

ALASKA NATIVE CLAIMS SETTLEMENT ACT:

A "LIVING SETTLEMENT?"

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EXECUTIVE SUMMARY

On December 18, 1971, the Alaska Native Claims Settlement Act (ANCSA) was signed into law by the President of the United States. This legislation extinguished all Native claims of aboriginal title by the Indians, Aleut and Inuit living in Alaska, including any aboriginal hunting and fishing rights and any pending or statutory claims. In compensation, the Alaska native peoples received a total cash settlement of \$962.5 million from both Federal and State governments and title, including both surface and subsurface, to 40 million acres of land (almost 1/9th of the total acreage of Alaska).

Congress also provided for the creation of 12 State-chartered, profit-oriented regional corporations and of more than 200 Native village corporations. All Alaska Natives living at the time of the enactment could be enrolled. Each would receive 100 shares of stock in a regional corporation and, if a village resident, an additional 100 shares of stock in a village corporation.

The original legislation stipulated, however, that there would only be a twenty-year period of restrictions on the trading of stock in ANCSA corporations; these corporations administered the lands that were conveyed to Native groups. This twenty-year moratorium on stock alienation became the "1991 issue". Since 1982, Alaska Native groups lobbied Congress to amend ANCSA regarding this threat to continued Native control of ANCSA institutions and resources.

The result was the Alaska Native Settlement Act Amendments of 1987 signed into law by President Reagan on February 3, 1988. These Amendments address three fundamental unresolved issues of the original legislation: (i) restrictions on stock alienation will continue indefinitely or until a majority of the shareholders of a corporation vote to terminate such restrictions; (ii) corporations can now provide shares to the "afterborn" (Alaska Natives born after December 18, 1971) and special benefits to Elders; and (iii) continued protection from taxation for undeveloped ANCSA lands. A fourth major issue, the question of tribal sovereignty, was specifically avoided in the 1987 ANCSA Amendments by a disclaimer that states this legislation neither validates nor invalidates any claims to tribal government.

ALASKA NATIVE CLAIMS SETTLEMENT ACT: A "LIVING SETTLEMENT?"

On December 18, 1971, President Richard Nixon signed into law the Alaska Native Claims Settlement Act (ANCSA). The substance of ANCSA had been ratified that same day by the Alaska Federation of Natives. It also had the support of the oil industry, the Alaska business community and the Alaska state government. This legislation extinguished all Native claims of aboriginal title by the Indians, Aleut and Inuit living in Alaska, including any aboriginal hunting and fishing rights and any pending or statutory claims. In compensation, the Alaska native peoples received a total cash settlement of \$962.5 million from both the Federal and State governments; title, including both surface and subsurface, to 40 million acres of land (almost 1/9th of the total acreage of Alaska). The legislation also provided broad authorization for the Secretary of the Interior to withdraw public lands in Alaska for possible designation as national parks, forests and wildlife refuges. Congress has made major amendments to ANCSA on seven occasions, the most recent being in December 1987.

Congress provided for the creation of 12 State-chartered, profit-oriented regional corporations (and the possibility for a 13th regional corporation for out-of-state resident Native beneficiaries). Congress also mandated the creation of more than 200 Native village corporations. These regional and village corporations administer the

lands, resources and cash provided under the legislation. All Alaska Natives living at the time of the enactment could be enrolled. Each then received 100 shares of stock in a regional corporation and, if a village resident, an additional 100 shares of stock in a village corporation.

The first section of this paper will summarize some of the problems in the implementation of ANCSA. The second section will examine the main findings and recommendations contained in the draft report of the ANCSA 1985 Study that was commissioned by the U.S. Secretary of the Interior. The third part of this paper will analyze the provisions contained in the most recent amendments of ANCSA that were adopted by Congress in December 1987 and later signed into law by President Reagan. These were the so-called "1991 amendments" which dealt with the 20-year restriction on the trading of stock in ANCSA corporations and the protection of lands conveyed for Native groups.

1. PROBLEMS OF IMPLEMENTATION

The Alaska Native Claims Settlement Act did not provide a means for ensuring that historic communal uses of the land would persist. Land use planning and development could occur through the activities of Native corporations and in the legal and regulatory framework established by the federal, state and municipal levels of government.

The original ANCSA legislation did not guarantee the perpetuation of existing programs and rights enjoyed by Natives prior to 1971.

The implementation of the legislation was largely an economic process with little reference to the existing political system. The benefits of the settlement were channeled to the recipients through modern business corporations; under the 1971 legislation, these corporations were assured of a Native character by restrictions on voting shares for the first twenty years after the enactment of the legislation. The Native corporations created under this legislation were not tied into the formal political structure.

The structure of ANCSA gave rise to a very hectic post-settlement period. A number of unanticipated problems arose concerning applications for enrollment by individual beneficiaries, land selections, and legal interpretations of the settlement by the involved parties (Federal agencies, state agencies, Native groups) with their conflicting goals and interests.

One major factor that hampered the viability of village corporations set up under ANCSA in getting established was the general lack of experience of local residents in administering such corporations. These difficulties were duplicated for the regional corporations. This shortage of experienced and trained Natives able to take advantage of the new opportunities created by the settlement

forced the corporations to look outside the Native community for senior employees.

Regional and village corporations have a legal obligation to make a profit for their shareholders. This interest in revenue generation and profit maximization clashes with other Native aspirations such as the preservation of the subsistence economy, the protection of the environment and the enhancement of traditional culture. Some regional corporations have attempted to balance such conflicting goals. It remains to be seen whether these corporations that were imposed on the Native communities of Alaska can successfully combine the goals of profit-maximization with the broader social goals needed to raise the quality of life in Alaska's Native population.

While the 1971 Settlement did not contain an explicit political component, the sheer amount of land and other resources controlled by the Natives through their corporations served to expand Native influence in political decision-making particularly at the regional and local levels. The regional corporation has become a major influence in all Native regions in Alaska (except for the North Slope where a borough government was formed in 1972).

Overall, it would seem that ANCSA has generated positive results for the Natives of Alaska. As a result of the settlement, there has been a substantial increase in the supply of capital and the availability of wage employment at the local level. Most rural

Alaskan Natives would seem to be better off economically today than they were some 20 years ago. However, the economic focus of Native business corporations has diverted attention away from broad social goals. It is uncertain as to how compatible a strategy of capitalist development is with the goal of maintaining a distinct Native culture.

2. ANCSA 1985 STUDY

Section 23 of ANCSA instructed the Secretary of the Interior to prepare "a report of the status of the Natives and native groups in Alaska and a summary of actions taken under the Act, together with such recommendations as may be appropriate." The Secretary awarded the contract for this status report to a private consulting firm, ESG, which produced, for public discussion, the draft ANCSA 1985 Study, dated June 29, 1984. No final version of this report was completed. The ANCSA 1985 Study examined the 1971 Legislation and the first six sets of amendments.

This section will first present an overview of the ANCSA corporations particularly the initial performance expectations for these corporations and the start-up problems they experienced. This section will then analyze the views of the shareholders of ANCSA corporations on such questions as stock ownership, knowledge about their respective Regional and Village corporations, and about the 13th Region.

2.1. The ANCSA Corporations

The ANCSA corporations had been expected to achieve many goals some of which are incompatible:

- (a) contribute to the social and economic well-being of Natives;
- (b) initiate the economic development of rural Alaska;
- (c) provide for Native participation in the modern economy;
- (d) contribute to Native self-determination;
- (e) preserve Native heritage and property for future generations;
- (f) protect the traditional way of life.

Congress and the Native leadership expressed broad expectations for the benefits that would accrue to the Native people as a result of ANCSA-- expectations that were unrealistic. Corporations are limited legally and financially in what they can do to serve the social, cultural and income needs of their shareholders. Many of the objectives of and expectations for ANCSA are pertinent for governments, not corporations.

The ANCSA 85 Study noted that one element that distinguished Native corporate reports was a strong sense of a community of interest that encompasses far more than the financial activities of the corporation. ANCSA corporations, both regional and village, do not conform fully to the profit-maximizing behaviour commonly associated with corporate decision-making.

The 1985 Study noted that, for mature corporations with stable demand and steady growth, the payment of sizable dividends is normal. None of the ANCSA corporations could be so categorized. They own considerable undeveloped assets but have yet to establish stable markets for their products or services. The 1985 Study recommended that their approach should be to reinvest corporate earnings rather than pay dividends.

The study also cited a number of factors that affected the performance of ANCSA corporations:

1. **Start-up difficulties:** Comprehending, interpreting and implementing an extremely complex and often ambiguous piece of legislation required tremendous effort. Corporations found it necessary to expend inordinate amounts of time, energy and money in negotiation, litigation and lobbying.
2. **Litigation:** As high as \$50 million. Corporate planning and decision-making were seriously undermined for the first 10 years of operation under ANCSA.
3. **Land Convergence Delays:** Long-term ability of native corporations to be economically successful was undercut by significant delays in transfers of land. This severely handicapped corporations in their performance until 1979-80.

4. **Management:** Legislation did not provide for any formal assistance in acquiring the management experience, training and skills needs to successfully operate the large-scale corporate entities that were formed by ANCSA.

5. **Non-Alienation of Stock:** Because stock cannot be traded or sold, corporations were denied a primary tool for raising capital and therefore limited to relatively modest amounts remaining from Alaska Native Fund distributions.

6. **Resource Revenue Sharing:** Since section 7(i) requires that regional corporations share 70% of their revenues from timber and subsurface; a disincentive to invest was created.

2.2 Opinions of ANCSA Shareholders

The ANCSA 1985 Study also analyzed the views of the shareholders of ANCSA corporations who responded to a survey questionnaire as to their views on stock ownership, their knowledge about the activities of Regional/Village corporations in which they own shares, and, for out-of-state beneficiaries, their feelings regarding membership in the 13th Region.

(a) Stock ownership

The Study stated that when the prohibition on stock sales was scheduled to expire in 1991, further changes in stock ownership would occur. Trends already present in some corporations—such

as greater non-Native ownership, fewer shareholders, and absentee ownership—would accelerate. Some ANCSA corporations might emerge with a non-Native majority. Others would continue to have a native majority but with stock ownership concentrated in a few Native hands. Some would undergo little change.

The Study stated that it was unlikely that the attitudes present in the shareholding population would result in a diffusion of stock ownership to a greater proportion of the Native population. The majority of those surveyed indicated that they would only sell to other Natives and to family members or pass on their stock when they die. However, enough were willing to sell or would have been willing to sell under the right circumstances that the Study felt that it was unlikely that stock would have remained in Native hands--unless no non-Natives wanted to buy.

Most shareholders did not perceive that they had received any substantial benefits from ANCSA. Analysis of information on benefits (jobs, dividends and shareholder services) indicated that these had been significant for only a minority of shareholders in the State.

(b) Knowledge about ANCSA

While the general level of knowledge about ANCSA by Native

respondents to the survey appeared to be fairly high, most also expressed a desire to know more about ANCSA and the corporations. Information about village corporations was obtained primarily through personal contact; information about regional corporations primarily through newsletters.

(c) The 13th Region

In responding to a survey questionnaire, the attitude of most 13th Region shareholders towards ANCSA was described as "a mixture of anger, sadness and disillusionment." Its shareholders expected better. Many regarded ANCSA as a symbol of Native heritage and were disgusted with the perceived mismanagement of the 13th Region's financial affairs. There was a strong sense of "being cheated" by the management of the corporation and wanting an investigation. Some considered it to be their link to their Native heritage--something of value they could pass on to their children.

2.3. Summary

The ANCSA 1985 Study concluded that ANCSA has had some impact on the Alaskan economy and on Natives but that State and Federal spending had been of far greater importance. Many Natives had at one time or another worked for a Native corporation. ANCSA has also provided some educational opportunities.

The Study listed two important indirect effects of ANCSA:

1. ANCSA corporations provided institutional support from which some Natives could begin to assert themselves in the political arena: (e.g.--rural high school reform).
2. Provided forums for Natives to discuss common needs and means of achieving common goals.

3.IMPACT OF BERGER REPORT

In July 1983, the Inuit Circumpolar Conference appointed Thomas R. Berger, former Justice of the Supreme Court of British Columbia, to head the Alaska Native Review Commission that would review the Alaska Native Claims Settlement Act. The World Council of Indigenous Peoples was a co-sponsor of this Commission. A number of foundations, church groups, native corporations and associations contributed funds to this Commission.

In 1985, Village Journey. The Report of the Alaska Native Review Commission was published in New York. Berger's Report was a major factor in bringing the problems Alaska Natives had with ANCSA to the national forefront. It was reviewed in a number of major American periodicals including the New York Times. Berger's criticisms of the 20-year moratorium on shares trading in ANCSA corporations and the impact that the lifting of these restrictions could eventually have

on Native ownership of the lands received under this legislation influenced the public debate that led to major amendments to ANCSA addressing this problem.

In the course of his work, Mr. Berger visited some sixty villages to learn of the depth of feeling about the land that existed among the Native peoples of rural Alaska. Based on testimony at the hearings, Berger noted that most Native persons wanted to sever Native lands from the ANCSA corporations; many wanted to retribalize their lands by transferring them to tribal governments; many Natives believed that if the corporations kept the lands, these would eventually pass out of Native control.

Berger concluded that the persons who spoke at the hearings were chiefly concerned about the land, self-government and subsistence and he addressed his main recommendations to these topics:

1. That shareholders of village corporations transfer their lands to tribal governments to ensure the land remains in Native ownership; that Congress amend ANCSA to permit such initiatives;
2. ANCSA legislation be amended to permit the establishment of regional tribal organizations and the transfer of the lands of regional corporations to these entities; Berger listed a number of precedents in the United States and in Canada for achieving this;
3. Pending and future applications by villagers in Alaska for tribal constitutions and charters under the Indian Reorganization Act should

be granted; that the state should recognize tribal governments as appropriate local governments for all purposes under state law; that tribal governments would hold land in fee simple; that all land subject to the jurisdiction of Native government be referred to as "Indian Country" (or, as appropriate, "Eskimo Country" or "Aleut Country");

4. That the members of Alaska Native tribes ought to have exclusive hunting and fishing rights and jurisdiction over Native lands and waters, and shared rights and jurisdiction over state and federal lands and waters; that through tribal institutions, Alaska Natives can work out such sharing arrangements with State and Federal authorities; Berger listed a number of existing precedents in the United States and in Canada.

The U.S. Congress faced fierce opposition to legally permitting the creation of such tribal governments and refused to consider it when preparing the final version of the 1987 ANCSA Amendments. Section 17 of these Amendments specifically precludes the tribal government premise on which Berger based his recommendations.

Although his recommendations were ignored, Berger's Village Journey has had a major impact in shaping the agenda of the tribal government movement. Throughout his Report, Berger emphasized that Native rights rest on a fundamentally different basis from that of other minorities in the United States and that no other minority can assert a right to a land base and to distinct political institutions

based on the recognition of Native sovereignty. Berger also noted that, President Reagan, in a policy statement issued in January 1983, had reiterated the sovereignty of tribal government. He questioned why this statement applied to Natives in the Lower 48 states but not, apparently, to Alaska Natives:

"It is neither logically consistent nor morally defensible to deny Alaska Natives the rights held by other Native Americans...Their goals are fundamentally the same as those of American Indians as well as those of related peoples throughout the Canadian and Greenland Arctic and sub-Arctic and indigenous peoples the world over." (p.157)

4. ANCSA AMENDMENTS OF 1987 - THE "1991 LAW"

On February 3, 1988, President Reagan signed Public Law 100-241, Alaska Native Claims Settlement Act Amendments of 1987. (This is commonly known as the "1991 law" as it was primarily concerned with protecting Alaskan Native corporations from changes due to occur in 1991.)

The 1987 amendments to ANCSA are an attempt by Congress to recognize the desires and needs of each Native corporation and to provide a flexible scheme that permits Native shareholders to adapt their Corporations to ever-changing conditions. The amendments establish a general rule that restrictions on the ability to sell stocks will continue indefinitely or until a majority of the shareholders of a Corporation elect to terminate those restrictions. It also provides a large number of options designed to maintain

Native shares in the proceeds of the settlement such as allowing the corporations, by majority shareholder vote, to issue stock to Natives born after 1971 and to create trusts for the benefit of all shareholders.

U.S. Senator Frank Murkowski of Alaska stated that these amendments were designed to ensure that ANCSA is a "living" settlement:

"It is not a fixed formula which is cast in stone and incapable of adapting to changing reality. Rather it is a flexible framework designed to provide Alaska Natives with a maximum amount of self-determination as they strive to balance the needs of their present and future generations." (Tundra Times, January 4, 1988)

The following are some of the main provisions of the recent amendments to ANCSA.

4.1. Land Protections

This legislation provides that all undeveloped land owned by village, urban and regional corporations have the following protections:

- (a) the land cannot be taxed;
- (b) the land cannot be taken by trespassers who otherwise might acquire rights to the land through adverse possession;

- (c) the land cannot be taken by creditors to pay a debt owed by the corporation;
- (d) the land cannot be lost if the corporation files bankruptcy;
- (e) the land cannot be lost even if the corporation is involuntarily dissolved.

These protections are automatic. The board of directors of a Native corporation does not need to take any action unless an activity that has created some form of "development" has already occurred. Development is defined in the legislation. Shareholders do not need to vote in order to protect a corporation's undeveloped land.

A corporation loses these protections if its land is pledged, leased, developed or subdivided. One exception is that if the purpose of the lease is to allow oil, gas or mineral exploration, then land protection would continue to apply. The legislation specifically precludes hunting and fishing activities on village and regional corporation land from the definition of "developed" land. For these reasons, fish camps, trapping cabins and other structures may be built and used on the land if they are for subsistence hunting, fishing or gathering. Even if land is mortgaged, leased or "developed", the protections automatically resume when the mortgage or lease expires or the development ends. If a corporation has subdivided land, it can be returned to undeveloped status if the land

is resubdivided back to its original state.

Timber lands can also regain land protection. When a Native corporation cuts timber on its land for sale, the land is considered developed. However, when the harvest ends, the land is no longer considered to be developed and the land is automatically protected.

4.2. Settlement Common Stock

Under the original ANCSA legislation, each eligible Native received 100 shares of stock in a Native corporation. Under these amendments, that stock is renamed Settlement Common Stock. Holders of Settlement Common Stock have: (1) the right to receive dividends or other distributions from the corporation; and (2) the right to vote in elections to the board of directors and on other questions decided by shareholders. Settlement Common Stock held by a person who is neither a Native nor a descendant of a Native does not carry voting rights.

Settlement Common Stock cannot be sold, pledged as collateral for a loan, taken to pay a debt or traded away. During a shareholder's lifetime, Settlement Common Stock can only change hands in three ways: (i) by court order to pay child support or alimony; (ii) transferred to another person if stock ownership conflicts with a shareholder's profession; and (iii) given as a gift to a child, grandchild, great-grandchild, niece or nephew. In each of these

situations, the new owners of the stock must be a Native or a descendant of a Native.

Native corporations may amend their articles of incorporation to purchase stock from a non-Native who inherits stock in the absence of a will from the original shareholders. If a shareholder dies with no heirs and no will, the stock returns to the corporation and is then cancelled.

4.3. Duration of Restrictions on Settlement Common Stock

Under these amendments, stock restrictions will continue indefinitely until removed by the shareholders using one of three alternative procedures:

(a) Opt-Out Approach: Under this option, stock restrictions will continue unless the corporation's shareholders vote to remove the restrictions by amending the corporation's articles of incorporation. The resolution to amend the articles of incorporation may be put to the shareholders either by a resolution passed by the board of directors or by a shareholder petition. If the resolution fails, another vote can be considered at a later date.

(b) Opt-In Approach: If the board of directors of a regional corporation passes an opt-in resolution by February 3, 1989, the stock restrictions of that corporation will expire on December 18, 1991 unless a majority of shareholders vote to continue restrictions.

Dissenters rights must be granted to shareholders who voted against the restrictions.

(c) Recapitalization: The recapitalization option allows a Native corporation to keep stock restrictions for a definite or indefinite period of time as part of a larger package of structural changes. A recapitalization plan would require an amendment to the corporation's articles of incorporation. If adopted, the Settlement Common Stock and the restrictions on that stock are governed by the terms of the recapitalization plan. Any such plan must be approved by shareholders before December 18, 1991.

If stock restrictions are removed or allowed to expire, the corporation must cancel the old stock and issue new replacement common stock to its shareholders. Shareholders can vote to put some restrictions on replacement common stock before it is issued.

4.4. Dissenters' Rights

In some cases, shareholders who vote to remove stock restrictions can require the corporation to buy their stock if the majority has voted to keep the stock restricted. This right is not absolute. If the opt-in approach is used, dissenters rights must be granted. With the opt-out approach, however, dissenters rights apply only if the shareholders have voted to allow it.

If the minority shareholders have dissenters rights, the corporation can buy their stock with either cash or a note payable within five years or issue them alienable common stock. The amount of payment depends on how the stock is valued.

4.5. Options on Stock Issuance

Native corporations can now issue new shares of settlement common stock to Elders, to Natives born after December 18, 1971, or to Natives who were eligible for enrolment in 1971 but excluded for some reason. A majority of shareholders must vote to approve this issuance. Also, certain conditions may be attached to this new stock.

Even if new shares of stock are issued, revenue sharing as provided under section 7(i) of the original 1971 ANCSA will not change. Regional corporations will continue to make distributions to the other regions. Holders of new shares of Settlement Common Stock in a regional corporation can be included in distributions made under section 7(m) for at-large shareholders but only if a majority of that regional corporation's shareholders approve it.

A corporation may issue other kinds of stock in addition to Settlement Common Stock. This other stock may be fully alienable or partially restricted. It can have such voting rights, dividend rights and liquidation preferences as the shareholders approved:

(a) Stock may be issued as a dividend or distribution to holders of Settlement Common Stock, allowing shareholders to sell some of their stock while keeping control of the corporation with their Settlement Common Stock.

(b) Stock could be issued for sale to the public so the corporation could raise capital on the open market.

(c) Stock could be issued without charge to Elders, Settlement Trusts, certain groups of Natives and descendants or organizations established for the sole benefit of Natives and descendants of Natives. (Elders, for example, might be issued preferred stock as a form of special benefits. Such stock could have a priority for dividends and could be cancelled when the Elder dies.)

4.6. Land Transfer Options

Native corporations may transfer land or other assets to another entity, such as a traditional or IRA Native government, a cooperative, or a non-profit corporation. There are two ways to transfer land or assets: with a Settlement Trust, or under state law.

(a) Settlement Trust

Under this legislation, a Native corporation may transfer some or all of its assets - such as surface land, stock and property - to

a Settlement Trust created just for the benefit of its shareholders.

The main purposes of a Settlement Trust are to:

- (i) promote the health, education and welfare of Native shareholders;
- (ii) preserve Native heritage and culture; and
- (ii) give greater protection to Native corporation lands.

A Settlement Trust is established under state law. The corporation transferring assets is entitled to set the terms and conditions for how the trust is operated and how the assets are managed. The corporation appoints the trustees and can remove them for cause. The specific purposes of the Settlement Trust, and the terms and conditions, are set out in a trust document. The trust document would set out how land is to be used. The Settlement Trust can accept money from a Native corporation to set up a "Permanent Fund" for its shareholders, and then give annual dividends from the fund to the shareholders.

There are limitations on a Settlement Trust. It cannot operate as a business. It cannot sell the land or any interest in the land. it cannot give special treatment or benefits to officers, directors, management or employees of the corporation which transferred its assets.

When a corporation transfers land to a Settlement Trust, that land can never be used as an economic asset.

Those who receive benefits from the Settlement Trust are called beneficiaries. Only people who hold Settlement Common Stock can be beneficiaries of the Settlement Trust. If the corporation issues Settlement Common Stock to children as they are born or reach a certain age, they, too, can be beneficiaries of the Settlement Trust.

A Native corporation can transfer surface lands to a Settlement Trust, but not subsurface lands. Standing timber may be transferred, but the Settlement Trust cannot develop that timber for commercial purposes. Transferring assets does not relieve the Native corporation from its revenue sharing obligations under Section 7(i) of ANCSA.

An important benefit of the Settlement Trust is that it allows the corporation to protect certain assets from creditors' claims. However, if land has already been pledged as collateral for a loan, for example, the corporation cannot place that land in a Settlement Trust until the loan is paid off or other collateral is found. If there is no debt or obligation against the land or money at the time of the transfer, then it can be transferred free and clear to the Settlement Trust.

A corporation that is insolvent or bankrupt cannot transfer its assets to a Settlement Trust. A corporation cannot transfer assets

if, by doing so it becomes insolvent or bankrupt. However, if a corporation becomes insolvent or bankrupt at some time after the transfer (but not as a direct result of it), the corporation's creditors could not claim the assets of the Settlement Trust.

A Settlement Trust can be established through a resolution of the Native corporation's board of directors and a vote of the shareholders. If all or substantially all of the corporation's assets are to be transferred to the Settlement Trust, then a shareholder vote is also required. If the transfer goes to a shareholder vote, it must be approved by more than 50 percent of the total voting shares in the corporation. Shareholders may wish to raise the voting standard to two-thirds of the outstanding voting shares.

The automatic Land Bank protections also apply to any land transferred to the Settlement Trust. Another key advantage to the Settlement Trust approach is that the land can be protected "in perpetuity". (Normally under state law, land can be restricted only for a specific period of time).

(b) State Law

Land transfers using state law must follow two general requirements. If the corporation plans to transfer all, or substantially all of its assets, two-thirds of the shareholders must approve it. If shareholders approve the transfer, the corporation

must be able to buy out the stock from the minority shareholders who voted against it.

4.7. Welfare Eligibility

This legislation ensures that federal assistance payments -- such as food stamps and Aid to Families with Dependent Children -- cannot be reduced because an individual receives corporate dividends, Native stock, land, partnership interests, or beneficial interest in a settlement trust. Assistance can be limited only if the person receives \$2,000 or more in annual corporate dividends.

4.8. Tax Exemption on Alaska Native Fund Distributions

This legislation ensures that distributions from the Alaska Native Fund continue to be exempt from taxes. (The Alaska Native Fund was a special account established in the U.S. Treasury into which the original ANCSA monies were deposited. All of the Alaska Native Fund money was distributed among the regional corporations which in turn paid out part to individuals and village corporations).

This legislation clarifies that certain distributions from the Fund cannot be taxed and that this tax exemption will continue until the corporation has distributed an amount equal to the total money it received from the Alaska Native Fund.

4.9. Federal Indian Programs

These amendments do not affect the eligibility of Alaska natives to participate in Federal Indian programs; Alaska Natives remain eligible for all Federal Indian programs on the same basis as other Native Americans.

4.10. Disclaimer

Section 17 of the 1987 legislative amendments states that the question of the existence of "Indian Country" in Alaska and the governing powers usually associated within the meaning of "Indian Country" is neither enhanced nor diminished by these amendments. In other words, this legislation is sovereignty neutral.

5. OTHER ANCSA-RELATED ISSUES

Two important (and possibly controversial) issues have developed from ANCSA legislation and the establishment of Native corporations: land exchanges and loss sales.

5.1. Land Exchanges

Several land exchanges have occurred during the past decade: (a) exchanges of U.S. federal lands in Cape Krusenstern National Monument with NANA Corporation lands to permit construction of a road to the

proposed Red Dog Mine north of Kotzebue; and (b) exchanges of Arctic Slope Regional Corporation lands in the Arctic National Wildlife Refuge for subsurface rights to other U.S. Federal lands on the coastal plain in the refuge closer to the village of Kaktovik. These exchanges easily passed the U.S. Congress

Of a more controversial nature, the Federal Administration, in an attempt to secure surface rights to critical wildlife habitat in holdings held by Native corporations in several U.S. Federal refuges within the state, has proposed a major exchange for lands within the coastal plain of the Arctic National Wildlife Refuge directly east of oil-producing Prudhoe Bay. The U.S. administration, the state of Alaska and major oil companies are seeking approximately 607,000 hectares on the coastal plain. Environmentalists, on the other hand, wish to declare the coastal plain a wilderness area. The rest of the 7,710,000 hectare refuge is not of interest for resource development.

In return for 361,000 hectares of Native surface holdings within U.S. federal refuges, two regional corporations and four village corporations selected 67,000 hectares of potentially rich subsurface oil lands right in the middle of the coastal plain. (Other Native groups have also asked for land exchange consideration within the coastal plain.) These exchanges are currently pending in the U.S. Congress amid heated controversy; resolution is uncertain.

5.2. Loss Sales

A technical amendment in the 1986 Tax Reform Act (U.S. Public Law 99-514 1986) permits Alaska Native corporations to sell net operating losses to profitable corporations which use the losses to reduce their taxes through writeoffs. Up to 80 per cent of the tax savings are then funnelled back to the Native corporations. This provision was created to aid financially ailing Native corporations but critics argue that accounting manipulation has created huge paper losses never anticipated by the writers of the legislation. By the summer of 1988, this tax break had provided Alaska Native corporations with more than US\$400 million. Since a bill has been introduced in the U.S. Congress to end this practice, Alaska Native corporations are rushing to complete new loss sales.

6. CONCLUSIONS

The original settlement act left three major issues unresolved: stock alienation, the situation of the "afterborn", and land taxation and protection. These issues have been addressed in the most recent ANCSA amendments. The original Act also left a fourth major issue, namely tribal sovereignty, in an undefined state of legal limbo. This issue was specifically avoided in the 1987 amendments by a disclaimer which states that this legislation was not intended to either validate or invalidate any claims to tribal government.

With the new amendments, proposed new land exchanges and current loss sales, the majority of regional corporations, as well as many village corporations, have been provided with new assets and potential new assets, as well as better ways to deal with the critical concerns of stock and land control, and continued ownership.

Since 99 per cent of the remaining land in Alaska is in public ownership, there will be increasing pressure to develop Native lands and pursue cash-generating activities. This pressure will necessarily conflict with the continued concerns over subsistence and cultural identity, as well as the controversial issue of tribal government and sovereignty. Nonetheless, many observers believe that the prospects for ANCSA are now brighter than at any time since the passage of the original Act.

7. COMPARISONS WITH CANADA

1. The question of share ownership is a unique feature of the ANCSA settlement and has no real comparison with recent comprehensive land claims settlements/negotiations in Canada. Share ownership emphasizes that ANCSA is very much an economically oriented settlement. The 1987 amendments provide that Native corporations can, by a vote of existing shareholders, grant shares to Alaskan Natives born after December 18, 1971. It also provides automatic restrictions to the acquisition of shares by non-Natives unless an

existing Native corporation formally decides to remove these restrictions.

Under these new amendments, in the provisions for dissenters' rights, it is now possible for a corporation to buy out the shares of minority native shareholders within that corporation. (In some ways this could lead to the selling out of one's Native heritage.) As Native shareholders become more active in dealings within their corporations, it will be interesting to see if majority Native shareholders can force minority shareholders to sell their shares as is the case in many American corporations.

2. Some of the innovations contained in these ANCSA amendments may prove worthwhile of further examination by Canadian corporations established through comprehensive claims settlements particularly once these corporations gain confidence in the administration of their affairs. One such innovation is the possibility of a corporation using its holdings to develop a recapitalization plan so as to secure additional fundings from outside sources. While there are risks to the Native corporation that wishes to undertake such an initiative, ANCSA legislation does give that corporation the flexibility to develop its own initiatives and secure funding from the private sector rather than continually depend on the public.

3. ANCSA has no provisions for subsistence hunting on federal lands. Regulations for hunting and fishing are controlled by the State

Department of Fish and Game and are applied to both Native subsistence hunters and white sports hunters. By contrast, comprehensive claims negotiations in Canada deal in great detail on the issue of harvesting and these rights, since 1982, would be guaranteed in the Canadian Constitution. In Alaska, subsistence harvesting rights for Natives have become a major issue in court challenges and in the developing tribal sovereignty movement.

4. After 1971, most of the regional native associations that had been organized in the land claims movement incorporated as non-profit arms of regional corporations turning their attention to the social and educational programs that are important to Natives. These associations provide a number of services including as advocates for Native interests and administering programs in such fields as health, housing and employment. Some of these Alaskan Native initiatives might be useful to comprehensive land claims negotiations; others might be more suitable to the implementation process or to self-government negotiations,

5. Although Section 17 of the 1987 Amendments declares ANCSA to be neutral on the tribal sovereignty question (tribal sovereignty is comparable to the aboriginal self-government question in Canada), it would seem that this will be the next major priority on the agenda of Alaska Native organizations. The slogan of the October 1988 convention of the Alaska Federation of Natives was: "We are sovereign". Two regional associations have withdrawn from the AFN

because they feel that the central organization is not proceeding rapidly enough on this question.

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