receipt equal $70:

Gross receipts	$150
Less—	
Allowable expenses	50
Subtotal	100
30 percent not subject to inter-regional distribution	30
Revenue subject to inter-regional distribution	70

Less—	
Inter-regional distribution	0
Depletion	$70
Income before taxes	0
Income taxes	0
Net income	0
Inter-regional distribution	0

An additional variable—the treatment of losses, if any—must be considered in the discussion of a before or after tax calculation of distributable revenue. Should the amount upon which the distribution is based result in a loss situation (and this is possible whether a before or after depletion and tax calculation is used) there are at least three methods of dealing with the loss:

(1) Distribute the loss among the regional corporations on a current basis; i.e. send debit memos or invoices to the recipient corporations.

(2) Allow the loss to be carried forward by the distributing regional corporation to be offset against future distributable revenues, with no time limitation.

(3) Require the distributing corporation to absorb the loss and to distribute current profits wtihout regard to previous loss years.

By distributing losses on a current basis among all regional corporations, the losses are shared. This does not appear to be an option granted by the Act, which implies that only revenues be distributed.

Ignoring prior-year losses places the distributing regional corporation at a significant disadvantage. In most business operations, the early start-up years usually result in losses or moderate profits unless organization costs are capitalized. It would not appear reasonable to require the regional corporation to distribute the first dollar of profit generated if in fact legitimate prior-year losses were incurred in reaching the break-even point.

The concept of allowing losses to be carried forward and offset against future distributable amounts may be viewed as a mechanism which allows the distributing corporation to reach its break-even point and recover its investment prior to distributing profits to other regional corporations.

6. *Resource Revenue Trust Funds.*

If distributable resource revenue is based on a before depletion and tax figure (as discussed in paragraph C. 5 above), does that revenue constitute trust funds?

It could be argued that such funds are collected by the distributing regional corporation on behalf of all 12 regional corporations which are to share in such revenues, and as such are trust funds. The trust fund theory was recognized by the State of Alaska when legislation was passed which was designed to "complement through state policy in a reasonable and fair manner the Federal policy expressed in ANCSA." (See Section 1, 1972 Laws of Alaska, Chapter 70).

Without addressing the nature of the distributions required under Section 7(i), the Judiciary Committee spoke of funds required to be distributed as "trust funds" in its report accompanying the Act. Others familiar with the Act, including attorneys active in its implementation, have also suggested that the mandatory distributions under Section 7(i) constitute trust funds.

The trust fund theory also has a source of support in the legislative history of the Act. As noted in the committee report accompanying the Act, the Senate version of the bill provided for the creation of two federally-chartered statewide corporations: one to handle the investment, and one to perform social welfare functions and hold title to the mineral estate of lands granted by the bill. The conference report provided for the establishment of 12 regional corporations with the revenue-sharing provisions as set out in Section 7(i). To the extent that the revenue-sharing provisions were designed to reflect the concept that all Natives were to share in all resources, the trust fund theory would appear to be a logical explanation of the nature of the distributions.

If the trust fund theory is to be held valid, all revenue received from the timber resources and subsurface estate patented to any one regional corporation would be treated as taxable income to that corporation against which it could

take a deduction for the inter-regional distributions. This approach embodies the attributes of the after distribution, depletion and tax formula for determining distribution amounts as discussed earlier in paragraph C. 5.

There appears to be no apparent negative tax ramifications under either treatment. However, by adopting the trust fund theory (which excludes distributions made to other corporations under Section 7(i) from gross income), the assessment of any state and local business or occupation tax or any other form of gross receipts tax would be avoided.

While the accounting treatment of these revenues is different, depending on whether or not they constitute trust funds, from a legal standpoint it is clear that the distributing regional corporation has a trustee relationship with the other regional corporations when it comes to administering the custodial responsibilities of making the required inter-regional distributions.

Therefore, whether or not the distributable amount is calculated on a before or after depletion and tax basis, the distributing corporation should establish a trust fund into which deposits are made on a regular current basis as resource revenues are received from its resources. The deposits into this trust fund should be in amounts sufficient to bring the balance in the fund equal to the distributable liability on a current year-to-date basis.

Section 7(i) states that the inter-regional distributions of resource revenues are to be made on an annual basis. Therefore, once each year the money deposited into this trust fund shall be paid out to all regional corporations. It would appear reasonable that such distributions be made within at least three months following the corporate fiscal year end. Due to the trustee responsibility of the distributing corporation, these funds should earn interest to be distributed along with the principal.

7. *Accountability on Project Basis.*

The Act seems to permit calculating distributable resource revenue on either a project-by-project basis or an aggregate basis.

First, one must determine what constitutes a development project. Is a project defined by standards like acreage under development or number of wells? Regardless of the definition for purposes of calculating distributable revenue, the fact remains that for tax purposes, in order to claim depletion, the depletion must be identified to the revenue from the property. The tax laws have developed specific guidelines for defining the "property." Without guidelines to the contrary, it would appear reasonable to define a project in a manner consistent with the tax guidelines. This approach is also reasonable because the books and records of the corporation should account for revenue, expenses, depletion, etc. on a project-by-project basis regardless of whether or not the figures are later aggregated for purposes of determining the inter-regional distributon amounts.

The first point to consider on the issue of individual or aggregate treatment of project revenue and expenses for purposes of determining the distribution amount under Section 7(i) is that if the aggregate treatment is adopted, the result is that profits or revenues from some projects offset the losses from other projects. For example, $100,000 recognized from producing wells could be used either to offset $100,000 of losses from other projects or to finance development of additional operations.

But a problem relevant to the trust fund concept discussed in paragraph C. 6 earlier arises: Can the $100,000 of distributable revenue (either before or after tax) recognized on profitable projects avoid deposit in the trust fund? Furthermore, if the funds are deposited but the determination of distributable revenue is done on an aggregate basis, it would be possible to have more money in the trust fund than is required to be distributed. What would happen to this excess?

By determining the distributable revenue on a project-by-project basis, it is implied that projects generating losses are ignored for purposes of Section 7(i) and only projects generating profits contribute to the distributable revenue. This approach avoids the problem of the trust fund deposits vs. distributable liability associated with the aggregate concept, but it appears unrealistic to prohibit a distributing corporation from recovering the costs of nine dry-hole projects with profits from the tenth profitable project. Again, the definition of "project" would have significant bearing upon this issue.

Another element involved in this discussion relates back to the expenses which are allowable deductions from gross receipts in determining distributable revenue before inter-regional distributions, depletion and taxes. Whether gross

receipts represent the value of resources in-place or include revenues from the extractive process, one of the allowable expense offsets against gross receipts are non-project, pre-development costs. These costs—mapping, aerial surveys, preliminary exploratory work, marketing, and the like—might be necessary in order to generate gross receipts equivalent to the value of the resource in-place. These expenses usually cannot be directly identified to a specific project; a project allocation must be made.

Furthermore, the issue of expensing these costs as incurred vs. a capitalization and amortization treatment could create serious cash flow problems to the distributing regional corporation with a project-by-project calculation of distributable revenues. The cash flow problems might not be avoided even under the aggregate project approach; but to the extent there were loss projects being aggregated with profitable projects, the cash flow problems associated with capitalizing and amortizing these costs are reduced.

Either on an individual or aggregate project basis, if revenues cease prior to full recovery of the capitalized costs, the distributing corporation would not be able to recover previous amounts distributed to other regions—distributions which would not have been made had these expenses been written off as incurred.

8. *Fair Market Value for Tax and Financial Reporting.*

Section 21(c) states that the value assigned to the land or interest in land is its "fair value . . . at the time of receipt." Fair market value is traditionally defined as the "price that a willing buyer will pay to a willing seller."

Recognizing the practical problem of determining the fair market value at date of receipt of 40 million acres of wilderness land at the time of conveyance to the 12 regional corporations, the issue is whether or not the initial values assigned to the timber resources and subsurface estate can be adjusted at later dates as additional information becomes known or as the resources are actually developed. The figure assigned as the fair market value of such resources is significant for two reasons:

(1) For tax purposes, the cost basis available to a regional corporation for purposes of computing cost depletion is equal to the fair market value at date of receipt. To the extent an accurate value can be determined, the higher the asset valuation the better, since cost depletion increases accordingly and tax dollars are saved. If percentage depletion would be greater than cost depletion, the fair market value determination of cost basis for tax purposes loses its significance.

(2) For financial statement purposes, the value of these assets on the balance sheet of the corporation is equal to the fair market value at date of receipt and is treated as capital in the equity section of the balance sheet. As these assets are depleted, the income statement is charged with the appropriate cost depletion figures and net income is reduced accordingly. Therefore, from a financial statement point of view, the lower the asset valuation the better.

Regardless of the desirable impact for tax or financial statement purposes, the resources must be valued at "fair value . . . at the time of receipt." It is implied that the costs of acquisition and/or of disposal of such assets are already figured into the determination of fair market value.

According to generally accepted accounting principles and tax laws, fair market value at date of receipt must be based upon facts and figures known at that date. Regulation 16.11–2(d) of the Internal Revenue Code states: "If the fair market value of the mineral property and improvements at a specific date is to be determined for purposes of ascertaining the basis, such value must be determined, subject to approval or revisions by the district director, by the owner of the property and improvements in light of conditions and circumstances known at that date, regardless of later discoveries or developments or subsequent improvements in methods of extraction and treatment of the mineral product."

Regulation 1.611–2(f) states: "No re-evaluation of a mineral property whose value as of a specified date has been determined and approved will be made or allowed during the continuance of the ownership under which was so determined and approved, except in the case of misrepresentation or fraud or gross error as to any facts known on the date as of which the evaluation was made." Re-evaluation on account of misrepresentation, fraud or gross error will be made only with the written approval of the IRS Commissioner.

There appears to be no provision for hindsight valuations of assets at future dates, even if subsequent discoveries of minerals are made or facts which might otherwise point towards a revaluation come to light.

Therefore, when the timber resources and subsurface estates are patented or conveyed to a regional corporation, if there is no supportable information available at such time as to quantity and quality of resources present, the "fair value . . . at the time of receipt" based upon facts and figures known at that date is *zero*. Subsequent discovery of resources or information cannot change this initial valuation for either tax on financial statement purposes.

For tax reporting, such an evaluation will prevent the use of cost depletion in computing taxable income from revenues derived from minerals discovered after the property was acquired. However, percentage depletion can be used in computing taxable income from revenues on these minerals, and it may be equal to or exceed cost depletion in many instances.

For financial reporting, there will not be a need for subsequent adjustments in the asset and shareholder equity accounts of the regional corporation. To the extent there is no knowledge of the existence of minerals conveyed as part of the subsurface estate, these assets will be carried on the books of the regional corporation at zero value.

Assuming a fair market value is determined, there is an additional problem: How should this value be shown on the balance sheet of the regional corporation, taking into account the fact that the corporation is entitled to keep 30% of the revenue derived from such resources plus its portion of the 70% held by all 12 regional corporations?

There appear to be at least three possible alternatives to the financial statement treatment of the right to receive revenue from mineral resources as legislated by Section 7(i):

(*a*) Book the assets at zero or nominal value and disclose in a footnote the fair market value and the fact that 70% of revenues received from these assets must be distributed to others and that this regional corporation is entitled to receive revenues from other regional corporations.

(*b*) Record 100% of the fair market value in patented resources as an asset with footnote disclosure of the fact that 70% of revenues derived from these assets must be distributed to other corporations and that this regional corporation is entitled to receive revenues in undeterminable amounts from other regional corporations.

(*c*) Record 100% of the fair market value in patented resources as an asset. Also record 70% of this fair market value in patented resources as an offsetting liability representing the trustee interests of other regional corporations in the revenues to be derived therefrom. The capital account of the distributing regional corporation would then reflect 30% of the fair market value in patented resources. In addition, to reflect its interest in the revenues generated from natural resources patented to all regional corporations, a figure equivalent to that region's percentage of 70% of the fair market value of the resources of all regional corporations could be booked as an investment with the corresponding impact upon the capital accounts.

All three alternatives would require a footnote explaining the provisions of Section 7(i) and Section 7(j) of ANCSA as they relate to the revenue distributions as well as an explanation of the fact that the corporation is unable to determine a fair market value on a portion of the resources to which it has title.

The first alternative understates the assets of the corporation to the extent a greater value can be assigned to the timber resources and subsurface estate. The financial statement would not fairly represent the financial condition of the corporation by carrying assets with a known substantial value at a zero or nominal figure.

The second alternative reflects 100% of fair market value of the timber resources and subsurface estate, but because the regional corporation is required to distribtue 70% of the revenue generated from such resources, this presentation would appear to overstate the assets of the corporation.

Thus, both of the first two alternatives appear to be significantly misleading to the reader of the financial statement.

The third alternative requires the exchange of fair market value information among the regional corporations, which presents problems relevant to certification of data. Also, inter-regional data relevant to book depletion of these resources would have to be communicated to all 12 regional corporations annually. Nevertheless, it would appear that this method provides full financial statement treatment of the provisions of ANCSA and is probably the least misleading of the three alternatives.

D. *Recommendations*

1. *Value of Natural Resource In-Place vs. Extractive Process.*

While the Act is not specifically clear on this issue, it would appear that what Congress intended to be shared was the revenue, when generated, equivalent to the value of the resource itself. Any profits and/or losses generated by a regional corporation associated with the risks and benefits of extraction should inure to the distributing regional corporation only.

This recommended interpretation is made with full knowledge and awareness that the alternative approach would be acceptable given the language of the Act.

2. *Applicable Revenue Sources.*

The Act does not include any guidelines which bear upon the determination of which types of revenue transactions and sources constitute distributable revenue under Section 7(i). In order to provide a starting point to be used as the basis of this determination, it is recommended that the following general guideline be adopted:

> Any transaction which involves the disposition of the timber or subsurface estate resources or which affects or influences the disposition of such resources is potentially a transaction within the framework of Section 7(i).

Beyond this guideline, it would appear that the applicability of many of the potential active and passive transactions could be challenged, and it possible that case-by-case litigation will eventually determine the outcome.

Consistent with the recommendation related to issue #1, it is recommended that the actual revenue received determine the value of the resource for those transactions of a passive nature. For active operational transactions or for transactions involving in-kind or non-monetary considerations, it is recommended that the distributing regional corporation calculate the dollar equivalent of the value of the resource in-place in a fashion which is justifiable and supportable.

3. *Gross vs. Net Revenue*

It is recommended that a concept of net revenue be adopted consistent with the interpretation of Section 7(i).

Considering the recommendations on issues #1 and #2 above, it is further recommended that the concept of net revenue as applied to the value of resources in-place be interpreted to permit allowable offsetting expenses are discussed in paragraph C.3.

It is further recommended that the accounting for revenue and expense in connection with distributable resource revenue under Section 7(i) be done on the accrual basis.

4. *Depletion and Eligibility for Tax Benefits Derived Therefrom.*

The two basic issues are:

(*a*) Does the right to receive revenue under Section 7(i) include an "economic interest" in the resources generating the distributable revenue sufficient to permit recipient regional corporations to claim depletion allowances?

(*b*) If the "economic interest" does exist, does Section 21(c) permit the sharing and passing on of cost depletion on the basis of land or interest in land equal to fair market value held by recipient corporations?

It must be recognized that the terminology "land or interest in land" has no precise definition in the Act or in any of the tax statutes. Furthermore, ANCSA does not shed any light on the question of whether or not the right to receive revenue constitutes an "economic interest." Arguments on both sides of either issue appear to be valid as far as the Act itself is concerned.

It is recommended that an attempt be made to resolve this issue in favor of the alternative which permits the recipient corporations to claim depletion allowances. Only in this fashion can assurances be given that tax benefits will not be lost by the regional corporations taken as a whole at the expense of higher total income tax.

5. *Revenue Before/After Depletion and Income Taxes.*

The numerical examples documented as part of paragraph C.5 demonstrate the recommendation given above on the desirability of depletion pass through. It is obvious that distributable revenue based on a before depletion and taxes concept is viable only if the depletion pass through concept is established as valid. This alternative minimizes the amount retained by the distributing regional corporation.

The alternative, depicting a distribution amount equal to 70 percent of net income after depletion and taxes, maximizes the amount retained by the distributing regional corporation. However, this method precludes any distribution

at all to the extent the distributing corporation has a cost basis in the depleted resources somewhat equivalent to distributable revenue before depletion and taxes.

Therefore, it would appear that there are two viable alternatives:

(*a*) Distributable revenue could be based upon revenue before depletion and taxes with a pass through of depletion to recipient corporations. This minimizes the amount retained by the distributing corporation.

(*b*) Distributable revenue could be based upon net income after inter-regional distributions, depletion and taxes with an add-back for depletion. This maximizes the amount retained by the distributing corporation.

No specific recommendation is given on which of these alternatives is the correct interpretation of the Act. It is also recognized that additional alternatives could be permissable.

Regardiing the treatment of losses, it is recommended for purposes of determining the distribution amount that losses be allowed to be carried forward and offset against future distribution amounts without any time limitation on the carry-forward.

6. *Resource Revenue Trust Funds*

The importance of characterizing revenue received from the timber resources and subsurface estate by the distributing regional corporation as trust funds is only important from the accounting or tax standpoint if the alternative that distributable revenue is based on a before tax concept is adopted. Therefore, it would be important to adopt the trust fund concept for a consistent treatment of alternatives if the before tax concept is adopted. Regardless of the before or after tax concepts, revenues subject to distribution constitute trust funds from a legal standpoint. Therefore, it is recommended that as revenues are received by the distributing corporation, an amount equal to the inter-regional distribution liability on such revenues be deposited in a separate trust account. In this manner, the correct amount of money will always be available to make the required distributions. Once deposited, this money should be restricted for inter-regional distributions only and should not be made available for working capital of the corporation. By placing these funds in trust, they are beyond the reach of creditors who for one reason or another might attach the assets of the regional corporation.

7. *Accountability on Project Basis.*

It is recommended that projects or parcels of revenue-producing property be defined in accordance with existing tax guidelines for purposes of internal accounting.

It is further recommended that distributable revenue be accounted for on an aggregate project basis if found to be within the authority granted by the Act. The treatment of deposits in the trust fund discussed in paragraph C. 6 must be consistent with the resolution of this issue.

If the aggregate project alternative is adopted, it is recommended that non-project, pre-development costs be capitalized and amortized against revenues according to the anticipated period of revenue recognition. This would be the preferable treatment of these expenses from the standpoint of generally accepted accounting principles. However, these principles do not have to govern the formula for calculation of distributable resource revenues.

8. *Fair Market Value for Tax and Financial Reporting.*

With regard to the method of determining fair market value and the restrictions upon subsequent valuations, it is recommended that each regional corporation obtain as much data as possible in order to permit an accurate determination of the fair market value of the timber resources and subsurface estate when actually patented to it.

Regarding the most appropriate financial statement presentation of the fair market value of patented resources and the revenue distribution provisions of the Act, it is recommended that the third alternative as presented in paragraph C. 8 be adopted. This presentation allows the financial statements to reflect the value of the resources patented to the corporation, the trustee interests of other regional corporations in the revenues from these patented resources, and the interests of the corporation in the revenues generated from the patented resources of all regional corporations.

E. *Further Action*

The numerous issues and sub-issues created by Section 7(i) dealing with accounting for resource revenue may be generally categorized into two parts: one,

the issues which may be decided by the regional corporations themselves; and two, those which require further legal interpretation and/or rulings from federal agencies.

Further legal input or rulings from government agencies are required as follows:

1. *Value of Natural Resource In-Place vs. Extractive Process.*

No action required.

2. *Applicable Revenue Sources.*

Further legal study required to determine intended treatment of numerous forms of revenue under Section 7(i).

3. *Gross vs. Net Revenue.*

No action required.

4. *Depletion and Eligibility for Tax Benefits Derived Therefrom.*

Further legal input required as to the interpretation of the term "land or interest in land" as used in Section 21(c). Legal opinion must also be obtained on the issue of whether or not Section 7(i) generates an "economic interest" to the extent that depletion can be shared among all regional corporations.

Based upon the results of these legal interpretations, the necessity of obtaining a ruling from the Internal Revenue Service may be considered.

5. *Revenue Before/After Depletion and Income Taxes.*

No action required.

6. *Resource Revenue Trust Funds.*

Potential ruling required from the Internal Revenue Service on the treatment of revenue to be distributed under Section 7(i) as trust funds or taxable income.

7. *Accountability on Project Basis.*

Legal interpretation required to determine whether treatment of project revenues and losses on an aggregate basis is permissible under ANCSA.

8. *Fair Market Value for Tax and Financial Reporting.*

Ruling required from Internal Revenue Service relevant to fair market value determination as applied to ANCSA.

It should be recognized that all of the issues and sub-issues discussed in relation to Section 7(i) could be subjected to further legal study and interpretation. In fact, many of the issues are so inseparably related that requiring legal review and interpretations of one isolated issue may be impossible. Given the lack of guidance provided by Congress in interpreting Section 7(i), a full legal review and interpretation of all issues connected with this section of ANCSA may be required.

The issues which appear to be within the scope of resolution by the regional corporations present a different set of problems. Recognizing the existence of divergent corporate interests in relation to inter-regional distributions of resource revenues, it may be impossible to have total agreement on the selection of any of the alternatives presented in connection with any issue. Even if some degree of uniformity were agreed upon, there is no enforcement mechanism created by the Act. There are at least three possible alternatives which merit further consideration:

(*a*) A statewide compliance commission including representatives of all 12 regional corporations could be created.

(*b*) Since the corporations' accountants are going to have to address themselves to the problem of certifying financial statements, it may be possible to develop uniform reporting standards through the auspices of the American Institute of Certified Public Accountants or the Alaska State Society of Certified Public Accountants. While such standards would never be a strong compliance mechanism to force uniformity, at least divergence from established uniform accounting practices as established for regional corporations would not go unreported. Without some "industry" accounting standards, the financial statements will only certify that the transactions were handled in accordance with generally accepted accounting principles consistent with individual corporate policies.

(*c*) It is possible that the Department of the Interior could develop uniform reporting standards for Section 7(i) transactions. While this authority is not granted in ANCSA, it would be one way of establishing some degree of control over divergent accounting policies affecting interregional distributions.

Senator METCALF. The next witness is an old friend of this committee. I believe, Senator Stevens, the first time this witness appeared before me was in Anchorage when we held those marathon hear-

ings up there and he has been active in the Alaska Native Claims Settlement Act. Mr. John Borbridge of the Sealaska Corp.

Mr. Borbridge, we are pleased to have you. We have been pleased with your cooperation and I want to reiterate, we are shuffling back and forth to answer these roll calls in order that we can make the record this morning and all of us who are concerned and interested will certainly read all of the statements.

Senator STEVENS. I think the record ought to show all of us from Alaska are indebted to Senator Metcalf. This is the only committee meeting in the Senate today and it is only by special consideration that we are permitted to meet, I'm grateful to you, Senator Metcalf, for your leadership in obtaining that permission.

STATEMENT OF JOHN BORBRIDGE, JR., PRESIDENT, SEALASKA CORP.

Mr. BORBRIDGE. I very much appreciate that, Mr. Chairman. I am John Borbridge. I am president of Sealaska Corp., the regional corporation organized pursuant to the Settlement Act by the natives of southeast Alaska. In the event there are any questions of a legal nature, I would like to ask our attorney, Mr. Richmond Allen of the firm of Weisbroad & Weisbroad to come forward.

I am concerned about the lack of funding for implementation of the amendment. As you recall, $500 million of the $962.5 million that the Settlement Act provides by way of monetary settlement to the Alaska natives is to come from a 2 percent royalty on oil and gas produced from Federal and State lands.

In 1973, recognizing that the startup of payments to the Natives from this source was going to be delayed well beyond the time contemplated when the Settlement Act was passed and that, consequently, the value of the settlement to the Natives was being seriously eroded, Congress authorized advance payments of royalty, commencing in fiscal year 1976, in the amount of $5 million every 6 months until oil should begin to flow in the Alaska pipeline.

So, here we are, within a few days of the end of a 12-month period during which Congress provided the Natives should receive $10 million advance royalty payments without having received, and without having any prospect of receiving, one red cent of the money Congress provided simply because the executive branch did not see fit to obey the law.

The subject of the advance reservation of easements, for other than presently existing or planned uses, was gone into again in considerable depth during the conferences among the Department of the Interior, the Natives, and other interested parties that preceded the issuance by the Secretary on May 23, 1973, of the original land selection regulations.

During these conferences, which I attended and which took place at various times over a period of about 2 weeks, I don't recall that any of the representatives of the Department of the Interior who participated, including, at various times, the Secretary, virtually every Assistant Secretary and Deputy Assistant Secretary, had the temerity to suggest that the Department was considering attempting to reserve continuous shoreline easements or conceived itself as having any authority to do so.

That Congress intended specifically to preclude the reservation of linear shoreline easements, and to authorize the reservation of easements along water margins only at periodic points, is too clear to admit of legitimate dispute. In asserting power to reserve such linear easements, the Secretary is essaying to banish a congressionally imposed limitation on his authority by this action.

In addition to being riparian or littoral to major water bodies or courses, virtually all of the lands that Sealaska and the villages and communities in southeast Alaska are due to receive are within the boundaries of the Tongass National Forest.

Conferences proceeded and it was understood this would be the condition attached to the selection of lands to be exercised by the Natives, but when, subsequently, one of our villages applied for lands under the act, the agreement between the Secretary and the Natives memoralized by this regulation as to how section 22(k) of the act should be implemented was completely repudiated without a whisper of notice or warning.

The preconveyance decision issued by the Bureau of Land Management on the village's application transmogrified the simple reservations, which the regulation provided should be expressed in the patent into covenants running with the land and decreed that the form of the second, rather than being as prescribed by the regulation, should be as follows:

> Harvest or development activities will be preceded by preparation and public availability of an environmental analysis which adequately identifies and evaluates all resources values on or adjacent to the lands involved and prescribes coordinating measures necessary to protect and enhance these values. Harvest and development activities will conform to these prescriptions.

I urge the committee to reflect upon the implications of the burden the Secretary is attempting to put upon the Native corporation by this covenant. Note that the requirement of an environmental impact statement to be publically available relates to development of the lands after they have become private property within the meaning of the fifth amendment.

Where, in law or logic, does the Secretary derive authority to burden an absolute right to receive a grant of lands with the condition that the grantee, after the lands have become private property, will not undertake to develop them without first preparing an environmental impact statement for public inspection?

Senator STEVENS. I have to go and vote but I agree with you. They have exceeded their authority and the yardstick we thought we would get in comparison with some owners under private ownership compared to State ownership compared to Federal ownership is going to be lost if they persist.

Mr. BORBRIDGE. I'm concerned about the position developed by the Internal Revenue Service as we have been advised through communications and meetings.

Although I don't want to make too fine a point of it at this time, it appears the agency is taking a position with respect to section 7(i) of the act which would have the consequence of reaching a protest result, namely that with the requirement for subsequent distribution by the Regional Corporations to stockholders, the Re-

gional Corporation would be left, in effect, with $2 out of each $100 that it would receive under the provision.

I simply cannot believe Congress intended in any way that this result should be reached. I think it is typical, all too typical, of the distortion that seems to prevade the entire implementation of the act by attitudes of some of the executive branch agencies and the intent as set forth by the Congress when the act itself was passed. Thus, we feel further regardless that the IRS is tending to hold that the revenues received by Regional Corporations, that it must share with the other regional corporations under section 7(i) are not income to the former, it is also tending toward the conclusion that the latter, the distributee corporations have no economic interest as would entitle them to allowance for depletion.

The entire depletion allowance would be taken by the holding corporations without regard to the fact the 11 regional corporations clearly have an official interest under section 7(i) of the act, in its resources and estates conveyed to the former.

In conclusion, I would like to comment on the interests of the environmentalists with respect to the efforts being made by Sealaska to select out of the national forests. Sealaska Corp. reached an accord with, among other groups, environmentalists, whereby Sealaska agreed not to exercise its land selection rights on Admiralty Island.

I do want to clarify, however, that disagreement had nothing whatsoever either directly or by implication with respect to the current controversy involving Sitka, Juneau, and Angoon, the State of Alaska and environmentalists and must not consider then or now as any sort of a precedent.

That concludes my statement. Should there be any questions, I would be pleased to answer.

Senator Gravel [presiding]. Thank you. I was not here for all of your testimony but I will go over it in detail.

[The prepared statement of Mr. Borbridge follows:]

STATEMENT OF JOHN BORBRIDGE, JR., PRESIDENT, SEALASKA CORP.

My name is John Borbridge Jr. I am president of Sealaska Corporation, the regional corporation organized pursuant to the Settlement Act by the Natives of Southeast Alaska.

On behalf of the 15,000 shareholders of Sealaska, I want to express our deep appreciation to the Chairman and members of this Committee for holding this hearing and according us an opportunity to present some important concerns we have about the way in which the Settlement Act is being implemented by the Department of the Interior and other agencies of the executive branch.

Mr. Chairman, we are not only deeply appreciative of the countless hours the members and staff of this Committee have devoted to Alaska Native affairs, we are also somewhat embarrassed to be taking more of your time and attention so soon after passage of several amendments to the Settlement Act, which the Alaska Natives, and I am sure the members and staff of this Committee, hoped would obviate the need for any further congressional attention to the Settlement Act this session.

However, at the risk of appearing a trifle paranoid, I would observe, from the standpoint of the Natives, that no sooner does Congress giveth, than the executive attempteth to taketh away.

Five hundred million of the $962.5 million that the Settlement Act provides by way of monetary settlement to the Alaska Natives is to come from a 2% royalty on oil and gas produced from State and Federal lands. In 1973, recognizing that the start up of payments to the Natives from this source was going

to be delayed well beyond the time contemplated when the Settlement Act was passed and that, consequently, the value of the settlement to the Natives was being seriously eroded, Congress authorized advance payments of royalty, commencing in fiscal year 1976, in the amount of $5 million every six months, until oil should begin to flow in the Alaska pipeline.

The first of these advance payments should have been deposited in the Alaska Native Fund during the last half of calendar year 1975 and should have been distributed to the Natives not later than shortly after the first of this year.

When we inquired when we might expect the first advance payment to be distributed, we were informed that the provision of the 1973 act authorizing such has not been funded. Further inquiry developed that, although an item to fund the provision had been included originally in the budget for fiscal year 1976 submitted by the Department of the Interior to the Office of Management and Budget, the latter had stricken it out.

This arrogant bureaucratic frustration of congressional will took place, of course, in 1974 or early 1975. But neither OMB nor the Secretary of the Interior saw fit to inform Congress of what had been done. And, needless to say, no one saw fit to inform the Natives.

So here we are, within a few days of the end of a twelve months period during which Congress provided the Natives should receive 10 million advance royalty payments without having received, and without having any prospect of receiving, one red cent of the money Congress provided, simply because the executive branch did not see fit to obey the law.

The ink was hardly dry on the omnibus amendments act of January 2, 1976 (which narrowly escaped a veto requested by several executive departments), when the Secretary of the Interior again set about to flout the Settlement Act in connection with the issuance of easement guidelines on February 12 (41 Fed. Reg. 6295–97). These guidelines, among other unauthorized provisions derogatory of Native rights, purport to require the reservation of continuous linear easements 25 feet in width upland of and parallel to the mean high tide line along the marine coastline of all lands to be granted to Natives under the Settlement Act.

The subject of reserving easements over lands to be granted to Natives did not receive much attention until quite late in the legislative process that produced the Settlement Act. As it went to markup, the basic Senate bill, S. 35 in the first session of the 92d Congress, did not contain provisions analogous to those found in section 17(b) of the Act. (Compare S. 35, as printed in *Hearings* thereon, part 1, February 18 and March 16, 1971, 92d Cong., 1st Sess., with S. 35, as printed in S. Rep. 92–405, October 21, 1971.)

Such easement provisions as were included in S. 35 prior to markup were limited and generally designed to protect Native interests. (See sections 16(b) and (c), and 23(m)(2)(A) of S. 35 in *Hearings, supra.*) Indeed, the premise of section 16(c) was that future easements over lands granted to Natives should generally be acquired by condemnation rather than by advance reservation.

Nor did the bill, H.R. 10367, that the House brought to conference with the Senate contain any analogous provisions. (*See* H.R. 10367, print of August 4, 1971, and H. Rep. 92–523, 92d Cong., 1st Sess., September 28, 1971.)

As I recall, preceding and during markup of S. 35 by this Committee, when the subject of reserving easements prior to making land grants to the Natives, was first broached and discussed among the various interested parties, there were some then who urged that provision should be made for linear easements along the margins of all water courses and bodies to which lands granted to the Natives should be riparian or littoral. Their contention, and the contention of the Natives that no provision should be made for easements on shorelines, were compromised, in effect, by this Committee when it provided for the identification and reservation of public easements *at periodic points* along the courses of major waterways.

In relevant part, the bill reported by this Committee provided:

"SEC. 24.(d)(1) As a part of the Planning Commission's review of land selections by the State, by Native Villages or by corporations pursuant to section 24(a)(9) the Planning Commission shall identify public easements across such lands and at periodic points along the courses of major waterways which are reasonably necessary to guarantee 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.

"(2) In identifying public easements the Planning Commission shall consult with appropriate State and Federal agencies, shall review proposed transportation plans, and shall solicit and receive statements and recommendations from interested organizations and individuals on the need for and proposed existing right recognized by this Act shall continue under existing law and this subsection shall not operate in any way to diminish or limit such right of access.

"(3) Prior to granting any patent under this Act the Secretary shall consult with the Planning Commission *and shall reserve such public easements as the Planning Commission has identified and recommends.* The responsibilities granted to the Planning Commission under this section shall be transferred to the Secretary upon termination of the Planning Commission." (Emphasis supplied)

The limitation of authority to reserve shoreline easements to "periodic points" was not imposed haphazardly.

As noted, the bill that the House brought to conference with the Senate contained no analogous provisions. In conference, section 24(d) of the Senate bill was slightly amended and incorporated as section 17(b) in the bill that became the Act as follows:

"SEC. 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.

"(2) In identifying public easements the Planning Commission shall consult with appropriate State and Federal agencies, shall review proposed transportation plans, and shall receive and review statements and recommendations from interested organizations and individuals on the need for and proposed location of public easements: *Provided,* That any valid existing right recognized by this Act shall continue to have whatever right of access as is now provided for under existing law and this subsection shall not operate in any way to diminish or limit such right of access.

"(3) Prior to granting any patent under this Act to the Village Corporations and Regional Corporations, the Secretary shall consult with the State and the Planning Commission and shall reserve such public easements as he determines are necessary."

Rationalizing his contemptuous disregard of the plain purpose of Congress to limit the reservation of shoreline easements to "periodic points along the courses of major waterways," the Secretary points to the changes from the Senate version made by the conference committee in paragraph (3) of the subsection. But as those who participated in and monitored the deliberations of the conference committee will recall, the changes made in paragraph (3) were deemed to be non-substantive; were conceived of as technical and housekeeping amendments. Specifically, to the best of my knowledge, no one ever suggested that the changes were designed to give the Secretary the power to reserve any easements other than those which were contemplated by section 24(d) of the Senate bill and section 17(b)(1) of the Act.

Indeed, the conference committee essentially so stated:

"Subsection 17(b) of the conference report *is substantially the same as section 24(d) of the Senate amendment.* This subsection provides for the advance reservation of easements and camping and recreation sites necessary for public access across lands granted to Village and Regional Corporations." (Emphasis supplied) H. Rep. 92–746, 92d Cong., 1st Sess., 44 (December 13, 1971).

The subject of the advance reservation of easements (for other than presently existing or planned uses) was gone into again in considerable depth during the conferences among the Department of the Interior, the Natives, and other interested parties that preceded the issuance by the Secretary on May 23, 1973 of the original land selection regulations. 38 Fed. Reg. 14218–27 (May 30, 1973) 43 C.F.R. Pt. 2650. During these conferences, which I attended and which took place at various times over a period of about two weeks, I don't recall that any of the representatives of the Department of the Interior who participated, including, at various times, the Secretary, virtually every Assistant Secretary and Deputy Assistant Secretary, had the temerity to suggest that the Department was considering attempting to reserve continuous shoreline easements or conceived itself as having any authority to do so.

In any event, the Native representatives insisted that the regulations should not attempt to commission the reservation of any non-specific, floating or general easements, and were led to believe, both by what was said at the conferences and by the easement provision finally adopted, that the Department agreed. *See* 43 C.F.R. §2650.4–7.

That Congress intended specifically to preclude the reservation of linear shoreline easements, and to authorize the reservation of easements along water margins only at periodic points, is too clear to admit of legitimate dispute.

In asserting power to reserve such linear easements, the Secretary is essaying to evanish a congressionally imposed limitation on his authority by pure legerdemain.

In addition to being riparian or littoral to major water bodies or courses, virtually all of the lands that Sealaska and the villages and communities in Southeast Alaska are due to receive are within the boundaries of the Tongass National Forest.

Section 22(k) of the Settlement Act provides:

"Any patents to lands under this Act which are located within the boundaries of a national forest shall contain such conditions as the Secretary deems necessary to assure that:

"(1) the sale of any timber from such lands shall, for a period of five years, be subject to the same restrictions relating to the export of timber from the United States as are applicable to national forest lands in Alaska under rules and regulations of the Secretary of Agriculture; and

"(2) such lands are managed under the principle of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands for a period of twelve years."

During the conferences preceding the issuance of the basic land selection regulations, it was agreed between representatives of the Department and the Natives that this provision should be implemented by placing the following reservations in every conveyance of lands within the boundaries of a national forest:

"(a) Until December 18, 1976, the sale of any timber from the land is subject to the same restrictions relating to the export of timber from the United States as are applicable to national forest lands in Alaska under rules and regulations of the Secretary of Agriculture; and,

"(b) Until December 18, 1983, the land shall be managed under the principles of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands." 43 C.F.R. §2650.4–5.

But, when one of our villages applied for lands under the Act, the agreement between the Secretary and the Natives memorialized by this regulation as to how section 22(k) of the Act should be implemented was completely repudiated without a whisper of notice or warning.

The pre-conveyance decision issued by the Bureau of Land Management on the village's application transmogrified the simple reservations, which the regulation provided should be expressed in the patent, into "convenants running with the land," and decreed that the form of the second, rather than being as prescribed by the regulation, should be as follows:

"That until December 18, 1983, management of resources will be consistent with the principle of sustained yield as defined in the Multiple Use-Sustained Yield Act of June 12, 1960, 16 U.S.C. 528–531 (1970), and under management practices for the protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands. *Harvest or development activities will be preceded by preparation and public availability of an environmental analysis which adequately identifies and evaluates all resources values on or adjacent to the lands involved and prescribes coordinating measures necessary to protect and enhance these values. Harvest and development activities will conform to these prescriptions.*" (Emphasis supplied) *Cape Fox Corporation, et al.*, No. AA–6986–A, BLM Decision on Native Village Selection (March 31, 1976).

I urge the Committee to reflect upon the implications of the burden the Secretary is attempting to put upon the Natives corporation by this covenant. Note that the requirement of an environmental impact statement to be publically

available relates to development of the lands after they have become private property within the meaning of the Fifth Amendment.

Where, in law or logic, does the Secretary derive authority to burden an absolute right to receive a grant of lands with the condition that the grantee, after the lands have become private property, will not undertake to develop them without first preparing an environmental impact statement for public inspection?

I respectfully submit that he wouldn't dare attempt to impose any such condition on the State of Alaska or anyone else possessing perfected rights to grants under the public land laws, and, if he did, that the time permitted him for shrift would be too short to measure.

The failure of the executive branch to distinguish between Indian trust lands and public lands has been a fertile source of damage to the Indians throughout this Nation's history. To continue this confusion of private and public property in implementing the Settlement Act is especially outrageous because, with respect to the lands the Alaska Natives are to receive under the Settlement Act, Congress made clear that they were to be private property in the fullest sense and that the United States was not to hold title to such lands as trustee for the Natives. Yet, the Secretary states that the policy behind his easement guidelines is "to protect the public interest in land conveyed to Natives and Native corporations pursuant to the Settlement Act." 41 Fed. Reg. 6295 (Feb. 12, 1976).

Perhaps no principle of public land law has been longer or more firmly settled than that, in making grants of land pursuant to acts of Congress, the executive branch is without power to impose any conditions or insert any reservations not specifically authorized by Congress. In a number of cases the Supreme Court has held that conditions and reservations sought to be imposed by the Executive without express authority from Congress are void.

The Natives have commenced litigation to enjoin the Secretary from undertaking to impose conditions or reservations in their grants under the Settlement Act not authorized by law. We have every expectation of prevailing on this issue in the courts, as we have in every case brought to date by Natives challenging secretarial actions which were beyond his authority under the Act:

Section 7(a) of the Settlement Act provides for the resolution of boundary disputes between regions by arbitration. The Secretary undertook to place an arbitrary time limit on such aritrations. The courts held he was without authority to do so. *Central Coun. of Tlingit & H. Ind.* v. *Chugach Native Ass'n*, 502 F.2d 1323 (9 Cir. 1974), *cert. den.* 95 Sup. Ct. 1680.

The Secretary took the position that he could deny applications for land made by individual natives under section 14(h) of the Act without according hearings. The courts held that this was a denial of due process. *Pence* v. *Kleppe*, 529 F.2d 135 (9 Cir. 1976).

The Secretary asserted in connection with determining that certain Native villages were ineligible for land grants under the Act that he need not accord them certain rights guaranteed by the Administrative Procedure Act. The courts disagreed, discountenancing, among other things, the Secretary's attempt to impose conditions for eligibility not found in the Act. *Koniag, Inc.* v. *Kleppe*, 405 F. Supp. 1360 (D.D.C. 1975).

And, of course, relative to the 13th region, the Secretary's conduct in preparing the Alaska Native roll was found wanting in a number of particulars. *Alaska Native Ass'n of Oregon* v. *Morton*, —— F. Supp. ——, (D.D.C. 1974).

These cases demonstrate that the Secretary's implementation of the Settlement Act has been characterized by arbitrary actions beyond authority granted him by Congress.

At the hearings held on the omnibus amendments bill before this Committee in September of last year, the Acting Chairman, Senator Metcalf, was at pains to remind the Secretary's representative of the trustee nature of the responsibilities owed by the Interior Department to the Natives in implementing the Act.

The easement guidelines promulgated shortly thereafter evince to us that the Secretary did not get the message, and that the only way the Natives will derive the benefits which Congress intended to provide by the Settlement Act is by further litigation and legislation. The executive branch has completely frustrated the congressional directive that "the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of the Natives, without litigation, and with maximum participation by Natives in decisions affecting their rights and property."

Although I don't want to put too fine a point on it at this time, recent discussions Native representatives have had with the Internal Revenue Service indicate that this agency also is tending toward tax determinations that are slaps to the face of the Settlement Act.

As you know, under section 7(i) of the Act, each regional corporation is required to share 70% of all revenues from the timber resources and subsurface estates conveyed to it with the other 11 regional corporations. Section 7(j), in turn, requires each regional corporation to distribute one-half of the revenues it receives pursuant to section 7(i) to its stockholders and to the village corporations within its region. While the Revenue Service advises that it is tentatively of the view that 7(i) revenues which a regional corporation must distribute to the other regional corporations should not be treated as income to the former, it is also tending to the conclusion that revenues which the regional corporation is mandated to distribute under section 7(j) should be treated as income to it. As a regional corporation is mandated to distribute to its shareholders and village corporations one-half of all section 7(i) revenues received by it, the net result of such a holding would be that the regional corporation could retain only 2% of revenues received under section 7(i). The corporate tax rate is currently 48%. If a regional corporation receives $100 under section 7(i); is fully taxed thereon (*i.e.*, to the tune of $48); and then has to distribute $50 under section 7(j) to its shareholders and village corporations, it will wind up with $2. That such a grotesque result was not intended by Congress seems plain enough, but so far the tax gatherers seem disinclined to shape their exactions to the Settlement Act. Instead they seem inclined to approach their task by attempting to shoe horn the provisions of the Settlement Act into the Revenue Code, without much regard to the purpose and intent of the former.

Regardless that the Service is tending to hold that the revenues received by a regional corporation that it must share with the other regional corporations under section 7(i) are not income to the former, it is also tending toward the conclusion that the latter, the distributee corporations, have no such economic interest as would entitle them to any allowance for depletion. According to the tentative thinking of the Service, the entire depletion allowance would be taken by the title holding corporation, without regard to the fact that the other regional corporations clearly have beneficial interests under section 7(i) in the resources and estates conveyed to the former. It is indeed difficult to fathom how anyone reading section 7(i) could reach the conclusion that the beneficiary corporations have no "economic interest" in such resources and estates.

Under section 14(h)(3) of the Act, the corporations organized by the Natives of Sitka and Juneau are each entitled to receive 23,040 acres of land. After examining all lands within a wide radius of the communities, the Natives of Sitka and Juneau elected to select their entitlements on Admiralty Island in the vicinity of Angoon. The Natives of Angoon and the Sierra Club protested the selections. Regardless that Congress has several times refused invitations from the Sierra Club to lock up the whole of Admiralty Island in some kind of wilderness status, the Secretary of Interior seemingly has sided with the Sierra Club in refusing to consider granting to the Natives of Sitka and Juneau the lands they most want. I am convinced, had the Secretary not simply caved in to the Sierra Club, but had used his good offices to mediate the matter, that it could have been resolved more fairly and satisfactorily to all. As it is, the Natives of Sitka and Juneau feel they have been left with no recourse other than to bring suit against the Secretary on the premise that his rejection of their land choices was arbitrary and failed to accord them due process.

Probably unconsciously, because I do not believe that it is staffed by other than honorable men, the executive branch and the departments and agencies thereof have built an anti-native bias into the implementation of the Settlement Act. I submit the record supports the proposition that the executive branch has generally approached the task of implementing the Act from the wrong direction. Rather than looking first to the Act to ascertain what Congress desired to accomplish by its adoption, the officers of the executive look first to the other statutes and interests they are charged with administering. As a consequence, essential purposes of the Settlement Act and the results envisioned by Congress are distorted by filtration through the membranes of other laws

and other interests not always compatible with the Act and with the interests of the Alaska Natives. A good example of the institutionalization of an anti-Native bias is the so-called Alaska Task Force set up within the Department of the Interior. Although created to advise the Secretary with respect to the implementation of the Settlement Act, his task force is composed of representatives of virtually all of the agencies within the Department, all of whom have an equal voice, and all but one or two of whom represent interests and constituencies both within and without the bureaucracy whose objectives are in large measure antithetical to those of the Natives.

I submit, so long as the Settlement Act is implemented in this fashion, that it is not going to be applied in line with its essential purposes and that the Natives are going to have to continue to repair to Congress and the courts to secure the benefits to which they are entitled thereunder.

Senator GRAVEL. Our next witness is Donald Nielson, accompanied by Eric Treisman and William Johnson.

STATEMENT OF DONALD NIELSON, BRISTOL BAY NATIVE CORP., ACCOMPANIED BY ERIC TREISMAN, GENERAL COUNSEL, AND WILLIAM JOHNSON

Mr. NIELSON. I have with me our general counsel. On behalf of our corporation, he will give our testimony.

Mr. TREISMAN. Mr. Chairman and members of the committee, my name is Eric Treisman. I am general counsel to the Bristol Bay Native Corp. Our corporation is headquartered in the village of Dillingham, on the Bering seacoast. With modern jet transportation, Dillingham in only 2 days' travel from Washington, D.C. But we find it seems to be much farther when we try to get action from the Washington bureaucracies that are administering the Alaska Native Claims Settlement Act.

We think the act is essentially a decent compromise—a fair settlement—and we think the beginning of this implementation have gone well. BBNC is a going concern. We have a number of mineral exploration programs underway; we have an agreement for a joint venture for petrochemical development with the Phillips Petroleum Co. Newmount Minerals is doing some work for us in the north part of our region. We have an agreement with Kennecott Copper with some lands we have selected on the Alaska Peninsula.

Each of these has strict environmental protection clauses because nobody is more fond of Bristol Bay than we are; we live there. We recently brought the Nation's fourth largest salmon packing company, Peter Pan Seafoods, and we have canning and packing facilities, many of them employing our shareholders and contributing to the prosperity of our region and the State of Alaska, and our facilities from Oregon to the Aleutian Islands. Bristol Bay is the largest employer. This is what has gone right with the Native Claims Settlement Act.

What is going wrong is that the lands Congress promised the Alaskan Natives in 1971 are not being delivered. Of nearly 3 million acres in Bristol Bay, selected by our corporation prior to December 17, 1974, we have to date received fewer than 80,000 acres total.

As recently as this spring, we had received exactly 157.4 acres. At that, we are doing better than the other regional corporations,

because of 40 million acres selected statewide, less than 200,000 acres have been conveyed.

For us, the impact of delay has been disastrous. Last fall, Phillips Petroleum informed us they would have to delay some exploratory work planned for this year because we had no title to the land or the property where the work was to take place. We were told if we did not get the title by January, it would be impossible to make logistical arrangements to get equipment to the site in the spring.

We spent a lot of time at the BLM offices in Anchorage and Washington, D.C., for the next several months learning the drill. We made three trips to Washington, D.C., to wheedle and cajole Mr. Berklund, the Director of the Bureau of Land Management. We did not get the title until April. The Bureau of Land Management had typing problems; they could not get typists to work on the actual, physical conveyances. They changed the rules in January; that took up another 2 months.

So, Phillips is doing what it can to make up for the lost time, but it seems unlikely exploration can proceed this summer because of our short working season. We may very well have lost the year. Our petroleum geologist estimates a year's delay will have a direct cost to Bristol Bay Native Corp. in excess of $1 million. The cost of the year's delay in eventual production which is not presently calculable will, of course, be much greater.

The Alaska State Director of the BLM estimates its shop can convey most of the Native lands during the next 3 years. That is the most optimistic estimate anyone is making. Other Interior Department officials have given us estimates ranging from 8 to 25 years. Even 3 more years is 5 more years than the Congress mandated. It is 5 years more than the Natives can afford.

The Phillips situation, again, will run to the same debacle with Newmount and Kennecott. More broadly, we will have to generate cashflow as quickly as we can if we are to survive the tax burdens and the takeover vulnerabilities our corporation will face in 1991. The delay to date has already moved 1991 back to 1989.

The cause of delay is a set of incredibly cumbersome methods employed by the Interior Department to identify and preserve non-Native interests in the land. The Rube Goldberg contraption they used to put in the subsection 17(b) easements in the title documents is a good example. Without going through the steps, they are outlined in our testimony.

If everything was done within deadlines, if documents go into process at one agency the day they come out of process from another agency, and if there are no aggrieved parties and the Natives waive their rights, the easement reservation process alone takes more than half a year.

The Natives are paying a tremendous price for the protection of non-Indian interests. We don't think this is what the Congress intended when it said Native selections would be conveyed immediately, and we don't believe it is necessary if there are third-party interests to be protected. The protection can be offered without holding Native lands hostage without threatening the whole land claims scheme.

The Department can issue the Natives, on request, title documents reserving easements generally, reserving third-party rights generally, and providing for precise definition at a later time. An analogous procedure is already followed for valid existing rights.

We first proposed this solution to the Department of the Interior last December. The former chairman of the Alaska Task Force, the Undersecretary, and a number of Assistant Secretaries indicated their optimism, the proposal will ultimately be acceptable. We have lobbied intensively in the last few months. We sent a detailed letter to Curt Berklund, outlining our proposal. That letter is attached. We have not received a written response.

Orally, we are told our proposal has attractive aspects but that it presents substantial legal questions. We are not told what the legal questions are; perhaps this committee could assist us in finding out what the legal questions are. Our optimism is slowly waning.

We want to supplement this portion of our testimony within the next week or two, either to supply the Department's affirmative response to our letter, or to provide this committee with our observations on why the BLM insists on its impossible procedures. If the pace of land conveyance does not improve drastically, it is almost certain that a future Congress will be asked for additional legislation in this area.

There have been problems of administration. I would like to touch on one major problem, the act itself. Tim Wallis has addressed it, that is the problem of 7(i), the Section providing for division and distribution of mineral revenues received by a regional corporation. We think the section, while admirable—the concept, is a tremendous financial burden in its operation. The legal and accounting fees arising from the discord over its interpretation consume an astonishing portion of the cash flow of all the regional corporations. Last year we went through the annual reports of the corporations and found the accounting expenses were accounting for one-quarter of the cashflow of the corporations.

It is not necessary to go into the details of the points in dispute. Once those points are settled, there will be a new set of disputes. It becomes a job for the lawyers, the accountants, the regional corporations to seek to maximize the corporations' ability to find new ways under new rules.

The root problem is the receiving corporations will never trust the distributing corporations to decided how much to distribute. The distributing corporations will never trust the receiving corporations to decide how much to distribute. The real problems is the lack of any process short of Federal litigation for resolving differences in interpretation and will remain regardless of the outcome of litigation underway and any future litigation.

We previously suggested the creation of an independent commission funded by the regional corporations on a per capita basis to make the first instance determinations of what is distributable. It seems to us that an independent first instance determination is what is needed and this will obviate the need for litigation. Litigation is simply a very expensive independent agency for making this determination. We expect to renew our proposal before the committee in the next session of Congress.

We are also interested in a proposal concerning the Cook Inlet which is a more substantial departure, but it might be cleaner. The end result might be better.

In addition to the financial burdens that are unavoidable under 7(i), we have suffered the effects of inflation which was not foreseen by Congress in 1971. The Buckley amendment has been addressed. Aside from that, we are hoping to take advantage of the business opportunities provided by Alaska's burgeoning economy; invest our money now and protect the values of our shareholders against inflation. To that end, we plan to borrow against the value of our future share in the payout.

We've had some discussions with lending institutions. They are willing to make us unsecured loans at a rate of interest 2 percent over the prime if the loan can be secured through governmental recognition of our assignment, they will reduce the lending rate to prime.

The government has recognized assignments by defense contractors in analogous situations. The procedure is for the administering department, in this case Interior, to contact the Treasury Department and for the two Departments then to jointly submit a plan to the Comptroller General.

Since this committee is holding oversight hearings, some Interior Department officials have suggested they will wait until the Congress affirmatively directs them to proceed in this matter through legislation. We are not requesting that legislation because we do not believe it is necessary. We think, under existing law, the matter can be dealt with administratively. It would cost the Government nothing, but it would result in—but it would have Bristol Bay Native Corp. money on the order of $350,000 per year.

We believe it would be sufficient if members of this committee would somehow express to the Interior Department that recognition of the assignment under the circumstances is consistent with the purposes of the ANSCA or address the questions to the Comptroller General and get his opinion.

I want to thank you for your continuing attention to the progress under the Alaska Native Claims Settlement Act, and for this opportunity to present our views.

Senator METCALF [presiding]. Thank you for your presentation on behalf of the Bristol Bay Corp. I want to say this presentation has aroused a great deal of concern. This Senator has been interested in Alaska Native Claims, except I have not been able to keep track of what is going on. I was talking to some of our staff. Senator Gravel, maybe we could send somebody up there to accompany you or Senator Stevens during the next recess to give us a report on this.

I would hope the administration would not wait. We will not go forward with legislation if legislation is not needed. Anyway, thank you for giving us some insight into this problem that Congress had hoped to solve by some if the most innovative legislation we have pased in years and we hope the delay will not destroy some of the values.

With the exception of section 7(i), we think Congress did a pretty good job.

Senator GRAVEL. I would suggest the committee and its staff might also hold some hearings in the month of August.

Senator METCALF. We will try to work something out on that, at least, staff should probably go up there.

Senator GRAVEL. The Agriculture Committee will be holding hearings up there.

Senator METCALF. Perhaps we could have our staff up there as observers.

[The prepared statement of Mr. Treisman and accompanying letter follows:]

STATEMENT OF ERIC TREISMAN, GENERAL COUNSEL, BRISTOL BAY NATIVE CORP.

Mr. Chairman and members of the Committee, my name is Eric Treisman. I am general counsel to the Bristol Bay Native Corporation. Our corporation is headquartered in the village of Dillingham, on the Bering seacoast. With modern jet transportation, Dillingham is only two days' travel from Washington, D.C. But sometimes it seems much farther. It has seemed terribly far this year as we have worked to resolve the problems placed on us by the Interior Department's implementation, or rather lack of implementation, of the Alaska Native Claims Settlement.

Our testimony, unfortunately, must be concerned with the problems. But before we tell you what has gone wrong, we want to tell you what has gone right.

BBNC's board of directors has put together a going economic concern with stable, professional management. We have a number of major mineral and energy resource exploration programs underway. We have signed an agreement for petrochemical development in joint venture with Phillips Petroleum. Newmount Minerals is beginning a comprehensive metallic mineral exploration in the northern part of our region. We are in our second year of cooperative effort with the Bear Creek Mining Company, the exploration arm of Kennecott Copper, and we are close to completing a joint venture agreement with Kennecott covering mineralized areas we have selected along the Alaska Peninsula.

Each of these agreements, incidentally, contains a set of strict environmental protective clauses. Nobody is more fond of Bristol Bay than we are who live there. Nobody is more interested in preserving the ecological health and beauty of the area.

Six months ago we bought the nation's fourth largest salmon packer, Peter Pan Seafoods, Inc. We have canning and packing facilities from Oregon to the Aleutian Islands. And of course BBNC itself is the largest employer in Dillingham, with more than twenty people on the payroll. All of our ventures are providing employment for our shareholders and contributing to the prosperity of our region and the State of Alaska.

That is what has gone right with the Native Claims Settlement.

What has gone wrong is that the lands Congress promised in 1971 are not being delivered to the Alaska Natives. Of the nearly three millions acres selected by BBNC through December 17, 1974, we have received title to fewer than 80,000 acres. As recently as this spring we had received title to exactly 157.4 acres. And at that, we are doing better than the other corporations. Of forty million acres selected statewide, only 200,000 acres have been conveyed.

The impact of the delay has been disastrous. Last fall, Phillips informed us it would have to delay planned exploratory work because we had no title to the property where the work was to take place. We were told that unless we obtained title by January, it would be impossible to make logistical arrangements to get equipment to the site in the spring. So we spent a lot of time at the BLM office during the fall and winter. We learned the routine. We made three trips to Washington to bring our situation to the attention of the Alaska Task Force in the Interior Department and BLM Director Curt Berklund. We did not get title until April. The BLM had typing problems. It lacked typists. And there were rule changes. So Phillips is doing what it can to make up for lost time, but it seems unlikely that exploration can proceed this summer. Because of our short working season, we may well have lost the year. Our petroleum geologist estimates that a year's delay will have a direct cost to BBNC in excess of one million dollars. The cost of the year's delay in eventual production, while not presently calculable, will be much greater.

The Alaska State Director of the BLM is sanguine about these problems. He informally estimates that the bureaucratic machinery presently in operation could convey most of the Native lands during the next three years. That is the

most optimistic estimate anyone is making. Other Interior Department officials have given us estimates ranging from eight to twenty-five years.

Even three more years is five years more than Congress mandated and five years more than Natives can afford. We will face the Phillips situation again. We will suffer similar debacles with Kennecott and Newmount. More broadly, we will have to generate cashflow as quickly as we can if we are to meet the tax burdens and corporate takeover vulnerability that will come in 1991. Already the delay is conveyancing has effectively put 1991 back to 1989.

The proximate cause of delay is the set of incredibly cumbersome methods employed by Interior to identify and preserve non-Native interests in Native lands. The Rube Goldberg contraption they use to put Subsection 17(b) easements into title documents is a good example:

Natives ask the Interior Department for a special, expedited conveyance on a defined parcel. (To date Natives have had lands conveyed only on requests for expedited treatment.) The request granted, the Anchorage BLM office begins to circularize several dozen agencies and private organizations whose memberships may have some interest in the parcel, asking them to suggest appropriate easements. Sixty days after circularization, the responses are tabulated and the suggested easements recommended or disrecommended by BLM adjudicators. The recommendations and disrecommendations, with supporting data, are submitted to the Federal/State Land Use Planning Commission for ninety days review. After ninety days the LUPC send its own recommendations and disrecommendations back to the BLM, where thirty more days are spent in final review by the Alaska State Director and publication of the BLM's intent to convey the parcel subject to the recommended easements. If there are then no protests by parties claiming to be aggrieved by the reservation or non-reservation of an easement, the Natives are issued a title document called an "Interim Conveyance."

If everything is done within the deadlines, if the documents go into process at one agency the day they come out of process at the prior agency, and if there are no aggrieved parties (or if aggrieved Natives waive their appeal rights) the easement reservation process takes half a year.

As a result of these methods, the Natives are paying a tremendous price for the protection of non-Native interests. We do not believe that is what the Congress intended when it said Native selections would be conveyed to the Natives "immediately." And we do not believe it is a necessary situation. If there are third party interests to be protected, the protection could be offered without holding Native lands hostage and without threatening the entire ANCSA scheme. The Interior Department could issue to Natives, on request, title documents reserving easements generally and providing for precise definition at a later time. An analogous procedure is followed already, since all conveyances issued to Natives contain the proviso that the grant is subject to "valid exiting rights therein, including but not limited to those created by any lease . . . contract, permit, right of way, or easement. . . ."

We first proposed such a solution to the Department of Interior last December. The former chairman of the Alaska Task Force, the current Undersecretary, and a number of the Assistant Secretaries indicated their optimism that our proposal would be accepted. We have lobbied the Department very intensively during the past two months. We sent the letter (copy attached) to the Honorable Curt Berklund, Director of the Bureau of Land Management, on June 1:

We have not received a written response. We are told orally that our letter has attractive aspects but that is presents substantial legal questions. We are not told what the legal questions are. Our optimism is slowly waning. We will want to supplement this portion of our testimony during the next week or two, either to supply the Department's affirmative response to our letter or to provide this Committee with our observations on why the BLM insists on its impossible procedures.

If the pace of land conveyance does not improve drastically, it is almost certain that a future Congress will be asked for further legislation in this area. It might be appropriate for the Secretary's authority to reserve new public easements to lapse on some date in the reasonably near future—say June 30, 1979, when the Land Use Planning Commission expires. It might also be appropriate for the twenty-year property tax exemption for undeveloped Native lands to be extended so that it will operate for twenty years from the date of receipt of the land.

Next in seriousness only to the problem of not getting the land are a number of problems we face in getting the effective use of our money. The most troubling of these are the problems associated with Section 7(i) of the ANCSA.

Section 7(i), while admirable in concept, is a tremendous financial burden in its operation. Legal and accounting fees arising from discord over the section's interpretation and application are consuming an astonishing portion of the cash flow of all twelve regional corporations. It is not necessary to go into the details of the points in dispute among the Corporations; in any case there will be a new set of disputes once the current matters are settled. The root problem is that receiving corporations will never trust distributing corporations to unilaterally decide how much they will pass along. Distributing corporations will never trust receiving corporations to decide how much must be handed out. The root problem is the lack of any process short of 12-sided federal litigation for resolving differences in interpretation, and the root will remain regardless of the outcome of litigation currently underway.

BBNC has previously proposed the creation of an independent commission, funded by the regional corporations on a per capita basis to make first instance determinations of the distributions required under each 7(i)-affected contract entered by any of the corporations. It seems to us that an independent first-instance determination would obviate most of the need for litigation. We expect to renew our proposal before this Committee at some time in the near future. We are also interested in the proposal advanced by Cook Inlet. That proposal would create a more substantial departure from the present statutory scheme, but it may be that the end result would be preferable.

In addition to the financial burdens of unavoidable 7(i) litigation, the Natives have suffered the effects of an inflation unforseen in 1971. BBNC will receive a total of $32 million from the Alaska Native Fund. Assuming the inflation rate does not exceed 6% through 1990 and that the ANF payout is complete in that year, the present value of that money is only $16 million.

To overcome inflation and protect value for our shareholders, BBNC wants to take advantage of the business opportunities provided by Alaska's presently burgeoning economy, and to that end we plan to borrow current funds against our share in the payout.

We have had some discussions with lending institutions. They are willing to make us unsecured loans at a rate of interest 2% over the prime, but the rate can be reduced to prime if the loan is secured through governmental recognition of our assignment of our right in the ANF payout.

The government has recognized assignments by defense contractors in analogous situations. The procedure is for the administering Department to contact the Treasury Department, and for the two Departments then to jointly submit a plan to the Comptroller General for approval.

Since this Committee is holding oversight hearings, some Interior Department officials have suggested they will wait in this matter until the Congress affirmatively directs them—through legislation—to proceed. We do not request such legislation, since we do not believe it is necessary. Under existing law the matter can be dealt with administratively. The recognition would cost the government nothing, but it would result in savings on the order of $350,000 per year to BBNC. We believe it might be sufficient if members of this Committee could somehow express to the Interior Department that recognition of the assignment under the circumstances is consistent with the purposes of the ANCSA.

We thank you for your continuing attention to our progress under the Alaska Native Claims Settlement Act, and for this opportunity to bring our problems to your attention.

BRISTOL BAY NATIVE CORP.,
Dillingham, Alaska, June 1, 1976.

HON. CURT BERKLUND,
Director, Bureau of Land Management, U.S. Department of the Interior, Washington, D.C.

DEAR MR. BERKLUND: This letter proposes that the United States, acting through the Bureau of Land Management ("BLM") of the Department of the Interior, enter into an agreement with the Bristol Bay Native Corporation ("BBNC"), for the purpose of expediting the conveyancing of interests in lands selected by BBNC, pursuant to the Alaska Native Claims Settlement Act ("ANCSA"), and its associated village corporations acting through BBNC,

while preserving the interests of other parties in easements to be reserved pursuant to section 17(b) of the ANCSA. We believe that these objectives can be accomplished within an agreement embodying the following provisions:

1. Interim conveyances shall be made for large parcels as designated by BBNC.

2. Interim conveyances shall be made in accordance with the order of priority designated by BBNC.

3. BBNC, or associated village corporations acting through BBNC, may ask for special processing of a specific conveyance, which conveyance may at the option of the BLM recite that the interest conveyed therein is subject to reserved public easements to be located subsequent to conveyance, and which conveyance shall exclude all land withdrawn for use in connection with the administration of any federal installation.

4. BBNC and such village corporations shall be precluded from initiating judicial proceedings with respect to the subsequent location of a public easement reserved but not located in a conveyance issued in response to and within sixty days after such a request for special processing *provided* that the easement is located within two years of the date on which the conveyance is issued and in no event later than January 1, 1980. The BLM shall make a good faith effort to issue such conveyance within the sixty day period.

5. To the extent that the acceptance of such a conveyance by BBNC or an associated village corporation constitutes a waiver or relinquishment of any right or interest, such acceptance is intended to be a contribution to the Secretary of the Interior pursuant to 43 U.S.C. §§1361–1364, *provided* that in no event does BBNC or any associated village corporation waive the right to question any reservation of an easement on the ground of lack of authority to reserve said easement and on the ground of lack of authority to locate at the place or places specified, and such rights, including rights to bring judicial proceedings, are hereby expressly reserved.

6. BBNC will contribute to BLM the services of typists, cartographic specialists, and office machine operators, for the purpose of facilitating the issuance of conveyances to BBNC and its associated village corporations. The contributions will be at such times and in such amounts as the parties agree on from time to time. Such contributions will be made in accordance with the provisions of 43 U.S.C. §§1361–1364.

7. The BLM will give BBNC and its associated village corporations advance notice of an intention to locate an easement previously reserved, and a reasonable opportunity to present views and facts with regard thereto.

8. In accordance with section 6 of Secretarial Order No. 2982 of February 5, 1976, the pendency of an easement appeal (the term "appeal" to include judicial review) shall not be a ground to delay the issuance of the conveyance which the appeal concerns.

9. During the pendency of an easement appeal:

a. Each conveyance (the term "conveyance" to include interim conveyance and superseding interim conveyance) shall recite that the easement reservation under appeal will become effective only if, when and to the extent that it is sustained by a final determination.

b. The United States shall not use or authorize or suffer anyone else to use the land to which the easement would pertain in any manner which would result in a substantial change in the character of the land.

c. The United States will include in all grants, permits, licenses, leases, assignments, and other authorizations for the use of the land to which the easement would pertain an express restriction against any use which would result in a substantial change in the character of the land.

d. The United States will post appropriate notices to inform the public as to the restrictions on the use of the land.

e. Neither BBNC nor associated village corporations will use or authorize anyone else to use the land to which the easement would pertain in a manner inconsistent with the easement; and BBNC and associated village corporations will incorporate restrictions to that effect in each grant, permit, lease, assignment or other authorization which they may issue for the use of the land.

f. If the final determination of the easement appeal upholds the authority of the Secretary to reserve the easement which is the subject of the appeal, but determines that the easement should not be located at the place at which it was

to be located, then BBNC and the associated village corporation or corporations involved shall be precluded from initiating judicial proceedings with respect to the subsequent location of said easement at some other place, *provided* that such subsequent location is made within one year of the date of the date of the said final determination.

g. To the extent that the acceptance of a conveyance containing such a subsequently located easement by BBNC or an associated village corporation constitutes a waiver or relinquishment of any right or interest, such acceptance is intended to be a contribution to the Secretary of the Interior pursuant to 43 U.S.C. §§1361–1364.

h. BBNC, and the associated village corporations acting through BBNC, waive any right they may have to question the consistency of Secretarial Order No. 2982 of February 5, 1976 and Secretarial Order No. 2987 of March 3, 1976 with the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. § 553, but neither BBNC nor the associated village corporations acting through BBNC waive, and they expressly reserve, all rights they may have to question the consistency of said Orders with the ANCSA.

10. The parties will subsequently execute a document or documents containing such additional provisions and formalties as are required to effectuate their intent expressed above.

We are eager to conclude an agreement as outlined above at the earliest possible time, and by no later than June 9, 1976, inasmuch as we anticipate that on June 10, 1976, at the ANCSA Oversight Hearings of the Senate Committee on Interior and Insular Affairs, we will report on our progress in receiving lands directed by ANCSA to be conveyed to BBNC and its associated village corporations.

Representatives of BBNC will be glad to meet with you and your staff in Washington, D.C. for the purpose of bringing this matter to completion. Our counsel in Washington, D.C., George Miron, 600 New Hampshire Avenue, N.W., Suite 1000, Washington. D.C. 20037, telephone (202) 466-2222, is also available to discuss this matter with you.

Sincerely yours,

ERIC TREISMAN, *General Counsel.*

Senator METCALF. The next witness is Roy Hundorf from Cook Inlet Region accompanied by Mrs. Agnes Brown.

STATEMENT OF ROY HUNDORF, PRESIDENT, COOK INLET REGIONAL CORPORATION; ACCOMPANIED BY AGNES BROWN, TYONEK NATIVE CORPORATION, DANIEL ALEX, EKLUTNA INCORPORATED, AND MARTIN SLAPIKAS, TYONEK NATIVE CORPORATION

Mr. HUNDORF. Thank you, Mr. Chairman, members of the committee, for this opportunity to come before you today. My name is Roy Hundorf, I am president of the Cook Inlet Regional Corporation. Accompanying me today is Mrs. Agnes Brown, president of the Tyonek Native Corporation; Martin Slapikas, Executive Director of the Tyonek Native Corporation; and Daniel Alex, executive director of the Native village—they will be testifying jointly on concerns that affect their village corporation.

I want to first thank the committee for their understanding and support in the past. Essentially the testimony which I have submitted for the record covers the following areas; the reluctant and unfair way in which the Department of the Interior has chosen to implement the act, and ambiguities in the act itself which are causing considerable difficulty.

One example of the hostile attitude of the Department of the Interior is in the recent decision of the Bureau of Land Management rejecting Village selections in our region. Rejections were made 2 years after the deadline for rejections have passed.

This action has come as a great shock to us, particularly since the Bureau of Land Management originally advised our villagers in making the selections and the Secretary has seen fit to approve similar selection patterns in other regions. We clearly feel it is a double standard.

It seems the Department of the Interior is unable to speak in a clear and decisive manner and as a result, the Native corporations are awash in a sea of litigation. Extensive delay has been encountered. It has been almost 5 years since the passage of the act and less than one-half of 1 percent of the lands have been conveyed.

The easement question is being used as another excuse to uphold conveyance. With respect to the problems created by the Department of the Interior, I have outlined some possible solutions for consideration by the committee.

One, the committee could seek an opinion from the Attorney General or the Secretary concerning the Secretary's trust responsibility during the period of the implementation of the act. The opinion would also address ways in which the Secretary could avoid, or at least mitigate conflicts of interest, within the Department.

Two, the committee could encourage the Assistant Attorney Gen- for attorneys fees and other related expenses, where a Native corporations, and the Department of the Interior for ameliorating sessions to work out and avoid the extraordinary litigation burden being placed on our shoulders. We believe Assistant Attorney General Taft would respond favorably to such a proposal.

Third, the committee could report legislation that would provide for attorneys fees and other related expenses, where a Native corporation in certain circumstances successfully reversed a determination of the Bureau of Land Management.

Ultimately the committee should determine whether the Bureau of Land Management is adequately equipped to carry out the implementation of the Settlement Act. Perhaps the conflicts are too great between the BLM as land manager and the BLM as the agency charged with the disposition of federal land.

Perhaps the Joint Land Use Planning Commission could be given greater authority over the base and pattern of land disposition under the act. Perhaps strong commitment and strong direction at the Secretary's level would be sufficient, but something needs to be done.

The Native corporations do not want to be locked in constant legal battle with their government. As a result of all of this delay, taxation of the land in 1991 would occur long before we had had the opportunity to prepare for it.

Finally, I have mentioned the matter of the ambiguous sections in the act itself which are continuing to present considerable problems. One such section is section 7(i) and I have proposed some possible solutions in my written testimony.

In conclusion——

Senator METCALF. I think every one of you today has brought up the problems involved in section 7(i) and I am delighted that you did in your statement.

Mr. HUNDORF. In the future we hope there will be problems solved without too frequent recourse to the Congress and the courts. Other-

wise we fear the great dream of the Settlement Act will dissolve into an acrimony of wasteful expenditures. That concludes my statement.

Senator METCALF. I sincerely hope the dream will be recognized and the nightmare you talk about can be staved off by congressional action or cooperation of the Department of the Interior.

The purpose of this hearing is achieved by bringing up these problems that have arisen and we will try to solve them. Thank you.

Mr. SLAPIKAS. The attempts of the Tyonek Native Corp. to—we believe it to be the most qualified and the most important of our land selections and we will also believe we should have had immediate patent a long time ago. All requirements for patent have been met.

The Moquawkie Indian Reservation has been surveyed. Tyonek chose this under the act yet Tyonek has not received patent to the former reservation and we asked why not. The most quoted reason has been because of the easement criteria. However, since 1936 the Indian Reorganization Act allowed the exclusive right of access to be determined by the residents of the village of Tyonek. This was approved and supported by the Secretary of the Interior. There has never been public access to the reservation in the past.

Under what guidance now is the former reservation public? We don't believe it is the Alaska Native Claims Settlement Act. Even criteria of the Secretary of the Interior applied to public lands withdrawn under the act. Again, the former reservation was not public and the Secretary protected such acts in the past.

In an attempt to live under the transition period, certain deficiencies have been discovered in the administration policy of the Bureau of Land Management as it applies to former reservations. The biggest one is that we have been unable to find BLM rules and regulations that covers, besides the easement problems, concerning reservations. Other problems surfaced when one gets into the day-to-day operational workings under the act.

Presently, the houses and land on which the houses rest are community owned in the village of Tyonek. This is a requirement of the act as stipulated in 14(c), satisfied by conveying land to the present village government under the Reorganization Act rather than to individual tribal members.

Travel within the village becomes a problem in our case. Does it belong to the village proper or the Village Corporation or the Regional Corporation? Throughout this process, easements as they are applied to the former Moquawkie Indian Reservation, remain the main problem.

We have concentrated our efforts on the former reservation. The thrust is a valid one considering the recent village rejection that was received by our corporation. Contrary to advice received by BLM, the same organization, the BLM rejected 30 to 42,000 acres of our 12(a) village selections of land filed in December 1974, subjecting us to delay and extensive litigation.

This attitude leads one to ask when will our applications for the former Moquawkie Indian Reservation be rejected? The shareholders of the Tyonek are not naive enough to believe the issuance of a patent to the former reservation will provide solutions to all of the problems and difficulties mentioned in our testimony.

We do believe a majority of them will not exist any longer if title to the former Moquawkie Indian Reservation is issued immediately. Thank you very much.

Mr. ALEX. Mr. Chairman, I want to thank you for affording us the opportunity to testify here today. We share a problem common to all Alaska Native corporations, the problem of lack of conveyances by the BLM including support of the regions and village has problems which are unique only—for instance, the problem of the requirement of conveyed land to the State, to hold land in a municipality that cannot be.

Our written testimony covers our problem areas and I want to take this opportunity to thank you.

Senator METCALF. Thank you very much.

Mrs. BROWN. We have spoken for the Tyonek Corp., we would be happy to answer any questions you would have.

Senator METCALF. Thank you for abbreviating your testimony and thank you for your appearance here.

[The prepared statements of Mrs. Brown and Mr. Slapikas on behalf of the Tyonek Native Corporation and Mr. Alex, on behalf of Eklutna, Inc., follow:]

TESTIMONY

ON BEHALF OF THE

TYONEK NATIVE CORPORATION

A VILLAGE IN COOK INLET REGION, INC.

SUBMITTED BY

B. AGNES BROWN, PRESIDENT AND CHAIRMAN

MARTIN G. SLAPIKAS, EXECUTIVE DIRECTOR

PRESENTED AT THE

ALASKA NATIVE CLAIMS SETTLEMENT ACT OVERSIGHT HEARINGS

WASHINGTON, D.C.

June 10 - 14, 1976

Mr Chairman:

We thank you for the opportunity to appear before this committee. Prior to certain developments, we had planned on speaking on just one topic -- the status of the former Moquawkie Indian Reservation as it now exists under the Alaska Native Claims Settlement Act. Before we address ourselves to that subject, we would like to point out developments that have occurred involving the Bureau of Land Management that to the Tyonek Native Corporation indicate flagrant violations of the intent of Congress when they directed implementation of ANCSA.

12(a) LAND REJECTION NOTICE

On May 15, 1976, Tyonek Native Corportation received a document rejecting approximately 35,000 to 42,000 acres of Tyonek Native Corporation's 12(a) village land selections which were filed December 17, 1974. Frankly, Tyonek Native Corporation does not understand the rejection notice. A land claims settlement act announcement from the Bureau of Land Management in Anchorage, Alaska, dated October 22, 1974, headlines "No Way to Change Land Selection Application After December 18." We quote from that ANCSA Alert:

> "If a village selected lands that were not compact or were not contiguous or otherwise did not meet the regulations, BLM would have to reject that part or possibly all of the application. Villages in this situation could lose part or all of the total amount of acreage which they are legally able to claim."

Needless to say, this concerned the villages in Cook Inlet Region, Inc. who were in the process of land selection. Land in the Cook Inlet

Region, available for selection, was not compact and contiguous to each village. The consequences of a mistake could be severe. As a result, contact was made with BLM on December 6th seeking clarification and guidance concerning the manner in which to proceed. BLM reviewed our procedures and documented their advice in a letter dated December 17, 1974. We quote:

> "The individual villages may scatter their selections within an area, so long as the total area selected by all of the villages makes up a compact unit."

Consequently, Tyonek Native Corporation's 12(a) village land selections were made and filed reflecting that advice.

Tyonek Native Corporation believes a gross error has been made by rejecting our applications. On May 19, 1976, a letter was addressed to the Director of the the Bureau of Land Management in Anchorage. Tyonek Native Corporation asked for "assistance in this matter" and requested "suggestions to solve the problem." Because of the deadlines imposed upon our corporation by the Alaska Native Claims Appeals Board procedures, which would be our next step, an answer was requested by Friday, June 4th in order that a course of action could be decided upon. To this date, Tyonek Native Corporation has not received a response.

On May 21, 1976, representatives of each village corporation in Cook Inlet Region, Inc. met with the Alaska State Director of BLM. We were told that the rejection notices were being dictated by Washington and that they were "probably not" aware of the guidance received in 1974. Tyonek Native Corporation asks "Why not?"

If the rejection notice is vacated, Tyonek Native Corporation can look upon it as a mistake that was rectified resulting in another delay in processing our application. However, if it is not vacated what conclusions can we draw? Based on difficulties in receiving title to the former Moquawkie Indian Reservation, Tyonek Native Corporation concludes that BLM is more disposed to manage land than it is to convey it, particularily as required under ANCSA. If other Native corporations turn to BLM for advice as Tyonek did in the land selection process of 1974 only to receive guidance that is reversed two years later by BLM's own staff, to whom do the corporations now turn for assistance?

Indications reveal that BLM believes further legislation or the courts are the answer. If this process is the way Tyonek Native Corporation eventually must go, our village corporation will be obliged to spend substantial amounts of time and money to obtain lands that were to be conveyed "immediately" under Section 14 of the Act. The attitude of BLM, as shown in the 12(a) village land rejection notice, concerns us very much. In 1974 there was no reason to believe that the method of land selection used by Tyonek Native Corporation was not in consonance with BLM's regulations. By stating one view through their correspondence and then asserting a conflicting one in the decisions, BLM is not creating a useful working relationship between the village and our corporation.

With that backdrop, we would now like to address ourselves to Tyonek Native Corporation's efforts to obtain easement-free title to the former Moquawkie Indian Reservation and Tyonek Native Corporation's belief that a definite oversight occurred concerning treatment of the reservation under ANCSA.

BACKGROUND INFORMATION

First, the following is background information that we feel is pertinent to our presentation.

1. The Moquawkie Indian Reservation was:

a. Reserved "...for the benefit of Alaska Natives of that region" by Presidential Executive Order 2141, dated February 27, 1915.

b. Maintained, prior to ANCSA, in accordance with the Corporate Charter of the Native Village of Tyonek (A Federal Corporation Chartered Under the Act of June 18, 1934, as amended by the Composite Indian Reorganization Act for Alaska of May 1, 1936). This allowed exclusive right of access to be determined by the residents of the Village of Tyonek. This was incorporated into the Constitution and By-Laws of the Native Village of Tyonek, Alaska and approved by the Assistant Secretary of the Interior on May 23, 1939.

c. Was surveyed in 1930 (US Survey 1865). The survey was filed with the Territory of Alaska in 1936 and the Department of the Interior in 1939.

d. Was revoked in 1971 in accordance with Section 19 of ANCSA - Revocation of Reservations.

2. In Title 43 of the Code of Federal Regulation (CFR), Sub Part 2650.1 - Provisions for Interim Administration, it states, "(a)(1) Prior to any conveyance under the Act, all public lands withdrawn pursuant to Sections 11, 14, and 16, or covered by Section 19 of the Act, shall be administered under applicable laws and regulations by the Secretary of the Interior...."

INTERIM ADMINISTRATION OF FORMER RESERVATIONS

In a letter to the Secretary of the Interior, Tyonek Native Corporation requested the laws and regulations concerning the provisions of interim administration under which the former Moquawkie Indian Reservation had been placed. We received documents relating to "Public Lands Withdrawn

Pursuant to Section 11, 14, and 16." Tyonek Native Corporation is unable to find the "applicable laws and regulations" pertaining to the interim administration of former reservations "covered by Section 19 of the Act." Tyonek Native Corporation does not believe there are any such regulations pertaining to former reservations. We feel it was the intention of Congress to convey patent to the former reservations as stated in ANCSA, Section 2(b) "....rapidly, with certainty, in conformity with the real and social needs...." of the Tyonek people. In the case of the former reservation, this has not been accomplished.

Let us presume that regulations do exist concerning interim administration of reservations revoked under Section 19 of ANCSA. Why would BLM issue a notice of trespass served on a lessee with which Tyonek Native Corporation has a contractual agreement? Tyonek Native Corporporation, as lessor, is leasing lands on the former Moquawkie Indian Reservation. The BLM issued a trespass on our lessee in June 1974 without our knowledge. We repeat, without Tyonek Native Corporation's knowledge or concurrence. It was not until late in 1975 that we learned of this alleged trespass.

Frankly, Tyonek Native Corporation does not understand why the notice of trespass was served. Tyonek Native Corporation did not request it and we regret that the lessee saw fit to pay it. However, the question remains, why was Tyonek Native Corporation not notified by BLM of a trespass on lands that the village selected under ANCSA? The fact that the alleged trespass occurred on the former Moquawkie Indian Reservation would seem to add further emphasis to that question. Tyonek Native Corporation does not wish to reopen this specific issue.

We do, however, wish to point out the inconsistent policy of interim administration of public land as BLM applies it to the former Moquawkie Indian Reservation.

EASEMENT PROBLEMS ON FORMER RESERVATIONS

Tyonek Native Corporation has fulfilled all the requirements to receive patent to the former Moquawkie Indian Reservation. We have: (1) completed and filed a survey of reservation boundaries; (2) selected village status under ANCSA; and (3) filed a village selection application on May 9, 1974. We have still not received patent to the former reservation upon which the Tyoneks have lived since at least 1915. The major reason has been because of a lack of easement criteria on land withdrawn under ANCSA. We feel that easements on reservations were not given proper attention. We hope to prove this by highlighting Tyonek Native Corporation's efforts to obtain easement-free patent to the former Moquawkie Indian Reservation.

Prior to ANCSA the public was not allowed on the Moquawkie Indian Reservation without the permission of the Native Village of Tyonek. This policy was supported and protected by the Department of the Interior in accordance with the Constitution and By-Laws of the Native Village of Tyonek. What easements are now required on Tyonek controlled land after the passage of ANCSA, when the reservation is to remain in the possession of the same people who lived on it before the passage of ANCSA? What criteria calls for easements across the former reservation? Certainly not ANCSA. Order No 2982 signed by the Secretary of the Interior pertains

to "the reservation of easements for public use." There has never been "public use" of the former Moquawkie Indian Reservation. Is it the intent of ANCSA to reserve easements on the former reservation when such use has only been by residents of the reservation and not the general public? Tyonek Native Corporation does not believe it is.

When Tyonek Native Corporation first received documentation concerning the proposed easements, we found that the Easement Task Force Meeting held September 11, 1974 had requested a 100 foot easement through the middle of the reservation on a privately constructed road to provide access to State lands. We could not understand why BLM choose this easement through the reservation when we are bordered on three sides by State lands. The Division of Lands, State of Alaska, agreed with our view point, and consequently, that particular easement was dropped. But it required over a year of effort to succeed.

COOPERATION?

On December 30, 1975, Tyonek Native Corporation received notification of a rerouted Primary Corridor No 30 that severed approximately 6,400 acres from the 26,918.56 acres of the former Moquawkie Indian Reservation. This came as a complete surprise to us. Previous to that date, Tyonek Native Corporation had relied upon a November 1974 report entitled "Multimodal Transportation & Utility Corridor Systems in Alaska" which recommended a route for Primary Corridor No 30 that avoided the Moquawkie Indian Reservation. There was no notification that this corridor was to be rerouted through the former reservation. Had Tyonek Native Corporation known about it, we could have pointed out that a negotiated

corridor, agreed to by the Federal government, State of Alaska and Cook Inlet Region, Inc., was being proposed in the Omnibus Bill, recently signed into law in January 1976. Further, one would expect notification other than a 30 day deadline because of the impact such a corridor system would have on the residents of the former Moquawkie Indian Reservation. But no -- only 30 days to reply. One does not receive the impression that cooperation and a free exchange of information exists between BLM and those who rely upon it for assistance.

FLOATING ENERGY EASEMENT: VILLAGE SUCCESS IMPAIRED

As you well know, specific corridor easements were changed to floating easements by the Secretary of the Interior's Order No. 2987. This proposal is anathema to the economic success of our village corporation or any village corporation whose lands the corridor may pass through. A village corporation's survival will depend upon income received from the surface estate of their land. The Secretary's Order allows compensation only through the right of eminent domain in the event of removal or relocation of any structure owned or authorized by the owner of the estate. Section 2 of the Secretary's Order pertains not only to the corridor, but "...the right to build any related facilities necessary for the exercise of the right to transport energy, fuel, and natural resources including those related facilities necessary during periods of planning, locating, constructing, operating, maintaining, or terminating transportation systems." Does anything remain for the village corporation?

Where is a village corporation now to expect economic success from the surface estate of their conveyed lands? A financial hardship looms

on the horizon through a potential loss of a beneficial economic opportunity. We realize that these easement orders are being debated elsewhere and we do not wish to belabor the subject. However, Tyonek Native Corporation does find it hard to believe that the solution to the nation's energy crisis rests upon the shoulders of the Native Village Corporations in the State of Alaska as indicated in the Secretary's Order. Frankly, we believe that this Secretarial Order is against the intent of Congress.

We feel that these inconsistencies point out that the reservation is not covered under the interim administration of public lands withdrawn under ANCSA. We strongly believe that it was the intent of Congress to convey patent to the former reservations as stated in ANCSA, Section 2 (b) "...rapidly, with certainity, and in conformity with the real and social needs...." of the Tyonek people.

OTHER PROBLEMS

Additional problems that confirm our belief that the status of the Moquawkie Indian Reservation and other reservations may have been an oversight in the passage of ANCSA, have surfaced. One is 14(c) reconveyances as they might pertain to the former reservation.

Although the reservations were revoked in accordance with ANCSA, we can find no references to revocation of the Village Corporate Charter of the Native Village of Tyonek. Among other things, the purpose of the Federally Chartered Corporation is "to own, hold, manage and dispose of all village property." Presently the houses, and property on which they rest, are community owned. Is the requirement of ANCSA, as stipulated

in 14(c), satisified by conveying the land to the Village Council rather than to individual tribal members if they so desire? Further, could the fish camps also be conveyed to the Village Council to be maintained as they were in the past under the rules of the Corporate Charter and Constitution and By-Laws of the Native Village of Tyonek?

If 14(c) reconveyances are not satisfied by this possibility it would seem that not only was the reservation revoked but the provisions under which the village corporation was operating were revoked. If so, what agencies now holds the responsibility of the village government? Certainly not the Bureau of Land Management.

If it is determined that the village government has not been revoked by ANCSA can we then presume that the Corporate Charter and the Constitution and By-Laws, as approved by the Secretary of the Interior, are still valid? If so, would this influence the impact of the Secretarial Orders concerning easements on the former reservation?

Another problem that exists concerns gravel within the Village itself. Who is entitled to that gravel? The Regional Corporation, the Village Corporation formed under ANCSA or the IRA Corporation as a governing body of the residents of the former Moquawkie Indian Reservation? This is not an abstract problem. Construction of a new addition to the village school requires a solution to this question. Where does the authority of BLM begin or end in a situation such as this? Do they, in fact, have any authority in this situation?

Throughout the Act reference is made to valid existing rights of non-Natives and indications are that these rights are well protected under ANCSA. However, when you apply valid existing rights to the former Moquawkie Indian Reservation, Tyonek Native Corporation feels this protection becomes diluted when referring to the residents of Tyonek. It is, in this regard, that BLM appears to be in a paradoxical situation. They encourage easements across former public lands withdrawn under ANCSA with the general reason that they were public before and the public should have access at least through them if not on them.

Yet, could not that same reasoning be applied to the former Moquawkie Indian Reservation? Exclusive right of access to the former Moquawkie Indian Reservation was allowed by the Department of the Interior through the Corporate Charter and the Constitution and By-Laws of the Native Village of Tyonek. Should not BLM be encouraging this same status and usage as existed in the past? They are certainly attempting to do so with public lands withdrawn under ANCSA. Tyonek Native Corporation believes that all withdrawals under ANCSA are subject to valid existing rights including the former Moquawkie Indian Reservation.

The shareholders and directors of the Tyonek Native Corporation are not naive enough to believe that issuance of the patent to the former Moquawkie Indian Reservation would provide the solution to all of these problems and difficulties that we have brought before you today. Tyonek Native Corporation does believe, however, that a good majority of them would no longer exist if immediate title to the former reservation was issued today.

On behalf of the Tyonek Native Corporation, we thank you for your time and urge your consideration of these problems as they pertain to the former Moquawkie Indian Reservation.

STATEMENT ON BEHALF OF EKLUTNA, INCORPORATED
BY DANIEL ALEX, VICE-PRESIDENT and EXECUTIVE DIRECTOR

MR. CHAIRMAN: Thank you for affording Eklutna, Incorporated, the opportunity to testify on the implementation of the Alaska Native Claims Settlement Act, in these oversight hearings. Nearly four and one-half years have past since the Alaska Native Claims Settlement Act became a law. In these four and one-half years Eklutna, Incorporated, has been struggling to achieve its place in the sun, according to the clear intent of the 92nd Congress that 100 years of neglect be immediately ended with a substantial conveyance of a real property asset. Regrettably, it appears that neglect of Eklutna's affairs continues to be the ordinary way the Department of Interior does its business. Any effort by Eklutna to enforce the intent of Congress is met with the same air of benign neglect, if not extortion. Regrettably, it appears to continue to be the attitude of many employees of the Department of the Interior, that the Claims Settlement was an act of the welfare state, and that it is presiding over a gift of land of the United States to certain disadvantaged citizens. That is certainly not the intent of the 92nd Congress in making a fair, just, non-litigious, and swift settlement of legitimate claims of aboriginal title.

Mr. Burton, our attorney, and I appeared before this Committee on September 24, 1975, and it is our understanding that our statement on that occasion and 21 proposed amendments to the Alaska Native Claims Settlement Act are part of the record of those proceedings. Eklutna, Inc. wishes to reaffirm its desire that such of these amendments as were not included in the Omnibus Bill, be expressed in subsequent legislation.

SUMMARY OF HISTORY OF EKLUTNA, INC.

The traditional view among the shareholders of Eklutna, Incorporated, is that the Native Village of Eklutna came into existence sometime in the 1800's, as one of many settlements of Denaena (Tanaina) Indians of Upper Cook Inlet. The life of the people was oriented to fishing, hunting, and the gathering of wild fruits and berries.

The white man's culture arrived in Upper Cook Inlet with the construction of the Alaska Railroad. This railroad passes directly through the middle of the actual village site. With the railroad, and with World War I, there came an influx of white settlers into the traditional fishing and hunting grounds on Ship Creek, the present site of the City of Anchorage. With these same influences came smallpox, and the worldwide epidemic of influenza. The Natives of Upper Cook Inlet were nearly exterminated by the influenza outbreak of the period around 1918.

The first recognition by the government of the existence of this Village and its attendant hunting and fishing areas, came with the establishment at Eklutna of a school for Indians during the 1920's. A small tract of approximately 2,000 acres was withdrawn in connection with the Indian school. In 1936 the Congress extended the provisions of the Indian Reorganization Act to Alaska. In its last visible act for the obvious benefit of the Indians, on October 30, 1936, Interior entered an order withdrawing 329,000 acres for the benefit of the school, with the express provision that the lands were to be held in reserve pending taking up with the occupants of the lands the question of an election pursuant to the Indian Reorganization Act. The period between 1936 and 1971 was characterized by a steady whittling down of the boundaries, and by the failure of the Secretary to hold such an election. Two vigorous petitions of the people that such an election be held were ignored. The result was Eklutna's having in December, 1971, an unencumbered reserve of not much more than 1,600 acres, which reserve was for the Bureau of Indian Affairs in connection with the administration of Native affairs near Eklutna.

In 1971, Eklutna was recognized by the Alaska Native Claims Settlement Act as a Native Village entitled to benefits under the Alaska Native Claims Settlement Act. Eklutna incorporated in 1972, and filed its first land

selections in August, 1973. Its 1973 selections encompassed approximately 26,000 acres. Nearly three years have passed, and of the 26,000 acres, something on the order of 1,600 have been patented or conveyed by interim conveyance. Of particular concern to Eklutna is the fact that whereas these 26,000 acres were ready for conveyance during the spring of 1974, two years have passed without such conveyance.

Eklutna is located within the geographic boundaries of Cook Inlet Region, Inc. It is important to recognize that Cook Inlet Region, Incorporated, is perhaps the only one of the regional corporations in which the majority of the shareholders of the region are not enrolled to any village. Relationships between Eklutna, Incorporated, and Cook Inlet Region, Inc. have not always been friendly, and there have been disagreements of major economic significance. At the moment, Eklutna, Incorporated, and Cook Inlet Region, Inc. enjoy peace. It is fair to state that the two corporations endeavor to cooperate on most questions, but neither would give the directors of the other the authority to speak for it without prior specific discussion.

THE SECRETARY APPEARS TO IGNORE THE EXISTENCE OF VILLAGE CORPORATIONS, EXCEPT TO THE EXTENT NECESSARY TO PUNISH THEM FOR HAVING THE TEMERITY TO ARGUE WITH HIM

This committee, knowledgeable as it is in government affairs, surely recognizes that a great deal goes on in Washington respecting the implementation of ANCSA. Not the

least of these goings on have been the promulgation of regulations respecting the implementation of ANCSA and the promulgation of easement guidelines. There are slightly over 400 Village Corporations in Alaska whose property rights are severely and directly effected by the promulgation of such regulations and orders. It is the simple truth that over half the land to be conveyed to the Natives of Alaska under the Act, will be conveyed to the Villages. It is the inescapable truth that easements generally have a far greater impact on these owners of the surface, than on the owners of the subsurface.

Eklutna, Incorporated enjoys something of an advantage in this regard, being located near Anchorage and being able readily to communicate with counsel and with the State Office of the Bureau of Land Management. However, there have been occasions when the Federal Register arrived in our attorney's office in the ordinary course, at a time subsequent to the period specified for comments on matter contained therein. Getting information out of the Bureau of Land Management in Anchorage also can be like pulling teeth. We have been advised on endless occasions that lands are about to be conveyed, when in fact they are not conveyed. We have been advised endlessly that this, that or the other person is presently in charge of the matter, when this, that or the other person appears blissfully unaware of the fact.

We have contended for two long years with the Bureau of Land Management and the Federal-State Land Use Planning Commission concerning what easements are to be reserved on the 26,000 acres comprising our "A" selection, only most recently to be informed by one of its officials that the Bureau of Land Management is unaware that the Federal-State Land Use Planning Commission has ever had hearings on and made recommendations concerning easements on these lands.

The only way Eklutna, Inc. has managed to stay abreast of developments with respect to regulations implementing ANCSA has been through the kind offices of the AFN and of Cook Inlet Region, Inc., who when asked, and sometimes spontaneously send documents to the Village. We have no doubt, however, but that the majority of the Native Village Corporations in Alaska are blissfully unaware of the present hearings, and blissfully unaware of other Washington events as they unfold.

We see no reason why the Secretary cannot in promulgating his rules, regulations and orders undertake to keep all of the Native corporations of Alaska directly informed by him as to his thoughts, proposals, and actions. There is no reason why an Order such as Secretarial Order 2987 respecting blanket easements for energy transmission, should come out of the blue as a complete surprise to a limited class of 400 some odd entities whose lands it exclusively affects.

Native Village Corporations, having thus far largely been prevented by the Secretary from having any economic base, cannot afford a major lobbying effort, and cannot afford to maintain agents in Washington.

Neither does it seem fair to impose upon the AFN, or the Regions, swamped as they are with their major battles, by assuming that they should undertake the obligation fully to inform the Village Corporations. Eklutna, Incorporated has nothing but praise for the efforts of the AFN, and Cook Inlet Region, Inc., and certainly does not wish to be misconstrued as blaming either for the vacuum of information at the Village Corporation level.

Rather, Eklutna, Inc. suggests that the Secretary appears to assume that all Natives think alike, and that there are no possible legitimate Native complaints concerning his proposed actions other than the complaints voiced by the AFN. The assumption that all Natives think alike, is akin to a belief that all Natives look alike.

Eklutna, Inc. even had the very surprising experience of learning that a United States District Judge assumed that Eklutna's interests would be adequately represented by Cook Inlet Region, Inc. in a civil action in which a plaintiff sought to deprive Eklutna of a patent. This assumption

that the villages need not be consulted, and that their views may generally be disregarded as unimportant, is founded upon a basic misunderstanding of the realities of human nature and of the economic structures created by the Alaska Native Claims Settlement Act.

The Secretary's policy that the Native Village Corporations must be "good boys", go away and not bother him, and patiently await the grace of the Bureau of Land Management, must be brought to a halt.

THE INTERESTS OF REGIONAL CORPORATIONS AND OF VILLAGE CORPORATIONS WITHIN THOSE REGIONS, ARE NOT NECESSARILY IDENTICAL, AND BOTH SHOULD BE CONSULTED.

An example of the significance of the difference between regional and village attitudes, lies in that provision of the Secretary's easement guidelines which call for the reservation of an "easement for access to the subsurface".

This proposed easement is apparently a blanket easement. This kind of easement is a time bomb.

One wonders if the Secretary, in his apparent view that regional corporations are the only entities which need to be consulted about anything, is unaware of the attitude of Western ranchers and townsfolk when they discover that some Eastern corporation has the right to strip-

mine their surface into oblivion without regard to their attitudes.

The 92nd Congress in its wisdom saw fit to provide in Section 14(c)(f) of the ANCSA 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.

Exactly how a blanket easement for access to the subsurface can be lawful in the light of the Congress's requirement that village consent be obtained to exploitation of the subsurface, is a little unclear to Eklutna, Inc. The fact remains that the regional corporations are the beneficiaries of this overstepping by the Secretary.

Now, in the present day one may hope that the present peaceful relations between the Village and the Region will continue; however, easements and consent provisions probably will outlive us all. One cannot blithely assume that for all future times the owner of the surface and the owner of the subsurface will see eye to eye on the use of some particular tract of land. One is concerned that the Regional Corporations, in their litigation against the Secretary respecting his easement guidelines, do not regard this issue as one of particular significance.

A second problem arising in this same context is that there are disagreements or potential disagreements as to what the "boundaries" of the Village are with respect to the right of the Village to consent and therefore to withhold consent. Some would say that the boundaries of the Village consist of the lands immediately beneath buildings, churches, and burial grounds, together with slopes at angles of natural repose to provide lateral support. Others would suggest that the boundaries of the Village encompass all lands owned by the Village, wherever situated. This issue is addressed in the proposals of August last.

Nor do we know whether the right to consent runs with the title to the land, or dies when the Village sells.

The basic point remains that the Secretary persists in treating the Village Corporations as if their views were of necessity identical to those of the Regional Corporations. The point remains that this assumption made by the Secretary is accurate, or inaccurate, according to the circumstances of the particular matter. The Secretary must morally undertake the responsibility to consult with all the Native Corporations.

THE GROSS DELAY IN CONVEYING LANDS TO THE VILLAGE CORPORATIONS VERGES ON EXTORTION

We are not unmindful that extortion is a very strong word. However, it has become abundantly clear that for so long as Eklutna, Inc. has the temerity to question the propriety of the Secretary's decisions respecting easements, and for so long as Eklutna, Inc. has the temerity to dispute with the State of Alaska or the Municipality of Anchorage their respective interests in specific tracts, no land will be conveyed to Eklutna, Inc.

In a moment, we will turn to the evidence of this decision by the Secretary, but first let us address its significance.

The actual settlement comprising the Native Village of Eklutna is located near the mouth of the Eklutna River, approximately 25 miles north of downtown Anchorage. A freeway is being constructed by the Alaska Department of Highways between Anchorage and the Matanuska Valley at Palmer. Eklutna will be an interchange on this highway. Another interchange on this highway will be at the community of Eagle River, which is located between Eklutna and downtown Anchorage. Eklutna's land selections lie on both sides of this highway from Fort Richardson and Eagle River on the South, to beyond Palmer on the North. All

of the lands selected by Eklutna lie within the boundaries of an incorporated municipality; the bulk lie within the Municipality of Anchorage, and the balance lie within the Matanuska-Susitna Borough. It is a fair statement that these lands will be worth in excess of an average of $1,000 per acre. Some, including those which have been ready for conveyance in excess of two years, have an appreciably higher value.

In 1991, or as soon thereafter as the Secretary decides in his grace actually to make these conveyances, Eklutna, Inc. expects to be on the tax rolls of municipalities, with an excess of 70,000 acres, having an assessed valuation in excess of $70,000,000.00, with an annual tax bill of $700,000.00.

At this point, 1991 is a scant 15 years away. The longer the Secretary takes to make these conveyances, the shorter the period of time Eklutna, Inc. will have to scramble around and find some way to meet an annual budget of $700,000.00 for real estate taxes alone. We might add that the probable values, and probable taxes, are likely to be far higher.

Unless Eklutna is to be forced into a liquidation and bankruptcy-style auction in 1991, two things must happen.

First, the Secretary must abandon his policy of holding lands hostage until Eklutna knuckles under to his views, and the Congress must do something to relieve Eklutna, Inc. of the disaster of sudden, massive taxation. One step Eklutna has had in mind to begin constructing an economic base, is the development of lands near Eagle River as a suburban residential area for the nearly 200,000 people of Anchorage. These lands have been ready for conveyance since 1974. Concerning these lands the Secretary now suddenly desires to have a second round of easement proceedings.

It is certainly more desirable for the continuation of the existence of the Village itself, that Eklutna not be compelled to sell lands at the Village center, the only ones presently patented to it. A review of the chronology is illustrative.

Eklutna filed its "A" selection in August, 1973. In December, 1973, as evidenced by Federal-State Land Use Planning Commission memorandum 74-2, a copy of which is annexed as an exhibit, the Bureau of Land Management requested that the Commission make its recommendations concerning easements to be reserved under Section 17(b). Eklutna was invited to comment, and did. A copy of such comments dated February 14, 1974, is attached as an exhibit. On March 15, 1974 the Commission sent its identification of easements under Section 17(b), to then Secretary of the Interior Rogers C. B. Morton.

In May, 1974, as required by regulations, the proposed conveyance of these lands to Eklutna was published by the Secretary four times. In June, 1974 the BLM wrote Eklutna concerning easements it proposed to retain in certain patents to be issued.

Thereafter, the matter wandered off into limbo. The subsequent correspondence is attached as an exhibit to this testimony. Suffice it to say that the Secretary, or his agents, found a series of convenient excuses for not conveying this land. First the Secretary decided that the existence of an overlapping village withdrawal for the benefit of Knik prevented the conveyance, despite the fact that Knik had not protested the Eklutna selection, and despite the fact that his own regulation specified that it is Village selection applications, not Village withdrawals, which segregate lands from conveyance to a Village. In any event, Eklutna, Incorporated and Knik-Ahtnu, Inc. managed to arrive at an understanding concerning the division of the overlapping area into zones of first selection right. Upon reporting this to the BLM, Eklutna, Inc. assumed that a conveyance would be forthcoming.

However, it then developed that the Secretary, in Alice-in-Wonderland tones reminiscent of the "paternalism" which saw the Eklutna reserve shrink from 329,000 acres to 1,600 acres, had decided that <u>it was in the economic interest of Eklutna to withhold all lands from Eklutna until all easement arguments had been resolved</u>. By this time, Eklutna had filed an appeal with the Alaska Native Claims Appeals Board

respecting the including in its patents of certain easements not set out in the Secretary's previous letter to Eklutna, indicating what easements would be reserved.

Eklutna next suggested to the Secretary that some means could be found to convey these lands without prejudice to the rights of either party as far as the reservation of easements was concerned. Eklutna suggested a contract in which it would agree to grant certain easements in the event the Secretary prevailed in the appeal process. Alternatively, Eklutna offered to enter into a contract whereby the Secretary would be bound to release certain easements in new conveyances, if Eklutna won the litigation concerning the earlier conveyances. Thirdly, Eklutna offered to enter an agreement with the Secretary that the Secretary could convey lands to the Village, that the Village would appeal, and that the parties in the appeal would then stipulate to continue the new appeal pending the disposition of the earlier ones, and to entry of an order in the new appeal according to the orders in the first appeals. All of these Eklutna proposals met only a resounding silence.

The State of Alaska and the Municipality of Anchorage's predecessor, the Greater Anchorage Area Borough, both had protested the conveyance of the lands in question to Eklutna upon publication in the newspaper in May, 1974. It is not

clear to us whether it is that the protests were filed late, or whether they were merely improperly filed in that they were not served upon Eklutna, Inc. as required by regulation. In any event, the Secretary elected not to reject the protests as untimely or improper, but rather accepted them. Thereafter Eklutna managed to work with the State and the Municipality to the extent that the protests by these governments were narrowed down to particular lands in dispute. Eklutna has repeatedly suggested to the Secretary that the lands not in dispute be conveyed, and that only the disputed lands be held up pending resolution of those disputes. To these suggestions the response again has been a resounding silence. Recent correspondence also annexed, brings home the fact that the Secretary in fact is persisting in a policy position; for so long as Eklutna is involved in appealing easements, no conveyances will be made.

Eklutna has been threatening to sue the Secretary to compel a conveyance for some years. When in fact Eklutna finally did so, now the suit itself is cited in some of the correspondence as an excuse for not making the conveyance. Such is truly the height of absurdity.

The effect of the attitude of the Department of the Interior is a repeal of the Alaska Native Claims Settlement Act. The Secretary in essence is saying to Eklutna, for so

long as you complain about what I in my grace would deign to give you, you will not even receive that. The Secretary is apparently engaging in an adversary process, in which he seeks to minimize the "losses" of the United States, to bludgeon the Village into accepting less than its full measure of entitlement, rather than acting as Congress commanded speedily to implement a just settlement by a immediate conveyance of the lands selected.

THE IMPLEMENTATION OF ANCSA IN THE CASE OF EKLUTNA, INC., WITH RESPECT TO 14(c)(3) MUNICIPAL GRANTS, IS DIFFICULT AND UNJUST.

The 92nd Congress, doubtless concerning itself with the more typical Native Village which would also be the population center of its remote area, enacted Section 14(c)(3) requiring Village Corporations to convey not less than 1,280 acres to the municipality in the Village or to the State in trust for a municipality to be formed in the Village.

This particular portion of the statute, as applied to Eklutna, becomes problematical. Eklutna is by no matter of means the population center of its area. There are slightly less than 200 people enrolled in Eklutna. The village center is located in the rural fringe of a Municipality having a population approximating 200,000, thus outnumbering Eklutna shareholders by one thousand to one. The Municipality of Anchorage is larger than the State of Rhode Island.

The Municipality of Anchorage is a unified municipality, which under the provisions of the municipal code of the State of Alaska means that no new municipality may lawfully be incorporated within its boundaries. No municipal corporation can be formed, which has its population center as Eklutna, or which otherwise might be construed as "in" the native village. It appears that Eklutna, Inc. may be obliged to convey 1,280 acres to the State of Alaska in trust for a municipality which will never be created.

It is also ironic that the minimum conveyance for municipal purposes nears the Eklutna reserve in size. Reading the Act narrowly might lead one to the conclusion that Eklutna must convey to the State of Alaska all of the reserve which is not conveyed to occupants of primary places of residence, the church, and possibly the graveyard. In as much as Eklutna's core townships were Mental Health Enabling Act selections by the State, as to the selectability of which there is some debate, the net result potentially is that ANSCA will bring to the utter destruction to the Native Village.

By State law, the Municipality of Anchorage and the Matanuska-Susitna Borough, one or the other of which has jurisdiction over all of Eklutna's selections, are required to have a planning, platting and zoning authority.

As exercised in the Municipality of Anchorage, this authority finds itself expressed in subdivision regulations requiring the dedication of streets, utility easements, the reservation of school sites and park lands, and possibly the dedication of park lands depending on the enacting of currently debated ordinances. So much of ANCSA Section 14(c)(3) as addresses itself to "appropriate rights-of-way for public use, and other foreseeable community needs", duplicates the platting laws of the Muncipality of Anchorage.

A further irony arises in that the Alaska Public Easement Defense Fund, from whose representative Dale Bondurant you were scheduled to hear at these hearings, is apparently seeking to impose a waterfront easement upon every stream and puddle on Eklutna's selection, also duplicative of the planning and zoning and platting function of the Municipality.

If we may return briefly to the subject of easements, and the Secretary's attitude towards Villages with respect to easements, let us consider the Alaska Railroad and the Secretary's proposed blanket reservation of rights of way for railroads, ditches and canals. Eklutna is not terrified by the prospect of ditches and canals, because the land available to Eklutna at this point in time more demands construction of tunnels and cog railways than it lends

itself to the construction of canals. Eklutna is, however, concerned about the Alaska Railroad.

The Alaska Railroad mainline is built directly through Eklutna Village, perhaps one or two hundred feet from the church. In the past the railroad has exhibited not only to Eklutna but to most other persons dealing with it, an attitude combining the worst features commonly attributed to bureaucrats and to railroad barons. The railroad, of course, is Secretary Coleman's baliwick, rather than that of Secretary Kleppe. However, an additional threat to the Village itself lies in the fact that under the Secretary's proposed blanket easement for railroads, the Alaska Railroad would apparently have an absolute legal right to expand its railroad yards into, and obliterate, Eklutna Village. Due to the benefecent policies of the Department of the Interior in the past, the improvements located on lands at Eklutna are not of such value as would give pause to the railroad controller. In the past, Eklutna could at least take a small amount of comfort in the fact that the BIA only once nearly did away with the reserve altogether and without notice, and thus might have been counted upon to prevent railroad expansion within the Village center itself. An easement for railroads is, however, thus not an academic question for Eklutna and further accentuates the very high price imposed upon Eklutna by Section 14(c)(3). In short,

Section 14(c)(3) threatens to force Eklutna to dedicate roughly equivalent quantities of land to public use simultaneously under Section 14(c)(3) and under municipal laws, which is inequitable in the extreme.

SECTION 3(e) OF ANCSA IS BEING MISCONSTRUED BY THE SECRETARY

Section 3(e) of the Claims Act, defining public lands, makes it plain that the fact that lands are withdrawn from entry under the public land laws does not withdraw them from selection by Native corporations. Rather, Section 3(e) excludes from collectible public lands only

> the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation.

The memorandum entitled "Memorandum of Understanding Between the Department of the Interior and the General Services Administration Relating to Procedures for Processing Surplus Real Property and Withdrawn Public Domain Lands in Alaska for Possible Section Under the Alaska Native Claims Settlement Act", executed by Interior on February 14, 1974, and by the General Services Administration on March 7, 1974, contains several grave errors of law.

Whereas the Act provides that Natives may not select lands "actually used", the Memorandum speaks of land "that is or will actually be used". Whereas the Act speaks to present

use, the Memorandum speaks to present or possible future use. Since one assumes that the process of withdrawing lands for Federal installations was motivated by some kind of logic, one supposes that the agencies for the benefit of which 99.9% of withdrawals were withdrawn, believe each has some present or future use for the land. This being so, the Secretary's interpretation of Section 3(e) to protect future uses essentially wipes out Section 3(e).

In any event, the Secretary has further grossly distorted the ANCSA by relating the Native right to select to, and making it subordinate to, the GSA process of screening "excess" real property reported to it by holding agencies for further Federal utilization in accordance with 41 CFR 101-47.203-5. In short, the Secretary not only stretches the term "actually used" to include future use, he stretches the concept of "actually used by any Federal agency" to include hypothetical future use and use by some agency having no present interest in the land.

Eklutna, Inc. has selected extensive acreages from Federal withdrawals within its Village Withdrawal Area. It has done so in the belief that they are not presently used by any Federal agency, but rather were withdrawn for future, even spectulative, use. If the Secretary's position on this issue is allowed to stand, the availability of lands to Eklutna will be further shrunk. Granted the extent to

which the Eklutna Withdrawal Area is impacted by prior patent to private individuals and to the State, by military reservations, and by the question of Mental Health Lands, and granted the extent to which the Eklutna Withdrawal Area consists of high mountains and ice, this 3(e) question is of great significance to it. Pursuant to the Claims Act Sections 12(a) and 12(b), Eklutna is entitled to in excess of 90,000 acres. By the time Eklutna is looking around for that fourth township, indeed by the time Eklutna is looking around for its second township, Eklutna is scraping the bottom of the barrel. Eklutna submits that the letter of July 7, 1975, from the Federal-State Land Use Planning Commission for Alaska to Royston C. Hughes, far more accurately sets out the law. For ready reference, we submit with this testimony as an exhibit copies of the Memorandum and the letter referred to in this statement.

THE BUREAU OF LAND MANAGEMENT HAS NOT ASSIGNED SUFFICIENT ADDITIONAL PERSONNEL TO THE ALASKAN OFFICES TO ACCOMODATE THE PRESS OF BUSINESS CREATED BY THE ANCSA

To the extent that the Secretary has any legitimate problem in processing conveyances to Native Corporations, it arises from the failure to assign incremental staffs to the responsible offices. Eklutna, Inc. does not have the precise manpower figures, and can only suggest that while the Secretary treats the situation as if he had 412 new homesteads, he is dealing with adjudication problems roughly equivalent in acreage

to 250,000 homesteads. While we certainly are not suggesting that the Secretary has a legitimate excuse, we are suggesting that he has a major problem he has not moved to meet.

TRESPASS PENDING CONVEYANCE IS A SEVERE PROBLEM

It is our understanding that other Native Corporations intend to address you with respect to trespass problems, and thus we will not dwell upon the topic.

However, since Eklutna's lands lie in some instances very close to populated areas, trespass is a major problem. In two instances Eklutna has discovered after the fact that persons known or unknown have bulldozed roads as much as a mile long across Eklutna selections without notice, or compensation. The Department of the Interior has moved to prosecute one of the two or more individuals involved, but not the other. Eklutna clearly does not have either the authority or the ability to post the perimeters of all of its property sufficient to meet the State trespass laws. It is essential that the Federal government take action to avoid these trespasses.

THE SECRETARY'S INTERPRETATION OF THE MEANING OF SECTION 11(a)(1) OF THE ANCSA IS INCORRECT AND HAS DAMAGED EKLUTNA

The clear intent of the 92nd Congress as expressed in Section 11(a)(1) and in the Conference Report which attended the Act, is that two concentric rings of townships be withdrawn

from public lands around the core township or core townships. The Secretary has resorted to a literalistic interpretation of the Act, and gives great substance to the existence of offsets at certain township corners where the township north of the line is wider than the township south of the line, and their "common" corners are therefore set off some distance one from the other. As your committee is doubtless aware, such a system of survey is necessitated by the fact that north-south lines converge as they approach the North Pole; in order that townships not be squeezed down to a height of miles and a width of inches, every so often as we march north from the survey baseline, a whole range of townships has its south boundary widened to six miles per township, north of which the lines again converge until a similar adjustment is made for township north. Because in Eklutna's case Township 17 North, Range 2 East has a southwest corner (in the middle of the Knik River) some 200 feet or less east of the northeast corner of Township 16 North, Range 1 East, the Secretary announces that they do not corner. The result of this literalistic interpretation has the effect of deleting from the Eklutna withdrawal Townships 17 and 18 North, Range 3 East. In this township 17 North are located some of the very few low-lying, developable or arable acres within the Eklutna withdrawal, that are not subject to actual or potential superior claims of others. We believe the Secretary should

be instructed to obey the clear intent of the 92nd Congress, which is to withdraw concentric rings of townships, without regard to survey correction lines.

CONCLUSION

We again wish to thank the Committee for extending us its hospitality. It is with all sincerity that Eklutna, Inc. can say that the first bright ray of hope in 100 years eminated from the 92nd Congress, and from this Committee and its corresponding Committee in the House of Representatives. It is in this Committee, and in its corresponding Committee of the House, that Eklutna, Inc. again hopes to find a sympathetic ear, and compassion and understanding for its problems. The Committee may recall that Eklutna's claim to this recognition is of long standing, that Eklutna and its sister village in Upper Cook Inlet, Tyonek, were the only two villages directly represented on the Board of Directors of the AFN at the time it was fighting for the passage of a claims settlement act. Villages no longer sit upon the board of the AFN, but we ask that you continue to hear and listen to the Village voice. It would be ironic if Eklutna, which once had in its hands all the unrealized geographic potential which is now known as Anchorage, which lost that potential through neglect by the Department of the Interior and saw it passed to others, would now lose that portion of the opportunity returned to us by ANCSA, through delay, neglect, encumbrance of its lands, and the onrushing cloud of taxation.

Eklutna, Inc.

Eklutna Village

Chugiak, Alaska
(907) 688-2286

February 14, 1974

Ms. Janet McCabe
Land Use Planning Commission
733 West Fourth Avenue
Anchorage, Alaska 99501

RE: Identification of Easements Over Land Selected by Eklutna.

Dear Janet:

Your decision to see preliminary comment by Eklutna with respect to proposed easements across lands selected by Eklutna is appreciated. Most of the easement proposals are still in preliminary form, and in most cases we are not sure we understand a particular proposal's true scope and significance. Moreover, there may be easement proposals which are still unknown to us, for we have not been permitted to see the easement proposals being considered by the District Office of the Bureau of Land Management. While we look forward to the opportunity to study the final, fully developed easement proposals and to comment upon them as provided in 43 CFR 2650.4, we hope that our preliminary observations will be useful.

The proposed highway access easement from the Glenn Highway to Eklutna Lake is troublesome, because the proposal calls for an easement 200 feet wide. We believe that 100 feet is ample for an ordinary two lane gravel or paved road intended to provide access for recreational purposes and the people who live in the valley. The 200 foot easement proposal is unnecessary unless intensive development in the valley is contemplated. Such development might justify the construction of a major highway capable of providing high speed access for persons intent on making a quick trip instead of enjoying the scenery the ride up to the Lake provides. Before a 200 foot easement may be reserved, it must be found that use, corridor location and size are reasonable related to an anticipated public use or a planned existing governmental function which would require a major, high-speed highway. Indeed, such access might conflict with existing Department of the Army activities in the area. While it is probable that recreational use of Eklutna Lake and its environs will increase, we do not believe that it can increase

enough to justify a major, high speed highway. The Lake is filled with glacial water. It is too cold for swimming or water skiing and supports very few fish. The glacier itself, while interesting, is not really comparable with Portage Glacier and surely would never prove to be a major tourist attraction. The most appealing aspect of the valley and the Lake is its relative solitude and its as yet unspoiled natural beauty. A major, high-speed highway would end the solitude while the increased flow of people and vehicles would ensure a deterioration in the natural environment. If anything, it is reasonable to anticipate that the kind of quiet escape which the valley presently offers to residents of the nearby metropolitan center as well as to our people will be recognized as an asset of tremendous and ever-increasing value. To protect it, it is reasonable to anticipate the public need to limit the flow of vehicular traffic into the valley, not to construct a major, high-speed highway. Such a highway would ruin the one remaining area near our village where our people and others can go to escape from the confusion of the white man's society and enjoy a part of the world that our fathers knew.

In connection with the proposed reconstruction of the Glenn Highway, we are concerned about the associated easements requested by Matanuska Electric Association and RCA. We can see no reason to permit Matanuska Electric Association or RCA to receive an additional easement alongside the new highway easement. Reserving a separate easement for Matanuska Electric Association or RCA would be inconsistent with 43 CFR 2650.4(3) which provides in part:

> The easement shall be no more extensive in size than is reasonable required for the purpose for which reserved.

Such a reservation would be in direct conflict with 43 CFR 2650.4(4) providing:

> A corridor location shall be no more extensive in width or length than is reasonably necessary to locate any easement to be reserved, taking into consideration climate, topography, terrain and available data.

The Borough's request for an easement providing access to the Birchwood Airport and an industrial park is a matter which in principle appears desirable to us. The Borough has indicated it will make the location of the proposed access route available to us soon. We will try to make more specific comments on the proposal after we have learned the proposed location. For now, we can only say that the route should not interfere with residential or recreational use of the land lying between the highway and the industrial area and the airport.

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The Borough's blanket request for the reservation of section line easements is improper. We feel that in any case where section line easements do not already exist, no easement should be reserved unless the particular section line easement is shown to be reasonably related to an anticipated public use or a planned or existing governmental function required by the regulations. We think the regulations in 43 CFR 2650.4 require such a showing.

We understand that the Borough has also suggested the creation of 25-foot access easements along all streams. We further understand that this kind of easement would be limited in use to Borough personnel who were engaged in cleaning the stream bed and its bank. To our knowledge the Borough does not provide this service anywhere else in the Borough except in subdivisions where the 25-foot easement has been established as part of the subdivision plan itself. Any subdivision of our land would be in accordance with applicable law and regulations and we fail to see why a 25-foot easement must be reserved now. It is possible that much of our land will not be subdivided for a considerable period of time and we do not understand why the Borough should be permitted special powers over our lands. It should be remembered that we may not choose to select or be able to select the entire length of a stream. What good does it do to have the Borough "policing" the stream bank on our land when land above and below ours is not accessible to the Borough?

The State's request for trails leading to Chugach State Park presents problems. We do not believe that a trail designed for access to the Park needs to be 100 feet wide. Access for large numbers of people on foot could be provided with a trail 12 to 15 feet wide. Such a trail would be more than adequate to provide for cross-country skiing in the winter time and access on foot in the summer time. Trails actually used by our people and those we have seen in pictures, including famous trails like the Appalachian Trail, are never more than a few feet wide. An easement of 12 to 15 feet in width would provide ample room for the traveled portion of a trail as well as several feet on each side. Reservation of an easement wider than 15 feet would either violate the regulation requiring that easements be no more extensive in width than reasonable necessary or constitute an impermissible scenic easement.

The Thunderbird Creek trail provides access to a portion of the Chugach State Park. As such, the reservation of a suitable easement would seem permissible pursuant to Section 17(b) of the Settlement Act. However, the recommendation calling for a 100-acre picnic area and trail head development at the roadside strikes us as an attempt to create an additional recreational facility rather than providing access to the Park. We do not know how much additional parking space might be required in connection with access to the Park. However, we feel that considerably more than 50 cars may be readily parked on an acre of ground. We suspect that the density of cars per acre in many parking facilities in the Anchorage area approaches 100 or more cars per acre. Reserva-

tion of access easements for the three other trails leading into the Chugach State Park appears to be within the scope of the Settlement Act. Again, however, we object to the creation of large recreational facilities at the roadside. In connection with parking for these trails as well as the Thunderbird Creek trail, we think it is appropriate to consider how many people will be obtaining access to the Park over all the trails combined. If there were one trail it might be appropriate to provide parking for two or three hundred cars at the terminus of that trail near the highway. However, when there is a multiplicity of trails, it would seem unnecessary to provide such large parking facilities at the terminus of any one trail. The trail beyond the Falls goes to what is considered part of the Chugach State Park. If we select it, it would no longer be part of the so called Park and access beyond the Thunderbird Falls would not be necessary.

Chugach Electric Association is interested in acquiring an easement over a portion of our land for a new power transmission line. Chugach officials met with our representatives and answered many of their questions. At this time we wish to take no position with respect to whether there should be a reservation of an easement for the Chugach project. However, we can make some comments on the assumption that such an easement will be reserved. (To some extent the following comments are applicable to all easement reservations, because they focus on the manner in which reservation is accomplished.) The reserving language should be carefully drafted in order to ensure that the proposed new line is contiguous to the old Alaska Power Commission line and to assure that all merchantable timber on the land cleared for the project will be delivered to the owners of the land. Further, the easement should make clear that other uses of the land by the owners not inconsistent with the National Electric Safety Code and the "lay down" requirements connected with construction of the line are permitted. Finally, the reserving language should be carefully prepared to restrict use of the easement to Chugach personnel or agents engaged in activities required for the construction, maintenance or operation of the power transmission line.

We object to any proposal which would effectively turn over marshlands and existing power line corridors to the snowmobilers. It is impossible for us to protect our property from motorized intruders even now. For example, the old quonset huts transferred to us by the B.I.A. have been badly vandalized already. Opening up more access routes would only guarantee further trouble. We believe reserving easements for access to the shore and power lines is largely intended to <u>create</u> new recreational areas for snowmobiling, <u>not</u> to provide <u>access</u> to public lands. As such, these easement proposals are not within the scope of the pertinent regulations.

Illegal use of the land does not give one the right to easements. A portion of the roads identified by the district

under preliminary easement plans are in this category. Access by use of some of those roads takes one to the shore line. Some of the shore line is dangerous and is not suitable for recreation area development. Some of those roads are used by thieves who take stolen cars down there to strip. Access by snowmobile is something that we do not need any more of, especially those who trespass on our lands.

It is our understanding that some persons have expressly mentioned the possibility of creating "use easements" on lands selected by Eklutna. Use easements which are openly conferred to be "use easements" include a proposal for reservation of the duck flats for duck hunting. We believe that this type of easement is clearly not contemplated by the regulations which speak in terms of corridors, widths and lengths. We have faith that the Commission will not recommend and the Secretary will not reserve such "easements". If "use easements" are reserved on land selected by us, our people would be forced to view the Land Claims Settlement Act as just another broken treaty. It is difficult to overemphasize the significance that the effective loss of our lands in this manner would have for our people.

Very truly yours,

Daniel Alex

Daniel Alex
President

Jack Reduske

File
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Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

MEMORANDUM 74-2

TO : Commissioners through Ted Bingham, Executive Director — February 20, 1974

FROM : Janet McCabe, Planner JMc

SUBJECT : Eklutna Easements - Recommendations

Background Summary

1. BLM requested Commission recommendations. The Commission's deadline under the 90-day requirement is March 18. Eklutna selections currently under consideration total approximately 25,800 acres, a little over one-quarter of Eklutna's entitlement. Part of this selection, including land in the two core townships, is in question because it is State mental health lands. The Commission will have to review easements in Eklutna selections a second time when they are complete and the mental health question is resolved. However, enough is known about easement needs and requests in the selection currently under consideration so that some recommendations could be made. Action now might facilitate a partial conveyance to Eklutna.

2. Commission sent requests for comment about easements to the Eklutna Village Corporation, Cook Inlet Regional Corporation, and the Greater Anchorage Area Borough.

3. Several meetings were held with Eklutna representatives and the Greater Anchorage Area Borough. Both organizations studied the easement question extensively. Copies of their written comments are attached to this memorandum and referred to in summary form in this memorandum.

The Matanuska-Susitna Borough was also contacted because their jurisdiction extends over the 10 sections selected in the Hay Flats north of the Arm. They foresaw no easement requirements in the selections involved other than the easement for the power line intertie which crosses this area.

STAFF RECOMMENDATIONS

1. Thunderbird Creek Trail from Glenn Highway to Point A-1 (see map)

Recommendation: That a thirty-foot wide access easement for public

trail use be established. This easement should center on the existing trail which extends for approximately a mile from the existing Glenn Highway to Thunderbird Falls.

Reason, Public Purpose: This trail is necessary to provide access through the selection to a parcel of State-patented land at Thunderbird Falls (point A-1). The Thunderbird Creek Trail receives heavy use and the trail bed will have to be improved or shifted occasionally if it becomes muddy and impassable. Thirty feet will allow a reasonable margin outside the travelled path, so there will be room for trail maintenance and improvement.

Comment by Others: This easement proposal was initiated by the State Division of Parks. Both the Greater Anchorage Area Borough and the Eklutna Village Corporation agree with the establishment of an easement along this segment of the existing trail. They differ, however, regarding the desirable width. The Division of Parks and the Borough both recommend a hundred-foot width to preserve the natural scenery along the trailway. The Eklutna Village Corporation feels the width should be no more than fifteen feet, stating that that amount of space would provide ample room for the travelled portion of the trail, as well as several feet on each side.

Personnel in the Highway Department who have been working on the Local Trails and Service Roads Program suggest a thirty-foot wide easement. They have found that this much width is necessary to have enough space for trail improvement and maintenance.

2. Thunderbird Creek Trail South of Point A-1

Recommendation: That a thirty-foot wide access easement for public trail use be established in Section 31, T16N, R1E from point A-1 to the boundary of the selection currently under consideration with the condition that this easement be terminated if Eklutna selects all or the majority of T15N, R1E. This conditional easement should be located to center on the existing game trail which leads through Section 31. For the segment of the proposed easement south of Section 31, it is recommended that the Commission postpone any recommendation until it has a complete picture of the Eklutna selections.

Reason, Public Purpose: This trail may be a valid easement under Section 17(b) as an access route to the Chugach State Park. However, this cannot be determined until the full extent of Eklutna's selection is known. Eklutna is considering selection of most of the land traversed by this proposed easement. The segment in the selection under consideration is a valid and needed access

easement if it will actually provide access to park land, hence the additional recommendation.

Comment by Others: Same as Item 1 above.

3. Trailhead Facility at Entrance to Thunderbird Falls Trail

Recommendation: That the Commission oppose reservation of an area easement for trailhead facilities at the entrance to the Thunderbird Falls Trail.

Reason: The hundred-acre trailhead facility easement proposed by the Division of Parks in this location would be an easement for use of an area rather than for access through a selection. If off-street parking space were needed for use of the trail, that portion of the trailhead facility necessary for off-street parking could be justified as an access easement. People have to park their cars to use the trail. However, the existing parking lot in this location accommodates approximately 45 to 50 cars. There is also room for parking on the Glenn Highway right-of-way which is 300 feet wide in this area.

Comment by Others: As has been stated, the Division of Parks supports the trailhead facility easement on the grounds that it is needed for off-street parking, picnic space, and other recreational uses. They mentioned that the existing off-street parking area is poorly designed with dangerous access, problems that could probably be corrected with improved design rather than additional space.

The Eklutna Village Corporation opposes the proposed trailhead facility easement and the Borough took no position on the proposal.

4. Eklutna Lake Road

Recommendation: That an easement for public road use be established on the existing Eklutna LakeRoad (B on map) from its intersection with the Glenn Highway to its terminus south of Eklutna Lake. In some locations, additional width may be necessary for road maintenance and improvements necessary to use of the road for recreational purposes. It is recommended that the specific locations of easements in excess of 100 feet be defined by the Department of Highways and the Bureau of Land Management after study of site characteristics of the route. However, total easement width in such locations should be limited to 200 feet.

Reason, Public Purpose: The Eklutna Lake Road provides access to public waters, Eklutna Lake, and it will be a primary means of access into the northern part of the Chugach State Park. The Division of Parks' plans show several future trails leading from the road to the Eklutna Glacier and other areas of the Park.

Because of the area's recreation assets and proximity to Anchorage, the road is bound to receive considerable traffic in the summertime. The Department of Highways' District Engineer has stated that, in some areas, a two-hundred foot right-of-way will be needed for road maintenance and improvement. The road traverses unusually steep and hilly terrain where road improvements, such as a reduction of grade or curvature or road widening, require ample right-of-way to allow for side-hill cut and fill operations. Some improvement of this nature will probably be necessary so that the road can safely accommodate buses and more intensive recreation traffic.

Comment by Others: All parties are in agreement that an easement for the public road be reserved. The disagreement evolves around the width of the easement. The Eklutna Village Corporation has stated that they "believe that a hundred feet is ample for an ordinary two-lane gravel or paved road intended to provide access for recreational purposes and the people who live in the Valley". They oppose a two-hundred foot right-of-way on the grounds that it might justify construction of a major highway capable of providing high-speed access and hence destroy the solitude and natural beauty of the Valley.

The Greater Anchorage Area Borough asks for two-hundred feet saying that a hundred-foot width would be inadequate to "allow any type of reconstruction of the roadway in the future when increased use of the Eklutna recreational area will warrant such work".

The Division of Parks asks for two hundred feet over the entire length of the road to enable maintenance of a parkway and to reduce "possible conflicts between vehicle impact and private roadside development".

5. Eklutna River Trail and Trailhead Facilities

Recommendation: That the Commission oppose reservation of an easement for a new trail along the south side of the Eklutna River (C on map) on the grounds that this would be an easement for recreation use rather than for access.

Reason: Access to the Chugach Park lands in the Eklutna Lake drainage is already provided by the Eklutna River Road. These additional facilities are primarily for purposes of recreational use rather than for access to public lands and waters, which is contrary to Section 17(b) of ANCSA.

Comment by Others: The trail easement plus a 100-acre trailhead facility easement were proposed by the Division of Parks.

The Borough supports the Division's proposed trails. The Eklutna Village Corporation opposes establishment of this particular trail easement.

6. New Glenn Highway

Recommendation: That access easements for public rights-of-way be established as needed to complete reservation of the right-of-way for the New Glenn Highway (D/G on map). This easement should be located in accordance with the applications or applications pending shown on BLM status plats. Approximately 80 acres of Eklutna's selections are involved. Some 40 acres of the land is located in the former Eklutna Reservation.

Reason, Public Purpose: The public need is clear. The Glenn Highway is a major State highway and the only route leading to the Northwest from Anchorage and connecting with the Palmer area, the Interior, and Canada. On the existing route, driving conditions are hazardous.

Comment by Others: Neither the Eklutna Village Corporation nor the Greater Anchorage Area Borough made any statement regarding the Glenn Highway right-of-way.

7. Easements for Regional Power Transmission Lines

Recommendation: That a hundred-foot wide utility easement, limited to purposes of construction and maintenance of power transmission facilities be established in the location shown by line E on the map. Precise location of this easement should be in accordance with plans submitted by Chugach Electric Co. dated January 24, 1974. It is also recommended that the terms of this easement include the following conditions.

1. That the easement allow the owners to conduct any lawful use of that land which does not conflict with the National Electric Safety Code requirements.

2. That all merchantable timber on the land, cleared for the project, be made available to the owners of the land.

Reason, Public Purpose: This easement is a necessarypart of the regional power line intertie system that will connect power systems in Southcentral Alaska and provide emergency backup in case of failure of any one part of the system.

Comment by Others: Eklutna representatives met with the personnel from the Chugach Electric Co., and resolved many of their questions about the necessity of the easement. At this point, they take no stand with respect to whether the easement should be reserved. However, they recommend that, should the easement be reserved, conditions such as those listed above, be included in the terms of the easement. The conditions listed above have the concurrence of the Chugach Electric Co.

8. Easements for Relocation of Matanuska Electric Association Power Lines Serving Eklutna and RCA Transmission Lines (necessitated by new highway construction)

Recommendation: That, wherever possible, these lines be located within the highway or railroad right-of-way. Where this is not possible, a site south of the road, where land is less valuable to the future owners, should be considered.

Reason: MEA has stated that their main reason for not locating within the highway right-of-way is the fact that the Highway Department currently grants only a revocable permit. If lines have to be moved in the future, it must be accomplished at the expense of MEA. They also indicated that other locations, more acceptable to Eklutna than those proposed, might be feasible.

Comment by Others: Eklutna Village Corporation opposes this easement request. They felt that reserving a separate easement parallel to the highway right-of-way would be inconsistent with the BLM Rules and Regulations which state that "the easement shall be no more extensive in size than is reasonably required for the purpose for which reserved".

9. Access to Birchwood Airport

Recommendation: That a hundred-foot wide easement for public road purposes be established in accordance with the description provided by the Greater Anchorage Area Borough. (Item 2 in the Borough's request, shown as H on the map).

Reason, Public Purpose: This easement is necessary to provide an industrial access road to the Birchwood airfield and the planned industrial area nearby. The Division of Aviation has plans for development of the Birchwood airfield as a major general aviation airport, developed in conjunction with an industrial area.

Comment by Others: The access road was planned and recommended by the Greater Anchorage Area Borough. Eklutna representatives support this proposal.

10. Twenty-Five Foot Stream Maintenance Easements

Recommendation: That this type of easement be established under the Borough's subdivision authority at the time that land is subdivided.

Reason: The Borough has requested 25-foot wide easements on both sides of streams "to insure that stream maintenance equipment (caterpillars and the like) will have access to the streams and sufficient maneuvering room to insure that the job of clearing streams of obstructions can be accomplished". They base the need for this type of easement on the potential for new development along streams, saying that development brings dangers of stream blockage and possible flooding.

Since the need for stream maintenance accompanies development, reservation of the easement at the time of subdivision is appropriate. If Eklutna wishes to develop its lands, it will have to subdivide and go through the normal subdivision requirement process. Need for stream maintenance should be minimal before subdivision while the land remains undeveloped in a single block of ownership.

Comment by Others: Eklutna Corporation has taken the position that stream maintenance easements should be reserved at the time of land subdivision rather than in the intial conveyance.

11. Easements Under Study by the Bureau of Land Management

Recommendation: That the Commission be provided with the opportunity

to review and make recommendations on Bureau of Land Management easement proposals in the Eklutna area when they are released by the State Office.

As a matter of general procedure for the Commission's easement study, it is suggested that the Commission request the BLM to either:

1. Give the Commission its easement proposals for review and recommendation at the same time the 90-day notice is issued to the Commission.

2. Or give the Commission the opportunity to review and comment on any easements proposed by BLM that are substantially different from the Commission's recommendations.

Reason: District Office proposals are still in preliminary form and have not yet received the endorsement of the State Office.

12. Confirmation of Surveyed Section Line Easements Providing Access to BLM Small Tract Subdivision

Recommendation: That the Commission take no action on this request.

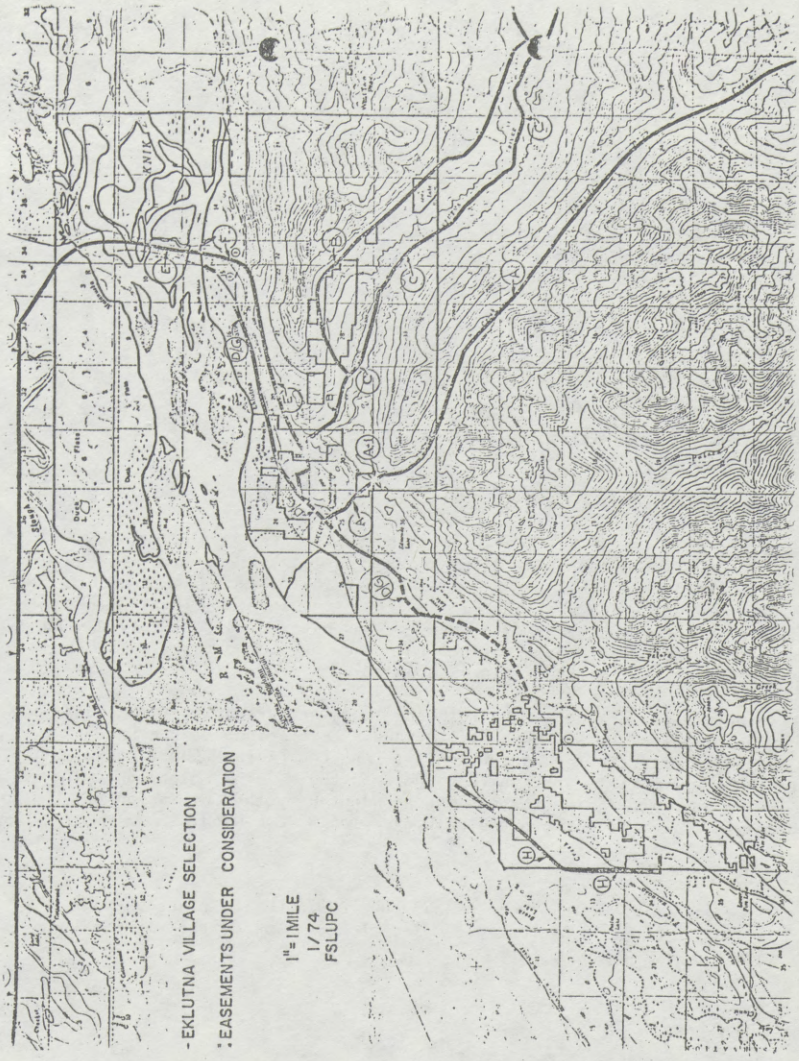
Reason: The Borough has requested confirmation of the existence of access easements in small tract subdivisions and along surveyed subdivisions. This is a matter of checking the status and legality of easements and rights-of-way that were previously established or intended to be established, not a matter of planning for new easements. BLM is making this check of records and will take any necessary action.

Comment by Others: The Eklutna representative thought that section line easements should be specific to location and public purpose.

Enclosure

JMc: mjw

13. Need to add condition


- EKLUTNA VILLAGE SELECTION
: EASEMENTS UNDER CONSIDERATION
1"= 1 MILE
1/74
FSLUPC

Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 450
ANCHORAGE, ALASKA 99501

March 15, 1974

Honorable Rogers C. B. Morton
Secretary of the Interior
U.S. Department of the Interior
Office of the Secretary
Washington, D.C. 20240

Easements: Eklutna Village Selections
Serial No. AA-6661 A

Dear Mr. Secretary:

Under Section 17(b) of the Settlement Act, the Federal-State Land Use Planning Commission has studied transportation and utility needs in the lands selected by the Eklutna Village Corporation. From these studies, and after consultation with the village, the Cook Inlet Regional Corporation, the Greater Anchorage Area Borough, and other parties involved, the Commission developed recommendations for easements to be reserved in the conveyances to the Eklutna Village Corporation.

Public access needs through the selected lands are primarily for access from Anchorage to the Matanuska Valley and other regions of the State to the north of Anchorage and, secondly, from the Glenn Highway southeast into the Chugach State Park which borders on the Eklutna selection. The following recommendations for easements, adopted by the Commission on February 27, recognize these two main areas of access need:

1. New Glenn Highway

   Recommendation: That access easements for a public right-of-way be established as needed to complete reservation of the right-of-way for the New Glenn Highway.

Location: This easement should be located in accordance with the applications or applications pending shown on Bureau of Land Management status plats.

Reason, Public Purpose: The public need is clear. The Glenn Highway is a major State highway and the only route leading to the north from Anchorage and connecting with the Palmer area, the Interior, and Canada. On the existing route, driving conditions are hazardous. Establishment of these easements will facilitate completion of the right-of-way for construction of safer, more direct route through the area.

2. Regional Power Transmission Lines

Recommendation: That a 100-foot wide easement (50 feet from each side of the centerline), limited to purposes of construction and maintenance of power transmission facilities be established for a regional powerline inter-tie. It is recommended that the terms of this easement include the following conditions. These conditions were requested by the Eklutna Corporation and are acceptable to the power company involved:

1. That the easement allow the owners to conduct any lawful use of that land which does not conflict with the National Electric Safety Code requirements.

2. That all merchantable timber on the land, cleared for the project, be made available to the owners of the land.

3. That the easement clearly exclude any use of the easement for purposes other than maintenance and development of power transmission lines. Easements for power maintenance and development purposes should not become public access ways open to snowmobile traffic.

Location: This easement should be located in accordance with plans submitted to the Commission by the Chugach Electric Company dated January 24, 1974.

Reason, Public Purpose: This easement is necessary part of the regional power line inter-tie system that will connect power systems in Southcentral Alaska and provide emergency backup in case of failure of any one part of the system.

3. Easements for Relocation of Power and Communication Lines Necessitated by New Highway Construction

Recommendation: That no easements be reserved for this purpose.

Reason: These easements, requested by Matanuska Electric Association and RCA, are for minor sites to accommodate line relocation necessitated by reconstruction of the Glenn Highway. Interviews with the companies involved revealed that other locations would be technically feasible. In most cases the lines could be located in the existing right-of-way. In the few cases where new easements are needed, the companies could accommodate the wishes of the landowner to a greater extent than is accomplished by the current easement proposals. MEA has stated that their main reason for not locating within the highway right-of-way is the fact that the Highway Department will grant only a revocable permit. If lines have to be moved in the future, this must be accomplished at the expense of MEA. For these reasons, the Commission did not find a clear public purpose to be served by reserving the requested easements. In fact, public interests would suffer by reserving more land for easement purposes than is absolutely necessary.

4. Access to Birchwood Airport

Recommendation: That a 100-foot-wide easement for public road purposes be established to provide access from the Birchwood Loop Road to the Birchwood Airport and adjacent industrial area. Terms of the easement should provide for reduction of the width to 60 feet upon completion of construction.

Location: This easement should be established so that its easterly edge is 250 feet west of and parallel to the westerly edge of the Alaska Railroad right-of-way, with the road commencing at the southerly end of the Birchwood Airport and running southwesterly to west section line of Section 18, T15N, R1W. From that point, the roadway should run south, centered on the section line, along the west lines of Section 18 and 19, T15N, R1W, to the SW corner of the NW 1/4 of said Section 19. From there, the roadway should run easterly, centered on the east-west centerline of Section 19, T15N, R1W, to Birchwood Loop Road.

Reason, Public Purpose: This easement is necessary to provide an adequate industrial road to the Birchwood Airport and the planned

industrial area nearby. The Division of Aviation has plans for development of the Birchwood airport as a major general aviation airport, developed in conjunction with an industrial area.

5. Eklutna Lake Road

Recommendation: That a 100-foot-wide easement for public road use be established centering on the existing Eklutna Lake Road from its intersection with the Glenn Highway to its terminus south of Eklutna Lake. In some locations, additional width may be necessary for maintenance and improvement. It is recommended that extension of the easement width up to 200 feet be permitted only in locations where unusually steep terrain will make the added easement width necessary to accomplish road improvements required for public safety purposes. It is recommended that the specific locations of easements in excess of 100 be defined by the Department of Highways and the Bureau of Land Management, after study of the site characteristics of the route and after consultation with the Eklutna Village Corporation. Total easement width in such locations should be limited to 200 feet.

Reason, Public Purpose: The Eklutna Lake Road provides access to public waters, Eklutna Lake, and it will be a primary means of access into the northern part of the Chugach State Park. The Division of Parks' plans show several future trails leading from the road to the Eklutna Glacier and other areas of the Park.

Because of the area's recreation assets and proximity to Anchorage, the road is bound to receive considerable traffic in the summertime. The road traverses unusually steep and hilly terrain where road improvements, such as a reduction of grade or curvature or road widening, require ample right-of-way to allow for side-hill cut and fill operations. Some improvement of this nature will probably be necessary so that the road can safely accommodate buses and more intensive recreation traffic.

6: Thunderbird Creek Trail from Glenn Highway to State Patented Land at Thunderbird Falls

Recommendation: That an access easement for public trail use be established along the existing trail to Thunderbird Falls.

Location: This easement should center on the existing main trail leading from the Glenn Highway right-of-way to the 46.78-acre tract of the State-patented land near Thunderbird Falls. Width of the

easement should vary to accommodate differences in terrain. After consultation with Division of Parks maintenance personnel and others who have used the tract, the Commission has determined that the following easement widths are necessary for access:

> From the Glenn Highway right-of-way to the existing powerline easement, the trail width should be 50 feet wide (25 feet from each side of the centerline). On the flat stretch of land from the powerline easement to the State-patented land, the width of the easement should be 30 feet (15 feet from each side of the centerline).

Reason, Public Purpose: The trail is necessary to provide access through the Eklutna selection to a parcel of State-patented land at Thunderbird Falls. The Thunderbird Creek Trail receives heavy use and the trail bed will have to be improved or shifted occasionally if it becomes muddy and impassable. The recommended width will allow a reasonable margin outside of the traveled path so there will be room for trail maintenance and improvement. The width was carefully limited to provide that necessary for access, yet to avoid what reservation of a scenic easement.

7. Thunderbird Creek Trail South of the State Patented Lands at Thunderbird Falls

Recommendation: That a 40-foot-wide access easement for public trail use be established along the existing game trail through Section 31, T16-N, R1E. This recommendation is made with the condition that the easement be terminated if future Eklutna selections are located so that the trail does not provide access to the Chugach State Park.

Location: This easement should center on the existing game trail which runs diagonally from Thunderbird Falls through Section 31, T16N, R1E. It isn't possible to determine whether this trail is a valid easement under Section 17(b) until the full extent of Eklutna's selection is known. Eklutna is considering selection of most of the land traversed by this proposed trail easement. The trail segment in the selection under construction is a valid and needed access easement only if it will actually provide access to park land, hence the conditional recommendation.

8. Trailhead Facility at Entrance to Thunderbird Falls Trail

Recommendation: That no easement be reserved for trailhead facilities.

Reason: The 100-acre trailhead facility easement proposed by the Division of Parks would be an easement for use of an area rather than for access through a selection.

If off-street parking space were needed for use of the trail, that portion of the trailhead facility necessary for off-street parking could be justified as an access easement. People have to park their cars to traverse the trail. However, the existing parking space on the Glenn Highway right-of-way, accommodates 45 to 50 cars. The right-of-way is 300 feet wide in this area, 150 feet from the centerline. Since this segment of the highway is being bypassed by the new highway, added space, surplus to highway needs, should be available for trail parking. The capacity of the 13-mile trail, including its extension south of the Falls, is estimated by the Division of Parks as 180 people at any one time. Space for 45 to 50 cars is adequate in relation to this capacity. Providing more parking space would only encourage overcrowding of the trail.

9. Eklutna River Trail

Recommendation: That a 40-foot-wide trail be reserved leading from the Eklutna Lake Road along the south side of the Eklutna River.

Location: This trail should be located in accordance with maps prepared by the Division of Lands.

Reason, Public Purpose: This trail would provide access to public recreation lands located on the south side of the Eklutna River and Eklutna Lake.

10. Twenty-Five-Foot Stream Maintenance Easements

Recommendation: That this type of easement be established under the Borough's subdivision authority at the time that land is subdivided.

Reason: The Borough has requested 25-foot-wide easements on both sides of streams "to insure that stream maintenance equipment (caterpillars and the like) will have access to the streams and sufficient maneuvering room to insure that the job of clearing streams of obstructions can be accomplished." They base the

need for this type of easement on the potential for new development along streams, saying that development brings dangers of stream blockage and possible flooding.

Since the need for stream maintenance accompanies development, reservation of the easement at the time of subdivision is appropriate. If Eklutna wishes to develop its lands, it will have to subdivide and go through the normal subdivision requirement process. Need for stream maintenance should be minimal before subdivision while the land remains underdeveloped in a single block of ownership.

11. Easements Under Study by the Bureau of Land Management

Recommendation: That the Commission be provided with the opportunity to review and make recommendations on Bureau of Land Management easement proposals in the Eklutna area when they are released by the State Office.

These recommendations were developed after consultation with the Eklutna Village Corporation, the Cook Inlet Region, Inc., the Greater Anchorage Area Borough, the Matanuska-Susitna Borough, the Alaska Division of Parks, and other parties with an interest in the area. In addition, the Commission staff conducted an independent planning analysis.

We would be glad to provide you with any further information you may need concerning the basis of these recommendations.

Sincerely,

Joe P. Josephson
State Co-Chairman Designee

Sincerely,

*Burton W. Silcock
Federal Co-Chairman

* On annual leave at the date of this communication.

cc: Daniel Alex - Eklutna Village, Inc.
Ralph Johnson - President, Cook Inlet, Inc.
Curt McVee - State Director, Bureau of Land Management

MINORITY POSITION ON EKLUTNA VILLAGE EASEMENTS

The minority position is that no easement be reserved for a trail on the south side of Eklutna River. Access is provided by the established road.

Our argument in favor of this position is based on the premise that the Act (P.L. 92-203, Alaska Native Claims Settlement Act) grants land and monies to the Alaska Natives as compensation for the extinguishment of aboriginal claims on all lands in Alaska. The effective date of the Act was December 18, 1971, and as of that date, aboriginal rights were extinguished and quid per quo title to the 40 million acres passed to the Natives subject only to the formalities of selection and patent. To reserve easements for uses not then in existence but thought to be desirable after the date is unreasonable even if within the purview of the Act. There is no end to the easements that may be conjured up by various agencies under the guise of being reasonably related to an anticipated public use or a planned governmental function.

We respectfully dissent from the majority opinion on the reservation of the easements aforementioned.

James J. Hurley
Commissioner

Harry E. Carter
Commissioner

SEPARATE STATEMENT CONCERNING EKLUTNA
VILLAGE EASEMENTS

BY: Joe P. Josephson
State Co-Chairman Designee
March 15, 1974

I support the decision by the Commission to recommend an easement for a proposed trail along the south side of the Eklutna River.

Section 17(b)(1) of Public Law 92-203, the Alaska Native Claims Settlement Act commands the Commission to

> identify public easements across lands selected by village coroporations... which are reasonably necessary... to guarantee a full right of public use and access for recreation, hunting, transportation, utilities, docks, and such other public uses as the planning commission deems to be important.

Congress did not intend that the Commission should limit its recommendations to easements in use on December 18, 1971, the date when the Alaska Native Claims Settlement Act was passed. Rather, the plain language of section 17(b)(1), read alone or in conjunction with other directives in section 17 to the Joint Federal-State Land Use Planning Commission, directs the Commission to consider easement requirements as part of its planning function.

Looking to the future, and considering the anticipated population growth of the Anchorage metropolitan area adjacent to Chugach State Park, I find the majority reached a sound conclusion that the proposed access route along the south side of the Eklutna River is "reasonably necessary to guarantee a full right of public use and access for recreation" within Chugach State Park. If the width of access easements is no greater than fifty feet, and no easement for parking is furnished within the Village Corporation's lands, the provision for an access trail along the south side of the Eklutna River becomes all the more critical. Moreover, the ability of hikers to use one route of ingress and another route for egress enhances their experience within the park itself, and reduces park management problems that result from excessive crowding.

JOE P. JOSEPHSON

JPJ:mjw

IN REPLY REFER TO:

United States Department of the Interior

2651 (931)
AA-6661-A

BUREAU OF LAND MANAGEMENT
State Office
555 Cordova Street
Anchorage, Alaska 99501

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAY 01 1974

DECISION

Eklutna Incorporated	:	Village Selection
P.O. Box 98	:	Section 12(a) of the
Chugiak, Alaska 99567	:	Act of December 18, 1971

Publication Directed

Eklutna Incorporated has filed an application under the above-noted act. The selected lands are subject to selection under the act and are described in accordance with the regulations.

The enclosed Notice for Publication is to be published for 4 consecutive weeks. The corporation officer should deliver the notice to the following newspaper for publication.

Anchorage Daily Times
P.O. Box 40
Anchorage, Alaska 99510

At the expiration of the period of publication, proof thereof, consisting of a statement of the publisher, foreman or other proper employee of the designated newspaper and showing the dates of publication, must be filed in this office together with a copy of the published notice, as required by 43 CFR 2650.7(b).

J. A. Hagans

J. A. Hagans
Chief Adjudicator

Enclosure 1
Encl. 1 - Notice for Publication

IN REPLY REFER TO

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

State Office
555 Cordova Street
Anchorage, Alaska 99501

NOTICE FOR PUBLICATION

Under the provisions of section 12(a) of the act of December 18, 1971 (85 Stat. 688), the village of Eklutna on August 20, 1973, filed application AA-6661-A, and amended same on November 13, 1973; November 19, 1973; November 27, 1973; April 10, 1974, and April 15, 1974, for certain public lands located near Eklutna and described as:

T. 15 N., R. 1 W., Seward Meridian (surveyed)

sec. 4: lots 5-7, 9, 11, 12, 14, 15, 18, 19, 30, 31, 40, 49, 50;

sec. 5: lots 3, 14-17, 24-27, 29-31, 37, 42-45, 51, 53, 55, 56, 62, 65, 68, 78, 79, 87, 91, 104, 110-117, SE¼NW¼, SE¼SW¼NW¼, that portion of the SW¼ lying northwest of the Alaska Railroad;

sec. 7: lots 1-5, 8-10, 22, 24-35, 37, 40-63, 70-92, N½NE¼;

sec. 8: lots 3, 87, 104-106, 119, 123, 126, 134-136, 142-144, 161-163, 166, 173-176, 178, 194-197, 199, 193-197, 204-206, 212-214;

sec. 9: a portion of lot 5, lots 11, 36, 41, 53, 58, 59, 72, 75, 79, 100, 102-104, 114, 117, 118, 120, 124, 125, 128, 133, 135, 139, 140, 144, 145, 148-150, S½SW¼SW¼, SW¼SE¼SW¼;

sec. 17: a portion of lot 8, lots 4-6, 11-14, N½, N½SW¼, SW¼SW¼, N½SE¼SW¼, N½NW¼SE¼, SW¼NW¼SE¼;

sec. 18: lots 6, 11-26, 42-57, 74-88, 109-113, 126, 134-144, 160, 162-164, 166, 167, 185, 203, 206, 209, 211-216, E½SE¼, NE¼SW¼SE¼;

sec. 19: lots 1, 4-7, 13, 17, 27, 30, 47, S½NE¼, SE¼NW¼, E½SW¼, W½SE¼, NE¼SE¼, N½SE¼SE¼, W½SW¼SE¼SE¼;
sec. 20: a portion of lot 2, lots 3-5, 8, 9, 12-15, 17-19, 21, 24, 29, 32, S½NE¼NE¼, SE¼NE¼, NW¼NW¼, W½SW¼NW¼, E½E½SW¼, E½W½SE¼SW¼, SE¼;
sec. 30: lots 19-26, 29-33, 43, 44, 54, 55, 67, 68, 79, 87-89, 91, 94, 95-99, 104, 105, 107-109, E½NW¼, E½E½SW¼, NW¼SE¼NW¼SW¼, NW¼SE¼NW¼SW¼, NE¼SW¼SW¼;

T. 16 N., R. 1 W., Seward Meridian (surveyed)
sec. 23: lots 1, 2, that portion of lot 3 north and east of the main channel of the Eklutna River, NE¼SE¼, SW¼SE¼ that part north and east of the main channel of the Eklutna River;
sec. 24: lots 3, 4, 7, E½NE¼SE¼NW¼, W½SE¼NW¼, SW¼NW¼, NW¼NE¼SW¼, W½SW¼, that part of the NW¼SE¼ south and east of the Alaska Railroad, S½SE¼;
sec. 25: NE¼, E½NW¼, that part of the W½NW¼ north and east of the main channel of the Eklutna River and south and east of the Alaska Railroad, N½SE¼, SW¼SE¼, W½SE¼SE¼, S½SE¼SE¼SE¼;

T. 16 N., R. 1 E., Seward Meridian
sec. 19: lots 5, 6, S½½SE¼NE¼, S½SE¼NE¼, W½SE¼NW¼, E½SW¼, NE¼SE¼, N½NW¼SE¼, SW¼NW¼SE¼, N½SE¼NW¼SE¼, SW¼SE¼NW¼SE¼;
sec. 20: lot 9, SW¼NW¼;
sec. 27: S½½NE¼NW¼, S½NE¼NW¼, S½NE¼NW¼NW¼, SE¼NW¼NW¼;
sec. 28: N½NE¼NW¼, and those lands formerly in A-056654;
sec. 29: NE¼NW¼;
sec. 30: lots 1, 2, 3, SW¼NE¼, E½W½, SE¼;
sec. 35: NE¼, those lands formerly in A-056539 and A-057186;
sec. 36: SW¼SW¼.

Containing approximately 5,090.54 acres.

The purpose of this notice is to allow all persons claiming the lands adversely to file in this office their objections to issuance of patent to the village corporation. Such persons must serve on the Secretary, Eklutna Incorporated, P.O. Box 98, Chugiak, Alaska 99567, a copy of their objections and furnish evidence of such service to the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501.

/s/ J. A. Hagans
J. A. Hagans
Chief Adjudicator

File [illegible] to Title [illegible]

IN REPLY REFER TO:
2651 (931)
AA-6661-A

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
State Office
555 Cordova Street
Anchorage, Alaska 99501

JUN 5 1974

Mr. Dan Alex, President
Eklutna Incorporated
P.O. Box 98
Chugiak, Alaska 99567

Dear Mr. Alex:

One of the steps involved in the processing of your village selection application (AA-6661-A) for the core township has been the identification of public easements in accordance with Section 17(b) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-7 of the regulations. The Federal-State Land Use Planning Commission and the Bureau of Land Management have studied the selected area to determine if the need exists for the reservation of any public easements in the title document. The commission and the Bureau have attempted to obtain input from all interested parties and agencies.

As a result of this in-depth study, a determination has been made that the following public easements shall be reserved in conveyance of the lands involved in selection application AA-6661-A:

1. Access easements will be reserved for the right-of-way of the New Glenn Highway. The easement will be subject to valid existing rights to protect the residents of Eklutna who have homes and improvements located on the proposed right-of-way. These easements will be located in accordance with right-of-way application AA-8095.

2. A 100-foot easement (50 feet from each side of the centerline) limited to construction and maintenance of power transmission facilities for a regional powerline inter-tie. The route of this transmission line is described in right-of-way applications AA-8781 and AA-8922. The easement will allow the owners of the land the right to conduct any lawful use of the land which does not conflict with the National Electric Safety Code. All merchantable timber cleared from the land will be available to the owners of the land.

3. A 100-foot easement will be reserved for a public road to provide access from the Birchwood Loop Road to the Birchwood Airport and adjacent industrial areas.

   This easement will be established so that its easterly edge is 250 feet west of a parallel to the westerly edge of the Alaska Railroad right-of-way, with the road commencing at the southerly end of the Birchwood Airport and running southwesterly to the west section line of section 18, T. 15 N., R. 1 W. From that point, the roadway will run south, centered on the section line, along the west lines of sections 18 and 19, T. 15 N., R. 1 W., to the southwest corner of the NW¼ of said section 19. From there, the roadway will run easterly, centered on the east-west centerline of section 19, T. 15 N., R. 1 W., Seward Meridian to Birchwood Loop Road.

4. A 200-foot wide easement will be reserved for the existing Eklutna Lake Road from its intersection with the Glenn Highway to its terminus south of Eklutna lake.

5. A 50-foot easement, 25 feet on each side of the centerline will be reserved for the existing main trail leading from the Glenn Highway to the State patented land near Thunderbird Falls. The existing trail passes through the following lands:

   T. 16 N., R. 1 E., Seward Meridian
   sec. 30: lot 4.

   T. 16 N., R. 1 W., Seward Meridian
   sec. 25: NE¼SE¼SE¼, N½SE¼SE¼SE¼.

6. A streamside easement 25 feet on each side of Thunderbird Creek will be reserved from Thunderbird Creek Falls to its junction with the Eklutna River and thence along the Eklutna River to Cook Inlet.

7. A 50-foot wide easement, 25 feet on each side of the centerline will be reserved along the existing game trail from Thunderbird Falls through section 31, T. 16 N., R. 1 E., Seward Meridian.

8. A 50-foot wide easement, including the streambed of the Eklutna River, on the south side of the river from the dam near Eklutna Lake to the junction of the Eklutna River and Thunderbird Creek.

9. A 100-foot wide easement, 50 feet on each side of the centerline, to be reserved for the Station Access Road in sections 24 and 25, T. 16 N., R. 1 W., Seward Meridian to provide access from the Glenn Highway to those lands reserved for the Alaska Railroad in PLO 2259 of February 3, 1961.

10. A 100-foot wide easement, 50 feet on each side of the centerline, be reserved for the Beach Access Road in section 24 of T. 16 N., R. 1 W., Seward Meridian to provide a point of shoreline access from those lands described in PLO 2259.

We will proceed with the preparation of the documents necessary to convey the lands as rapidly as possible.

Sincerely yours,

Sue A Wolf

Acting Chief Adjudicator

June 11, 1974

Curtis V. McVee
State Director
Bureau of Land Management
555 Cordova
Anchorage, Alaska 99501

RE: Your letter to Dan Alex of June 7, 1974

Dear Mr. McVee:

Daniel Alex has provided me with a copy of your letter to him dated June 7, 1974 concerning Eklutna's selections in Township 15 N, Range 1 W, Seward Meridian. Your letter raises certain questions.

Eklutna recognizes that the Bureau of Land Management must conduct its activities in accordance with Department of Interior regulations, including 43 C.F.R. 2651.4 concerning selection limitations. Subparagraph (g) of that regulation provides:

> Whenever the Secretary determines that a dispute exists between villages over land selection rights, he shall accept, but not act on, selection applications from any party to the dispute until the dispute has been resolved in accordance with § 12(c) of the Act.

No dispute between Eklutna and Knik concerning lands in Township 15 N, Range 1 W, Seward Meridian exists so far as we know. Eklutna took advantage of the procedure provided in 43 C.F.R. 2650.7 allowing publication for a period of four weeks to give notice to potential adverse claimants concerning Eklutna's land selections. That publication was completed in accordance with the regulation and Knik did not file any claim or protest concerning the land covered by the publication, including the land in Township 15 N, Range 1 W, Seward Meridian. 43 C.F.R. 2650.7(c) provides:

> Any adverse claimant must serve on the applicant a copy of his objections and furnish evidence of service thereof to the appropriate land office.

Eklutna most assuredly has not received any objection from Knik-Atnu, Inc. or any other entity purporting to represent Knik.

In view of the fact that Ekulutna has followed the publication procedure and in view of the fact that Eklutna knows of no action by Knik-Atnu, Inc. or any other representative of Knik which would constitute evidence that a dispute exists concerning land selections between Knik and Eklutna, Eklutna must conclude that the Bureau's decision not to convey the lands in Township 15 N, Range 1 W is arbitrary and capricious.

Before seeking judicial assistance, Eklutna will give you an opportunity to respond to this letter. Kindly state whether the Secretary has determined that a dispute exists between Knik and Eklutna concerning land selection rights in Township 15 N, Range 1 W, Seward Meridian. Please indicate when the Secretary's decision was made. Finally, set out the bases for the Secretary's conclusion that a dispute actually exists.

Very truly yours,

BURR, PEASE & KURTZ, INC.

John W. Sedwick
Attorneys for Eklutna, Inc.

JWS/nas

cc: Daniel Alex
Leo Stephan

United States Department of the Interior

IN REPLY REFER TO:
2650.32 (931)
AA-6661-A

BUREAU OF LAND MANAGEMENT
State Office
555 Cordova Street
Anchorage, Alaska 99501

JWS

Mr. John W. Sedwick
Burr, Pease and Kurtz, Inc.
825 West Eight Avenue
Anchorage, Alaska 99501

JUL 03 1974
RECEIVED
JUL 5 1974
Burr, Pease & Kurtz, Inc.

Dear Mr. Sedwick:

In your letter of June 11, 1974, you stated that a dispute does not exist between the villages of Knik and Eklutna. We agree with this position, however, we are unable to convey the lands in T. 15 N., R. 1 W., Seward Meridian, to the village of Eklutna at this time.

The Director of the Bureau of Indian Affairs, acting for the Secretary of the Interior, proposed the village of Knik as being eligible for benefits of the Alaska Native Claims Settlement Act. In accordance with the regulations in 43 CFR 2651.2(a)(6) the application from Knik was forwarded to the Bureau of Land Management and the records were so noted. The regulations in 43 CFR 2651.2(a)(7) state:

> The receipt of the selection application for filing by the Bureau of Land Management shall operate to segregate the lands in the vicinity of the village as provided in sections 11(a)(1) and (2) of the act.

The Bureau of Land Management received Knik's application on August 30, 1973. The lands from that date on have been withdrawn from all forms of appropriation for possible selection by both Knik and Eklutna.

As you know, the matter of Knik's eligibility is now before the Alaska Native Claims Appeal Board. If that board finds that Knik is not an eligible village, the segregative effect of that application will die. At that time the lands could be conveyed to Eklutna.

If, however, the Appeals Board finds that Knik is eligible for benefits of the claims act, their right to select the lands in question is also valid.

Until the Appeals Board finds Knik ineligible for benefits under the Native claims act, or if Knik is found eligible for these benefits and chooses not to select lands in T. 15 N., R. 1 W., we cannot issue a conveyance document as the lands in question are covered by overlapping withdrawals.

Until the time a final determination on the eligibility of Knik is made, a matter which we have no control over, we are following the only course open to us.

Sincerely yours,

Richard L. Thompson

Acting State Director

July 8, 1974

Richard L. Thompson
Acting State Director
Bureau Of Land Management
555 Cordova Street
Anchorage, Alaska 99501

RE: Your letter of July 3, 1974

Dear Mr. Thompson:

Your letter of July 3, 1974 has been received. I wish to take this opportunity to thank you for replying to my earlier correspondence. Of course, Eklutna still maintains that your position is improper in as much as there is no basis for determining that an actual dispute betwee Knik and Eklutna exists with respect to the land Township 15 North, Range 1 West, Seward Meridian. If you have any information to the contrary (aside from the application for certification of the village submitted by Knikatnu, Inc.), I would appreciate your conveying that information to me at your early convenience.

Very truly yours,

BURR, PEASE & KURTZ, INC.

John W. Sedwick
Attorneys for Eklutna, Inc.

JWS/mas

cc: Daniel Alex,
Executive Director
Eklutna, Inc.

Leo Stephan,
President
Eklutna, Inc.

JWS

IN REPLY REFER TO:

2650.32 (931)
AA-6661-A

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

State Office
555 Cordova Street
Anchorage, Alaska 99501

RECEIVED
AUG 14 1974
Burr, Pease & Kurtz, Inc.

AUG 13 1974

Mr. John W. Sedwick
Burr, Pease and Kurtz, Inc.
825 West Eighth Avenue
Anchorage, Alaska 99501

Dear Mr. Sedwick:

In your letter of July 8, 1974, you again assert that there is not an actual dispute between Knik and Eklutna over lands in T. 15 N., R. 1 W., Seward Meridian. We can only restate our position that as long as the lands are under a withdrawal for both villages, we are unable to grant conveyance to either one. We feel that each concerned village should have an equal opportunity to select lands withdrawn for it.

We have no additional information concerning the eligibility of Knik; neither do we know anything of the intended selection as the village is barred from submitting an application before being certified eligible.

Since our letter of July 3, 1974, Eklutna, Inc. has appealed the decision of the Bureau of Land Management to include certain reservations in previously issued conveyance documents. We feel that until this question is resolved, both Eklutna, Inc. and the Bureau of Land Management would benefit, in time and monetary expenditures, by postponing the issuance of additional conveyance documents.

When these issues have been resolved to the satisfaction of the involved parties, we will take appropriate action.

Sincerely yours,

Curtis V. McVee

Curtis V. McVee
State Director

File A-127 1.0 Correspondence

BURR, PEASE & KURTZ, INC.

825 WEST EIGHTH AVENUE

ANCHORAGE, ALASKA 99501

TELEPHONE
AREA CODE 907
279-2411

E. L. ARNELL 1913-1958

D. A. BURR
T. M. PEASE, JR.
L. S. KURTZ, JR.
E. G. BURTON
C. P. FLYNN
R. A. HELM
A. C. PAGE
J. W. SEDWICK
P. A. WILLIAMS

August 21, 1974

File

Curtis V. McVee, State Director
Bureau of Land Management
United States Department of the Interior
State Office--555 Cordova Street
Anchorage, Alaska 99501

Re: 2650.32 (931)
AA-6661-A

Dear Mr. McVee:

In the absence of Mr. Sedwick, I have taken the liberty of responding to your letter of August 13, 1974.

The position of Eklutna must remain that so long as no selection has actually been filed by a village which has an overlapping withdrawal, a selection made by one of the villages concerned must be honored, if no protest is received after publication. Be that as it may, we believe that matters between Knik and Eklutna have been resolved by the settlement agreement which hopefully has been received by you and already is lodged with the Alaska Native Claims Appeals Board.

We desire to discuss the matter of further conveyances with you. It is doubtless true that unless the matter of further conveyances is carefully handled, there will be expenditures of time and money in disputes concerning these conveyances of the same nature as the ones we are now experiencing. Nevertheless, the disputes at the present time concern only some aspects of the ownership of the land, that is, the extent of the title conveyed. There are lands, and there are interests in those lands, which indisputably are conveyed by the conveyances which are presently in dispute. To withhold further conveyances is to withhold from Eklutna those interests in lands which it is entitled to and able to work with in the interim. Thus, Eklutna would be substantially damaged by not making any additional conveyances.

Hopefully we can resolve this matter by entering into some variety of agreement which would protect both parties against the issues presently being appealed. We would suggest the possibility of an agreement that Eklutna's failure to appeal certain items in future conveyances would not be deemed a waiver of your duty to amend those items in the event that similar items in the first conveyances are resolved in Eklutna's favor. Likewise, Eklutna might then be agreeing that it would not in the future contest the validity of certain items in the new conveyances which in the present proceedings were resolved against Eklutna. The possibility also suggests itself that the conveyances could be issued in a form acceptable to the Bureau of Land Management, appeals taken, and a stipulation promptly entered that no further proceedings on the appeals need take place pending resolution of the presently pending appeals.

I hope that you understand that I have no authority to enter into such an agreement at the present time, but am only putting the subject on the table for discussion. I am very hopeful that we can work out some way in which the village may receive the interest in land which all agree it is entitled to, without prejudice to either party concerning the contested interests in land.

Very truly yours,

BURR, PEASE & KURTZ, INC.

Ted Burton

E.G. Burton

EGB:kfs

cc: Eklutna, Inc.

January 15, 1975

Curtis V. McVee
State Director
Bureau of Land Management
555 Cordova Street
Anchorage, Ak. 99501

Dear Mr. McVee:

As you know, this office has taken over the legal representation of Eklutna, Inc. A review of Eklutna's files has disclosed quite a bit of correspondence between your office and Eklutna's prior counsel over Eklutna's request for immediate conveyance of lands selected in T.15 N., R.1 W., S.M.

In view of the resolution of matters between Knikatnu, Inc. and Eklutna, Inc. regarding land selections, it appears that the primary reason for postponing the issuance of patent is as set forth in your letter of August 13, 1974, to John W. Sedwick:

> "...Eklutna, Inc. has appealed the decision of the Bureau of Land Management to include certain reservations in previously issued conveyance documents. We feel that until this question is resolved, both Eklutna, Inc. and the Bureau of Land Management would benefit, in time and monetary expenditures, by postponing the issuance of additional documents."

As the public easements designated pursuant to §17(b)(3) of ANSCA are essentially unique to the land conveyed, it appears that your letter is concerned with the reservations to the United States. Of those reservations, Eklutna, Inc. has taken issue with only the right-of-way for ditches and canals and the right-of-way for the construction of railroads, telephone and telegraph lines.

It is unfortunate that Eklutna, Inc. must be penalized because it has exercised its right of appeal to the Alaska Native Claims Appeals Board. Furthermore, as the issue of the propriety of those reservations are already before the Appeals Board, I am not sure what additional time and expense would be incurred if patent issued with similar reservations. Will patents to other villages be similarly held up?

I would greatly appreciate hearing from you in this regard and would welcome the opportunity to meet with you or a member of your staff.

Thank you for your time and consideration.

Repsectfully,

RICE, HOPPNER, BLAIR & HEDLAND

Saul R. Friedman

SRF/pf

cc: Leo Stephan, President, Eklutna, Inc.
Dan Alex, Executive Director, Eklutna, Inc.
Judy Brady, Chairperson, ANCAB

January 15, 1975

Ms. Judy Brady
Chairperson
Alaska Native Claims Appeals Board
P. O. Box 2433
Anchorage, AA. 99510

Re: Eklutna, Inc.'s land selections

Dear Ms. Brady:

Enclosed is a copy of a letter which I have written to Curtis V. McVee regarding Eklutna's desire for further conveyances by the B.L.M.

In my opinion, Mr. McVee's position constitutes an adverse decision by the B.L.M. Therefore, I would appreciate your advising me if the ANCAB would accept jurisdiction over an appeal from that decision.

Though I want to insure that I have exhausted all administrative remedies prior to the filing of any lawsuit in this matter, I am apprehensive that such an appeal could be pending before your Board for a substantial period of time. Therefore, I would also welcome your comments as to whether such an issue could be quickly disposed of by your Board, as I do not believe any factual dispute exists.

Thank you for your time and consideration.

Respectfully,

RICH, HOPPNER, BLAIR & HEDLAND

Saul R. Friedman

SRF/pf

cc: Leo Stephan
Dan Alex

BURR, PEASE & KURTZ, INC.
825 WEST EIGHTH AVENUE
ANCHORAGE, ALASKA 99501
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AREA CODE 907
279-2411

E. L. ARNELL 1913-1958
D. A. BURR
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RICHARD A. HELM
A. E. PAGE
J. W. SCOWICK
RONALD H. BUSSEY
RUSSELLYN S. CARRUTH
R. E. DUERRE
CONNIE J. SIPE
LARRY MEYER

February 9, 1976

Alaska State Office
Bureau of Land Management
555 Cordova Street
Anchorage, Alaska 99501

Attention: Curtis McVee
State Director

Gentlemen:

For a period in excess of two years, Eklutna has been awaiting conveyance of properties as to which there has been Federal-State land use planning commission easements review, and as to which properties there has been publication. We know of no legal obstacle to the present conveyance of these properties. We previously suggested that matters of valid existing rights could properly be adjudicated between Eklutna and the holder of that right in another forum. We have repeatedly offered to except from the conveyances, without prejudice to future conveyances, any tracts such as Borough school lands and State airports as to which there may be felt to exist some questions of entitlement or boundary dispute. If a conveyance of those lands as to which no such dispute exists has not been received by Eklutna, Inc. on or before February 15, 1976, Eklutna will have no choice but to bring an action for a mandatory injunction for the implementation of the claims act.

Very truly yours,

BURR, PEASE & KURTZ, INC.

E. G. Burton

EGB/gd

cc: Mr. Robert Sorenson, BLM-Anchorage
Mr. Merrill, Anchorage District Office
Honorable Ted Stevens
Honorable Mike Gravel
Honorable Don Young
Eklutna, Inc.

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HENRY BELLMON, OKLA.
JAMES R. CALLOWAY
CHIEF COUNSEL AND STAFF DIRECTOR

RECEIVED
FEB 23 1976
Burr, Pease & Kurtz, Inc.

United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, D.C. 20510

February 18, 1976

Mr. E. G. Burton
Burr, Pease & Kurtz, Inc.
825 West Eighth Avenue
Anchorage, Alaska 99501

Dear Ed:

Thank you for providing me with a copy of your recent letter to Curt McVee of the Bureau of Land Management. I appreciate knowing of the difficulties that Eklutna is having in receiving land under the Alaska Native Claims Settlement Act. It is indeed unfortunate that these properties have not yet been conveyed to your client.

As you may be aware, several members of the staff of the Senate Interior Committee were in Alaska last week and met with a variety of groups concerning the D-2 land issue. At one session of those meetings a representative of your group and other Natives attended and voiced great dismay at the implementation of the Claims Act. As a result of those and other comments received by the staff members, it is my understanding that they intend to urge the Interior Committee to hold oversight hearings on the implementation of the Claims Act. This obviously would include discussion of the transfer of land by the Bureau of Land Management in Alaska. If those hearings are held, you may be interested in testifying. In the meantime I have forwarded a copy of your letter to Secretary Kleppe and urged him to take immediate action to insure conveyance of the land to Eklutna.

With best wishes,

Cordially,

TED STEVENS
United States Senator

A-212.

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E. L. ARNELL 1913-1958
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R. E. DUERRE
CONNIE J. SIPE
LARRY MEYER

March 15, 1976

Honorable Thomas E. Kleppe
Secretary of the Interior
Department of the Interior
Washington, D. C.

Re: Secretarial Order No. 2987
Subject: Reservation of Easements for the Transportation of Energy, Fuel, and Natural Resources Pursuant to Section 17(b) of the Alaska Native Claims Settlement Act (ANCSA)

Dear Secretary Kleppe:

This office represents Eklutna, Inc., a native village corporation incorporated pursuant to ANCSA. Eklutna has the misfortune and fortune to be located in the Anchorage suburban area. The highest and best use of Eklutna property at the present time, or at least of substantial portions of Eklutna property, is residential subdivision development.

Following promulgation of Secretarial Order No. 2987, and our obtaining a copy of the same, we have discussed this Order 2987 with various mortgage lenders in the Anchorage area to whom Eklutna, Inc. might look for development money in order to prepare this land for marketing.

We are advised that easements reserved pursuant to Secretarial Order 2987 may well render Eklutna's land worthless for purposes of collateralizing land development loans. The ability of the United States to take land from within a recorded subdivision, without compensating the owner for the land, rendering a replat necessary, if not taking the entire subdivision, simply makes the land not marketable and worthless as security for lending.

Under the circumstances, Eklutna is threatened with the absolute destruction of the value of ANCSA to it.

There is no way we can overstate the severity of the situation.

We are confident that the promulgation of the order was in contemplation of problems of an entirely different nature. We are confident that you did not have in mind mortgage financing problems of the suburban area of a major city when this order was promulgated. Rather, I assume that you had locations such as Anaktuvuk Pass in mind, and needs such as transportation of Pet 4 resources.

It is imperative that your order be modified to exclude lands in the Alaska "rail-belt" area, or that a procedure promptly be established for the exemption of specific conveyances from the requirement that these easements be reserved, or that some other means be devised by the Department of the Interior to eliminate the mortgagee's problem. Otherwise, Eklutna will have no choice but to bring court action to strike down these regulations as contrary to the obvious intent of ANCSA.

We are told that even with respect to improvements on the property, there remains a problem caused by this blanket easement. For example, even though the United States would be obliged to compensate the owner for his improvements, the land on which the improvements are located would not be paid for; as a result, the alert home buyer is going to be unwilling to pay any price for the land, and the mortgage lender is not going to include the land for purposes of determining the value of the collateral to which to apply the maximum loan amount percentage.

We require immediately assurance that steps will be taken to eliminate this problem. Otherwise, insofar as Eklutna is concerned, the Alaska Native Claims Settlement Act will have been repealed.

We are not unaware that various other Federal blanket easements have existed from time to time in the past, principally those for telephone and telegraph lines, and railroads, ditches and canals. The mortgage lending community has come to tolerate the existence of these, although they do threaten the same sorts of deprivation as above referred to. However, one is able to guage for ones self the probability of the construction, for example, of canals in mountainous areas adjacent to navigable portions of the sea. Therein lies a significant distinction. Concerning energy, we are faced with the existence of the Eklutna power project, the potential construction of Devil's Canyon Dam, possible transmission of natural gas, and a variety of other federally related energy projects. We believe that Eklutna's track record with regard to requests by Chugach Electric Association and Matanuska Electric Association, establishes beyond a reasonable doubt that Eklutna is not

difficult to deal with when it comes to obtaining right of way for specific projects. However, Eklutna simply cannot afford to have all of its lower-lying lands clouded with a blanket easement when only a portion would be useful in fact for the construction of facilities related to projects that are on the drawing boards.

We sincerely trust that you did not intend to bring about any such predicament, and will move swiftly to allieviate it.

Very truly yours,

BURR, PEASE & KURTZ, INC.

E. G. Burton

EGB/gd

cc: Jack Burke, Esq.,
Office of the Solicitor
John Roberts, Assistant
U. S. Attorney
Mr. Dan Alex
Honorable Ted Stevens
Honorable Mike Gravel
Honorable Don Young
Honorable Henry Jackson
Honorable Lloyd Meeds
Jake Lestenkoff, A.F.N.

RECEIVED
APR 9 1976
Bureau of Land Mgt.

United States Department of the Interior
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

March 24, 1976

Honorable Ted Stevens
United States Senate
Washington, D. C. 20510

Dear Senator Stevens:

This is in further response to your letter concerning Eklutna, Inc. A copy of the letter from the attorney for Eklutna, Inc., was not enclosed with your prior correspondence, however, we have investigated the matter and determined the difficulties encountered in the conveyancing process for Eklutna.

Some time ago, representatives of the village of Eklutna approached the Bureau of Land Management and the Joint Federal-State Land Use Planning Commission and represented that Eklutna needed the conveyance of certain lands immediately. They were informed at the time that the BLM was operating under interim instructions concerning the reservation of easements and that the Commission had identified a substantial number of reservations relating to the lands desired. The representatives of Eklutna insisted that they wished to waive their objections to the inclusions of any easements identified by either the Commission or the Bureau in exchange for expedited conveyances. The Bureau complied with the request. After the conveyances were received and recorded some of the land was reconveyed. Thereafter, Eklutna filed appeals questioning the reservation of the easements in which they had earlier acquiesced. In addition, Eklutna has filed a crossclaim in the Alaska Public Easement Defense Fund v. Klepoe against the United States challenging the procedures and conclusions of the Secretary in determining which easements should be reserved.

It is the universal Federal policy not to take actions on matters pending in litigation and this is especially true concerning the conveyancing of land. Once a conveyance has been made it is impossible to add to or alter the reservations in the patent. Since Eklutna has challenged the conveyance procedures, the Department cannot proceed further in conveying of lands for this region until the issues have been resolved.

Sincerely yours,

Ken M. Brown
Legislative Counsel



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

RECEIVED
APR 9 1976
Burr, Pease & Kurtz, Inc.

April 5, 1976

Mr. E. G. Burton, Esquire
Burr, Pease & Kurtz, Inc.
825 West 8th Avenue
Anchorage, Alaska 99501

Dear Mr. Burton:

This is in further response to your letter of March 15. All public lands conveyed during the past hundred years have contained floating easements of various types. Even in the areas where easements might be used, it has not been our experience that lending institutions have viewed these reservations as clouds on title justifying a reduction on the amount of the mortgage. Moreover, the Federal Government has only authorized the use of these easements in a limited number of instances and after careful consideration of impact and alternatives. It is very unlikely that the Secretary of the Interior could or would authorize a major oil or gas pipeline or high voltage transmission line through the center of a residential subdivision.

Federal statutes concerning condemnation that would be applicable to the authorized use of a Federally reserved right-of-way subject to the limitations in conveyances required by Secretarial Order 2987 provide considerable protection to the landowner.

In addition the existing Departmental regulations, 43 CFR 2650.4-7(c)(1), state:

> The Secretary shall terminate a public easement . . . . if he finds that conditions are such that its retention is no longer needed for public use or Government function.

Because of the foregoing any land actually subdivided by your client or any other corporation is extremely unlikely to be threatened by the rights reserved pursuant to Secretarial Order 2987.

An application to the Secretary for relinquishment of the easement reserved pursuant to Secretarial Order 2987 would be seriously considered by any Secretary of the Interior and, in the absence of very unusual circumstances, would very likely be approved. Public and private entities usually seek



unpopulated routes when building high voltage transmission lines or major oil and gas pipelines to minimize environmental and economic impacts.

It is hoped that this letter will assure both your client and any lending institution that proposes to do business with your client. We stand ready to review any application for relinquishment applicable to a specific area such as a subdivision, but we feel that a blanket relinquishment would not be in the public interest.

Sincerely,

Ken M. Brown
Legislative Counsel

WARREN G. MAGNUSON, WASH., CHAIRMAN
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MICHAEL PERTSCHUK, CHIEF COUNSEL
ARTHUR PANKOPF, JR., MINORITY COUNSEL

United States Senate

COMMITTEE ON COMMERCE
WASHINGTON, D.C. 20510

April 2, 1976

E. G. Burton, Esq.
Burr, Pease & Kurtz, Inc.
825 West Eighth Avenue
Anchorage, Alaska 99501

Dear Ted:

Enclosed is a copy of a letter I recently received from Ken Brown, Legislative Counsel for the Department of the Interior, concerning the problems that Eklutna, Inc. is encountering in conveyances under ANCSA.

If I can be of any further assistance, please don't hesitate to let me know.

With best wishes,

Cordially,

TED STEVENS
United States Senator

Enclosure

April 13, 1976

The Honorable Ted Stevens
United States Senate
Washington, D. C. 20510

Re: Eklutna, Inc.

Dear Ted:

I am in receipt of your letter of April 2, 1976 enclosing a copy of Mr. Ken Brown's letter of March 24, 1976.

I regret to say that Mr. Brown is either misinformed or less than candid. Unfortunately, I am so swamped with a variety of matters that I could not at the moment take the time to dig out the earlier correspondence and records in question. Nevertheless, I am confident I am on safe ground in assuring you that Eklutna has repeatedly offered the BLM to enter into a program of conveyancing that would prejudice the rights of neither party, despite the existence of certain disputes.

For example, respecting the reservation of certain easements for railroads, ditches, canals, telephone and telegraph lines, we offered to accept conveyances containing such easements provided an appeal could thereafter be filed and held in abeyance pending the outcome of the existing appeals. This step was suggested in order that neither party would be prejudiced by proceeding to enable Eklutna to do business.

Concerning the allegation that Eklutna reneged on an agreement to accept certain easements, neither we nor our client have any recollection of any waiver whatsoever of objections to easements. Further, the language of the conveyances deviated substantially from the intent of the Federal-State Land Use Planning Commission. For example, Eklutna did consent to a right-of-way for the existing Eklutna lake access road, but was instead conveyed lands

with an easement with an unspecified centerline. Such an easement wanders across the landscape in an unspecified location. I do not believe that it is fair to portray the BLM as the victim of inconsistent Eklutna decisions.

Finally, the referenced cross-claim in the Public Easement Defense Fund suit has been dismissed by Eklutna, except as it relates to the subject matter of the pending administrative appeal of easements in existing conveyances.

It is my reluctant conclusion that the Department of the Interior intends to punish Eklutna for having the temerity to appeal certain easements by withholding patent to all additional lands until those disputes are resolved. Considering that these cases could wander up through the Department of the Interior into the judicial system, and not find their resolution until the Supreme Court hears them years in the future, this is a severe sanction. In short, it appears to us that the United States is holding 90,000 acres as hostage to blackmail Eklutna into accepting easements that drastically effect the value and uses of lands received under the Act. Every overture to work out a procedure for conveyance "without prejudice" is ignored.

I guess one should never have the temerity to question the judgment of the Bureau of Land Management.

Very truly yours,

BURR, PEASE & KURTZ, INC.

E. G. Burton

EGB/gd

cc: Eklutna, Inc.
Ken Brown

Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

July 7, 1975

Honorable Royston C. Hughes
Assistant Secretary
Program Development and Budget
U.S. Department of the Interior
Room 4160
Washington, D.C. 20240

Dear Roy:

This letter is written pursuant to Sections 17(a)(7)(D) and 17(a)(7)(H) of the Settlement Act to communicate our views concerning certain aspects of the agreement between the Department of the Interior and the General Services Administration which outlines procedures for processing various categories of Federal land as a prerequisite to the possible selection of such land by Native corporations organized under the Act.

This agreement and other matters relating to the Department's implementation of Section 3(e) of the Settlement Act were considered by the Commission at its last meeting. On the basis of this examination, we have been directed to bring the points discussed below to your attention.

The Commission believes that the memorandum of understanding referred to above is inconsistent with Section 3(e) in that the agreement utilizes definitions and procedures which are appropriate to the processing of Federal lands under the Federal Property and Administrative Services Act of 1949, but which have little applicability to the Native land selection process. This inconsistency manifests itself in several ways. First, the memorandum of understanding contemplates that lands must be declared "excess" to the needs of a holding agency before the procedures outlined therein become operative. Customarily, a finding that lands are excess involves considerations, including projected future needs, which appear inappropriate under Section 3(e). That section defines "public lands" to mean "all Federal land and interests therein located in Alaska except: (1) the smallest practicable tract...enclosing land actually used in connection with the administration of any Federal installations..." (emphasis supplied). Reference to the phrase "actually used" seems to preclude the retention by a holding agency of lands for which there may be some undefined, future need or which do not otherwise satisfy the criteria stipulated in Section 3(e).

Perhaps of even greater importance, the memorandum of understanding contemplates that lands must be declared surplus to the needs to all Federal agencies which could possibly utilize them. Thus, Section iii(a)(1) requires the General Services Administration, upon receipt of a notice of intention to relinquish withdrawn public lands, to "notify all Federal agencies which could conceivably have a program need for any or all of the land to be relinquished..." and to implement a process leading to the transfer of the land to any such agency. Again, this approach would appear to abrogate the clear language and intent of Section 3(e) by allowing other Federal agencies to interpose their requests ahead of the Native corporation that otherwise would be entitled to the land involved. (Since there is scant legislative history regarding Section 3(e), there is no need to go beyond the language of this subsection in postulating what Congress intended.)

With respect to a related matter, we believe that Section iii and certain other provisions of the memorandum which deal with unimproved Federal lands run afoul of the withdrawal and selection regime provided in the Settlement Act in that such sections do not adequately recognize Native selection rights within areas withdrawn pursuant to Section 11(a)(1). This conclusion is premised on the following considerations. Sections 11, 14, and 16 withdraw or authorize the withdrawal by the Secretary of lands from which Native corporations may make their selections. Sections 12 and 14 then authorize such selections, subject to the express limitations and prohibitions provided in these sections and elsewhere in the Act. In view of this statutory regime, it would appear that a Native corporation may select any unimproved Federal withdrawals located within 11(a)(1) areas, provided that such selections do not fall within one of the stated prohibitions or exceed the specified limitations. If this analysis is correct, not all unimproved Federal withdrawals are exempt from selection until the screening procedure provided in the memorandum of understanding has been fully implemented. Rather, only those Federal lands which enclose a Federal installation, military withdrawals, national park lands, national forest and wildlife refuge selections exceeding three townships, and so forth, are totally exempt from selection.

Additional support for this conclusion can be derived from the definition of public lands contained in Section 3(e) of the Act. This subsection defines the term "public lands" to exclude, among other things, only that land "actually used in connection with the administration of any Federal installations...." While the term "Federal installations" is not defined in the Settlement Act or the relevant legislative history, its usual meaning connotes buildings, appurtenances, and improvements. (See Webster's Third New International Dictionary, page 1171.) To the extent utilized in other Federal statutes, the word "installation" seems to have a similar meaning. [See 16 USC § 1133(c).] If, in fact, the definition just mentioned was incorporated by Congress into Section 3(e)--and there is nothing in the relevant source material to indicate that it

was not--the present memorandum of understanding would appear to abrogate Congressional intent by extending the public lands exception contained in Section 3(e) to unimproved Federal lands not related to the administration of a Federal installation.

Accordingly, for the reasons discussed above, we believe that the present memorandum should be amended to permit Native selection of nonexempt unimproved lands (for example, unimproved power site withdrawals) located within areas withdrawn under Section 11(a)(1) of the Act. (Since Section 11(a)(3) authorizes the Secretary to withdraw only "unreserved, vacant and unappropriated public lands" to satisfy deficiencies resulting from the land status situation within areas withdrawn under Section 11(a)(1), the existence of a Federal withdrawal within a Section 11(a)(3) area, whether or not such a withdrawal encompasses unimproved lands, would preclude Native selection in the absence of a reclassification order. For this reason, we believe that a procedure similar to the one recommended to you in our correspondence of August 6, 1974 should be utilized to determine the continuing need for small withdrawals, including military reservations, upon which "top filing" is not permitted.)

In summary, we believe that if Congress had intended to authorize the screening procedure outlined in the Interior Department-GSA agreement, the exception to the definition of "public lands" contained in Section 3(e) would have been written much more narrowly. A simple amendment placing Native corporations ahead of State agencies and behind Federal agencies in terms of the priorities established in the Federal Property and Administrative Services Act would have sufficed. This approach was not adopted, possibly because Congress wanted to improve land management patterns around Native villages and to provide Native corporations with as much relatively high value land as possible given the then existing program needs of Federal holding agencies. Accordingly, we recommend that the procedure outlined in the memorandum of understanding be amended in accordance with the suggestions made herein.

Thank you for your consideration of this matter.

Sincerely,

Burton W. Silcock
Federal Co-Chairman

Sincerely,

David S. Jackman
State Co-Chairman

P.S. Over the past few months, certain other problems have arisen with respect to the implementation of Section 3(e). For your information and review, we are enclosing an outline of a procedure which we have recently suggested to the Alaska State Office of the Bureau of Land Management. We believe that utilization of this procedure will solve many of the

problems which have materialized previously and will enable both the Department and the Commission to satisfactorily perform responsibilities assigned to them in Sections 3(e) and 17(a)(7)(D), respectively.

Enclosure (1)

1. Procedure for Making Determinations Pursuant to Section 3(e) of the Settlement Act.

Procedure for Making Determinations
Pursuant to Section 3(e) of the
Settlement Act

Agency	Action
Native Corporation -	Files selection application with the Bureau of Land Management.
BLM Adjudicator -	Initial examination of application. This examination will include a review of information submitted by Federal agencies holding land subject to requirements specified in Section 3(e). (See Interior Department-GSA memorandum of February 14, 1974 respecting disposal of certain Federal lands under the Settlement Act and other relevant sources for an enumeration of categories of land subject to such requirements.) If the Adjudicator determines that a particular agency has not submitted sufficient information to enable the State Director of BLM to make a well substantiated determination pursuant to Section 3(e), further data will be requested from the agency. When the Adjudicator is satisfied that adequate information has been submitted, copies of this data will be forwarded to the Land Use Planning Commission for review in accordance with the procedure described below.
Commission -	
Co-Chairmen -	Pursuant to the requirements specified in Section 17(a)(7)(D) of the Settlement Act, the Co-Chairmen will conduct an initial review of information received from the BLM. If, on the basis of this review, the Co-Chairmen determine that there is sufficient information upon which to premiss a particular 3(e) determination, they will transmit their recommendations and conclusions to the State Director of BLM, with a copy to the holding agency, affected Native corporations, the State, and other interested parties. If it is found that

sufficient information does not exist, additional explanitory data will be requested from the holding agency. Where necessary, meetings will be held with representatives of affected Native corporations and other parties who possess knowledge of a particular withdrawal. (The results of any such meetings will be summarized for subsequent use by the Commission and the BLM.) If these contacts indicate that further consultation with the Commission would be desirable, the Co-Chairmen will implement the procedure outlined below.

Subcommittee - A subcommittee will consider 3(e) questions submitted by the Co-Chairmen. Where necessary, additional meetings with affected Native corporations, government agencies, and others will be held. If possible, the subcommittee will then make recommendations to the State Director, with a copy to interested parties. When a resolution by the subcommittee is not possible, the issue will be submitted to the full Commission.

Commission - The Commission will receive testimony and written comments regarding 3(e) issues submitted by the Subcommittee. On the basis of this information and data gathered by the Co-Chairmen and the Subcommittee, the Commission will make recommendations to the State Director, with a copy to the holding agency, affected Native corporations, the State, and other interested parties.

Department of the Interior - The State Director will make a decision respecting "the smallest practicable tract...enclosing land actually used in connection with the administration of any Federal installations." [Sec. 3(e).] This decision will be based solely on the administrative record formulated as a result of the information gathering process described above, including recommendations and supporting justifications submitted

by the Commission. The Director's determination will be provided to affected Native corporations, the holding agency, the Commission, the State, and any other parties of record. The decision, together with a draft of any necessary public land orders and other supporting material, will also be forwarded to the Department of the Interior in Washington, D.C. for final review and processing.

Alaska Native Claims Appeal Board -

Pursuant to regulations promulgated by the Department of the Interior, the Board will review appeals involving final 3(e) determinations made by the Department.

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF THE INTERIOR AND THE GENERAL SERVICES ADMINISTRATION RELATING TO PROCEDURES FOR PROCESSING SURPLUS REAL PROPERTY AND WITHDRAWN PUBLIC DOMAIN LANDS IN ALASKA FOR POSSIBLE SELECTION UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

This memorandum of understanding between the Department of the Interior and the General Services Administration sets forth the procedures which will be observed by the respective agencies in the processing of the following categories of properties in Alaska for consideration for possible selection under the Alaska Native Claims Settlement Act, 85 Stat. 688:

- real property determined to be surplus to all Federal agency needs, and
- withdrawn public domain lands for which the holding agency has filed a notice of intention to relinquish with the Bureau of Land Management.

It also includes provisions relating to the processing of real property in Alaska which has been reported to GSA as excess by the holding agency.

PURPOSE

The purposes of this Memorandum of Understanding are threefold:

(1) To assist the Secretary of the Interior in determining the smallest practicable tract enclosing land that is or will actually be used in connection with the administration of any Federal installation;

(2) Expedite making lands not needed for administration of Federal programs available to Native Corporations; and

(3) Facilitate expeditious disposal by GSA of properties not needed either for further Federal utilization or for selection by Native Corporations.

Section I. EXCESS REAL PROPERTY

(Includes: (1) acquired lands with or without improvements and (2) withdrawn public domain lands determined by the Bureau of Land Management, with the concurrence of GSA, to be unsuitable for return to the public domain.)

a. GSA will screen excess real property reported to it by holding agencies for further Federal utilization in accordance with 41 CFR 101-47.203-5. Concurrently with screening of other Federal agencies GSA will furnish a copy of each Notice of Availability of Excess Real Property covering excess acquired

land, with or without improvements, to the Chief, Division of Property Management, Office of the Secretary, Department of the Interior, Washington, D. C. 20240.

b. Requests for transfer of excess real property received by GSA from interested Federal agencies will be processed by GSA as provided in 41 CFR 101-47.203-7.

Section II. SURPLUS REAL PROPERTY

a. GSA will determine whether excess real property reported to it is surplus in accordance with the provisions of 41 CFR 101-47.204-1.

b. Upon a finding that all or any part of the real property is surplus, GSA will:

(1) With respect to surplus acquired lands, with or without improvements, notify the Department of the Interior of the availability of such property for possible selection under the Settlement Act. This notification will be given prior to notifying eligible public agencies (or the Federal agencies concerned with disposals of property to public agencies) of the availability of surplus real property as prescribed in 41 CFR 101-47.303.2.

(2) With respect to surplus withdrawn lands, proceed with disposal in accordance with the provisions of 41 CFR 101-47.3. (NOTE: Withdrawn lands will have been considered for possible selection under the Settlement Act at the time the notice of intention to relinquish is filed with the Bureau of Land Management. (See Section III, below.) Thus, no purpose would be served by having GSA notify BLM of the availability of surplus withdrawn lands.)

(3) With respect to surplus land to be exchanged pursuant to the authority in 40 U.S.C. 484(c), proceed with disposal in accordance with such statutory authority, when the property to be acquired in exchange is to be used in connection with administration of a Federal installation. The Secretary of the Interior hereby determines that surplus property to be exchanged for other property is property necessary for the administration of a Federal installation.

c. As soon as practicable after receipt of notification of the availability of surplus acquired land, the Department of the Interior will make a determination as to whether or not the land may be subject to selection under the Settlement Act.

(1) Where it is determined that the land may be subject to selection, the Department will promptly file a request for transfer of the property with the appropriate GSA Office in the following circumstances:

(a) Where the land is within a Section 11(a)(1) withdrawal, or

(b) the Department is obligated to withdraw additional acreage for a Native Corporation that can select the land, or

(c) an eligible Native Corporation has filed an application for the land and that Corporation is not barred by law or regulation from selecting the land.

(2) Where the Department determines that it will not request a transfer of the property, it will notify the appropriate GSA Office of this determination and advise that the Department will not interpose any objection to disposition under the Federal Property Act or other disposal authority.

d. It is recognized that there may be instances where, due to special circumstances, the determinations and notifications required by paragraph II.c, above, will have to be expedited to the maximum extent possible. In any such cases, GSA should write to the State Director, Bureau of Land Management, 555 Cordova Street, Anchorage, Alaska, Zip Code 99501, and request assistance in expediting such actions. A copy of each such request should be furnished the Chief, Division of Property Management, Office of the Secretary, Department of the Interior, Washington, D. C., and the Director, Bureau of Land Management, Washington, D. C.

e. The Department of the Interior will:

(1) Be responsible for preparation of such environmental impact statements as are required for surplus acquired lands subsequent to the date of transfer thereof to the Department.

(2) With respect to surplus property to be conveyed under the Settlement Act, make every effort to enter into cooperative agreements so that the native organization will either take immediate possession of the property or assume the cost of protection and maintenance during the period between transfer to the Department and conveyance to the native organization.

Section III. WITHDRAWN PUBLIC DOMAIN LAND
(Improved or Unimproved)

a. Upon receipt of each copy of a notice of intention to relinquish withdrawn public domain land filed with the Bureau of Land Management pursuant to 43 CFR 2372.2 (see also FPMR 101-47.202-6), or of a preliminary disposal report to the Armed Services Committees, the General Services Administration will:

(1) Notify all Federal agencies which conceivably could have a program need for any or all of the land to be relinquished, that the holding agency has filed or may file a notice of intention to relinquish with the Bureau of Land Management and that such land may become available for acquisition and use by other Federal agencies.

The notice will contain the following language:

"The (insert name of Government agency) (has filed) (may file) with the Bureau of Land Management a notice of intention to relinquish the withdrawn lands described herein. This notice is for the purpose of advising Federal agencies of the proposed relinquishment. The future use or disposition of these lands is presently being considered by the Bureau of Land Management, and any Federal agency having a program need for these lands, or any portion thereof, should express its interest in writing to the State Director, Bureau of Land Management, 555 Cordova Street, Anchorage, Alaska 99501, within 30 days from the date of this notice."

(2) If both withdrawn and acquired lands are included in the notification given in accordance with paragraph (1), above, the number of acres of each such category of lands will be listed and described separately.

b. Upon receipt of a notice of intention to relinquish withdrawn public domain land, the Department will determine whether there is a Federal program need for the land. This determination will be made on the basis of a known Federal agency need or on the basis of receipt of an expression of interest as provided in paragraph a(1), above.

c. If a Federal program need exists,

(1) and the lands are found suitable for return to the Bureau of Land Management, the Department will:

(a) Obtain from the interested agency an application for withdrawal if one is not already on file.

return to the Bureau of Land Management,

(c) issue a public land order revoking the existing withdrawal and withdrawing the land for the Federal program for which needed,

(2) and the lands are found not suitable for return to the Bureau of Land Management, the Department will:

(a) Obtain GSA concurrence in the determination, and

(b) instruct the holding agency to report the property to GSA for disposition.

d. If no Federal program need exists,

(1) the Department will revoke the existing withdrawal and withdraw the land for Native selection where any of the circumstances set out in II.c(1) exist,

(2) and the Department has determined not to withdraw the land for Native selection it will make a further determination as to whether the lands are suitable for return to the Bureau of Land Management.

(a) If the lands are found suitable for return to the Bureau of Land Management, the Department will revoke the withdrawal and take appropriate action under existing authority.

(b) If the lands are found not suitable for return to the Bureau of Land Management and GSA concurrence is obtained, the Department will instruct the holding agency to report the property to GSA for disposition.

This Memorandum of Understanding will expire on December 18, 1975, unless the expiration date is extended by mutual consent of the Director, Bureau of Land Management, and the Regional Administrator, Region X, General Services Administration.

Approved: [signature] Date: 7-2-14.1974

Deputy Assistant Secretary of the Interior

Approved: [signature] Date: 3-7-74

General Services Administration

Senator METCALF. I'm afraid I'm going to have to leave before conclusion of the testimony of Mr. Karl Armstrong. He is accompanied by Mr. Ed Weinberg. We are delighted to have you as a witness, Mr. Weinberg. In a few minutes, Senator Gravel will return and take over.

I want, at this time, before the hearing concludes, to express my appreciation to the two Senators from Alaska. Both of them are former members of this committee. Both have been very much concerned over the years with the Alaska Native Claims Settlement Act and in helping and participating in this hearing today so we can hear the witnesses who have come from so long to a hearing.

When unanimous consent for hearings was requested this morning there was objection and, until 9:30 this morning, it was odds-on we would not get this hearing. So, I think it is quite an accomplishment to have that and I want to express my appreciation to all of you for presenting this testimony, summarizing it.

Our staff and Senator Gravel and Senator Stevens and I will go over it and I am sure there will be some results as a direct result of this hearing.

We are delighted to have you as a last witness. We are going to continue this hearing on Monday and we will have additional witnesses. If I don't get back, let me express my appreciation to you and all of the witnesses for your cooperation with us today.

STATEMENT OF KARL ARMSTRONG, SECRETARY, KONIAG, INC.; ACCOMPANIED BY ED WEINBERG, COUNSEL, KONIAG, INC.; WILLIAM ANDERSON, OUZINKIE VILLAGE; AND FRANK PETERSON, AYAKULIK VILLAGE

Mr. ARMSTRONG. My name is Karl Armstrong. I am Secretary of the Koniag, Inc., regional Native corporation for the Kodiak and Afognak Islands. Accompanying me is William Anderson who is president of the Ouzinkie Village Corp., Frank Peterson who is president of the Ayakulik Village Corp. and serves as president of the Kodiak Native Association.

In the interest of time, I would like to submit my written testimony for inclusion in the record and Mr. Weinberg will testify on the highlights concerning that testimony.

[The prepared statement of Mr. Armstrong follows:]

STATEMENT OF KARL ARMSTRONG, SECRETARY, KONIAG, INC. REGIONAL NATIVE CORPORATION, BEFORE THE SENATE INTERIOR AND INSULAR AFFAIRS COMMITTEE OVERSIGHT HEARING ON THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, JUNE 10, 1976

Mr. Chairman and Members of the Committee. My name is Karl Armstrong. I am Secretary of Koniag, Inc, the regional Native corporation created pursuant to the Alaska Native Claims Settlement Act (ANCSA) which is centered on Kodiak and Afognak Islands. Koniag has had more than the usual problems incident to land selection, largely because almost all of Kodiak Island is encompassed in the Kodiak Island National Wildlife Refuge and almost all of Afognak Island is included within the Chugach National Forest.

Most of the land on Kodiak Island which is not included in the Wildlife Refuge was either selected by or tentatively approved to the State of Alaska. Hence, there is practically no land on Afognak or Kodiak Islands which, in the selection process, has not given rise to limitations and difficulties incident to the existence of the federal reserves and state selections.

As a result, the Koniag villages have been confined largely to three township selections on Kodiak and Afognak Islands, regardless of their size, and Koniag, Inc. does not obtain patent to the subsurface estate underlying the village lands in the Wildlife Refuge. Consequently, the Koniag villages as to surface estate and Koniag, Inc. as to subsurface in-lieu

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estate, have been relegated to making deficiency and in-lieu selections across the approximately 90 mile wide Shelikof Strait, one of the roughest bodies of water in the world, on the Aleutian Peninsula, an area which has no natural afinity to Koniag.

It developed also that a considerable portion of the land which the Department had set aside on the mainland for Koniag deficiency and in-lieu selections was also proposed by the Department for inclusion in the Aniakchak Caldera National Monument. Recognizing the impossible situation in which this placed Koniag, this Committee included as Section 15 of the Alaska Native Claims Settlement Act Amendments of 1976, a provision which enables Koniag to secure in-lieu subsurface selections regardless of the future creation of the Aniakchak Caldera National Monument. Koniag is deeply appreciative of the Committee's recognition of its plight and of the action of Congress in enacting Section 15.

From President Kito of AFN and other witnesses who have preceded me, the Committee has had an extensive presentation of problems which presently confront the Alaska Natives in the implementation of ANCSA. I will not repeat those comments here, although we support most of them.

I will concentrate my presentation on three matters, one of which is of immediate urgency and two of which are long range.

The immediate problem involves easements. You have already heard testimony regarding the establishment of the so-called coastal linear easement, other linear easements and the floating corridor easements which we believe to be a violation of ANCSA. I wish to carry the discussion one step beyond that and focus upon the unnecessary delays in issuing interim conveyances which have arisen because of easement disputes.

After BLM has processed a village or regional land selection, it issues a decision which, among other things, specifies the easements which BLM proposes to reserve under Section 17(b) of ANCSA. If a Native corporation wishes to challenge the legality of any of such easements, either on the ground that they exceed the Secretary's authority under ANCSA, or because they do not comply with the Secretary's regulations and easement criteria, or lack factual support, or for any other reason, the Native corporation must appeal either administratively to the Alaska Native Claims Appeal Board (ANCAB) if the objection is that the easement is "arbitrary or capricious," or it may go directly into court if the challenge is to the Secretary's authority to impose the easements in the first place.

However, and this is the problem, if such a challenge is made, the Department will not issue the interim conveyance. The result is that the Natives face a Hobson's choice. Either the Native corporation accepts a conveyance, or it must await the outcome of lengthy administrative and/or judicial proceedings before it receives title to its land. The additional

delay presented means a further delay of anywhere from one to three years. When it is considered that this delay is on top of the already unconscionable delay in acting upon land selections, the injustice of this practice is readily apparent. The time table established by Congress in ANCSA is that first round village land selections were required to be made by December 18, 1974, three years from the date ANCSA became law. Most regional land selections were required by ANCSA to be filed no later than four years from enactment, that is, by December 18, 1975. While ANCSA is not explicit as to the time limit for filing second round village land selections, it is apparent that such selections also were required to be filed within four years, because withdrawals for land selection purposes expired as to any unselected lands four years after ANCSA's enactment.

ANCSA further provides that the Secretary was to convey land "immediately" after selection. Even allowing for some elasticity in the term "immediately," it is difficult to rationalize any warrant for the fact that today, four and a half years after ANCSA's enactment and one and a half years after most village selections were made, Interior has conveyed to the Natives less than 1% of their land entitlements. A principal reason for that delay has been easement problems. It was not until March of this year that the Secretary of the Interior completed promulgation of the criteria the Department

would use for the selection of easements. A reading of the criteria reveals nothing in them that could not have been determined as well within the first three years following ANCSA's enactment. Now, on top of what we consider to be an entirely unnecessary delay in deciding upon easement criteria, we find ourselves in a situation where we must either forego our right as citizens to challenge easement determinations which we think invalid, or go through another delay of an additional one to three years before we can obtain conveyance.

Two months ago (see attached copy of letter of April 15 from our attorney to the Interior Department Solicitor's office) we proposed to the Department of the Interior a plan which would enable the issuance of interim conveyances while challenges to easements go forward. We proposed simply that in the interim conveyances the Department state that if, upon administrative or judicial review, the easements were determined to be invalid, such easements would be eliminated or modified as required by the outcome of the review proceedings. At this date the Department has yet to conclude whether or not it possesses the authority to so act. Our proposal is entirely consistent with ANCSA in that ANCSA (a) looks to reasonably prompt conveyance following land selection, (b) provides that settlement should be accomplished rapidly, with certainty and in conformity with the real economic and social needs of Natives, and (c) the Secretary's own regulations provide that he shall terminate easements reserved in a conveyance under certain conditions. If the Secretary has the authority to provide for such

terminations, and we have no doubt that he has, we are unable to understand on what ground the Secretary should object to providing in the interim conveyance for the termination of those easements which either he or the courts determine to be invalid.

We are advised by the Interior Department that our proposal remains under consideration. As an alternative, we have proposed that the Department consider removing easement questions entirely from the jurisdiction of ANCAB. If that were done, the BLM decision would be final unless the Secretary chose to review it as a matter of discretion, and with finality of decision the interim conveyance would issue and the Native corporations would be free to seek whatever judicial review they deemed appropriate. Since the Department has already limited ANCAB's jurisdiction to review BLM easement decisions solely to a determination of whether the decision to reserve was arbitrary or capricious, the Board review serves little useful purpose and an appeal to it is largely a formality in order to preserve the right to obtain judicial review. That proposal is now under consideration by the Department.

We earnestly request the good offices of this Committee in seeking early resolution of this matter by the Department. We are convinced that an administrative solution is possible, for it is unthinkable that the Department can permit a continuation of delays in issuing conveyances simply because the Native corporations (or others) wish to exercise their right to seek review of BLM's easement decisions.

I also would like to bring to the Committee's attention at this time two matters which, though not requiring legislative action at this time, will ultimately require a legislative solution.

One of these involves the conveyance by the Department to a Native corporation of land which is later determined judicially to underlie navigable waters.

Alaska, like all other states admitted to the Union, reserves title to lands underlying navigable waters as an incident to statehood. Such lands are not charged to the state's land grants. We have no quarrel with this well settled principle of American constitutional law. The problem arises because, under the land selection regulations Native corporations are required to select, in some instances, lands overlain by bodies of water of a certain size which the Department considers to be non-navigable. It is an equally well established principle of constitutional law that the Department's determination of navigability is not controlling. The only way that navigability or non-navigability can be authoritatively determined is by the courts.

The State of Alaska has served notice on Alaska Native corporations that it reserves the right at a time of its choosing to challenge conveyances to Native corporations of submerged lands which the state considers to underlie navigable waters. If such a challenge is brought and the state is successful, the land in question has belonged to the state since the date of its admission to the Union, almost 20 years ago. The effect is that the Natives will have lost land and there is no provision in ANCSA for selection by the Native corporations

affected of lieu lands. This is an oversight in ANCSA which was not recognized at the time the Act was going through Congress. Provision should be made by law at an appropriate time for the selection by Native corporations of lieu lands where a Native corporation loses land through a judicial determination of navigability, after a determination by the Department that the Native corporation was required to select such lands. I attached for the Committee's information a copy of a letter from our counsel to Secretary Kleppe on this subject dated March 30. No reply or acknowledgement of that letter has been received to date, although it has been called to the attention of the Department in meetings with the Department's Task Force. I realize that this subject is an exceedingly complex one. I suggest only that at some time Congress should adopt a legislative solution so that the Native corporations are not made the victims of determinations of navigability.

The final matter that I would bring to the Committee's attention for its longer range consideration involves the need for an extension of time of the tax exemption for undeveloped land. When Congress enacted ANCSA, it provided that land conveyed to a Native corporation should be exempt from real estate taxes for a period of 20 years following ANCSA's enactment, unless it was earlier leased or developed. That 20 year period was fixed in contemplation of the other provisions of ANCSA, to

which I have already referred, which required land selections by Native corporations within three or four years, to be followed by "immediate" conveyances from the Department. It is obvious that at the front end we are woefully behind schedule. Unless there is a compensating adjustment at the other end of the scale, the Native corporations will suffer a double blow. First of all they are delayed in receiving their lands and as a consequence they are deprived of the time Congress intended for them to either lease or develop the lands before they go on the tax rolls. Unless a compensating extension of tax exemption is provided, Native corporations may be forced into premature decisions to lease or otherwise develop land. This is in noone's interest.

I appreciate the opportunity to present this statement.

STATEMENT OF ED WEINBERG, COUNSEL, KONIAG, INC.

Mr. WEINBERG. Mr. Chairman, for the record my name is Edward Weinberg. I am the national counsel for Koniag, Inc. I would touch only on a very few highlights, Mr. Chairman. One is of immediate concern and I think it is solvable by this committee through the use of its good offices.

I am not here to ask the committee to referee legal disputes, on whether the Secretary has the authority to impose linear easements, et cetera, nor am I here to ask the committee to decide that 7(i) issues as we know the committee is not going to do that, and we know that is not the committee's role unless it chooses to adopt entirely new legislation and I don't think we can realistically expect that.

There is, however, an easement problem which is immediate and which is solvable. It is solvable because it is a nonproblem which comes about by reason of the administrative processes used by the Department of the Interior. Let me interpolate, Mr. Chairman, I sympathize with the situation which the Interior Department finds itself.

I spent 25 years down there, I know what the problems are from the end of administering a Department as well as being on the outside trying to get something. There are many problems in this act. I think the difficulty we are confronting here in easement implementation and other problems is the Department has not adapted its procedures and approach to the act in a manner which will meet the challenges posed on a timely basis or even give us decisions.

We don't expect we are going to agree with everything they do and we can't expect them to accept everything we ask, but I think we are entitled to be given yes or no and reasons within a reasonable period of time, and then we can seek our remedy elsewhere if we have to.

Now, let's take easements. The procedure the Department follows on land conveyance is this, they review the selection application, then after a process which Mr. Treisman has described which is very torturous, they decide which easements will go into the conveyance. The BLM thereafter issues a decision which clears the land for conveyance and specifies the easements that are reserved.

At this point we come to the first catch-22. If a Native corporation wishes to appeal to the Secretary on the ground the BLM is reserving an easement erroneously because the facts do not warrant it or because they don't comply with the Secretary's regulations, or if we want to go to court and challenge the authority of the Secretary to include an easement for a particular purpose, we do not get our conveyance. It is just as simple as that.

If an easement decision is challenged, there is an additional delay of anywhere from one to 3 years in the issuance of an interim conveyance. When you consider, Mr. Chairman, this is on top of a delay which has already gone on far beyond the contemplation of Congress which said conveyances were to be issued immediately upon selection.

Selection was 3 years after the act was passed for a village corporation. Recognizing there has to be some give in the concept of immediacy, nevertheless, another 3 years delay on top of the delay that already exists is intolerable.

Mr. Treisman includes in his testimony a letter when he sent the Department on June 1, making a proposal and this followed an oral

discussion he had in January. We made a substantially similar proposal to the Department earlier in March and followed it up by letter in mid-April. The solution is simplicity itself. The Secretary is authorized to reserve easements. Let him reserve the easement and let him say also, if upon his review or judicial review it turns out the easement is erroneous, it will be conformed.

Now Mr. Treisman says he doesn't understand, he has been given no reason why that can't be done. We have been given no reason in writing, but I have had discussions with the Solicitor's office and they appear to be troubled by a principle of law which is that the Secretary can include in a conveyance, no condition not authorized by law, a proposition with which no one can argue.

Our position is simply that ANCSA authorizes him to observe easements and he is simply specifying the kind of easement he is reserving. We think the committee could be of immeasurable help in resolving this problem which is capable of resolving by asking the Department to come to an early conclusion, and if that proposal is not satisfactory, surely the Department can devise a proposal which will enable interim conveyances to be issued.

While legal disputes over conveyances are then resolved, then, Mr. Chairman, is the immediate problem that there are two long-range problems. I would like to bring to the attention of the committee one of them, navigation. Navigation was mentioned by Commissioner Martin and we have no quarrel with what Commissioner Martin says, the State of Alaska, like any other State upon admission to the Union, automatically receives or becomes the owner of land underlying navigable waters.

The problem arises because the Department, in the regulations implementing ANCSA, has required Alaska Native corporations must select the lands underlying bodies of water of a certain size. If the Department determines they are nonnavigable, the State of Alaska has quite correctly reserved its rights to a judicial determination of the correctness of the Department's determination and if, later on, the State of Alaska establishes in court, as it well may, a body of water which was considered to be navigable which is not navigable in the Department's determination, the Natives have lost their land.

There is no provision for reserving land for selection by Native corporations when that eventuality comes about and we know it is going to come about.

The State of Alaska is obviously entitled to all of the lands underlying navigable waters and we would hardly deny them that. We can't, we wouldn't if we could. But, we think we are entitled to ask the Department to give attention to how to make the Native corporations whole when they lose land when they were forced by the Department to select it on a departmental determination that it was not navigable.

A final point, Mr. Chairman, again along the range that has also been touched on and that is, the delays in conveyances are cutting into the 20-year period which Congress allowed the Native corporations on their land before that land went on the tax rolls, unless the land is leased or developed in the meantime.

Every year's delay is occasioned in conveyancing is shorting the time in which the Native corporations have to develop those lands and, in the end, unless the time is extended on the other end, it is

going to force prematurely development of Native land, the last thing most people want.

These are decisions to be made on a sound basis and after a careful study. We think Congress will, in the end, or should, in the end, restore the other end of the time period, the time that is being lost now because contrary to what everyone thought when the act was passed, conveyancing is not being made in the third year, the fourth year, and the fifth year after passage of the act.

Mr. Chairman, that concludes our statement.

Senator GRAVEL [presiding]. Thank you very much for an emphatic statement and I think a very timely one too. Senator Stevens, do you have any questions?

Senator STEVENS. Have you included in your statement, and I'm sorry we have just gotten back, Mr. Weinberg, suggested amendments to meet your objectives? Is it your desire to have the act amended in this regard?

Mr. WEINBERG. No, Senator Stevens, we do not. We call it to attention now. We understand the committee is not going to report out amendments in this session and we simply want to get on the record with it. We have included in our submission, the text of the proposal we made to the Interior Department which we think can be used to solve this problem of interim conveyances pending easement resolution.

Senator STEVENS. You are absolutely right about the 20 years on the taxes, it should have been from the date of the receipt of the patent.

Mr. WEINBERG. That is right.

Senator STEVENS. Or the interim conveyance, the use of the land. I would be happy to have you suggest to the committee specific amendments for consideration in the next Congress.

Mr. WEINBERG. I would be glad to draft one, Senator Stevens.

Senator GRAVEL. Thank you very much. I think that would go also for the regions whose attorneys are here and those who are not. If they have recommendations specifically, I think it would be helpful to us and to the committee for another Omnibus Act next year.

Mr. WEINBERG. In Senator Metcalf's opening remarks this morning, he was pessimistic about being able to persuade the Department to act. I don't share his pessimism. I think if this committee will indicate to the Department its concern about developing a mechanism to permit conveyances while we hassle about easements, I think the Department will pay respectful attention to the committee's desires. I am satisfied legally there is a way that can be done.

Senator STEVENS. We asked for tentative approval authority at the time the bill was passed.

Senator GRAVEL. I spoke with the Secretary yesterday. I don't know why they can't convey with reservation in the law and he told me there is some legal reason, he could not give it to me, he was waiting on getting it from the Solictor. When he gets it from the Solicitor——

Mr. WEINBERG. I sympathize with the Solictor. The laws the lawyers have not been able to explain to me either.

Senator STEVENS. Thank you very much.

Senator GRAVEL. We both agree as attorneys.

[The material submitted by Mr. Weinberg follows:]

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April 15, 1976

John J. Mc Hale, Esquire
Assistant Solicitor - Lands
Department of the Interior
Washington, D.C. 20240

Dear Jack:

Following up on our conference of yesterday, I enclose a form of stipulation which, in my judgment, will do the job. This stipulation would be used whenever there is an easement appeal. In order for you to evaluate the stipulation, I enclose for your information a copy of the Board's decision in the Afognak case. I assume this decision is typical of decisions that the Board will be rendering.

I realize, of course, that the Secretary lacks authority to impose in any patent or its equivalent any condition not authorized by law. I realize, also, that the general rule is that the Department loses jurisdiction once it parts with title. However, neither of these generalities poses any problem in our situation for the following reasons.

First, the Secretary is authorized by Section 17(b) of ANCSA to reserve easements. The stipulation simply deals with the description and identification of the easement.

Second, the Department would not lose jurisdiction by issuing the conveyance because it reserves in the conveyance a sufficient interest in the land to make the necessary corrections.

Third, ANCSA is a remedial statute for the benefit of the Alaska Natives and should be liberally construed.

That principle, coupled with the provisions of Section 2(b) which look to the protection of the economic interests of the Natives as well as the provisions of Section 14 which look toward an early conveyance, give the Secretary, in my judgment, the necessary authority to adopt a procedure which both fulfills the Department's responsibilities in connection with the reservation of easements and enables the Native corporations to obtain title in order to avoid delays incident to the resolution of easement issues.

In my judgment, only such procedures can avoid a situation in which a Native corporation is given a Hobson's choice of either abandoning what it considers to be legitimate objections to particular easements, or foregoing conveyance during the pendency of administrative and judicial review. I remain of the opinion that it is wholly unreasonable for the Department to put Alaska Native corporations in such a predicament and that the legal talent of the Department is equal to the task of divining a means of avoiding that dilemma within the letter as well as the spirit of the Alaska Native Claims Settlement Act and other authorities available to the Secretary.

With kindest regards.

Sincerely yours,

Edward Weinberg

Edward Weinberg
of DUNCAN, BROWN, WEINBERG & PALMER

EW:vcr

Enclosure

cc: Hon. Thomas S. Kleppe
H. Gregory Austin, Esquire
Hugh C. Garner, Esquire
Mr. Morris Thompson
Mr. Curt Berklund
G. Paul Kirton, Esquire
Robert Price, Esquire

BEFORE
UNITED STATES DEPARTMENT OF THE INTERIOR

ALASKA NATIVE CLAIMS APPEAL BOARD

CAPTION ANCAB # _____

STIPULATION

It is hereby stipulated by and between the Secretary of the Interior and _____ and _____ _____, as follows:

Interim conveyance for the surface estate of the lands identified as approved for interim conveyance in BLM Decision AA_____ dated _____, shall be issued as soon as practicable after the date of execution of this Stipulation to _____ and, simultaneously, interim conveyance for the subsurface estate in such lands shall be issued to _____, notwithstanding the pendency of the above captioned proceeding, subject to the following conditions:

1. The easements to be reserved in the interim conveyance for the surface estate pursuant to Section 17(b) of the Alaska Native Claims Settlement Act shall be those easements set out at pages _____ of Decision AA_____, and no others;

2. The interim conveyance for the surface estate

shall contain the following statement:

> Each and every easement identified herein as reserved pursuant to Section 17(b) of the Alaska Native Claims Settlement Act, is tentative pending the outcome of the decision of the Alaska Native Claims Appeal Board in Appeal No. VLS _____ and/or the outcome of subsequent administrative or judicial proceedings, if any, arising out of such decision. A superceding interim conveyance or conveyances (or patent or patents if survey has been completed) reflecting final effective easement determinations under said Section 17(b) of the Alaska Native Claims Settlement Act, shall be issued when and as such final determinations are made. Each such superceding interim conveyance (or patent, as the case may be) shall contain a recital similar to this recital as to any easement not yet final at the time of the issuance of such superceding interim conveyance or patent.

3. Until an easement determination pursuant to Section 17(b) of the Alaska Native Claims Settlement Act contained in the interim conveyance (or superceding interim conveyance or patent, as the case may be) has become final:

(a) The United States, its permittees, licensees, lessees, successors in interest, assigns or any other person or entity who may be lawfully authorized by the United States to use such easement, shall limit use so as not to effect any substantial change in the physical character of the land included in the easement by way of construction, improvement, or operations on such land, and the United States will include such a limitation in all permits, licenses, leases, assignments and other forms of approval respecting the use of such lands,

and shall post notices appropriate to inform the using public of such limitation; and

(b) Use of the lands conveyed by the grantee, its successors or assigns, in any manner inconsistent with such reserved easement shall be subject to such reserved easement and grantee will incorporate such limitation in all permits, grants, leases, assignments and other forms of approval of use of the lands involved.

Dated: _____

_____
Village Corporation

_____
Regional Corporation

SECRETARY OF THE INTERIOR

By: _____

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT,
Anchorage, Alaska, February 20, 1976.

Certified mail return receipt requested.

DECISION

Natives of Afognak, Inc., Koniag, Inc.; AA–6645–A: Native Selection
State of Alaska; A–056377, A–067745: State Selections

Tentative Approval Vacated in Part State Selection Application Rejected in Part Lands Proper for Village Selection Approved for Interim Conveyance

On December 22, 1961, the State of Alaska filed selection application A–056377 under section 6(b) of the Alaska Statehood Act for certain lands in T. 25 S., R. 22 W., Seward Meridian. On May 31, 1966, the State filed application A–067745 for all of Whale Island lying within the same township and T. 25 S., R. 21 W., Seward Meridian. Portions of both selections have been tentatively approved in two decisions. On June 16, 1972, each application was amended to include all lands in these townships, excluding patended lands.

On December 18, 1971, the Alaska Native Claims Settlement Act (85 Stat. 688) became law. Section 11 of the act withdrew all of the above-mentioned townships for selection by the village of Afognak. In addition, Departmental regulation 43 CFR 2651.4(b) promulgated pursuant to the act states:

"To the extent necessary to obtain its entitlement, each eligible village corporation shall select all available lands within the township or townships within which all or part of the village is located. . . ."

On October 22, 1974, the Natives of Afognak, Inc. filed village selection application AA–6645–A under the provisions of section 12(a) of the act for the surface estate of lands located in the Kodiak Island Area, including all of T. 25 S., Rs. 21 and 22 W., Seward Meridian. The application was amended on December 13, 1974 to give a new description of the lands to be selected and to supersede the previously-filed application. Section 12(a)(1) provides that village selections "shall be made from lands withdrawn by subsection 11(a)." Subsection 11(a)(2) of the act withdrew for possible selection by the village corporation those lands "that have been selected by, or tentatively approved to but not yet patented to, the State under the Alaska Statehood Act."

Village selection application AA–6645–A, as amended, has been properly filed and the lands are available for selection. Those portions of the village selection to be described are unoccupied and do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title. Accordingly, the tentative approval given in the decisions of October 14, 1963 and February 3, 1967, is hereby vacated in part and State selections applications A–056377 and A–067745 are rejected as to the following described unsurveyed lands:

State Selection A–056377

T. 25 S., R. 22 W., Seward Meridian:

Sections 18 through 21.
Section 28.
Sections 30 through 32.

State Selection A–067745

All of Whale Island lying with T. 25 S., Rs. 21 and 22 W., Seward Meridian (except for section 31, T. 25 S., R. 21., Seward Meridian)

It should be noted that the State has created numerous third-party interests in section 31, T. 25 S., R. 21 W., Seward Merdian. In order to determine valid existing rights, as delineated by the provisions of section 14(g) of ANCSA, the lands in section 31 are therefore excluded from the effect of this decision. Furter action on these lands will be taken on a later date.

Tentative approval is vacated as to approximately 3,829 acres by this decision. Selection applications A–056377 and A–067745 are rejected for the re-

mainder of T. 25 S., Rs. 21 and 22 W., Seward Meridian, except for those lands excluded in the listing of lands considered proper for acquisition by the Natives of Afognak. Further action on the subject State selection applications, as to those lands not rejected herein, will be taken at a later date.

In view of the foregoing, the surface estate of the following described lands aggregating approximately 74,944 acres are considered proper for acquisition by the Natives of Afognak, Inc. and are hereby approved for interim conveyance pursuant to section 14(a) of the act:

T. 23 S., R. 19 W., Seward Meridian, Alaska (Unsurveyed):

Sections 1 and 2: fractional.
Sections 3 through 9: inclusive.
Sections 10 through 15: fractional.
Sections 16 through 22: inclusive.
Sections 23 through 26: fractional.
Sections 27 through 30: inclusive.
Section 31: fractional.
Section 32: fractional, excluding Native allotment AA–7070 Parcel A.
Section 33: excluding Native allotment AA–7070 Parcel A.
Sections 34 and 35: all.
Section 36: fractional.

T. 23 S., R. 20 W., Seward Meridian, Alaska (Unsurveyed):

Sections 1 through 3: inclusive.
Section 4: fractional.
Sections 5 through 7: inclusive.
Sections 8 and 9: fractional.
Sections 10 through 12: inclusive.
Sections 14 and 15: all.
Sections 16 and 17: fractional.
Section 18: all.
Sections 19 through 21: fractional.
Section 22: all.
Section 25: all.
Section 27: all.
Section 28 through 33: fractional.
Sections 34 through 36: inclusive.

T. 23 S., R. 21 W., Seward Meridian, Alaska (Unsurveyed):

Section 1: all.
Sections 4 and 5: all.
Sections 7 through 10: inclusive.
Sections 12 through 22: inclusive.
Section 24: all.
Sections 27 and 28: all.
Sections 30 and 31: all.
Sections 34 and 35: all.

T. 23 S., R. 22 W., Seward Meridian, Alaska (Unsurveyed):

Sections 18 through 22: fractional.
Section 26: all.
Section 27: fractional.
Sections 35 and 36: all.

T. 23 S., R. 23 W., Seward Meridian, Alaska (Unsurveyed):

Sections 13 and 14: fractional.
Section 23: fractional.
Section 26: all.
Sections 35 and 36: all.

T. 25 S., R. 21 W., Seward Meridian, Alaska (Unsurveyed):

Sections 3 and 4: fractional.
Sections 6 and 7: excluding Native allotment AA–7000.
Section 16: fractional.
Section 18: fractional, excluding U.S. Survey 454.
Section 21: fractional.
Sections 29 and 30: fractional.
Section 32: fractional.

T. 25 S., R. 22 W., Seward Meridian, Alaska (Unsurveyed):

Section 1: fractional, excluding Native allotments AA–6220, AA–6221 and AA–7000.
Sections 2 through 11: inclusive.
Section 12: fractional, excluding U.S. Survey 454, Tract C, and Native allotments AA–6220, AA–6221, AA–7000, AA–7079 Parcel A, AA–8125, AA–8126, AA–8130 and AA–8131.
Section 13: fractional, excluding U.S. Survey 454, Tracts B and D, U.S. Survey 3886 and Native allotments AA–7071 Parcel A, AA–7079 Parcel B, AA–7471 Parcel B, AA–8127, AA–8129, AA–8131 and AA–8132.
Section 14: fractional, excluding Native allotment AA–8129.
Sections 15 and 16: all.
Sections 17 through 22: fractional.
Sections 23 and 24: fractional, excluding Native allotment AA–2530.
Sections 25 through 34: fractional.
Sections 35 and 36: all.

Whereas pursuant to sections 14(a) and 22(j) of the act, the Secretary of the Department of the Interior is authorized to convey certain land located within the boundaries of a national forest provided that, in accordance with section 22(k) of the act and regulations found at 43 CFR 2650.4–5 (1974), the grantee agrees to accept a convenant running with the land in the conveyance with regard to the management and use of such forest land.

It is agreed and understood by and between the United States and grantee, its successors and assigns, and the grantee, by its acceptance of this deed, does acknowledge its understanding of the agreement and does covenant and agree for itself, and its successors and assigns, forever, which shall be considered as covenants running with the land and binding the land for as long as is specified as follows:

1. That until December 18, 1983, management of resources will be consistent with the principle of sustained yield as defined in the Multiple Use-Sustained Yield Act of June 12, 1960, 16 U.S.C. 528–531 (1970), and under management practices for the protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands. Harvest or development activities will be preceded by preparation and public availability of an environmental analysis which adequately identifies and evalulates all resources values on or adjacent to the lands involved and prescribes coordinating measures necessary to protect and enhance these values. Harvest and development activities will conform to these prescriptions.

2. That until December 18, 1976, the sale of any timber from the land is subject to the same restrictions relating to the export of timber from the United States as are applicable to national forest lands in Alaska pursuant to 36 CFR 221.25 (1974).

3. The grantee, its successors and assigns, shall allow the United States, or its delegate, reasonable access and entry to the above-described land for observation and inspection of the premises for the purposes of insuring compliance with the covenants contained herein.

4. The United States reserves the right to seek enforcement of the above-described covenants in an action in equity including, but not limted to, the right to enjoin any breach of the above-described convenants.

The interim conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. A right-of-way thereon for the construction of railroads, telegraph, and telephone lines, as prescribed and directed by the Act of March 12, 1914, 38 Stat. 305, 43 U.S.C. 975(d).

3. The subsurface estate therein, and all rights, privileges, immunities and appurtenances, of whatsover nature, accuring unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688; 43 U.S.C. 1601–1624.

Pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688), the easements described in case file AA–6645–EE identified below are reserved to the United States, its permittees, licensees, lessees, successors in interest, assigns, or any other person or entity who may be lawfully authorized by the United States to use the easements herein reserved for public purposes. Said easements are subject to administration, control, regulation, or other exercise of the lawful authority of the United States. Unless otherwise specified, the Natives of Afognak, Inc., its successors or assigns shall have such use, rights, and privileges in the lands included in the easements as may be exercised and enjoyed without interference with or abridgment of the rights hereby reserved.

An easement located as described below, along those portions of the coast of the State of Alaska conveyed herein by the United States for use as a high way and for the beaching of boats, floatplanes and other vessels or vehicles, together with the right of passage over and on and the use of the land granted herein for all lawful purposes that may be necessary or desirable in connection with the location, relocation, construction, improvement, repair, or operation of said easement for the above-specified purposes. The United States hereby reserves the right to dedicate its reserved interest in said strip of land to the public, for public use forever, for such purposes. This easement shall be subject to the right of Natives of Afognak, Inc., its successors or assigns, to build upon such easement a facility or facilities for public or private purposes, such right to be exercised reasonably and without undue or unnecessary interference with or abridgment of the rights hereby reserved. Where access along the marine coastline easement is obstructed by the Natives of Afognak, Inc., its successors or assigns, said easement shall be relocated so as to provide a reasonable alternative access route acceptable to the United States. Such relocation shall be by conveyance of an easement to the United States for the same purposes as those herein reserved. Such relocation shall be at no expense to the United States, its successors in interest, or assigns. The location of the easement is prescribed as follows:

"A continuous linear easement 25 feet in width upland of and parallel to the mean high tideline.

The site easements located as described below, and easements for use by the public to gain access to and from said sites, together with the right of passage over and on and the use of the land herein granted for all lawful purposes that may be necessary or desirable in connection with the location, relocation, construction, maintenance, repair, improvement, or operation of the site. The United States hereby reserves the right to dedicate its reserved interest in said parcels of land to the public, for public use forever, for such purposes. The location of the sites reserved to the United States and easements reserved to the United States for public access herein are described as follows:

1. A 25-foot wide trail from Kazakof Bay Road to Lilly Pad Lake and a 1-acre campsite easement adjacent to Lilly Pad Lake.

2. A 25-foot wide trail easement beginning on the north shore of Malina Bay continuing north to public lands. This easement also includes a 1-acre campsite easement on the north shore of Malina Bay where trial begins.

3. A 25-foot wide trail easement from proposed Afognak Bay road to public lands. This easement also includes a 1-acre floatplane pullout easement at south end of lake.

4. A 25-foot wide trail easement beginning at head of Malka Bay continuing south to public lands and then connecting with Muskomee Bay and Malina Lake at Afognak Lake. This easement also includes a 1-acre campsite easement at head of Malka Bay.

5. A 25-foot wide trail easement from Kazakof Bay to a tract of overselected land that may be isolated by the selection. This also provides for a 1-acre campsite easement at Kazakof Bay.

6. A 100-foot wide road easement on existing Kazakof Bay Road to public lands to the north. This easement will also include a 4.5-acre log transfer dock site on Kazakof Bay. The proposed road and dock site will provide an outlet for storage, processing, utilization and transportation of natural resources derived from public lands.

7. A 100-foot wide easement for a proposed road from the Afognak Bay Road to Malina Bay, then along the south shore of Malina Bay for about 2 miles to its terminus. This easement also includes a 10-acre log transfer dock site at the terminus of the road on Malina Bay. This proposed road and dock site will provide an outlet for storage, processing, utilization and transportation of natural resources from the Afognak mountain area and other isolated tracts of public land. This easement will also provide a 25-foot wide trail easement in the event the road is not constructed.

8. A 25-foot wide trail easement from Kitoi Bay to overselected lands that may be isolated by village selection. This easement also includes a 1-acre campsite easement at beginning of trail on Kitoi Bay. An easement, located as described below, for use as a public campsite, together with the right of passage over and on and the use of the land herein granted for all lawful purposes that may be necessary or desirable in connection with the location, relocation, construction, maintenance, repair, improvement, or operation of the site. The United States hereby reserves the right to dedicate its reserved interest in said parcel of land to the public, for public use forever, for such purpose herein is described as follows:

"A 1-acre campsite easement at head of Malina Bay."

The easements located as described below for use as roads or trails, together with the right of passage over and on and the use of the land granted herein for all lawful purposes that may be necessary or desirable in connection with the location, relocation, construction, maintenance, repair, improvement, or operation of said roads or trails. The United States hereby reserves the right to dedicate its reserve interest in said strip of land to the public, for public use forever, for such purposes. The location of the easement is described as follows:

1. A 100-foot wide easement for proposed Paramonof Bay Road from proposed Afognak Bay Road to public lands around Paramonof Bay. This proposed easement will also provide a 25-foot wide trail easement in the event the road is not constructed.

2. A 100-foot road easement beginning at head of Kazakof Bay and ending at Back Bay. This road provides access to public lands to the north. It also provides access to tracts isolated by village selections. This easement will also provide a 25-foot trail easement in the event the road is not constructed.

3. A 100-foot wide easement for a proposed road from the Malina Bay Road to public land around Afognak Mountain. This route will provide access for the public and for the removal of resource products from Afognak Mountain. This easement will also provide a 25-foot wide trail easement in the event the road is not constructed.

4. A 25-foot wide trail easement from proposed Afognak Bay Road to overselected lands that may be isolated by village selections.

5. A 25-foot wide trail easement beginning at proposed Afognak Bay road to isolated public land.

6. A 25-foot wide trail easement beginning at proposed Afognak Bay road to public lands.

7. A 25-foot wide trail easement beginning at Malina Bay to public lands.

8. A 25-foot wide trail easement from the proposed Afognak Bay Road to a tract of overselected land that may be isolated by the selection.

9 A 25-foot wide trail easement from existing Kazakof Bay Road to overselected lands that may be isolated by village selections.

10. A 25-foot wide trail easement near the northwest shore of Afognak Lake, then north to public lands.

11. A 25-foot wide trail easement for an existing trail across Whale Island from public water to public water.

The right to enter upon the lands herein granted for cadastral, geodetic or other survey purposes as may be deemed necessary together with the right to do all things for all lawful purposes which may be necessary or desirable in connection therewith.

The grant of lands by the interim conveyance shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands.

2. Valid existing rights therein, including but not limited to, those created by any lease (including a lease issued under section 6(g) of the Alaska Statehood Act (72 Stat. 339, 341) contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him.

Interim conveyance to the subsurface estate of the lands described above will be granted to Koniag, Inc. at the same time conveyance is granted to the Natives of Afognak, Inc. for the surface estate. Interim conveyance to the lands remaining in the application will be conveyed at a later date. Enclosed is a current status plat showing the lands approved for interim conveyance.

The Natives of Afognak, Inc. and the State of Alaska, Division of Lands have the right of appeal to the Alaska Native Claims Appeal Board in accordance with the regulations in 43 CFR 4.900. If an appeal is taken, the notice of appeal must be filed with the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alasga 99510 and a copy served upon the Bureau of Land Management and the Regional Solicitor, Office of the Solicitor, 1016 West Sixth Avenue, Suite 201, Anchorage, Alaska 99501, within 30 days from receipt of the decision. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations. See ASO Form 2650–4.

ROBERT E. SORENSON,
Chief, Branch of Lands and Minerals Operations.

(Enclosures: ASO Form 2650.4 Regulations Plats.)
(Addresses: Natives of Afognak, Inc. P.O. Box 14 Kodiak, Alaska 99615; Koniag, Inc., P.O. Box 746, Kodiak, Alaska 99615; State of Alaska, Division of Lands, 323 East Fourth Avenue, Anchorage, Alaska.)

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT.

Information on taking appeals to the Alaska Native Claims Appeal Board:
Do not appeal unless—

(1) This decision is adverse to you, and
(2) You believe it is correct.

If you appeal, the following procedures must be followed

1. Notice of appeal: Within 30 days from the date of receipt of the decision which you are appealing, file a *Notice of Appeal* in the the office of the Alaska Native Claims Appeal Board and serve a copy of the Notice of Appeal upon the Bureau of Land Management. The regulations 43 CFR 4.22(e) contain the rules governing the computation of time prescribed for filing a Notice of Appeal. The notice should contain an identification of the action or decision appealed from and give a concise but complete statement of the facts relied upon and the relief sought.

2. Where to file notice of appeal: Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510.

3. Pleadings: If you wish to submit an appeal brief, you have 30 days from the date in which you filed your *Notice of Appeal* in which to do so. "Date of filing" shall be the date of postmark, except when there is no postmark, in which case it shall be the date of receipt in the proper office. Additional briefs may be filed as permitted (43 CFR 2650.0–5m).

4. Adverse Parties: Your *Notice of Appeal* must contain a certificate setting forth the names of the parties served, their addresses,and the date of mailing (43 CFR 4.701).

In addition, copies of all briefs must be served upon all other parties or their attorneys of record and a certificate to that effect must be furnished to the Alaska Native Claims Appeal Board (43 CFR 4.701).

Any adverse party involved will have 30 days from receipt of your brief in which to file an answering brief. Rebuttal briefs may be filed as permitted (43 missal. Be certain that all communications are identified by the Bureau of CFR 4.703).

Unless these procedures are followed, your appeal may be subject to dis- Land Management serial number of the case being appealed.

SUBPART B—GENERAL RULES RELATING TO PROCEDURES AND PRACTICE

§ 4.22 Documents.

(e) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was served or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays and other nonbusiness days shall be excluded in the computation.

SUBPART G—SPECIAL RULES APPLICABLE TO OTHER APPEALS AND HEARINGS

Authority: The provisions of this Subpart G issued also under 5 U.S.C. sec. 301.

§ 4.700 Who may appeal.

Any party aggrieved by an adjudicatory action or decision of a Departmental official relating to rights or privileges based upon law in any case or proceeding in which Departmental regulations allow a right of appeal to the head of the Department from such action or decision, should direct his appeal to the Director, Office of Hearings and Appeals, if the case is not one which lies within the appellate review jurisdiction of an established Appeals Board and is not excepted from the review authority delegated to the Director. No appeal will lie when the action of the Department official was based solely upon administrative or discretionary autority of such official.
[36 F.R. 7186, Apr. 15, 1971; 36 F.R. 7588, Apr. 22, 1971]

§ 4.701 Notice of appeal.

The appellant shall file a written notice of appeal, signed by him or by his attorney or other qualified representative. In the Office of the Director, within 30 days from the date of mailing of the decision from which the appeal is taken. The notice shall contain an identification of the action or decision appealed from and give a concise but complete statement of the facts relied upon and the relief sought. The appellant shall mail a copy of the notice of appeal, any accompanying statement of reasons therefor, and any written arguments or briefs, to each party to the proceedings or whose rights are involved in the case, and to the Departmental official whose action or decision is being appealed. The notice of appeal shall contain a certificate setting forth the names of the parties served, their addresses, and the dates of mailing.

§ 4.702 Transmittal of appeal file.

Within 10 days after receipt of a copy of the notice of appeal, the Departmental official whose action or decision is being appealed shall transmit to the Office of the Director the entire official file in the matter, including all records, documents, transcripts of testimony, and other information compiled during the proceedings leading to the decision being appealed.

§ 4.703 Pleadings.

If the parties wish to file briefs, they must comply with the following requirements: Appellant shall have 30 days from the date of filing of his notice of appeal within which to file an opening brief, and the opposing parties shall have 30 days from the date of receipt of appellant's brief in which to file an answering brief. Additional or rebuttal briefs may be filed upon permission first obtained from the Director or the Ad Hoc Appeals Board appointed by him to consider and decide the particular appeal. Copies of all briefs shall be served upon all other parties or their attorneys of record of other qualified representatives, and a certificate to that effect shall be filed with said brief.
[36 F.R. 7186, Apr. 15, 1971; 36 F.R. 7588, Apr. 22, 1971]

§ 4.704 Decisions on appeals.

The Director, or an Ad Hoc Appeals Board appointed by the Director to consider and decide the particular appeal, will review the record and take such

action as the circumstances call for. The Director or the Ad Hoc Appeals Board may direct a hearing on the entire matter or specific portions thereof, may decide the appeal forthwith upon the record already made, or may make other disposition of the case. Upon request and for good cause shown, the Director or an opportunity for oral argument. Any hearing on such appeals shall be conducted by the Ad Hoc Appeals Board or a member or members thereof, or by an administrative law judge of the Office of Hearings and Appeals and shall be governed insofar as practicable by the regulations applicable to other hearings under this part.

[36 F.R. 7185, Apr. 15, 1971, as amended at 39 F.R. 2368, Jan. 21, 1974]

LAW OFFICES, DUNCAN, BROWN, WEINBERG & PALMER,
Washington, D.C. March 30, 1976.

Hon. THOMAS S. KLEPPE,
Secretary of the Interior, Department of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: I am counsel for Koniag, Inc., an Alaska Native regional corporation established pursuant to the Alaska Native Claims Settlement Act.

On March 23, my client received a copy of a document signed by Michael C. T. Smith, Director, Alaska Division of Lands, addressed to Natives of Afognak, Inc., P.O. Box 14, Kodiak, Alaska, 99615, referencing BLM Decision AA–6645–A and styled "Notice of State of Alaska's Ownership of Submerged Lands."

In substance the March 19 document asserts that title to the land under navigable and tidal waters located in the State of Alaska vested in the State of Alaska upon Alaska's admission as a State on June 3, 1959; that consequently such lands are not "public lands" within the meaning of ANCSA; that in Decision No. AA–6645–A the Alaska Office of BLM has approved for interim conveyance or patent certain submerged lands, title to which is asserted by the State of Alaska as of June 3, 1959 by reason of Alaska's admission to the Union; that the United States is without power to convey title to such lands under ANCSA to the grantees (the Village of Afognak as to the surface estate and Koniag, Inc. as to the subsurface estate); and that the particular lands identified in the document are not to be taken as a definitive identification of all submerged lands to be included in the interim conveyance and patent to which the State of Alaska may assert title by virtue of its admission to the Union. Finally, the document recites that it is given in order that the recipients may be aware of the State's position so the recipients might protect their interests as they deem appropriate.

As you know, over the objections of the Alaska Natives at the time the land selection regulations were prepared, those regulations required that an Alaska Native corporation be charged with the acreage of submerged lands underlying non-navigable bodies of water comprising less than one-half of a section and, where non-navigable bodies of water comprise one-half of a section or more, the selecting corporation is charged with the submerged lands if the section itself is selected or if all the riparian land surrounding the body of water is selected. 43 C.F.R. § 2650.5–1(b). This regulation is, of course, a substantial departure from the ordinary practice pertaining to survey and patenting followed by the Department in the case of public land entries. The usual rule is that where a body of water is meandered the conveyance of title to the land fronting that body of water if non-navigable, carries ownership to the center of such body without charge to entitlement because it is not the practice of the United States to require otherwise. At the time the land selection regulations were prepared we regarded the Department's insistence on a different practice in the case of the Alaska Natives to be discriminatory and nothing that has occurred since has indicated to the contrary.

Whether or not the State's claim is well founded as to the particular submerged lands identified in the notices and others which may be subsequently identified, are matters upon which I can express no opinion at this time. In addition to the factual question of navigability, other factors will affect the question of whether submerged lands passed to the State of Alaska by reason of its admission to the Union. Such other factors include the effect of withdrawals, if any, made prior to statehood, I am not advised what data, if any,

the State of Alaska has submitted to BLM on the question of navigability. Nor has Koniag, Inc. been afforded an opportunity to review such data, if indeed the State of Alaska made a submittal of proof of navigabilility. *See*, 43 C.F.R. § 2650.5–1(b).

Since the submerged lands identified by the State of Alaska in the document in question are included in the area specified in the Decision as intended to be conveyed, BLM must have concluded that such submerged lands are non-navigable.

The document tendered by the State of Alaska focuses attention upon a problem which, unless the Department takes action to preclude it, can result in Alaska Native corporations losing lands by reason of a situation not of their own making. I believe that to protect the selection rights of Alaska Native corporations against the consequences of State assertions of navigability, the following steps should be taken.

1. Where the State claims a particular body of water is navigable before conveyance to an Alaska Native corporation, the Department should offer the affected Native corporation the right to waive selection of the submerged lands and instead to receive in lieu an equal acreage of fast lands.

2. If the Native corporation does not wish to avail itself of such right, or if navigability is not authoritatively determined by the time of the BLM Decision on the selection in question, the Department should maintain under withdrawal for selection by the corporation whose selection rights are affected, areas of land equal to three times the estimated acreage of the submerged lands, such areas to be within the withdrawals theretofore effected for ANCSA, selection by the corporation if possible, and if not possible, by the making of necessary additional withdrawals, such withdrawals to be maintained pending agreement among all parties as to navigability of the body of water in question, or, if agreement is not possible, pending a final judicial resolution of navigability. Only by taking such action can the rights of Alaska Native corporations be protected against future determinations of navigability which will have the effect of depriving such corporations of their ANCSA selection rights.

3. The Department should take immediate steps to secure judicial determination of navigability of all bodies of water claimed by the State to be navigable if agreement on navigability cannot otherwise be reached. I suggest that it may be necessary for the Department to request the Department of Justice to institute litigation against the State of Alaska covering navigability of all bodies of water in the State, affecting Alaska Native selections, where navigability is not now definitely established. This would not mean that the United States and the State would immediately be involved in judicial proceedings as to each body of water affected. These determinations could be reached in an orderly fashion, but the existence of the lawsuit would put the burden of litigating where it belongs, i.e., upon the United States and the State. The Alaska Natives should not be forced to undertake the financial burden of such litigation. However, unless the United States recognizes its obligations now, the inevitable result may be that the Natives will have to bear such expense and, moreover, where judicial determination in favor of navigability is made, the Natives could very well find that land is no longer available to them, with the result that they would have lost both their money and their land.

While this is the first such notice that I have seen, I must assume that the State of Alaska will send such notices in every case of a Decision by BLM to convey lands upon which bodies of water of any substantial size are located. I am sure you will agree upon the necessity of the Department's taking appropriate action to protect the selection rights of Alaska Native corporations against the consequences of determinations either by the Department of the Interior, or by the Judiciary, of navigability in the future. I would, therefore, much appreciate an early written response as to the Department's plans in this regard. I am, of course, available for consultations at the convenience of your staff.

Sincerely yours,

EDWARD WEINBERG.

(Cc: Hon. Ted Stevens, Hon. Mike Gravel, Hon. Don E. Young, H. Gregory Austin, Esq., Hugh Garner, Esq., Paul Kirton, Esq., Michael C. T. Smith, Curtis McVee, Robert Price, Esq., Federal Co-Chairman, LUPC of Alaska, State Co-Chairman, LUPC of Alaska, John Katz, Esq., Frank Ducheneaux, Esq., Steven Quarles, Esq., Kerry Barker, Esq., Jacob Wick, Leslie Anderson, Iver Malutin, Sam Kito, Counsel for All Alaska Regional Corps.)

MARCH 19, 1976.

Certified mail No. 745901, return receipt requested.

NATIVES OF AFOGNAK, INC., P.O. Box 14, KODLAK, ALASKA 99615
(Ref: AA–6645–A)

NOTICE OF STATE OF ALASKA'S OWNERSHIP OF SUBMERGED LANDS

Pursuant to section 6(m) of the Alaska Statehood Act, 72 Stat. 339, the Submerged Lands Act of 1953, 43 U.S.C. 1301 *et seq.*, and the "equal footing" doctrine, *Pollard* v. *Hagen*, 44 U.S. 212 (1845), the State of Alaska holds title to the land under navigable and tidal waters located within the State of Alaska. Such title vested in the State of Alaska upon Alaska's admission as a state to the United States on January 3, 1959; and since that time the United States has had no title, ownership right or interest in submerged lands. In particular, such submerged lands are not "public lands" as that term is defined in section 3(e) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(e).

By decision of Feb. 20, 1976, file No. AA–6645–A, the Chief Adjudicator for the Alaska Office of the Bureau of Land Management has stated his approval for Interim conveyance or patent of certain lands pursuant to state section of ANCSA under which conveyance is to be made; e.g. section 14(a)1 of the Alaska Native Claims Settlement Act. It appears from the adjudicator's decision that the BLM will attempt to convey to you certain lands which underly waters which the State of Alaska believes to be navigable, as shown in blue on the attached Water Delineation Map Identified as Exhibit A, Sheet 1, 2 and 3.

BE ADVISED that the Bureau of Land Management is without power to convey title to lands under navigable waters. *Borax Consolidated, Ltd.*, v. *Los Angeles*, 296 U.S. 10 (1935). The State of Alaska has the right and the duty to protect its title by all means authorized by law.

This notice is provided to you so that you may be aware of the State's position regarding lands under navigable waters, and protect your own interests as you deem appropriate. The State's identification by name of certain water bodies as navigable is intended to assist you in protecting your own interests. You are *CAUTIONED* that the above list of navigable waters may be incomplete. Only a court may determine as a final matter whether a particular body of water is navigable or non-navigable. The State's identification of navigable waters in many instances is based on limited data. If additional information should indicate that a water body was navigable at the time Alaska became a state then the State holds title to the land under that body and has the duty to protect such title. The State's failure to list such water body in this notice is not intended as a waiver or relinquishment of the State's title.

MICHAEL C. T. SMITH,
Director, Alaska Division of Lands.

Cc: State Director, Bureau of Land Management. Co-chairman, Land Use Planning Commission, Koniag, Inc.

Senator GRAVEL. That will conclude the hearings. We will have additional witnesses from the Native community and the administration on Monday.

[Whereupon, at 11:53 a.m., the hearing was recessed, to reconvene, Monday, June 14, 1976, at 10 a.m.]

IMPLEMENTATION OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

MONDAY, JUNE 14, 1976

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m. in room 3110, Dirksen Office Building, Hon. Mike Gravel presiding.

Present: Senators Gravel and Stevens.

Also present: Steven P. Quarles, counsel.

STATEMENT OF HON. MIKE GRAVEL, A U.S. SENATOR FROM THE STATE OF ALASKA

Senator GRAVEL. The hearing will come to order.

I would like to apologize on behalf of the members of the Interior Committee. Unfortunately, the schedules became very entangled, as is customary when we had a week of having the entire Senate tied up and having had committee meetings restricted; in fact, for the last 2 weeks. And I, myself, have been chairing another meeting and came down with Senator Stevens to open this meeting up, and I may not be able to stay for the balance of the morning, but Senator Stevens will certainly be able to continue these hearings.

We could have probably sought a postponement and tried to wait on the individual members of the committee. But I think that realizing the expense that our constituents were put through to come here and make these hearings last week and this week, this would not have been worth while.

What is important is that the committee receives the testimony on record. As you know, it is not all that customary to have a large number of Senators in attendance, but the fact that we have staff that advises the various members and that we have the record laid down by all of you who traveled such a distance to come here and testify, I think will stand us in good stead if we choose to undertake any actions this year or certainly would be preparatory to actions that we would undertake next year.

Due to the fact that we do have 11 witnesses, I wonder if each witness who is giving testimony would take it upon himself to limit himself to 5 minutes. In this way we can get to the necessary questions and make the necessary contributions.

All of the statements that you have prepared will be submitted for the record in its entirety, and so none of it will be lost and it will give you the opportunity to summarize.

Because we do have to conclude the hearing by noon today, it is with some pleasure that I would like to welcome as our first witness the gentleman from Calista, Mr. Nelson Angapak. And I wonder if he would be joined by Mr. Ray Christiansen, who is also from the same council. Nelson and Ray, would you take seats, please, and proceed as you wish.

STATEMENT OF NELSON ANGAPAK, ASSISTANT DIRECTOR, CALISTA CORP., ACCOMPANIED BY RAY CHRISTIANSEN, CHAIRMAN, CALISTA CORP.

Mr. ANGAPAK. Good morning, Mr. Chairman. On my right is Mr. Ray Christiansen, chairman of the Calista Corp. My name is Nelson Angapak, and I am assistant director of Calista Corp.

On behalf of Calista Corp. we thank the committee for giving us the opportunity to testify on the Alaska Native Claims Settlement Act.

As you requested, in the interest of time we will be limiting our oral testimony and give you some of our major problems.

First of all, on the implementation of the act. More than 4 years have passed since the inception of the act and more than 2 years have elapsed since Village Corporations within Calista Region began to make their land selections. To date no patents or interim conveyances have been received by Calista Corp. or any of the 56 Village Corporation within the region.

We feel that the large passage of time between the signing of the act, the selections of lands, and the actual receipt of benefits of these lands is a substantial conflict with the intention of Congress concerning the Alaska Native Claims Settlement Act.

On the easements and corridors. Calista Corp. feels that both secretarial orders 2982 and 2987 do not conform to the standards set forth in 17(b) of the act. For example, secretarial order 2982 reserves a 25-foot continuous coastline easement, yet, the act only allows for periodic point easements along the courses of major waterways. Calista feels that 17(b) of the act is not a vehicle through which the Secretary may retake our lands by using easements or corridors, because the lands which have been selected by the Natives are the most valuable concession granted to us by the act and without them, we have little. We are totally opposed to placement of easements and/or corridors across our lands. And we feel that the intent of Congress can only be met when we are compensated with lands of a value equal to our lands which are encumbered by either easements and/or corridors.

On coastal zone management. Another land encumbrance which seriously effects and concerns Calista Corp. is the Coastal Zone Management Act of 1972 which extends and strengthens the role of the State of Alaska in land matters. As presently planned, the State of Alaska could effectively regulate all lands located within a 200-foot topographic contour including lands which have been selected by 45 of 56 village corporations located within Calista Corp.

We are opposed to unilateral implementation of the Coastal Zone Management Act by the State of Alaska. And if its terms are to be imposed upon us, we require direct particpation in the planning and implementation of the Coastal Zone Management Act of 1972.

On navigable waters. Calista Corp. since 1972 has been requesting the Department of the Interior to come up with some type of definitive guideline on navigable waters. Yet to this day the only ground rules we have received are the recitation of case law on this very important question.

Calista's concern comes from the fact that at least 30 to 40 percent of our selections will be affected by the navigability question.

We would like to see a development of navigability guidelines, more suitable for Alaska, with direct input from affected Natives, by the Department of the Interior and respectfully request any and all assistance that your committee can provide for us.

On reimbursement of costs on the implementation of the act. Village and regional corporations have, since December 18, 1971, been working on the implementation of the act and have found continuous obstacles imposed by Federal agencies. The Native corporations have found themselves battling agencies for what was part of the Settlement Act, and have incurred substantial costs involuntarily. As an example of such costs, several regional corporations are now involved in easement litigation with the Secretary of Interior. It is our feeling that it was not the intention of Congress to force Natives to spend their moneys fighting agencies for what was awarded to them legislatively.

Calista feels that involuntary costs imposed upon village and/or regional corporations are reimbursable to the appropriate corporations either through section 24 of the act or other means even if reimbursement is to be taken out of the annual budgets of agencies involved.

Mr. Chairman, that concludes our oral testimony. We will be turning in written testimony to accompany our oral testimony. Unless the committee has any questions—

Senator GRAVEL. The Coastal Zone Management Act, of course, applies to a ribbon completely around the United States and there are methods that a State must come up with its own plan before there is a Federal plan and there is a whole host of vehicles for involvement in the planning process. So I would hope that you would initiate with the State liaison between your land planning department in the State government so that you have a total input and the vehicle is there for you to have a total input from the ground in question that borders the ocean.

And I think if you look very closely, this might provide you with a good deal of power and leverage in implementing programs that you want to see implemented. In view of the fact that you have some problems with these areas, this might give you more leverage than you may appreciate using the full force of the Government and the State.

I think you should delve into that because there are opportunities to have full input into what would take place in the activities there.

The other question that I have is a question that I would ask. In Section 24 you speak of reimbursement. Could you, if you can—if not, we can do some research on it—what would section 24 provide for in reimbursements?

Mr. ANGAPAK. Senator Gravel, first on the coastal zone management, Calista Corp. has been trying to work together with the State of Alaska in development of a bill that could be of benefit both to the State of Alaska and the regional corporations. To date we have had very little success and although we recognize the State of Alaska's function in controlling legislatively the coastal zone, we want this committee to be aware of the fact that at some point in the future we may have problems with the Coastal Zone Management Act. And generally speaking, the regional corporations in Alaska may have a problem with this if we are not allowed to have direct participation.

On the second question——

Senator GRAVEL. Let me just say if you are really denied any participation, I would appreciate it if you would let me know and I am sure all the members of the delegations would be very concerned that that participation did not exist because it was our intent that your involvement should be paramount.

Mr. CHRISTIANSEN. Mr. Chairman, if I may add, actually the original Calista area we don't want any kind of coastal zoning. However, if we are forced to take coastal zoning, we have drafted a bill and gave it to Senator Pollin to introduce and she has got it now, because we were afraid that they were going to pass a coastal zoning bill anyway.

And if we did pass a bill, well, we wanted our own.

Senator GRAVEL. I would hope that you would take that view because it is something you are going to have to submit to since it applies to the entire nation.

Mr. ANGAPAK. And on your second question, Senator Gravel, section 24. Appropriations. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this act.

Our feeling here is that if we are forced into involuntary costs either by the Department of the Interior or any division within the Interior that the regional corporations and the village corporations who are being forced into spending these costs involuntarily, that this may perhaps be the vehicle in which we may be reimbursed on those costs that we had to have because the Interior didn't carry out its part of the agreement.

Senator GRAVEL. Thank you very much.

Senator STEVENS. I am, too, worried about the mounting costs of attorneys' fees in this litigation and we can check out this section 24. I would have to tell you I seriously doubt whether that can be interpreted to authorize the attorney's fees involved in these suits against the agencies or against another corporation; but I do hope that we can find a way to get an agreement on some sort of arbitration procedure which will not involve going to court, at least in the first instance. Because I think that many of these could be resolved without strict adherence to rules of evidence and all of the delay that would be involved in access to the courts.

Thank you for your statement. I think you are right about that.

Mr. ANGAPAK. Thank you.

Senator GRAVEL. Thank you very much.

Mr. CHRISTIANSEN. Mr. Chairman, while we are up here, I know I am supposed to come up—I am about seventh. However, since I am up here, I am just going to turn the testimony over.

Senator GRAVEL. Please.

Mr. CHRISTIANSEN. I have got a letter here from Eddy Hoffman. He was supposed to come down here. He wanted me to read the letter. However, Mr. Angapak covered it and it is sort of a duplication. However, it is a little bit different. They sent a proposed bill with it.

Senator STEVENS. Knowing Eddy as we all know Eddy, you had better read it.

Senator GRAVEL. We will put it in the record as if read.

Mr. CHRISTIANSEN. As long as you get it in the record, I agree with you Senator.

Senator GRAVEL. We will be happy to accept it for the record.

Mr. CHRISTIANSEN. At the same time, I think I will just give it to the court reporter.

[The information referred to follows:]

STATEMENT OF RAY CHRISTIANSEN, CHAIRMAN, CALISTA CORP.

CALISTA'S TOPICS FOR TESTIMONY

I. Implementation of the Act

Sections 2(a) and 2(b) of the Alaska Native Claims Settlement Act, which deals with the declaration of policy by Congress, states in part that there is an immediate need for a fair and just settlement of all claims of Natives and Native groups of Alaska and that, "The Settlement should be accomplished rapidly with certainty and conformity with the real economic and social needs of the Natives without litigation." From this it seems that it was the intention of Congress for the Alaska Native Claims Settlement Act to be implemented as rapidly as possible. This philosophy is again expounded relating to land matters in Sections 14(b) and 14(e). Both subsections in part state "Immediately after selection by a village or regional corporation, the Secretary shall convey to the village or regional corporation title to surface and/or subsurface estates as is appropriate in the land selected."

More than four years have passed since the inception of the Act, and more than two years have elapsed since Village Corporations within Calista Region began to make their land selections. To date no patents or interim conveyances have been received by Calista Corporation or any of the 56 village corporations within the region. We feel that the large passage of time between the signing of the Act, the selections of lands and the actual receipt of benefits of these lands is a substantial conflict with the intention of Congress concerning the Alaska Native Claims Settlement Act. While there may be no simple solution for expediting each and every provision of the Act, we feel that there are some solutions to some of the specific problems we have encountered to date. The following is a list of some of the problems we have encountered in the implementation of the Act, together with some suggestions for the hopeful resolution of these problems:

II. Land Matters

A. Easements.—Section 17(b) of the Alaska Native Claims Settlement Act states that the Secretary of the Interior shall reserve public easements as he determines necessary prior to the granting of a patent to land to the village and regional corporations. In accordance with this section, the Secretary of the Interior issued S.O. No. 2982 entitled "The Reservation of Local Easements Pursuant to section 17(b) of the Alaska Native Claims Settlement Act."

Calista Corporation feels that S.O. No. 2982 does not conform to the standards set forth in 17(b). For example, this secretarial order reserves a 25-foot con-

tinuous coastline easement, yet, the Act only allows for periodic point easements along the courses of major waterways. Calista feels that 17(b) of ANCSA is not a vehicle through which the Secretary may retake our lands by using easements. The lands which have been selected by the Natives are the most valuable concession granted to us by the Act and without them, we have little.

We are totally opposed to placement of easements across our lands. We feel that the intent of Congress can only be met when we are compensated with lands of a value equal to our lands which are encumbered by easements.

B. Corridors.—Calista Corporation has, both publicly and privately, continuously gone on record opposing placement of corridors across any lands selected by village and or regional corporations.

We feel very strongly that the Secretary of the Interior went beyond this ANCSA statutory authority when he issued S.O. No. 2987, a secretarial order that allows for corridors on selected lands. Placement of corridors is, at this time, premature because the location of petrochemical and/or hard rock minerals have not been identified.

We have and will continue to oppose corridors because we feel that when Congress passed the Act, their intent was not to place encumbrances on selected lands and if encumbrances are placed upon such lands then we should be compensated with lands of equal value.

C. Coastal Zone Management.—Another land encumbrance which seriously effects and concerns Calista Corporation is the P. L. 92–583, otherwise known as Coastal Zone Management Act of 1972, which extends and strengthens the role of the State of Alaska in land matters. As presently planned, the State of Alaska could effectively regulate all lands located within a 200 foot topographic contour, including lands which have been selected by 45 of 56 village corporations within Calista Region.

Calista Corporation is opposed to unilatered implementation of Coastal Zone Management by the State of Alaska. If the terms of P.L. 92–583 are to be imposed upon us, we require direct participation in the planning and implementation of Coastal Zone Management Act of 1972.

We know that it is the State of Alaska's function to control and legislate Coastal Zone Management but we want the Legislators to understand our concerns on land matters, especially those affecting lands that have been selected by us pursuant to the terms of ANCSA.

D. Navigable Waters.—One of the most serious issues in our land selection progress and an issue which remains today, surrounds the question of the navigability of waters. This is an issue of concern because under the Statehood Act of 1959, Alaska was granted lands located under navigable waters. Pursuant to the Act, village and/or regional corporations could receive lands located under non-navigable waters if in fact a body of water is proved to be non-navigable.

For the Committee's information, village corporations located within Calista Region, in their 1974 and 1975 land selections, considered and used State of Alaska's criteria for navigable waters because no one else has come up with comparable criteria. Perhaps, Interior could look into State's navigability guidelines.

Calista Corp., since 1973, has been requesting the Department of Interior to come up with some type of definitive guidelines on navigability; yet, to this day, the only ground rules are the recitation of case law on questions of navigability.

Calista's concern comes from the fact that at least 30% to 40% of our selections will be affected by the navigability question.

We would like to see a development of navigability guidelines, more suitable for Alaska, with direct input from affected Natives, by the Department of the Interior and respectfully request any and all assistance that your Committee can provide for us.

III. Adjudication of Selected Lands

The Bureau of Land Management has been generally using an inaccurate set of status plats in deciding issues pertaining to land selection. Status plats are the maps used in determining which land to select and which has been selected. These plats are inaccurate as they are many years old and in numerous cases contain rivers which do not exist or fail to show rivers, villages, lakes or other geographical phenomena which are in existence. The use of these plats is creat-

ing serious problems in our region in the transfer of title to village and regional corporation lands. We request that the Bureau of Land Management immediately realign its priorities so that accurate maps can be produced and used in the selection process.

IV. Disposition of 14(h) Lands

ANSCA Section 14(h) reads as follows: "The secretary is authorized to withdraw 2 million acres of unreserved and unappropriated lands located outside the areas withdrawn by Section 11 and 16."

This language indicates that the regional corporations are to have a greater latitude in the choice of lands that they may select under Section 14(h) than they did under Sections 12, 16 or 19. Section 14(h) lands include historical and cemetary sites, Native group selections and primary places of residence. Further, subsection 14(h)(8) states that should the selections for the above items not amount to two (2) million acres, then any portion of the two (2) 2 million acres not conveyed is to be allotted and conveyed to the regional corporations on the basis of population. There is no restriction in Section 14(h)(8) which requires the regional corporations to select only land within those areas withdrawn under Section 11 and Section 16. Yet, the Secretary of Interior, in promulgating rules and regulations for the implementation of Section 14(h), wrote at CFR 2653.9(a): "Lands available for Section 14(h)(8) selections are those lands originally withdrawn under Section 11(a)(1), (3) or 16(a) of the Act and not conveyed pursuant to selections made under Sections 12(a), (b) or (c), 16(b) or 19 of the Act."

The Secretary of Interior has contradicted the Act when he wrote that lands available for 14(h)(8) selection be those set aside per Section 11(a)(1), (3), or 16(a) of ANCSA. The Act specifically states that 14(h) lands are lands located outside the areas withdrawn by Sections 11 and 16. We strongly recommend that these regulations be immediately rescinded or amended to comply with Section 14(h) so that our selections under 14(h) are not inhibited.

V. Solicitor's Opinion of November 5, 1975, on Exclusion of D–2 Lands from 14(h) Selections

Section 17(d)(2) is a mandate to the Secretary to examine the possibility of adding up to 80 million acres to the "four systems"—i.e. National Park, Wildlife Refuge, Forest, and Wild and Scenic River Systems. There is some controversy as to how the land withdrawals and other land dealings called for by Sections 11, 14, and 16 are affected by (d)(2) withdrawals. The November 5, 1975 Solicitor's Opinion concludes that the withdrawal is a mandatory freeze, excluding all interests except village corporations, from making selections in those lands. This is a well reasoned opinion, but we feel that the adoption of the Solicitor's Opinion may possibly result in some limitation of our selection rights which was not intended by Congress. It is our feeling that it was the intent of Congress to allow Natives to select their 14(h) lands out of any lands not encumbered on or before December 18, 1971, including lands which were later designated as D–2 Lands.

VI. D–2 Lands—Time Limits For Action

ANCSA Section 17 (d)(2) provides that for a period of two years after enactment of ANCSA, the Secretary of Interior shall submit recommendations to Congress with respect to the inclusion of lands for National Parks, Forest, Wildlife Refuge and Wild and Scenic River Systems. This section further goes on to say that such lands shall remain withdrawn from any forms of appropriation for a period of five years from the dates on which the Secretary of Interior makes his recommendations. At the end of this five-year period, the lands withdrawn and recommended as 17 D–2 Lands will return to the public domain if Congress does not enact legislation making those lands part of the Four Systems. It is our feeling that the national interest will not be served if these lands are either made part of the Four Systems or returned to the public domain without Congress having any knowledge of the resources of these particular lands. Before these lands are included in the Four Systems or returned to the public domain, we feel that an accurate and reasonably detailed resource inventory should be conducted so that valuable resources will not be inadvertently locked up and, further, to insure that lands of suitable nature are indeed being added to the Four Systems.

We strongly recommend that an extension of time for a determination of what lands are going to be included into the Four Systems be made so that an intelligent decision can be made with regard to these lands.

VII. Reimbursement of Costs on the Implementation of the Act

Congress acted and passed ANCSA, which was to compensate the Alaska Natives for their various claims. The Natives were to receive approximately 962 million dollars and 40 million acres of land. There is nothing in the Act to indicate that the monies granted to the Natives were to be used to implement the Act. Quite to the contrary. Section 24 of ANCSA states specifically that such sums as may be necessary to carry out the provisions of the Act are to be appropriated for the implementation of the Act.

Village and regional corporations have, since December 18, 1971, been working on the implementation of the Act and have found continuous obstacles imposed by federal agencies. The Native corporations have found themselves battling agencies for what was part of the Settlement, and have incurred substantial costs involuntarily. As an example of such costs, several regional corporations are now involved in easement litigation with the Secretary of Interior. It is our feeling that it was not the intention of Congress to force Natives to spend their monies fighting agencies for what was awarded to them, legislatively.

The various Native groups are, also, involved in litigation surrounding interpretation of various provisions of the Act. A good example of this is the litigation commonly called, "The 7(i) Dispute." All the regional corporations are spending huge sums of money for attorney's fees and other costs in trying to find out just what what it was that Congress granted to them.

We feel that involuntary costs imposed upon village and/or regional corporations are reimbursable to the appropriate corporations either through Section 24 of ANCSA or other means even if reimbursement is to be taken out of the annual budgets of agencies involved.

NUNAM KITLUTSISTI,
Bethel, Alaska, May 17, 1976.

Senator HENRY JACKSON,
Chairman, Interior and Insular Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: The Association of Village Council Presidents representing the 56 villages in the lower Yukon and the Kuskokwim river drainage request time on the committee's hearing scheduled June 10th, 1976 for an oversight on ANCSA. We would like to request time adjacent to the Calista Regional Corporation's speaker Nelson Angapak in that the testimony by David Friday, Chairman of Nunam Kitlutsisti will coincide with some of Calista's presentation. We wish to speak specifically about the D–2 Bill drawn up by the villages of the Calista region and the Calista Regional Corporation. The secretary of the Interior easement guidelines and section 4B of the Claims Act long term impact on our villages way of life.

Sincerely,

EDWARD HOFFMAN, Sr.,
Chairman, Association of the Village Council Presidents.

(Cc: Nelson Angapak, Calista Corporation Pamila Rich, Friends of the Earth.)

PREPARED STATEMENT OF EDWARD HOFFMAN, SR., CHAIRMAN, ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS

My name is Edward Hoffman, Senior, and I am the Chairman of the 56 villages within the Lower Yukon and Kuskokwim Rivers in Southwestern Alaska called the Association of Village Council Presidents. I am unable to attend the meeting, and have asked Ray Christianson, Chairman of the Calista Regional Corporation to speak for me. AVCP and Calista work closely together for our people. AVCP concentrates its work on the social, cultural, and envi-

ronmental programs that affect our region. I would like to address the committee on the issues of subsistence, and the affects of several sections of the claims act on our villager's way of life.

The people of our region are extremely poor in a money sense. The per capita income in the Bethel and Wade-Hampton census tracts is far below the Alaskan and national averages. Our food basket costs as computed by the Department of Labor are 263% of Seattle's prices as of December, 1975. The economic benefits that were assumed present in the Claims Act have not had a visible affect on the village economies in rural Alaska. Our people still depend on the land for 90% of their food, and almost 100% of their protein. The subsistence way of life is our way of living. Our village structures its culture around the hunt and the harvest. Our land is very large, and has little development, so conflicts over exploitation of the land have not occured to date. Even though our people are cash poor, they still have food, and are a proud people. But many sections of the Claims Act will soon challenge our right to life. We are generally concerned about 3 sections that will affect subsistence, and they are Section 4(b), 17(b), and 17(d)(2).

With the passage of the Claims Act, development for federal energy projects began in rural Alaska. First we had the trans-alaska pipeline, now we have frontier exploration of Alaska's vast outer continental shelf. Federal officials have told us bluntly that if oil is found on the land or the seas near Western Alaska, a western pipeline will be built. This means new people, new cities, and competition for resources. Our region is already crowded. Our 14,000 people use up every mile to harvest their food, and development can only make competition grow, and bring hard times to our people. Both AVCP and Calista are trying to deal with the future, but the extinquishment of special considerations for Alaskan natives in Section 4(b)'s extinguishment of aboriginal hunting and fishing rights, will affect us the most. We are without airplanes. As game populations drop due to human pressures, we see our villagers loosing in the competition with the more mobile cash economy people. The State of Alaska is unwilling to recognize the problems facing our people over resource management. In order to continue as an ethnic culture, we need the direct assistance of Congress to allow us to continue our traditional way of life. We ask that this Committee begin an investigation into the affects of Section 4(b) in rural Alaska. In Secretarial order 2982, the Secretary of the Interior allowed extensive easements across and around native selected lands. Our shorelines and our waterways are now exposed to marine coastline easements and linear recreational easements. Our access to the water is our guarantee to continuation of our culture. Congress set aside ample amounts of lands surrounding native villages to buffer the villages from competition. Subsistence is a fragil condition, and its practice in rural Alaska does not stand up well to competition. The Secretary's order opens up our waterways to sport hunters who will soon be moving to rural Alaska seeking the jobs brought on by development. AVCP supports AFN in its suit against Interior for the easements. All of our villages recognize the danger of the easements to our way of life, and we ask this committee to establish guidelines for the management of any easement across native lands so as to protect our traditional villages from resource competition.

AVCP and Calista have worked closely with our villages over the past 2 years to formulate a policy for resource management in the vast Federal land holdings surrounding our villages. In that the State of Alaska has not selected extensive tracts of land in our region, the native community and the Federal government are the principal land owners. This appears to be an ideal situation for cooperative management of the land. Our villages look toward Section 17(d)(2), the national interest Lands section as a mechanism to bring about this cooperation. We have a draft copy of a bill calling for a Yukon and Kuskokwim Delta Cooperative Refuge Management Act. We know that this committee is not prepared at this time to discuss "d–2", but we request that your staff review our proposal, and make suggestions for future "d–2" discussions. Thank you very much.

An Act to provide for the joint cooperative management of certain National Wildlife Refuge lands in the State of Alaska

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Yukon and Kuskokwim Delta Cooperative Refuge Management Act."

DECLARATION OF POLICY

SEC. 2. Congress finds and declares that—

(a) There exists in the Yukon and Kuskokwim River Deltas, an area of outstanding natural character, supporting teeming wildlife populations, having a continuous occupancy by Alaskan-Natives from man's earliest arrival on this continent until this day; and that this area and its wildlife to this day dominate and define the subsistence, culture and way of life of the Native Alaskans resident in the area.

(b) These lands have for thousands of years and still today actively support and provide the nutritional, social and cultural requirements of Native Alaskans.

(c) These lands, although occupied for millenia, show almost no evidence of the continued presence of the Native Alaskan. They have preserved the land and its resources since, without the land and resources, the people would vanish. The Alaskan Natives have demonstrated by their continual presence in the area, their ability to live compatibly with nature. They have maintained a balance between man and nature." Because of their demonstrated ability to manage the land well, the Native Alaskans should participate in the management of the local refuge.

The establishment of a unique management system which allows the Native Alaskans resident in the area to participate in formulating management policies affecting the lands upon which their way of life depends, including any existing or yet to be created, wildlife refuges, parks, forests, or other federal reserves is necessary in order that healthy and protected vegetative communities and wildfowl populations may be maintained and the culture and way of life of indigenous Native Alaskans who depend on the land and its wildlife resources for subsistence may be sustained in their traditional cohabitation, and so that the opposing cultural values of a cash economy and the consequent disruption or dissolution of the traditional way of life of these Native Alaskans will not be imposed upon their peoples through loss of management, access, control or other rights to utilize the land and wildlife upon which they have depended and do depend. It is further recognized, in particular, that large areas of existing refuges now selected by villages ,but not these areas exclusively, require active co-management and that all other lands must be maintained as subsistence zones in order to preserve the traditional way of life.

DEFINITIONS

SEC. 3. (a) "Native Alaskan" is any person defined by the Alaska Native Claims Settlement Act to be a Native Alaskan, 43 U.S.C. 1601 et seq.

(b) "Secretary" means the Secretary of the Interior.

(c) "Board of Commissioners" means those nine persons chosen pursuant to Section 8 of this Act who exercise authority as set forth in this Act.

LANDS INCLUDED

SEC. 4. Existing and future refuge lands will be included under this joint management act when they lie west of 159° 30′ W longitude, between 63° 10′ N latitude and 59° 30′ N latitude.

[Legislative counsel will have to do this by reference to map or legal description.]

ADMINISTRATION

SEC. 5. The Board of Commissioners shall administer all Federal lands within the above delineated area, which are designated as belonging to the National Wildlife Refuge System in accordance with rules and regulations to be issued by such board, subject to the approval of the Secretary as set forth in Sec. 6 below.

MANAGEMENT

SEC. 6. (a) The cooperatively managed refuge areas established by this Act shall be managed in accordance with the rules and regulations issued by the Board of Commissioners. Such rules and regulations shall be submitted to the Secretary of the Interior and shall take effect in 30 days from the date of their

submission, unless the Secretary states in writing withing such time his objections to the prepared rules and regulations. Upon approval, such rules and regulations shall have fulo force and effect.

(b) In the event that the Secretary objects to the proposed rules and regulations he or his designated representatives shall meet, within 30 days from such objection, with the Board or its designated representative in order that the rules and regulations approved by both the Board and the Secretary may be formulated. Should the Secretary or his designee and the Board or its designee fail to reach agreement within 21 days, the proposals of both shall be submitted to an arbitration panel consisting of three members, one to be appointed by the Secretary of the Interior, one by the Board of Commissioners and one by the two panel members so designated. If any party to the dispute fails to appoint its representative to the arbitration panel with 90 days from the Secretary's objection to the proposed rules and regulations, the other party may apply to the U.S. District Court to make such appointment.

(c) The arbitration panel shall issue, within 30 days, rules and regulations which shall be binding on both the Board and the Secretary and shall be adopted as the governing rules and regulations.

(d) By written agreement all business may be conducted by means of written documents or in any other manner tending to expedite the issuance of final rules and regulations.

AGREEMENT TERMS

Federal lands within the above delineated area which are designated ranging to the National Wildlife Refuge System shall be managed cooperatively set forth in Section 5 above and in accordance with the following criteria:

Any development of mineral resources, gas and oil, or gravel removal, shall be regulated by the Commission. All such development must be carried out in such a manner so as to be compatible with subsistence use of the land. The commission shall exercise close scrutiny to assure that the development has no detrimental effects on subsistence, to assure that renewable resources are in fact renewed, and to assure that land is reclaimed. All developers shall be required to comply with the rules and regulations of the Commission and to properly return any land under their care to its natural state.

The Commission is hereby empowered to bring suit against any developer in the United States District Court for the State of Alaska, or any other district, in which the developer resides or may have its principal place of business, for the enforcement of its rules and regulations, to enjoin any action by a developer which the Commission deems detrimental to the interests of the lands subject to its jurisdiction as described in Section 4 in this Act, and seek compensation for any damages to the people or property in such lands.

The U.S. District Court shall have jurisdiction to hear complaints by the Commission against a developer who has failed to observe any rules or regulations of the Commission, or abide by any agreements with the Commission. The court shall have the power to require such compensation, or impose such equitable remedies as it deems just and proper.

This remedy is an addition to any and all other remedies available.

Other complainants are not to be deprived of their proper remedies in the courts.

(b) Subsistence use of the land shall be authorized for those people residing in those areas mentioned in Section 4 above.

(c) Where a conflict arises between the taking of renewable resources from the land for sport, commercial, non-consumptive, or for subsistence need, the Board of Commissioners and the village representatives shall determine which use or uses shall take place. Prior to such determination only subsistence uses shall be allowed to continue and such use shall in no event be discontinued without agreement of a majority of the Board.

(d) That the use of snowmobiles and dogteams, throughout the Deltas shall be permitted for the subsistence and travel purposes of the local residents of the lands described by Section 4, and by other persons pursuant to the regulations promulgated by the Board of Commissioners and approved by the Secretary.

(e) Impact upon subsistence will be the primary consideration in the location and utilization of easements and right-of-ways across the lands included in this Act.

(f) Biological principles concerning optimum sustained yield shall be the first priority of the Board in establishing harvest. When a species, or a subspecies population reaches a level in which continued harvest would affect the biological reproductivity of the species, the Board will investigate the factors affecting the population decline. Once all factors are determined, the Board shall institute mechanisms to control exploitation of the resource in the following manner:

(1) All non-subsistence competition for the resource will be eliminated. In the event the species in question is migratory, the Board shall work with Federal and State authorities to limit non-subsistence harvest.

(2) The Board shall determine the location or locations in which exploitation of the resource is occuring within the Refuge, and shall institute management practices to reduce hunting or habitat pressure on the resource.

(3) The Board shall in cases when species or sub-species populations do not improve as a result of Subsections (1) and (2) above to eliminate exploitation of the species or sub-species in question in the location(s) where exploitation is taking place. In this manner, harves for subsistence purposes shall be the last manner of exploitation to be prohibited, and the Board shall take this action when the population declines toward the "Endangered Level" as defined in Subsection 4).

(4) "Endangered" means that number below which continuation of subsistence hunting is in jeopardy. The establishment of the endangered species condition for this Act shall amend 16 U.S.C. 1533 to allow native Alaskans to continue their traditional subsistence activities until such time as a species in question is diminished to such a level that continuation of subsistence hunting and fishing of domestic and migratory species is in jeopardy. "Endangered" shall then mean that federal standards for population shall be elevated on a species basis to terminate other forms of exploitation prior to the enactment of a prohibition of subsistence exploitation of the resource.

BOARD OF COMMISSIONERS

SEC. 8. (a) The Secretary shall establish a nine person Board of Commissioners of which five at any given time must be Native Alaskans and must be from the Calista region. The duties and responsibilities of the Commission shall be:

(1) To exercise review of the administration and management of all Federal lands included in this Act, in compliance with this Act: the promulgation of, and compliance with regulations adopted pursuant to the Act: the mediation of any disputes or misunderstandings between Native Alaskan people, state and federal government personnel and agencies, and such other matters as the concerned parties shall decide upon;

(2) To make proposals which shall be reviewed by the Secretary on any or all matters concerned with refuge administration or management; any conflict arising under this section shall be disposed of in the same manneras set forth in Section 7(b) above.

(3) To bring suit in the U.S. District Court against any party who violates rules and regulations promulgated by the Commission, or any agreements made with the Commission.

(b) Five members of the Board of Commissioners shall be elected by the people of the region to serve staggered four year terms, elections to be held every two years, three commissioners to be elected at one time and two commissioners at the alternate election. The other four members shall be chosen from a list of five who are nominated by the Secretary and whose names are submitted to the general electorate to serve in four year staggered terms, two to be elected at any one time. All members shall be compensated as provided by the President at a rate not in excess of that provided for level V of the Executive Schedule in Title 5 United States Code, for such periods of time as their actual duties demand; and provided that Commissioners shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as the Board of Commissioners."

REVIEW BY CONGRESS

SEC. 9. The Secretary shall submit to the Congress annual reports as approved by the Board of Commissioners on the administration of the refuge lands included in this Act.

APPROPRIATIONS

SEC. 10. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

PUBLICATION, VIOLATIONS OF PROVISIONS

SEC. 11. The Secretary is authorized to issue and publish in the federal Register, pursuant to the Administrative Procedure Act, such regulations as may be necessary to carry out the purposes of the Act.

SAVING CLAUSE

SEC. 12. To the extent that there is a conflict between any provision of this Act and any other Federal laws applicable to Alaska, the provisions of this Act shall govern.

SEPARABILITY

SEC. 13. If any provision of this Act or the applicability thereof is held invalid, the remainder of this Act shall not be affected thereby.

Senator GRAVEL. Our next witness is Herb Smelcer of the Ahtna Corporation. Herb is not here apparently. We will go on to Cecil Barnes and Richard Jansen. It is a pleasure having you both here.

STATEMENT OF CECIL BARNES, PRESIDENT, CHUGACH NATIVES, INC., AND RICHARD JANSEN, CHUGACH NATIVE CORP.

Mr. BARNES. Mr. Chairman, members of the committee, I am Cecil Barnes, president of Chugach Natives, Inc. and with me I have my assistant, Dick Jansen.

Mr. Chairman——

Senator GRAVEL. Speak a little closer into the microphone, please.

Mr. BARNES. Chugach Natives, Inc. appreciates this opportunity share some of its experiences under ANCSA with the committee.

Although individual examples of outstanding cooperation within the executive branch can be cited, including the personal interest of BLM Director Berklund, we of Chugach—like the other Native corporation leaders who have spoken—see a growing tendency of agency officials away from cooperative responses to legitimate Native concerns.

Congress directed that lands be conveyed "immediately after selection." The word immediately is not devoid of meaning.

Thus, when BLM declines to process an interim conveyance, such as for the Icy Bay deficiency withdrawal adjacent to the Gulf of Alaska leased tracts offshore, because Chugach and the Secretary are litigating selection issues not germane to that withdrawal, BLM thwarts congressional intent and acts counter to the Secretary's own goals in promoting exploration in the gulf. For an interim conveyance at Icy Bay can help assure Chugach a useful role in conjunction with offshore exploration and development.

As to interim conveyances, we observe no criteria that determine the priorities of administrative processing; on the contrary, we see an apparent decision to defer interim conveyances when such a deferral might compel a Native corporation to compel some positions it holds that are at variance with positions of the Department.

Chugach joins other corporations in opposing statewide coastal easements, or floating easements that cloud Native title. We believe that the criteria required by the Congress in section 17 apply to the considerations of the Secretary as well as the Joint Land Use Planning Commission, and that the Congress, in directing the Commission to identify easements across Native lands, and to review transportation plans, clearly intended specific easement routes, or at worst, identifiable corridors for limited purposes. Congress did not contemplate that the Department would burden entire withdrawals with floating easements.

As part of your oversight function, we urge you to review BLM's technology for performing surveys. In spite of nominal support for pilot studies in new technology, BLM remains generally resistant to changes that could speed the conveyancing process. Your success in advancing survey methodology can help render moot some of the complaints you have heard about the slow pace of conveyancing.

We are also concerned about the complete failure of the Forest Service, in its interim administration of National Forest lands to be conveyed to Native corporations under section 22(i) of ANCSA, to have meaningful consultations with Natives about gravel extraction within these lands.

Consultation is a requirement of federal regulation. On August 22, 1975, the Chief of the Forest Service wrote Senator Stevens that the Forest Service would consult carefully, and would grant no commitments for sand or gravel extraction without consent of the prospective Native corporate patentee, in cases where the materials are located within priority selection areas.

In spite of these welcome assurances, the Forest Service issued additional gravel permits last month without consultation or consent. Having exhausted our administrative recourse through meetings with Forest Service officials in 1975, and having received assurances that have been broken, we believe that the problem is now one that will interest the committee as part of its oversight function.

In ANCSA, you directed that the settlement be accomplished with maximum participation by Natives in decisions affecting their rights and property. Permits for the extraction of materials issued without our consent, and without consultation about price, methods of appraisal, conditions of sale, environmental protection, and administration of the permits after issuance are not in harmony with congressional intent as expressed in section 2 of ANCSA.

Knowing that the committee has diverse interests and responsibilities, we are especially grateful for these hearings. As great and large as the United States may be, the Congress, we see, still retains its ability to assure that its intent is carried out by executive agencies. This is cheering news to those who might doubt the capacity of our Government to do justly towards all its citizens.

Mr. Chairman, this is sort of a condensed view of the more detailed testimony that you have and in the interest of time hopefully the brief overview here meets the requirement of the 5 minutes.

Senator GRAVEL. Very good. Thank you, Cecil. I have no questions.

Senator STEVENS. Those permits that the Forest Service issued, contrary to that letter they sent to me, were they within the priority section area?

Mr. BARNES. Yes.

Senator STEVENS. Can you give us the details on those? Are they in your written statement?

Mr. BARNES. Well, we——

Senator STEVENS. You can't really inquire from them about it.

Mr. BARNES. One of the problems I am concerned with is also with regard to the gravel issue and within section 22 I believe the administration of those lands—I am wondering in my own mind whether if the question is resolved and that gravel is surface? Does the Forest Service in fact have the administrative authority with regard to surfaces and this is something, of course, which I don't know what is going to happen.

It may be that when the Settlement Act question is resolved we may find that the administration of that resource is in the wrong area. I would like to have Dick Jansen follow up with a comment.

Mr. JANSEN. Yes. On the gravel, we thought we were in some sort of negotiation with the Forest Service relative to certain part of the interest which were three contractors and while we were discussing it with them, they went ahead and gave the permits to the three contractors for quite a bit less money than we thought that the gravel was selling for in any other region or any other area close by and we didn't know that they intended to do this until they had already given the order about a week behind and even know that it was done.

Senator STEVENS. Well, we will look into that.

Senator GRAVEL. Thank you very much, gentlemen.

[The prepared statement of Mr. Barnes follows:]

STATEMENT OF CECIL BARNES, PRESIDENT, CHUGACH NATIVES, INC.

Mr. Chairman, Chugach Natives, Inc. appreciates the opportunity to share with this Committee some of its experiences with agency administration of the Alaska Native Claims Settlement Act.

Be assured that we do encounter some individual examples of outstanding civil servants who work hard to resolve Native claims issues "rapidly, with certainty, in conformity with the real economic and social needs of Natives, (and) without litigation", the spirit commanded by Congress in section 2 of the Act.

But sadly, we preceive a growing disinclination of agency officials to respond cooperatively and helpfully to legitimate Native concerns.

In section 14(a), and again in section 14(e), Congress commanded the Secretary to convey lands to Native corporations "(i)mmediately after selection. . . ." Even if "immediately" does not mean "instantly", the word used by Congress is not devoid of all meaning. Let the term mean "as soon as possible", let it mean "all deliberate speed"—even then the Secretary has thwarted the intend of Congress.

Earlier this year, Chugach asked for early conveyance of regional deficiency lands at Icy Bay, near the boundary line between Chugach and Sealaska which Congress confirmed in the Omnibus Act.

Chugach has several excellent reasons for seeking early conveyance at Icy Bay. First, Chugach has entered into a contract with Phillips Petrloeum Company for on-shore exploration and development in this deficiency withdrawal area. Second, Chugach believes the Icy Bay withdrawal area can be developed in tandem with Gulf of Alaska activities of the successful bidders. Third, Chugach has identified the Icy Bay regional deficiency, with the advice of the Land Use Planning Commission, as the region's most important selection area.

To date, the Bureau of Land Management has declined to even process Chugach's request for an interim conveyance of the regional deficiency lands at Icy Bay. Timing of the interim conveyance is of critical importance to

Chugach, given its limited selection opportunities resulting from "d2" withdrawals and the presence in the Region of the Chugach National Forest, and in the light of the Secretary's action in leasing tracts for petroleum exploration and development in the adjacent Gulf of Alaska.

The Bureau's failure to act is not justified by the Bureau by any legally or morally valid explanation. The Bureau does not assert that it is too busy processing other interim conveyances to other corporations, whose applications enjoy a higher priority. Indeed, as far as Chugach is aware, the Bureau has no criteria by which it determines which interim conveyances it will process, and which it will defer. Perhaps that is because the Bureau is turning deaf ears to all interim conveyance requests, as this oversight hearing seems to suggest.

On April 27, the Bureau advised Chugach in writing, with regard to the processing of an interim conveyance at Icy Bay: "Our position (is) that since the issue of Chugach's selection rights (are) in litigation, we (do) not believe we should process portions of the lands involved until either the entire issue (is) resolved by mutual agreement and stipulation or by judicial decision."

The April 27 communication's reference to "litigation" refers to a pending action brought by Chugach against the Secretary in the District Court for the District of Columbia. But that action concerns the over-all adequacy of regional wihdrawals, village second-round selections in the Chugach National Forest, and the administrative regulation requiring that regional selections be in parcels at least as large as whole townships, unless the regulation is waived by the Secretary.

None of these issues in litigation is relevant to the Icy Bay deficiency withdrawal. Some of the Icy Bay lands applied for may not be available for conveyance because of interests of the State of Alaska, and terminology used in Public Land Order 5393, but these factors would not affect the remainder of Chugach's selection applications at Icy Bay and do not create any controversy between Chugach and the Secretary at this time.

Clearly, the Bureau's position is that a regional corporation which has the temerity to challenge the validity of an administrative regulation or action should not expect Bureau cooperation in an unrelated administrative area.

We understand that spokesmen for the Department will testify here later. We respectfully urge that they be asked whether there are criteria to determine the priorities of conveyancing, and whether an applied criterion is not that conveyancing should be deferred when the deferral might compel a corporation to forego its position on unrelated matters.

That this is the Department's policy in fact is demonstrated by the Department's refusal to accept the proposal described here last week by Mr. Ed Weinberg, counsel for Koniag, Inc. Mr. Weinberg, speaking of easement issues that attend the conveyancing process, had recommended that the Secretary reserve any easements which he determines are proper, subject to the right of the patentee to obtain administrative and judicial review, and to obtain a release of easements found to violate ANCSA or the Secretary's regulations, or to be warranted only by invalid regulations.

As reported last week by Senator Gravel, the Secretary appears to have rejected the proposal, relying upon undisclosed legal considerations. We believe that the proposal is fair to all. We believe that it would expedite the conveyancing process, which Congress wanted to take place "immediately" after the land selection stage. We urge the Committee to recommend the adoption of this proposal by the Secretary, or his implementation of any other easement reservation methodology that will similarly expedite the conveyancing process without jeopardizing legitimate Native interests.

With further reference to easements, Chugach believes that "floating" easements established by regulation violate the intent of Congress in ANCSA. If plain words have plain meaning, section 17 of ANCSA contemplated that the Joint Federal-State Planning Commission was to "*identify* public easements across" selected lands, using specific criteria set forth in subsection 17(b)(1); that in "identifying public easements" the Commission was required to consult with agencies of government and to "review proposed transportation plans";

and that the Secretary "shall consult with the State and the Planning Commission and shall reserve such public easements as he determines are necessary." The public easements which the statute refers to must be identified easements tied to existing use or specific plans. If the role of the Commission is to have the usefulness intended by Congress, the criteria employed by the Secretary must be the same criteria which Congress directed the Commission to use.

In this statutory scheme, "floating" easements that encumber entire selection areas must be eliminated. We urge the committee to address this issue in the oversight process.

Finally, as to conveyances, Chugach urges that Congress examine the procedures used by the Bureau of Land Management, with particular reference to surveys. Technology in surveying is undergoing rapid change. While BLM has participated in some pilot studies of new survey techniques, BLM is perceived as adopting generally a resistant attitude towards the utilization of new electronic and airborne survey techniques. When ANCSA became law, Native expectations for early conveyances were aroused. Unless new survey techniques are employed as they become available, these expectations are sure to be dashed for a generation or longer. We respectfully submit that this is another fruitful area for committee investigation. Already, the tensions created by delays in conveyancing are evident. Regional corporations whose land selections benefit from past surveys may still be delayed in obtaining title if BLM is bogged down in the survey effort unnecessarily. Your success in advancing survey methodology by BLM can help make moot some of the complaints you have heard from the regional corporations and the State of Alaska.

Mr. Chairman, our testimony would be incomplete without mention of the United States Forest Service. In 1975, when the Forest Service, without consultation with Chugach or its affiliated village corporations, decided to grant permits for the extraction of gravel from lands within village withdrawals, Chugach conferred with Forest Service officials in Alaska and communicated its concern to members of the Alaska delegation in Congress.

As a result, Chief John McGuire wrote Senator Stevens on August 22, 1975, that the Forest Service, in future, planned to work closely with Chugach and its affiliated villages, would consult on all possible commitments for gravel, and moreover, would grant no commitments without Native corporation consent if the materials were within "priority selection" areas. You can appreciate our severe disappointment when we learned that the Forest Service, last month, had issued still more permits without consultation, let alone consent.

We believe that genuine consultation—which is even required by regulation as well as by equity—means advance discussions between the agency and the Native corporations concerned, covering appraisals and appraisal methods, the terms and conditions of sale, the location of the materials to be sold, environmental factors, and administration of the permit for extraction after it is issued. The Forest Service has failed to meet any of these criteria of meaningful consultation.

As a result, in our judgment, gravel has been taken for less than fair market value. The Committee will recall that the Omnibus Act assures Native patentees only of that money received from third parties; it does not by itself assure a reasonable return for the materials taken in depleting the value of the Native fee.

In view of the Forest Service's breach of Chief McGuire's commitment, and its expressed intention to proceed with further permits for gravel without our consent, and without specific arrangements for genuine consultation, and in the light of expert opinion advising us that the Forest Service has utilized an inappropriate appraisal method, Chugach has commenced legal action against the Forest Service and the Secretary of Agriculture.

We know that this is not the forum to try that legal action. We call the matter to your attention, however, so that you may know how lacking has been the consultation which Congress intended. As a matter of oversight, this is important to your concerns because you directed that "the settlement . . . be accomplished rapidly . . . with maximum participation by Natives in decisions affecting their rights and property. . .". We recognize, of course, the authority of the Secretary of Agriculture, under section 22(i) of the Act, for interim administration of Forest Service lands selected under the Act. But we

call upon the Forest Service to keep the pledges made by Chief McGuire to Senator Stevens and to abide by published regulations which require true consultation with prospective Native land owners.

Chugach understands that this Committee has many concerns, of which the oversight of ANCSA is only a part. We look forward to presenting to you at a later date Chugach's views about "d2" legislative proposals that affect Chugach and its affiliated villages directly. We believe we can help fashion a "d2" bill that will strengthen the so-called "four systems" without diminishing the legitimate interests of the State and the regional and village corporations.

While Chugach recognizes the diversity of the Committee's jurisdiction, we respectfully believe that your continuing oversight of the administration of the Native Claims Settlement Act is essential and important. To those critics of our country who believe it has grown too large and too unmanageable, the ability of Congress to assure that executive agencies carry out congressional intent—in letter and spirit—is the most telling possible response.

These oversight hearings will have been worthwhile if this Committee, as a result, can steer the Department of the Interior and the Department of Agriculture back to the high purposes which the Committee has pursued faithfully since 1971, when ANCSA was enacted.

Thank you for this opportunity to present our views.

Senator GRAVEL. Our next witness is Tom Drake. Tom; is he here? No? Well, we will take him out of order also.

Willie Hensley; I know he is here. Willie, happy to have you here.

STATEMENT OF WILLIE HENSLEY, NANA REGIONAL CORP., ACCOMPANIED BY FOSTER DeREITZES

Mr. HENSLEY. Thank you, Mr. Chairman and Senator Stevens.

Mr. Chairman, I have a statement which I will submit for the record and I would like to limit my remarks primarily to the subject of easements and, Mr. Chairman, I am representing a regional corporation, representing our president, John Shaffer.

Mr. Chairman, the Alaska Native Claims Settlement Act did confer on the Secretary of the Interior a right to impose easements on the land that was to be granted to the Native corporations in Alaska.

However, it is our opinion that the authority that has been granted to the Secretary for easements has been expanded substantially and, in fact, this is one of the major issues that was not a part of the administration of the Settlement Act.

Since May of 1973 when we sat down with the Secretary's representatives here in Washington for about 2 weeks, we thought that we had basically worked out an agreement between the Interior Department and the Natives in terms of how the corridors and easements were going to be administered in Alaska on land that would be granted to the people. However, since that time there has been a virtual turn-about on an agreement that has been worked out. And the Native community has not been granted, we feel, the proper input in defining easements that are to be imposed on the lands.

These easements have been issued under Secretarial orders other than regulations and whatever advice that was granted by the Native community has simply been ignored. There have been two orders issued by the Secretary. One dealing with local public easements and the other dealing with corridors. And we have virtually a catch-22 situation with respect to the 25 foot easements.

Whereas, the fact that the Native community over the past has used this land over the past years that has been used as region four. And basically it appears, Mr. Chairman, to us that this portion of the act regarding easements is being utilized not in the fashion that has been official to the Native community and there is no view in mind as to the effect of those easements on the Native life style and are strictly being utilized to in fact fold up the issuance of interim conveyances and thereby the transfer of lands from the public domain to the Native community.

We are not saying that there needs to be specific legislation on this matter. It is simply that we feel that the Secretary has overstepped his bounds in his application of the authority that was given to him.

And the idea of virtually having floating easements across the lands that are to be granted to the Native community simply makes it very difficult for us to plan for the use of these lands.

So that is basically the substance of my remarks, Mr. Chairman, and my printed remarks——

Senator GRAVEL. It will appear in the record. Thank you very much, Mr. Hensley. I have no questions.

Mr. HENSLEY. I might add, Mr. Chairman, that there are seven of the regional corporations that have joined together and virtually all agree including the others that there has been a substantial expansion, in fact, overstepping, we feel, of the bounds in the act in interpreting that provision and we seek to have the illegal portion of his orders and policies set aside.

Senator STEVENS. Well, Willie, I am disturbed about those law suits because we have law suits from the non-Native community also saying that they didn't go far enough. It seems, once again, we are taking the Alaska problem to the Federal courts.

It seems that we ought to find some way. I asked Commissioner Martin if he wouldn't see about getting a statement. But it seems to me that there ought to be some way to represent the Alaskan public interest with regard to access to some of these areas and exclude them from these selections so that they are not a deduction from the selection totally.

But at the same time preserve what is necessary for the public and it is not a Native versus non-Native thing. In many areas it is Natives of one village that have used access across the lands which are now being selected by another. And I think it is highly unfortunate. But it seems that this litigation is going to delay the conveyance for these lands. That is my reading of it.

As a lawyer, it just seems that that is going to be protracted legislation and I would hope that somehow or other some of the Native leaders would join us in trying to get the state to step forward and be the catalyst for the public interest in Alaska and define what is necessary in the public interest to be set aside and ask the Secretary to set aside as we intended in the act. The Secretary seems to have shifted the burden. The law requires the Secretary to set aside these areas. He has now shifted the burden so that the individual Alaskan must protect the public interest. And I don't think the individual Alaskan has the financial capability to do that, nor the legal knowledge to do it.

And I do think it is an Alaskan problem. And it is going to be unfortunate if we let it drag on through the Federal courts for years. And it will ultimately be a Federal question, as it is interpretation of the Federal law and even though some of the cases have been tried in State court, I think it is going to be a Federal principle. I would hope that the committee would consider to imposing the responsibility on the State of Alaska that is if it won't take it voluntarily—but, I think somehow or other we have got to resolve this so as not to delay the conveyance of a substantial portion of the lands that were included in the Settlement. I don't know whether you agree, but that and the other litigation, I think, are the most worrisome things in the aftermath of the passage of the Settlement Act.

Mr. HENSLEY. Mr. Chairman, we would like to also see this Settlement Act expedited and the lands conveyed. And our position generally has been, at least amongst the Native corporations, that we would prefer to stay out of the political arena and keep having to return to you for resolution of some of these conflicts. But when pressed to the wall there is no choice but to have to go to the courts and seek a ruling.

And I had hoped—well, almost 3 years ago that we had worked out a method by which these lands could be transferred; that there would be some provisions for easements and use along these lands that are selected. But those have been virtually withdrawn and their own policies entered that simply did not take effect.

Senator STEVENS. You know, the Secretary changed the law. The law specifically says that the selection should be in sections and wherever feasible and in units of not less than 1,280 acres and he changed it and said selections could be in quarter sections and the net result of that has been a complete misunderstanding as far as the non-Native population of the State. I think we are headed for a real conflict, unless we resolve this; and the longer those conveyances are delayed, the more the intent of the act is frustrated. So I really believe we need a sort of a summit meeting on the interpretation of this Act with representatives of the State and the regional corporations and the Secretary. I really believe that there ought to be a way to negotiate this thing out and not spend year after year after year in litigation.

And I think the responsible approach has got to be to try and find a middle ground that will protect the total interest of Alaskans without being involved in this litigation. We passed the act to avoid litigation. It looks like we may have engendered more than we escaped by passing the act, if some of these things are not settled.

I should be asking questions, but I think you ought to know my point of view and that is that litigation ought to be resolved to the extent that it is humanly possible by some form of negotiation.

Mr. HENSLEY. Mr. Chairman, if we felt that such a summit meeting could resolve some of the problems that we see in the litigation without any real detriment to us, I think we would be willing to sit down and talk.

Senator GRAVEL. Thank you very much.

[The prepared statement of Mr. Hensley follows:]

STATEMENT OF WILLIAM L. HENSLEY, A MEMBER OF THE BOARD OF DIRECTORS OF NANA REGIONAL CORPORATION, INC., BEFORE THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS REGARDING THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

Mr. Chairman, Members of the Committee:

My name is William Hensley. I am a member of the Board of Directors of NANA Regional Corporation, Inc., the regional corporation formed in Alaska under the Settlement Act for the northwest region of Alaska, centered around Kotzebue. I appreciate the opportunity to present this statement to you on behalf of NANA, as well as several of the other regional corporations formed under the Settlement Act.

My purpose here is to discuss the problems we are facing as a result of the policies of the Department of the Interior regarding easements to be imposed on lands selected under the Settlement Act by the regional and village corporations. These policies are of great concern to all the Natives of Alaska, for it is becoming ever more apparent that the provisions of the Settlement Act for only limited easements on the lands are being greatly expanded by the Department of the Interior and are being used by the Department to effectively deprive the Native corporations of many of the rights to the land for which they fought so long and hard.

Section 17(b) of the Settlement Act is the only provision in the Act giving authority for the imposition of easements on lands selected by the Natives. Section 17(b) directs the Land Use Planning Commission to identify certain

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public easements, and directs the Secretary of the Interior, after consulting with the Planning Commission, the State of Alaska and the Native corporations, to reserve those public easements which he deems necessary. Only limited types of easements are authorized. These include public easements across lands selected by the Native corporations and at periodic points along the courses of major waterways reasonably necessary to guarantee international treaty obligations, the full right of public use and access for recreation, hunting, transportation, utilities, docks and other public uses which the Planning Commission deems important.

Since the Settlement Act was passed in 1971, the Natives have had to engage in an almost continuous struggle to prevent the Department of the Interior from using these provisions to chip away at the land rights granted them by Congress. In May of 1973, after extensive negotiations with the Native corporations, the Department issued regulations covering land selections generally. These also contained certain provisions relating to easements. The result was at best a mixed blessing. The regulations provided that a public easement imposed on a Native conveyance would have to be specific as to use, corridor location and size, and these also had to be related to an anticipated public use or a planned or existing governmental function. Scenic easements of any type were prohibited. In addition, the Secretary of the Interior also was required, no later than the year 2001, to terminate any public easement

not used for its intended purpose. In an effort to minimize the effect of so-called floating easements, the regulations also provided that any corridor reserved for future specific easements could be no longer or wider than actually necessary.

Not until this year, however, did the Department issue more specific rules governing the imposition of easements, and with these the Department made amply clear its intention of using the easement provisions of the Settlement Act to diminish the Natives' land rights to the greatest extent possible. First, after delaying more than four years before issuing these policy guidelines, it issued them in the form of Secretarial orders, rather than through the process of promulgating regulations, thereby virtually eliminating the Natives' opportunity to have input in the process. To the extent that the Native corporations were consulted in advance at all, their objections to the forthcoming orders were effectively ignored. In any event, the Department clearly violated Congress' mandate, clearly expressed in section 2(b) of the Settlement Act, that the settlement be accomplished "with maximum participation by Natives in decisions affecting their rights and property."

Substantively, the two orders, issued in February and March of this year, take an approach negative to the Natives' interests at virtually every possible turn. The February Order[1/]

1/ Order No. 2982, dated February 5, 1976, attached hereto as Attachment A.

deals specifically with local public easements. It provides for the reservation of various public easements on the basis of present use, without regard to the statutory criteria of the Settlement Act. Under the Order, two types of easements specifically need not be related to present use. Although section 17(b) of the Settlement Act very clearly provides for public easements only "at period points along the courses of major waterways", the Order provides for a continuous shore line easement extending 25 feet above mean high tide along the marine coast line of the State, regardless of present use. Second, easements for giving access to all public lands and resources also need not be related to present use.

Easements, 25 feet wide, also are to be imposed along all rivers and streams having a so-called "highly significant present recreational use". Again, although section 17(b) speaks of easements at periodic points along the waterways, the regulations impose periodic linear easements. A variety of factors are used to determine whether the present recreational use is "highly significant", the most important of these being that the portion of the river or stream must have been used by at least "several users" each year. This might be no more than three or four people. The fact that these users may have been Natives is irrelevant. Thus the past Native use of the shoreline of a river or stream would constitute past "public" use, and could be used to justify the

imposition of an easement to serve the public generally. The extreme irony in this approach should be self-evident.

In order to insure access to the government and public to various facilities, the Order provides for easements across Native lands. The Order, however, provides for these easements to be far wider than necessary. It also places no limitations on the number or frequency of these easements, and the potential for serious abuse exists here.

The second Secretarial Order, issued by the Department in March of this year,[2/] relates to utility, transportation and other such corridors to be withdrawn by the Secretary. The Order directs the Bureau of Land Management in all conveyances made under the Settlement Act to reserve various of these easements for the transportation of energy, fuel and natural resources. However, neither the location of the corridor, nor its size have to be specified in the conveyance and no time limit is placed on when the corridor actually must be put to use. These then constitute so-called floating easements, which will place a cloud on the title to the entire conveyance to which they relate. They also fly in the face of the Department's own easement regulations issued in 1973.

As I mentioned, these are only some of the problems relating to the imposition of easements. They should make evident, however, that the Natives will receive lands crisscrossed by a multitude and wide variety of easements, serving

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2/ Order No. 2987, dated March 3, 1976, attached hereto as Attachment B.

the public and the government, not the Natives. These easements will drastically reduce both the value of the lands received and the use to which they may be put.

Equally clear is the fact that the Natives again will be forced to spend vast sums of money to protect and preserve the land rights which rightfully are theirs. The worst result of the Secretary's policies, however, is that, because of the uncertainty and disputes created, a large portion of the conveyances of lands selected by the Natives is being delayed. This delay could last until the disputes are resolved, perhaps many months, or even years. If conveyances are made, questions of title will remain in a state of flux until the propriety of specific easements are adjudicated.

Because the Secretary's policies constitute so great a threat to the Natives' land rights, seven of the regional corporations last month brought suit against the Secretary of the Interior, seeking to have the illegal portions of his orders and policies set aside.[3/] Until the court rules, the uncertainty over the Natives' rights will continue, and, unless the court rules in our favor, the Natives' land rights will have been severely violated. While we do not wish here to make any specific recommendations for a legislative remedy, it is clear that many of these problems could be eliminated by

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3/ Calista Corporation, et al. v. Kleppe, Civil No. 76-0771 in the United States District Court for the District of Columbia.

making section 17(b) of the Settlement Act considerably more specific and spelling out in detail the limited nature of the easements which Congress originally intended to be imposed. But legislation is not essential, for nothing in the Settlement Act requires the Department of the Interior to take the approach which it has, one so detrimental to the Natives' rights.

This concludes my statement. I thank the Committee for giving me this opportunity to present our views and would be pleased to provide you with any further information which you may feel useful.

June 14, 1976

Office of the Secretary

[Order No. 2982]

ALASKA NATIVE CLAIMS SETTLEMENT ACT (ANCSA)

Reservation of Local Easements

SECTION 1. *Purpose.* The purpose of this order is (a) to establish policy, guidelines, and procedures for reserving local public easements in the State of Alaska pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708), and (b) to delegate to the State Director, Bureau of Land Management, Alaska, the authority of the Secretary of the Interior to determine which local public easements are necessary and to reserve such easements for public use.

SEC. 2. *Delegation of Authority.* The State Director, Bureau of Land Management, Alaska, is hereby delegated authority to determine which local public easements are necessary and to reserve such easements for public use, pursuant to the policy, guidelines, procedures and limitations within this order.

SEC. 3. *Scope.* This order deals with local public easements. Local public easements include all public easements other than easements to be used in interregional or interstate commerce for the transportation of energy, fuels, or natural resources, or for interregional or interstate communications systems.

Instructions for the reservation of easements for interregional or interstate transportation of energy, fuels, or natural resources, and for interregional or interstate communication systems shall be promulgated separately.

SEC. 4. *Policy.* The local easement policies herein set forth will be applied to protect the public interest in land conveyed to Natives and Native corporations pursuant to the Alaska Native Claims Settlement Act and to meet the requirements of public law.

Local public easements will be reserved for public and governmental uses. Local easements in behalf of the general public for recreation, access, transportation, utilities, airports, and aircraft landing sites will be reserved only on the basis of present existing use with the following exceptions: (1) the reservation of a continuous shoreline easement extending 25 feet above mean high tide along the marine coastline of the State; and (2) the reservation of easements to assure present and future access to all public lands and resources. These exceptions describe the only local easements in behalf of the general public to be reserved for other than present existing uses. Scenic easements will not be reserved. Periodic linear and site easements for recreation purposes on rivers and streams and site easements on lakes will be reserved only to the extent necessary to provide continued public use of areas having highly significant present recreational use.

Whenever it is determined that an easement will adequately serve a government need in lieu of retention of title to the land pursuant to section 3(e)(1) of the ANCSA, an easement will be reserved to (a) protect existing uses, or (b) protect presently planned uses.

Easements will be precisely located whenever possible except in those instances where this would result in a substantial delay in the issuance of conveyances. Local public easements, especially existing transportation and utility easements, will be located in close proximity wherever possible. For this purpose, corridors carefully delineated in accordance with 43 CFR 2650.4–7(b)(4) may be used to permit the subsequent identification of the precise location of each easement. Local easement corridors will be specifically identified as to location, size, and use in terms of the public easements to be contained therein.

Local easement corridors may be delineated by aliquot parts or by other means necessary to accommodate the easements. When the specific identification and definite location of all the easements within a corridor are made, those portions of the corridor reservation not used by the easements will be relinquished.

Easement provisions in interim conveyances and patents will identify uses through commonly accepted terminology, e.g., trail or road. When necessary, additional descriptive terms may be added to further identify uses. All easements shall be reserved to the United States and subject to further regulation thereby.

The term "public easements" will include public use, access, transportation, recreation, communication, and utility easements as may be defined in State or Federal law or through historical usage. The authority granted in ANCSA to reserve public easements will be exercised to protect the public interest, including but not limited to, their right of access to and use of public land and public resources. All conveyances will be made subject to all rights of access preserved under section 17(b)(2) of the ANCSA. Identification and reservation of public easements shall include consideration of the need to assure access to Federal or State lands and resources (including the need to reserve easements for full right of access to the reserved subsurface) or land which is subject to public use.

Special consideration as to the location of such easements will be given to the effect of a proposed easement on Native lifestyle and subsistence needs. The environment and other relevant factors will also be considered. Alternative routes and modes of access will be assessed. All public easements will be periodically reviewed to determine if they continue to be required or if they should be vacated.

It should be noted that the right of the United States to enter lands conveyed to the Natives will be reserved in the patent for cadastral, geodetic, or other survey purposes. Easements reserved for this purpose will be a general right of entry for such survey purposes along with the right to do all things necessary in connection therewith.

Determinations of easements to be reserved will be made after review of the recommendations of the Federal-State Land Use Planning Commission, other Federal Agencies, the State, the Natives, and the general public. Consideration will be given to requests for easement reservations which are timely submitted to the Bureau of Land Management accompanied by written justification.

Detailed guidelines follow to further assist the State Director in the proper discharge of the Department's responsibility for easement identification and reservation.

EXHIBIT A

SEC. 5. *Guidelines.* (a) In identifying appropriate easements, an assessment must be made of the public use or purpose to be accommodated and the type of easement proposed. This order lists situations which form the basis for identification of specific easements to be reserved. However, it is not intended that such examples are all inclusive.

(b) The size of specific easements will be governed by standards set forth in applicable laws and regulations. In the absence of a controlling statute or regulation, the following standards will be followed as general guidelines, taking into account the purposes for which the easement might be reserved. Standard sizes delineated here may be varied when such a variance is justified by specific conditions.

(1) *Roads and trails.* The usage of roads and trails will be controlled by applicable State or Federal law or regulation. The usages listed in these guidelines will not be listed in the conveyance either as prohibited or permitted usages of the easement but instead will be used for the purpose of determining the width of the easement to be reserved.

(A) The width of a trail will be 25 feet if the usages to be accommodated are for travel by foot, dogsleds, horseback, small vehicles, and uses of a similar character.

(B) The width of a trail will be 50 feet if the usages to be accommodated are for travel by all-terrain vehicles, track vehicles, 4-wheel drive vehicles, and uses of a similar character in addition to the uses included under (A) above.

(C) The width of a road will be 60 feet if the usages to be accommodated are for travel by automobiles or trucks and similar vehicles within a community.

(D) Major traffic arteries or roads connecting communities or regions will be 100 feet in width

(2) *Marine coastline.* In order to provide public access to and along the marine coastline and use of such shore for purposes such as the beaching of watercraft or aircraft, travel along the shore, recreation, and other similar uses, a continuous linear easement 25 feet in width upland of and parallel to the mean high tide line shall be reserved, subject to the limitations and conditions contained hereafter in subparagraph (c)(2).

(3) *Recreational rivers and streams.* To provide for public use of rivers and streams having highly significant present recreational use, easements 25 feet in width shall be reserved along the bank or banks of such rivers and streams. In addition, such reservations on nonnavigable recreational rivers and streams shall include the river or stream bed.

(4) *Campsites and beaching sites.* Easements may be reserved for boat and float plane pullout areas upon a shore. Also, easements may be reserved for temporary camping sites upon a shore or along a linear access route or within a reasonable distance of such shore or route. Easements for the beaching of boats and float planes, and temporary campsites shall be one acre, more or less, except where terrain, sanitation, public safety, or intensity of public use require deviation. When appropriate, access routes to and from such beaching or camping sites shall be provided.

(5) *Other easements.* Other easements may be identified, the size of which is not controlled by any applicable law or regulation. The size of such easements for any given purpose may vary from place to place depending upon the particular circumstances. When not controlled by applicable law or regulation or this order, size shall not exceed that which is reasonably necessary for the purposes of the identified easement. A nonexclusive list includes easements for railroad sidings, spurs, and stations; electric or electronic transmission or reception; communication systems; local water, gas, or sewer systems; docks; navigational aids for watercraft or aircraft; aircraft landing sites not covered under section 14(c)(4) of the ANCSA; avigation; and weather stations.

(c) This subparagraph includes a nonexclusive series of situations in which easements should be reserved pursuant to the policies enumerated in this order. The right to hunt will not be reserved on any lands conveyed pursuant to ANCSA. However, the availability of hunting on Federal or State lands will be a factor to be considered in reserving other easements hereinafter listed.

(1) *Access.* Easements for access by the government and the general public shall be reserved across Native lands to Federal and State facilities, resources, lands, and waters, including the ocean. Easements for access by the government and the general public may be reserved, when reasonably necessary, across Native lands to provide access to and from communities, airports, docks, boat and float plane beaching sites, reserved aircraft landing sites, campsites, water transportation routes, groups of private holdings, reserved easements for reservations and developments constituting a public use. All easements shall follow existing routes of travel when possible. Easements for rest areas and temporary camping sites will be reserved when reasonably necessary in conjunction with routes of travel. Whenever there is not an existing route of travel, easements should be reserved in topographically suitable locations.

(2) *Marine coastline.* (A) The easement along the marine coastline described heretofore in subparagraph (b)(2) will not be reserved if it is determined prior to conveyance that it is impracticable for use by the general public. If it is reserved and is later determined to be impracticable, it will be relinquished.

(B) In the original reservation, deviations from the waterline are permitted when specific conditions so require, e.g., impassable topography or waterfront obstruction.

(C) A marine coastline easement shall be reserved subject to the right of the owner of the servient estate to build upon such easement a facility for public or private purposes, such right to be exercised reasonably and without undue or unnecessary interference with or obstruction of the easement reserved. When access along the marine coastline easement is to be obstructed, the owner of the servient estate will be obligated to convey to the United States an acceptable alternate access route at no cost to the United States, prior to the creation of such obstruction.

(D) Access to the ocean as a public resource will be provided on National Wildlife Refuge System lands in consonance with the rules and regulations of each refuge. Seasonal and/or temporal closures of such access routes may occur when required to protect wildlife values.

(3) *Recreational rivers and streams.* The easement described in subparagraph (b)(3) heretofore may be reserved when it is determined that there is highly significant present recreational use of a river or stream for sport fishing, boating, portage, or other water related recreational activities. Highly significant present recreational use on a portion of a river or stream will justify the reservation of linear easements only on that portion where such use actually occurs and not on the entire waterway. When reasonably necessary for general public use and enjoyment of the recreational easement, additional easements may also be reserved for temporary campsites, sanitation facilities, or access to the recreational area.

The determination of highly significant present recreational use will take into account numerous factors. A river or stream need not meet all criteria to be considered as having highly significant present recreational use. The factors to be considered shall include (a) the volume of use (at least several users each year), (b) the variety of recreational experiences, (c) the uniqueness of the experiences (e.g., where trophy-sized fish or a specific species of fish may be caught), or (d) the overall quality of the experiences (e.g., white water canoeing or inspiring scenery).

(4) *Beaching sites.* Site easements may be reserved at suitable locations on the bed and shore of lakes, rivers, streams, bays, and the marine coastline when determined to be reasonably necessary for public travel along water transportation routes or when necessary for use as a boat or floatplane beaching site. Site easements may also be reserved to provide connections from water transportation routes to land transportation routes.

(5) *Lakes.* Site easements may be reserved at suitable locations on the bed and shore of lakes for public utilization of the waterbody. Site easements may be reserved on lakes greater than 640 acres in area where reasonably necessary. Site easements will not be reserved where reasonable access can be provided on publicly owned waterfront. Site easements will not be reserved on lakes under 640 acres in area unless such waters have unusual recreational or transportational value for public use.

(6) *Utility, communication, weather, and appurtenant easements.* To the extent reasonably necessary, in order to protect present existing uses, easements will be reserved for utility, communica-

tion, and weather purposes. Appurtenant easements may also be reserved.

(7) *Aircraft landing sites.* Aircraft landing sites which are presently being used but which do not qualify as airports under section 14(c)(4) of the ANCSA may be reserved as are reasonably necessary for public access or safety. Associated space easements may also be reserved.

(8) *Space easements.* Space easements may be reserved as needed to insure public safety or to permit proper use of improvements developed for public benefit or use, such as navigational aids or communication sites.

(9) *Agreements.* In addition to the foregoing, the State Director is also authorized to reserve any easements necessary to insure protection of international treaty obligations and to implement any agreement entered into between the United States and the Native or Native corporation receiving the conveyance. For example, the agreement of May 14, 1974, related to Naval Petroleum Reserve Number Four, between the United States Department of the Navy and the Arctic Slope Regional Corporation and four Native village corporations, will be incorporated in the appropriate conveyances and the easements necessary to implement said agreement shall be reserved.

SEC. 6. *Procedures.* The following administrative procedures are designed to provide an organized method of handling land conveyances and the discretionary aspects of public easement reservations under the Alaska Native Claims Settlement Act (ANCSA). A selection application may be processed in part at any time so that conveyance can be made at the earliest practicable time for those portions having no conflict.

These procedures shall be used as a guide when identifying and reserving public easements and issuing decisions to convey under ANCSA. The identification of public easements to be reserved under section 17(b) of ANCSA shall be conducted concurrently with the processing of other regulatory land selection requirements.

The identification of needed easements will include participation by the Natives, State, Federal Agencies, and others having an interest in easements.

The BLM District Manager shall transmit identified easement needs to the BLM State Director. After reviewing the identified easement needs, the State Director shall determine which easements will be reserved.

The State Director will then notify all parties that participated in the development of the easement needs, including the Natives, the State of Alaska, the Federal-State Land Use Planning Commission, and interested Federal Agencies, as to the proposed easement reservations. This notice shall direct that all comments be sent to the Commission and the State Director.

It is expected that the Commission and the State of Alaska will furnish their recommendations on the proposed easement reservations within the time prescribed by regulations. If a recommendation is not submitted by the Commission or the State within the time period established by regulations, 43 CFR 2650.4-7(d), the State Director may proceed.

The BLM State Director shall review the Commission's recommendations and the comments from other interests. If there are significant differences between the State Director, the recommendations, and the comments from other interests, he may submit the easement reservation question to the Director, BLM, for final determination by the Department of the Interior. Otherwise, he will issue a decision to convey that includes easements that will be reserved and all other terms and conditions relating to conveyance of the land.

The decision to convey shall be served on all parties having a property interest in land affected by the determination. The Alaska Native Claims Appeal Board (ANCAB) will review decisions pursuant to section 17(b)(3) of ANCSA only to determine whether the decision to reserve was arbitrary or capricious.

Where no appeal has been timely filed on decisions to convey or where ANCAB has rendered its decision on an appeal, the BLM State Director may issue the conveyance.

SEC. 7. *Limitations.* The actions of the State Director under this delegation shall be subject to supervision and review by the Director, Bureau of Land Management.

SEC. 8. *Effective date.* This order is effective immediately and shall remain in effect until it is amended, superseded, or revoked.

Dated: February 5, 1976.

THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.76-4078 Filed 2-11-76;8:45 am]

Office of the Secretary

[Order No. 2987]

ALASKA

Reservation of Easements for the Transportation of Energy, Fuel, and Natural Resources

Section 1. *Purpose.* The purpose of this order is (a) to establish policy for reserving easements for the transportation of energy, fuel, and natural resources in the State of Alaska pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708), and (b) to direct the State Director, Bureau of Land Management, Alaska, to reserve such easements for the use of the United States.

Section 2. *Direction.* The State Director, Bureau of Land Management, Alaska, is hereby directed to reserve the following described easement to the United States in all conveyances made pursuant to the ANCSA on mainland Alaska (excluding that portion of the southeastern region lying south and east of the former section 16 withdrawal for the village of Yakutat). The easement shall be for the transportation of energy, fuel, and natural resources which are the property of the United States or which are intended for delivery to the United States or which are produced by the United States. The easement here described shall include the right to build any related facilities necessary for the exercise of the right to transport energy, fuel, and natural resources including those related facilities necessary during periods of planning, locating, constructing, operating, maintaining, or terminating transportation systems. The specific location of any easement reserved pursuant to this order shall be determined only after consultation with the owner of the servient estate. Whenever the use of such easement will require removal or relocation of any structure owned or authorized by the owner of the servient estate, such use shall not be initiated without the consent of the owner of such improvement; provided, however, that the United States may exercise the right of eminent domain if such consent is not given. Only those portions of the easement reserves pursuant to this order that are actually in use or that are expressly authorized on the twentieth anniversary of this order shall continue to be in force.

Section 3. *Scope.* This order deals with easements for the transportation of energy, fuel, and natural resources. Instructions for the reservation of local public easements were promulgated by Secretarial Order No. 2982, dated February 5, 1976, and published in the FEDERAL REGISTER on February 12, 1976.

Section 4. *Determination of the Non-local Easements Which Are Necessary for Public Use.* Pursuant to the authority vested in the Secretary of the Interior under section 17(b) of the ANCSA, the following determinations have been made concerning nonlocal easements which are necessary for public use:

1. There is a national need to expedite the transportation of energy, fuel, and natural resources in order to meet the national energy crisis;

2. The routes of such transportation should be precisely and carefully planned;

3. The number of options or alternatives available as possible routes should be maximized in order to preserve optimum choices;

4. Federally owned energy, fuel, and natural resources should be developed, transported, and delivered without unreasonable expense or delay to the Federal Government along routes that are under Federal control in order that environmental protection and public safety can be maintained;

5. Privately owned energy, fuel, and natural resources that are being developed for a profit should not be afforded extraordinary privileges across private property. Therefore, easements should not be reserved by the United States in conveyances to Alaska Natives for the benefit of such privately owned energy, fuel, and natural resources;

6. The further delay in ascertaining the routes to be used by or for the United States will detrimentally affect those entitled to receive conveyances pursuant to the ANCSA;

7. All prior studies of potential transportation routes have disclosed that few, if any, islands off the coast of Alaska or the southeastern panhandle of Alaska will be utilized in the transportation of energy, fuel, and natural resources regardless of whether the energy, fuel, and natural resources are ultimately transported by sea or across Canada. Therefore, easements should not be reserved on such islands or in the southeastern panhandle of Alaska south and east of the section 16 withdrawal for the village of Yakutat;

8. The best way to accomplish the foregoing would be to reserve easements on mainland Alaska (excluding that portion of the southeastern region lying south and east of the former section 16 withdrawal for the village of Yakutat) in behalf of the United States to cross all the land conveyed pursuant to the ANCSA rather than delineating selected narrow corridors for such rights-of-way at this time;

9. Strict compliance with the regulations, 43 CFR 2650.4–7, should be waived provided that the rights of each grantee set forth in 43 CFR 2650.4–7(b)(2), (c)(1), and (c)(2) should still be preserved in the conveyance.

Section 5. *Waiver of Regulations.* Pursuant to the provisions of 43 CFR 2650.-0–8, the provisions of 43 CF R2650.4–7 are hereby waived provided that the rights of each grantee set forth in 43 CFR 2650.4–7(b)(2), (c)(1), and (c)(2) are preserved in the conveyance.

Section 6. *Limitations.* The actions of the State Director under this delegation shall be subject to supervision and review by the Director, Bureau of Land Management.

Section 7. *Effective Date.* This order is effective immediately and shall remain in effect until it is amended, superseded, or revoked.

Dated: March 3, 1976.

Prepared for publication in the FEDERAL REGISTER.

THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.76-7675 Filed 3-17-76;8:45 am]

EXHIBIT B

Senator GRAVEL. Our next witness is Pamela Rich, Alaska coordinator, Friends of the Earth. Pamela.

STATEMENT OF PAMELA RICH, ALASKA COORDINATOR, FRIENDS OF THE EARTH

Ms. RICH. Good morning, Senators. We appreciate your taking your time to chair the meeting this morning and hear our concerns. My written testimony was being sent out from Alaska, and it has not yet arrived.

Senator GRAVEL. When it gets here, we will put it in the record.

[The statement of Jim Kowalsky, Alaska field representative of Friends of the Earth is printed in the appendix, pg. 360.]

Ms. RICH. Thank you very much. And I just want to make some brief comments because I know the intent of that testimony and issues that I have gathered from sitting through the testimony.

My name is Pamela Rich, and I am Alaska coordinator for Friends of the Earth. I think it is very obvious from earlier testimonies that many problems have arisen in implementation of the Alaska Native Claim Settlement Act.

We would like to see the Interior Committee take upon itself its oversight responsibility for implementation of the act and follow through with some specific steps in forms of directives or congressional review to the Department of the Interior so that, in particular, the delays in implementation can be overcome.

We feel that for this hearing to have had any real meaning these concerns must be carried beyond this hearing room. It is apparent from practically everyone's testimony that Interior has not fulfilled its responsibilities under ANSCA. It has not granted title to land conveyed to the Natives, and payments have not even begun.

The committee has heard specific concerns regarding this implementation of conflicts in process. We respectfully urge now that it take the steps necessary to insure that these problems are overcome.

There are some specific areas in which we think that the Interior Committee can play a more active role which will help smooth this lengthy and complex process; in particular, under section 17(d)(1) and (d)(2) of the Act. The Congress is to act upon recommended withdrawals. To date, however, oversight hearings before this committee have been the only action taken.

We feel this is another aspect of delay in implementation of the act, which we feel is really complicating the whole land settlement issue in Alaska. And we urge this committee to begin action on the several (d)(2) bills that are now before it.

Let me briefly enumerate other specific areas which we feel could benefit from committee review. There have been several problems of interim management on these lands that have been enumerated in other testimony.

We urge the committee to take the following action regarding interim management. In particular, a supplemental appropriation to BLM for fiscal year 1977 which would be sufficient to implement

adequate interim management program. We feel that disputed lands between State and Natives and the Department of the Interior should be withdrawn until December 18, 1978, from private appropriations. This is the deadline for congressional review established under ANSCA in the public lands in Alaska.

And finally, a directive to the Interior Department that this committee finds that the agencies must coordinate their program regarding surface protection of these withdrawn lands.

To touch briefly on the issue of easements, this is becoming a real controversy in Alaska, and we think that the Congress may have to clarify the intent of ANSCA regarding the easement issue.

In connection with your idea for a summit conference, Senator Stevens, we think that some type of clarification from the Congress may, indeed, be necessary.

Let me simply state that the position of the Friends of the Earth regarding recreational easements is that they must protect existing usage within an area. In particular, we are concerned with protecting the subsistence values and usage in those areas.

We think also that floating easements, as being considered by the Department of Interior, go far beyond the intent of the legislation.

The people of Alaska have not been given adequate opportunity for input, and the situation must be carefully reviewed by this committee for their impacts on the Alaskan land and the people.

In closing, the Alaska Native Claim Settlement Act is basically a vehicle for land-use planning in Alaska. Until implementation delays are overcome, decisions concerning long-term development patterns cannot be resolved. No one benefits from the delays. It is late in the year for congressional action, but we respectfully urge the Interior Committee to follow through with appropriate directives to the Department of the Interior with specific references to the many problems raised in the course of these hearings. Thank you very much.

Senator GRAVEL. Thank you, Pamela.

Senator STEVENS. No questions.

Senator GRAVEL. Our next witness is Ms. Irene Rowan, Klukwan, Inc. Irene, it is a pleasure having you here. If you will introduce your colleagues.

STATEMENT OF IRENE ROWAN, PRESIDENT, KLUKWAN, INC., ACCOMPANIED BY BILL THOMAS, VICE PRESIDENT, AND DONNA WILLARD, CORPORATE ATTORNEY, KLUKWAN, INC.

Ms. ROWAN. Good morning, Mr. Chairman. On my right is Mr. Bill Thomas, the vice president of Klukwan and our corporate attorney, Donna Willard.

Senator GRAVEL. Move the mike a little closer to you, please.

Ms. ROWAN. My name is Irene Rowan. I am president of Klukwan, a village corporation established under the terms of the Alaska Native Claims Settlement Act.

Klukwan, a Tlingit village located 110 miles north of Juneau, Alaska, is the home of the Chilkat Indians. A fierce, proud people, the Chilkats were the most powerful of the Tlingit groups. The source of that power was their economic riches garnered from the lands which they dominated and utilized. The area was a massive one, extending from what is now the northern-most area of British Columbia Canada, south to Berners Bay, just north of Juneau.

However, despite repeated recognition and reaffirmation of native aboriginal claims, Klukwan today finds itself in a dilemma. It has no suitable land from which to make the 23,040 acre selections to which it is entitled to by the terms of the Alaska Native Claim Settlement Act.

Klukwan has been placed in this unenviable position through a combination of occurrences. First, the bulk of land in southeastern Alaska is in the Tongass National Forest. As a result, there is very little from which the State of Alaska would select pursuant to the Statehood Act. The one exception was the Chilkat Valley.

Second, the valley lands are highly desirable: rich in timber, wildlife, and esthetic virtues. The two factors left the State to make massive land selections in the area from which enormous wealth has been garnered; 269 million board feet of timber have thus far been harvested. The income thereupon contributing substantially to the budget to the Alaskans as a State.

As a result, the bulk of Klukwan's selection area which is composed of eight townships has already been appropriated. What remains, as illustrated by the map appended to my written statement, is land whose dominant features are snow, glacial ice caps and an average elevation of 5,000 feet. While the area is breathtaking in its beauty, it is hardly comparable to the lands which gave the Chilkat Indians their wealth and power. Furthermore, it provides no economic base from which Klukwan can grow and become economically independent.

A second impediment exists to complicate the situation: lack of access. The unappropriated lands are surrounded by state selection and bordered by foreign country—Canada. So even if roads could be economically constructed, which they can't, negotiations of an anti-development state government and with Canada for rights of way would have to be pursued.

Ours is not an enviable position. This committee and the Congress in good faith passed legislation to compensate us for our aboriginal claims. Unfortunately, in this instance it is ineffective. We have been exhausting every source in an attempt to find a solution.

First, we went to the Bureau of Land Management with various proposals. But because there was no withdrawal provision for the southeastern villages, the regional director has no authority to administratively solve our problem.

Next, we approached the State Division of Land and explain the situation. We asked for consideration of a trade—mountain tops for economically viable lands. The State is not interested. Their policy is to exchange, if at all, only where the appraised value is equal.

Now we come to you. It is apparent that the only solution to the dilemma is legislation which would provide us an additional withdrawal from which to make our selection. The language of this concept appears in my written statement.

Furthermore, in resolving our problem it must be stressed that time is of the essence. The Omnibus Act requires that a selection be made on or before January 2, 1977. Therefore, if legislation is not forthcoming during this session, we will have been deprived of a substantial portion of the benefits guaranteed to us by the Alaska Native Claims Settlement Act.

Thirty years ago the Federal Government recognized the Chilkat Indians had possessional claim to a massive land area. The Alaska Native Claim Settlement Act sought to compensate for that claim.

Today, however, Klukwan is still without a viable area from which to select its land. No one is to blame because in the complex process of legislating a solution to aboriginal claims, the problem could not have been foreseen.

However, it is now apparent and Klukwan shareholders respectfully request your aid in its solution.

Thank you.

Senator STEVENS. I am trying to find that section that deals with Klukwan in the amendments.

Ms. WILLARD. Senator, it is section nine of the Omnibus bill.

Senator STEVENS. I am looking at the section.

Senator GRAVEL. Why wasn't this problem discovered earlier?

Ms. ROWAN. Klukwan became part of the act in January of this year. We have had no money to do the necessary research. We have been given misleading information by BLM and another report that was done.

Senator GRAVEL. Is there any other solution other than congressional action?

Ms. ROWAN. Not really. And the only other solution is litigation and Klukwan does not have the financial resources.

Senator GRAVEL. What do you anticipate in terms of opposition with respect to legislation taking Klukwan from the other regions?

Ms. WILLARD. Yes, Senator, we have, of course, since we have discovered this problem been speaking with all of the concerned persons. We do not anticipate any opposition from Sealaska Corporation, our Regional Corporation, as long as our desire to lands do not conflict with their prospective withdrawals.

We are attempting to avoid any conflict with agriculture by only requesting a withdrawal which has already been under consideration. In other words, perhaps some of the lands which another village has not selected from their withdrawal areas are lands such as the champion plywood areas or areas which are already being dealt with and are not virgin territories as far as the Tongass National Forest is concerned.

Senator GRAVEL. Thank you. What would happen if this problem is not resolved this year?

Ms. WILLARD. We see only one other solution and we don't believe it is a viable one and that is, of course, litigation. It would involve a relatively small village. We have 253 shareholders in an immense suit against both the State of Alaska and the Federal Government. We would have to expend what moneys we did receive from the Alaska Native fund in this endeavor. We don't believe that is the intent or purpose of ANF's—that the purpose is to be used in that manner.

If we do not have a solution this year, that, of course, is our only alternative because our time to select runs out January 2, 1977.

Senator GRAVEL. Thank you very much. Senator Stevens.

Senator STEVENS. I have no questions. I will have to take a look at this. My memory is there were some deficiency land areas withdrawn in the general area—have you examined those?

Ms. WILLARD. We have no knowledge of any deficiency lands. Eight townships were rewithdrawn by terms of the omnibus bill, but in those 8 townships, we have encountered our entire problem which is no viable lands from which to select 23,040 acres.

Senator STEVENS. Thank you.

Senator GRAVEL. Thank you very much.

[The prepared statement of Ms. Rowan follows:]

STATEMENT OF IRENE SPARKS ROWAN

PRESIDENT OF KLUKWAN, INC.

TO THE

COMMITTEE ON INTERIOR & INSULAR AFFAIRS

June 14, 1976
Washington, D. C.

Klukwan, a Tlingit village located 110 miles north of Juneau, Alaska, is the home of the Chilkat Indians. A fierce, proud people, the Chilkats were the most powerful of the Tlingit groups. The source of that power was their economic riches garnered from the lands which they dominated and utilized. The area was a massive one, extending from what is now the northern-most area of British Columbia Canada, south to Berners Bay, just north of Juneau.

However, despite a history of continuous use of at least 2 million acres, President Woodrow Wilson signed, on April 21, 1913, Executive Order No. 1764, creating an 800 acre reserve for the Chilkat Indians of Klukwan. Two years later, Executive Order No. 2227, established a native sanitarium reserve of 82 acres, two miles from the village.

Executive Order No. 3673, signed by President Warren Harding, reduced the boundaries of the reserve and decreased the acreage to 492 acres. However, on April 27, 1943, the Secretary of the Interior granted additional lands so that the total reserve was comprised of 810 acres. Throughout, the sanitarium reserve remained intact.

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In 1946, Public Land Order No. 324 was promulgated, withdrawing 12,800 acres for classification as the Klukwan Reservation. However, a public hearing on that proposal, held in Klukwan on October 15, 1946, produced some astonishing results. In an unprecedented decision by an Indian group, Klukwan refused to accept the traditional reservation concept. The villagers, in lengthy testimony, decried not only the stigma attached to the word but also the fact that they would not be given fee title. Even more important, they catalogued the deficiencies of the designated land which was not the economically viable acreage they had, for centuries, occupied and utilized. Furthermore, the village inhabitants complained of the small area which was proposed and clearly and unmistakably laid claim to their traditional lands.

The Honorable J. A. Krug, Secretary of the Interior, on December 9, 1946, approved the recommendations of the hearing officer that the reservation proposal in Public Land Order No. 324 be rejected and that hearings be held to determine the possessory claims of the Klukwan natives. As a result, on May 27, Public Land Order 373 revoked Public Land Order 324 as it applied to Klukwan.

Unfortunately, the good intentions manifested by the Department of the Interior were never pursued. No hearings were ever held and no activity with respect to Klukwan took place for ten years, except for an attempt by mining interests to have the reserve totally revoked.

On September 2, 1957, Congress passed P.L. 85-271, redefining the boundaries of the reservation and granting to the natives the right to lease their land for mining purposes.

In 1971, the Alaska Native Claims Settlement Act, 85 Stat. 688, et seq., 43 U.S.C. 1601 et seq., became law. Pursuant to § 19 of the Act, Klukwan, because of its reserve status, held an election to determine whether the village would retain the reserve lands in fee simple or accept status as an ANCSA village with all the rights attendant thereto. Because of misunderstanding and fear, the election resulted in retention of the fee simple reserve lands and on May 24, 1974, 892.208 acres, including the native sanitarium reserve, were conveyed by patent to Klukwan, Inc.

Because of the 1957 legislation which empowered Chilkat Indian Village, an Indian Reorganization Act entity, to lease for mining purposes, the same land which had been conveyed to Klukwan, Inc. in fee simple, difficulties quickly arose. In short, there was a grave question as to who had valid title to what had been known as the Klukwan reserve.

The end result of a complex situation was the passage of § 9 of the Omnibus Act, P.L. 94-204. Pursuant to its terms, Klukwan, Inc., the native village corporation, became a full participant in the Alaska native claims settlement entitled, among other benefits, to select 23,040 acres of land. Chilkat Indian Village, the I.R.A. entity, obtained fee simple title to the 892.208 acre reserve.

The corporation immediately hired the consultants necessary for an accurate selection. The experts retained to determine the amount of acreage available to Klukwan, in its core township, concluded that there was none. A copy of that report is attached hereto marked Exhibit "A".

However, to further complicate the problem, the Bureau of Land Management has recently indicated that a State selection of some 14,000 acres within the core township is to be declared invalid. Thus, a dispute between the State and Federal Governments is immiment.

Studies to determine the quantity and quality of acreage available in the remaining seven townships of Klukwan's withdrawal area were also undertaken. As the map, attached hereto marked Exhibit "B", illustrates, the bulk of Klukwan's withdrawal area has either been patented to, or selected prior to 1969, by the State of Alaska. The areas marked in blue indicate the remaining lands which Klukwan could conceivably select. While it exceeds the alloted 23,040 acres, the average elevation of the area is 5,000 feet. Snow and ice are its dominant features. Parenthetically, it should be added that the same characteristics imbue the 14,000 acres in the core township which, as earlier detailed, are now the subject of a pending Federal-State controversy.

But even if the acreage were either comparable to the traditional land of the Chilkats or economically viable, there is another grave impediment to its selection: There is no access.

Economically, the construction cost of roads is untenable. Politically, easements would have to be obtained either from a State government which has a decided anti-development bias or from a foreign nation, Canada. The practical result of such a selection would be the acquisition of inaccessible land with no economic value.

The whole purpose and intent of the Alaska Native Claims Settlement Act was to compensate the original inhabitants of the State for their aboriginal claims. The compensation was of two varieties: Title to certain acreage and cash. The payment in the form of land was to consist of acreage comparable in character to those traditionally utilized by the natives.

Klukwan is surrounded by some of the richest land in the State. Undoubtedly that fact was recognized by the State government when, pursuant to the terms of the Alaska Statehood Act, P.L. 85-508, it made the massive selections indicated on Exhibit "B". Indeed, since 1961, the State has harvested 269,000,000 board feet of timber which sold for prices ranging from $1.00 to $70.00 per thousand board feet. The dilemma is clear: Klukwan's traditional lands have been pre-empted, and nothing comparable has been offered as a replacement.

Klukwan's problem is unique. In the first place, it is a section 16 village and no deficiency land withdrawals for that category were provided. Second, no other village in Southeastern Alaska found itself in a similar predicament because it was either in or adjacent to the Tongass National Forest. Undoubtedly,

the massive State selections surrounding Klukwan were also precipitated by the fact that the overwhelming bulk of land in Southeastern is classified as National Forest.

Klukwan must, therefore, once again approach this Committee and Congress for a solution to its problem because conferences with the Bureau of Land Management and the State Division of Lands have proved unfruitful. The B.L.M. is unable to help because there is no authority vested in the Secretary of the Interior to withdraw additional acres from which Klukwan could select.

The Alaska State Division of Lands has vetoed any trade between Klukwan and itself. In the first place, State policy requires a value-for-value approach. In the second, the State feels that when its selection under the Statehood Act is completed, it will have all of the aesthetically desirable land it requires.

It is, therefore, respectfully requested that amendatory legislation, containing the following substantive material, be enacted:

> § 16(e)(1). The Secretary is hereby directed to withdraw 70,000 acres from the nearest public lands in order that Klukwan, Inc., may make the selection authorized by § 16(d). In making this withdrawal, the Secretary shall, insofar as possible, withdraw public lands of a character similar to those surrounding the village and in order of their proximity to the center of Klukwan.
>
> (2) The Secretary shall make the withdrawal provided for in subsection (1) hereof on the basis of the best available information within sixty days of the date of this Act. Klukwan, Inc., shall have one year from the date of this Act to make its selection.

Without such legislation, in light of the attitude of the State of Alaska, Klukwan will have no alternative but to litigate, raising numerous complex questions including the validity of the patents already issued to the State in the Chilkat Valley. Such a procedure will not only be time consuming and costly but might very well have permanent and far reaching effects on land title throughout the State. No one, least of all Klukwan, wants that result. The proposed legislation will effectively avoid it.

Thirty years ago, the Federal Government recognized that the Chilkat Indians had possessory claim to a massive land area. The Alaska Native Claims Settlement Act sought to compensate for that claim. Today, however, Klukwan is still without a viable area from which to select its lands. No one is to blame because, in the complex process of legislating a solution to aboriginal claims, the problem could not have been foreseen. However, it is now apparent and Klukwan's shareholders respectfully request your aid in its solution.

Respectfully submitted,

Irene Sparks Rowan

Irene Sparks Rowan, President
Klukwan, Inc.

HYDROGRAPHIC SURVEYS LAND SURVEYS

F. M. Lindsey and Associates
2502 West Northern Lights Blvd.
ANCHORAGE, ALASKA 99503
(907) 272-4428

Irene Sparks (Rowan)
President (Klukwan, Inc.)

May 24, 1976

Anchorage, Alaska

Mrs. Irene Sparks:

I have researched the Klukwan core township per your request and have found the following acreages: please refer to the enclosed status plats.....

STATE PATENTED LANDS		RIVER ACREAGE	
USS 3708	3,415.02	SEC 30	179.83
SEC 29	153.05	SEC 31	153.87
SEC 30	384.53	SEC'S 29 & 30	254.02
SEC 31	456.64	SEC 33	95.58
SEC 32	80.00	SEC 34	47.84
SEC 34	320.00		731.14
	4,809.24		4,809.24

TOTAL STATE.....5,540.38

TOTAL STATE SELECTED LANDS: AS PER GENERAL SELECTION LETTER 6/16/72 (see attached letter)

TOTAL STATE SELECTION.....14,718.21**

PRIVATE LANDS (except Klukwan reserve)		KLUKWAN RESERVE	
SEC 30	73.20	SEC 32	82.22
SEC 31	28.69*	SEC 33	491.73
SEC 29 & 32	285.56	SEC 34	112.16
USS 948	88.60		686.11
USS 991	103.67		
	579.72		579.72

TOTAL PRIVATE.....1,265.83

* exact ownership in doubt-may fall under State Selection.....

EXHIBIT "A"

MINERAL SURVEYS

MS 2205	467.44
MS 2223	40.03
MS 2206	460.00
MS 2207	380.00
M 2193	183.63
	1,486.10

TOTAL MINERAL.....1,486.10

****

TOTAL STATE PATENTED LANDS.....5,540.38

TOTAL STATE SELECTION.....14,718.21**

TOTAL PRIVATE.....1,265.83

TOTAL MINERAL.....1,486.10

TOTAL ACREAGE IN T28S, R56E, C.R.M.....23,010.52

ADD'L AMOUNT DUE TO SHORTAGE IN GROSS CORE
TOWNSHIP ACREAGE.....29.48

TOTAL ENTITLEMENT OUTSIDE OF CORE TOWNSHIP.....23,040.00

**This calculated figure based on attached letter of amendment from the State of Alaska, dated June 16, 1972, being valid; if not valid total entitlement outside of core township would be.....8,321.79

If there are any questions on the preceding please feel free to call our office.

Yours Very Truly,

Robert T. Kean

Robert T. Kean

RTK/rd

Enclosure

Received from Bob Cross 5/24/76

STATE OF ALASKA

WILLIAM A. EGAN, Governor

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LANDS, 323 E. 4TH AVENUE, ANCHORAGE 99501

JUN 16 1972

Bureau of Land Management
State Office
555 Cordova Street
Anchorage, Alaska 99501

Re: A-060527 GS-1264

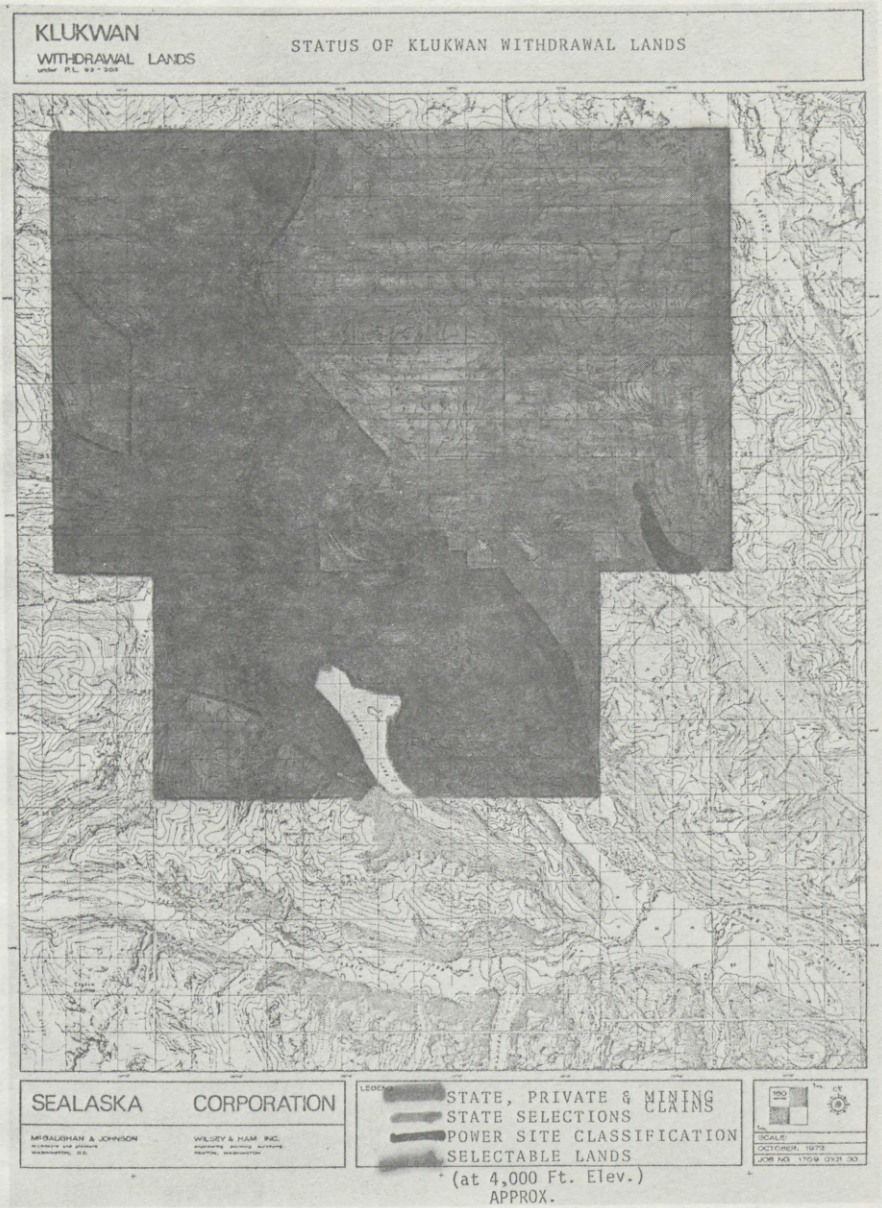
Gentlemen:

The State hereby amends the above referenced selection to include all the lands in the following area excluding patented lands:

T. 17-18 N., R. 3 W., S.M.
T. 16-17 N., R. 4 W., S.M.
T. 19-30 N., R. 4 W., S.M.
T. 5 N., R. 8-10 W., S.M.
T. 2-8 N., R. 11 W., S.M.
T. 2-4 N., R. 12 W., S.M.
T. 1-2 S., R. 14 W., S.M.
T. 2 S., R. 12 W., S.M.
T. 4 S., R. 15 W., S.M.
T. 18 N., R. 1 E., S.M.
T. 13 N., R. 4 W., S.M.
T. 28 S., R. 56 E., C.R.M.

Sincerely,

F. J. Keenan
Director



* (at 4,000 Ft. Elev.)
APPROX.

Senator GRAVEL. Our next witness is Dale Bondurant, cochairman, Alaska public easement defense fund.

STATEMENT OF DALE BONDURANT, COCHAIRMAN, ALASKA PUBLIC EASEMENT DEFENSE FUND

Mr. BONDURANT. Mr. Chairman, Senator Stevens, I represent a coalition of outdoor organizations, wholly Alaskan organizations, and private citizens that are interested in the right to continue to use the streams, rivers, lakes and beaches on those lands that are being withdrawn and given to the Native corporations.

We believe that the act itself provides for this. The act does say that the Secretary of the Interior must reserve easements to guarantee the full right of the public for recreation. We have heard some opinions as to the Natives getting their land free and clear with none of these easements attached.

The Solicitor has given an opinion that the Secretary does have this right and more so, he has a responsibility to withdraw such easements to meet a greater public need.

Now, this is not being done. The present policy which is an outgrowth of several policies back in February of 1975—Assistant Secretary for the Department of the Interior, Mr. Hughes came out with a policy that provided for present, past and future public use.

This policy suddenly disappeared and they started to convey some of the lands without any easements. Our group was formed and we went to court to stop the Secretary for further conveying these lands. This was kind of held up due to the fact that we had several secretaries at that time. Now we do have secretarial order 2892 and the present policy under this order is a farce. They have given this to each individual of the public to come in and validate his right to use a perpetual public resource, the waters of the State of Alaska.

And to show you how great this is—in the first place, the individual has to consider 200 million acres and then when he does come in to BLM, if he is ever made aware of his responsibility to do this, he has to consider the 96 million acres that were tentatively selected in the overselection and he has to do that to be sure that he has got his easement request on the 44 million acres that will eventually be requested.

Now, 44 million acres, it has been stated, is only 12 percent of Alaska. But it does include, probably, the greater majority of the prime waters of our state, because the Natives did do a good job of selecting and they did live along the prime waters.

Now, we are not in any way objecting to the Native land claims, but we think that these claims—these lands should be treated the same as any other lands in the State of Alaska. This present, highly significant use is not going to do the job. BLM agrees it is not working. They are not getting public input.

The question has come up, well, how about the Natives' rights? Well, how does this affect the individual Native right? The individual Native has no more right than the rest of the public outside his own corporation. He does not have a permanent right to use these waters

in his own corporation because these lands can be immediately sold on conveyance. So he is not going to have any guarantee of his right to use these waters.

To show you that these native rights have not been protected, I contacted the BLM office in Anchorage just before I left and they told me that there has been not one request made by the Native corporations for public use easement of this type.

These are corporations that are receiving this land and these corporations are no better nor worse than any other corporation. And I think we all realize that a corporation does not have as its prime interest individuals outside of that corporation.

Now we have heard that they may make reciprocal agreements. I think there are two things wrong with this. They are very fragile in that the parties could disagree on these. And the other thing—it does point up one of the intents of the act in which they should do nothing to draw lines according to races and groups of people. And I think this is what they do.

We have been charged that this is an anti-Native or non-Native view. I think Alaska has proved that they are for the Alaskan Natives. The act was passed and I don't think that it could have been passed if the Alaskan public had been against it. I don't think the Omnibus bill which was truly wholly for the benefit of the Natives could have been passed without the public backing. And just lately, the Cook Inlet Trade, which gave billions and billions of tons of coal to the Native corporations could not have been passed unless the Alaskan public felt there was a legal and moral obligation to the Natives.

So I don't think that is right. And one of the questions that we think is important is how are we going to base the public rights to the use of these waters? And in our one point is that we have to use past Native use because that Native is now a part of the public. That was the intent of the act. And it is going to have to be considered if we are going to have this free-flow—the use of these waters for all the people.

Our Governor, he has taken this stand, and I don't think anyone can charge the Governor with having a non-Native view.

Now we come to what we would propose is a solution and I was real happy to hear that two of the corporations that were testifying on Thursday had also made some remarks along our proposed solution. And this is to treat these lands the same as any other lands in Alaska. The lands of the State of Alaska were received and individually will go into private ownership or private use through sale, transfer, lease or whatever, are going to require continuous linear easements along all these waters.

The State policy is absolutely clear on this. Our Constitution would not allow anything but that. You must have free access to all citizens of the United States and all resident Alaskans to every piece of navigable and public water. And the State just passed a statute that declares practically every drop of water that flows or drops in Alaska as either navigable or public.

And our proposal is that let's have a general easement policy attached to all these conveyances and then have a liberal policy in

which the owner can come in and for a valid private development need have that vacated. And I don't think you will have the opposition because all of Alaska will realize that they have all the rest of these waters available to everybody—Native, non-Native, alike.

And these vacating proposals will be accepted. The results of this would, I think, would be what we are all after—the immediate conveyance of the lands could be started and the Natives need the lands.

We have heard the arguments that they do have people waiting to make contracts. They are loosing their tax break. And this would allow immediate conveyance. It would also protect the private ownership's right for development if we could go in and get these areas vacated. And it would protect the public right. And it is the only way the public right is going to be protected because once these conveyances are made, we are not going to get easements on them. They find this out in every other State.

So we are asking here that this committee would in some way convince somebody to take this stand and give a responsibility to the present public and the future public and see that the total public, the Alaskan Natives and native Alaskans and all American public would still retain this right.

And I think that one of the most important results of this—Senator Stevens touched on this—we don't want a polarization of our people in Alaska. We don't have that. We have real good relations, but this is one area we are going to get into if we don't settle this question now because Alaskans are free-moving people. They love to move around. And when they are suddenly confronted with all their prime waters denied to them, we are going to have problems.

And I sure thank you for the time to give this. I have submitted additional written testimony.

Senator Stevens [presiding.] Thank you very much. Your full testimony will be printed in the record. And I do thank you for expressing a difficult problem that must be resolved somehow by Alaskans.

We also have a letter that has been received by the Chairman from the Alaskan Wildlife Federation and that will be printed in the record. And it specifically asks that a map that is attached there be printed.

Senator Stevens. It is an indication of the type of situation that has been described in that State.

I don't have any questions. I think we all understand the issues.

Mr. Bondurant. Senator Stevens, I would like to make one comment about a map. I think the public can see the main rivers that are under selection in Alaska. It just looks like you have the whole nervous system of Alaska and if the public is denied access to this, why we are going to have problems.

Thank you.

Senator Stevens. Thank you very much.

[The prepared statement of Mr. Bondurant and letter from the Alaska Wildlife Federation follow:]

STATEMENT OF DALE BONDURANT, COCHAIRMAN, ALASKA PUBLIC EASEMENT DEFENSE FUND

List of documents presented by the Alaska Public Easement Defense Fund in support of the right of Public access to and use of the waters, on lands conveyed under the Alaska Native Claims Settlement Act. (ie. linear easements along and under all rivers, lakes, and beaches.)

1. Alaska Public Easement Defense Fund's position paper.
2. United States Department of Interior, Solicitor's opinion as to the reservation of easements under the Alaska Native Claims Settlement Act.
3. Alaska State Governor Jay Hammond's letter of 4 April 1975. State's position that Native use is Public use.
4. Alaska State statute defining Navigable and Public waters.
5. Proposed amendment to the Alaska Native Claims Settlement Act.

POSITION OF THE ALASKA PUBLIC EASEMENT DEFENSE FUND RELATED TO PUBLIC ACCESS AND USE OF STREAMS, RIVERS, LAKES, AND BEACHES ON LANDS SELECTED UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT

The Alaska Public Easement Defense Fund is a coalition of outdoor organizations and individuals dedicated to the preservation of the Public right of access to and use of the waters of Alaska. (Izaak Walton League, Sportsmen's Game Preservation Association, Alaska Airmans Association, Matanuska Valley Sportsmen, Alaska Wildlife and Sportsmen's Council, Territorial Sportsmen, Inc., Nordic Ski Club, Chugach Gem and Mineral Society, Knik Kanoers and Kyakers, Safari International, Top-O-The-World Four Wheelers, and Alaska Miners Association, plus several hundred individual contributors.)

Under the Alaska Native Claim Settlement Act approximately 44 million acres of Public lands are to be transferred to Private Native Village and Regional Corporation ownership. This is an area greater than any one of 39 other states. It encompasses hundreds of thousands of miles of streams, rivers, lakes, and beaches, which in turn includes the greater majority of the prime waters of Alaska.

The Alaska State Constitution provides: Article VIII, Section 3, Common Use: Wherever occurring in their natural state Fish, Wildlife, and Waters are reserved to the People for common use. Section 4, Access to Navigable Waters: Free access to Navigable or Public waters of the State as defined by the legislature, shall not be denied any citizen of the United States or any resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial use or Public purpose. The Alaska Native Claim Settlement Act provides for Public easements with a full right of Public use and access for recreation and hunting. The People's total constitutional right to this Public resource is valid under both the Alaska Constitution and the Alaska Native Claim Settlement Act.

Through the failure of past Secretaries of Interior to provide for meeting this obligation to the Public, the conveyance of these lands was started without regulatory guidelines. A set of unsigned guidelines, which were continually eroded by Native Corporation lobbying, were used to start interim conveyance of the title to these lands.

The Alaska Public Easement Defense Fund was formed by concerned Alaskans to fight this violation of their right to these Public resources. Our request for hearing and legislation to provide for right of Public access to these waters failed to stop the actual conveyance of these lands. The Alaska Public Easement Defense Fund then went to court for an injunction against the Secretary of Interior's further conveyance until valid regulations were propagated to establish easements providing full right of access to this Public resource. This court suit is still in process, with our winning the first challenge by the Native Corporations that we had no legal status to sue for this injunction on behalf of the Public interest.

The new Secretary of Interior, Mr. Thomas Kleppe, has just now, on 5 February, issued SO 2982 as the regulation establishing local easement criteria. The Alaska Public Easement Defense Fund then met with Mr. Curtis McVee,

State Director, Bureau of Land Management, for his interpretation and application of this regulation. It is now very apparent that the intended application will not meet the obligation to protect and insure the People's right to use this Public resource, the waters of these lands.

Although the Bureau of Land Management recognizes and agrees that the streams, rivers, lakes, and beaches are Public resources, their application of the regulation lacks the effort that is made to provide access to other public resources. SO 2982, Section 4, Policy, provides: Local easements will be reserved for Public and Governmental uses. Local easements in behalf of the general public for recreational, access, transportation, utilities, airports, and aircraft landing sites will be reserved only on the basis of present existing use with the following exceptions: (1) The reservation of a continuous shoreline easement extending 25 feet above mean high tide along the marine coastline of the State; and (2) the reservation of easements to assure present and future access to all public lands and resources. These exceptions describe the only local easements in behalf of the general public to be reserved for other than present existing uses. Scenic easements will not be reserved. Periodic linear and site easements on lakes will be reserved only to the extent necessary to provide continued public use of areas having highly significant present recreational use.

Nowhere in the Alaska Native Claims Settlement Act is it stated that the reservation of easements to provide for the greater Public need for recreation and hunting shall be restricted on the basis of "present existing use" nor "having highly significant present recreational use". The intention of BLM to apply "(2) the reservation of easements to assure present and future access to all public land and resources." only to the non-renewable resources (i.e., minerals and oil) and not to these waters ignores their perpetual validity as a Public resource.

The regulation's requirement that easements must show "highly significant present use" is impractical and impossible, therefore is not valid in providing for this Public right. To require the individual to identify, validate, submit, and defend his past use of these waters cannot be reasonably accomplished. It took the BLM staff six months just to catalog the Native Village and Regional Corporation selections. Multiply this by the hundreds of thousands of miles of waters, then again by the hundreds of thousands of individual uses of these waters, and you can begin to see the impossibility of this identification. Then there would be the problem of actual on the ground identification and marking of these easements so the Public could in fact recognize and use them. The Native Corporations have initially over-selected to a total of 96 million acres. This places the additional burden on the individual Public, of validating use on up to 52 million acres that will not be conveyed. Whether past Native use is to be considered as Public use is also an important question. The Native Corporations say no, the BLM says sometimes, the State of Alaska, Governor Jay Hammond says yes, and the Alaska Public Easement Defense Fund agrees. This would validate all selected waters as having highly significant use.

The Alaska Native Claims Settlement Act was to be the settlement of the claims of the Alaska Natives. Alaskans supported the legal and moral obligations of this settlement. With this settlement Natives and Non-Natives became equally considered members of the total Public. We all support the concept of a Public composed and considerate of all Americans. Outside his own Village and/or Regional Corporation land selections, the Alaskan Native will be treated as part of the Public by the other Corporations. Without these Public easements, Natives who in the past traveled many miles to fish salmon runs would no longer be allowed to use these areas. Villages that in the past traveled many miles to subsistence duck and geese hunting, would no longer be allowed this way of life because the waters now are controlled by another Village or Regional Corporation. A Native who, for his lifetime, and as far back as he knew, his ancestors had trapped or fished certain waters could no longer use this Public resource without easements. And in the future, as the lands are sold by the Corporations to other private owners, neither he nor his children will be allowed to use even the waters now available to him. Even so, the Native Corporations now indicate they will file suit opposing even those easements conveyed under SO 2982.

The United States Senate's Interior Committee will hold oversight hearings on problems stemming from the Alaska Native Claims Settlement Act on 10

June 1976 in Washington, D. C. The Alaska Public Easement Defense Fund will at that hearing request that Congress specifically provide Public access to and linear easements under and along all streams, rivers, lakes, and beaches, and also easements on all trails as have been identified by the State of Alaska Department of Highways. We believe this method must be pursued in addition to the court suit that could drag out the problem for years and require great sums of money.

Our position is that access to and linear easements under and along all waters is the most valid and only possible way to guarantee the People's right to use this Public resource. This, with a liberal policy for allowing exceptions to an easement to be granted to the owner for valid private needs, would provide for the rights of all parties. The actual private use would in most cases identify it as no longer being a Public easement. This concept would speed conveyance of these lands to the Native Corporations, which has been of vital and legitimate concern on their part.

We sincerely believe the easement issue must be settled now or the Public's right to these waters will be lost forever, as it has been in other areas where much of the water is available only to a privileged few. We believe that the question of compensation for the easements was settled by their reference as a part of the Act. The growth of the original figure of 7 million acres to the present 44 million did consider fair compensation to the Native's claims. As part of the Act, there is no more obligation for compensation for the reservation of easements than there would be for the receipt of the lands by the Native Corporations.

The settlement of this matter now is also necessary to avoid a polarization of Native and Non-Native positions that will destroy a present support of equable rights and solutions for all. We only ask that these waters carry the same access and easement obligations as will be required on other future Public land transfers in the State of Alaska.

Easement Reservations in Conveyances to Alaska Native Corporations Under ANCSA

Alaska—Indian and Native Affairs
Alaska Native Claims Settlement Act—Easements

Prior to the conveyance of any land pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601) (ANCSA) the Secretary must make a determination of which public easements are necessary and the Secretary must reserve those easements in the conveyance.

The Secretary has authority to reserve public easements in conveyances under ANCSA (43 U.S.C. 1601) other than those easements identified and recommended by the Joint Federal State Land Use Planning Commission.

The authority of the Secretary to reserve easements in conveyances under ANCSA is not limited to those public easements specifically listed in Section 17(b)(1) of that Act.

The Secretary is not limited to reservation of easements in conveyances under ANCSA which cross the patented lands from one boundary to another. The easements may be for uses within the patented lands.

U.S. Department of the Interior,
Office of the Solicitor,
Washington, D.C., May 23, 1975.

Name to: The Secretary.
From: Solicitor.
Subject: Easement Reservations in Conveyances to Alaska Native Corporations Under the Alaska Native Claims Settlement Act, 85 Stat. 688, 43 U.S.C. Section 1601 et seq. (ANCSA).

You have asked for a brief and concise description of the authority of the Secretary to reserve easements under Section 17(b)(3) of ANCSA. Since Section 17(b)(3) is not the sole source of authority for the Secretary to reserve easements, the scope of that authority must be discussed in the context of his total authority. Section 17(b) of ANCSA provides:

"(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.

"(2) In identifying public easements the Planning Commission shall consult with appropriate State and Federal agencies, shall review proposed transportation plans, and shall receive and review statements and recommendations from interested organizations and individuals on the need for and proposed location of public easements: Provided, That any valid existing right recognized by this chapter shall continue to have whatever right of access as is now provided for under existing law and this subsection shall not operate in any way to diminish or limit such right of access.

"(3) Prior to granting any patent under this chapter to the Village Corporation and Regional Corporations, the Secretary shall consult with the State and the Planning Commission and shall reserve such public easements as he determines are necessary."

The inclusion of this section in the Act by the Conference Committee was the result of long and continuing expressions of need by many diverse interests during the consideration of a Native claim settlement. H.R. 10367, 92d Cong., 1st Sess. (1971), as passed by the House, contained no reference to easement reservations after the efforts to include a land use planning section were defeated. On the other hand, S.35, 92d Cong., 1st Sess. (1971), as it passed the Senate, did contain a land use planning section in which the findings of the Land Use Planning Commission were mandatory and binding on the Secretary. Section 24(d) of that bill provided:

"(1) As a part of the Planning Commission's review of land selections by the State, by Native Villages or by corporations pursuant to section 24(a)(9) the Planning Commission shall identify public easements across such lands and at periodic points along the courses of major waterways which are reasonably necessary to guarantee 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.

"(2) In identifying public easements the Planning Commission shall consult with appropriate State and Federal agencies, shall review proposed transportation plans, and shall solicit and receive statements and recommendations from interested organizations and individuals on the need for and proposed location of public easements: Provided, That any valid existing right recognized by this Act shall continue to have whatever right of access as is now provided for under existing law and this subsection shall not operate in any way to diminish or limit such right of access.

"(3) Prior to granting any patent under this Act the Secretary shall consult with the Planning Commission and shall reserve such public easements as the Planning Commission has identified and recommends. The responsibilities granted to the Planning Commission under this section shall be transferred to the Secretary upon termination of the Planning Commission."

The Senate Committee explained the intent of that section as follows:

"[A] major problem facing the State of Alaska and the Federal Government in connection with the settlement of the land claims issue and the gradual lifting of the administrative and Secretarial Order "land freeze" that has operated in Alaska over the past five years is to develop a rational and coherent land use planning capability which will operate to preserve the environment and protect the public interest in the Federal lands in Alaska without, at the same time, frustrating the reasonable expectations of the Native people and the State to exercise in a rational manner of the rights granted to them by this Act and by the Alaska Statehood Act.

"This year, building upon the experience gained from two intensive years of consideration and many hearings on legislation to establish a National Land Use Policy, it is the Committee's view that additional actions should be taken to insure that the land resources base of Alaska is properly planned for and managed.

"To achieve this goal the Committee has adopted Section 24. Section 24 provides for the establishment of a Joint Federal-State Land Use Planning Commission; the creation of a North Slope Recreation and Transportation Corridor; and the reservation of appropriate public easements. These provisions are discussed in detail elsewhere in this report. S. Rep. No. *92-405*, 92d Cong., 1s Sess., 84-85 (1971)."

The Committee then stated, by way of detailed discussion:

"Section 24(d)—This section details the requirement that appropriate public easements shall be reserved under all grants and patents to insure the full rights of public use and access.

"Section 24(d)(1)—This subsection directs that as a part of the Planning Commission's review of land selections by the State, by Native Villages or by corporations pursuant to section 24(a)(9) the Planning Commission shall identify public easements across such lands and at periodic points along the courses of major waterways which are reasonably necessary to guarantee 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 24(d)(2)—This subsection directs that in identifying public easements the Planning Commission shall consult with appropriate State and Federal agencies, shall review proposed transportation plans, and shall solicit and receive statements and recommendations from interested organizations and individuals on the need for and proposed location of public easements. Any valid existing right recognized by this Act shall, however, continue to have whatever right of access as is now provided for under existing law and this subsection shall not operate in any way to diminish or limit such right of access.

"Section 24(d)(3)—This subsection directs that prior to granting any patent under this Act the Secretary shall consult with the Planning Commission and shall reserve such public easements as the Planning Commission has identified and recommends. The responsibilities granted to the Planning Commission under this section shall be transferred to the Secretary upon termination of the Planning Commission." *Id.* at 172.

The mandatory nature of the language concerning the determinations of the Land Use Planning Commission was vigorously opposed by the House members of the Conference Committee and by the Executive Branch. Thus, the entire function of the Land Use Planning Commission became *advisory* to the Secretary[1] in the bill prepared by the Conference Committee, while the Secretary's authority was broadened to look beyond the Planning Commission and to make individual determinations on questions concerning easements. Section 17(b) of the Alaska Native Claims Settlement Act as finally enacted can be outlined as follows: The Planning Commission is directed to identify public easements for a number of public uses and access functions which it deems to be important. In the process of doing so the Planning Commission is to consult with appropriate State and Federal agencies and interested organizations and individuals. The Secretary of the Interior is then instructed prior to granting of any patent under the Act to village and regional corporations to consult with the State and with the Planning Commission and then mandated to reserve such public easements as he determines are necessary. It is important the Secretary must reserve those public easements which "he determines are necessary." Thus, the Secretary must first make his own determination, in consultation with the State and the Planning Commission, as well as others, as to which public easements are necessary and should be reserved under the Act. The Act's language "the Secretary . . . shall reserve" (Section 17(b)(3)) mandates the reservation of those easements.

It is noted that in the original Senate version the Planning Commission dictated which easements were to be reserved, but in the final version of the Act the Secretary of the Interior makes this determination and he is to make that determination after consultation with the State as well as the Planning Com-

[1] The Conference Report states: "The Planning Commission has no regulatory or enforcement functions, but has important advisory responsibilities." S. Conf. Rep. No. 92-581, 92d Cong., 1st Sess. 36 (1971) (emphasis added).

mission. Furthermore, Section 17(b)(2) requires "that any valid existing right recognized by this Act shall continue to have whatever right of access as is now provided for under existing law and this subsection shall not operate in any way to diminish or limit such right of access." Therefore, in construing the meaning of "public easement," the Secretary must construe his functions under Section 17(b) in such a manner as not to reduce the right of access of anyone holding any valid existing right at the time of conveyance. Thus, the Secretary's discretionary authority to reserve public easements beyond those identified and recommended by the Planning Commission derives from the Secretary's independent mandate to consult with the State as well as the Planning Commission and to ensure that "valid existing rights" of access are preserved.

It has been argued that the purposes for which easements may be reserved and the circumstances in which they may be reserved listed in Section 17(b)(1) are limitations upon the authority of the Secretary in Section 17(b)(3). This construction of the statute will not hold up under close examination because: (1) the Act requires the Secretary to look beyond the Planning Commission for consultation before making his determinations; (2) the Secretary is directed not to reduce the right of access of any valid existing right; (3) the language of Section 17(b)(1) is ejusdem generis in nature and is not that ordinarily used when the doctrine of expressio unius est exclusio alterius is intended to apply. The first two reasons have been examined in some detail already in this opinion. With respect to (3) above, Section 17(b)(1) ends with the phrase "and such other public uses as the Planning Commission determines to be important." (emphasis added.) This phrase makes it clear that the use or access functions listed previously in that subsection are not exclusive. The reemphasis of the term "public use" in that phrase would also indicate a relation back to such "public use" needs as arise in the fulfillment of international treaty obligations.

Relevant parts of the Conference Report also indicate that the nature and purposes of easements to be reserved were to be determined chiefly in light of the duty of the Planning Commission and the Secretary to protect the "larger public interest":

"Appropriate public access and recreational site easements will be reserved on lands granted to Native Corporations to insure that the *larger public interest* is protected. S. Conf. Rep., *Supra*, at note 1." (emphasis added.)

An explanation of the term "public use" as used in Section 17(b)(1) is appropriate. A "public use" has been defined as that which, (1) enables "the United States or a State . . . . to carry on its governmental functions, and to preserve the safety, health, and comfort of the public . . . (2) to serve the public with some necessity or convenience of life . . . . (3) in certain . . . cases . . . to enable individuals to carry on business . . . if their success will indirectly enhance the public welfare." *Delfield v. City of Tulsa*, 131 P. 2d 754, 757-9, 191 Okl. 541 (1942). The weight of authority is to the effect that "public use" encompasses the concept of public advantage. Thus, the United States Supreme Court has said, "Public uses are not limited, in the modern view, to matters of mere business necessity and ordinary convenience, but may extend to matters of public health, recreation and enjoyment." *Rindge Co. v. Los Angeles Co.*, Cal., 262 U.S. 700, 707 (1922). Public uses, then, obviously involve more than simply access-related functions.

The use of the terms "recreation sites" and "camp sites" throughout the Conference Report clearly indicates that Congress contemplated that the Secretary would have the authority to reserve site easements for public uses on lands conveyed to village and regional corporations.[2]

In various oral and written comments to the Department, much emphasis is placed on the term "across" in the phrase in Section 17(b)(1), "identify public easements across lands selected." The term "across" has been construed

[2] "Appropriate public access and recreational site easements will be reserved on lands granted to Native Corporations to insure that the larger public interest is protected." Id. "Section 17 of the conference report is based upon section 24 of the Senate amendment. "(2) Subsection 17(b) of the Conference Report is substantially the same as section 24(d) of the Senate amendment. This subsection provides for the advance reservation of easements and camping and recreation sites necessary for public access across [We have some difficulty in conceptualizing a recreation site on Native lands necessary for access across Native lands.] lands granted to Village and Regional Corporations." *Id.*, at 44."

by the courts over the years to have a very broad meaning that is not limited to a line from one boundary to another boundary of a piece of property. It has been variously held to mean, "Over" *Commonwealth v. Warwick*, 40 A. 93, 185 Pa. 623, (1898); *Illinois Central R. Co. v. City of Chicago*, 30 N.E. 1044, 141 Ill. 586 (1892); *State v. Newport St. Ry. Co.*, 18A. 161, 16 R.I. 533 (1889); *Brown v. Meady*, 25 American Decision 288, 10 Me. 391 (1833); "Along" *Mt. Vernon Telephone Co. v. Franklin Farmers Tel. Co.* 92 A. 934 Maine (1915); *Brooklyn Heights R.R. Co. v. Steers et al.* 106 N.E. 919, 213 N.Y. 76 (1914); "On" "The reservation of the right to maintain a drain 'across' the land conveyed is not nullified because the drain, in fact, ended in a cesspool 'on' the land conveyed." *Jones v. Adams et al.* 38 N.E. 437, 162 Mass. 224 (1894); "Upon" (same citations as "along"); "Through" and "Within" *Quanah, A. & P. Ry. Co. v. Cooper* 236 S.W. 811 (Tex. 1922). In view of the two conclusions that Section 17(b)(1) is not a limitation on the Secretary and that "across" has a very broad meaning, it is concluded that the term "across", standing alone, does not prescribe the place or manner in which a public easement may be reserved.

It has been argued that the "across" language followed by the language "and at periodic points along the course of major waterways" further delimits the Secretary's authority to proscribe him from reserving linear easements along the course of any major waterway. At least three responses can be made to that argument. First, linear easements along the course of a major waterway might be necessary, in the opinion of the Secretary, to fulfill some public easement function such as the guaranteeing of international treaty obligations or some access functions such as rights-of-way for transportation or utilities. Second, such linear easements will, in appropriate circumstances, qualify as being "across" selected lands. Finally, after consultation with the State of Alaska, the Secretary may determine that such a linear easement is reasonably necessary. As a result of these possible situations and in view of obvious Congressional intent to preserve valid existing rights and to protect the larger public interest, such a narrow and constricted interpretation as that proposed in various oral and written comments submitted to the Department cannot be placed upon the statute.

Each statute already in force and applicable to Alaska, authorizing the reservation of easements, has not been examined in light of Section 26 of the ANCSA. Each of these statutes must be examined with care to determine whether they should be used in conjunction with Section 17(b), in lieu of Section 17(b), or must be construed as repealed. However, in examining these alternatives it must be remembered that there is a strong presumption against implied repeal. *Federal Trade Commission v. APW Paper Co.* 328 U.S. 193 (1946); *U.S. Alkali Export Assn. v. U.S.* 325 U.S. 196 (1945); *State of Georgia v. Pennsylvania R.R. Co.* 324 U.S. 439 (1945).

There are four limitations upon the Secretary in carrying out his obligations under Section 17(b). The first is contained in Section 17(b)(2) which prohibits the reduction of the right of access for anyone holding a valid existing right under present law. The second limitation appears in Section 17(b)(3) and requires that he first determine public easements are necessary before any reservation is made. Third, the easement reserved must be a public easement or an easement to fulfill the obligation of Section 17(b)(2). Fourth, the easement should be a public use or an access-related easement. This fourth conclusion is not clearly spelled out in Section 17(b)(2) or (3) but is strongly suggested by the general scope of Section 17(b)(1).

Despite these limitations on the authority of the Secretary, he is vested with broad authority by Section 17(b)(3) and with certain obligations. In the exercise of his authority he must be reasonable and not arbitrary or capricious in his determinations of what easements are necessary or not necessary. A determination that an easement is necessary or not necessary should be recorded and accompanied by a written record in support thereof in case the determination is challenged. (*Citizens to Preserve Overton Park v. Volpe* 401 U.S. 402 (1971); *Camp v. Pitts* 411 U.S. 138 (1973)). The exercise of the Secretary's authority is, in part, a policy function of his office and the exercise of that authority is not totally dictated by this statute but also by general principles of law.

Hon. Rogers C. B. Morton,
Secretary of the Interior,
Washington, D.C.

Dear Mr. Secretary: Following the February 25, 1975, meeting in Washington, D.C., with the Alaska Task Force, discussions with the Joint Federal-State Land Use Planning Commission, and a recent meeting with representatives of the Alaska Federation of Natives, I felt it appropriate to convey again to you the State's views on the reservation of Local easements pursuant to Section 17(b) of ANCSA and to specifically address several aspects which are currently being considered by your staff.

As I mentioned to you in my letter of February 6, the State of Alaska *strongly endorses* the Section 17(b) Local easement recommendations of the Planning Commission. It must be emphasized that the Commission's recommendations are the result of a very substantial review of the entire easement question and that process involved participation from all affecting interests including your State office of the Bureau of Land Management. It is our feeling that the Commission's recommendations represent the best reasoning for equitably balancing the public interest of all citizens with the interests of the Alaska natives as recipients of land in settlement of their aboriginal land claims. The Commission's recommendations are, in my view, the result of the greatest possible public input at the local level under advocacy conditions.

In our view, the Local draft easement guidelines presented by your department on February 24, will not best meet the legal, policy, and administrative issues which must be addressed under Section 17(b). The Planning Commission, in its March 14 letter to Assistant Secretary Royston Hughes, detailed at some length many areas of concern shared by the State in regard to your Department's February 24 draft. I feel the Commission's letter expresses those concerns very adequately and will not repeat them at length here. I do, however, wish to briefly comment upon certain aspects of the Department's draft.

Of particular concern to us was the possibility, raised for the first time, that dedication of certain local easements to the State might occur. This is an issue which poses substantial legal, policy, and administrative questions such that we do not feel we have had sufficient time for research to date. The question of adequate enforcement against trespasses or other violation of laws from easements adjacent to native lands is representative of these issues. Considerable work must be done among the Department, the natives, the Planning Commission, and the State before a final decision is made. Regardless of to whom the ultimate dedications are to be made, easements must be reserved across native lands to protect those public access rights on adjoining Public Lands and waters as specified in Section 17(b), and we believe that at this time emphasis should be placed upon finalizing the identification and reservation procedures to insure timely initiation of conveyances to native corporations. We will be most willing to initiate discussion on this matter when Assistant Secretary Hughes visits Alaska in two weeks.

Regarding the reservation of easements to and along waterways based upon existing public use, one suggestion has been that such reservations are appropriate as long as strictly native use is not interpreted as public use. The State cannot agree with this concept. Proper resolution of this question is highest priority of the State on the matter of easement reservations. Under Alaska's Constitution, all persons are equal and entitled to equal rights, opportunities, and protection under law. The further constitutional guarantee of free access to public waters of the State must, therefore, address natives as citizens and not as stockholders in private corporations. Congress itself stressed this point in Section 2(c) of ANCSA when it declared that no provision of ANCSA shall relieve, replace, or diminish any obligation of the United States or of the State of Alaska to protect and promote the rights and welfare of natives as citizens of the United States and of Alaska. To protect those rights of natives as citizens guaranteed free access to navigable and public waters, the State must be cognizant of the fact that not only may the interests or actions of a private native corporation mitigate against those of some of its individual stockholders or those of another corporation regarding access to public lands and waters, but also that in less than 17 years alienation of stock in presently all-native corporations will be possible and may well lead to the

passage of corporate control to nonnative interests in a number of instances. Additionally, land conveyed to native corporations will be alienable immediately with no guarantee of continued public access. As a practical matter, since a substantial number of native villages are the homes of nonnatives, it would appear almost impossible to determine past or existing access use and to reserve same on strictly a racial basis. It is the State's position, therefore, that to the extent native use is public in character, that such constitutes public use in reserving any easements pursuant to Section 17(b) .

I would like at this time to reiterate that the State is still very firm in requesting the reservation of both linear easements along non-major waterways, based upon existing public use, and a continuous shoreline easement around the exterior coastline of the State. It has been contended that several of the State's easement requests have originated only recently in reaction to the sudden transfer of 40 million acres of land into private native ownership and that the State itself has not practiced such policies in the past. This is not true. In my letter of February 6, I outlined the State's long history of protecting coastal access along the public tidelands and waters. Since February of 1970, the State Division of Lands has followed a specific formula for retaining public access on lakes, and since 1964, it has provided a minimum 10-foot pedestrian easement along the banks of any stream recognized as capable of supporting a sports fishery when adjacent uplands were leased or sold. In view of the thoroughness of the Commission's recommendations and the appropriateness of their applicability to all lands in Alaska (i.e., public and private, federal and State), I have directed that the local easement guidelines adopted by the Planning Commission be implemented, as a minimum, on all State lands.

With regard to continuous coastal easements, I wish to emphasize our feelings that such easements are needed to guarantee public access along the public lands and waters of the coast when periods of high tide or topographical barriers would otherwise permit sizable stretches of public land and water to become inaccessible to the public and create de facto private property. Their purpose is simply that of guaranteeing access and is in no way directed at a form of zoning control.

In conclusion, let me indicate my feeling that a great deal of the existing problems regarding easement reservations stems from a misunderstanding of the purpose and nature of the easements themselves. For the reason that I believe it would more fairly inform all members of the Alaska public and greatly reduce the level of misunderstanding, I want to recommend that the Secretary in consultation with the natives, the State, and the Land Use Planning Commission seek to establish where reasonable a uniform description of the uses covered by easements reserved under the ANCSA. Toward this end, let me offer our full cooperation at the earliest possible time.

It is my understanding that Assistant Secretary Hughes is planning a trip to Alaska in mid-April during which time this and related easement questions will be discussed among interested parties. We would be most grateful for an early indication of his schedule if possible. I look forward to finalizing this matter in the near future.

Sincerely,

JAY S. HAMMOND,
Governor.

Original sponsor: Orsini, Bradley, Colletta, et al.
Offered: 5/9/75.
Referred: Rules.

IN THE SENATE—BY THE JUDICIARY COMMITTEE

HOUSE CS FOR 2DCS FOR SENATE BILL NO. 215

IN THE LEGISLATURE OF THE STATE OF ALASKA
NINTH LEGISLATURE—FIRST SESSION

A bill for an Act entitled: "An Act relating to navigable or public waters."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. INTENT. It is the intent of this Act to implement the provisions of art. VIII, sec. 14, Alaska State Constitution, relating to access to the navigable or public waters of the state.

Sec. 2. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.127. ACCESS TO NAVIGABLE OR PUBLIC WATERS. (a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the Department of Natural Resources shall

(1) under regulations, determine if the body of water or waterway is navigable water, public water, or neither;

(2) upon finding that the body of water or waterway is navigable or public water, provide for specific easements or rights-of-way, or both, reasonably necessary to insure free access to and along the body of water, unless the department finds that regulating or limiting access is necessary for other beneficial uses or public purposes.

(b) The Department of Natural Resources shall adopt regulations implementing this section.

(c) Nothing in this section affects valid existing rights.

Sec. 3. AS 38.05.345 is amended by adding a new subsection to read:

(d) Where the lands involved are adjacent to a body of water or waterway which the department has not previously determined to be navigable or public, or not navigable or public, the notice shall state that such a determination is to be made.

Sec. 4. AS 38.05.365 is amended by adding new paragraphs to read:

(22) "navigable waters" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes;

(23) "public waters" means navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest.

Section 17(b)(3) as amended to read as follows:

"(3) Prior to granting any patent under this Act to the Village Corporation and Regional Corporations, the Secretary shall consult with the State and the Planning Commission and shall *permanently* reserve *continuous public recreation easements underlying all surface waters of the State and not less than 25 feet in width adjacent to and surrounding such surface waters so as to ensure reasonable access to and along the boundary of such surface waters and* such *other* public easements as he determines are necessary."

ALASKA WILDLIFE FEDERATION AND SPORTSMEN'S COUNCIL, INC.,
Juneau, Alaska, June 8, 1976.

Senator HENRY JACKSON,
Dirksen Office Building
Washington, D. C.

DEAR SENATOR JACKSON: This written testimony is submitted on behalf of the above organizations as well as *Your Right to Alaska's Water and Land, Inc.* to be considered by the Oversight Hearing Committee in connection with the Alaska Native Claims Settlement Act.

A major concern of ours is the location of these hearings. Because of the tremendous distance between Alaska and Washington, D. C. and the substantial cost involved both in time away from commercial endeavors at Alaska's busy construction season as well as the cost of travel, many who wish to present oral testimony are precluded from testifying. Also, there has been a lack of information disseminated in Alaska concerning the Oversight Hearings and only recently have the dates and procedure to present testimony been made known. We feel, because of this, further Oversight Hearings should be scheduled in Alaska to permit the people who will be effected on a day-to-day basis sufficient opportunity to present testimony to your committee.

It is our understanding from discussing the easement policies with various BLM personnel that only specific easements will be reserved where a significant prior use can be shown. This is extremely difficult, unmanageable and unworkable when the vast acreage that is going to be conveyed into private ownership is considered, particularly when tentatively twice as much land as will ultimately be conveyed has been selected. This places an undue burden on the public-at-large not only to identify easements on land which will be conveyed but also to identify easements on land which may not be conveyed. The present method of reserving easements is untenable, will delay conveyances, lead to court litigation on a piecemeal basis, polarize Alaskans, and in general cause severe disharmony in the State of Alaska. It is suggested that as an alternative the guidelines as set out by the Division of Lands of the State of Alaska be utilized. A copy of these guidelines is enclosed for your information. We feel that these guidelines more adequately protect the public-at-large in being able to continue to use the waters and lands of Alaska as they have done in the past.

Another solution, at least with respect to the waterways here in Alaska, is to reserve lineal easements along all rivers, streams and lakes. These easements should be sufficiently broad to cover all types of recreational activities which these lakes, rivers and streams have been used for generations by both native and non-native as well as non-residents of Alaska and citizens of foreign nations. If this is done, the private owners would then have the opportunity to come in and vacate specific portions of that easement if it would interfere with his right to utilization of the lands. This easement reservation system would permit immediate conveyances to the various corporations and would protect the public-at-large with respect to access at least in these areas.

At the present time, the State of Alaska has not received all of the land it is entitled to. Some of the land which the State of Alaska will receive will be landlocked by corporation selection. It is very difficult to reserve an easement until such time as you know which land you are going to own. Therefore, any conveyance should take this into account since no one, including the State of Alaska, should be deprived of access to its property.

The problem of easements and the Land Claims Settlement Act is a far reaching problem that will have an effect here in the State of Alaska for generations to come. The terrain in Alaska permits access primarily by waterway systems which include the lakes, rivers and streams. Much of Alaska is not accessable by road and much recreational utilization occurs in Alaska over the waterway systems. Unless adequate easements are reserved for present and future use, much of the recreational use of Alaska will be lost forever. Therefore, we urge you to seriously consider this easement problem and to not permit hasty action by the Interior Department in conveying title without adequate reservation of easements.

We feel that the Interior Department, in order to protect existing rights of the public to utilize Alaska's land and waters as they have done for generations in the past, should take a broad policy as to public access. With respect to the waterways, which include rivers, lakes and streams, it should convey lineal easements along all waters for the use of the public-at-large. This would include both native and non-native as well as residents and non-residents of the State of Alaska. The easement or access right should permit the public-at-large to utilize these waters and waterways of Alaska as they have done in the past; they should permit free ingress and egress camping, fishing, hiking, hunting and any other related activities incidental to waterway travel. This easement should be sufficiently wide to effectively permit utilization for all recreational purposes and should be no less than 25 feet in width along both banks of rivers and streams and 25 feet in width along all lake shores. The private owner would then have the right to come in and if a specific showing is made, vacate any easement where a specific use is being made of a particular shore line, such as a village community, fish camp or otherwise. If this method of reserving easements is used, the savings to the people of the United States would be substantial.

The present method being used by the Interior Department for reserving easements is backwards. Because of the vast size of Alaska, the substantial overselection of lands and the problem of not being able to predict the future need for public access, the Interior Department should grant blanket easements along all waterways in Alaska; that is, rivers, lakes and streams, giving the private owner the right to vacate any easements that are necessary for his use

of the land. This would protect both the public as well as the private owner and would be far less expensive than the plan being utilized by the Interior Department at the present time.

Another problem that effects the easement question concerns the manner in which the various corporations have tentatively selected their land. The settlement act itself provides:

"Selections made under this subsection (a) shall be contiguous and in reasonable compact tracts, except as separated by bodies of water or by lands which are unavailable for selection, and shall be in whole sections and, wherever feasible in units of not less than 1,280 acres."

Much of the tentative selection does not conform to this section [Section 12 (2)] of the Claims Act. Many of the tentative selections have been selected lineally along waterways and highway systems. As an example of this, the attached map of the Nenana Village selection is enclosed. As can be seen, this selection does not comply with the act. We feel that this issue is of upmost importance and should be resolved prior to any conveyances. We urge that the Interior Department require compliance with this section. Unless this is done, vast areas of private of public lands will be cutoff from public access.

We have also heard that some land has already been conveyed without any easements. One example we believe is the Nenana Village in that they have received some land by conveyance without any easements. This is also a question that the Interior Department should answer, since, if there have already been conveyances without adequate easements, they should be voided and only conveyed once adequate easements have been provided for.

In summary, we feel the Interior Department should require compliance with selections of lands in contiguous and reasonable compact tracts. They should also establish a more feasible public easement and access problem reserving to the public continual use of the waterways and lands of Alaska as has been enjoyed by all people for generations in the past. Also, additional Oversight Hearings should be held in Alaska to permit as many Alaskans as possible to testify concerning the substantial problems that have already occurred and are occurring at the present time with respect to the land claims and correct these problems prior to conveyances. Unless this is done, the spirit of the act as set forth in the act will not be accomplished. The act specifically states:

"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 effecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or a lengthly wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation established in special relationships between the United States Government and the State of Alaska."

At the present time, this is not being accomplished and unless more realistic easement guidelines are promigated and implemented in a realistic way, the settlement will drag out indefinitely, create polarization between the peoples of Alaska, and establish privileges for a limited few.

We feel that the following questions should be satisfactorily explained and/or answered prior to any conveyances of land under the settlement act:

I. Is the Interior Department going to require that the selected land be contiguous and in reasonably compact tracts?

2. For what purposes may lineal easements along rivers, lakes and streams be used?

3. Has the Interior Department complied with Section 17 of the Land Claims Settlement Act regarding easements, namely, has he consulted with the planning commission concerning public easements and has the Secretary of Interior consulted with the State and the Planning Commission to reserve to the public such easements that are necessary?

4. Has the joint Federal-State Land Use Planning Commission for Alaska properly compiled data and made recommendations for public easements to the Interior Department?

5. What provision will be made for future easements to permit access to State selected land which the State of Alaska will receive at a later time or access to private land which will be conveyed into private ownership at a later time?

6. What provision is going to be made for continued use of the waters and lands of Alaska by the public as has been done for generations in the past; that is, recreational use which includes all forms of recreation such as hiking, fishing, camping, hunting and trapping?

Very truly yours,

TOM SCARBOROUGH, *President.*
JAMES DODSON,
President, Your Right to Alaska's Water and Land, Inc.

DIVISION OF LANDS POLICY MEMORANDUM

Date: September 10, 1975.
Subject: Local Easement Reservations.

The following is the 'Department of Natural Resources, Division of Lands' policy for easements on State lands to be alienated as administered by the State.

PREMISE

1. The Federal-State Land Planning Commission for Alaska has compiled a report on 'local easement study' dated November 1974 and has addressed itself to the subject.

2. The Honorable Jay S. Hammond, Governor of Alaska, has responded to the Honorable Roger C.B. Morton, Secretary of the Interior, on this study as affects Alaska.

3. The Governor has agreed, in general, with the concepts recommended and has so informed the Secretary of his policy statement: "In the view of the thoroughness of the Commission's recommendations and appropriateness of their applicability to all lands in Alaska (i.e., public and private, Federal and State), I have directed that the local easement guidelines adopted by the Planning Commission be implemented, as a minimum, on all State lands."

4. Local easement requirements are an integral part of 'Planning and Classification' of State lands and shall be reviewed prior to Classification. The District Offices, Boroughs, and other state land planning bodies working on state-wide planning projects are available to provide input prior to finalizing a Classification Order.

5. Local easement requirements will be established prior to approving Borough Land Selections, State surveys, appraisals, and any lease or disposal of interest in State lands.

IMPLEMENTATION

The Department of Natural Resources, Division of Lands, Planning and Classification staff is the 'clearing house' and shall review and coordinate all land and water easement activities not already provided by law. The Chief of the Planning and Classification Section is assigned with this responsibility and shall assure that easement standards as set forth here are properly applied and administered. This Section shall disseminate, coordinate and gather applicable information.

Disagreements of easement needs will be adjudicated at the Director's level.

This policy for easement identifications on State lands is hereby established this ——— day of ———, 1975 by the Department of Natural Resources, Division of Lands.

GUIDELINES

The following are to be considered the Division of Lands *Size* and *Use* Standards for local easement reservations on State alienated lands:

LINEAR EASEMENTS FOR ACCESS TO OVER AND ACROSS PUBLIC LANDS,

WATERS AND RESOURCES

Category 1. Trails

Trail widths from a 10 foot minimum width to 25 foot maximum width are established. Topographic conditions, soil conditions, and construction costs and maintenance would be considered the controlling factors for width and alignment.

A 10 foot width is applicable for non-motorized use such as foot travel, bicycles, dogsleds, cross-country skiing, and horseback riding, and uses for other similar characteristics. Trail widths of 10 to 25 feet would be for small motorized and/or mechanical driven equipment, except four wheel vehicles.

Category 2. Roads, Utilities and Scenic

Paragraph A. 60 feet in width: This is primarily within existing developed areas and considered as local access roads with the same being utilized for vehicular traffic, connection of one road system to another, or from a waterway or airport to State lands considered as backland country.

Paragraph B. 100 feet in width: This width is applicable for a definite request from the governmental sector. The easements involve road construction and is recognized by the Department of Highways as being a necessary right-of-way easement width.

Topographic conditions and engineering data would be the controlling factor for road width and alignment. Appropriate agencies would be contacted as regards input data.

Paragraph C. Utility line easements 5 to 100 feet in width: The exact width of these easements would be determined by consultation with appropriate agencies that have responsibility for such utilities. No easement widths would be assigned as a permanent encumbrance on State lands until the appropriate agency has been contacted and such easements approved by them. Temporary construction easements of wider widths may be created for construction purposes and narrowed to the actual width needed after completion of construction.

Paragraph D. Scenic and Screening Easements: A minimum of 20 feet and a maximum of 200 feet in width is established. The exact width would be determined according to necessity and topographic conditions. A minimum of 20 feet would be applicable along minor waterways with the maximum of 200 feet being along major waterways for scenic purposes and along major roadways.

SITE EASEMENTS FOR UNIMPROVED CAMPSITE PURPOSES

Prior to disposal of State land, public campsites will be identified and properly classified as such. A 5 acre site for each 10 miles of trails or waterways is considered as minimum. The use would be for temporary overnight camping, temporary boat and float plane tie-ups, and such other modes of travel as so designated for trails and waterways. No sanitation facilities or permanent structures would be maintained or established by the Division on these areas. These areas would not be used for commercial purposes but with the intent of maintaining an environmental concept for the local area. These sites could be vacated when and if suitable alternate sites are identified and established. Also, these sites could be transferred to Division of Parks when and if appropriate.

ACCESS EASEMENTS, BOROUGH LAND SELECTIONS

Easement criteria as established above for trails, roads, waterways and utilities shall be established prior to the State approving a Borough Land Selection. In addition thereto, all sections of land, surveyed or unsurveyed, will continue to maintain the normal 50 foot section line easement reservations on each side of a section line.

EASEMENTS AND RESERVATIONS ON STATE LANDS ADJACENT TO LAKES

The following is intended to be minimum criteria for retaining public ownership of lands adjacent to lakes. This data will be incorporated during the Classification procedure. All waters identified herein would have a minimum 10 foot pedestrian easement along the banks except when topographic conditions prohibit the use of such.

Paragraph A: Lake size of 40 acres or less without a distinguishable inlet or outlet would have no public lands retained except when identified by the Department of Fish & Game and Division of Parks as having possible fishery and recreation potential.

Paragraph B: Lake size of 40 acres or larger without a distinguishable inlet or outlet would have retained a minimum of 1/10th of an acre of uplands for each acre of water surface and may consist of one or more sites.

Paragraph C: Lakes less than 5 acres with a distinguishable inlet and/or outlet would retain a trail access easement from connecting road systems, trails, waterways, or other lakes for public use. A minimum of 100 feet of lake frontage shall be retained in public ownership at the trail-head area.

Paragraph D: Lake size 5 to 200 acres with a distinguishable inlet or outlet would have a minimum of 0.15 acres of uplands for each acre of water surface with a minimum frontage equal to 5% of the lake shore.

Paragraph E: Lake size 200 acres or larger with a distinguishable inlet and/or outlet would have a minimum of 1/10th of an acre of uplands retained for each acre of water surface with a minimum frontage equal 5% of the lake shore.

Paragraph F: Easements other than pedestrian easements along the lake shore is as established for waterways, within this policy.

WATERWAY EASEMENTS

Category 1. Inland Navigable and Non-Navigable Rivers and Lakes

A minimum of 10 feet and a maximum of 25 feet easement shall be established from the ordinary high water line inland on both banks. Unless otherwise specified in the Planning and Classification Report, the easement shall be for pedestrian use only. The Planning and Classification Report, together with justification, would indicate any other uses for this easement. Topographic conditions would be the controlling factor if the easement were not to be established and alternate easement routes would be established. The report would substantiate any public waters not depicting and/or having encumbered the easement along said ordinary high water line.

Category 2. Coastal Waterways

Width established is a minimum of 25 feet and shall be along all waters affected by tidal action. Only tidelands and uplands would be subject to any easement. In the situation where the State is the upland owner and/or the tidelands owner, an easement shall be created with equal widths on each side of the *mean high water line*. If the State is not the owner of the uplands, then the linear easement shall be applicable only on tidelands and only on that portion of tidelands actually falling within the designated width. In those situations where topographic conditions prohibit use as regards ingress and egress from the coastline, alternates will be established. Unless approved, justified and stipulated in the Planning and Classification Report, these coastal easements shall be for pedestrian use only.

RESOURCE ACCESS ROADS

Resource access roads are herein defined as roads necessary for the development of the lumbering, farming, mining and oil & gas industry and are excluded herein as regards preliminary identification of access roads with the exception of the following:

"The selection of a route through a resource area shall be made for the protection of public ingress and egress. The policy as outlined above controls trail and road standards to other State lands, waterways, roads and connecting public lands. Prior to the finalizing of the resource disposal the appropriate Section shall be responsible for the identification and submission of necessary data so as to be incorporated into the records to meet necessary criteria."

CERTIFICATION OF STATEMENTS ON EASEMENT QUALIFICATIONS REPORT

A certification report is to be signed citing the specific reasons for the easements and how they were arrived, i.e., site investigation, aerial photography, contour maps, etc., with adequate nomenclature so as a specific document could be inspected for qualification of the easement.

REVIEW PROCESS

Prior to the finalizing of the easement sector of the Planning and Classification Report written comments shall be obtained from other State agencies involved and thereafter the document shall be submitted for staff review to assure that the input of Division staff members and other State agencies involved with the area is being considered. This circulation will be in two stages: (1) Preliminary draft form for input and (2) Final draft form prior to obtaining official signatures for the Planning and Classification Order.

EASEMENT QUALIFICATION

The easements set forth in this Policy and Guidelines are minimum. Additional easements may be necessary for the adequate administration and control of State lands for protection of public interests.

Senator STEVENS. Now, is Mr. Herb Smelcer here?

How about the representatives of Goldbelt?

Mr. BASS. We had all agreed not to testify today but to submit statements for the record.

Senator STEVENS. Thank you very much. They will be contained in the record.

Mr. Shoemake from Tikchik Lakes? I think his statement should be placed in the record, too.

Is Tom Drake here from Bering Straits? His statement will be placed in the record, also.

Now, is there anyone else here who desires to present a statement for these oversight hearings?

The record will be open for 2 weeks from today for submission of written testimony. Those who have presented statements and those who want to present statements should deliver them to the staff. It will be a staff decision as to whether or not the statements are redundant to material that is already in the record. And we will print the statements that are not redundant to statements already presented.

But that would end the testimony today and end the hearing. Thank you all for your patience and we appreciate the time you have taken to make the hearing and the hearing record a meaningful one.

[Whereupon, at 11:35 a.m., the hearing was adjourned, subject to the call of the Chair.]

APPENDIX

Additional Statements and Communications Submitted for the Record

STATEMENT

OF

KOOTZNOOWOO, INC.

. . . the Native village corporation
for the Village of Angoon, Alaska

Kootznoowoo, Inc.
Daniel Johnson, President
Post Box 116
Angoon, AK 99820

79-784 O - 77 - 22

SUMMARY OF TESTIMONY OF KOOTZNOOWOO, INC.
The Village Corporation for
the Native Village of Angoon, Alaska

Kootznoowoo, Inc. is comprised of the 625 shareholders of the Tlingit Indian Village of Angoon, Alaska. Angoon is located on Admiralty Island in Southeast Alaska. A situation has developed there which threatens the integrity and culture of the Island's Native community.

Urban Native corporations (Juneau and Sitka) exercising selection rights under the Act have started a land rush on the Island.

Congress intended that these urban corporations should have land from which to select; but the selections were to be made from lands withdrawn near and in reasonable proximity to the urban centers. With the aid of regulations promulgated by the Secretary, the urban corporations of Juneau and Sitka have descended on Admiralty Island and have selected large blocks of land around the small community of Angoon, at considerable distance from Juneau and Sitka. (Up to 50 miles away in the case of Sitka, and up to 62 miles in the case of Juneau.)

This rush for land on Admiralty Island is motivated purely by an economic desire to harvest the Island's fine timber. These urban corporations have no historic connection with the lands they seek.

Their selections, if allowed, will surround Angoon with large blocks of absentee owned timber land. This in turn can be expected to lead to the destruction of one of the last traditional native communities in Southeast Alaska.

To avert this result, Kootznoowoo, Inc. requests an amendment to the Act to halt the land rush on Admiralty Island, and to give these urban corporations the opportunity to select lands of equal value elsewhere in the area, but not on Admiralty Island.



VINCENT I. SOBOLEFF

Paddle boy Billy Johnson and dancers. Angoon, about 1900.



KOOTZNOOWOO, INC.

P.O. Box 116 — ANGOON, ALASKA 99820 — PHONE: 907-788-3571

STATEMENT OF DANIEL G. JOHNSON, SR.
PRESIDENT AND CHAIRMAN OF THE BOARD
KOOTZNOOWOO, INC.

ANSCA OVERSIGHT HEARINGS
JUNE 14, 1976

Mr. Chairman, Members of the Committee:

I am Daniel G. Johnson, Sr., President and Chairman of the Board of Kootznoowoo, Incorporated, which consists of the 625 Shareholders of the Native Village corporation of Angoon, Alaska.

Angoon is situated on Admiralty Island in Southeast Alaska, and our corporation, Kootznoowoo, Inc. was organized on November 9, 1973 under the laws of the State of Alaska and in accordance with the Alaska Native Claims Settlement Act of December 18, 1971.

As a Village Corporation organized under Section 16(a) of the Settlement Act, Kootznoowoo, Inc. has been charged with the responsibility of Land Selection.

This has not been an easy task, as you, members of this committee well know. There have been problems within the Settlement Act itself; some of these problems have been resolved in Congress, and there have been problems in the interpretation of the Act.

Our corporation is faced with a problem of interpretation:

Section 14(h)(3) reads in part:

> (3) the Secretary may withdraw and convey to the natives residing in Sitka, Kenai, Juneau, and Kodiak, if they incorporate under the laws of Alaska, the surface estate of lands of a similar character and not more than 23,040 acres of land, which shall be located in reasonable proximity to the municipalities . . .

and Section 14(h)(4) reads as follows:

> (4) the Secretary shall withdraw only such lands surrounding the villages and municipalities as are necessary to permit the conveyance authorized by Paragraphs (2) and (3) to be planned and effected; . . .

The words "reasonable proximity" and "surrounding" in these two paragraphs have been interpreted by the Secretary to mean "all available lands within a sixty two mile radius

of the villages and municipalities" in one case and "all available lands within a fifty mile radius" in another case. This puts the urban corporations of Sitka and Juneau in our backyard.

For centuries our people have lived on Admiralty Island far away from these Urban native groups. Now because of this interpretation by the Secretary and because of the appetite of these economically motivated urban corporations, a land rush is under way on Admiralty Island, and our traditional way of life is threatened.

To go back to October, 1974, before this problem surfaced (for who would have thought in 1974 that "reasonable proximity" could mean 62 miles) our corporation, in preparing for an orderly and quiet land selection process developed a set of purposes and goals which was drafted by our Land Planner, Sterling Bolima, as follows:

-PURPOSES AND GOALS-

The purpose of our land selection is to fulfill our obligation to our shareholders under Section 16 of the ANCSA.

However, our obligation is not only to comply with the Act, but also to provide our people with a sound land base so that our community can grow; socially, economically and, above all, proudly.

Environmental considerations have been foremost in the minds of our people long before History was recorded and our selection reflects this feeling for the land and waters, for the waters that touch on our shores have for countless ages provided food and transportation corridors necessary to our survival.

We have taken the names of animals, birds and fish for our clans, for our respect for our fellow creatures is boundless.

We have lived in harmony with our environment and we have been careful lest we upset the delicate balance of nature that has provided for us for centuries.

These things we will continue to do; they are a part of our culture.

Our social structure, passed down from generation to generation, goes beyond the last glaciation of our area. Stories tell of how we were forced from our land by the oncoming ice, and they speak of the joy of returning.

Bent slightly over the years, our culture remains basically unchanged. Old traditions still guide; old legends continue to instill pride of heritage and culture.

The land we retain is only a small part of the world we have lived in. We have traveled far and wide throughout this area. We have spread the ashes of our ancestors over the land we have touched and we have taken only what we needed to exist.

Our history has not come easily. There have been earthquakes, glaciation, years of famine and even a U. S. Navy bombardment that leveled our town. Yet we've hung on to our land, our ways and beliefs.

The change in our way of life, apparent through these last few years, has been sudden -- for this last century can only be considered a small part of our total existence.

There is no doubt that we will continue to change, for as everything changes around us, we must adopt other values, other ways. Through this change we will seek to strengthen our own values and reinforce our own beliefs.

This new culture brings with it a new economic base. For a people who not many years ago lived entirely from the land and sea, this has been the most deeply felt impact.

This impact is still apparent in Angoon where the median income is well below the poverty level. This is not to say our people live in poverty -- eighty years ago the median income was near zero -- but relating to standards set for the country as a whole, we must strive to provide a sound economic base for future growth.

These, then, were and are our purposes and goals; to see to the social needs of our people, to protect our environment, and to provide an economic base for future growth.

Our optimism of 1974 has been replaced by gnawing doubts. Can we protect our culture with two hundred woodsmen perched on our doorstep? Can we protect our environment while absentee owners log our backyard? Can we develop our

economy while urban speculators surround us with their development?

This is the problem we face; and it is caused by the interpretation of three words "reasonable proximity" and "surrounding".

Looking through the hearing records and reports you will see the words "area occupied, subsistence, territorial rights and historical rights" repeated over and over again. It is clear that the Congress, in putting together the Settlement Act, did not mean for the urban natives to cast about throughout Southeastern Alaska in order to seize our historical, territorial and subsistence lands which we have used and occupied since time immemorial; for them to seize these lands in a relentless search for commercially valuable timber. No, Congress made its intentions clear; the Act says "reasonable proximity" and "surrounding" their own community. This is not much different than the wording recommended by the Committee of Conference in their Report of December 14, 1971 in which the following language is used:

> (4) The surface estate in not to exceed 23,040 acres will be conveyed to Natives in four towns that originally were Native villages, but that are now composed predominantly of non-Natives. These conveyances will be near the towns, but far enough away to allow for growth and expansion of the towns . . .

And here, then, we have another word "near". Near the towns.

Congress' intent was clear; the Secretary of the Interior, in his discretion might give the urban natives 23,040 acres near (in reasonable proximity) and surrounding their towns. The Act was not written to allow the urban corporations of Sitka and Juneau to reap windfall timber profits at the expense of the Natives of Angoon or the Shareholders of Kootznoowoo.

How did this situation come about and more importantly, what is the solution?

This is not an administrative problem that can be solved through administrative procedures, for it is just these procedures that brought the problem about. An administrator

made the arbitrary decision that lands 62 miles from Juneau were "in reasonable proximity" to that town. It is administrative procedure that allows the Juneau and Sitka urban corporation to "surround" Angoon and not Juneau or Sitka.

What about the Courts? Will they decide that surrounding Angoon is the same as surrounding Juneau or Sitka? Will they decide that the intent of Congress was to allow the Juneau and Sitka urban corporations to camp on our doorstep, waiting for the "big one"; the big timber sale that will make them all rich, while they pollute our streams, tax our water supply, undermine our culture and destroy our traditional way of life? Will the courts decide that the urban Natives who have forsaken the rigors of village life for the comforts of the City, have more rights to land than those of us who depend on the land for our sustenance? Or will the courts decide that the intent of Congress was for ". . . a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims"?

The urban corporations of Juneau and Sitka claim no aboriginal rights to the timberlands they seek nor do they claim historical, traditional or any other ties to these lands. They instead claim economic reasons for their quest for timber.

We don't argue that they shouldn't get land and we don't say that their economic reasons are wrong. We do say, however, that we will not sacrifice one deer from our traditional hunting grounds so that they can buy more pork chops in their fancy supermarkets; we will not sacrifice one inch of our land to logging roads so that they can parade their logging trucks reeling with their booty through our village. We have therefore committed ourselves to a long and drawnout battle to see that our land and environs are protected.

We have filed suit in the U.S. District Court in Anchorage, Alaska to determine the meaning of those three words "reasonable proximity" and "surrounding" for that is what it boils down to.

It is our hope that in the end justice will prevail and we will win this struggle to save our way of life.

Looking back, you will note that it is Congress that delineated this battlefield; it is Congress that set apart the combatants, and you will again note it is Congress that is supplying our opponents with arms, for in this battle our

has been granted to each of these urban corporations to carry on their land selection process; a process now before the Courts. Congress has provided everything but the solution. What is the solution? Dr. Kissinger might suggest a DMZ or a no mans land. We will go one step further.

If Congress will simply help get them out of our backyard, they can have any other land the Secretary deems fit to give them; and to this end we respectfully submit a proposed amendment to the Alaska Native Claims Settlement Act, a copy of which will be offered into the record.

The effect of this proposed amendment is to withdraw the island from all forms of appropriation under the Native Claims Settlement Act and other public land laws except for selections by the Village of Angoon within the area presently withdrawn for this purpose. This withdrawal would remain in effect pending a full and complete study of the area and in the meantime, the Secretary would be directed to withdrawn lands elsewhere of equal or greater value for selection by the urban corporations.

Congress has previously recognized Admiralty Island's unique character, and Section 10 of the recent Omnibus Act bars SeaAlaska, the Regional Native Corporation, from making selections on the island. This proposed amendment would extend this same prohibition to these Urban Corporations.

I have come all the way to Washington in the hope of obtaining a just solution to this problem. I ask you not to allow me to return to my people and report that I have failed.

A BILL TO AMEND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, PL 92-203, 43 U.S.C. 1601 et seq., 85 Stat. 688:

Section 16(b) of the Settlement Act is amended by adding at the end thereof the following:

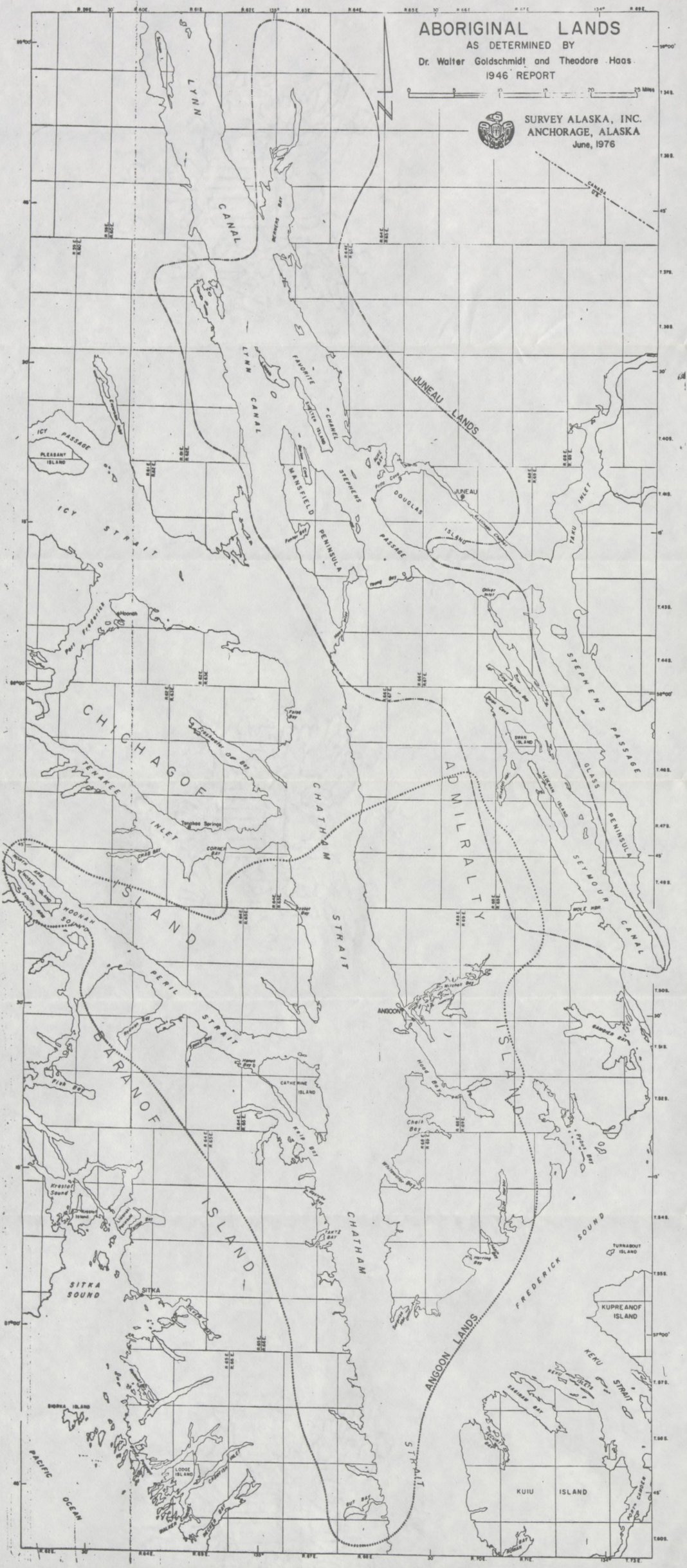
Congress, being mindful of the present controversy involving the lands of Admiralty Island, hereby directs the Secretary to withdraw the lands of Admiralty Island from all forms of appropriation under the public land laws of the United States, including Section 14(h)(3) of the Settlement Act, and directs that the Secretary prepare a comprehensive study of the environmental, social and economic resources of Admiralty Island and its unique aspects. Said study shall be completed within two years from the date of this Amendment, at which time the Secretary shall report to Congress with appropriate recommendations concerning future disposition of lands on the said Island; provided, however, that the Secretary shall designate alternative lands of equal or greater value located elsewhere in southeast Alaska for the benefit of the Juneau and Sitka urban corporations; and provided further, that the area presently withdrawn for selection by the Angoon Native Corporation pursuant to the mandatory provisions of Section 16(a) of the Act shall not be affected by this Amendment and shall remain available for selection by the Angoon Native Corporation.



ANGOON'S MAIN STREET IN WINTER
(John Lyman)



House Front at Angoon, circa 1910


ABORIGINAL LANDS
AS DETERMINED BY
Dr. Walter Goldschmidt and Theodore Haas
1946 REPORT
SURVEY ALASKA, INC.
ANCHORAGE, ALASKA
June, 1976
JUNEAU LANDS
ANGOON LANDS
LYNN CANAL
ICY STRAIT
CHICHAGOF ISLAND
BARANOF ISLAND
ADMIRALTY ISLAND
CHATHAM STRAIT
PERIL STRAIT
STEPHENS PASSAGE
FREDERICK SOUND
KUIU ISLAND
KUPREANOF ISLAND
KEKU STRAIT
SITKA SOUND
PACIFIC OCEAN
JUNEAU
ANGOON
SITKA
PLEASANT ISLAND
DOUGLAS ISLAND
MANSFIELD PENINSULA
GLASS PENINSULA
TENAKEE INLET
HOONAH SOUND
TAKU INLET
SEYMOUR CANAL
CATHERINE ISLAND
BARANOF ISLAND
KRESTOF SOUND
BIORKA ISLAND
LOGGE ISLAND
TURNABOUT ISLAND
CANADA

COLE, HARTIG, RHODES, NORMAN, MAHONEY, & GOLTZ
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
SUITE 201
717 K STREET
ANCHORAGE, ALASKA 99501
(907) 274-3576

HOYT M. COLE
ROBERT L. HARTIG
JAMES D. RHODES
JOHN K. NORMAN
ROBERT J. MAHONEY
KEITH A. GOLTZ
BERNARD J. DOUGHERTY

August 27, 1975

Mr. Curtis McVee
State Director
Bureau of Land Management
555 Cordova Street
Anchorage, AK 99504

Re: Selection Nominations of
GOLDBELT, INC. (AA-9205);
and SHEE ATIKA, INC.(AA-9206)

Dear Mr. McVee:

Please be advised that the Native corporation Kootznoowoo, Inc. hereby registers this letter of protest to the withdrawal of lands nominated on Admiralty Island in the above referenced selection nominations and, further, to certain actions by the Secretary of the Interior regarding §14(h)(3) of the Alaska Native Claims Settlement Act (ANCSA).

Kootznoowoo, Inc. objects to the withdrawal of these lands on the basis that such withdrawal is contrary to the intent and purpose stated in ANCSA and other statutory requirements as provided by law.

Congress declared the purpose of ANCSA to be the just and fair settlement of all claims by Alaskan Natives based on aboriginal land claims. It was the stated intent of Congress that this settlement be accomplished rapidly, with certainty, in conformity with the real economic and social needs of the Natives, without litigation, and with maximum participation by Natives in decisions affecting their rights and property. No provision of the Act is to be interpreted as relieving, replacing or diminishing any obligation of the United States or of the State of Alaska to protect and promote the rights and welfare of Natives as citizens of the United States or of Alaska.

The Natives comprising the corporation of Kootznoowoo, Inc. believe that their rights, interests, privileges and welfare,

both as United States citizens and as Alaskan Natives registering their just claim under ANCSA, have been inadequately protected by recent and pending actions sanctioned by the Department of Interior. ANCSA provides for the withdrawal and conveyance of public lands in specified acreage to several types of Alaskan Natives groups. These include Native villages, as specified in §§11 and 16; and Natives residing in the four cities specified in §14(h)(3). Two of these four cities are situated in the southeastern Alaska region and are permitted, under rules promulgated by the Secretary, to make substantial selections of land contiguous to and surrounding the Kootznoowoo locality on Admiralty Island.

Potential harvesting of more than sixty thousand acres of pristine forests so near the Angoon community threatens the culture and life style of the Natives belonging to the Kootznoowoo Native corporation, and endangers the food supply, shelter, and ecosystem on which are dependent the many species of wildlife and vegetation which inhabit Admiralty Island.

The statute requires that lands eligible for withdrawal and selection by Native Village corporations be situated within a reasonable distance to the center of the Native community. More specifically, §11(a)(1) limits the withdrawal to public lands situated no further than two townships from the core township of the Native village:

> Sec. 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.

This provision has the effect of limiting the land base upon which village corporations can make their selections to an area with a radius varying from between fifteen to twenty-one miles, measured from the village center, or approximately twenty-five townships. Section 14(h)(2) authorizes Native groups to select their acreage from Native lands surrounding the Native group's locality. The "four cities" corporations are authorized by §14(h)(3) to select only from lands located in reasonable proximity to their respective municipalities. Of relevance to this selection process is the Joint Statement of the Committee of Conference which provides, with reference to §14(h), as follows:

> The surface estate . . . will be conveyed to Natives in four towns that originally were Native villages, but that are now composed predominately of non-natives. These conveyances will be near the towns, but far enough away to allow for growth and expansion of the towns. [Emphasis supplied.]

The Secretary failed to comply with the intent and purposes expressed in ANCSA and by the Conference Report when promulgating the selection regulations at 43 C.F.R. 2653.7. This section provides that the corporations representing the Natives of Sitka, Kenai, Juneau and Kodiak, after incorporating, may each select the surface estate of up to 23,040 acres of land of similar character located in reasonable proximity to those municipalities; subsection (b) of the regulation further provides that the corporations representing the municipalities shall nominate not less than 92,160 acres of land within fifty miles of each of the four named cities, which are similar in character to the lands in which each is located. A radius of fifty miles provides these cities an

area of over 7,500 square miles encompassing nearly 250 townships (ten times the selection area available to Kootznoowoo, Inc. and other §11 corporations,) from which to make their selections. This basic fifty mile radius limit in the regulation is inconsistent with the statutorily and congressionally expressed intent that selections be within reasonable proximity to the local municipalities.

Further, allowance of selections in the Angoon area and on Admiralty Island is inconsistent with the intent of ANCSA, as well as other federal legislation and regulations, to have selections within reasonable proximity to the two municipalities and not to allow selections simply to be made at large. It is apparent that the motivation for selecting lands on Admiralty Island is based solely on economic considerations and the hope of significant economic windfalls in the near future--all of which is repugnant to the intent and purposes expressed in the history and language of ANCSA.

ANCSA was not intended to grant economic windfalls to one class of Native corporations to the detriment of an adjacent Native culture, such as the Kootznoowoo membership, or to the destruction of a unique and highly productive natural environment, such as that thriving on Admiralty Island. In fact, the Act specifies that it is the duty of the Secretary to assure the continuation of subsistence hunting and fishing activites by the Native cultures provided for in the Act.

The nominations by Goldbelt, Inc. and Shee Atika, Inc. of lands on Admiralty Island are further objectionable because these nominations are not based on aboriginal land claims of the two communities. Kootznoowoo, Inc. particularly objects to the waiver by the Secretary of the fifty mile limitation in favor of Goldbelt, Inc. since this decision of the Secretary could result in significant impact on the people and environment of Admiralty Island. An Environmental Impact Statement should have been prepared on adverse effects that might result from a waiver of this limitation. Section 102 of the National Environmental Policy Act, 42 U.S.C. §4332(C), requires the Department of the Interior to provide a detailed environmental impact statement on every recommendation or report on proposals for legislation and other major federal

actions significantly affecting the quality of the human environment. (42 U.S.C.A. 4332(C)) The significant amount of acreage that could be subjected to logging operations in the immediate vicinity of the Angoon community with resulting harsh environmental effects deserves the careful, detailed study and attention of trained experts in the Department of the Interior. See Sierra Club v. Froehlke, 359 F.Supp. 1289; 40 C.F.R. 50, et seq. In other situations involving federal actions such as timber sales and dredging activities, the Courts have been consistent in requiring environmental impact statements on possible adverse effects of the activities upon fish and wildlife, vegetation, and an appraisal of the full social, economic and environmental costs that might result from the action. See Wyo. Outdoor Coordinating Council v. Butz, 484 F.2d 1244; Proetta v. Dent, 484 F.2d 1146; and Minn. Public Interest Research Group v. Butz, 358 F.Supp. 584. The stockholders in Kootznoowoo, Inc. are interested in the alternative township selections available to Goldbelt, Inc., and Shee Atika, Inc., in areas situated more closely to their respective municipalities, a facet of the Secretary's action under ANCSA that should be explored more thoroughly and as required by 42 U.S.C.A. 4332(1)(C)(ii). I-291 WHY? Assn. v. Burns, 372 F.Supp. 223; Environmental Defense Fund v. TVA, 371 F.Supp. 1004, aff. 492 F.2d 466.

An environmental impact statement should have been filed by the Secretary, both for the original promulgation of the fifty mile limitation rule and for the subsequent waiver of that rule as it applied to the Goldbelt corporation, since the development of significant logging operations on Admiralty Island was a distinct possibility and was indicated by the nomination of lands by both Goldbelt and Shee Atika.

Several other factors within the knowledge of the Secretary adverse to the environmental integrity of Admiralty Island and the Native community situated thereon should have been included by the Secretary when developing the regulations and granting the waiver to Goldbelt, Inc. Development of large-scale timber operations would drain the natural resources of Angoon, dilute and eventually assimilate the Native culture and sociology which has existed for many years on Admiralty Island, and open the Island to an influx of new commercial and industrial activity with resulting irreversible

and adverse effects, none of which was intended by Congress when enacting ANCSA. The Secretary is obligated to perform his statutorily defined responsibility of ascertaining the cumulative effects on the quality of the human environment that could result from his decision in this matter. Simmons v. Grant, 370 F.Supp. 5.

A study conducted by the Department of the Interior under authority of the Wilderness Act, 16 U.S.C.A. 1131, et seq., indicates the wilderness character of much of the Admiralty Island area. Kootznoowoo, Inc., vouches for the authenticity of that study and appreciates the character of the land and desires that it continue to fulfill its role in the subsistence hunting and fishing activities of the Native community and as a unique recreational area available to the people of Alaska. The Department further is aware of the desire expressed by the Natives of Kootznoowoo, Inc., to have the Mitchell Bay Inlet and related estuarine area declared a National Estuarine Sanctuary as provided by the Estuarine Areas Act of 1972, 16 U.S.C.A 1461.

The Department is also aware of the long term commitments of the National Forest Service with private economic interests over a large portion of the forested acreage situated on Admiralty Island. Allowance of these additional selections would grossly overburden an already dangerously encumbered natural resource area.

The waiver of the fifty mile request as to Goldbelt was done without notice to Kootznoowoo, Inc. and other interested parties. Pursuant to 43 C.F.R. §2650.0-8, the Secretary is authorized to waive any non-statutory requirement of the regulations pertaining to Alaska Native selections. However, the language in the regulations indicates that the Secretary's discretion should be exercised freely only "when the rights of third parties will not be impaired." Kootznoowoo, Inc. fears that selections on Admiralty Island by these urban corporations will result in a significant drain on the resources of the local community and potential destruction of resources available to future generations. If allowed, these proposed selections will endanger the future of valuable

commerical and sport fisheries upon which the Admiralty Island fishing community is dependent, will threaten the historical sites, usages and life style characteristic of the Kootznoowoo people, and will interrupt the pattern of hunting, fishing and other activities enjoyed for generations by the local Native community.

The Secretary, by his initial promulgation of the fifty mile radius limitation and his subsequent waiver and even further extention of that limitation has failed to consider fully the impact which these withdrawals would have on the Native culture of Admiralty Island. This waiver of the fifty mile limitation without actual notice to third parties in interest, has impaired the rights of the Natives of Kootznoowoo, Inc. by opening the door for selections to be made on Admiralty Island, in a manner which is in conflict with principles of orderly and planned development and is incompatible with National and State environmental objectives, as well as the public interest in public lands, forests, and wildlife in Alaska. Such action unmistakably impairs the economic and social well being of the Native people residing on Admiralty Island.

For the reasons stated herein it is urged that there be no withdrawal of lands on Admiralty Island in response to the referred nominations by Goldbelt, Inc., and Shee Atika, Inc. and that said nominations be rejected insofar as they seek to effect such withdrawals.

Very truly yours,

COLE, HARTIG, RHODES, NORMAN.
MAHONEY, & GOLTZ
Attorneys for Kootznoowoo, Inc.

By
John K. Norman

TESTIMONY OF JOSEPH KAHKALEN ON BEHALF OF GOLDBELT, INC.

Mr. Chairman, my name is Joseph Kahkalen. I am an Alaska Native who was raised in Angoon, Alaska, and I'm enrolled as a member of Goldbelt, Inc., the Settlement Act corporation organized by the Natives enrolled in Juneau for the purpose of selecting 23,040 acres of land under § 14(h)(3). I appear today on behalf of Goldbelt to let this Committee know our side of the controversy over selections on Admiralty Island which has resulted from the response of the Sierra Club and the 625 shareholders of Kootznoowoo to decisions made by Goldbelt and Shee-Atika on behalf of their combined 4400 stockholders.

It is important to put this issue in its appropriate context. What is involved is the selection of 23,040 acres each by the Natives of Juneau and Sitka. This land represents all the land we will retain and it is only about 0.05% of the total land retained by all Alaska Natives under ANCSA. Our opponents in this controversy sometimes imply that we are being greedy in our land selections. That, we believe, is a distortion of the truth. Under ANCSA 80,000,000 acres of land were set aside to satisfy the needs of the public and the conservationists. That land is twice what all the Natives put together will own. The Sierra Club is not satisfied with 80,000,000 acres, but apparently wants to keep all of Admiralty Island as well. Angoon is entitled to select 23,040 acres of land, and we fully support them in getting whatever land they choose to select. But Angoon apparently wants to extend its control of lands beyond the limits of its withdrawal area. They join the Sierra Club in wanting to exclude us from any lands on Admiralty Island, an area one-third larger than the entire State of Rhode Island. We are simply seeking the best available lands—we owe a duty to our stockholders to do no less. We do not seek one acre of land more than we are entitled to under the settlement. But we do not want to be forced to take other lands of far lesser value because of pressures put on Interior and Congress by groups seeking to extend their land influence beyond the terms of the Settlement.

Goldbelt's land selection process began soon after we were organized in January of 1974. We approached selection carefully since we knew it was a one-time opportunity to obtain the best available resource base for our stockholders. ANCSA provided for selection by us of 23,040 acres. The Secretary of the Interior had already published regulations that our lands should be selected within 50 miles of Juneau. We therefore began a comprehensive study of all the land within that 50-mile radius. In August, 1974, the BIA Planning Support Group finished their study of those lands. In December, 1974, Interior told us what steps we had to follow to complete selections by December 18, 1975. We were told the timing was crucial and we must act quickly.

In reviewing lands for possible selection, we were guided by a single primary principle—serving the best interests of our stockholders. We soon learned that we had problems in meeting that goal within the 50-mile radius. In our selection area there were a large number of previous timber sales. If we selected lands which were covered by those sales, we would suffer great economic losses. Nevertheless, we worked to develop a selection pattern within our 50-mile radius.

On January 22, 1975, Goldbelt representatives met with Interior Department representatives here in Washington to discuss an extension of the February 1, 1975, deadline for our land nominations. During that meeting, we told Interior about our problems with timber sales in the 50-mile area. The Interior officials present suggested that we look outside the 50-mile limit to find suitable land. They also suggested we should work with the Forest Service in developing our nominations.

We followed Interior's advice, went back to revise our nominations and on February 23, 1975, nominated 92,160 acres for consideration by the Secretary as lands to be withdrawn for our selection. As Interior had suggested, we included some lands on Admiralty Island outside the 50-mile radius. We had developed those nominations in close co-ordination with the Forest Service. They encouraged us to make selections near the lands chosen by Shee-Atika and Angoon to develop sound management blocks. Our nominations followed their advice. On March 7, 1975, we formally asked for a waiver of the 50-mile limit. BLM and the Forest Service supported the waiver, and Assistant Secretary Hughes granted the waiver on May 20, 1975. A copy of that waiver is attached.

Part of the selection process included public hearings on land nominations. A hearing was held in Juneau on April 10, 1975. Interior had previously announced that written comments would be received up until April 28, but that period was extended until May 12 at the request of the State of Alaska. Testimony from interested parties was taken, and letters were received. The Forest Service supported our land selections, believing that compact selections by Angoon, Sitka and Juneau in one area were in the public interest. A copy of their May 9, 1975, letter endorsing our first priority selections is also submitted with this statement.

At those hearings the Sierra Club opposed our selections on Admiralty Island and Angoon expressed opposition to selections near their village. The State did not testify and did not submit any written comments by the May 12, 1975, deadline. After the hearings things began to change, but not for our benefit. Although Interior had told us it would not take further comments after May 12, it solicited advice from the State after that date. On September 2, 1975, the Acting Secretary met with Governor Hammond without the presence of any representative of Goldbelt and despite our specific written objection to such a meeting. Prior to that private, off-the-record meeting, our nominations had been processed by BLM Alaska and that office was working on recommendations for withdrawals of land for our selection. After that meeting we were informed on September 9th that BLM Alaska would take no further action on our selections, but that all decisions would be made by the Alaska Task Force here in Washington. It is now clear to us that the deal was cut at that September meeting and that Interior made a political decision to ignore the needs of the Juneau and Sitka Natives and to adopt a proposal put forth by the State, the Sierra Club and Angoon. In essence, those interest groups got together and decided that Juneau and Sitka would not be allowed to select any lands in the Mitchell Bay, Kanalku Bay or Chaik Bay areas. The Interior Department rubber-stamped that proposal without trying to obtain our approval or make changes which might satisfy all concerned. In early November, 1975, representatives of Goldbelt met with Ken Brown and Doug Wheeler of Interior. We knew then what the deal with the State, Angoon and the Sierra Club was. We explained to them why our first priority lands were more valuable than other alternatives. We told them we were willing to compromise and trade Mitchell Bay lands for lands of equal value elsewhere. A copy of our written presentation is attached. Our effort to reach an acceptable settlement failed. Interior did not even discuss the possibility of alternative selections of equal value, but chose to stick with the deal it made with the state. On November 21, 1975, Interior finally withdrew lands for our selection. They refused to withdraw any of the lands we requested in the Mitchell Bay-Kanalku Bay area. They ignored the waiver of the 50-mile limit and forced us to select less valuable lands in tracts widely separated from Angoon and Sitka. The joint management approach we had developed at the suggestion of BLM and the Forest Service was thus impossible. We had to complete our selections by December 18th and it was obvious that no 12th-hour compromise was possible. Reluctantly we filed our selections under protest and went to court to challenge the Secretary's acts and preserve a position from which to negotiate a settlement with Angoon, the State and the Sierra Club.

The Sierra Club and Angoon reacted. They repudiated the position they had taken earlier. In August Angoon told Interior they had no objection to our selections in the Ward Creek-Lake Kathleen area of Admiralty Island. In November the Secretary withdrew precisely the areas where Angoon said it had no objection, and in December Goldbelt filed selections within those areas to protect our rights if we cannot attain our first priorities through litigation or otherwise. Angoon turned around and now wants to keep us off of Admiralty Island entirely. They have sued to invalidate the Secretary's withdrawals which they supported and suggested to him, and they are now asking Congress to legislate us off our selections onto lands of far lesser value.

Goldbelt seeks to serve its stockholders' interests by selecting the best available land. We are limited under ANCSA to selecting 23,040 acres "in reasonable proximity" to Juneau. Given those statutory selections, it is clear to us that our first priority selections are far more valuable than any other alternative. We hired professionals to advise us on our land selections and our decisions reflect their advice. We will continue to seek to select the best available land.

We will continue to try to work with our friends in Angoon to reach an agreement on selections that will maximize the benefit to the entire Native community. We will try to avoid unnecessary conflicts with the Sierra Club and the State. However, we cannot ignore our duty to our stockholders and give in to the pressures to take inferior lands simply to avoid conflicting with the interests of others. There is room in Alaska for all interests. ANCSA set forth the guidelines for dividing the land fairly. Under those guidelines the Secretary withdrew lands on Admiralty Island for our selection, although we contend he did not withdraw the lands he should have. There is no reason to enlarge the domain of the Sierra Club or protect Angoon by keeping everyone else off of Admiralty. Congress should not step in precipitously to force a settlement. We will consider proposals other than our own, but we must be satisfied that they truly present a chance for us to obtain lands of equivalent value to those we have chosen. To date no one has suggested such an alternative.

Mr. Chairman, we appreciate this opportunity to respond to the Sierra Club and Angoon to express our side of this dispute.

STATEMENT OF WARREN WEATHERS ON BEHALF OF SHEE ATIKA, INC.

My name is Warren Weathers. I am Executive Director of Shee Atika, Inc. Shee Atika, Inc. is the Native corporation created pursuant to Section 14(h)(3) of ANCSA to represent the Natives residing in Sitka. Nelson Frank, President of Shee Atika, Inc., regrets his inability to be present at this hearing and has requested that I present this statement.

We have requested the opportunity to appear because of testimony presented on behalf of Kootznoowoo, Inc., the Native village corporation for the village of Angoon, and because of the testimony of the representative of the Sierra Club regarding our land selections.

Shee Atika has 1800 members. It is, I believe, pertinent to point out that many of these members have cultural ties to Admiralty Island. As a matter of fact, Shee Atika has at least as many members with cultural ties to Admiralty Island as the entire membership of Angoon, which is 625.

Under Section 14(h)(3), Shee Atika, like the Native corporations representing the other so-called urban villages (Juneau, Kenai and Kodiak), is entitled to 23,040 acres of land.

The Secretary of the Interior has designated certain lands on Admiralty Island out of which Shee Atika's 23,040 acre entitlement is to be selected, and he has similarly designated other lands on Admiralty Island out of which Goldbelt, the Native corporation for the Native inhabitants of Juneau, is to select its 23,040 acre entitlement.

Both Shee Atika and Goldbelt believe that the areas designated by the Secretary of the Interior for their selection on Admiralty Island violate their rights under ANCSA and the Secretary's regulations. Each corporation has, therefore, brought suit against the Secretary to require him to designate for selection the lands nominated by each corporation.

Both Kootznoowoo and the Sierra Club have attempted to insinuate themselves into that lawsuit. Under ANCSA, Kootznoowoo is entitled to 23,040 acres in the immediate vicinity of Angoon. The land selections that Goldbelt and Shee Atika seek do not invade any land to which Kootznoowoo is entitled under ANCSA. Kootznoowoo's opposition to the land selections of Shee Atika and Goldbelt amounts simply to an effort by Kootznoowoo to extend its control over lands to which it is not entitled under ANCSA. In effect, Kootznoowoo seeks to acquire more land than ANCSA entitles them to and at the expense of Shee Atika and Goldbelt.

The Sierra Club has a single-minded objective. It wants the Natives off of Admiralty Island. The land entitlements of Shee Atika and Goldbelt together comprise but slightly more than 46,000 acres. This acreage is about 1/10 of 1 percent of the 40 million acres which ANCSA provides for all the Alaska Natives in settlement of their aboriginal land claims which encompassed more than 80% of the land area of the entire State of Alaska.

While ANCSA provided a 40 million acre settlement for the Alaska Natives, it also provides 80 million acres to satisfy so-called conservation interests. The Sierra Club is obviously not satisfied with the 80 million acres which Congress

provided to meet their point of view and now seeks to oust the Natives of Sitka and Juneau from their entitlements. The tactics of the Sierra Club are neither fair nor equitable. Unfortunately, they are typical of the Sierra Club's attitude toward the Native peoples—that the Sierra Club knows better than the Native people what is good for them and that they should, in effect, be relegated to the status of human exhibits in a statewide wilderness area. The members of Shee Atika and Goldbelt are entitled to their portion of the Alaska Native claims settlement as a matter of right. Their land entitlements are not charity to be bestowed or withheld at the whim of the Sierra Club.

If I may for a moment return to the position of Angoon. Shee Atika and Goldbelt have time after time offered to provide assurances to Angoon that Angonn's subsistence needs will be protected. We repeat that assurance here. We are prepared to meet with Angoon at any time to discuss with that corporation's representatives appropriate measures to make that commitment a reality.

Shee Atika undertook extensive, as well as expensive, studies in order to nominate lands which would be in the best interests of its members. We complied with the Secretary's time limits. We worked closely with the BIA and the Forest Service. Having done all of these things, we are shocked at the fact that the Secretary of the Interior ignored our own pressing needs and, literally, went behind our backs in making his determinations. We are not, of course, shocked at the attitude of the Sierra Club. We have had to live for a long time with the knowledge that the Sierra Club is not satisfied with the 80 million acre 17(d)(2) lands, but wishes to control the destiny of the Natives of Sitka and Juneau as well. As for Angoon, we are saddened to find that our fellow Natives have arrayed themselves with the Sierra Club.

In its testimony, the Sierra Club proposes that Congress amend ANCSA to provide that the Juneau and Sitka corporations receive "an equivalent amount of timber" elsewhere than on Admiralty Island. Entirely aside from the question of where that timber is to be found, the Sierra Club's suggestion that the proper standard is "equivalent amount" rather than "equivalent value" demonstrates the Club's complete lack of concern for the economic interests of the Natives. Moreover, by specifying timber only, the Sierra Club would have Congress ignore all the other values for which Goldbelt and Shee Atika have designated lands.

Kootznoowoo proposes that we be legislated off of Admiralty Island, with the Secretary of the Interior designating lands elsewhere of equal or greater value.

As I stated earlier, many of our members have cultural ties to Admiralty Island. It is no easy matter for them to be told that they can have no Admiralty Island land while Angoon receives 23,040 acres and, in effect, dominion over the rest of the island. Admiralty Island is an area a third larger than the State of Rhode Island. Its entire population is smaller than the House of Representatives. Many of our members and of Goldbelt's members will find it hard to understand there is not room on Admiralty Island for both their lands and the 23,000 acre entitlement of Angoon. Cultural ties aside, moreover, there remains a substantial question of whether, in fact, sufficient lands of equivalent value could be found outside of Admiralty Island without creating more problems than our removal from Admiralty Island would resolve. Finally, given the difficulties Shee Atika and Goldbelt have already experienced with the Secretary of the Interior's land selections, we question the fairness of making the Secretary of the Interior the exclusive judge of equivalent value. We are, of course, prepared to explore any concept which gives promise of resolving our land problems in a way which is fair to us. At this time, however, I must advise that neither the Kootznoowoo nor the Sierra Club proposals are satisfactory.

I will not presume upon the Committee's time to argue our legal case. Suffice it to say we believe that our legal position is sound. The Committee, however, has not called these hearings for the purpose of acting as a court and we therefore refrain from imposing upon the Committee by arguing our legal case.

Shee Atika appreciates the opportunity to present this statement.

Statement on Behalf of Bering Straits Native Corporation

INTRODUCTION

Bering Straits Native Corporation would like to state on the onset that we appreciate the opportunity to submit written testimony before this Committee. It is our hope and our belief that these oversight hearings will serve to eliminate some of the common problems that face the village corporations, regional corporations and numerous government agencies.

INTERIM CONVEYANCE

One of Bering Straits Native Corporation's major problems has been the inordinate delays in receipt of interim conveyance or patent. This has been a common problem shared by all 12 land-based regional corporations and their respective village corporations. To date, neither the regional corporation nor the 17 BSNC villages have received interim conveyance to a single parcel of land. Bering Straits initial request for interim conveyance was submitted to the Bureau of Land Management almost three years ago. Since that time we have received a variety of excuses as to why this request has not been granted. These excuses have ranged from "lack of departmental jurisdiction" to "lack of regulations" to the more current issues of easements and navigable waters. In this regard we must emphasize that both the region and the villages of Diomede and Brevig have long since completed the Bureau of Land Managements requirements. Yet, we still do not have interim conveyance for any parcel of land.

In view of the current situation regarding interim conveyances and the inordinate delays, Bering Straits Native Corporation firmly believes there should be an automatic granting of interim conveyance. We feel certain that this idea is consistent with the Congressional intent of ANCSA. In this manner all parties would benefit, and the conveying of land would be accomplished in a timely manner at considerable less expense.

NAVIGABLE WATERS

A related issue to our discussion on interim conveyance is the lack of definition for navigable waters. The Bureau of Land Management has repeatedly used this as a reason for a delay in issuing interim conveyances. This has occurred in spite of the fact that historically navigable waters have been handled on a case by case basis. In view of the magnetude of this problem, it becomes apparent that interim conveyances will be delayed decades if "Navigable Waters" are considered a factor. Bering Straits Native Corporation can readily show you BLM maps that delineate private and public recommendations regarding navigability. These include recommendations by more than 35 separate agencies plus an indeterminant number from private individuals.

Bering Straits Native Corporation is convinced that navigability must be considered a separate unrelated topic, and must not enter in to the subject of interim conveyance.

EASEMENTS

In keeping with the "Declaration of Policy" as set forth in Section 2(a) and 2(b) of ANCSA, it becomes evident that the subject of easements must also be considered separately from interim conveyances. Section 2 states in part; "Congress finds and declares that——

(a) There is an *immediate* (emphasis supplied) need for a fair and just settlement of all claims by natives and native groups of Alaska, based on aboriginal land claims;

(b) The settlement shou'd be accomplished *rapidly*, (emphasis supplied) 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* (emphasis supplied) without establishing any permanent racially defined institutions, rights, privileges, or obligations, *without creating a reservation system or lengthy wardship or trusteeship*, (emphasis supplied) and ——."

Additionally, in regard to easements, there must be the recognization by the

Bureau of Land Management that Native owned land will be private land, and must be treated as such. Instrumental to this is that the prime purpose for easements is access to public lands, *not* public use of Native lands.

DEADLINES

The issue of easements brings the subject of deadlines to mind, and the problem of numerous government agencies extending, cancelling or ignoring their solid or inferred deadlines. A recent example of this is the statement released by the BLM Alaska State Director on May 28th of this year. To quote "in newspaper ads published statewide in April, we asked the public to send us their information on use of recreational waters by June 1st," said McVee. "Will still consider any information we receive after the target date of June 1st."

Another example that exemplifies this problem is the 14(h) selection deadline and more specifically the historical site, cemetary place selections. Though the initial ANCSA deadline for these selections was December 18th, 1975; the final rules and regulations governing them were *not* published until April 7, 1976. This problem was compounded by the fact that the official extension of the December 18th deadline did not come until December 17th, 1975.

BLM HOLDBACK ACREAGE

Another land related issue has recently been raised by the Alaska State Office of the Bureau of Land Management. This is the 10% holdback or hostage acreage. The BLM maintains this position is necessary to assure that Native selected land is not "overconveyed." Bering Straits Native Corporation is convinced this tactic is totally unnecessary. Section 22(j) of ANCSA reads:

"In any area of Alaska for which protraction diagrams of the Bureau of Land Management or the state do not exist, or which does not conform to the United States Land Survey System, or which has not been surveyed in a manner adequate to withdraw and grant the lands provided for under this act, the secretary shall take such actions as are necessary to accomplish the purpose of this act, and the deeds granted shall note that upon completion of an adequate survey appropriate adjustments will be made to insure that the beneficiaries of the land grants receive their full entitlement."

We feel certain that this section adequately solves the problem of overconveying or underconveying.

TAXATION OF LAND

Somewhat related to interim conveyances is the subject of possible property taxation on undeveloped ANCSA land. The act provided for a 20 year exemption on potential state taxation. We recommend that this exemption be extended indefinitely. Much of the land selected is not suitable for short term development, and some of the land should never be developed. But the real threat of potential taxation could well preclude a program of sound land use planning and management.

REIMBURSEMENT

In regard to the forementioned subjects, there is one additional topic, Bering Straits Native Corporation wishes to address at this time. This is the subject of reimbursement. To date, we have not been granted interim conveyance or management powers to a single acre of selected land. This fact has interferred with a number of joint ventures, and cooperative agreements. In terms of dollars and direct loss of revenue, this has cost us hundreds of thousands. Indirectly it has cost us millions.

Bering Straits Native Corporation firmly believes that there should be reimbursement on an equitable basis to offset this loss of revenue. Along the same lines, we feel there must be consideration of the inflationary rate in the monetary portion of ANCSA. If this is *not* done, both the benefits and the intent of ANCSA will be seriously undermined.

We have reviewed the act with this in mind and wish to direct your attention to Section 2(a) and (b) under "Declaration of Policy."

D-2 CHURCH-IMURUK PROPOSAL

Our comments so far have pertained to the direct "settlement" of 40 million acres of land pursuant to ANCSA. However, Section 17(d)(2) of this act provides for a possible 80 million land base in land planning and land management. While we are not prepared to comment on the various proposals throughout Alaska, we do wish to make some specific comments regarding the proposed national park services "Chukchi-Imuruk National Preserve."

Bering Straits Native Corporation has undergone considerable time, effort and expense in reviewing and commenting on the environmental impact statement and management plan for these 3.2 million acres.

We have been discouraged by the inaccuracies and distortions this literature contains. This concern is compounded by the fact *intelligent* land use decisions are dependant on an adequate data bank. It is evident from the publications that this information is lacking.

CONCLUSION

We have briefly outlined several of our most important issues, and problem areas. It is likely that this testimony has raised questions, and if so, please contact us. Bering Straits Native Corporation will be most happy to furnish additional information.

We appreciate the opportunity to submit this testimony, and remain hopeful for timely solutions to these most important issues.

TESTIMONY SUBMITTED ON BEHALF OF FRIENDS OF THE EARTH

My name is Jim Kowalsky and I am the Alaska Field Representative for Friends of the Earth. My address is 1895 Pioneer Way, Fairbanks, Alaska, 99701. Today I wish to outline several concerns which Friends of the Earth has regarding implementation of the Alaska Native Claims Act by the Department of Interior.

The Alaska Native Claims Settlement Act (ANSCA) is seen not only as a settlement of aboriginal claims to Alaskan lands, but also, combined with the Alaska Statehood Act, as the major vehicle to bring about land use planning in Alaska. In fact, the Federal/State Land Use Planning Commission for Alaska was established under ANCSA to help implement the numerous and complicated land use planning decisions which have been made necessary by the passage of the act.

INTERIM MANAGEMENT

You have already heard Mr. Hession's remarks about some of the conflicts with the tentatively approved State of Alaska selections and D-1 lands. There is very real national interest in these D-1 lands and substantial D-1 acreages are included in the National Interest Lands proposals of both the Administration and of the Alaska Coalition. We wish to make the point that better interim protection should be given to these D-1 lands until Congress exercises its options in determining whether or not such lands will be included in the National Interest Lands proposals.

One specific example of the need to include interim protection for D-1 lands within D-2 proposals would be the area along the southwestern edge of the proposed Gates of the Arctic National Park. Here mining claims can be staked. Here there is a relatively small, but important, area of D-1 lands which have been added to the Administration's D-2 proposal of December 1973. Even so, the area remains open to mineral claims, and many claims were staked within this D-2 proposal.

Interim management and protection by the Department of Interior for actual D-2 lands has also not been adequate to protect surface values of these lands. The Committee has already been apprised of trespass violations in the Charley River proposal and elsewhere. Friends of the Earth believes that the Department of Interior must extend full protection to D-2 withdrawals as required by ANSCA and that it take immediate action to correct trespass developments which have taken place on them. We urge the Senate Interior Committee to see that this action is taken.

Another type of problem which involves interim protection to lands within the D-2 withdrawal status is related to mining access and mineral exploration. One example, not so great by itself but indicative of how easily such encroachments can take place, was the mineral survey camp located last summer on the Ambler River in the Brooks Range. Here vegetation was trampled, trees cut, holes dug and garbage carelessly left for animals to scatter. The site is on a corridor of D-2 land originally withdrawn for wild and scenic river study, but retained in the Gates of the Arctic National Park proposal. It appears that such depradations can take place within these D-2 proposals with little chance that the Bureau of Land Management is able to prevent it.

Much has been stated in earlier hearings about mining access in the proposed northern extension to McKinley Park. I have enclosed for the record a copy of a report by the BLM on this subject. This report will furnish some insights and information about how difficult it is to protect land within the D-2 proposal areas while Congress decides what it will do with the actual proposal. (see Attachment A). We recommend that the Department of Interior place much more emphasis upon a program of interim protection of these areas where it can be anticipated that activities which may require disturbances to surface values could potentially damage the natural values for which these areas have been withdrawn.

One final example of where such activity has taken place and has actually damaged a surface values within a D-2 proposal is within the Alaska Coalition's proposed Yukon Flats National Wildlife Range. This coincides with land found within the Administration's proposed Porcupine National Forest. In the Kandik River Basin, a northern tributary of the Yukon River, an exploratory petroleum development spilled over into the D-2 withdrawal and damaged surface vegetation and organic soil cover. I have enclosed for the record several photographs of this damage taken from light aircraft. [Retained in committee files.]

We think that Congress had in mind that these lands not be damaged or altered until it has an opportunity to review the proposals and to take action upon them. Interim protection to date has not been adequate. We recommend Committee evaluation of this situation and that directives be issued to Interior Department calling for a stronger program.

Transportation Corridors and Recreational Easements

It may come as some surprise to Congress that many Alaskans, especially those in rural areas and predominately Native villages, do not wish to have their communities or regions connected to the State of Alaska Public Highway System. These views became known when the Department of Interior took its proposed Primary Corridor System for some 11,000 miles of new rail, highway, pipeline and utility corridors around Alaska for public comments. Reasons for opposition most often cited were the need and desire to retain certain lifestyles which depend upon hunting-gathering activities from the land, and a low density, non-competitive population of people which would keep competition for these limited resources at a minimum.

So that the viewpoint of these Alaskans is very clear to the Committee with respect to Interior's massive proposed transportation system, we include a summary transcript of the public meetings held around the state by the BLM for the record of this hearing.

Transportation planning is an important aspect of the implementation of ANCSA, and we feel that the Department of Interior has taken the wrong approach with its primary corridor system. The State of Alaska and the Joint Federal/State Land Use Planning Commission takes this same view. Transportation planning should be based upon needs and appropriate modes which would consider alternatives such as air and water. It should not be based upon speculative projections of needs. Interior's proposed corridor system is based upon speculated needs, which have no relation to existing use patterns or desired future ones. It does not reflect planning at all.

The Secretary's Order Number 2987 which sets forth his rules for the reservation of corridor easements under section 17 (b) of ANCSA makes several determinations which we find highly questionable. One is that there is a "national need to expedite the transportation of energy, fuel and natural resources in order to meet the national energy crisis." We are uncertain about this in view of the projected Prudhoe Bay oil production, the inability of our west coast to absorb and refine this oil and send it to the midwest and eastern

seaboard where it should have gone in the first place. The trans-Alaska pipeline is in the wrong location. The Department of Interior is unable, we feel, to make a case for any of these corridors on the basis that energy will be transported through them to market. Order 2987 states these routes should be "precisely and carefully planned." This simply isn't true. BLM Primary Corridor Plan is not carefully planned, but rather it was a hasty, in-house plan done in the period of two months. It is nothing more than a purely engineers' plan which follows topography. It is only a rehash of old highway and railroad planning maps. It mandates that every last resource presumed to be present will be exploited in the next 26 years. It assumes this extraction regardless of markets and costs and impacts. It does not compare alternative routes or costs and benefits thereof. It doesn't even measure or consider air transportation as an alternative. These lines were placed upon the map even before land use determinations had been made. As such, the BLM proposed corridors are having undue influence in predjudicing land use patterns.

We strongly urge the Senate Interior Committee to look into this matter. We suggest the solution is to reserve corridor easements only at a place and time when their need can be demonstrated, consistent with and pending the emergence of a national energy plan. It is grossly unfair to burden Alaska landowners with energy corridors when there is nothing even resembling a comprehensive national energy strategy, one which emphasizes energy conservation equally with accelerated extraction of energy resources in frontier areas. It is noteworthy that both the Federal/State Land Use Planning Commission for Alaska, and the Governor have also asked that the BLM Primary Corridor System not be implemented due to the cloud which it places over the land planning process in Alaska.

To assist the Committee in better understanding transportation needs and desires by the actual rural people of Alaska, I will submit for use by the Committee several copies of a report entitled *Bush Transportation* project, prepared by the Fairbanks Environmental Center. This project was funded by a grant from the Alaska Humanities Forum. The project culminated in a two-day conference in which rural Native Villagers sat down with federal and state transportation planners. The result was that the realities of rural life were brought closer together with the urban-based bureaucratic planning process which so directly affects the lives of rural people.

On the controversial question of recreational easements to be reserved in title documents conveying land to Native villages, Friends of the Earth does recognize the views of both those who wish more easements and those who ask for less or no easements on their own lands. Generally we view that recreational easements along waterways and through Native lands, while desired by some, are essentially corridors which will open up a sparse country. In many cases, this country barely produces enough fish and game for the local peoples. We are especially sympathetic with the rural Natives in those areas where it is important to harvest food and materials from the land to support a local substinence oriented lifestyle. In these sensitive areas it is especially important not to open up the country to competing uses by a burgeoning urban Alaska population.

Therefore, on the basis of the importance of local use of renewable resources —usually in a very limited supply—we join the native community in urging the Committee to take a very close look at the reservation of recreational easements and clarify its intent under ANSCA. We urge that a very minimum number of such easements be reserved at the very most, with special precautions made to avoid reserving any such recreational easements in village lands where subsistence uses and needs are significant to the local community.

National Interests Land Legislation

On the question of National Interest Lands D-2 legislation and the role of the Federal/State Land Use Planning Commission, we wish to urge the Senate Interior Committee to consider that LUPC Commission should study and compare all proposals rather than to place itself into a position of advocating its own proposal. The Commission has set forth a "very tentative" proposal for D-2 legislation which was prepared essentially by the staff. In Alaska, as well as in the rest of the nation, there is an overwhelming need to examine the D-2 process and the proposals which have been, or will be, introduced in Congress as an educational tool. In Alaska there is a tremendous amount of misinformation and polarization by various interests and individuals over this

question. We feel that the Commission could perform a badly needed service by shedding light where there is only heat. As a member of the Advisory Committee to the Federal/State Land Use Planning Commission, I have recommended that the Commission do a thorough socio-economic analysis of these proposals. Too often land use planning consists of a detailed exercise of identifying and inventorying resources, with little or no attention paid to the question of how people in the region and in the state at large wish to live. Land use planning in Alaska has essentially followed this pattern to date with little more than reams of map overlays showing renewable and non-renewable resources.

The various proposals should be compared. The relative protection of the land, of the resources, and of lifestyles which could be expected with each proposal should be explored and factored into the total picture by the Commission. This process should be followed by a major campaign to educate the general public, inside and outside of Alaska.

No one in Alaska or anywhere else is doing any type of education now. There is likely no one to do it unless the Commission assumes this task and so changes its D-2 role from advocacy to education. Governor Hammond rightfully has his own proposal to promote, and he cannot be expected to perform this educational task. Certain Native interests who are striving to protect the land around them similarly are preparing D-2 proposals and can rightfully be expected to advocate them. Rep. Young likewise has his own, as do the conservationists in the Alaska Coalition's proposal. Who is going to sort out the various critical issues involved in each proposal, compare and equate them, and bring the total picture to the public if the Commission does not decide to perform this needed task? It should, and it should not place itself in the lineup of advocates. We urge the Senate Interior Committee, whose brainchild the Commission is, to consider this important role for the Commission.

Subsistence

The question of subsistence and how it is handled under ANCSA concerns Friends of the Earth greatly. We believe that those who can and desire living primarily from the land should be encouraged to do so by extending necessary protection to the land on which the people depend. As ANCSA is further implemented, there will be increasing committments of resources on subsistence lands. Many times those committments will be irreversible and many times these will simply in time destroy the subsistence activity. Oilwells, pipelines, and highways in the midst of caribou range and calving grounds is simply going to reduce the number of caribou and alter the long-term habits of these animals which are basic to many subsistence diets. Such development, as it spreads across Alaska, will critically reduce the range of the caribou by disturbing or destroying the climax vegetation which is critical to its survival.

We have overlapping interests with Native people who depend directly upon the land and its resources to sustain them. We note that the "Conference Report on Alaska Native Claims Settlement Act," to accompany H.R. 10367 (1971) these instructions: "The Secretary could, for example, withdraw appropriate lands and classify them in a manner which would protect Native subsistence needs. . . The conference committee expects both the Secretary and the State to take any action necessary to protect subsistence needs of the Natives."

Whereas FOE does not place itself in the position of speaking for any Native people, we do support them strongly in their specific efforts to gain protection of public lands which may be needed to sustain subsistence activities. We call to the Committee's attention the fact that the conference report clearly states the conference committee's intent to have both federal and state governments take affirmative action to protect subsistence activities. We urge the Senate Interior Committee to recognize this option, and we suggest that withdrawal of lands to protect the resources for this use is indeed a desireable option which the Secretary may have to utilize as directed by the conference report.

In this regard, FOE along with the Fairbanks Environmental Center has cosponsored the writing of a major legal research paper which is yet in draft form. The paper, prepared by a law student, is a comprehensive review of the legal aspects to the protection of subsistence rights in Alaska. The paper deals with an examination of the definitional problems of how protected uses could be described, administrative authority to allow subsistence on National Interest

Lands in absence of a legislative command, and the power of Congress to legislate for subsistence users. At this very moment there may be no immediate need for the Committee to deal directly with this question. However, we do wish to inform this Committee of this work, which we hope will be available in final form in the near future so that the Committee may make use of its content as appropriate. We do also wish to emphasize that the subsistence question is a very important aspect of the implementation of ANCSA in which the Department of Interior and the Secretary have major opportunities and responsibilities. Whereas we do not wish to take responsibility for identification of who subsists where, why, how and when, we do wish to offer our best support for this purpose. We anticipate the use of this legal research to achieve that goal.

Our final point is a general plea for this Committee to take up the question of the D-2 proposals in the very near future. Almost daily, major and very far-reaching development decisions are being made in Alaska—decisions of great magnitude and significance which are changing forever the face of Alaska. And yet the proposals before this Committee to give permanent protection to laws which have high wilderness and natural values are languishing in both the House and Senate Interior Committees while irreversible development decisions are being made. We urge the Committee to consider the *urgent* need to protect certain public land values in Alaska now. We feel that it is only fair that the Congress balance the accelerated frontier development now underway (OCS, NPR-4, gas pipeline, oil and gas exploration around Alaska, hard rock mineral exploration and some development already underway. Arctic Camp in Bornite Mine area of upper Kobuk for example, etc.,) with earnest and prompt attention to these other public, national values. This was the intent of the Congress in its passage of Section 17 (d) (2) of ANCSA. Essentially, the State and the Natives have had their settlements made by Congress, and yet the National Interest aspect of this three-part settlement has really not even reached the first step of implementation by Congress in any substantive way.

We certainly appreciate this opportunity to present our views here today. We look forward to Committee action which will begin unravelling the complex process of implementation, and effect needed responses from the Department of Interior. Thank you.

ATTACHMENT A

February 26, 1976

To: Files.
From: Yukon Area Mgr.
Subject: 50020-TR5-9, Moose Creek.

I have reviewed this trespass case and have reached the following conclusions:

(1) The miner has the right of access to claims across D-1 and D-2 lands (per Solicitors opinion).

(2) That *excessive* damage has *not* occurred from road construction on D-2 lands.

(3) The miner should be contacted to "shape up" the road and install culverts where necessary.

(4) This trespass case be closed.

JOHN H. STEPTEARN.

MEMORANDUM

June 12, 1975.

To: Yukon AM.
From: Larry Knapman.
Subject: Mining disturbance—Kantishna Area.

Approximately 10:30 today I received a call from a Chuck Bale, who says he is working at the park (did not say for NPS) and staying at Camp Denali.

The miners are skidding equipt. along side the road and really tearing up the vegetation—making a wide swath. They are planning to go 14 miles up Moose Creek and also up Spruce Creek.

He has not seen it but was told by Celia Hunter. Suggests we talk to her.

L.N.K.

Form 2060-1
(January 1969)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

LAND REPORT TITLE PAGE

State	District	
Alaska	Fairbanks	
County	Resource area	Planning Unit
	Yukon	
Type of Action		Serial Number
Trespass		50020-TR5-9
Applican.'s name	Address *(include zip code)*	
Paul Wieler and brother	Star Route A, Box 1574-B Anchorage, Alaska 99502	

Date(s) of examination September 4 & 5, 1974

LANDS INVOLVED

TOWNSHIP	RANGE	MERIDIAN	SECTION	SUBDIVISION	ACRES
16 S	17 W	Fairbanks	20,21,22		

Purpose of report

To determine a course of action for present and future trespass violation on withdrawn lands.

Prepared by	Title	Date of report
Clyde Murray	Mineral Specialist	10/8/74

* U.S. Government Printing Office:1974-781-472-316 Reg.8

BACKGROUND DATA

A. *Land Status of the Subject Area*

1. F–034575, April 30, 1965, W1/2, Section 20 and 21, T. 16 S., R. 17 W., proposed inclusion into the National Park Service. Legal references: Act of 6/25/10, 36 (Stat) 847, Executive order 10355, 43 USC 141–143.

2. PLO–5179, September 13, 1972, E1/2, Section 21 and 22, T. 16 S., R. 17 W., ANCSA withdrawal—selected by the National Park Service.

3. All of the land in the area has been withdrawn and classified D–2. The land is closed to all forms of appropriation.

B. *General Description*

A tramroad was built in the spring of 1974 for access to placer mines in the Moose Creek watershed. Miners had been using Moose Creek as an access route prior to original withdrawal of 1965. The road traverses the bench terraces and active flood plain of Moose Creek. Tundra overburden was dozed off creating berm piles. White spruce, aspen and birch trees were pushed over and the natural drainage of Moose Creek was diverted by constructing a 2½′ to 3′ gravel dike.

In places the road is considerably wider than need be.

The road has a good dry base of gravel and seems to be very stable. Run-off and washouts should be minimal on the terraces; however, the dike is not likely to hold a spring run-off without a reinforcement of riprap.

Further extension of the road is planned for next spring according to local citizens.

C. *Planning Recommendations and Other Considerations*

1. The subject land is being considered for inclusion into McKinley National Park. There are no other use plans for the land.

2. Data was supplemented by verbal conversations with Mr. Charles Ott, Miss Ginny Wood, and Mr. Dan Kuen, Superintendent M.N.P. These people showed concern for the environment and all were opposed to the road.

D. *Area Analysis*

1. The subject land is within the Kantishna Mining District, Fairbanks Meridian.

Minerals in the area, include antimony, gold, lead, silver, zinc, copper, and tungsten. Principal metals that are being mined are gold (placer and lode), antimony, lead and silver.

Mineralization was implaced through hydrothermal fluids associated with nearby intrusive bodies. Implacements of these hydrothermal fluids were influenced by fissures with or without faulting.

Geologically, the area is underlain by Pre-Cambrian metamorphic rocks and Mesozoic intrusive bodies which are partially covered by Pleistocene glaciofluvial sediments. Structurally the area is controlled by the Denali strike-slip fault which influenced some mineralized hydrothermal solutions.

Approximately 566 active mining claims have been filed since 1955 in the district. No production figures are available for the interval of 1955 to the present, but the number of claims filed will give some indication of the amount of activity and interest in the Kantishna Mining District.

According to the report by Robert G. Bottge of the Bureau of Mines, the area is potentially favorable for additional reserves of gold, silver, copper, lead, zinc, and antimony. The projected mineral value for the mining district is $196,000,000.[1]

Ore production has been minimal in recent years due to the high cost of materials and controlled access by the National Park Service.

2. There is one established lodge in the area. Camp Denali, owned and operated by Miss Celia Hunter and Miss Ginny Woods, offers food and lodging to selected guests.

3. There are no public services such as service stations, restaurants, or stores available.

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[1] Potential Mineral Resources in Selected D-2 Lands. Robert G. Bottge. Bureau of Mines, May 5, 1974.

4. As a result of the D-2 withdrawals, the land use trends have stabilized. No new claims, homesteads, T. & M.'s, etc. can be filed.

E. *Site Data*

1. Location and Data: The subject land (road) traverses Sections 20, 21 and 22. The road begins on the south side of Moose Creek at the steel bridge and follows the creek to its confluence with Rainy Creek approximately 2–6/10 miles east of the bridge.

2. Access: Access to the area is provided by the Denali Highway or light aircraft. The area is 214 road miles and 110 air miles south of Fairbanks.

3. Physical Characteristics: Moose Creek valley contains terraces of Pleistocene glacio-fluvial sediments which have been dissected by Moose Creek. Other glacial features include kettles, drumlins and moraines. High ridges and hills not covered by glacial debris consist of basement rock. Elevation difference between the valley and ridge is 1000 to 1500 feet.

LAND USE CAPABILITIES OF THE SUBJECT LAND

A. *Historic Use*

Historically the area has been known for its mining of placer and lode claims. Placer gold was discovered in 1905 and an influx of miners into the Kantishna area began.

The town of Kantishna is virtually dead now. Only a few people and buildings remain.

Pilfering of cabin logs has destroyed the old townsite which had potential for an historic site.

1. Authorized Uses and Users: There is no authorized use in the withdrawn area. See below.

2. Unauthorized Uses and Users: In 1966, Glen Exploration filed claims along Moose Creek from the Camp Denali Bridge to Rainy Creek. Northwest Exploration was granted quitclaim deeds from Glen Exploration in 1969. The subject land is within the boundaries of these claims. However, Liberty claims 35, 34, 33, 32 are invalid because they were filed after the 1965 land withdrawal. The F–034575 withdrawal closed the area to mining. A portion of these claims is located on the Camp Denali trade and manufacturing site which also invalidates the claims in question.

No tramroad or right-of-way permit was applied for. Therefore, according to the Solicitor's Opinion of August 13, 1974, the section of road (approximately 1–½ miles) within the withdrawn area is in trespass.

B. *Potential Uses*

The subject land has no value for domestic livestock, timber production, or agriculture.

Wildlife, watershed protection, wilderness protection, and outdoor recreation values have good potential in the area. If the park service annexes the subject land, these four values will be under strict management programs.

If inclusion occurs, it will be detrimental to mineral production because the park service will make mining operations difficult by applying strict stipulations to mining activity, and will eventually phase out all mining in the park.

CONCLUSIONS

As the subject land is classified D-2 and based on the Solicitor's memo of August 13, 1974, regarding tramroad rights-of-way, the persons responsible are in trespass according to 43 U.S.C. 956.

According to local citizens, the Wieler Brothers of Anchorage are responsible for road construction. Contact can be made through S.R.A. Box 1574-B, Anchorage, Alaska 99502, or through McHugh and McHugh, 1507 W. 45th, Anchorage, Alaska.

This problem of trespass has arisen because of the new status of the lands and the new laws and public land orders which now apply to these lands. The involved people are in a state of confusion by not being sufficiently informed of these changes. To avoid future violations of this type a public relations program should be developed. Communications with miners through news media and mining organizations should be undertaken to enlighten miners as to their rights of access to valid claims.

Seeing the situation as it is and that there are valid claims in need of an access route, I feel a trespass notice should not be filed at this time. The individuals involved should be notified and advised that a right-of-way permit is required for a tramroad as per Solicitor's memo of August 13, 1974. This will insure protection for both the land involved and the claimants' right to access.

RECOMMENDATIONS

I recommend that the party or parties involved in the road construction be informed of their situation and that a right-of-way permit is necessary. It is imperative that action be taken to rehabilitate and repair damaged areas and to introduce appropriate stipulations which will prevent further environmental damages to the land in question.

PORT ALSWORTH, ALASKA, *January 2, 1976*

Ref: Five Acre Homesite #AA85
Vernard E. Jones
Lake Clark, Alaska
Mr. GERALD FORD,
President,
The White House,
Washington, D. C.

DEAR MR. PRESIDENT: We know you must be busy with the magnitude of problems both here and abroad, and regret that we must write seeking your assistance concerning our five acre homesite #AA85, located at Lake Clark, Alaska. This homesite was filed on with Veterans Preference and proved up on. To some, perhaps five acres of land is a minute thing, however, to my wife, grandchildren, and myself it is our home and our world.

We will try to keep this letter as brief as possible.

It was years before we could save enough money for materials and to fly me into this remote area to file my claim in 1966. This claim was located on Federal Land, consisted of five acres of unreserved, unoccupied public land with no reservations and there were no withdrawals on record. This was prior to the land freeze and the passage of the Native Land Claim Act. Over a period of approximately ten years we have built a log cabin home, guest cabin, workshop and various other improvements. All this was completed at great expense to us since everything must be flown in due to the remotness of the area. Now since the Native Land Claim Act we have been denied *Due Process* because of harrassment and discrimination and accusations by the Bureau of Land Management in Anchorage and native protest which are too numerous to reiterate. Yet at the same time, Hilda Kroner, Native Claim #AA7591, has filed on a 140 acres adjacent to our line as late as the summer of 1975, and this property also has two crosses by their house and the Bureau of Land Management has allowed the Native Claim. To protect our rights and home since 1966, we have had to retain an attorney and write to our Senators and Congressman seeking any assistance they could give. We also sent a letter to Secretary of the Interior, Mr. Thomas Kleppe, but it is very apparent that he has received the same kind of correspondence from the Alaska State Directors Office as every one else, gross exaggeration and misrepresentation of the facts concerning our claim.

Being past fifty years young, our earning capacity is not what it use to be, and we have exhausted all our finances, yet we feel that we must continue to seek help. Perhaps someone in your office could throughly peruse our file in the office of the Department of Interior in Washington, D.C., and also, at the Bureau of Land Management in Anchorage, Alaska. *Someone who would actually read the files in it's entirety.* We are convinced that this is the only means by which we will receive due process and acknowledgement of the gross misrepresentation of facts made in correspondence from the Alaska State Director's Office stamped Curtis V. McVee.

Respectfully,

VERNARD E. JONES.
LENORE E. JONES.

HODGES & DOWNES,
June 3, 1976.

Senator HENRY JACKSON
Dirksen Office Building
Washington, D. C.

DEAR SENATOR JACKSON: Enclosed is a copy of a U.S. Geological Survey Map outlining a portion of the tentative select land for the Minto Village here in Alaska. As can be seen by the outline of said tentative select lands, this selection does not conform to Section 12 (2) of the Alaska Native Land Claims Settlement Act.

That section provides: "Selections made under this subsection (a) shall be contiguous and in reasonable compact tracts except as separated by bodies of water or by lands which are unavailable for selection and shall be in whole sections and wherever feasible in units of not less than 1,280 acres."

As can be seen by the outline on the map, it does not comply with that section. Thus, initially, it seems to me that the Interior Department should require tentative selections be made in conformity with that section. At least no conveyances should be issued until such time as a determination is made concerning contiguous and reasonable compact tracts.

At the present time, the Interior Department, through the BLM, is attempting to compile specific public easements in connection with the Alaska Native Land Claims Settlement. This is being attempted for approximately 44 million acres which will be conveyed into private ownership from approximately 80 million acres which have been tentatively selected. The task of compiling specific easements is overwhelming when the vast acreage and distance involved are considered, particularly when rights of people in the lower 48 are taken into account. BLM requires specific documentation and a specific location of any easement. This attempted plan for easement reservation is completely unworkable, time consuming and extremely costly. The total cost of surveying and erecting markers and signs is astronomical in light of the terrain here in Alaska. To further complicate the problem, many of the tentative selections have been made laterally along water courses or roads (as can be seen by the Minto Village selection enclosed). If adequate easements are not reserved, vast acreages of Alaska which are in public ownership will be without feasible accesses.

One solution, at least with respect to the water access problems here in Alaska, is to reserve lineal easements along all rivers, streams and lakes, reserving to the public, both native and non-native alike, this easement. This easement should be sufficiently broad to cover all types of recreational activities which these lakes, rivers and streams have been used for for generations by both native and non-native as well as non-residents of Alaska and citizens of foreign nations. If this is done, the private owners would then have an opportunity to come in and vacate specific portions of that easement if it would interfere with his right to utilization of the lands. This easement reservation system would permit immediate conveyances to the various corporations and would protect the public-at-large with respect to access at least in these areas. At later times, access across the land for transportation purposes could be reserved as the need arises. At the present time, the State of Alaska has not received all of the land it is entitled to. Some of the land which the State of Alaska will receive will be landlocked by corporation selection. It is very difficult to reserve an easement until such time as you know which land you are going to own. Therefore, any conveyance should take this into account since no one, including the State of Alaska, should be deprived of access to its property.

The problem of easements and the Land Claims Settlement Act is a far reaching problem that will have an effect here in the State of Alaska for generations to come. The terrain in Alaska permits access primarily by waterway systems which include the lakes, rivers and streams. Much of Alaska is not travelable by road and much recreational utilization occurs in Alaska over the waterway systems. Unless adequate easements are reserved for present and future use, much of the recreational beauty of Alaska will be lost forever. Therefore, I urge you to seriously consider this easement problem and to not permit hasty action by the Interior Department in conveying title without adequate reservation of easements.

I feel that the Interior Department, in order to protect existing rights of the public to utilize Alaska's land and waters as they have done for generations in the past, should take a broad policy as to public access. With respect to the waterways, which include rivers, lakes and streams, it should convey lineal easements along all waters for the use of the public-at-large. This would include both native and non-native as well as residents and non-residents of the State of Alaska. The easement or access rights should permit the public-at-large to utilize these waters and waterways of Alaska as they have done in the past; they should permit free ingress and egress camping, fishing, hiking, hunting and any other related activities incidental to waterway travel. This easement should be sufficiently wide to effectively permit utilization for all recreational purposes and should be no less than 25 feet in width along both banks of rivers and streams and 25 feet in width along all lake shores. The private owner would then have the right to come in and if a specific showing is made, vacate any easement where a specific use is being made of a particular shore line, such as a village community, fish camp or otherwise. If this method of reserving easements is used, the savings to the people of the United States would be substantial.

The present method being used by the Interior Department for reserving easements is backwards. Because of the vast size of Alaska, the substantial overselection of lands and the problem of not being able to predict the future need for public access, the Interior Department should grant blanket easements along all waterways in Alaska; that is, rivers, lakes and streams, giving the private owner the right to vacate any easements that are necessary for his use of the land. This would protect both the public as well as the private owner and would be far less expensive that the plan being utilized by the Interior Department at the present time.

In summary, I feel that the Interior Department should require compliance with selection of lands in contiguous and reasonable compact tracts and should also establish a more feasible public easement and access programed for reserving to the public continued use of the waterways of Alaska as has been enjoyed by all people for years.

Very truly yours,

JAY HODGES.

SELDOVIA NATIVE ASSOCIATION, INC.,
Seldovia, Alaska, June 4, 1976.

Hon. HENRY M. JACKSON,
Senator,
Washington, D.C.

DEAR SENATOR: Congress has passed legislation, and the Federal Government, the State of Alaska, and the Cook Inlet Region, Inc., have come to a land consolidation agreement that appears to greatly affect the Seldovia Native Association, Inc. Although we are not party to this agreement.

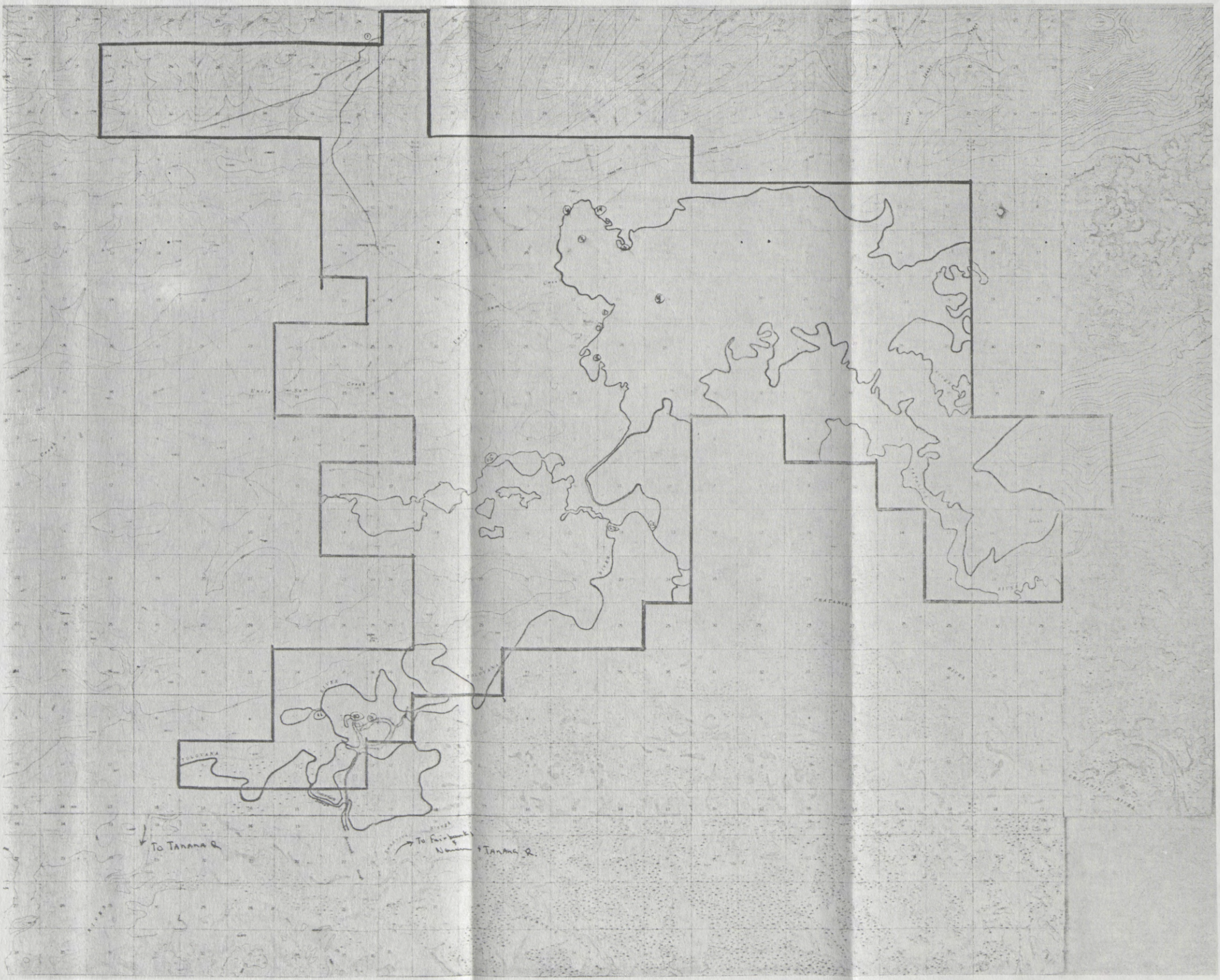
The Seldovia Native Association became aware of CIRI's intention to set up a land trade in May, 1976. At that time, we wrote to the President of Cook Inlet Region, Andy Johnson, stating our concern. We did not get a written reply, but we were assured verbally that Seldovia would not be affected by the trade.

Through all the negotiations between CIRI, the State of Alaska, and the Federal Government, we were informed of the changes made in the agreement after the changes were made, never prior to changes.

Whenever negotiated changes were mentioned, they were always stated as "minor changes, but don't worry, Seldovia is not affected."

At one time, at the request of CIRI, the Board of Directors of the Seldovia Native Association gave it's written approval to the trade. That approval was based on the trade as the Seldovia Native Association Directors knew of it in early October, 1975. At that time, Seldovia was still assured that the trade in no way affected the corporation, thus the approval was given.

At the request of the CIRI Land Department, in Sept., Oct., and November of 1975, the Seldovia Native village land committees, to make 12(b) land selections. The region land staff attended the selection meetings, and at region's request, through it's consultant Mr. Eric Hansen of Resource Associates of



79-784 O - 77 (Paster No. 4 Face p. 370)

Alaska, the land in Township 1 S., Range 21 W., was available for village deficiency selections, but not regional selection, so on behalf of CIRI, the Seldovia Native Association selected that land.

It is very odd that the CIRI negotiating team would decide to legislate this township in Washington D.C. on December 10, since it was not even mentioned at the CIRI Director's meeting in Anchorage on December 5, 1975.

Also, for CIRI to establish an easement across village lands without finding out which villages are affected and further not even notifying the village corporations of this action is certainly uncalled for.

This type of easement should be mutual agreement between the landholders, not an act of Federal legislation.

Also, the Seldovia Native Association selected land as far south as Township 2 S., Seward Meridian, namely the Chenik Lake area in Kamishak Bay. The Region land department was aware of, and had copies of the Seldovia Native Association's 12(b) land selections.

At no time was it mentioned, or even hinted, that this land would not be available to the Seldovia Native Association. We were aware of the land trade in the Lake Clard Area, but again, we were assured that Seldovia was not involved.

To make it's 12(b) land selections, the Seldovia Native Association spent $3,453.79 (a great amount of money for a village corporation), and selected land at the request of CIRI. These 12(b) selections were timely filed in early December 1975.

Unknown to the Seldovia Corporation, in the final bill in the CIRI land trade, the Regional corporation had the Federal Government enact legislation that will take away the Seldovia Native Association's selections in Township 1 S., R. 21 W., S.M. and further restrict and deny Seldovia Native Associations selection rights in the Kamishak Bay area.

It is our understanding that the first 12(b) selections, as a result of this trade will force the villages to take land that they have previously refused to select—namely, filling the holes in the Iniskin Peninsula. If this is so, the legislation means that CIRI will be selecting land for the villages, whereas section 12(b) of Alaska Native Settlement Claims Act gives the villages the right to select their own lands.

The president of Cook Inlet Region, Inc. is now requesting that the Bureau of Land Management disregard Seldovia's selections. We do not see this as a duty of a Regional Corporation.

On first review of the enacted legislation, the land trade is probably a good trade for the signature villages. It is not the intent of the Seldovia Native Association to attempt to stop this trade, but we have come to the point where we have to protect the rights of the Seldovia Native Association.

The Directors of CIRI have established the 12(b) acreage allocation.

The Seldovia Native Land Selection committee have made 12(b) selections and timely filed them.

The Seldovia Native Association cannot stand idle and let another corporation negate it's rights under the Alaska Native Settlement Claims Act.

We have sent a memo on this issue to Secretary of the Interior, Thomas S. Kleppe and we are writing to you because as Chairman of the Interior and Insular Affairs Committee we feel you should be aware of what is happening.

Sincerely,

FRED H. ELVSAAS, *President.*

CHOGGIUNG LIMITED,
Dillingham, Alaska, June 7, 1976.

Senator HENRY JACKSON
Chairman, Senate Interior Committee,
Washington, D.C.

CAMAI SENATOR JACKSON: We are writing about the BLM and the way it is handling the ANCSA. We want our comments made part of the official record of your Senate Interior Committee Oversight Hearings. We look forward to your cooperation.

Despite the clear Congressional mandate that BLM issue immediate patient to land selected under the ANCSA, conveyance has been incredibly slow. Our village selected 200,000 acres and today we have patent to 1.25 of them. The Region wide figures are equally staggering.

The disastrous impact of this failure to convey land was recently brought home to Choggiung Ltd. when researchers from the BLM's Anchorage OCS office visited our village. They came describing the impact of the OCS program scheduled soon for Outer Bristol Bay and the Bering Sea. They came to see how our community would handle the surge. They found that 70% of the housing was substandard, the schools were full, no land available for lease or sale, no community sewerage system and a land fill site that violated every regulation.

Fortunately most of these problems will be met when the land claims of native individuals and their ANCSA corporation are satisfied. Unfortunately the BLM moves at a snails pace in this process. One major holdup has been caused by the easement reservation process which has proved to be the narrow point in the hourglass shaped conveyance machinery. A genuine Rube Goldberg mechanism that has been sorely understaffed by the BLM State Office, the easement reservation procedure involves a complicated series of 30, 60 and 90 day notification, comment, and appeal periods. Our village selection has been through this unwieldly apparatus on three occasions as the program is continually being scrapped and restarted. Each time we have emerged with essentially the same easement package but before the lands conveyed we had to do it again. This process should be simplified and properly staffed. Man problems the village has with BLM's easement proposals stem from the way "Easements" are used as a bar to conveyance.

Another holdup of major proportions occurs in the Adjudication Process. Every village and regional corporation land application, state selections, native allotments and all land claims for that matter, are "worked" by the adjudication section. The land law examiners who perform this function are the descendants of the land office clerks who once worked in the General Land Office. The G.L.O. disposed of federal land for many a decade. Although scandal often marked its history there is no question but that the G.L.O. obeyed its Congressional mandate to put public land in private hands. But then the mood of the country changed and a management ethic for the public domain replaced all out disposal.

One result of this change in philosophy was the merger-marriage of the G.L.O. and the Taylor Grazing Service into the Bureau of Land Management. This new agency was designed to both MANAGE and DISPOSE public land. And there lies the conflict. The dual purposes run counter to one another. An honest land manager does not want to convey away his land resource. But the BLM is expected to do both. We feel they manage the public domain well but fall down completely when it comes to disposal.

An example is correspondence with the Alaska BLM. Writing in March we asked for a copy of a R/W grant. The request was sent to the State Office to the attention of the proper section. We received our response in June. A total of 3½ months to copy 6 pages of a case file. In January we wrote the State Office and asked for information on BLM's multiple-use management frame work plan. We received a complete response with letter, copies and sample plans in 8 days. The first answer came from adjudication, the latter response from the land use planning office. BLM recognizes management as their #1 priority, disposal is a distant cousin. A visit to the respective offices indicates this too. The managers are located in new, rural, modern facilities with jogging and cross-country skiing part of the daily regimen. The adjudicators are wedged into a smoke-filled down town office with few amenities. The same contrasts can be drawn on the caliber of the respective staffs, their career potentials, and the turnover rate. Suffice it to say the BLM does best what it's name implies—MANAGE lands.

What can be done about this? It seems the answer is right at hand. In Alaska BLM has gone to DECENTRALIZATION as a means of handling its varied mandates. For instance the Pipeline Office, the OCS Office, and the District Office are all a part of BLM Alaska but each operates its own shop. This allows more direct action on specific projects of national significance but still keeps the Alaska State Director as the final authority.

We believe the same decentralization must happen with the Adjudicative Function. Today it is buried as a Branch of the Resource Division deep in the bowels of the BLM bureaucracy. But it's task is of a scale as monumental as any of the offices created to handle special projects. The disposal mandate

as described by Congress in the ANCSA and the Alaska Statehood Act encompasses more than 150 million acres. In order to reach this GOAL we must have an office that is free from the identity crisis between management and disposal. We feel that separating this disposal function from the main body for the duration of the ANCSA and Statehood Act selection and conveyance process would work wonders.

We also encourage increased staffing in the adjudication section. At one time 6 project leaders worked the ANCSA claims, each responsible for two regional corporations. Each project leader was supported by 2 or 3 claims workers. Today only 1 or 2 project leaders remain. This means that each significant action must be reviewed by 1 overworked man before it is forwarded for signature. The result is the hourglass phenomena once again. So separating DISPOSAL and MANAGEMENT must be accompanied by the upgrading of the quantity and quality of the disposal (Adjudication) staff if we are to see any progress towards the goal of conveying land to the native corporations and the state.

Dillingham is a village of 1100 people. Choggiung Ltd., the Dillingham Village Corporation, has 927 stockholders. The vast majority of them live right here. Today a housing program slated for our village cannot begin because we have no land. The village dump causes an air transport safety hazard but cannot be moved because we have no land. Land prices have skyrocketed as the village grows but no relief is in sight because we have no lands and cannot increase the supply. The lack of land also threatens construction projects that require gravel including a major state highway project in our village. The lack of land makes use decisions that are unwise but no alternatives exist because BLM holds the lands. It is indeed ironic to live in Western Alaska where millions of acres lay untouched by man but at the same time face economic and social strangulation because we have no land.

The ANCSA recognized our village land claims. We filed our selections over 2 years ago. On a monthly basis we have kept BLM posted on our needs and priorities. We have attempted to cooperate with the process but we have had little success. We are certain that changes must be made if the Congressional mandate of prompt conveyance is to occur. We encourage your review of our suggestions and look forward to your leadership in this matter.

Sincerely yours,

WILLIAM TENNYSON, *President.*

ALASKA WILDLIFE FEDERATION AND SPORTSMEN'S COUNCIL, INC.,
Juneau, Alaska, June 8, 1976.

Senator HENRY JACKSON
Dirksen Office Building
Washington, D.C. 20510

DEAR SENATOR JACKSON: This written testimony is submitted on behalf of the above organizations as well as *Your Right to Alaska's Water and Land, Inc.* to be considered by the Oversight Hearing Committee in connection with the Alaska Native Claims Settlement Act.

A major concern of ours is the location of these hearings. Because of the tremendous distance between Alaska and Washington, D. C. and the substantial cost involved both in time away from commercial endeavors at Alaska's busy construction season as well as the cost of travel, many who wish to present oral testimony are precluded from testifying. Also, there has been a lack of information disseminated in Alaska concerning the Oversight Hearings and only recently have the dates and procedure to present testimony been made known. We feel, because of this, further Oversight Hearings should be scheduled in Alaska to permit the people who will be effected on a day-to-day basis sufficient opportunity to present testimony to your committee.

It is our understanding from discussing the easement policies with various BLM personnel that only specific easements will be reserved where a significant prior use can be shown. This is extremely difficult, unmanageable and unworkable when the vast acreage that is going to be conveyed into private ownership is considered, particularly when tentatively twice as much land as will ultimately be conveyed has been selected. This places an undue burden on the public-at-large not only to identify easements on land which will be conveyed but also to identify easements on land which may not be conveyed. The present method of reserving easements is untenable, will delay conveyances,

lead to court litigation on a piecemeal basis, polarize Alaskans, and in general cause severe disharmony in the State of Alaska. It is suggested that as an alternative the guidelines as set out by the Division of Lands of the State of Alaska be utilized. A copy of these guidelines is enclosed for your information. We feel that these guidelines more adequately protect the public-at-large in being able to continue to use the waters and lands of Alaska as they have done in the past.

Another solution, at least with respect to the waterways here in Alaska, is to reserve lineal easements along all rivers, streams and lakes. These easements should be sufficiently broad to cover all types of recreational activities which these lakes, rivers and streams have been used for for generations by both native and non-native as well as non-residents of Alaska and citizens of foreign nations. If this is done, the private owners would then have the opportunity to come in and vacate specific portions of that easement if it would interfere with his right to utilization of the lands. This easement reservation system would permit immediate conveyances to the various corporations and would protect the public-at-large with respect to access at least in these areas.

At the present time, the State of Alaska has not received all of the land it is entitled to. Some of the land which the State of Alaska will receive will be landlocked by corporation selection. It is very difficult to reserve an easement until such time as you know which land you are going to own. Therefore, any conveyance should take this into account since no one, including the State of Alaska, should be deprived of access to its property.

The problem of easements and the Land Claims Settlement Act is a far reaching problem that will have an effect here in the State of Alaska for generations to come. The terrain in Alaska permits access primarily by waterway systems which include the lakes, rivers and streams. Much of Alaska is not accessible by road and much recreational utilization occurs in Alaska over the waterway systems. Unless adequate easements are reserved for present and future use, much of the recreational use of Alaska will be lost forever. Therefore, we urge you to seriously consider this easement problem and to not permit hasty action by the Interior Department in conveying title without adequate reservation of easements.

We feel that the Interior Department, in order to protect existing rights of the public to utilize Alaska's land and waters as they have done for generations in the past, should take a broad policy as to public access. With respect to the waterways, which include rivers, lakes and streams, it should convey lineal easements along all waters for the use of the public-at-large. This would include both native and non-native as well as residents and non-residents of the State of Alaska. The easement or access right should permit the public-at-large to utilize these waters and waterways of Alaska as they have done in the past; they should permit free ingress and egress camping, fishing, hiking, hunting and any other related activities incidental to waterway travel. This easement should be sufficiently wide to effectively permit utilization for all recreational purposes and should be no less than 25 feet in width along both banks of rivers and streams and 25 feet in width along all lake shores. The private owner would then have the right to come in and if a specific showing is made, vacate any easement where a specific use is being made of a particular shore line, such as a village community, fish camp or otherwise. If this method of reserving easements is used, the savings to the people of the United States would be substantial.

The present method being used by the Interior Department for reserving easements is backwards. Because of the vast size of Alaska, the substantial overselection of lands and the problem of not being able to predict the future need for public access, the Interior Department should grant blanket easements along all waterways in Alaska; that is, rivers, lakes and streams, giving the private owner the right to vacate any easements that are necessary for his use of the land. This would protect both the public as well as the private owner and would be far less expensive than the plan being utilized by the Interior Department at the present time.

Another problem that effects the easement question concerns the manner in which the various corporations have tentatively selected their land. The settlement act itself provides:

"Selections made under this subsection (a) shall be contiguous and in reasonable compact tracts, except as separated by bodies of water or by lands which are unavailable for selection, and shall be in whole sections and, wherever feasible in units of not less than 1,280 acres."

Much of the tentative selection does not conform to this section [Section 12 (2)] of the Claims Act. Many of the tentative selections have been selected lineally along waterways and highway systems. As an example of this, the attached map of the Nenana Village selection is enclosed. As can be seen, this selection does not comply with the act. We feel that this issue is of utmost importance and should be resolved prior to any conveyances. We urge that the Interior Department require compliance with this section. Unless this is done, vast areas of private of public lands will be cutoff from public access.

We have also heard that some land has already been conveyed without any easements. One example we believe is the Nenana Village in that they received some land by conveyance without any easements. This is also a question that the Interior Department should answer, since, if there have already been conveyances without adequate easements, they should be voided and only conveyed once adequate easements have been provided for.

In summary, we feel the Interior Department should require compliance with selections of lands in contiguous and reasonable compact tracts. They should also establish a more feasible public easement and access problem reserving to the public continual use of the waterways and lands of Alaska as has been enjoyed by all people for generations in the past. Also, additional Oversight Hearings should be held in Alaska to permit as many Alaskans as possible to testify concerning the substantial problems that have already occurred and are occurring at the present time with respect to the land claims and correct these problems prior to conveyances. Unless this is done, the spirit of the act as set forth in the act will not be accomplished. The act specifically states:

"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 effecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or a lengthly wardship or trusteeship, and without adding to the catagories of property and institutions enjoying special tax privileges or to the legislation established in special relationships between the United States Government and the State of Alaska."

At the present time, this is not being accomplished and unless more realistic easement guidelines are promigated and implemented in a realistic way, the settlement will drag out indefinitely, create polarization between the peoples of Alaska, and establish privileges for a limited few.

We feel that the following questions should be satisfactorily explained and/or answered prior to any conveyances of land under the settlement act:

1. Is the Interior Department going to require that the selected land be contiguous and in reasonably compact tracts?

2. For what purposes may lineal easements along rivers, lakes and streams be used?

3. Has the Interior Department complied with Section 17 of the Land Claims Settlement Act regarding easements, namely, has he consulted with the planning commission concerning public easements and has the Secretary of Interior consulted with the State and the Planning Commission to reserve to the public such easements that are necessary?

4. Has the joint Federal-State Land Use Planning Commission for Alaska properly compiled data and made recommendations for public easements to the Interior Department?

5. What provision will be made for future easements to permit access to State selected land which the State of Alaska will receive at a later time or access to private land which will be conveyed into private ownership at a later time?

6. What provision is going to be made for continued use of the waters and lands of Alaska by the public as has been done for generations in the past:

that is, recreational use which includes all forms of recreation such as hiking, fishing, camping, hunting and trapping?

Very truly yours,

TOM SCARBOROUGH,
President, Alaska Wildlife Federation and Sportsmen's Council, Inc.
JAMES DODSON,
President, Your Right to Alaska's Water and Land, Inc.
THE CARRINGTON CO.,
Fairbanks, Alaska, June 17, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D. C.

DEAR SCOOP: Please include this note as written testimony in the Alaska Native Claims Settlement Act Oversight Hearings. The time and expense involved prohibits me from coming to Washington and personally appearing to testify.

I feel the background of both you and I demands of us equal justice in regard to the vast acreages and tremendous distances involved, plus lack of road path access into much of Alaska, demands a broader easement along all rivers, lakes and streams of Alaska. I feel strongly that this has to be done to do away with the dual society that our federal government seems to be thrusting upon us.

I hope this note finds you and yours in the best of health and happiness.

Sincerely, Your reformed Republican friend from Mt. Vernon, Washington,
CHARLES T. SPINK.

ALASKA NATIVE ENROLLMENT,
Anchorage, Alaska, August 13, 1976.

Senator HENRY JACKSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JACKSON: In the five years since the Alaska Native Claims Settlement Act was passed by Congress, thirteen regional corporations and 210 village corporations have been established, millions of dollars have been distributed to approximately 78,000 Alaska Indian, Eskimo, and Aleut enrollees, and 40 million acres of land have been selected by the Native people of this State.

But there are still anywhere from five to ten thousand Alaska Native people who have not received their share of the Congressional settlement. These are the people who have not yet enrolled and for whom you passed an amendment to the original Act given them until January 2, 1977 to submit their applications.

Our research indicates that 75% of these unenrolled but eligible Alaska Natives are living outside of Alaska. Although they are concentrated on the West Coast, there are Alaska Native people living in every state of the Union.

Some of these people have lost touch with their Alaska families; some are Native children who have been adopted by non-Native parents; others are simply people who don't know how to go about getting their share of the settlement.

We are writing to you now to request your assistance in getting information to these people before it is too late for them to take advantage of the opportunity given to them by Congress.

Would you, therefore, be willing to include in your next newsletter to your constituents the following small news item:

"Alaska Natives who have not yet enrolled to receive their share of benefits under the Alaska Native Claims Settlement Act have until January 2, 1977, to submit enrollment applications. To be eligible for these benefits one must be at least one-quarter Alaska Indian, Eskimo, or Aleut, and must be a United States citizen who was living on December 18, 1971. For an application, write to Pouch 7-1971, Anchorage, Alaska, 99510."

We are enclosing a bit of information which will permit you to enlarge on this subject if you wish. If you would like further information, please feel free to call us.

Obviously we would appreciate your help. And needless to say, any Alaska Native person who receives a share of the Settlement because of your willingness to get this information to your constituents will be very grateful to you.

Sincerely,

IRENE SPARKS ROWAN.
SUSAN L. RUDDY.

DILLINGHAM, ALASKA,
June 7, 1976.

Senator HENRY M. JACKSON,
Chairman,
Senate Interior Committee,
Washington, D.C.

CAMAI SENATOR JACKSON: The BLM moves too slow. Please read my letter to them about my dad's land claim into your native claims oversight hearing record. Even when I told them that the new HUD houses needed land they wouldn't type the report and give it to us. Can you do something?

Thank you.

Sincerely yours,

ANECIA LINCOLN.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

The present method being used by the BLM in determining easements for the Alaska Native Land Claims Settlement Act is unmanageable, unworkable and very costly. An undue burden is placed upon the public to attempt to specifically pinpoint easements over some 80 million acres. A broader policy as well as a more feasible method should be implemented for determining easements. I suggest lineal easements along all waterways as a solution to the easement problem.

JOE SHEEHAN.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

The present method being used by the BLM in determining easements for the Alaska Native Land Claims Settlement Act is unmanageable, unworkable and very costly. An undue burden is placed upon the public to attempt to specifically pinpoint easements over some 80 million acres. A broader policy as well as a more feasible method should be implemented for determining easements. I suggest lineal easements along all waterways as a solution to the easement problem.

RAY KARNS.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

The present method being used by the BLM in determining easements for the Alaska Native Land Claims Settlement Act is unmanageable, unworkable and very costly. An undue burden is placed upon the public to attempt to specifically pinpoint easements over some 80 million acres. A broader policy as well as a more feasible method should be implemented for determining easements. I suggest lineal easements along all waterways as a solution to the easement problem.

PARRISH BROTHERS.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

There are substantial problems in implementing easements to be reserved in connection with Alaska Native Claims Settlement Act. Present method utilized by BLM approaches the problem incorrectly. Broad easements should be granted giving property owners the right to vacate where it would interfere with their right to use the property. Vast acreage and tremendous distances involved plus lack of road access into much of Alaska, dictate broad easements along all waterways be granted. I urge your committee to request the Inter or Department grant lineal easements along all rivers, lakes and streams of Alaska so that the public can utilize this transportation system as in the past.

EVERETT W. HEPP.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

There are substantial problems in implementing easements to be reserved in connection with Alaska Native Claims Settlement Act. Present method utilized by BLM approaches the problem incorrectly. Broad easements should be granted giving property owners the right to vacate where it would interfere with their right to use the property. Vast acreage and tremendous distances involved plus lack of road access into much of Alaska, dictate broad easements along all waterways be granted. I urge your committee to request the Interior Department grant lineal easements along all rivers, lakes and streams of Alaska so that the public can utilize this transportation system as in the past.

DICK SAVELL.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

There are substantial problems in implementing easements to be reserved in connection with Alaska Native Claims Settlement Act. Present method utilized by BLM approaches the problem incorrectly. Broad easements should be granted giving property owners the right to vacate where it would interfere with their right to use the property. Vast acreage and tremendous distances involved plus lack of road access into much of Alaska, dictate broad easements along all waterways be granted. I urge your committee to request the Interior Department grant lineal easements along all rivers, lakes and streams of Alaska so that the public can utilize this transportation system as in the past.

FRANK CHAPADOS.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

There are substantial problems in implementing easements to be reserved in connection with Alaska Native Claims Settlement Act. Present method utilized by BLM approaches the problem incorrectly. Broad easements should be granted giving property owners the right to vacate where it would interfere with their right to use the property. Vast acreage and tremendous distances involved plus lack of road access into much of Alaska, dictate broad easements along all waterways be granted. I urge your committee to request the Interior Department grant lineal easements along all rivers, lakes and streams of Alaska so that the public can utilize this transportation system as in the past.

BOB COMPEAU.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

There are substantial problems in implementing easements to be reserved in connection with Alaska Native Claims Settlement Act. Present method utilized by BLM approaches the problem incorrectly. Broad easements should be granted giving property owners the right to vacate where it would interfere with their right to use the property. Vast acreage and tremendous distances involved plus lack of road access into much of Alaska, dictate broad easements along all waterways be granted. I urge your committee to request the Interior Department grant lineal easements along all rivers, lakes and streams of Alaska so that the public can utilize this transportation system as in the past.

DENNY BREAID.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

There are substantial problems in implementing easements to be reserved in connection with Alaska Native Claims Settlement Act. Present method utilized by BLM approaches the problem incorrectly. Broad easements should be granted giving property owners the right to vacate where it would interfere with their right to use the property. Vast acreage and tremendous distances involved plus lack of road access into much of Alaska, dictate broad easements along all waterways be granted. I urge your committee to request the Interior Department grant lineal easements along all rivers, lakes and streams of Alaska so that the public can utilize this transportation system as in the past.

JOHN LINK.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

There are substantial problems in implementing easements to be reserved in connection with Alaska Native Claims Settlement Act. Present method utilized by BLM approaches the problem incorrectly. Broad easements should be granted giving property owners the right to vacate where it would interfere with their right to use the property. Vast acreage and tremendous distances involved plus lack of road access into much of Alaska, dictate broad easements along all waterways be granted. I urge your committee to request the Interior Department grant lineal easements along all rivers, lakes and streams of Alaska so that the public can utilize this transportation system as in the past.

LES DODSON.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

There are substantial problems in implementing easements to be reserved in connection with Alaska Native Claims Settlement Act. Present method utilized by BLM approaches the problem incorrectly. Broad easements should be granted giving property owners the right to vacate where it would interfere with their right to use the property. Vast acreage and tremendous distances involved plus lack of road access into much of Alaska, dictate broad easements along all waterways be granted. I urge your committee to request the Interior Department grant lineal easements along all rivers, lakes and streams of Alaska so that the public can utilize this transportation system as in the past.

JIM CANNON.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

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DAMON THOMAS.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

There are substantial problems in implementing easements to be reserved in connection with Alaska Native Claims Settlement Act. Present method utilized by BLM approaches the problem incorrectly. Broad easements should be granted giving property owners the right to vacate where it would interfere with their right to use the property. Vast acreage and tremendous distances involved plus lack of road access into much of Alaska, dictate broad easements along all waterways be granted. I urge your committee to request the Interior Department grant lineal easements along all rivers, lakes and streams of Alaska so that the public can utilize this transportation system as in the past.

DAMON THOMAS.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Please include this message as written testimony in the Alaska Native Land Claims Settlement Act oversight hearings. The expense of coming to Washington prohibits me from personally appearing to testify and I feel oversight hearings should be held in Alaska. I feel that lineal easements should be granted along all rivers, lakes and streams and a more feasible method of determining easements should be put into effect rather than the specific easement policy being used by BLM at the present time. The vast acreage involved prohibits effective determination of specific easements. The present BLM system is unmanageable, unworkable and extremely costly.

JAY HODGES.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Please include this message as written testimony in the Alaska Native Land Claims Settlement Act oversight hearings. The expense of coming to Washington prohibits me from personally appearing to testify and I feel oversight hearings should be held in Alaska. I feel that lineal easements should be granted along all rivers, lakes and streams and a more feasible method of determining easements should be put into effect rather than the specific easement policy being used by BLM at the present time. The vast acreage involved prohibits effective determination of specific easements. The present BLM system is unmanageable, unworkable and extremely costly.

GERALD MYERS.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

The present method being used by the BLM in determining easements for the Alaska Native Land Claims Settlement Act is unmanageable, unworkable and very costly. An undue burden is placed upon the public to attempt to specifically pinpoint easements over some 80 million acres. A broader policy as well as a more feasible method should be implemented for determining easements. I suggest lineal easements along all waterways as a solution to the easement problem.

JOHN ATHENS.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

The present method being used by the BLM in determining easements for the Alaska Native Land Claims Settlement Act is unmanageable, unworkable and very costly. An undue burden is placed upon the public to attempt to specifically pinpoint easements over some 80 million acres. A broader policy as well as a more feasible method should be implemented for determining easements. I suggest lineal easements along all waterways as a solution to the easement problem.

ED NEIWOHNER.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Please include this message as written testimony in the Alaska Native Land Claims Settlement Act oversight hearings. The expense of coming to Washington prohibits me from personally appearing to testify and I feel oversight hearings should be held in Alaska. I feel that lineal easements should be granted along all rivers, lakes and streams and a more feasible method of determining easements should be put into effect rather than the specific easement policy being used by BLM at the present time. The vast acreage involved prohibits effective determination of specific easements. The present BLM system is unmanageable, unworkable and extremely costly.

MIKE COOK.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Please include this message as written testimony in the Alaska Native Land Claims Settlement Act oversight hearings. The expense of coming to Washington prohibits me from personally appearing to testify and I feel oversight hearings should be held in Alaska. I feel that lineal easements should be granted along all rivers, lakes and streams and a more feasible method of determining easements should be put into effect rather than the specific easement policy being used by BLM at the present time. The vast acreage involved prohibits effective determination of specific easements. The present BLM system is unmanageable, unworkable and extremely costly.

JIM MOVIUS.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

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should be held in Alaska. I feel that lineal easements should be granted along all rivers, lakes and streams and a more feasible method of determining easements should be put into effect rather than the specific easement policy being used by BLM at the present time. The vast acreage involved prohibits effective determination of specific easements. The present BLM system is unmanageable, unworkable and extremely costly.

DALLAS PHILLIPS.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

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JAMES A. MESSER.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

There are substantial problems in implementing easements to be reserved in connection with Alaska Native Claims Settlement Act. Present method utilized by BLM approaches the problem incorrectly. Broad easements should be granted giving property owners the right to vacate where it would interfere with their right to use the property. Vast acreage and tremendous distances involved plus lack of road access into much of Alaska, dictate broad easements along all waterways be granted. I urge your committee to request the Interior Department grant lineal easements along all rivers, lakes and streams of Alaska so that the public can utilize this transportation system as in the past.

CURTIS JOHNSON.

FAIRBANKS, ALASKA,
June 11, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Please include this message as written testimony in the Alaska Native Land Claims Settlement Act oversight hearings. The expense of coming to Washington prohibits me from personally appearing to testify and I feel oversight hearings should be held in Alaska. I feel that lineal easements should be granted along all rivers, lakes and streams and a more feasible method of determining easements should be put into effect rather than the specific easement policy being used by BLM at the present time. The vast acreage involved prohibits effective determination of specific easements. The present BLM system is unmanageable, unworkable and extremely costly.

DUANE SNEDDEN.

FAIRBANKS, ALASKA,
June 11, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Please include this message as written testimony in the Alaska Native Land Claims Settlement Act oversight hearings. The expense of coming to Washington prohibits me from personally appearing to testify and I feel oversight hearings should be held in Alaska. I feel that lineal easements should be granted along

all rivers, lakes and streams and a more feasible method of determining easements should be put into effect rather than the specific easement policy being used by BLM at the present time. The vast acreage involved prohibits effective determination of specific easements. The present BLM system is unmanageable, unworkable and extremely costly.

RAY KOHLER.

FAIRBANKS, ALASKA,
June 11, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Much of the tentative select land has not been selected in contiguous and reasonably compact tracts. Until this issue is settled by the Interior Department, no land should be conveyed. If this is allowed, substantial waterway and lake system access in Alaska will be prohibited unless lineal easements are granted along all waterways. I urge your committee to consider the granting of lineal easements along all waterways and lakes as well as requiring contiguous and reasonably compact blocks.

JOE JACKOVICH.

FAIRBANKS, ALASKA,
June 11, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Much of the tentative select land has not been selected in contiguous and reasonably compact tracts, until this issue is settled by the Interior Department, no land should be conveyed. If this is allowed, substantial waterway and lake system access in Alaska will be prohibited unless lineal easements are granted along all waterways. I urge your committee to consider the granting of lineal easements along all waterways and lakes as well as requiring contiguous and reasonably compact blocks.

AL LOMEN.

FAIRBANKS, ALASKA,
June 11, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

There are substantial problems in implementing easements to be reserved in connection with Alaska Native Claims Settlement Act. Present method utilized by BLM approaches the problem incorrectly. Broad easements should be granted giving property owners the right to vacate where it would interfere with their right to use the property. Vast acreage and tremendous distances involved plus lack of road access into much of Alaska, dictate broad easements along all waterways be granted. I urge your committee to request the Interior Department grant lineal easements along all rivers, lakes and streams of Alaska so that the public can utilize this transportation system as in the past.

J. B. COGHILL.

FAIRBANKS, ALASKA,
June 11, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

The present method being used by the BLM in determining easements for the Alaska Native Land Claims Settleemnt Act is unmanageable, unworkable and very costly, an undue burden is placed upon the public to attempt to specifically pinpoint easements over some 80 million acres. A broader policy as well as a more feasible method should be implemented for determining easements. I suggest lineal easements along all waterways as a solution to the easement problem.

JAMES LAKE.

FAIRBANKS, ALASKA,
June 11, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

The present method being used by the BLM in determining easements for the Alaska Native Land Claims Settlement Act is unmanageable, unworkable and very costly. An undue burden is placed upon the public to attempt to specifically pinpoint easements over some 80 million acres. A broader policy as well as a more feasible method should be implemented for determining easements. I suggest lineal easements along all waterways as a solution to the easement problem.

ERNEST T. HOLM.

FAIRBANKS, ALASKA,
June 11, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

The present method being used by the BLM in determining easements for the Alaska Native Land Claims Settlement Act is unmanageable, unworkable and very costly. An undue burden is placed upon the public to attempt to specifically pinpoint easements over some 80 million acres. A broader policy as well as a more feasible method should be implemented for determining easements. I suggest lineal easements along all waterways as a solution to the easement problem.

AL SEELIGER.

FAIRBANKS, ALASKA,
June 11, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Please include this message as written testimony in the Alaska Native Land Claims Settlement Act Oversight Hearings. The expense of coming to Washington prohibits me from personally appearing to testify and I feel oversight hearings should be held in Alaska. I feel that lineal easements should be granted along all rivers, lakes and streams and a more feasible method of determining easements should be put into effect rather than the specific easement policy being used by BLM at the present time. The vast acreage involved prohibits effective determination of specific easements. The present BLM system is unmanageable, unworkable and extremely costly.

DUANE HALL.

FAIRBANKS, ALASKA,
June 11, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

I feel that oversight hearings should be held in the State of Alaska since the distance and costs involved in traveling to Washington. D.C. prohibits me from personally appearing at the hearings. The present plan which BLM is using to implement the easements is unworkable and a broader policy for easements should be implemented. I urge your committee to consider lineal easements along all rivers, lakes and streams of Alaska.

BOB BETTISWORTH.

FAIRBANKS, ALASKA,
June 11, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

I feel that oversight hearings should be held in the State of Alaska since the distance and costs involved in traveling to Washington, D.C. prohibits me from

personally appearing at the hearings. The present plan which BLM is using to implement the easements is unworkable and a broader policy for easements should be implemented. I urge your committee to consider lineal easements along all rivers, lakes, and streams of Alaska.

PAUL GAVOR.

BOSTON, MASS.,
June 8, 1976.

Senator FLOYD HASKELL,
Senate Building,
Washington, D.C.:

DEAR SENATOR HASKELL: It has just come to the attention of the United States Ski Association Convention now in session in Boston, that your subcommittee on environment and resources is considering substantial amendments to S-2125.

The United States Ski Association represents over one hundred and ten thousand dedicated skiers in all sections of the country. As participants in your Denver and Washington hearings, the USSA is deeply concerned with the issues addressed to in your bill. We would appreciate the opportunity to provide additional input and consultation prior to the amendments being finalized.

We will look forward to your early response. Respectfully yours

DICK GOETZMAN,
President—USSA, Copley Plaza Hotel.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

I feel that oversight hearings should be held in the State of Alaska since the distance and costs involved in traveling to Washington, D.C. prohibits me from personally appearing at the hearings. The present plan which BLM is using to implement the easements is unworkable and a broader policy for easements should be implemented. I urge your committee to consider lineal easements along all rivers, lakes and streams of Alaska.

JACK WILBUR.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Much of the tentative select land has not been selected in contiguous and reasonably compact tracts. Until this issue is settled by the Interior Department, no land should be conveyed. If this is allowed, substantial waterway and lake system access in Alaska will be prohibited unless lineal easements are granted along all waterways. I urge your committee to consider the grant of lineal easements along all waterways and lakes as well as requiring contiguous and reasonably compact blocks.

JOSEPH RIBAR.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Much of the tentative select land has not been selected in contiguous and reasonably compact tracts. Until this issue is settled by the Interior Department, no land should be conveyed. If this is allowed, substantial waterway and lake system access in Alaska will be prohibited unless lineal easements are granted along all waterways. I urge your committee to consider the grant of lineal easements along all waterways and lakes as well as requiring contiguous and reasonably compact blocks.

WILLIAM V. BOGGESS.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

I feel that oversight hearings should be held in the State of Alaska since the distance and costs involved in traveling to Washington, D.C. prohibits me from personally appearing at the hearings. The present plan which BLM is using to implement the easements is unworkable and a broader policy for easements should be implemented. I urge your committee to consider lineal easements along all rivers, lakes and streams of Alaska.

GERALD MYERS.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

I feel that oversight hearings should be held in the State of Alaska since the distance and costs involved in traveling to Washington, D.C. prohibits me from personally appearing at the hearings. The present plan which BLM is using to implement the easements is unworkable and a broader policy for easements should be implemented. I urge your committee to consider lineal easements along all rivers, lakes and streams of Alaska.

GORDON WEAR.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

I feel that oversight hearings should be held in the State of Alaska since the distance and costs involved in traveling to Washington, D.C. prohibits me from personally appearing at the hearings. The present plan which BLM is using to implement the easements is unworkable and a broader policy for easements should be implemented. I urge your committee to consider lineal easements along all rivers, lakes and streams of Alaska.

EUGENE V. MILLER.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Much of the tentative select land has not been selected in contiguous and reasonably compact tracts. Until this issue is settled by the Interior Department, no land should be conveyed. If this is allowed, substantial waterway and lake system access in Alaska will be prohibited unless lineal easements are granted along all waterways. I urge your committee to consider the grant of lineal easements along all waterways and lakes as well as requiring contiguous and reasonably compact blocks.

DICK MADSEN.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Much of the tentative select land has not been selected in contiguous and reasonably compact tracts. Until this issue is settled by the Interior Department, no land should be conveyed. If this is allowed, substantial waterway and lake system access in Alaska will be prohibited unless lineal easements are granted along all waterways. I urge your committee to consider the grant of lineal easements along all waterways and lakes as well as requiring contiguous and reasonably compact blocks.

ROBERT HANSON.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Much of the tentative select land has not been selected in contiguous and reasonably compact tracts. Until this issue is settled by the Interior Department, no land should be conveyed. If this is allowed, substantial waterway and lake system access in Alaska will be prohibited unless lineal easements are granted along all waterways. I urge your committee to consider the grant of lineal easements along all waterways and lakes as well as requiring contiguous and reasonably compact blocks.

LINNOLN E. OST.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Much of the tentative select land has not been selected in contiguous and reasonably compact tracts. Until this issue is settled by the Interior Department, no land should be conveyed. If this is allowed, substantial waterway and lake system access in Alaska will be prohibited unless lineal easements are granted along all waterways. I urge your committee to consider the grant of lineal easements along all waterways and lakes as well as requiring contiguous and reasonably compact blocks.

WALTER WITT.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Much of the tentative select land has not been selected in contiguous and reasonably compact tracts. Until this issue is settled by the Interior Department, no land should be conveyed. If this is allowed, substantial waterway and lake system access in Alaska will be prohibited unless lineal easements are granted along all waterways. I urge your committee to consider the grant of lineal easements along all waterways and lakes as well as requiring contiguous and reasonably compact blocks.

GERALD J. VAN HOOMISSEN.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Much of the tentative select land has not been selected in contiguous and reasonably compact tracts. Until this issue is settled by the Interior Department, no land should be conveyed. If this is allowed, substantial waterway and lake system access in Alaska will be prohibited unless lineal easements are granted along all waterways. I urge your committee to consider the grant of lineal easements along all waterways and lakes as well as requiring contiguous and reasonably compact blocks.

CARL ERICKSON.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

I feel that oversight hearings should be held in the State of Alaska since the distance and costs involved in traveling to Washington, D.C. prohibits me from personally appearing at the hearings. The present plan which BLM is

using to implement the easements is unworkable and a broader policy for easements should be implemented. I urge your committee to consider lineal easements along all rivers, lakes and streams of Alaska.

DON MUSTON.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

I feel that oversight hearings should be held in the State of Alaska since the distance and costs involved in traveling to Washington, D.C. prohibits me from personally appearing at the hearings. The present plan which BLM is using to implement the easements is unworkable and a broader policy for easements should be implemented. I urge your committee to consider lineal easements along all rivers, lakes and streams of Alaska.

RALPH MIGLIACCIO.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

I feel that oversight hearings should be held in the State of Alaska since the distance and costs involved in traveling to Washington, D.C. prohibits me from personally appearing at the hearings. The present plan which BLM is using to implement the easements is unworkable and a broader policy for easements should be implemented. I urge your committee to consider lineal easements along all rivers, lakes and streams of Alaska.

BIXLER WHITING.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Much of the tentative select land has not been selected in contiguous and reasonably compact tracts. Until this issue is settled by the Interior Department, no land should be conveyed. If this is allowed, substantial waterway and lake system access in Alaska will be prohibited unless lineal easements are granted along all waterways. I urge your committee to consider the grant of lineal easements along all waterways and lakes as well as requiring contiguous and reasonably compact blocks.

TRUMAN JACKSON.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

I feel that oversight hearings should be held in the State of Alaska since the distance and costs involved in traveling to Washington, D.C. prohibits me from personally appearing at the hearings. The present plan which BLM is using to implement the easements is unworkable and a broader policy for easements should be implemented. I urge your committee to consider lineal easements along all rivers, lakes and streams of Alaska.

PAUL HAGGLAND.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

I feel that oversight hearings should be held in the State of Alaska since the distance and costs involved in traveling to Washington, D.C. prohibits me from personally appearing at the hearings. The present plan which BLM is using to implement the easements is unworkable and a broader policy for easements should be implemented. I urge your committee to consider lineal easements along all rivers, lakes and streams of Alaska.

O. L. STEGER.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Please include this message as written testimony in the Alaska Native Land Claims Settlement Act oversight hearings. The expense of coming to Washington prohibits me from personally appearing to testify and I feel oversight hearings should be held in Alaska. I feel that lineal easements should be granted along all rivers, lakes and streams and a more feasible method of determining easements should be put into effect rather than the specific easement policy being used by BLM at the present time. The vast acreage involved prohibits effective determination of specific easements. The present BLM system is unmanageable, unworkable and extremely costly.

JAMES DODSON.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

Please include this message as written testimony in the Alaska Native Land Claims Settlement Act oversight hearings. The expense of coming to Washington prohibits me from personally appearing to testify and I feel oversight hearings should be held in Alaska. I feel that lineal easements should be granted along all rivers, lakes and streams and a more feasible method of determining easements should be put into effect rather than the specific easement policy being used by BLM at the present time. The vast acreage involved prohibits effective determination of specific easements. The present BLM system is unmanageable, unworkable and extremely costly.

RON HENDRIE.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

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WILLIAM WAUGAMAN.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

The present method being used by the BLM in determining easements for the Alaska Native Land Claims Settlement Act is unmanageable, unworkable and very costly. An undue burden is placed upon the public to attempt to specifically pinpoint easements over some 80 million acres. A broader policy as well as a more feasible method should be implemented for determining easements. I suggest lineal easements along all waterways as a solution to the easement problem.

TOM SCARBOROUGH.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

The present method being used by the BLM in determining easements for the Alaska Native Land Claims Settlement Act is unmanageable, unworkable and very costly. An undue burden is placed upon the public to attempt to specifically pinpoint easements over some 80 million acres. A broader policy as well as a more feasible method should be implemented for determining easements. I suggest lineal easements along all waterways as a solution to the easement problem.

ROD LEDBETTER.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

The present method being used by the BLM in determining easements for the Alaska Native Land Claims Settlement Act is unmanageable, unworkable and very costly. An undue burden is placed upon the public to attempt to specifically pinpoint easements over some 80 million acres. A broader policy as well as a more feasible method should be implemented for determining easements. I suggest lineal easements along all waterways as a solution to the easement problem.

BOB HUFMAN.

FAIRBANKS, ALASKA,
June 9, 1976.

Senator HENRY JACKSON,
Dirksen Office Building,
Washington, D.C.:

The present method being used by the BLM in determining easements for the Alaska Native Land Claims Settlement Act is unmanageable, unworkable and very costly. An undue burden is placed upon the public to attempt to specifically pinpoint easements over some 80 million acres. A broader policy as well as a more feasible method should be implemented for determining easements. I suggest lineal easements along all waterways as a solution to the easement problem.

TOM BLANTON.

BURR, PEASE & KURTZ, INC.,
Anchorage, Alaska, March 26, 1976.

Hon. TED STEVENS,
U.S. Senator, Washington, D.C.

DEAR TED: Dan Alex tells me that oversight hearings are being scheduled in Washington towards the end of April. It is our understanding that the topic of discussion will be implementation of the claims settlement act by the Depart-

ment of the Interior. I do not know whether or not the topic properly would concern difficulties arising in administration of the claims act by the Village and Regional Corporations which might require Legislative correction. That is to say, we understand that the principal "target" of the hearings is the Department of the Interior, and possibly other Federal departments having a duty under Section 3(e) to review their lands, but we are wondering whether the Act itself is also a proper target for comment.

In any event, Eklutna, Inc. desires to be heard on these matters having to do with the implementation of the act by the executive branch. In particular Ekllutna, Inc. has concern with the glacial speed of the conveyance to it of its selections, and considerable concern with the easement designation process. As one of the first villages to make selections, and as a recipient of some of the first conveyances, Eklutna can bring to bear on the situation the experience of a Village that has been waiting a very long time.

We would very much appreciate the assistance of your office in finding a spot on the agenda. We certainly do not wish to again find ourselves (certainly through no fault of yours) wandering about the halls looking for permission to be heard. Dan and I were tremendously impressed with the courteous and cooperative attitude of your office during our last visit.

We are looking forward to seeing you again.

Very truly yours,

E. G. BURTON.

TYONEK NATIVE CORP.,
Anchorage, Alaska, May 12, 1976.

Hon. TED STEVENS,
U.S. Senate,
Russell Building, Washington, D.C.

DEAR SENATOR STEVENS: Representatives of Tyonek Native Corporation, expect to be in Washington, D.C. for the June 10th ANCSA Oversight Hearings, scheduled by the Senate Committee on Interior and Insular Affairs. Tyonek Native Corporation wishes to bring to the attention of the committee, problems encountered by the shareholders of the former Moquawkie Indian Reservation pertaining to how the former reservation now exists under ANCSA. We ask your assistance in assuring us the opportunity to present our views. We would also like to discuss this with you before the Oversight Hearings.

The following is background information that we feel is pertinent to our presentation.

1. The Moquawkie Indian Reservation was:

a. reserved ". . . for the benefit of Alaska Natives of that region" by Presidential Executive Order 2141, dated February 27, 1915.

b. maintained, prior to ANCSA, in accordance with the Corporate Charter of the Native Village of Tyonek (A Federal Corporation Chartered Under the Act of June 18, 1934, as amended by the Composite Indian Reorganization Act for Alaska of May 1, 1936). This allowed exclusive right of access to be determined by the residents of the Village of Tyonek.

c. was surveyed in 1930 (US Survey 1865). The survey was filed with the Territory of Alaska in 1936 and the Department of the Interior in 1939.

d. was revoked in 1971 in accordance with Section 19 of ANCSA—Revocation of Reservations.

2. In Title 43 of the Code of Federal Regulation (CFR), Sub Part 2650.1—Provisions for Interim Administration, it states, "(a) (1) Prior to any conveyance under the Act, all public land withdrawn pursuant to Section 11, 14, and 16, or covered by Section 19 of the Act, shall be administered under applicable laws and regulations by the Secretary of the Interior. . . ."

Tyonek Native Corporation is unable to find the "applicable laws and regulations" pertaining to the interim administration of former reservations "covered by Section 19 of the Act." We do not believe there are any regulations pertaining to former reservations. We feel it was the intention of Congress to convey patent to the former reservations as stated in ANCSA, Section 2 (b) ". . . rapidly, with certainty, in conformity with the real and social needs. . . ." of the Tyonek people. This has not been done.

Although Tyonek Native Corporation has fulfilled all the requirements to receive patent to the former Moquawkie Indian Reservation (chosen village status under ANCSA, completed and filed a survey of reservation boundaries, filed village selection application on May 9, 1974) we have still not received patent to the former reservation upon which the Tyoneks have lived since at least 1915.

The major reason has been because of a lack of easement criteria on land withdrawn under ANCSA. However, prior to ANCSA, the public was not allowed on the Moquawkie Indian Reservation without the permission of the Native Village of Tyonek. This policy was supported and protected by the Department of the Interior. What easements are now required on Tyonek controlled land after the passage of ANCSA, when the reservation is to remain in the possession of the same people who lived on it before the passage of ANCSA? What criteria calls for easements across the former reservation? Certainly not ANCSA. Order No. 2982 signed by the Secretary of the Interior pertains to "the reservation of easements for public use." There has never been "public use" of the former Moquawkie Indian Reservation.

Because of the delay experienced in obtaining patent to the former reservation, the Bureau of Land Management proposed a study, and later, easement recommendations that rerouted Primary Corridor No. 30, suddenly and without notice, through the former Moquawkie Indian Reservation. Although, this corridor has been dropped, the Department of the Interior, by Order No. 2987, is now recommending a policy of floating easements for energy/transportation corridors across the former Moquawkie Indian Reservation. This proposal is anathema to the economic success of our Village Corporation or any Village Corporation whose lands the Corridor may pass through. We believe it is in direct conflict with the intent of Congress through ANCSA to provide an economic base for the successful future of a village corporation. We believe it particularly ignores the unique status of the former reservation.

These questions are but a few that have been raised in our quest for easement free patent to the former Moquawkie Indian Reservation. What was believed to be the beginning of a journey on the road to a solid economic future has turned into a battleground in order to receive patent to land that Tyonek Native Corporation believes Congress intended to convey immediately upon passage of ANCSA. It is requiring time and the expenditure of our Village Corporation Alaska Native Fund monies that should be spent elsewhere.

Your assistance and support for the Tyonek people would be appreciated in bringing this matter to a favorable conclusion.

Sincerely yours,

MARTIN G. SLAPIKAS,
Executive Director.

DUNCAN, BROWN, WEINBERG & PALMER,
Washington, D.C., June 29, 1976.

HON. TED STEVENS,
U.S. Senate,
Russell Senate Office Building, Washington, D.C.

DEAR SENATOR STEVENS: At the oversight hearings on the Alaska Native Claims Settlement Act on June 10, you requested that I prepare legislation which would make the tax exemption for real property interests conveyed under ANCSA extend for a period of twenty years from the time of conveyance, rather than twenty years from the date of enactment as is now provided in Section 21(d) of ANCSA. The reason for the change is the extensive delays that have occurred in Interior Department conveyances to Natives and Native corporations. As you know, less than 1% of the Natives' land entitlement has been conveyed and present indications are that further lengthy delays may ensue.

I enclose what I believe to be an appropriate draft of a bill. I appreciate your interest in this matter and stand ready to confer with you or your staff regarding it at any time.

With kindest regards.

Sincerely yours,

EDWARD WEINBERG.

A BILL TO AMEND SECTION 21(d) OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 21(d) of the Alaska Native Claims Settlement Act (Act of December 18, 1971, P.L. 92-203) is amended by striking the phrase "after the date of enactment of this act" and inserting in lieu thereof the phrase "after the date of the conveyance".

ANCHORAGE, ALASKA,
April 4, 1976.

Senator MIKE GRAVEL,
Dirksen Building,
Washington, D.C.

DEAR SENATOR GRAVEL: We are writing in regard to the access to and easements under and along the streams, rivers, lakes, beaches, and trails conveyed under the Alaska Native Claim Settlement Act. We support the concept that the fish, wildlife, and waters of Alaska belong to *all* Alaskans, not any one select group for any reason. Such resources should be reserved for all people for their common use. Access and easements are a must, whether it be for hunting, fishing, boating, or sightseeing. Already too much land is unavailable for recreational use, not because there isn't any land, but because the state and federal governments did not enforce access to these recreational spots. The situation is atrocious in the Anchorage and Matanuska-Susitna Boroughs. These examples prove that access to public recreational spots must be maintained for everyone. If the wildlife belongs to the public, then access to them must be guaranteed.

The Muehlhausen Family.
KENT, SHIRLEY, LARRY, LISA.

ANCHORAGE, ALASKA,
May 28, 1976.

Senator MIKE GRAVEL,
Dirksen Building,
Washington, D.C.

DEAR SIR: This letter is in regards to the upcoming hearing in Washington, D.C. on June 10 concerning public access to waterways on lands that will be transferred to various native corporations under the Alaska Native Land Claims Settlement Act. I have four points I wish to make.

(1) The Act speaks to this point very clearly. There is to be public recreational access and easements along all streams, lakes, rivers, and ocean beaches under the terms of the act.

(2) There is strong historical and legal precedent in Alaska for such public easement. An excellent example is the State Open Entry program which clearly defines a 10′ public easement on all private lands acquired under this program. This easement is in present law to protect historical use of waterways by all of the public.

(3) Many of the other 50 states have identical easement laws to protect the easements along waterways in those states for the public use.

(4) The Alaskan natives are United States citizens first and a special interest group second. They do not have any exclusive right to the use of the lands 10′ wide along public waters. There is no interest to be served except their own special interest by eliminating the historical right of access of other citizens of this nation.

I urge you to speak for me in this matter. I strongly recommend that you use your considerable political influence to see that the historical public easement along public waterways is upheld in the state of Alaska.

Thank you for your time in this matter. I would appreciate hearing how you plan to represent the public at this hearing.

Sincerely,

C. R. KNOWLES.

CHOGGIUNG LIMITED,
Dillingham, Alaska, May 26, 1976.

ROBERT SORENSON,
Chief Lands and Minerals Branch,
Bureau of Land Management,
Anchorage, Alaska.

CAMAI MR. SORENSON: We certainly enjoyed the opportunity of discussing the case files referenced above with you in your office last week, however, the substance of our conversation leaves us a little worried. We cannot understand what you folks are up to in there. As we explained in your office we are unhappy with Right of Way application AA10000.

In April of 1975 Choggiung Limited requested interim conveyance of the land involved in the above mentioned case. We requested that this parcel be conveyed to us each month through the summer and fall. We asked for IC in writing. We asked for IC in person. We asked for IC in letters to our congressional representative. We asked for IC in virtually every manner we could imagine. We demanded IC. We begged for IC, but all these efforts fell on deaf ears.

The BLM stated that it would be better for us take our interim conveyance by the township rather than the parcel. Unfortunately, this takes time. Endless time. In the meantime while our case flounders in the rube goldberg easement process you have begun processing right of way applications AA10000. Notes in that case file suggest that you wish to have its processing expedited. Now how can that be. The village selected these lands in 1974. We requested prompt conveyance of these tracts in the spring of 1975. The Dept. of Highways selected these lands in the fall of 1975. Yet it is there claim which you hurry to grant.

We believe that Congress intended for the lands that were selected by the village corporation to be immediately conveyed to their ownership. Further, we have aided your staff in working the casefiles to determine which lands were available for Choggiung selection and which lands were proper for conveyance to the village in cases AA6659A.B, & C. We believe our lands are ready for conveyance and the decision to interim convey could be issued today. We urge you to take this action promptly. In addition we respectfully request the right to review case file AA10000 and to submit our comments as outlined in the regulations. We look forward to your cooperation.

Sincerely,

TOM HAWKINS,
Land Manager.

KODIAK-ALEUTIAN CHAPTER,
ALASKA CONSERVATION SOCIETY,
Kodiak, Alaska, June 24, 1976.

Re ANCSA oversight hearing, June 10 and 14, 1976.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

Attn: Mr. Steve Quarles, Counsel to the Committee.

DEAR SENATOR JACKSON: This is a statement for the record of your recent oversight hearing. Earlier this month we submitted to your committee a set of photographs of places in the Kodiak group of islands which have been nominated

by Koniag, Inc. and certain other Native corporations for status as established villages under the Alaska Navite Claims Settlement Act. Our statement is intended to supplement these photographs. It is also intended to bring the Committee members up-to-date on recent developments in this long-standing controversy.

At the present time, the following places have been determined by the Interior Department to be ineligible for established village status: Uyak, Uganik, Anton Larsen Bay, Bells Flats, Ayakulik (all on Kodiak Island); Litnik (on Afognak Island); and Port William (on Shuyak Island). However, Koniag, Inc. has succeeded at the federal district court level in Washington, D.C. in overturning the ruling. Basing his decision on procedural grounds, the judge declared the village eligible, instead of returning the issue to Interior for reconsideration.

If the government's legal case is ultimately lost on nonsubstantive grounds, Uyak, Uganik, and Ayakulik would be eligible for nine townships from the Kodiak National Wildlife Refuge. Litnik and Port William would be eligible to select five townships on Afognak Island in the Chugach National Forest. All seven would be able to select "deficiency" land on the Alaska Peninsula.

Based on the first-hand knowledge and experience of our members, we think that these places do not in any way meet the criteria of the Act for established villages.

There are three other sites which Interior has certified as full-fledged Native villages: Woody Island, Afognak, and Kaguyak. The latter two are abandoned villages, while Woody Island is an abandoned FAA station.

Interior certified Afognak and Kaguyak because counsed for Koniag, Inc., Mr. Edward P. Weinberg, wrote the regulation which Interior adopted allowing the department to certify these two places as established villages. Our members heard Mr. Weinberg admit this fact under cross-examination during administrative law hearings in Kodiak. Woody Island was certified for lack of a challenge during the administrative appeal preceedings. Had we known of Woody's Island's nomination, we certainly would have lodged a protest, but we are not in the habit of poring over the *Federal Register*. Simply because we did not protest during the administrative appeal proceedings is no excuse for Interior to qualify the obviously fraudulent "village" of Woody Island. It should not be the responsibility of the general public to block fraudulent claims against the federal government. Interior is charged by Congress with the responsibility to defend and protect the public lands. Its performance in the case of Woody Island, Afognak, and Kaguyak is totally inexcusable.

Because of Interior's failure to uphold the public trust, non-Native citizens of Kodiak, including several members of our chapter, have been obliged to go into court in an effort to prevent the certification of Woody Island. It is with some degree of irritation that we have undertaken this task in the face of no help whatsoever from the Alaska Congressional delegation and the two state administrations, all of which entitites seem bent on giving away the very important federal and state lands involved.

At the same time as our legal effort is underway, we read in the press of investigations by a federal grand jury, and we also know of FBI investigations of these alleged "villages".

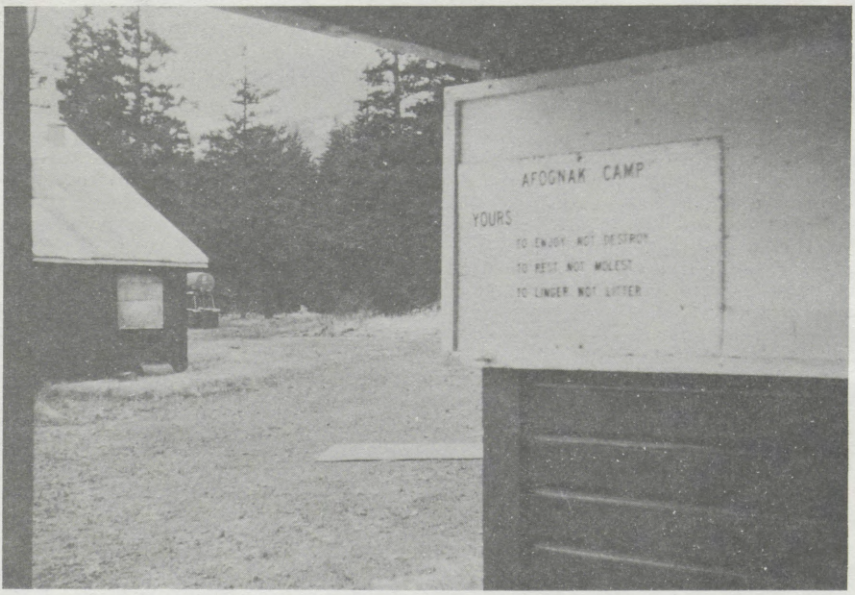
Under these circumstances, we urge the Committee to place a moratorium on any interim conveyance of title to the public lands identified for selection by Native corporations representing the ten alleged villages noted above. We further urge you, as chairman of the Permanent Investigations Subcommittee, to undertake an investigation into the entire issue. Kodiak National Wildlife Refuge and Afognak Island contain wildlife habitat of unquestioned national importance. We would appreciate your help in protecting these public lands. You, and the committees you chair, are our court of last resort.

Sincerely yours,

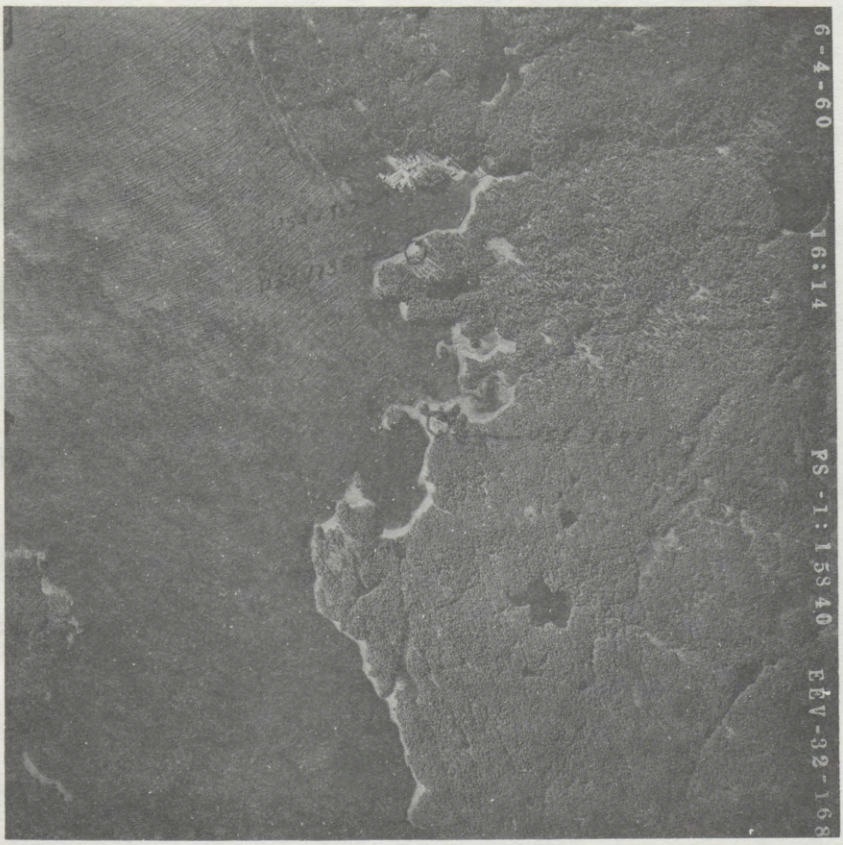
MRS. PHYLLIS FREDERICKSEN,
Acting Secretary.



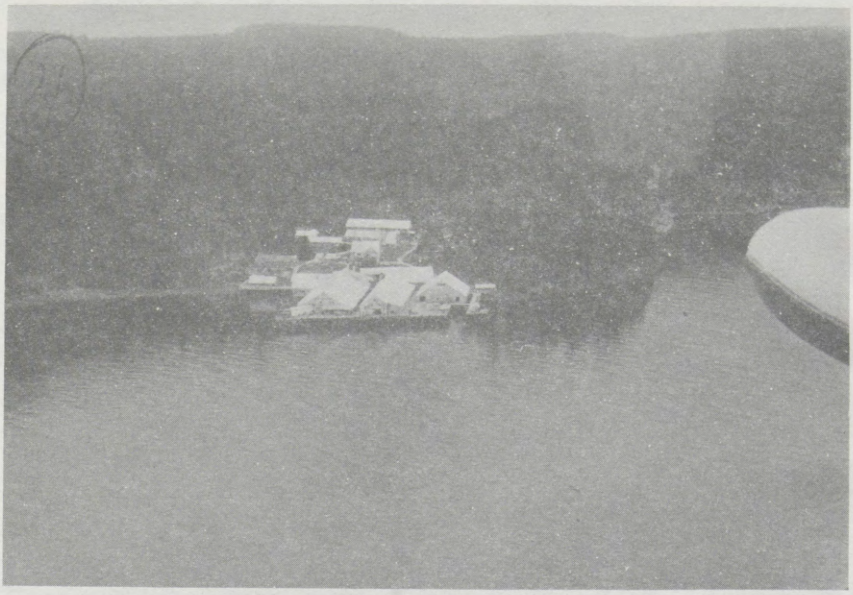
(1) Aerial view of Navy Recreation Camp on Afognak Lake—claimed by some to be the native village of Litnik. There are other structures on Afognak River and Bay, all associated with the recreation camp.



(2) Photo from ground of Afognak Recreation Camp



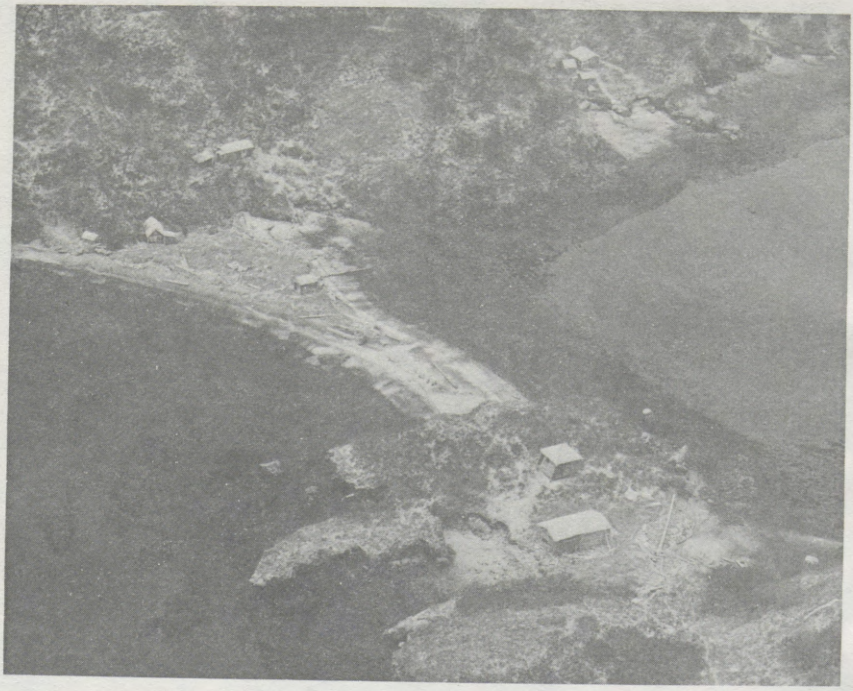
(3) Aerial of area claimed to be Port Williams Native Village. USS2932—Cannery owned by Washington Fish and Oyster Co. USS 1699 Cook Residence—non-native. US1738–?



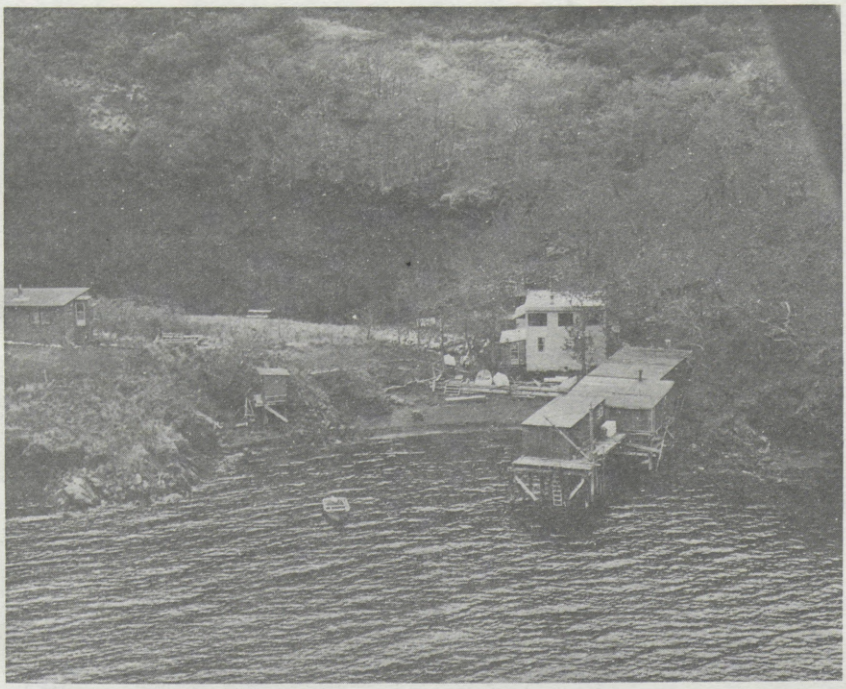
(4) Closer aerial of Port Williams Cannery



(5) Closeup of all structures at Ayakulik.—Uninhabited for probably over 50 years. Fish and Game has built a cabin about ½ mile from these buildings for use during summer fish study. There are no other structures in the area.



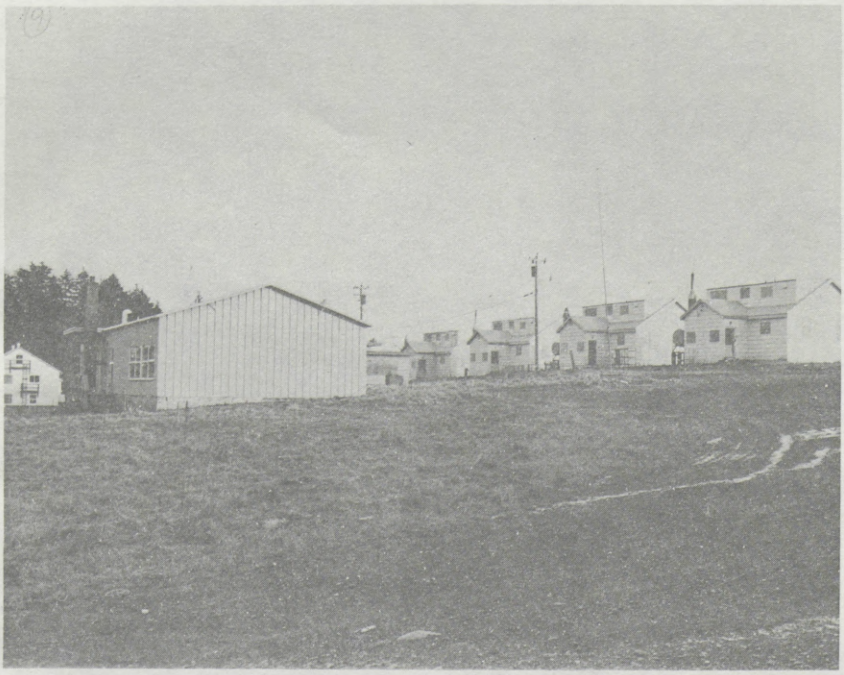
(6) Aerial of Uyak.—We understand there are no natives living there and that native people were flown in by Kodiak Airways to be photographed in front of the buildings as if they actually lived there.



(7) Aerial of a cannery and two houses owned by Wayne Hans and family (non-native) at Uganik Bay.



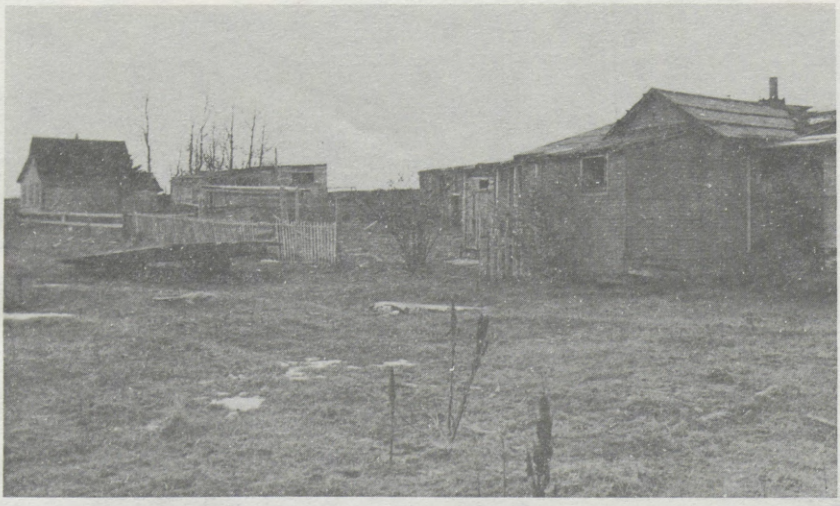
(8) Homestead or Homesite (not sure which). *Patented* land owned by Daniel Boone Keed (native) of Uganik Bay.



(9) Woody Island FAA facility.—Claimed by natives in application for certification to be native village. Photographs of native people standing in front of FAA facility were used to gain certification.



(10) Woody Island.—FAA facility



(11) Woody Island.—Houses where several native families at one time lived. People moved to town for convenience.

(a) The tidal wave caused evacuation and some damage to the houses, but the families moved back in after the tidal wave and continued to live there.

(b) Closure of the Woody Island school had no effect on uninhabited condition of village in 1970—school closed because FAA facility shut down. Info we have indicated about 9 students the last year the school operated—none of which were native.

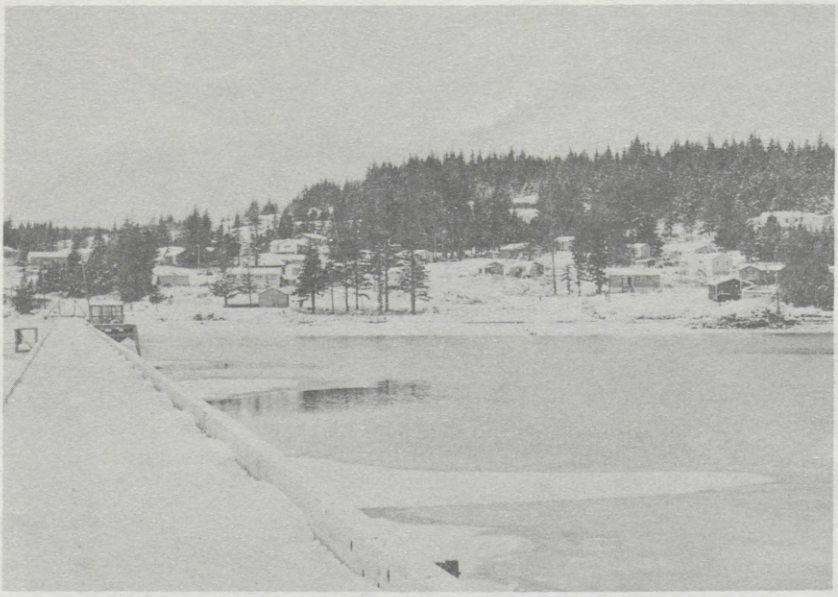


(12) Inside of house at Woody Island.

Anton Larsen and Hells Flats have no photographic support because there's nothing to take a picture of. Affidavits are on file from numerous people (including natives) that there has never been any kind of native village at either of these locations.



(13) Legitimate village of Old Harbor



(14) Legitimate village of Port Lions