A Study of Five Southeast Alaska Communities

Prepared For

U.S. Department of Agriculture, Forest Service

U.S. Department of the Interior, Bureau of Land Management
and Bureau of Indian Affairs

Prepared By

Institute of Social and Economic Research, University of Alaska Anchorage
Lee Gorsuch
Steve Colt

Charles W. Smythe, C.W. Smythe Consulting Services

Bart K. Garber, Garber & Bazzy, P.C.

February 1994

Institute of Social and Economic Research
University of Alaska Anchorage
3211 Providence Drive
Anchorage, Alaska 99508

Contract No. 53-0109-3-00368

A Study of Five Southeast Alaska Communities

Preface

In early 1993, Congress directed the Secretary of the Interior to prepare a report examining whether Congress had inadvertently denied five communities—Haines, Ketchikan, Petersburg, Tenakee, and Wrangell—in Southeast Alaska status as recognized villages or urban places under the 1971 Alaska Native Claims Settlement Act (ANCSA). Natives from these five study communities were eligible to enroll as at-large shareholders of Sealaska, the regional corporation established for Southeast Alaska. But they were not eligible to form village or urban corporations—and therefore received no land entitlements. Land entitlements that the ten village and two urban corporations in Southeast received have proved very valuable, because they included stands of commercial timber.

The Forest Service of the U.S. Department of Agriculture and the Bureaus of Land Management and Indian Affairs of the U.S. Department of the Interior contracted with the Institute of Social and Economic Research (ISER) at the University of Alaska Anchorage to prepare a report presenting the available, factual evidence on why the five study communities were omitted from ANCSA—and how the historical circumstances and conditions of the study communities compare with those of the Southeast communities that were recognized under ANCSA.

Congress will use the historical record in this report to help determine whether the study communities were intentionally or inadvertently denied recognition under ANCSA. The legislative history in many instances is not explicit, and a judgment about Congress's omission of these study communities is complicated by the fact that from the outset Native communities throughout Southeast Alaska were treated differently under ANCSA. To shed light on Congress's intention, we compiled the available evidence from the period before the claims settlement through implementation of ANCSA provisions.

The first two chapters of the report examine Congress's broad authority to settle aboriginal land claims and the development and application of Congressional and administrative criteria for villages and urban communities recognized under ANCSA. Attorney Bart Garber wrote these two chapters. He examined in detail the history of the settlement act—including several earlier proposed settlement bills—and interviewed a number of people who were involved in the process that ultimately led to passage of ANCSA in 1971. He particularly looked for evidence of how the status of the study communities changed, and why it changed, under the different settlement bills introduced between 1967 and 1971.

Chapter 3, by anthropologist Charles Smythe, examines the Tlingit and Haida land claims settlement—Alaska's first aboriginal land claims settlement, resulting from a suit the Natives of Southeast Alaska brought against the federal government. The author compares the participation of the study communities with that of other Southeast Alaska communities in the court case and the subsequent settlement.

Chapter 4, by Lee Gorsuch, ISER's director, assesses similarities and differences in Native population characteristics of the study communities and other communities at the time ANCSA was passed. He uses two sources for those comparisons—the 1970 U.S. census, and the Alaska Native roll compiled for ANCSA in the first half of the 1970s.

Chapter 5 describes historical Native use and occupation of the five study communities and of ANCSA communities in Southeast Alaska. ("Use and occupation" includes historical Native stewardship and management of land.) The author, anthropologist Charles Smythe, uses a number of criteria—ranging from sites of early Native settlements to presence of government schools for Natives—to assess similarities and differences in historical use and occupation of communities that were and were not recognized under ANCSA.

Chapter 6, also by anthropologist Charles Smythe, reports how ANCSA enrollment procedures were carried out in both the study communities and the recognized villages and urban communities. For that work he consulted available documents and also spoke with community residents who took part in the enrollment process.

Chapter 7, by ISER economist Steve Colt, reports on the financial benefits that shareholders of Southeast village and urban corporations have realized over the years, as compared with benefits the at-large shareholders received. He points out that "benefits" can be defined in many ways, some of which can't be quantitatively measured. His work, based on corporate reports and other sources, looks chiefly at cash distributions and income from timber harvests.

Appendixes (bound in separate volumes) provide detailed histories of Native occupation and use in the five study communities, a legal analysis of ANCSA, and other relevant source documents as listed in the Table of Contents.

About the Authors

Steve Colt is a research economist with the Institute of Social and Economic Research. He has for several years examined the finances of the Native corporations established under the Alaska Native Claims Settlement Act (ANCSA).

Bart K. Garber is an Anchorage attorney who has studied the legal history and implementation of ANCSA.

Lee Gorsuch is the director of the Institute of Social and Economic Research. He has a long-standing interest in Native land claims and the effects of ANCSA.

Charles Smythe is an anthropologist with wide experience in studying the histories of the Native peoples of Southeast Alaska.

Contents

Note: Appendixes are bound separately.

Executive Summary: A Study of Five Southeast Alaska Villages

Introduction and Background

In early 1993, Congress told the Secretary of the Interior to examine why five communities in Southeast Alaska—Haines, Ketchikan, Petersburg, Tenakee, and Wrangell—had been denied eligibility to form village or urban corporations under terms of the 1971 Alaska Native Claims Settlement Act (ANCSA). Three federal agencies—the Forest Service, the Bureau of Land Management, and the Bureau of Indian Affairs—then contracted with the Institute of Social and Economic Research at the University of Alaska Anchorage to prepare a report on that question.

This report will be presented to Congress. Congress will use it to help determine whether the five communities were intentionally or inadvertently denied eligibility to form village or urban corporations. The report presents the available evidence on the omission, and looks at how the historical circumstances and conditions of the study communities compare with those of the Southeast communities that were able to form village or urban corporations under ANCSA. Finally, it estimates some of the financial benefits the shareholders of Southeast village and urban corporations and the at-large shareholders of the study communities have received from ANCSA.

ANCSA awarded about $1 billion and 44 million acres to Alaska's Native people and called for establishment of village and regional corporations to manage the money and land. In four larger communities, the act also allowed establishment of urban corporations instead of village corporations. All Native beneficiaries enrolled to a regional corporation, and most also enrolled to either a village or an urban corporation.

The $1 billion in ANCSA money was divided—based on population—among the regional and the village and urban corporations. A little over half of the land entitlement went to village and urban corporations, with the regional corporations getting subsurface rights to village corporation lands. The balance of the land entitlements went to the regional corporations under a land-loss formula.

Section 11 of ANCSA listed villages—in all regions except Southeast—that would be eligible to form village corporations, once the Department of the Interior had confirmed that they met the eligibility criteria. The villages were required (as discussed more below) to have at least 25 Native residents and to have populations that were mostly Native; they also could not be "modern and urban in character." An additional provision allowed villages that were not listed in section 11 to become eligible by proving that they met the criteria. Finally, a special provision allowed four larger communities—Juneau, Sitka, Kenai, and Kodiak—that did not meet the requirements for Native villages to form urban corporations.

Provisions for Southeast Communities Under ANCSA

Native communities in Southeast Alaska were treated differently from communities in other regions—because the Tlingit and Haida Indians had received an earlier claims settlement (as discussed below). The first administrative settlement bill (one of the precursors to ANCSA) excluded Southeast communities altogether. But findings of the U.S. Court of Claims and the Indian Claims Commission supported arguments of Tlingit and Haida groups that not all their aboriginal rights had been extinguished by the earlier settlement. Subsequent settlement bills began listing Southeast villages.

Ultimately, ANCSA included a separate section—Section 16—for Southeast villages. That section listed 10 Southeast communities that were eligible to form village corporations. But unlike earlier sections that dealt with villages in other regions, section 16 did not include a provision for unlisted villages. Two additional Southeast communities, Juneau and Sitka, were included in a special provision that allowed four communities to form urban corporations. All the village corporations in Southeast Alaska got less land than corporations elsewhere, because they had benefited under the earlier Tlingit and Haida settlement.

The Study Communities

The study communities—Haines, Ketchikan, Wrangell, Petersburg, and Tenakee—are all located in Southeast Alaska but were not listed in Section 16. So what benefits were the Native residents of the study communities granted or denied under ANCSA?

- Natives from the study communities did not have the option of establishing village corporations. They became at-large shareholders of Sealaska, the regional corporation for Southeast Alaska.
- At-large shareholders received proportionate shares of cash distributions from the ANCSA settlement fund in lieu of distributions to village corporations. They also receive, as do the village and urban shareholders, ongoing cash distributions and other benefits from Sealaska.
- Without village corporations, the study communities did not get the 23,040 acres that each of the village and urban corporations in Southeast Alaska received. Those land entitlements have proved particularly valuable in Southeast Alaska, where there are extensive stands of commercial timber.

The Alaska Claims Settlements

Congress can settle aboriginal claims almost any way it chooses, as long as the settlements reflect "Congress's unique obligation toward Indians" and do not violate their constitutional rights. (See Cohen's *Handbook of Federal Indian Law*, 1982 ed., at 221; Getches and Wilkinson, *Cases and Materials on Federal Indian Law*, 267-68, 1986 ed.) Alaska Natives have won two settlements of aboriginal claims, and the settlements reflect two different approaches.

The first, the Tlingit and Haida settlement, came after Congress authorized the Tlingit and Haida Indians of Southeast Alaska to take their claims before the U.S. Court of Claims. The Court of Claims decided in 1959 that the Tlingit and Haida should receive compensation, and in 1968 valued their land claims at $7.5 million. To manage the settlement, Congress recognized a consolidated tribal body—the Central Council of the Tlingit and Haida Indians of Alaska.

The second settlement was the much larger 1971 Alaska Native Claims Settlement Act, under which Congress settled aboriginal claims of all Alaska Natives. In that settlement, Congress itself awarded both land and money and mandated creation of village, urban, and regional business corporations to manage the assets.

Participation of the Study Communities in the Tlingit and Haida Settlement

Several steps led up to the Tlingit and Haida settlement: the 1935 Jurisdictional Act, allowing the Tlingit and Haida to take their claims before the U.S. Court of Claims; the subsequent establishment of the Central Council of the Tlingit and Haida Indians; the 1959 Court of Claims decision that the Indians were entitled to compensation; the 1965 amendments to the Jurisdictional Act, broadening the function of the Central Council and the eligibility criteria for beneficiaries; and the 1968 Court of Claims award of $7.5 million in compensation for lost Tlingit and Haida lands.

Who benefited under the settlement changed considerably from the early steps in the 1930s to the judgment in 1968. The 1935 act talked about "tribal communities," and the 1959 Court of Claims decision specifically listed Tlingit-Haida tribes and the modern communities associated with those tribes. In 1965 amendments to the Jurisdictional Act, Congress broadened eligibility for benefits under the settlement so that any group of Tlingit and Haida Indians could organize, seek membership in the Central Council, and thereby become eligible for settlement benefits.

Table 1 lists communities named in the 1959 and 1968 Court of Claims decisions in the Tlingit and Haida settlement and the Southeast communities recognized under ANCSA. How did the study communities of Haines, Ketchikan, Wrangell, Petersburg, and Tenakee take part in the activities leading up to the settlement, and how did they benefit under the settlement?

- All of the study communities took part in the early organizational meetings of the Central Council of the Tlingit and Haida Indians. Between 1953 and 1960 Ketchikan, Wrangell, and Petersburg regularly participated in Tlingit-Haida annual conventions. Haines sometimes had its own delegates and sometimes sent a resident as part of the Klukwan delegation. Tenakee appears not to have been active in the organization in the 1950s.

Table 1. Comparison of Southeast Communities Listed in Tlingit and Haida Decision and in ANCSA

Communities Listed in 1959 and 1968 T&H Court Decisions*	Communities Listed in ANCSA
Angoon[a]	Angoon
	Craig
Douglas[a,b]	
Haines[a,b]	
Hoonah[a]	Hoonah
Hydaburg[a]	Hydaburg
Juneau[a,b]	Juneau
Kake[a]	Kake
	Kasaan
Ketchikan[a,b]	
Klawock[a]	Klawock
Klukwan[a]	Klukwan
Petersburg[b]	
Saxman[a]	Saxman
Sitka[a,b]	Sitka
Skagway[b]	
Wrangell[a,b]	
Yakutat[a]	Yakutat
Total: 16	12

[a] Listed in 1959 decision as modern communities associated with tribal groups
[b] Named in 1968 decision as communities where Indians should receive compensation for lost lands.

- In its 1959 ruling, the Court of Claims listed Haines, Ketchikan, and Wrangell among the modern communities associated with Tlingit and Haida tribes. It did not list Tenakee or Petersburg
- The court also reported that a third of the modern communities it had recognized were not located at the same sites as the original villages. These included the study communities of Haines and Ketchikan, as well as Juneau, Douglas, and Saxman.
- In a report accompanying the 1965 amendments to the Jurisdictional Act, the Senate cited "Juneau, Douglas, Ketchikan, Wrangell, and Petersburg" as larger communities that without the amendments would have received "little or no benefit" from the expected settlement.
- In its 1968 award, the Court of Claims listed the study communities of Haines, Ketchikan, Petersburg, and Wrangell (as well as Douglas, Juneau, Sitka, and Skagway) as places where the Tlingit and Haida had lost lands when townsites were created. It did not list Tenakee
- As of 1971, four of the five study communities—Haines, Ketchikan, Petersburg and Wrangell—as well as 13 other Southeast communities and two out-of-state chapters were recognized as members of the Central Council of the Tlingit and Haida Indians.

Eligibility Criteria for ANCSA Village and Urban Corporations

Criteria For Village Corporations Except Southeast

Under terms of the Alaska Native Claims Settlement Act, Native communities benefited through both regional and village corporations (and, in a few cases, through urban corporations). Communities that were judged ineligible to form village corporations were not able to select lands. The criteria for eligible communities evolved over several years and through a number of draft settlement bills.

When the claims settlement act was passed in 1971, it listed (in Section 11) the villages eligible to form village corporations and required the Secretary of the Interior to confirm that the listed villages met the eligibility criteria: that they had at least 25 Native residents as of 1970, that they were not modern and urban in character, and that a majority of their populations were Native. A separate provision of the law allowed villages that were not listed to become eligible by proving that they met the criteria.

- It is not clear where the requirement for a minimum of 25 Native residents originated. The Federal Field Committee for Development Planning, which compiled tribal lists before ANCSA was passed, consistently used a population of 25 as the standard measure of village existence. Also, in 1970 the state government generally required communities to have populations of at least 25 to organize as municipalities, and the 1970 census identified unincorporated communities, including Native villages, with populations of from 25 to 1,000.
- The requirements that eligible villages have mostly Native residents and that they not be modern and urban appear to have originated for several reasons. Powerful members of Congress insisted on present aboriginal use of claimed lands as a prerequisite for sharing in any settlement.. For example, Wayne Aspinall, chairman of the House Committee on Interior and Insular Affairs, sponsored a settlement bill that defined Native villages as those that were not "of a modern and urban character" (Hearing on HR 3100, HR 7039, HR 7432, 1971).

The State of Alaska also objected to including communities not "primarily Native in character" (Id. at 366, testimony of Governor Hickel). And the state government had an interest in limiting the number of communities eligible to select land because at that time it was also selecting lands under its statehood entitlement. Finally, up until ANCSA was passed, all the proposed settlement bills had included some form of Native subsistence privilege that would have allowed closure of land around villages to all except local Native subsistence users—and the more eligible villages there were, the more land could have been closed (Sen. Rep. Doc. No 92-405 at 43-44). (That provision was not included in the final settlement bill.)

Criteria for Urban Corporations

Earlier proposed settlement bills had dealt in various ways with the issue of how Natives not living in small, rural Native villages could benefit from the settlement. When the final claims settlement was enacted, it had three options for Natives living in urban areas: they could enroll to village corporations in the communities they were originally from; they could enroll as at-large shareholders of their regional corporations, in lieu of a village corporation; and those Natives living outside the state could vote on whether to create a 13th regional corporation.

Aside from those general provisions, ANCSA also included a special provision for four communities—Sitka and Juneau in Southeast Alaska and Kodiak and Kenai in Southcentral Alaska. Those specific communities were authorized to form urban corporations and select one township each. ANCSA described these urban places as communities that were "originally Native villages, but [came to be] . . . composed primarily of non-Natives" [43 USC 1613(h)(3)].

- There appears to be no record of criteria or evaluation used to determine if these communities were more qualified than others. Bill Van Ness, who was at that time chief counsel for the Senate Interior and Insular Affairs Committee, said in an interview for this report that the urban corporation provision was never formally introduced in any bills leading up to the passage of ANCSA, and that no one had objected to the four communities' gaining eligibility. Hank Eaton, who was at that time a lobbyist for Kodiak Natives, recalled in an interview that he and other representatives of the four communities lobbied congressmen in both houses. John Borbridge, who at that time was a lobbyist for the Tlingit and Haida, recalled in an interview that Alaska's Senator Ted Stevens introduced the provision in the final bill, and that the sense of the conference committee was that no more communities would be accepted for urban corporation status.

Eligibility of Study and Other Southeast Communities

Communities throughout Southeast Alaska were, as described above, treated differently under ANCSA. A separate section—Section 16—of ANCSA listed 10 eligible villages in Southeast and restricted their land awards to one township each. Two additional Southeast communities, Juneau and Sitka, were allowed to form urban corporations.

How were the five study communities treated in early settlement bills, and what historical evidence is there about why they were not included on the list of eligible communities in the final claims settlement?

- The study communities—except for Tenakee—did appear on some earlier versions of Native village lists but were excluded from others.
- The study communities disappeared from the list of Southeast villages at the same time as the 1970 census data became available and as the village eligibility criteria evolved to require that villages have at least 25 Natives, not be modern and urban in character, and have a majority Native population.
- The omission of the study communities is not clearly explained in any provision of ANCSA or in the accompanying conference report.

Eligibility Determinations for Unlisted Southeast Villages

ANCSA included a provision that gave unlisted villages a chance to prove to the Interior Department that they in fact met the eligibility criteria for forming village corporations. The Senate's version of the final claims settlement bill had included a similar provision for unlisted Southeast villages, but the conference committee did not adopt it in the bill that became law, nor did it explain why.

Representatives of three of the study communities—Tenakee, Ketchikan, and Haines—appealed to the Alaska Native Claims Appeal Board to try to gain eligibility to form village corporations. The board denied all three appeals and said:

- That ANCSA had "created an exclusive list of eligible villages in Southeast Alaska which cannot be added to . . ."
- That it was "apparent that Congress did not intend that unlisted Southeast villages could be made eligible for benefits under the Act," and
- That Congress's failure to provide a specific provision for unlisted Southeast villages was evidence that Congress did not intend them to have the same opportunity to become listed as unlisted villages in other regions of the state. (In Re: Appeal of Ketchikan Indian Corporation, 2 ANCAB at 171.)

Comparison of Southeast Community Populations

A comparison of the 1970 populations of the study communities and the Southeast communities that were recognized under ANCSA sheds some light on differences among and similarities between the two groups of communities.

- Total populations of the study communities were comparable to those of Southeast communities recognized under ANCSA.
- Natives made up close to the same percentage of the population in Ketchikan (15 percent) and Wrangell (19 percent) as in Juneau (20 percent). Petersburg's Native population (12 percent) was smaller as Table 2 shows.
- Natives made up 24 percent of Haines's population—similar to the proportions in Saxman (27 percent) and Kasaan (27 percent), but considerably below that of the other medium and small Southeast communities recognized under ANCSA. Natives in ANCSA communities other than Saxman and Kasaan made up a majority of the population—anywhere from 82 to 94 percent.
- In Tenakee, the U.S. census recorded six Natives making up 7 percent of the population.

Table 2. Comparison of Native Population and Enrollments in ANCSA and Study Communities

URBAN PLACES	PERCENT NATIVE POPULATION 1970 CENSUS	ENROLLMENT TO COMMUNITY	PERCENT OF ENROLLEES LIVING IN COMMUNITY
Juneau	20%	2,722	67%
Ketchikan	15%	1,862	64%
Sitka	23%	1,863	77%
LARGE COMMUNITIES			
Petersburg	12%	428	72%
Wrangell	19%	747	64%
MEDIUM COMMUNITIES			
Angoon	94%	629	62%
Craig	56%	317	53%
Haines	24%	321	51%
Hoonah	71%	876	63%
Hydaburg	88%	565	40%
Kake	90%	558	79%
Klawock	91%	508	46%
SMALL COMMUNITIES			
Kasaan	27%	120	39%
Klukwan	89%	253	14%
Tenakee	7%	64	0%
Saxman	27%	196	57%
Yakutat	82%	342	70%

Study communities

Comparison of Enrollment Procedures

The first step in enrolling for benefits under ANCSA was identifying a place of residence. Natives could identify the community where they were living at the time or a community where they or their families had traditionally lived. Later, the Interior Department made determinations of which villages were eligible to form village corporations. Natives who were enrolled to communities that were later determined to be ineligible became at-large shareholders of Sealaska regional corporation.

There were two enrollment periods—an initial period and a later period for those who had missed the first. The 1976 amendments to ANCSA also included a provision that would have allowed Natives who had enrolled to villages that were later declared ineligible a chance to change their enrollments. But in fact

that amendment was never implemented. Some communities outside Southeast Alaska instead won changes in eligibility through the 1980 Alaska National Interest Lands Conservation Act. And, as noted below, the Interior Department ruled that the provision did not apply to Southeast communities.

Nearly 3,500 Natives—or 22 percent of total enrollment in the Sealaska region—enrolled to the study communities. Table 2 shows the number of persons who enrolled to the study communities and to the Southeast communities recognized under ANCSA. What evidence is there about how the enrollment process in the study communities compared with that in the recognized Southeast villages? And were there substantial differences in enrollment patterns among residents of the study communities and the communities listed in ANCSA?

- The policies and procedures for enrollment were uniformly applied in the study communities and in the ANCSA-recognized communities, according to available documents and interviews with community enumerators.
- Many Natives in the study communities were unaware that their villages were not listed as eligible to form village corporations, according to several enumerators interviewed for this report. And in many cases they were unaware of the significance of villages' being listed or unlisted.
- It is not clear how much enrollment to the study communities may have been affected among those who were aware that the communities were unlisted. Some enumerators interviewed for this report felt that it caused Natives to enroll elsewhere, but others felt that it had no significant effect on enrollment.
- Natives who enrolled to the study communities were declared ineligible to have their places of enrollment changed under a 1976 amendment to ANCSA. That determination came in a 1983 opinion of the Department of the Interior. Attorneys for Sealaska regional corporation and for a resident of Haines unsuccessfully challenged that opinion.

The proportion of enrollees to a community who actually lived in that community is another measure of similarities and differences among the study and the ANCSA communities. As of 1974:

- In the three large study communities and the two Southeast urban places recognized under ANCSA, the share of Native enrollees who resided in the communities where they enrolled was similar. The proportion of enrollees who lived in the communities varied from 64 to 77 percent, as Table 2 shows.
- Among the small and medium communities recognized under ANCSA, between 14 and 79 percent of enrollees lived in the communities where they enrolled. The study community of Haines fell into that range, with 51 percent of those who enrolled to Haines also living there.
- None of those who enrolled to Tenakee lived there.

Histories of Use and Occupation in Study and Other Communities

We can use a number of measures to compare the histories of Native use and occupancy in the study communities and in the listed communities in Southeast Alaska :

Traditional Native settlements (villages or camps) at sites of modern communities, before the arrival of whites

Indian occupancy of identifiable areas in the early towns

Indian land reservations or exclusions from the Tongass National Forest

Indian possessions and Native townsite lands

Federal schools for Indians

Churches or missions serving Natives

Participation in Native Organizations

Traditional Native settlements at sites of modern communities

- It was common in Southeast Alaska for modern communities to be established directly on or near areas and sites of Native settlements and camps. This was true of the five study communities and of recognized ANCSA communities. Non-Natives were drawn to these places by fish, minerals, or other resources. Indian settlement patterns were characterized by seasonal population dispersal and aggregation.
- Ketchikan and Petersburg were summer villages and fish camps before white settlers arrived, while Haines and Tenakee were winter villages. Wrangell was a summer village and then became the primary village of the Stikine kwan in 1836, after the Russians established a post there.
- Among communities recognized under ANCSA, Sitka was the site of a principal village of the Sitka kwan before the Russians established a settlement there in the early 1800s. Juneau was established at the site of a Native fish camp. Craig was established directly across from a former village on Fish Egg Island. Kasaan was a large Haida village; the site of the village was moved about 5 miles in 1901, when the manager of a mining company offered education and job opportunities to residents.

Indian Occupancy of Identifiable Areas in Early Towns

- One or more areas in all the study communities were considered to be Indian villages or Indian towns. That was also true in the ANCSA recognized communities of Juneau and Sitka and in a number of smaller ANCSA communities. However, in some of the smaller ANCSA communities like Kasaan and Craig, Native residents often lived throughout the community rather than in specific areas.

Land reservation or exclusion from the Tongass National Forest

- Federal land reservations were set aside for Natives at Haines and Ketchikan in the early 1900s. The Indian village at Tenakee was excluded from the Tongass National Forest under a federal land order in 1935.
- Federal land reservations were also made in the ANCSA communities of Hydaburg, Klawock, and Klukwan early in the century. The ANCSA communities of Kasaan and Craig were also excluded from the Tongass National Forest in the 1920s and 1930s.
- School reserves for federal Indian schools were also set aside in many Southeast communities, including the study communities of Petersburg, Wrangell, and Haines.

Indian Possession or Native Townsite Lands

- Haines, Ketchikan, Wrangell, and Petersburg had Indian possession lands identified when the townsites were first established. There is no record of Indian possession lands in the Tenakee townsite, since the Indian village was outside the original townsite.
- Juneau had no Indian possession lands in the original townsite, and Sitka had Indian possessions totaling less than an acre—because the Indian villages in those communities were outside the original townsites. There is no record of Indian possessions in the original townsite of Craig.
- The Bureau of Land Management made no distinction in the administration of townsite lands occupied by Natives in the study communities and in ANCSA-recognized communities.

Government Schools for Indians

- Federal Indian schools operated in Haines, Ketchikan, Petersburg, and Wrangell during the period between 1881 and 1948. There were also federal government schools in all 12 Southeast communities recognized under ANCSA.
- Tenakee had a territorial school, as did the ANCSA community of Craig.

Churches and Missions Serving Indians

- The first churches to organize in all the study communities were Native churches—that is, churches that were either started as missions for Natives, or churches that Native themselves established. Such activity of Native churches was common among ANCSA recognized communities as well.

Participation in Native Organizations

- All the study communities had local camps of the Alaska Native Brotherhood and Sisterhood beginning in the 1920s, as did ANCSA-recognized communities.
- Ketchikan, Petersburg, Wrangell, and Haines belonged to the Tlingit and Haida Central Council as of 1971, as did ANCSA communities as well as Metlakatla; Seattle, Washington; and Oakland, California. Tenakee was not active in the council in 1971.
- All the study communities except Tenakee formed IRA organizations in the 1930s and 1940s, as did ANCSA recognized communities.

Financial Benefits from Village and Urban Corporations

The village corporations and the lands awarded them under ANCSA have benefited Alaska Natives in a number of ways—including the subsistence, cultural, and spiritual values of the land. Most observers would agree that the corporations have also provided valuable economic and social benefits through their political power and ability to nurture leadership in shareholders. But it's impossible to put a dollar figure on those kinds of values.

It is possible, however, to estimate financial benefits village and urban corporations in Southeast Alaska have provided their shareholders. Corporations in Southeast Alaska differ from village corporations elsewhere in the state in two important ways. First, Southeast corporations received only one township (23,040 acres) each, because communities in Southeast Alaska had benefited from the earlier Tlingit and Haida settlement. Village corporations elsewhere received anywhere from three to six townships each. Second, much of the land Southeast corporations selected had valuable timber. Few other villages in Alaska found themselves surrounded by such an economically valuable resource.

The estimates of financial benefits for corporation shareholders in Southeast are based on a fairly complete set of annual reports for five of the ten village corporations and both of the urban corporations. Reliable data for the other five village corporations are not available. Although our sample includes only half the village corporations, it covers nearly two-thirds of the village shareholders and 100 percent of the urban shareholders. So the data presented below represent benefits received by 82 percent of the village and urban corporation shareholders in Southeast.

Since it is not our goal to compare financial performances of individual village corporations, we present the village data in composite form, as a weighted average of the five sets of village data. The result gives us a sense of the average financial benefits.

The five study communities were not able to form village corporations and did not receive land grants. How have the financial benefits of the enrollees from the study communities—who are at-large shareholders of Sealaska—compared with those of village and urban shareholders?

- All shareholders—at-large, urban, and village—were entitled to equal per capita payments from the ANCSA settlement fund and are still entitled to equal resource revenue sharing payments required under section 7(i) of ANCSA. The difference is that at-large and urban shareholders collect those payments directly, while payments to village corporation shareholders go to the village corporations, which do not necessarily pass them directly on to shareholders. Some may have invested them well and earned good returns for shareholders, but some may have lost the money through bad investments. So even though payments are calculated on an equal per capita basis, the at-large and urban shareholders have received larger direct cash payments from these sources.
- However, cash distributions from the ANCSA fund and from resource revenue sharing have proved to be minor compared with the financial benefits Southeast village and urban shareholders have received from timber harvesting on their lands.
- On average, shareholders in the sample five village corporations had received more than $57,000 in cash distributions as of 1992. The average per shareholder book equity—a measure of the shareholders' stake in corporate assets— of the five village corporations was more than $117,000 as of 1992 (Table 3).

Table 3. Shareholder Distributions and Book Equity of Five Southeast Village and Two Urban Corporations

Fiscal Year	Average of 5 Village Corporations Total (In Thousands of Dollars)	Dollars per Shareholder	Average of Two Urban Corporations Total (In Thousands of Dollars)	Dollars per Shareholder
1977	0	0	0	0
1978	0	0	0	0
1979	$71	$126	0	0
1980	338	601	0	0
1981	1,453	2,580	0	0
1982	26	46	0	0
1983	234	416	0	0
1984	501	889	0	0
1984A(1)	536	952	0	0
1985	840	1,492	0	0
1986	781	1,387	0	0
1987	3,492	6,200	$3,554	$1,554
1988	5,081	9,021	409	179
1989	5,655	10,040	780	341
1990	5,015	8,904	728	318
1991	3,643	6,469	1,243	543
1992(2)	4,713	8,368	4,219	1,845
Total Distributions	$32,379	$57,491	$10,933	$4,780
Reported Per Shareholder Book Equity, 1992 (Includes some ANCSA Land assets)		$117,073		$31,83

[1] Several corporations adjusted the start of their fiscal year during the 1980s. As a result, there are in some cases more data points than calendar years.

[2] Distribution Data for 1992 are incomplete. Average is computed from only 3 corporations

Source: Corporation Annual Reports

- On average, shareholders in the two Southeast urban corporations had received about $4,800 in cash distributions through 1992—far less than the village corporation shareholders. Urban shareholders have received less because (as Table 3 shows) their total distributions have been smaller, and they have many more shareholders—so the distribution per shareholder is much smaller. Part of the reason for the smaller distributions by the urban corporations is that their land conveyances and therefore logging were delayed a number of years. The average per shareholder book equity in the urban corporations was about $32,000 as of 1992—again, much less than the equity of village corporation shareholders.
- The five village and two urban corporations also earned $430 million between 1986 and 1988 by selling their net operating losses. A provision of the 1986 Tax Reform Act gave Alaska Native corporations the ability to sell their operating losses to more profitable businesses looking for tax write-offs. The Southeast corporations were able to measure those losses as the difference between the value of a log at the time the land was conveyed to the corporation and the value of the log at the time it was either cut, sold, or written off as having no value. As of 1992, much of the cash generated by sales of losses remained locked up in escrow accounts, pending IRS audits of the transactions.
- Overall, the Southeast village and urban corporations have been the most financially fortunate groups of all ANCSA corporations, as measured by financial returns per shareholder to date. There are two main reasons for their good fortune. The first is that their ANCSA lands included valuable timber, and the second is that they were able to make substantial profits from the sale of net operating losses—which were not actual cash losses but were based on the decline in the value of timber.
- Past financial performance, however, does not predict future fortunes of these or any other corporations. First, Congress ended sales of net operating losses in 1988, so those will not be a future source of income. Second, much of the commercial timber on village corporation lands has already been harvested. Those corporations with commercial timber will still have to deal with volatile world market prices for timber.

This summary has briefly reviewed our findings about the historical circumstances of the study communities and the available record about how they came to be omitted from the ANCSA list of eligible Southeast communities. We now turn to our detailed discussions.

Chapter 1. Congress and Alaska Land Claims Settlements

By Bart K. Garber

This chapter looks broadly at Congress's authority to settle aboriginal land claims and at the settlement techniques it used in the Tlingit and Haida settlement[1] and in the Alaska Native Claims Settlement Act (ANCSA). These descriptions provide a broad context for the more detailed discussions, in Chapter 2, of the legislative and administrative development of criteria to determine eligibility for villages under ANCSA and specifically of how the eligibility criteria were applied to the five study communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell.

Review of ANCSA's legislative history reveals that the five study communities were dropped from the list of eligible villages in section 16 of ANCSA by Congress and not by the Secretary of the Interior [(43 USC, 1615 (a)]. Therefore, unless the Interior Department misinterpreted the eligibility process or misapplied the criteria, then the application of the ANCSA eligibility criteria may not be all that enlightening, unless Congress reconsiders its earlier decision about which Southeast villages to include. (See In *Re: Village of Tenakee,* VE # 74-60, 2 ANCAB 173, September 9, 1974; and In *Re: Appeal of Ketchikan Indian Corporation,* ANCAB # LS 77-33, 2 ANCAB 169, December 5, 1977.) Of particular interest is whether the exclusion of the five study communities was intentional or inadvertent (HR Rep. No. 102-256, 102nd Congress, 1st Session, 42-43, 1991).

Congressional Discretion in Settling Aboriginal Claims

Congress enjoys nearly unfettered discretion in fashioning aboriginal claims settlements. (See Cohen's *Handbook of Federal Indian Law,* 3-7, 12-13, 1982 ed.) Nonetheless, some minimal standards apply. First of all, Congress and the executive branch can only deal in the area of Indian affairs (including the settlement of aboriginal claims) where the subject community is "distinctly Indian:"

> Of course, it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe, but only that in respect of distinctly Indian communities the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the Unites States are to be determined by Congress, and not by the Courts (*United States v. Sandoval,* 231 U.S. 28, 1913).

Beyond this rudimentary standard of judicial review, the form and content of aboriginal claims settlements historically have been determined by the political and moral condition of the United States at a given time and, in some instances, by the legal status of a particular tribe's claims (Cohen at 47-50).

Settlements with Indian tribes in the early years of the nation were tempered by the federal government's desire to sustain the peaceful settlement of the frontier (Cohen at 62-78). More recently, tribes have had to prove that they hold something more than bare aboriginal claims in order to successfully sue for compensation. For example, in *Tee Hit Ton Band of Indians v. United States,* (348 U.S. 272, 279; 1955), the court found that unrecognized, bare aboriginal claims to land are not

[1]The term "Tlingit and Haida Settlement" refers to a group of federal laws, amendments, and court of claims judgements that resulted in the payment of over 7.5 million dollars by the United States to the Tlingit and Haida Indians of Southeast Alaska for prior takings of Alaska Native clan land and related rights. Act of June 19, 1935, 49 Stat. 388, CH. 275; Act of August 19, 1965, 79 Stat. 543; Act of July 9, 1968, 82 Stat. 307; Act of July 13, 1970, Pub. L. No. 91-335, 84 Stat. 431 (codified at 25 U.S.C. § 1211); *Tlingit and Haida Indians of Alaska v. United States,* 147 Ct. Cl. 315, 177 F. Supp. 452 (1959); *Tlingit and Haida Indians of Alaska and Harry Douglas, et al. v. United States,* 182 Ct. Cl. 130, 389 F.2d 778 (1968).

considered permanent property rights protected by the United States Constitution. Without a legally enforceable right, Indian tribes in Alaska had to rely on moral and political persuasion to settle their aboriginal claims with the United States. (See, for example, R. Arnold, *Alaska Native Land Claims,* 117-144, 1978.)

For the most part, the Tlingit and Haida settlement and ANCSA are examples of voluntary settlements of otherwise unenforceable aboriginal claims. Congress simply failed to recognize Alaska Native tribal and community aboriginal rights of occupancy in all but a few instances.[2] Without constitutionally protected permanent property rights, Alaska Natives had to rely on jurisdictional statutes that waived the immunity of the United States and authorized payment for various aboriginal claims. Without a statutory right to sue, tribes relied on legislative settlements. Congress authorized the Tlingit and Haida to seek a settlement of their aboriginal claims in the Court of Claims:[3]

> The Court of Claims would examine "[a]ll claims of whatever nature, legal or equitable, which the said Tlingit and Haida Indians of Alaska may have, or claim to have, against the United States, for lands or other tribal or community property rights, taken from them by the United States... (Act of June 19, 1935, 49 Stat. 388, CH. 275 § 2).

Congress and, ultimately, the Alaska Natives, elected a political settlement of the Native claims that were outstanding as of 1971:

> The extent to which the Natives in Alaska could prove their claims of aboriginal title is not known...The pending bill does not purport to determine the number of acres to which the Natives might be able to prove an aboriginal title. If the test developed in the courts with respect to Indian Tribes were applied in Alaska, the probability is that the acreage could be large—but how large no one knows. A settlement on this basis, by means of litigation if a judicial forum were to be provided, would take many years, would involve great administrative expense, and would involve a Federal liability of an undeterminable amount.
>
> It is the consensus of the Executive Branch, the Natives, and the Committee...that a legislative rather than a judicial settlement is the only practical course to follow... (H.R. Rep. No. 523, 92d Cong., 1st Sess., reprinted in 1971 *U.S. Code Cong. & Admin. News* 2194).

Congressional settlements of Indian claims will withstand judicial review so long as the legislation is "tied rationally to the fulfillment of Congress' unique obligation toward Indians" and so long as Congress conforms its legislative activity to the requirements of the Bill of Rights, including the due process clause of the Fifth Amendment (Cohen at 221; D. Getches & C. Wilkinson, *Cases and Materials on Federal Indian Law,* 267-268, 1986 ed.). Congress met this test with respect to ANCSA (*Paul v. Andrus,* 639 F. 2d. 507, D.C. Cir. 1980). In any case, no one successfully challenged the constitutionality of ANCSA within the one year limitation period set out by the act (*Paul v. United States,* 687 F. 2d. 231, Ct. Cl., 1982, *cert. denied,* 461 U.S. 927).

---

[2]Congress declared two statutory reservations (Metlakatla in 1891 and Klukwan in 1957) and authorized six reservations created by the Secretary of the Interior pursuant to the Indian Reorganization Act. (See Federal Field Committee for Development Planning in Alaska, *Alaska Natives and The Land 444,* 1968.)

[3]Some Alaska Native villages and tribal groups, including the Tlingit and Haida, had filed claims pursuant to the Indian Claims Commission Act of 1946 and other federal statutes (Federal Field Committee at 445-446).

Nevertheless, Congress now wants to determine whether it "inadvertently denied village or urban corporation status" to the five study communities under ANCSA.[4] To aid Congress in making its determination, below we compare the treatment of the study communities under two different settlement acts—the Tlingit and Haida settlement and ANCSA. The central underlying question is whether some study communities were nominally included in the Tlingit and Haida settlement but excluded under ANCSA, and, if so, do any changes in the situation of these communities or in the applied eligibility criteria help explain the denial of status under ANCSA?

The Tlingit And Haida Settlement

The Tlingit and Haida settlement and ANCSA reflect two approaches the United States can use to settle aboriginal claims. Despite its unique reliance on the corporation as a settlement mechanism and fee simple land conveyances, ANCSA achieved objectives fundamental to every settlement: Tribal land claims were extinguished in exchange for money and conveyances of smaller parcels of land. (See H.R. Rep. No. 92-523 at 2193-2194; 43 U.S.C. §§ 1603, 1605, 1611, 1613). Congress obtained earlier cessions of Indian lands by providing payments of cash, goods, services, and guarantees of federal protection for Indians remaining on the remnants of their ancestral lands or removed to other lands reserved for their use (Cohen at 62, 66-70, 121-125). In some situations, the United States merely paid tribes or their members for the lands taken from them (*Id.* at 70, 170-175).

By comparison, the Tlingit and Haida settlement was a cash settlement authorized by a jurisdictional act and quantified through litigation (Act of June 19, 1935, 49 Stat. 388). Land that Congress had taken to create the Metlakatla Indian Reservation, the Tongass National Forest, and the Glacier Bay National Monument was not returned to the village-based clans (*Tlingit and Haida Indians of Alaska v. United States*, 147 Ct. Cl. 315, 177 F. Supp. 452, 1959). Instead, the Court of Claims determined that the clans' claims were worth over 7.5 million dollars (*Tlingit and Haida Indians of Alaska* and *Harry Douglas, et al. v. United States*, 182 Ct. Cl. 130, 389 F.2d 778, 1968). Congress appropriated funds for the settlement and recognized a new tribal consortium, called the Tlingit and Haida Tribes of Alaska, which would manage the settlement funds on behalf of its members[5] (Act of August 19, 1965, 79 Stat. 543; Act of July 9, 1968, 82 Stat. 307; Act of July 13, 1970, Pub. L. No. 91-335, 84 Stat. 431, codified at 25 U.S.C. § 1211).

Congress frequently distinguishes between tribal groups which possess claims and others which it authorizes to manage settlement assets when structuring a settlement of Native claims. Cohen illustrates Congress's authority in this regard with the example of two tribes, A and B, that combine to form tribe C and share a common reservation and common funds (Cohen at 12-13). Congress can extinguish tribe A and tribe B's claims to their historical homelands in exchange for a reservation or funds that they hold and manage jointly as tribe C. (See, for example, *Washington v. Fishing Vessel Association*, 443 U.S. 658, 664 n.5, 1979; and *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 192, 1978. In those cases, "loosely related" groups of villages were combined and recognized as tribes by the United States.)

[4]This mandate and the expiration of the limitation period preclude any review of the propriety of the eligibility criteria themselves.

[5]Members had to reside in the United States or Canada and must have resided in Alaska prior to the jurisdictional Act of 1935 or been a descendant of such a person.

Congress can later recognize tribe A or B again for the purpose of adjudicating unresolved claims, even though the two have already consolidated as tribe C. (See Act of June 28, 1898, ch. 517, § 25, 30 Stat. 504, construed in *Delaware Indians v. Cherokee Nation,* 193 U.S. 127, 1904; and Act of Feb. 25, 1889, ch. 238, 25 Stat. 694, construed in *United States v. Old Settlers,* 148 U.S. 427, 1893.)

Cohen's hypothetical example of tribes A, B, and C closely resembles the treatment experienced by the Tlingit and Haida tribes of Southeast Alaska in the Tlingit and Haida settlement and in ANCSA. The Court of Claims identified the clans (Cohen's tribes A and B) as the principal land claiming user groups among the Tlingit and Haida (*Tlingit and Haida Indians of Alaska v. United States,* 147 Ct. Cl. at 361-366). These clans were located in a number of Native communities, or "tribes...in the geographical sense," which the Indians called "kons" or "kwaans" [6] (*Id.* at 361-362). The Court of Claims listed fourteen tribes located in 31 villages with at least two or more clans making up each village (*Id.* at 363-364).

Congress was much less clear, however, in designating the beneficiaries of the Tlingit and Haida settlement. The jurisdictional statute describes the beneficiaries of the Tlingit and Haida settlement, alternatively, as members of "any local community of these tribes," "each tribal community," "a Tlingit and Haida central council," and "such Indian communities" (Act of June 19, 1935, 49 Stat. 388, § 8). Congress ultimately resolved this confusion without specifically defining tribal or Indian communities, by amending the 1935 jurisdictional act to provide for a collective settlement managed by a consolidated tribal body—the Central Council of the Tlingit and Haida Indians of Alaska (Act of August 19, 1965, 79 Stat. 543).

The central council's constitution identifies the council as the "general and supreme legislature and governing body of the Tribes" (Constitution of the Central Council of the Tlingit and Haida Indian Tribes of Alaska, Article I). Presumedly, these tribes are the ones identified by the Court of Claims (*Tlingit and Haida Indians of Alaska v. United States,* 147 Ct. Cl. at 361-366). However, the central council also identifies communities that, in turn, elect delegates to the council, prescribe and rule on the qualifications and status of delegates, and determine membership (Central Council Constitution, Article VI, Section 1.h). The list of member communities has fluctuated over time. All five study communities, including Tenakee, have been active members in the past. (See Chapter 3.) In 1971, 19 communities were listed as member communities.[7] More recently, the number of member communities has expanded to 21 with the addition of Anchorage and Pelican (Case at 379 n. 70).

The story of Tlingit and Haida claims settlements might have ended with the Court of Claims judgment, except that the Tlingit and Haida settlement did not extinguish all aboriginal claims in Southeast Alaska. The Court of Claims noted that more than 2.6 million acres of land in Southeast Alaska had not been taken or extinguished by the federal government (*Tlingit and Haida Indians of Alaska* and *Harry Douglas, et al. v. United States*, 182 Ct. Cl. at 134-135). Furthermore, in 1969, the Indian Claims Commission concluded that the Tlingit and Haida had preserved claims to fishing rights by timely filing a petition under the Indian Claims Commission Act (Act of August 13, 1946, ch. 959, 60 Stat. 1049, codified as amended at 25 U.S.C. §§ 70 to 70v-3; *Tlingit and Haida Indians of*

[6]See Shinkwin, Chapter Eight, "Traditional Alaska Native Societies," in *Case* at 335-337.

[7]Haines, Ketchikan, Petersburg, Wrangell, Angoon, Craig, Hoonah, Hydaburg, Juneau, Kake, Kasaan, Klawock, Klukwan, Metlakatla, Saxman, Sitka, Yakutat, Seattle, and Oakland. See Smythe, Chapter 3 of this report.

Alaska v. United States, 20 Ind. Cl. Comm. 508, May 14, 1969). These claims laid the foundation for Tlingit and Haida participation in ANCSA.

Alaska Native Land Claims Settlement

Congress extinguished the remaining claims[8] of the Tlingit and Haida clans (Cohen's tribes A and B), and required a new group of Native organizations to manage the ANCSA assets—in this case, regional, village, and urban corporations rather than the Tlingit and Haida Central Council (Cohen's tribe C) [(43 U.S.C. §§ 1607, 1613 (h)(3), 1615)].

As with the Tlingit and Haida settlement, Congress drew only rough correlations between the tribes purporting to possess aboriginal claims and those organizations which it required to manage ANCSA assets. Congress mandated the creation of new managing organizations for claims settlement assets. "Village corporations" organized under state law were to "hold, invest, manage and/or distribute lands, property, funds, and other rights and assets *for and on behalf of... Native village[s]*," which in turn were defined as any "tribe, band, clan, group, village, community, or association in Alaska...composed of twenty-five or more Natives" [(43 U.S.C. §§ 1602 (j) and (c)]. "Group corporations" did the same for "Native groups," which were nothing more than Native villages with fewer than 25 Natives, "who comprise a majority of the residents of the locality" [(43 U.S.C. §§1602 (n) and (d)]. "Urban corporations" did the same for "members of an urban community of Natives" [(43 U.S.C. § 1602 (o)]. By comparison, Congress allowed one regional tribal organization to manage the Tlingit and Haida cash settlement on behalf of all the Tlingit and Haida tribes and communities.

Native individual and community eligibility under the Tlingit and Haida settlement did not automatically lead to eligibility under ANCSA. Individual Native eligibility under ANCSA was tied to a quarter blood quantum requirement or, in the absence of proof of a minimum blood quantum, acceptance by any Native village or group [(43 U.S.C. § 1602 (b)]. Tlingit and Haida Natives were enrolled on the basis of descent, without regard to blood quantum [(Act of June 19, 1935, 49 Stat. 388, ch. 275 § 7; Act of August 19, 1965, 79 Stat. 543; Central Council Constitution, Article II and Rules of Election, Rule 21 (b)]. The central council designated Tlingit and Haida communities without regard to any particular criteria beyond the residency of some Tlingit and Haida individuals and in no way limited its selection to Native communities. (See supra, note 7 and text at note).

The ANCSA criteria for Native communities (that is, villages and groups) are more objective or defined than the standards applied by the Central Council. However, Congress's designation of eligible urban Native communities may not have been objective or defined, except by specific identification (Interview August 26, 1993, with William Van Ness, former chief counsel, Senate Interior and Insular Affairs Committee, 1966-77). In the end, the Tlingit and Haida settlement clearly influenced the ANCSA legislative process, but could not guarantee Southeast village success in later ANCSA community eligibility decisions (In *Re: Village of Tenakee*, VE # 74-60, 2 ANCAB 173, Sept. 9, 1974; In *Re: Appeal of Ketchikan Indian Corp.*, ANCAB # LS 77-33, 2 ANCAB 169, December 5, 1977).

[8] *Tlingit and Haida Indians of Alaska v. United States*, 28 Ind. Cl. Comm. 169 (June 7, 1972) dismissing Southeast fishing claims due to their extinguishment as a matter of law under Section 4 of ANCSA.

The Tlingit and Haida settlement and ANCSA demonstrate how much Congress can vary in settling aboriginal claims. Congress enjoys such broad discretion in this respect that any timely challenge of the settlements would likely have failed.[9]

The analysis now shifts, in Chapter 2, to the legislative and administrative development of criteria used to determine the status of villages and urban places under ANCSA.

[9]The most egregious "settlements" have been found valid and constitutional even where Congress severed the relationship between a tribe and the United States and transferred management authority over the tribe's assets to a corporation organized under state law [Menominee Termination Act of June 17, 1954, ch. 303, § 9, 68 Stat. 250, 252 (repealed 1973), construed in, *Menominee Tribe v. United States,* 607 F.2d 1335, 1340-44 (Ct. Cl. 1979), *cert. denied,* 445 U.S. 950 (1980)].

Chapter 2. Review of ANCSA Eligibility Criteria

By Bart K. Garber

This chapter reviews the evolution and application of criteria for Native communities to be judged eligible to establish village or urban corporations under ANCSA. In particular, it looks at how those criteria were applied to the five study communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell.

Benefits under ANCSA "accrue to Natives not through clans, families, or other traditional groupings, but, instead, through the modern form of business organization called a corporation" (R. Arnold, *Alaska Native Claims* 146, 1978). If a Native community qualified as an eligible Native village, Native group, or urban community of Natives, the Natives residing in the Native community could incorporate and receive various benefits under ANCSA as a "village corporation," a "group corporation," or an "urban corporation" [43 U.S.C. §§ 1601 (j), (n), (o)].[1] The five study communities were not included on the list of eligible Southeast villages or urban Native communities, nor were they given the opportunity to prove their qualifications for either status. The omission of the five communities was not clearly explained in any provision of ANCSA or in the accompanying conference report. Review of the legislative history of the act as it relates to the development of the concepts of and the criteria for Native villages and urban communities concepts and criteria may help explain the exclusion of the study communities.[2]

Historical Development of the Term "Native Village"

Native Groups Under Early Settlement Bills

Congress ultimately used the definition and criteria for a "Native village" as the baseline for determining community eligibility and entitlements under ANCSA. The act defined "Native village" as:

> [A]ny tribe, band, clan, group, village, community, or association in Alaska listed in sections 1610 and 1615 of this title, or which meets the requirements of this chapter, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives [43 U.S.C. § 1602 (c)].

Native communities with fewer than twenty-five Natives were called Native groups and could organize group corporations if they constituted a majority of the people in particular localities (43 U.S.C. § 1602 (d), construed in *Chugach Alaska Corp. v. Lujan*, 915 F. 2d 454, 9th Cir. 1990). "Natives in four towns that originally were Native villages, but [came to be]... composed predominantly of non-Natives" were authorized to organize urban corporations [43 U.S.C. § 1613 (h)(3); Joint Statement of the Committee of Conference, Conf. Rep. No. 746, 92d Cong., 1st Sess. Report, reprinted in 1971 *U.S. Code Cong. Admin. News*, 2248 (hereafter referred to as *Conference Report*)] Native villages that met the population

[1]The act also divided the state into twelve regions roughly representing the geographic areas of operations of the existing regional Native associations (43 U.S.C. § 1606). Each regional Native association appointed incorporators who organized twelve regional corporations to manage part of the settlement assets on behalf of individual Native shareholders enrolled to their region [43 U.S.C. §§ 1606 (d) - (h)]. Natives residing outside the state eventually organized a thirteenth regional corporation [43 U.S.C. § 1606 (c)].

[2]The study communities were only denied eligibility to form village corporations. Natives from those villages still benefited from ANCSA through Sealaska regional corporation.

requirements and were not modern and urban in character could organize as village corporations [43 U.S.C. § 1607, 1610(b); see generally, *Village of Uyak v. Andrus*, 580 F.2d 601 (9th Cir. 1978), cert. denied, 439 U.S. 1052].[3]

Congress originally used the term "Native group," not Native village, in describing Native communities eligible for benefits under proposed settlement acts. ANCSA still includes one reference to this older use of the term "Native group" in the declaration of policy: "There is an immediate need for a fair and just settlement of all claims by Natives and *Native groups*[4] of Alaska, based upon aboriginal land claims" [(43 U.S.C. § 1601(a); emphasis added)]. The substance of the declaration of policy came from the Senate amendment, S. 35 (*Conference Report* at 2253). S. 35 defined a "native group" as "any tribe, band, clan, village, community or village association of Natives in Alaska" (S. Rep. Doc. No. 405, 92d Cong., 1st Sess. 3, 1971; hereafter referred to as S. Rep. Doc. No. 405).

Senator Gruening of Alaska introduced one of the first Native claims bills on February 1, 1968. That bill authorized Alaska "native groups" to incorporate under state or federal law, select lands, and receive royalties derived from Outer Continental Shelf development as compensation for their claims, based on aboriginal use and occupancy of Alaska lands. [See *Alaska Native Land Claims: Hearings on S. 2906, S. 1964, S. 2690,* and *S. 2020 Before the Comm. on Interior and Insular Affairs, 90th Cong., 2d Sess. 2, 4 (1968);* hereafter referred to as *Alaska Native Land Claims: Hearings on S. 2906"].*[5] S. 2906 defined a "native group" as:

> any tribe, band, village, community, association, or other identifiable group of Indians, Aleuts, or Eskimos of Alaska, resident in Alaska, including identifiable groups of residents of a locality which, as such a group, claims Indian title to land in Alaska by virtue of aboriginal use and occupancy at any time (Alaska Native Land Claims: Hearings on S. 2906 at 16).[6]

S. 2906 borrowed elements of its definition for "native group" from S. 1964, the first bill prepared for the first session of the 90th Congress by the Secretary of the Interior. That bill provided jurisdiction in the Court of Claims to compensate Alaska Natives for losses of aboriginal or "Indian title" lands (Federal Field Committee for Development Planning in Alaska, *Comparative Analysis of Land Claim Proposals Submitted to the 90th Congress* 6-8, 1968; see also, *Alaska Native Land Claims: Hearings on S. 2906* at 96, statement of Barry W. Jackson). Congress had done the same for southern Indian tribes in the Indian

[3]All eligible Native villages organized as village corporations under this section regardless of their particular entitlement. Villages listed or found eligible pursuant to 43 U.S.C. § 1610(b) received between 3 and 7 townships of surface estate depending on their populations; Southeast villages listed at § 1615 received one township of land each; Villages located on former reserves could elect to receive the surface and subsurface of their former reservation lands as their village corporation entitlement, with the additional condition that their shareholders would not receive regional corporation stock [43 U.S.C. § 1618 (b)].

[4]The use of the term in this context does not refer to the definition set out in ANCSA [*cf.*,43 U.S.C. § 1602(d)].

[5]Settlement bills introduced before S. 2906 all drew more or less on the Tlingit & Haida settlement model, which used the United States Court of Claims to adjudicate Native claims. Some of these bills also proposed modest land conveyances. The Department of the Interior introduced the first bill, S. 1964, on June 15, 1967. Senator Bartlett introduced a similar bill, S. 2690.

[6]S. 2906 expanded the use of the term even further: "The term 'group' or 'native group' may, when appropriate, include not only 'native group' but also 'regional native association,' 'regional native corporation' and the statewide native corporation" [Sec. 516(e)].

Claims Commission Act (25 U.S.C. §§ 70 to 70v-2, 1983). The Indian Claims Commission provided groups not generally regarded as Indian tribes an opportunity to assert their claims against the federal government. The act allowed the commission to hear claims "on behalf of any Indian tribe, band, or other *identifiable group of American Indians residing within the territorial limits of the United States of Alaska*" (25 U.S.C. § 70a; emphasis added). The commission later clarified its position noting that so long as a "group can be identified and it has a common claim, it is ... an 'identifiable group of American Indians' " (*Loyal Creek Band or Group of Creek Indians*, 1 Indian Cl. Comm'n 122, 129, 1949).

Not surprisingly, the definition of "native group" first used in S. 2906 contains the same three elements required by the claims commission for asserting an Indian claim against the federal government:

Claims Commission Act Criteria

- an identifiable group of Native Americans
- residing within the territorial limits of the United States
- possessing a common claim

S. 2906 Criteria

- identifiable group of Indians, Aleuts, or Eskimos of Alaska
- residing in a locality in Alaska
- which, as such a group, claims Indian title to land in Alaska by virtue of aboriginal use and occupancy at any time

The definition in S. 2906 referred to tribes, bands, villages, communities, and associations as examples of the kinds of identifiable Native groups that could pursue common claims under the proposed law. In this respect, S. 2906 foreshadowed much of what was to come in ANCSA and in the bills that led to it: S. 2906 identified village-based groups as the principal claimants and beneficiaries of a Native claims settlement package made up of land and money for lands lost, managed by corporations organized under state law.[7] The bill also raised a variety of issues that eventually led to the development of the more restrictive Native village criteria and, by default, the criteria for Native groups and urban communities under the Alaska Native Claims Settlement Act of 1971.

This analysis of the Native village definition and criteria could move forward to ANCSA from S. 2906 and the report of the Alaska Task Force, which wrote that bill.[8] However, examining the history of federal Indian policy in Alaska also provides useful information. The federal government had developed an administrative policy to deal with Alaska Natives—a policy that would later contribute to the administrative settlement drafts and those that borrowed from them.

[7] Earlier bills, including S. 1964, S. 2690, and S. 2020 (both referring to "claimants") used the claims commission model for an identifiable group of Native Americans but did not specifically designate or define the term "native group" (*Alaska Native Land Claims: Hearings on S. 2906* at 16-23).

[8] *Proposal for Settlement of the Alaska Native Land Claims, A Report of the Governor's Task Force on Native Land Claims*, Juneau, January 10-16, 1968 in *Alaska Native Land Claims: Hearings on S. 2906* at 74-78.

Federal Indian Policy and Alaska Native Villages

From 1936 to the early 1960s, the official policy of the federal government in Alaska centered on the revival of Native social, economic, and political life at the community level, pursuant to the Indian Reorganization Act (IRA), as amended (Act of May 1, 1936, 49 Stat. 1250, codified at 25 U.S.C. § 473a, 1983; see D. Case, *Alaska Natives and American Laws,* 10, 1984). The Alaska IRA amendment reads as follows:

> Sections 461, 465, 467, 468, 475, 477 and 479 of this title shall after May 1, 1936 apply to the Territory of Alaska; Provided, that groups of Indians in Alaska not recognized prior to May 1, 1936, as bands or tribes, but having a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district, may organize to adopt constitutions and bylaws and to receive charters of incorporation and Federal loans under sections 470, 476, and 477 of this title.

Not surprisingly, IRA "communities" turned out to be predominantly Native villages. The Task Force on Alaska Native Affairs found:

> Of the 69 associations established in Alaska pursuant to the 1936 Act, 57 included the following provision in their constitutions:
>
> 'To control the use by members or non-members of any reserve set aside by the Federal Government for the village, and to keep order in the reserve.'
>
> Considering the employment of the word "village" in the above provision, it is evident that both the natives and the Bureau of Indian Affairs felt that there would be a coincidence of membership between these associations and the communities from which their members were drawn and that officials of the association would serve as governing bodies for the villages (Report to the Secretary of the Interior by the Task Force on Alaska Native Affairs 83-84, December 28, 1962).

Native villages were considered the core community among Alaska Natives, and the federal government acknowledged this fact in the IRA amendment. The Native members of the community only had to share a common bond of occupation, or association, or residence within a well-defined community. Native villages did not require any minimum population or character for a community to organize under the IRA. Of the five study communities, all except Tenakee organized IRAs in the 1930s and 1940s.

By the early 1960s, federal promotion of the IRA in Alaska began to wane. The Department of the Interior was promoting a transfer of local government authority from federally chartered local governments to municipal governments organized under state law. The Task Force on Native Affairs reported on "problem areas" in village organization:[9]

> 1. The need for establishing village governments consistent with the system of municipal organization found throughout the State.
>
> Comment: Native villages vary in size and quality for incorporation as cities of different classes. A majority, however, at least fulfill the criteria for fourth class cities. The Task Force suggests that the Juneau Office discuss with those communities which already have I.R.A. constitutions the pros and cons of dissolving their village associations and incorporating under State law. At the same time, it should work with non-

[9]The second recommendation pointed out "2. The desirability of providing for State-licensed business organizations in the native communities as an alternative to the granting of Federal charters." *Report to the Secretary of the Interior by the Task Force on Alaska Native Affairs* at 87.

> I.R.A. villages to encourage them to organize in similar fashion (Report to the Secretary of the Interior by the Task Force on Alaska Native Affairs at 86).

Earlier in its report, the Task Force on Alaska Native Affairs noted that "since 1957, Alaska state has provided for the incorporation of villages containing more than 25 adult inhabitants ... denominating such communities 'fourth class cities' "(*Id.*at 86). The BIA area director at the time instructed the staff to help Native communities organize under state law—which required a minimum population of 25 in a community—rather than under the IRA, according to John Hope, who was with Tribal Operations, Juneau Area Office, Bureau of Indian Affairs, 1947-55 and 1963-80 (Telephone interviews with John Hope, August 17 and November 1, 1993). At about the same time, baseline studies were being done that would later be used as source documents for settlement act proposals. [See, for example, Federal Field Committee for Development Planning in Alaska, *Villages in Alaska and Other Places Having a Native Population of 25 or More* (1967)].

John Hope participated in the gathering of the data that led to the Federal Field Committee village population study. Hope said no explanation was given to staff for the threshold village population of 25. The Federal Field Committee's fixation with the number 25 goes beyond listing places with more than 25 residents—"Also listed are places that are predominantly non-Native but which have a Native population of at least 25" (Federal Field Committee for Development Planning in Alaska, *Villages in Alaska and Other Places Having a Native Population of 25 or More,* at i). The number 25 cannot be explained by any federal Indian policy imperative. The U.S. Bureau of the Census, however, presents unincorporated communities in the same manner as incorporated places of equal size. Since most municipalities cannot organize without a minimum population of 25, it follows that unincorporated Native villages would be recorded by this standard. The 1970 census identified unincorporated communities, including Native villages in Alaska, with populations from 25 to 1000 (U.S. Bureau of Census, *1970 Census Of Population—Number of Inhabitants, Alaska,* VI, 1971).

The same BIA staff was later asked to create lists of villages that might be eligible to participate in various Native claims settlement acts. The analysis now returns to the Governor's Task Force Report in January of 1968.

The Governor's Task Force

The Department of the Interior introduced the first draft Native claims settlement act bills in the summer of 1967, just as the Federal Field Committee was completing another village population study. None of the parties were satisfied with this first round of claims commission oriented bills. The Natives, the federal government, and the State of Alaska all agreed to make a concerted effort to find some legislative common ground that could break the historical impasse over Native claims in Alaska (*Alaska Native Land Claims: Hearings on S. 2906* at 62, statement of William L. Hensley). The testimony of Edgar Paul Boyko, the attorney general for Alaska at that time, provides the most succinct history of the events which led to a historic working session between the parties, an Alaska Task Force Report, and S. 2906:

> A little more than a year ago the newly formed Alaska Federation of Natives met and caused to be drafted and introduced into Congress, legislation dealing with a proposed method of settling Alaska native land claims. A great deal of discussion ensued, and meetings and conferences were held, attended by native leaders, representatives of the State of Alaska and of the U.S. Department of the Interior, the three parties most immediately concerned with this problem. It soon developed that neither the State nor the Federal

> Government could fully accept the proposed bill as originally submitted on behalf of the Federation of Natives. Early in 1967, Governor Hickel addressed a conference of the Alaska Federation of Natives here in Anchorage, and outlined to them his imaginative concept of a proposed approach: the granting of fee title for the growth and development of native communities; of non-exclusive surface rights for the protection of the native economy and their traditional way of life; and of monetary compensation for lands to which they claim aboriginal rights, but which have been taken from them by disposal to third parties on the part of the Federal Government. Governor Hickel's concept has become the accepted standard, and while there has been a variety of approaches and proposed methods of accomplishing this end, this conceptual approach remains unaltered and accepted universally by all parties concerned.
>
> Shortly thereafter, representatives of the U.S. Department of the Interior visited Alaska and met with the Governor and his staff. They revealed at that time that the U.S. Department of the Interior planned to sponsor legislation of its own, which in due course was disclosed and introduced, and also became the basis for serious study and discussion. It soon developed that once again neither the natives of Alaska nor the State could fully accept the proposal advanced by the Department of the Interior, although many valuable features were contained therein and have been preserved in the present draft.
>
> Acting under the Governor's instructions, I met with the Alaska Federation of Natives at another meeting in Anchorage last October [1967]. At that time I proposed that the State develop a compromise version embodying some of the best features of the original Alaska Federation of Natives draft and the Interior Department draft, and perhaps adding some of its own. I suggested that, rather than have the State draft its own version, and then disclose it to the other interested parties as a completed piece of work—which might very well result in hardened attitudes and pride of authorship—we should strive for a cooperative effort. We invited the Alaska Federation of Natives to designate a committee to work with the Governor and me, and other officials of the State, in a joint effort to frame such proposed legislation which all parties could support. This offer was accepted, and, at the request of native leaders, the Governor created a special task force in his own office, which was largely staffed by officers and directors of the Alaska Federation of Natives and other representative leaders of the native communities and assisted by private attorneys representing native claimant groups, and the attorney general's office.
>
> As a result of Secretary Udall's visit to Alaska to meet with representatives of the natives and the State on the native claims issue, the Secretary moreover authorized participation in these meetings by representatives of the Department of the Interior, thus creating a tripartite group and giving great impetus to the hope of reaching the kind of agreement which would make possible the kind of legislative climate in which an attempt at settling this thorny problem would have a real chance of success (*Alaska Native Land Claims: Hearings on S. 2906* at 326-327, statement of Edgar Paul Boyko).

The Task Force Report outlined the components of a proposed settlement which were ultimately incorporated into a draft bill—S. 2906 ("Proposal for Settlement of the Alaska Native Land Claims, A Report of the Governor's Task Force on Native Land Claims, Juneau, January 10-16, 1968" in *Alaska Native Land Claims: Hearings on S. 2906* at 74-78). The task force proposal consisted of: (1) a grant of 40 million acres of land in fee, or in trust, allocated on the basis of proportional enrollments of individuals to villages, regions, and a statewide organization incorporated under state business charters; (2) a federal grant of 10 percent royalty interest in Outer Continental Shelf revenues with an immediate advance payment of $20 million to compensate for lands reserved or disposed of to third parties; (3) a state grant of 5 percent royalty interest in state selected lands, commencing upon the lifting of the land freeze[10] and resumption of state land selections; and (4) a terminable license to use the surface of lands under occupancy and used by Natives for subsistence purposes. Congress spent the

[10]PLO 4582, 34 Fed. Reg. 1025 (January 23, 1969).

next four years refining this model for a land claims act, by rejecting some concepts,[11] straying from others,[12] and bartering along the way,[13] before eventually returning to the core concepts first outlined in the task force proposal.[14]

The following sections follow the traces left by the Governor's Task Force, S. 2906, and other legislative proposals that give some clues to the origin of the Native village and urban community criteria and ultimately the creation of village lists.

Native Village Beneficiaries Under S. 2906.

The Governor's Task Force settlement bill, S. 2906, called for the enrollment of every Native to one Native group (S. 2906 § 507). Each Native group determined its own membership and enrollment. Natives could enroll to the villages where they currently lived, or to the villages where they or their ancestors had come from (S. 2906 § 507). Native groups that failed to enroll at least 25 Natives would have their members enrolled to another group.

Nothing in S. 2906 or in testimony regarding the bill indicates why the 25 person population figure was used. The definition of Native group in S. 2906 did not include a population requirement. The definition only refers to "identifiable groups of residents ... which as a group...claims Indian title to land ... by virtue of aboriginal use and occupancy at any time [S. 2906 § 516 (a)]. The group could incorporate as a state business corporation or an IRA and receive land and money under the bill—and neither requires 25 members to incorporate.

---

[11] For example, the idea of a statewide corporation (S. 2906 § 307) was eventually rejected. Some feared that the well-funded, statewide corporation would become a political arm of the Natives of Alaska. Ironically, this statement came from a legal representative of various Native groups [*Alaska Native Land Claims: Hearings on S. 2906* at 101 (Statement of Barry W. Jackson); *see* H.R. Rep. No. 523 at 2198].

[12] One deviation from the Task Force's proposal and intentions was the idea of granting settlement assets to Natives organized as municipal corporations instead of for-profit business corporations. The Task Force explained their policy choice as follows:

In order to facilitate future development, the village-as-a-municipal-corporation shall be separated from the village-as-an-incorporated-tribal-group. Among the differences between these concepts are the following: Whites may become resident members of the municipality; residence is not required for membership in the corporation; corporation membership in the course of time is to be translated into stock in a business corporation under Alaska law. A membership interest will be represented by 100 shares of stock which are not alienable by the first holder, except at death, and successor holders must be descendants of those on the original roll until 100 years have elapsed, when the shares shall be freely alienable, subject to any "close corporation" provisions in the articles and by-laws (*Alaska Native Land Claims: Hearings on 2906* at 75).

The same reasons were cited by the conference committee in rejecting the final House bill proposal for a municipal settlement vehicle at the village level (Conference Report at 2252).

[13] Later settlement proposals for Native land conveyances ran the gamut from 10 to 16 million acres before eventually returning to the 40 million acre figure. [*See* H.R. Rep. No. 523 at 2241-2242 ("Chronology of Interior's Proposals for Settlement of the Alaska Native Land Claims" from the dissenting view of Hon. Rep. John P. Saylor).]

[14] Congress eventually provided 962.5 million dollars in cash payments from the federal and state governments instead of royalties (43 U.S.C. § 1605), and offered the general regulatory protection of the federal government for Native subsistence uses on federal lands instead of a licensing system for such uses (Conference Report at 2250).

It may be that only villages with 25 members could be "identified" by verification on the most recent tribal list (*Villages in Alaska and Other Places Having a Native Population of 25 or More,* 1967). Regardless, the Federal Field Committee consistently used the 25 person population as the standard for village existence (*Alaska Natives and the Land* at 8). The last House proposals which used the municipal corporation as the settlement vehicle had an additional rationale for the 25 resident requirement—municipal corporations required that number to incorporate under state law. (See H.R. Rep. No. 92-523 at 2197.)

Natives did not need to constitute a majority of a Native village or exhibit current aboriginal use and occupancy of land under S. 2906 to participate in its proposed settlement. Two sections of the bill proposed exceptions that persist in subsequent settlement proposals. First, villages which were relatively new or which had relocated in recorded history could still file a claim based upon aboriginal use and occupancy during such period (S. 2906 § 504). Second, Native villages which had been abandoned involuntarily or which had been absorbed by non-Native communities could also file claims based on aboriginal use and occupancy before their involuntary abandonment or absorption (S. 2906 §505). These exceptions broke from an early tendency in the claims commission bills (e.g. 1964) to tie Native group land entitlements to present use by a Native community and a traditional use or need standard.[15] The official Governor's Task Force commentary explains these exceptions:

> Section 504. Claims of New Villages
>
> Native villages which have relocated or been reestablished during the last 100 years as a result of volcanic explosion, flood, loss of game, and other reasons. This section permits these villages to participate in the settlement.
>
> Section 505. Claims of Abandoned Villages
>
> This section provides for situations such as Kenai, where the native village has been absorbed, and villages which have been involuntarily abandoned. In the latter case, only a few native group corporations based upon abandoned villages are expected, as most members of these villages have formed or have affiliations with other groups (*Alaska Native Land Claims: Hearings on 2906* at 108).

Despite the disavowal of the requirement of present aboriginal use and occupancy and the need for a majority Native population, the exceptions tend to prove the rule—only current Native aboriginal land use (that is, subsistence lifestyles exhibited by a predominantly Native community) would assure an entitlement under the Governor's Task Force proposal. The exceptions (relocated villages and the original urban corporation provision) were tightened or eliminated in subsequent acts. More to the point, the majority Native and "not modern and urban in character" requirements were officially made the rule for Native village certification.

[15] "The Secretary of the Interior is authorized to grant in trust...to...a group of natives...title to the village site or sites now occupied by such group...and ... to grant title to such additional lands within the environs of such site or sites as would contribute significantly...to the livelihood of the community, taking into account factors such as population, economic resources of the group, traditional way of life, and the nature and value of the land proposed to be granted" (S. 1964, Sec. 3, *Alaska Native Land Claims: Hearings on S. 2906* at 16).

Not Modern and Urban in Character and A Majority of Native Residents

Powerful members of Congress insisted on present aboriginal use of claimed lands as a prerequisite to sharing in any settlement:

> Aboriginal title depends on actual use and occupancy by a recognized aboriginal group. Many Alaska Natives have left the villages of their ancestors and no longer participate in present village use of land. They live in Seattle, Anchorage, Fairbanks, and in other cities. The point is, these Natives no longer use the land (Hearings on H.R. 3100, H.R. 7039, H.R. 7432—To Provide for the Settlement of Certain Land Claims of Alaska Natives, and for other Purposes at 79; Comments of Hon. Wayne N. Aspinall, Chairman, Committee on Interior and Insular Affairs; 1971).

Congressman Aspinall excluded modern and urban villages from entitlements under his proposed bill, H.R. 3100:

> Many individual Natives no longer reside with a Native group that uses public lands, and those individuals have no valid claim based on present use and occupancy....
>
> "Native village" means a Native group in Alaska that is comprised of twenty-five or more Natives, who live in a community that is not of a modern and urban character (Id. at 2-3).

Although the proposed bills at this late date purported to eliminate the relationship between value of aboriginal use and occupancy and the lands granted under legislative proposals, in H.R. 3100 Sec. 2 (g) (*Id.* at 2), city lifestyles (e.g., no subsistence use of land) would have disqualified a village from a group entitlement.

The governor contributed additional reasons for limiting village certification to predominantly Native villages and not those in urban environments:

> The first type of circumstances which activate a State policy objection is the denomination for these purposes as "Native villages," towns, cities or villages which are not, at the present state of historical development, primarily Native in character.... For instance, the city of Kenai is non-Native in population, and its economy is integrated into the cash economy of the State, as is the surrounding territory. The City of Nome was settled by gold miners and although through migration has acquired a majority of Eskimo population, it is culturally mixed and urban in character. It is difficult to assess the precise effect of conveying all the vacant land in and around such city to a corporation controlled by a racially defined minority within it, but it may have the effect of dividing the City more than it unites it, working to the long term disadvantage of both elements in the population (Hearings on H.R. 3100, H.R. 7039, H.R. 7432 at 366, testimony of Governor Hickel).

The distinction between "cities and towns not .... primarily Native in character," "culturally mixed and urban in character" and communities which are a majority non-Native blurred over time. By October 1971, the Senate incorporated all three criteria into the eligibility requirements for Native villages under S. 35—at least 25 Natives had to reside in the village, the village could not be modern and urban in character, and the majority of residents could not be non-Natives (Sen. Rep. No. 92-405 at 3, 42). State land selection concerns might not have been the only reason for limiting the number of eligible Native villages. Up until the final passage of ANCSA, every bill included a Native village subsistence privilege, usually provided through a license or permit on federal lands. Under the Senate proposal, the Secretary of the Interior could close areas around Native villages to entry by all those except local residents for subsistence purposes (Sen. Rep. Doc. No. 92-405 at 43-44). The more Native villages, the more potential for subsistence closures. The dynamics of all the different legislative proposals pointed toward limiting the scope of village eligibility.

Village Lists

Villages listed in ANCSA are presumed eligible for the benefits of the act [43 U.S.C. §§ 1610(b), 1613(a)]. The reason for the lists had everything to do with the conflicts over land selection priorities:

> It is our feeling that both the listing of Native villages in the bill and a cut-off date for qualifications of 25 Native residents important to establish definite boundaries for land withdrawals. If the villages are not listed in the bill then for a certain period of time after enactment of the legislation there would be no way to determine what land would be subject to Native settlement and what would be available for State selection or other use.... Identifying the village in the bill and tying land withdrawals and patents to specifically defined areas surrounding the listed villages will avoid such future conflict (Letter from Rogers C. B. Morton, Secretary of the Interior, to Hon. Wayne N. Aspinall, Chairman, Committee on Interior and Insular Affairs, Hearings on H.R. 3100, H.R. 7039, H.R. 7432—To Provide for the Settlement of Certain Land Claims of Alaska Natives, and for other Purposes at 9, 1971).

The initial lists included in the administrative bills were generated by the area director of the Bureau of Indian Affairs in Juneau (Telephone interview August 17, 1993, with John Hope, Tribal Operations, Juneau Area Office, 1963-1980). The length of the lists depended on the eligibility criteria in each bill. Congressman Lloyd Meeds' list, included in H.R. 7039, excluded no one. The definition of "Native village" in H.R. 7039 included Native villages "composed of twenty-five or more Natives, regardless of whether or not resident in a predominantly Native area" (Hearings on H.R. 3100, H.R. 7039, H.R. 7432 at 18). The list of villages that was finally included in sections 1611 and 1615 of ANCSA evolved from ones generated by the Secretary of the Interior after the 1970 census data became available (*Id.* at 97, 111-114).

Southeast Village Lists

From the outset, Native villages in Southeast Alaska faced an uphill struggle to participate in a legislative settlement of Alaska Native claims. The first administrative bill, S. 1964, excluded them altogether (S. 1964, Sec. 4(a), *Alaska Native Land Claims: Hearings on S. 2906* at 19). Testimony by John Borbridge made it clear that the Tlingit and Haida Indians retained claims to million of acres of land in Southeast Alaska, in addition to certain claims pending in the Court of Claims (*Id.* at 341-347). The Court of Claims noted that more than 2.6 million acres of land in Southeast Alaska had not been taken or extinguished by the federal government (*Tlingit and Haida Indians of Alaska and Harry Douglas, et al. v. United States,* 182 Ct. Cl. at 134-135). Furthermore, in 1969, the Indian Claims Commission concluded that the Tlingit and Haida had preserved claims to fishing rights by timely filing a petition under the Indian Claims Commission Act of August 13, 1946 (Ch. 959, 60 Stat. 1049, codified as amended at 25 U.S.C. §§ 70 to 70v-3; *Tlingit and Haida Indians of Alaska v. United States*, 20 Ind. Cl. Comm. 508, May 14, 1969). These claims laid the foundation for Tlingit and Haida participation in ANCSA.

From that point on, Southeast villages—including all the study communities except Tenakee—were included on Native village lists with villages throughout the state (H.R. 7039, Hearings on H.R. 3100, H.R. 7039, H.R. 7432 at 31-35; S. 1830, 91st Cong., 1st Sess. 46-56, October 2, 1969). Other lists were limited to eligible Southeast villages (H.R. 7432 and S. 1830, June 10, 1970), excluding the study communities but including Tatitlek (Hearings on H.R. 3100, H.R. 7039, H.R. 7432 at 31-35, 57; S. Rep. No. 925, 91st Cong., 2d Sess. 166, 1970).

Southeast village representatives endured constant attacks and pressure from non-Native advocates, who opposed any recognition of Southeast Native land claims in Southeast towns they considered to be historically non-Native (Hearings on H.R. 13142, H.R. 10193, and H.R. 14212, Before the Subcomm. on Indian Affairs of the House Comm. on Interior and Insular Affairs, 91st Cong., 1st Sess. 581-582, 1969, statement of Leo Mark Anthony; and Hearings on H.R. 13142, H.R. 10193, and H.R. 14212 at 608-610, 1969, statement of William L. Paul). By the 1960s, Tlingits and Haidas found it difficult to overcome the strength of the non-Native communities' denial of the Native origins of most communities in Southeast Alaska (Telephone interview August 13, 1993 with Byron Mallot, former special assistant to Senator Gravel).

The study communities disappeared from the Southeast list at the same time as 1970 census data became available, and the criteria for the statewide village list shifted to a population of at least 25 Native residents, a majority Native population in the village, and communities that were not urban and modern in character[16] (Hearings on H.R. 3100, H.R. 7039, H.R. 7432 at 97, 111-114). The final version of S. 35 contained an unlisted Southeast village subsection that ran parallel with the provision for unlisted villages in other parts of the state (S. Rep. Doc. No. 92-405 at 45). The provision would have allowed the Secretary to make findings with respect to the eligibility of unlisted Southeast villages much the same as with unlisted villages in section 1610(b)(3). However, the provision was not adopted by the Conference Committee (Conference Report at 2257), and Southeast villages found themselves without an appeal from a denial of Native village status (In *Re: Village of Tenakee*, VE # 74-60, 2 ANCAB 173, 177, Sept. 9, 1974; identical opinion In *Re: Village of Haines*, VE # 74-85, Sept. 9, 1974; acc'd, In *Re: Appeal of Ketchikan Indian Corp.*, 2 ANCAB 169, Dec. 5, 1977).

Historical Development of the Term "Urban Community"

Section 14 (h)(3) of ANCSA authorized the Secretary of the Interior to withdraw and convey to Natives residing in Sitka, Kenai, Juneau, and Kodiak 23,040 acres each as an entitlement for these urban corporations. "Natives in four towns that originally were Native villages, but [came to be] ... composed predominantly of non-Natives" were authorized to organize urban corporations (43 U.S.C. § 1613 (h)(3); Conference Report at 2248). The issue of urban group status can be traced to section 505 of S. 2906:

> Section 505. Claims of Abandoned Villages
>
> A native group relocated to a native village which has been abandoned involuntarily during recorded history, or which has been absorbed by a non-native community, may file a claim based upon aboriginal use and occupancy before such involuntary abandonment or absorption (*Alaska Native Land Claims: Hearings on S. 2906* at 14).

[16]The respective total and Native populations for each of the landless villages were as follows in the 1967 report of the Federal Field Committee for Development Planning in Alaska, *Villages in Alaska and Other Places Having a Native Population of 25 or More*: Ketchikan 10855/1605; Haines 1000/300; Petersburg 1800/360; Tenakee 125/30; Wrangell 1700/500. The 1970 Census figures were reported as follows: Ketchikan 6994/1064; Haines 463/109; Petersburg 2042/242; Tenakee 86/6; Wrangell 2029/380 [ISER, *Alaska Review of Business and Economic Conditions*, Vol. X, No. 2 (Sept. 1973)].

The Governor's Task Force commentary explains this section as follows:

> This section provides for situations such as Kenai, where the native village has been absorbed, and villages which have been involuntarily abandoned. In latter cases, only a few native group corporations based upon abandoned villages are expected, as most members of these villages have formed or have affiliations with other groups.

Another section, Section 516, provides a clarification:

> ... Note that certain urban native groups, such as the Fairbanks Native Association, which do not as a group claim Indian Title, are not "native groups" under the act. Their members must be enrolled on the rolls of their historic villages (Id. at 108).

The ability of historic Native groups located in urban locations to participate in ANCSA was assured by some bills which would have extended benefits to Native groups "regardless of whether or not resident in a predominantly Native area" (Hearings on H.R. 3100, H.R. 7039, H.R. 7432 at 18). But this version of a settlement act did not survive. Instead, the Senate shifted to the idea of a national corporation for non-resident Natives living out-of-state, and an urban corporation for Natives living in places that were ineligible because they had so many non-Native residents (Conference Report at 2254). However, these corporations did not survive the conference committee. Instead, the conference committee included a section which authorized non-resident, out-of-state Natives to vote on creating a 13th regional corporation. In addition, in-state Native residents of urban locations could enroll as at-large shareholders in their respective regional corporations and enjoy a larger monetary distribution over time than village shareholders [43 U.S.C. §1606(j)]. Finally, Natives residing in the historic villages of Sitka, Kenai, Juneau, and Kodiak were able to incorporate as urban corporations and were thereby entitled to 23,040 acres each and a modest planning grant [43 U.S.C. 1613 (h)(2)].

The ANCSA urban corporation provision was never officially introduced in any bill leading to the passage of ANCSA, according to Bill Van Ness, who was at that time chief counsel for the Senate Interior and Insular Affairs Committee (Telephone interview, August 26, 1993). Representatives from the four communities had spoken to Senator Stevens about the provision the year before, in 1970, according to John Borbridge, who was at the time a Tlingit and Haida representative (Telephone interview, October 14, 1993). Senator Stevens was favorably inclined toward the provision but did not act on it *(Id.)*. The four urban villages tried again during the conference committee deliberations in late 1971. Spokesmen for each of the urban communities took turns lobbying various congressmen in both houses, according to Hank Eaton, who represented the urban community of Kodiak (Telephone interview, Sept. 23, 1993). Senator Stevens was approached about the provision again during the conference committee and introduced the provision into the final bill, according to John Borbridge.

The Federal Field Committee identified six urban places in Alaska—Anchorage, Fairbanks, Juneau, Ketchikan, Kodiak, and Sitka—and four examples of "non-Native" towns—Wrangell, Petersburg, Kenai, and Seward. The four urban corporations were organized in Juneau, Kodiak, Sitka, and Kenai (*Alaska Natives and the Land* at 6). The Field Committee reported that of the five study communities, Wrangell was located at the same place as the original village (Id. at 274). Sitka was also found to be located at the site of its original village, but Juneau was not.

Bill Van Ness recalled that the urban Native corporation provision was enacted because no one objected to these four communities' gaining eligibility (Telephone interview, August 26, 1993).

Van Ness also said that, to his knowledge, no criteria or evaluations were used to determine if these four communities were any more qualified than others (*Id.*). John Borbridge recalled that the sense of the conference committee was that no more communities would be accepted for urban corporation status (Interview with John Borbridge, October 14, 1993). At the time, it was not clear whether Southeast villages had other options to qualify for village status under ANCSA—that would be discovered later in the village eligibility decisions regarding Tenakee, Haines, and Ketchikan (*Id.*).

Native Village Certification Under ANCSA

The Secretary was required to make eligibility determinations for more than two hundred villages within two and a half years after enactment of ANCSA [43 U.S.C. §1610(b)]. Villages found eligible could incorporate and were entitled to the land benefits described in section 1613 of ANCSA. A list of established Native villages ("listed villages") was set out in section 1610(b)(1), and these villages were deemed to be eligible unless the Secretary made a finding that fewer than 25 Natives resided in the village on the 1970 census enumeration date, that the village was modern or urban in character, or that the village was populated by a majority of non-Native residents [43 U.S.C. § 1610(b)(2)].

Since villages in Southeast Alaska, listed in section 1615(a), were not "listed in subsection (b)(1)," they could have been required to fulfill the eligibility criteria for unlisted villages found in section 1610(b)(3). Notwithstanding that technical distinction, Southeast villages were treated as "listed" villages under the regulations [43 C.F.R. § 2651.2 (a); see example, In Re: *Kasaan*, VE 74-17, VE 74-18, June 14, 1974: Appeal by the Forest Service and the Alaska Wildlife Federation and Sportsmen's Council of acting area director's decision finding Kasaan eligible for benefits under ANCSA].

Unlike listed villages, unlisted villages carried the affirmative burden of establishing that at least 25 Natives resided in the village on the census enumeration date and that the village was not modern and urban in character [U.S.C. § 1610(b)(3)]. An unlisted village would be found eligible and be added to the list, once the Secretary of the Interior had made a finding about all necessary facts required by the subsection. The Secretary later determined that Congress did not intend to allow unlisted Southeast villages an opportunity to prove their village status, the way unlisted villages in other parts of the state could (In *Re: Village of Haines*, VE 74-85, September 9, 1974; In *Re: Village of Tenakee*, 2 ANCAB 173, VE 74-60, September 9, 1974; In *Re: Appeal of Ketchikan Indian Corporation*, 2 ANCAB 169, LS 77-33, December 5, 1977).

Any Native group that failed to meet the minimum village population standards could be considered for special land entitlements, as under section 1613(h)(2).

The first proposed village eligibility regulations met with broad disapproval in the Native community (*Alaska Native Management Report*, October 24, 1972 at 2). Natives were concerned that even if the regulations were redrafted, many Native villages would be found ineligible under the "modern and urban character" standards (*Alaska Native Management Report*, March 13, 1973 at 1). This widespread dissatisfaction could have been avoided, if the local Alaska Bureau of Land Management (BLM) officials responsible for preparing regulations had consulted the Native community before the regulations were published. Final regulations were not adopted until May 30, 1973. That lack of consultation contributed to unnecessary delays and an initial poor working relationship between the BLM and the Native community.

Almost all appeals of village certification decisions were brought by third parties who felt threatened by village corporation land selections. State municipal governments, non-Native sports hunting associations, and—in some instances—federal land management agencies used the village certification process as a way of defeating village land selections. (See, e.g., *Stratman v. Watt*, 656 F.2d 1321 (9th Cir., 1981), *cert. denied.* 102 S.Ct. 1744; and, *Alaska Native Management Report*, January 31, 1974 at 3; September 16,1974 at 1.)

The director in the Juneau area office of the Bureau of Indian Affairs (BIA) was responsible for making village eligibility determinations under regulations adopted on May 30, 1973 [43 C.F.R. § 2651.2(a), 1973)]. The area director was required to investigate and examine available records and evidence that could have a bearing on the eligibility of any listed village *[Id.* at 2651.2(a)(1)]. An authorized representative of the village was required to submit an application for determination of eligibility for unlisted villages [*Id.* at 2651.2(a)(6)]. The application had to include prima facie evidence of compliance with the requirements of eligibility under the regulations.

The village eligibility regulations expounded on the language in ANCSA as follows:

1. Twenty-five or more natives had to reside in the village on April 1, 1970, but residence was presumed if a Native was properly enrolled to the village.

2. The village had to have an actual physical location evidenced by the occupancy of at least thirteen Natives during 1970. However, no village "which is known as a traditional village" would be disqualified, if occupancy could be shown sometime during the ten years preceding 1970.

3. A village was modern and urban in character only if it possessed all of the following attributes:

a. Population over 600;

b. Centralized water and sewer system serving a majority of residents;

c. Five or more established businesses;

d. Organized police and fire protection;

e. Private resident medical and dental services;

f. Fully maintained streets and sidewalks. [Id. at 2651.2(b)(1),(2),and (3)].

When he finished his review, the area director published his proposed decision in the Federal Register and in local newspapers [*Id.* at 2651.2(a)(2)]. Any interested party could file a protest within thirty days *[Id.* at 2651.2(a)(3)]. Absent a valid protest, the decision was final and would be published a second time in the Federal Register [*Id.* at 2651.2(a)(2)].

The director would evaluate any protests and supporting evidence and render a decision on the eligibility of the village within thirty days of receipt of the protest *[Id.* at 2651.2(a)(4)]. The decision on appeal would be published and become final, unless appealed to the Secretary by a notice filed with the Alaska Native Claims Appeals Board (ANCAB) (*Id.*).

The Secretary of the Interior established the ANCAB, or the "ad hoc board," as it was referred to in the regulations, to hear appeals of BIA village eligibility and village land selection determinations. ANCAB operated as a fact finding board which recommended decisions for Secretarial review and approval.

The Secretary was not bound by ANCAB's recommendations. The Secretary appointed four members, familiar with Native village life, from outside the Department of the Interior to sit on ANCAB. ANCAB, in turn, assigned Interior Office of Hearings and Appeals administrative judges to hear the appeals (*See* GAO *Report on Enrollment and Village Eligibility* at 10). ANCAB reviewed the record and the decision recommended by the administrative law judges, and then sent its own recommendations to the Secretary without providing an opportunity for the parties to review the administrative judges' decisions or submit exceptions.

Of the 215 villages listed in ANCSA, the BIA found 201 eligible and 14 ineligible. (See generally, GAO *Report on Enrollment and Village Eligibility* at 9-14). ANCAB received twelve appeals on the listed village determinations. All twelve appeals involved villages that the BIA had determined were eligible. Only eight of the twelve appeals proceeded to hearing before the administrative judges. The judges upheld the BIA's determination of eligibility in seven of the eight cases. ANCAB recommended reversal of two of these decisions, and the Secretary accepted ANCAB's recommendation.

Of the three listed villages that ANCAB found ineligible, one did not have an identifiable physical location evidenced by occupancy consistent with Native culture and lifestyle (Salamatoff), another failed to show proof of at least twenty-five resident Natives enrolled to the village (Pauloff Harbor), and the third failed to show an identifiable physical location and sufficient number of Native residents (Uyak). The three ineligible villages filed suit in the United States District Court challenging the Secretary's decisions (*Koniag, Inc. v. Kleppe*, 405 F. Supp. 1360, D.D.C., 1975). The District Court overruled the Secretary and reinstated the BIA's determinations that all three were eligible. The Secretary appealed the decision for all the villages except Pauloff. The District of Columbia Circuit Court of Appeals affirmed in part, reversed in part, and remanded the case for administrative determination on the grounds that the secret procedure involved in ANCAB review of the administrative judges' decisions denied due process to the parties and violated the ANCSA policy of maximum participation by Natives in matters that concern their property rights (*Koniag Inc., Village of Uyak v. Andrus*, 580 F.2d 601, 609, D.C. Cir., 1978). Salamatoff and Uyak were later legislatively confirmed as eligible villages in the 1980 Alaska National Interest Lands Conservation Act (ANILCA, Pub. L. No. 96-487 §§ 1427, 1432, 94 Stat. 2327).

Unlisted villages faced a more precarious fate when the ANCAB reviewed the BIA director's decision. [See *Report of the Secretary* 1982, § 1610(b)(3)]. Thirty-one unlisted villages submitted eligibility applications. The BIA declared that twenty-four of these villages were eligible and seven ineligible. Twenty-eight of these determinations were appealed (twenty-three eligible, five ineligible). Except for Eklutna's protest of the Knik determination, the appeals of villages found eligible were made by non-Native third parties (*Alaska Native Management Report*, January 31, 1974 at 3). Ultimately only 20 of these appeals were decided by the administrative judges and ANCAB. ANILCA also resolved most of the pending issues on eligibility regarding unlisted villages (ANILCA §§ 1427, 1432).

In summary, once final village eligibility regulations were adopted, village eligibility determinations were made expeditiously by the Secretary, but third parties forced many of the Secretary's decision into adjudication. The adjudication process was long and expensive. Ultimately, many of the disputes were resolved by legislation as part of ANILCA.

Southeast Village Eligibility Determinations

Following the passage of ANCSA, three Southeast villages, including the study communities of Haines and Tenakee, filed timely appeals of eligibility decisions of the area director of the Bureau of Indian Affairs with the Alaska Native Claims Appeal Board. (In *Re: Village of Tenakee*, VE # 74-60, 2 ANCAB 173, 177, Sept. 9, 1974; Identical Opinion In *Re: Village of Haines*, VE# 74-85, Sept. 9, 1974; *Forest Service, et. al v. Village of Kasaan*, ANCAB VE# 74-17, VE# 74-18, June 14, 1974).

Ketchikan Indian Corporation, the IRA organization in Ketchikan (another study community), filed an untimely request for determination of its village eligibility and land entitlement (In *Re: Appeal of Ketchikan Indian Corp.*, 2 ANCAB 169, 170, Dec. 5, 1977). The Ketchikan IRA appealed the area director's adverse decision. The ANCAB resisted the area director's request to dismiss the case as untimely, and instead applied the rational of the decisions it had made on the earlier appeals by unlisted villages. It found as follows:

> On August 30, 1974, this Board issued a Final Order in re Appeal of Village of Tenakee, VE # 74-60, finding the Village of Tenakee not eligible for benefits under the Act and the same was approved by then Secretary of the Interior Rogers B. Morton on September 9, 1974. The final order...developed the legislative history of the Southeast Region, discussed applicable sections of the Alaska Native Claims Settlement Act and concluded that the designation of villages in Southeastern Alaska in §16(a) of ANCSA created an exclusive list of eligible villages of Southeast Alaska which cannot be added to, stating:
>
> It is ... apparent from a comparison of the appropriate provisions relating to withdrawals, selections and conveyances of land that unlisted Southeast villages are not intended to receive benefits under the Act. The distinctions made between 'identified' non-Southeast villages and listed Southeast villages is consistent throughout all of the withdrawal, selection, and conveyance procedures spelled out in the Act. It is thus apparent that Congress did not intend that unlisted Southeast villages could be made eligible for benefits under the Act.
>
> ...The Appellant in the present appeal, Ketchikan Indian Corporation, is located in Southeastern Alaska and purports to be a village or community entitled to benefits under the Alaska Native Claims Settlement Act despite the fact it did not seek a determination of eligibility prior to the September 1, 1973, deadline ... However, just as the Village of Tenakee, the Appellant is not listed within § 16(a) of ANCSA and thus regardless of the significance of the application deadline for determination of eligibility this appeal must be controlled by the previous decision and therefore dismissed [sic] (In Re: Appeal of Ketchikan Indian Corp., 2 ANCAB at 171).

In essence, the ANCAB found that the only way an unlisted Southeast village could acquire benefits under ANCSA was to be treated as a non-Southeast village and thereby conceivably acquire larger land entitlements than the listed Southeast villages and create inconsistencies in land selection reallocation formulas found in section 12(b) of the act. (In *Re: Village of Tenakee*, 2 ANCAB at 175-176). Finally, the conference committee's failure to adopt the Senate's parallel unlisted Southeast village provision cinched the case:

> The provisions for the Southeast and non-Southeast villages are parallel, but distinctly different, and the failure of Congress to provide any parallel provision for the eligibility of unlisted Southeast villages is consistent with the other distinctions made by Congress in conferring land benefits upon the listed Southeast villages subject to the Tlingit-Haida Settlement, and upon the listed and unlisted villages elsewhere in Alaska (Id. at 177).

The conference committee did not explain its omission of the unlisted provision (Conference Committee at 2257).[17] None of the other study communities attempted to assert their eligibility during the regulatory period following the passage of ANCSA. Any attempt on their part, however, would likely have been futile, given the Secretary's decisions regarding unlisted Southeast villages.

[17] Certainly, population figures and knowledge regarding the settlement patterns in Southeast Alaska were better known than in other parts of the state. However, the reasons for the committee's decision are only conjecture.

Chapter 3. The Tlingit and Haida Settlement

BY CHARLES W. SMYTHE

This chapter compares the participation of the five study communities and of the recognized ANCSA Southeast villages and urban communities in the first Native land claims settlement in Alaska—the settlement the Tlingit and Haida Indians won after bringing suit against the federal government. The chapter also discusses the form of the settlement, known as the Tlingit-Haida settlement, which was originally proposed as a community-based settlement and later was legislatively changed to a region-based settlement by recognizing the Tlingit and Haida Central Council as a regional tribal organization.

Origins of the Tlingit and Haida Settlement

The Tlingit and Haida land claims lawsuit was instituted after the Natives of Southeast Alaska secured passage of the Jurisdictional Act of June 19, 1935 (49 Stat. 388), "Authorizing the Tlingit and Haida Indians of Alaska to bring suit in the United States Court of Claims, and conferring jurisdiction upon said court to hear, examine, adjudicate, and enter judgement upon any and all claims which said Indians may have, or claim to have, against the United States, and for other purposes." The participation of the five Southeast study communities in the events leading up to this act, and in the subsequent activities and organizations which carried the action through to the decisions granting compensation for lost property rights, including the establishment of the Central Council of Tlingit and Haida Indians of Alaska, is described below and compared with that of Southeast villages recognized in ANCSA.

The Jurisdictional Act defined the Tlingit and Haida Indians to be all those Indians of whole or mixed blood who in 1935 were living in the southeastern region of "Russian America," or the Territory of Alaska. It granted the authority for these Indians to pursue all claims "for land or other tribal or community property rights taken from them by the United States without compensation," or "which the United States appropriated to its own uses and purposes without consent of the said Indians," or "for the failure or the refusal of the United States to protect their interests in lands or other tribal or community property in Alaska, and for loss of use of the same, at the time of the purchase of... Russian America, now Alaska, from Russia, or at any time since that date and prior to the passage and approval of this Act..." It also authorized compensation for the loss "of their right, title, or interest, arising from occupancy and use, in lands or other tribal and community property, without just compensation therefor ..."

The act also authorized a community settlement. It specified that "all persons of Tlingit or Haida blood, living in or belonging to any local community of these tribes" in Southeast Alaska were entitled to share in the judgement. "Each tribal community shall prepare a roll of its tribal membership, which roll shall be submitted to a Tlingit and Haida central council for its approval. The said council shall prepare a combined roll of all communities and submit it to the Secretary of Interior for approval. Approval of the roll by the Secretary of Interior shall operate as the final proof of the right of such Indian communities to share in the benefits of this Act..." The subsequent recognition of the Central Council as the beneficiary entity of the Tlingit and Haida settlement derives from this wording.

The act did not provide any further specification of tribal community, such as a list of eligible communities, or of procedures for establishing and approving a tribal membership roll. It did say, however, that any judgement funds would be apportioned to the different Tlingit and Haida communities listed on the roll in proportion to the number of names on the roll. The act also designated that the funds would be expended "for the future economic security and stability of said Indian groups, through the acquisition or creation of productive economic instruments and resources of public benefit to such Indian communities..."

Prior to the court's decision on the Tlingit-Haida case, the Central Council organization was modeled after the Alaska Native Brotherhood (ANB) and Alaska Native Sisterhood (ANS). Its leadership was drawn from the ANB and ANS, and it met during the annual ANB/ANS conventions. Central Council membership was comprised of Tlingit and Haida communities with active ANB/ANS camps. In the 1930s and 1940s, these included the study communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, as well as Angoon, Craig, Douglas, Hoonah, Hydaburg, Juneau, Kake, Kasaan, Klawock, Klukwan, Saxman, Sitka and Yakutat. Haines, Kasaan, and Tenakee were less active in the 1950s, but the participation of the other communities remained at earlier levels.

The history of the Tlingit and Haida land claims began with the ANB and ANS. The idea of pursuing claims for the loss of lands and property rights in Alaska is attributed to one of the founders of ANB, a Tsimshian named Peter Simpson, who first posed the question, "Whose land is this?" and urged the Native leaders to take action. Ironically, one of the five study communities, Haines, is recognized as the site from which attorney William L. Paul, Sr. initiated the Tlingit and Haida land claims, during the 1929 annual ANB convention in Haines.

Paul invited Judge James Wickersham to the 1929 convention in Haines. When Judge Wickersham addressed the convention, he called upon the ANB to pursue Congressional action to redress the loss of land and the timber on it. He read a list of communities that should be included, and mentioned four of the five study communities by name: Haines, Petersburg, Wrangell, Ketchikan (also named were Klukwan, Hoonah, Douglas, Juneau, Angoon, Sitka, Kake, Hydaburg, and Kasaan). Presumably, these were the communities in attendance at the meeting (Brown 1993: personal communication; Paul 1946).

At this meeting, the ANB Grand Camp passed a resolution which authorized the executive committee to expend funds from the grand treasury to pursue this course. "We began actively seeking out lawyers and solutions and bending the arms of several legislators (principally the delegates from Alaska) toward getting the legislation that we would need to actually permit us to sue the United States government" (Brown, in Hope 1982:36). Also at this meeting, the decision was made to include every Tlingit and Haida Indian, regardless of how much the individual contributed to the cause.

Wickersham drafted the legislation which was introduced in Congress and which would enable the Tlingit and Haida tribes to sue the United States for the loss of tribal property, and of its use and possession, in Alaska. Members of the ANB and ANS worked with him in introducing it, and later in keeping it in front of the body after Wickersham returned to Congress as the territorial delegate in 1930. In 1935, Wickersham's successor, Anthony Dimond, succeeded in achieving passage of the special jurisdictional act granting authority to the Tlingit and Haida Indians of Alaska to pursue these claims.

Implementing the Jurisdictional Act: Creation of the Tlingit and Haida Indians of Alaska

The first organizational meeting of the Tlingit and Haida Indians of Alaska took place in Wrangell in 1935, after passage of the act. Before that assembly, the BIA required every community and village in Southeast Alaska with Tlingit and Haida residents to hold public gatherings and elect delegates to the Wrangell meeting.

> The first organizational meeting was held in Wrangell ... It was hosted by Wrangell, and our ANB and Tlingit and Haida meetings ran concurrently. We had the ANB Convention going on at the ANB Hall and we were able to get space at the Salvation Army Hall to hold our Tlingit-Haida meetings. As I recall, the first Tlingit and Haida meeting we held in the evening after the ANB business was completed at the ANB Hall. That was when we fulfilled the requirements for organizing. ...[elected officers]... At that first meeting we selected our presiding officer, secretary, and also accepted a slate of delegates from the different towns. Delegates were seated on the basis of one delegate for each one hundred Indians of each community or fraction thereof (ibid.:37).

Haines, Ketchikan, Petersburg, and Wrangell participated in that meeting, along with Sitka, Angoon, Klawock, Craig, Hoonah, Kake, Douglas, Juneau, Hydaburg, Saxman, Klukwan and Yakutat.

After elections, the motion was made and passed, "We go ahead with the suit under the 'Tlingit and Haida Land Bill,' " (ibid.:49). On another motion, William L. Paul, Sr., was appointed to serve as attorney to prosecute the lawsuit; he was also authorized to select an associate and submit the name to the Central Council. He notified the meeting that he would ask Judge Wickersham to be lead counsel. A committee was elected with the power to contract with an attorney. A major problem discussed at this meeting was fund-raising; the assembly decided to send fund-raising teams around to the communities and pass "the potlatch bowl" around in meetings in each community.

In 1939, the ANB passed a resolution to form an executive committee that would serve in the capacity of the Central Council, under the act of 1935, for the purpose of pursuing the land claims. The Central Council would be organized similarly to the ANB, with each local camp constituted as the "tribal community" referred to in the 1935 act. But the BIA maintained that the Central Council had to be distinct from the ANB, because the ANB membership was open to non-Natives, which was inappropriate in the present case as the Central Council was to represent only members of Tlingit and Haida tribes.

In consequence of this objection, another organizational meeting of the Central Council was held in 1941, at which delegates selected their attorney and adopted a contract. These actions took place with attendance by and approval of the BIA. At this meeting, the Central Council membership comprised 18 communities, including all five study communities: Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, as well as Angoon, Craig, Douglas, Hoonah, Hydaburg, Kake, Kasaan, Klawock, Klukwan, Juneau, Saxman, Sitka, and Yakutat. In the minutes of this meeting, there is reference to prior meetings in 1939-40 with similar membership. The group arrived at the selection of Grady Lewis, William L. Paul, Sr., and Fred Paul as attorneys.

Filing the Tlingit and Haida Lawsuit

After further delay, a BIA-approved contract was signed in 1947 between the Tlingit and Haida Indians of Alaska and attorneys James E. Curry and Associates, selected by the Central Council to represent them in land claims before the U.S. Court of Claims. The suit was filed on October 1, 1947. In subsequent years, the Central Council continued to meet informally and follow the progress of the lawsuit. In 1950, Curry wrote to the 18 member communities and suggested they form "Tlingit and Haida Claims Committees." The mailing list used by the attorney was that of the ANB, and it included the five study communities.

In 1951, the attorneys prepared an overall petition covering all the local groups, including the modern organizations, individual bands, and local groups. This new petition covered the individual claims of the various towns. In the list of organizations representing aboriginal tribal groups, Curry included the Wrangell Indians representing the Stikine Tribe; the Chilkat Indian Village of Klukwan and Chilkoot Indian Association of Haines, representing the Chilkat Tribe; and the Tlingit Indians of Ketchikan representing the Tongass Tribe. Tenakee was represented through Angoon, as its tribal affiliation was linked with Angoon, and Tenakee residents began to move to Angoon in this period.

In 1954, descendants of traditional Tlingit and Haida tribes, who were recognized as chiefs or active leaders of Tlingit and Haida clans, intervened as parties plaintiff in the suit. A comparable lawsuit was also filed before the Indian Claims Commission with corresponding plaintiffs, including the Tlingit and Haida Indians of Alaska, representatives of the Tlingit and Haida Nations, representatives of the 14 Tlingit Tribes and the Haida Tribe, and the IRA governments of organized communities (in their own right and as representative of their respective tribes). The following tribes were represented: Chilkat, Auk, Taku, Hoonah, Yakutat, Lituya, Sitka, Angoon, Kake, Kuiu, Henya, Stikine, Tongass, Sanya, and Kaigani (Haida).

In the early 1950s, the lawyers' mailing list corresponded to the ANB membership list, and included all the five study communities (Haines, Ketchikan, Petersburg, Tenakee, and Wrangell), as well as Angoon, Craig, Douglas, Hoonah, Hydaburg, Juneau, Kake, Kasaan, Klawock, Klukwan, Metlakatla, Saxman, Sitka, and Yakutat. An examination of the available minutes and attendance records of annual Tlingit and Haida conventions held between 1953 and the early 1960s indicates active and regular participation by Haines, Ketchikan, Petersburg, and Wrangell, together with other communities. In some years, Klukwan delegates included a Haines resident, in place of a separate Haines delegation. The available information indicates that Tenakee was not active in the 1950s. By comparison, the same records suggest that Kasaan was also inactive through this period, until about 1963. Douglas apparently affiliated with Juneau in 1959, as it no longer appeared as an independent delegation in the 1960s.

The 1959 Tlingit and Haida Claims and Aboriginal Indian Title

On October 7, 1959, the U.S. Court of Claims held that the Tlingit and Haida Indians had established aboriginal Indian title to the land in Southeast Alaska and were entitled to compensation for the uncompensated taking of their lands by the United States, and for the failure or refusal of the United States to protect the interest of the Indians in their lands or their hunting and fishing rights, pursuant to the Act of June 19, 1935. It was held that the Tlingit and Haida Indians exclusively used and occupied most of Southeast Alaska at the time of purchase of Alaska in 1867, and that the land had not been abandoned by the Indians prior to the dates of taking.

Part of the land, water, and rights used and occupied by the Indians in 1867 was subsequently lost through the failure of the United States to exempt such property rights from the operation of the general land laws in Alaska and from the failure of the government to enforce such minimum protection as was authorized in the laws (particularly section 8 of the Organic Act of Alaska). This included areas lost to mining and industrial sites, homesteads, mineral leases, and townsites established by white settlers. The court also held that other lands were taken outright by the government, including the Annette Islands reserve and various areas set aside for the Tongass National Forest and Glacier Bay National Monument [(U.S. Court of Claims (147 Ct. Cls.) 1959)].

The U.S. Court of Claims identified the Tlingit and Haida tribes listed the principal winter villages for each of the tribes as of 1867, and identified 14 modern Tlingit and Haida tribal communities associated with these tribes (see Table 3.1). The modern communities were the following:

Angoon	Ketchikan
Douglas	Klawock
Haines	Klukwan
Hoonah	Saxman
Hydaburg	Sitka
Juneau	Wrangell
Kake	Yakutat

Three of the five study communities (Haines, Ketchikan and Wrangell) were listed in the 1959 decision, while Petersburg and Tenakee were not. In comparison, among the 12 Southeast communities recognized in ANCSA, Craig and Kasaan were not identified in the decision. Another community, Douglas, was listed in the Tlingit and Haida decision but was not recognized in ANCSA (Petersburg was included in the 1968 decision; see Table 3.2).

The court recognized that since the U.S. acquired Alaska in 1867, there had been movements of Tlingit and Haida Indians from traditional villages to larger, modern communities in the region:

> At the present time, the Tlingit and Haida Indians live in a number of native villages which are almost entirely Indian, but some live in large communities in principal cities of Alaska (Finding of Fact No. 25).

The court included six of these larger towns and cities in its enumeration: Haines, Juneau, Douglas, Sitka, Wrangell, and Ketchikan. The modern villages named in the findings were Yakutat, Klukwan, Hoonah, Angoon, Kake, Klawock, Saxman, and Hydaburg. In enumerating the modern Indian communities in Southeast Alaska, the court was following a tribal orientation which was inherent in the proceedings, but which served to limit the final enumeration.

In identifying modern communities (those in existence in 1935), the court followed a tribal framework; that is, it first identified the names of Tlingit and Haida tribes and then the names of the modern communities associated with those tribes. This effort was consistent with the legal framework established in the 1935 jurisdictional act, which concerned "tribal ... property rights," as described above. But it also introduced constraints and errors regarding the identification of modern Tlingit and Haida communities. For example, some communities were in existence before 1935 (such as Petersburg, Tenakee, Craig, and Kasaan) that were not mentioned by the court, although they had tribal affiliations.

On the other hand, the Kuiu tribe was singled out as "no longer in existence as a tribe;" that is, no longer associated with its own tribal community (Finding of Fact No. 26). However, the court stated that its members had migrated to other communities including Klawock, Kake, and Wrangell. The implications of migration of other tribal members to different tribal communities was not discussed by the court, except insofar as the list of modern communities indicated a consolidation of more dispersed settlements that existed in 1867.[1] This tribal emphasis resulted in some inconsistencies in the court's list of communities.

[1]The Tongass tribe was incorrectly identified with Saxman, and likewise the Cape Fox tribe was associated with Ketchikan; the accurate modern community affiliation of these subdivisions is the reverse.

Table 3.1. Names of Modern Communities Where the Indians of the Tlingit and Haida Tribes Live

TRIBE	VILLAGE(S) AS OF 1867	MODERN COMMUNITY
Tlingit Tribes		
1. Yakutat	Yakutat	Yakutat
2. Chilkat-Chilkoot	Klukwan	Klukwan
	Kalwalt	Haines
	Chilkoot	
	Yandestuka	
	Diea	
3. Huna	Huna	Hoonah
	Tuxugu	
4. Auk	Aynskultu	Juneau
5. Taku-Sumdum	Taku	Douglas
	Sumdum	
6. Hutsnuwu	Basket Bay	Angoon
	Angoon	
	Killisnoo	
	Neltushkun	
7. Sitka	Sitka	Sitka
8. Kake	Kake Village	Kake
	Kake	
9. Kuiu	Kuiu	none
10. Stikine	Wrangell	Wrangell
11. Henya	Shakan	Klawock
	Tuxekan	
	Klawock	
12. Sanya	Yes Bay	Ketchikan
	Cape Fox	
	Loring	
13. Tongass	Tongass	Saxman
Haida Tribe		
1. Haida	Kasaan	Hydaburg
	Sukkwan	
	Hawkan	
	Klinkwan	
	Koianglas	

Source: *The Tlingit and Haida Indians of Alaska v. the United States,* Finding of Fact No. 25.

In addition to associating each community with a single tribe, the court also reported which communities were and were not located at the same places as the original villages. The court held that five communities (or 33 percent of all Southeast communities recognized by the court), were not located at the sites of historic tribal villages. These were Haines, Juneau, Douglas, Ketchikan, and Saxman. The court identified Saxman with the Tongass tribe, which may have been the case at an earlier period in its history, but at the time of its establishment, and again by 1959, Saxman was identified with the Cape Fox people. The Tongass people are associated with the Native community in Ketchikan.

After the 1959 Decision: The Central Council of Tlingit and Haida Indians

As described above, the 1935 jurisdictional act identified the role and function of the Central Council. The beneficiaries of the Tlingit and Haida settlement were identified as "all persons of Tlingit and Haida blood, living in or belonging to any local community of these tribes" in southeast Alaska. Each "tribal community" was authorized to prepare a roll and submit it to the Tlingit and Haida Central Council for approval. The Central Council, in turn, would prepare a combined roll and submit it to the Secretary of the Interior for final approval. The Central Council was authorized by name in the 1935 act, but as its statutory role would not be necessary until there was a favorable decision, it operated informally to follow the progress of the lawsuit through the years until 1960.

The definition of "community" was significant in the Tlingit and Haida proceedings, since distributions were to be apportioned to the different Tlingit and Haida communities according to the number of names on each community roll. This form of settlement was established in the special jurisdictional act authorizing the lawsuit, as described previously. The original version of this act called for a per capita distribution. But at the suggestion of the Department of the Interior, it was changed shortly before passage to prohibit per capita payments and to provide that judgements must be used for the future economic stability and development of Tlingit and Haida communities (Carver: 1964).[2] Sections 7 and 8 were added to the act to effect these goals. As will be described below, these issues were re-visited after the decision, and the form of the settlement was reshaped with the active participation and encouragement of the DOI and BIA.

After the decision, the Central Council met in Angoon in conjunction with the 1960 annual ANB convention. This gathering was regarded by the BIA as the meeting at which the Central Council would be formed and begin developing enrollment procedures, following its mandate in the 1935 act. In the meeting, the Central Council requested Tlingit and Haida communities to carry out a census of tribal members to provide an estimate of community rolls and for use in proposing amendments to the jurisdictional act. Sometime later, the Central Council distributed lists of Southeastern communities, together with their populations by race, based on the 1960 census. The lists included categories for

[2] The reason for this tribal and community form of settlement, as opposed to a per capita distribution, was the nature of the resources (lands) in question, which were identified as capital resources that served to maintain the entire Native population for the benefit of successive generations (see Opinion and Findings of Fact, Tlingit and *Haida Indians of Alaska v. United States,* pp. 15-17).

indigenous settlements, non-indigenous towns, cities having Native communities and present-day Native villages. These lists are indicative of the kinds of concerns that existed within the council regarding community eligibility.[3]

The lack of any clear definition of the term "tribal community" in the jurisdictional act (or its legislative history) caused controversy over the years of the lawsuit. William L. Paul, Sr. brought up the issue in Wrangell in 1941 at the early organizational meeting of the Tlingit and Haida Indian Tribes of Alaska. In the 1950s, he and others brought suits (most notably the Teehitton case) in federal and state courts on behalf of local tribal groups, which opposed the granting of tribal recognition to members of other tribes (immigrants) living in the tribal communities. These efforts were ultimately unsuccessful.

The issue was problematic to the attorneys working for the Tlingit and Haida tribes, who were forced to file the case in the name of all the various modern organizations and groups as well as the aboriginal bands. This was necessary, in their view, because the Attorney General contended that modern groups did not have authority to represent the aboriginal tribes.[4] Some difficulty was also evident in the 1959 opinion of the court, which made no mention of Petersburg or Tenakee, although each had a history of native occupation since well before the passage of the jurisdictional act.

In the early 1960s, the predominant view, and the position of the Central Council and the Department of the Interior, was that the term "tribal community" applied to any of the modern villages, towns, and cities in which there were communities of Tlingit and Haida Indians. The position was justified by the need to extend recognition to Tlingit and Haida communities in Anchorage as well as in the Lower 48 states, which were excluded from the settlement because the 1935 act limited payments to communities in Southeast Alaska. The opposing position maintained that since local clans were the tribal land-holding units in traditional Tlingit and Haida communities, and since the settlement was for lands lost by such groups, any award should be distributed to the matrilineal descendants of such "original" units based on the amount of land each controlled in 1867. Proponents of this view in Wrangell organized their own delegation to the Central Council, so that there were two groups claiming to represent Wrangell at the annual convention for two years in the early 1960s.

[3] The eligibility of existing Tlingit and Haida communities within the meaning of "tribal community" employed in the 1935 act was at issue in this time. For example, the question of Craig's status as a "tribal community" was raised by the chairman of the local Tlingit and Haida Committee in 1960. The BIA Juneau area director responded with an opinion from a Regional Solicitor that Craig would not be considered a "tribal community" because it came into existence after the construction of a cannery there, and the original residents of Craig came from Klawock, Hydaburg, and possibly other Tlingit and Haida villages. The Solicitor's opinion was that Craig residents would need to be enrolled with the Indian village group where their ancestors formerly resided (Hawkins 1960). When the question was passed to a higher authority through Alaska's Senator Bartlett, the BIA response was that Craig's status would be decided according to the rolls prepared by communities and submitted through the Central Council for approval by the Secretary of Interior under the 1935 act, which was yet to be carried out.

[4] In Curry's opinion, the parties plaintiff should include the Tlingit and Haida Indians of Alaska, Tlingit Tribe or Nation, Haida Tribe or Nation, each of the aboriginal bands (as described by Haas), the various modern groupings suing in their own behalf, and the various modern groupings suing as representatives of the aboriginal groups and in behalf of the Tlingit Nation and Haida Nation. The list of modern organizations that represent aboriginal tribal groups included Wrangell Indians representing the Stikine Tribe, Chilkat Indian Village of Klukwan and Chilkoot Indian Association of Haines representing the Chilkat Tribe, and Tlingit Indians of Ketchikan representing the Tongass Tribe (Curry 1951).

Within a few years of the 1959 decision, the Central Council decided to expand its role and function over that defined in the original jurisdictional act. With the approval of the BIA, the Council began to seek recognition as a formally-constituted regional organization with a substantial role in planning how the claims award would be spent. A planning committee was formed in 1963 to develop a plan for the use of the judgement award; membership was comprised of representatives of all Tlingit and Haida communities (including Ketchikan, Petersburg, and Wrangell). At annual conventions in Wrangell in 1963 and in Yakutat in 1964, the Central Council passed resolutions supporting proposed bills to modify the 1935 jurisdictional act to allow for these organizational changes and to extend membership and representation on the Central Council "to persons of Tlingit or Haida blood residing in the various local communities or areas in the United States." Members of the Central Council were dispatched to Washington, D.C. in 1963 and 1964 to lobby and speak in support of the proposed amendments. Some Juneau members also lobbied on behalf of an amendment to approve per capita distributions.

Representing the Central Council, Andrew Hope and Ted Denny testified to the historical fact that since 1867, a substantial migration and resettlement of the Tlingit and Haida Indians had taken place. Large numbers of Tlingit and Haida Indians had left their original Native villages to live in modern towns and cities in Southeast Alaska and beyond, in order to obtain employment, more advantageous educational opportunities for their children, or for other reasons. Hope used Juneau as an example of a town to which Indians migrated that was never the site of a traditional Native village. Alternatively, he presented other modern cities and towns, such as Ketchikan, Petersburg, and Sitka, which are populated "not only by descendants of the local clans which were native to the area which included the site of the particular city or town, but also by descendants of local clans which had traditional Native villages in other geographical areas." Rhetorically, he posed the question whether these (migrating) individuals were to be prohibited from participating in the act, or were expected to return to their Native village community to receive benefits (Hope 1965a and 1965b).

The amendments had strong backing from the Department of the Interior, which supported the Central Council in its efforts to re-constitute itself as a tribal self-governing organization with expanded functions and authorities. Congress passed the amendments on August 19, 1965 (P.L. 89-130), although it remained opposed to using the settlement for per capita payments. On the issue of eligible communities, the Senate report made the following statement:

> The 1935 act was designed to meet conditions that existed at that time. Since the passage of the jurisdictional act, circumstances and conditions have changed considerably. Increasing numbers of Tlingits and Haidas have chosen to make their homes outside of their local villages or communities in Alaska. Numerous individuals and families moved into the large towns and cities of southeast Alaska such as Juneau, Douglas, Ketchikan, Wrangell, and Petersburg. Several hundred have resettled in the Puget Sound area, especially in Seattle, and in California. Under existing law they would receive little or no benefit from the expected judgement fund (Senate Report No. 159, 89th, 1st).

The House report adopted a similar position (House Report No. 521, 89th, 1st). The amended jurisdictional act provided a new structure for the distribution of the claims award which did not entail payments to tribal communities. The Central Council became the vehicle for the award on behalf of individual enrollees. In consequence, the community eligibility issue was resolved. Any group of Tlingit and Haida Indians who decided to organize and cooperate among themselves could seek approval of the Central Council to elect delegates to the annual conventions, and thereby gain participation in the

decision-making process of the newly constituted organization. The Central Council became a political and administrative institution for its members, who were represented by delegates to the annual conventions. A planning committee, first formed in 1963, developed a six-point plan for using the judgment award. Approved by Congress in 1970, this plan identified program area in educational scholarships and vocational training, services for the elderly, housing, and community development.

In May 1966, delegates from 18 communities met in annual convention and reorganized the structure of the Central Council. With the adoption of BIA-approved rules for election, the Central Council was reconstituted with authority to use and expend the settlement funds in accord with the amendments to the 1935 jurisdictional act. On June 1, 1966, the BIA published in the Federal Register (Vol. 31, No. 105, pp. 7744-45) amendments to existing regulations governing preparation of tribal membership rolls to implement requirements for enrollment with the Tlingit and Haida Indians of Alaska. Eligibility was open to all persons of Tlingit or Haida blood residing in the U.S. or Canada who were Alaska residents on or prior to June 19, 1935, or were descendants of such residents of Indian blood. Each of the participating Tlingit and Haida communities adopted rules for election of delegates, constitutions, and bylaws as local community councils of the Central Council.

During the 1960s, Central Council membership was adjusted somewhat to reflect additional community groups as well as the amalgamation of others. Metlakatla was added, Douglas became affiliated with the Juneau group, and Haines had representation within the more active Klukwan group. Two out-of-state groups (Washington and California) were also formed. Ketchikan, Petersburg, and Wrangell were regular members throughout the decade. In 1971, a resolution to approve Haines as an independent Tlingit and Haida community was passed at the annual convention. Later Anchorage and Pelican were also approved for membership.

The 1968 Tlingit and Haida Land Claims Valuation of Indian Land Lost

On January 19, 1968, the U.S. Court of Claims decided that the Tlingit and Haida Indians were entitled to recover $7,546,053.80 for the loss of their land. In this case, the court established standards of valuation for the Indian title lands and determined the acreage to which such values applied. The court valued fishing rights, townsites, mineral lands and timber lands in areas of Indian title land taken by the United States. The court disallowed compensation for the Indians' lost fishing rights, valued at $8,388,315.

Of interest here is the recognition of Indian title lands in townsites that were established by white settlers. The decision identified those communities that, as of the date of the passage of the jurisdictional act in 1935, were owned according to principles of aboriginal title at the time the white settlers established townsites. The court held that, "Indian title land patented by the United States as townsites without the consent of and without compensation to the Indian owners, is taken as of the date the townsites were patented, and the value for the purposes of compensation should be established as of that date" [(U.S. Court of Claims (182 Ct. Cl.) 1968:130)].

The Tlingit and Haida Indians received compensation for townsite and settlement land in the following communities:

Douglas
Haines
Juneau
Ketchikan
Petersburg
Sitka
Skagway
Wrangell

The Tlingit and Haida Indians also received compensation for land in the town of Metlakatla, which was established on the federal Annette Island Reserve, set apart by Congress in 1891 for use of Tsimshian Indians. In the valuations, the court provided compensation for specified townsite lands, homesteads, and settlements on adjoining lands, including mineral leases and salmon canneries, that were in or near the modern communities. The total townsite value was $778,434 (not including Metlakatla, which was valued at $14,500). Table 3.2 provides a comparison of the communities identified in the Tlingit and Haida decisions and those recognized in ANCSA.

Table 3.2. Comparison of Southeast Communities Listed in Tlingit and Haida Decision and in ANCSA

COMMUNITIES LISTED IN T & H COURT DECISIONS	COMMUNITIES LISTED IN ANCSA
Angoon	Angoon
	Craig
Douglas	
Haines	
Hoonah	Hoonah
Hydaburg	Hydaburg
Juneau	Juneau
Kake	Kake
	Kasaan
Ketchikan	
Klawock	Klawock
Klukwan	Klukwan
Petersburg	
Saxman	Saxman
Sitka	Sitka
Skagway	
Wrangell	
Yakutat	Yakutat
Total: 16	**12**

The Tlingit and Haida Central Council and ANCSA

As the Central Council grew and developed, it assumed more governmental functions on behalf of its enrollees. It also actively expanded as a political organization in the state. The Central Council was very energetic in the pursuit of land claims leading to the passage of ANCSA. The member communities were represented in these efforts by the officers and executive committee, who during the year carried out the will and desire of Central Council delegates who only met annually in convention. The council developed effective relationships with the Alaska Federation of Natives (AFN) and cooperated in statewide efforts in support of the claims. The leadership also pursued legislative lobbying activities on behalf of the Southeast region and local communities.

The Tlingit and Haida settlement established aboriginal Indian title to nearly all of Southeast Alaska, and determined that the land had not been abandoned at the time of taking. Although the Southeast Indians received compensation for the national forest, national park, townsite, and other lands that were taken from them, this area did not constitute all the Southeast region. There were 2,628, 207 acres still held by abori-ginal Indian title by the Tlingit and Haida Indians, according to the court findings. The Central Council participated in the efforts to settle statewide land claims for these areas, with claims that were still outstanding. In 1967, for example, the Central Council was approached by the state to participate in a state-sponsored Land Claims Task Force to draft a bill that would be jointly proposed by the state and the Native people.

The Central Council lobbied Congress for inclusion of all of its constituent communities in draft ANCSA legislation. It took the position that all of its member communities are entitled to full benefits under the act, which included Haines, Ketchikan, Petersburg, and Wrangell. In 1969, for example, the President of the Central Council participated in cooperative lobbying activity with the Alaska Federation of Natives (AFN) in Washington, D.C. President Borbridge reported, "We [Emil Notti of AFN and John Borbridge of the Central Council] have advanced our aspirations for ... our urban and rural people" (Borbridge 1969). In 1970, Borbridge reported, "The position of the Central Council of the Tlingit and Haida Indians of Alaska has been to include all of our Tlingit and Haida communities in the list of villages that would receive land in a land claims settlement. Thus Juneau, Sitka, and Petersburg are included in such a list. We have made inroads to the extent that the 'Hickel Bill' and the Senate in S. 1830 recognize ten of our communities" (Borbridge 1970).

This letter also expressed Central Council concerns over the issue of processing state land selections from the Tongass National Forest near modern communities. The Central Council opposed efforts by the state commissioner of natural resources, who was pushing the Bureau of Land Management (BLM) to process such selections, since those selections would affect the availability of land to the villages under the impending settlement. Specific reference was made to Ketchikan, Petersburg, Wrangell, and Sitka on this issue. The Central Council also engaged in discussions with its attorneys about filing suit over this issue.

Summary

Before 1950, all Tlingit and Haida communities participated in the land claims movement through meetings that occurred in association with annual conventions of the Alaska Native Brotherhood, as well as in key organizational meetings of the Central Council, such as that in 1941. Tenakee and Haines became less active after about 1950, but in this regard they match similar changes in activity in Kasaan and Douglas. After the Central Council was re-organized as a representative tribal organization for all of Tlingit and Haida Indians in the 1960s, following the favorable decision in the case, there was active participation of Ketchikan, Petersburg and Wrangell as local chapters of the organization (joining with 15 other Tlingit and Haida communities in Alaska, Washington, and California).

The treatment of "community" is instructive with regard to the question of community recognition under ANCSA, since in the Tlingit and Haida case it was changed through legislative action. The discussion about that change involved four of the five communities that are the topic of this study. In the 1960s, it was necessary to modify the original terms of the 1935 enabling legislation in order to acknowledge modern Tlingit and Haida communities which otherwise would have been eliminated from benefits.

In 1971, following adoption of a resolution at the annual convention to approve Haines as an independent Tlingit and Haida community, there were nineteen Tlingit and Haida communities. Haines, Ketchikan, Petersburg, and Wrangell were recognized, along with 13 other communities in southeast Alaska (Angoon, Craig, Hoonah, Hydaburg, Juneau, Kake, Kasaan, Klawock, Klukwan, Metlakatla, Saxman, Sitka, Yakutat), and two out-of-state chapters (Seattle, Washington, and Oakland, California). The 17 southeastern Tlingit and Haida communities included the 12 ANCSA communities (10 "villages" and two "modern and urban" communities), Metlakatla (which opted to maintain its reservation status under ANCSA), and four of the five unrecognized southeast communities (Haines, Ketchikan, Petersburg, and Wrangell). These four communities elected delegates and had full participation in all of the meetings, committees, actions and initiatives of the Central Council.

References Cited

References cited in this chapter appear at the end of Chapter 5.

Chapter 4. Southeast Alaska Community Populations

BY LEE GORSUCH

Introduction

This chapter examines the 1970 populations and the ANCSA enrollments of communities in Southeast Alaska. It compares the five study communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell to those Southeast Alaska communities that were certified under ANCSA as Alaska Native villages, or were conferred special status as urban places.

The 1971 Alaska Native Claims Settlement Act (ANCSA) defined a "Native village" as:

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

The only communities of Southeast Alaska referenced in the act were the ten listed in Section 16, all of which were subsequently certified by the Secretary as Native villages under the definitions of the act. None of the five study communities were expressly mentioned in the act. However, in addition to listing and defining Native villages, ANCSA, under Section 14(h)(3), authorized the Secretary of the Interior to withdraw and convey lands to Natives residing in the four urban communities of Sitka, Juneau, Kodiak, and Kenai, if they incorporated under the laws of Alaska (as did all other Native villages in order to receive the benefits of the settlement). Two of these urban communities, Sitka and Juneau, are in Southeast Alaska and became eligible to receive benefits under the act.

The central questions of this chapter thus become: how are the populations of the study communities of Ketchikan, Petersburg, and Wrangell—which are urban in character—similar to or different from the populations of Juneau and Sitka; and how are the populations of the smaller study communities of Haines and Tenakee similar to or different from those of the ten Southeast communities listed in the act and certified as Native villages?

Southeast Community Populations in 1970

Given ANCSA's specific reference to the 1970 census of population, the first point of reference in this chapter is to present and compare data on the 1970 community populations by size and by race as reported by the U.S. Bureau of the Census. Table 4.1 displays the 1970 community populations by Native and non-Native residents. It also reports the percentage of the total community population enumerated and recorded as Native.

How do the five study communities compare in size to the other recognized communities in Southeast Alaska? Table 4.1 shows that one of the study communities, Ketchikan, had a 1970 population in excess of 2,500 residents and was classified as an urban community along with Juneau and Sitka. (The population numbers reported are of the cities proper, not of their greater metropolitan areas.) Even though the two study communities of Petersburg and Wrangell were not classified as urban, they had populations of over 2,000 and were comparable in size to Sitka. Similarly, the population of Haines was in the mid-range of the medium-sized communities certified as Native villages, and Tenakee was between the size of the two Native villages of Saxman and Kasaan. In summary, the five study communities were comparable in size to the other Southeast communities recognized by the settlement act.

How was the Native composition of the study communities similar to or different from the Native composition of the recognized Southeast villages? The 1970 census reported that 15 percent of Ketchikan's population was Native, compared to Juneau's 20 percent and Sitka's 23 percent. In Petersburg and Wrangell, Natives comprised 12 percent and 19 percent of the local populations. Thus, the Native populations of both Ketchikan and Wrangell were comparable to those of Juneau and Sitka, whereas Petersburg's Native population was somewhat smaller.

Among the smaller Southeast Alaska communities which became certified Native villages under ANCSA, the Native proportions of the community populations ranged from 94 percent in Angoon to 27 percent in Kasaan and Saxman. Haines, with 24 percent of its 1990 population Native, was comparable to Kasaan and Saxman. However, on average, the census data indicates that the two study communities of Haines and Tenakee had significantly smaller proportions of their populations which were Native than did those Southeast communities that became recognized Native villages. The study community of Tenakee, where in 1970 only 7 percent of the population was Native, had a much smaller share of Natives than did Kasaan and Saxman—populations of both those ANCSA villages were 27 percent Native.

Table 4.1. 1970 Population of Southeast Alaska Communities

URBAN PLACES	TOTAL	NON-NATIVE	NATIVE	% NATIVE
Juneau	6,050	4,819	1,231	20%
Ketchikan	6,994	5,930	1,064	15%
Sitka	3,370	2,608	762	23%
LARGE VILLAGES				
Petersburg	2,042	1,800	242	12%
Wrangell	2,029	1,649	380	19%
MEDIUM VILLAGES				
Angoon	400	23	377	94%
Craig	272	119	153	56%
Haines	463	354	109	24%
Hoonah	748	214	534	71%
Hydaburg	214	25	189	88%
Kake	448	47	401	90%
Klawock	213	19	194	91%
SMALL VILLAGES				
Kasaan	30	22	8	27%
Klukwan	103	11	92	89%
Tenakee	86	80	6	7%
Saxman	135	36	99	27%
Yakutat	190	34	156	82%

Source: 1970 Census and 2(c) Report

Study communities; not certified under ANCSA

Other Sources of Native Population Data

In a state as large, sparsely settled, and diverse as Alaska, it is quite possible that the census may have undercounted some communities. It is even more likely that it may have undercounted the Native population. The census enumerates an individual's race or ethnic status based on the respondent's own assessment. Thus, some Natives, particularly those with less than a majority of Native blood or those who, for other reasons, may not have thought of themselves as Native, may have enumerated themselves as white or other in 1970. To illustrate this likely undercounting, the census reported a total statewide Native population of 50,654 for 1970, while the Alaska Native roll—drawn up after ANCSA was enacted—contained the names of 59,771 Natives who were born on or before December 17, 1971 and resided in Alaska. Even though the census enumeration took place in 1969, and the Native roll counted all Natives born on or before December of 1971 (the enrollment process occurred during 1972-74), the differences in the numbers cannot be explained by the expected net natural increases and migration that would likely have occurred between the two reporting periods.

This likely phenomenon of underreporting becomes more evident when one turns to Table 4.2, to compare the census's Native populations for Southeast communities with those of the Bureau of Indian Affairs' official ANCSA roll of Natives, reported by Native enrollee's physical residence at the time of enrollment.

How does 1970 census data on Native populations by community compare to Native enrollments by the enrollee's place of residence? And, does Native enrollment data differentiate the five study communities from the other Southeast communities in ways in which the census did not?

Table 4.2 reports the census's Native population count by community and also shows the number of Natives enrolled under ANCSA who were living in those communities at the time they enrolled. In the implementation of the settlement act, the Secretary of the Interior defined a Native's residence as his or her permanent residence, the place considered home, irrespective of where he or she was actually living at the time. Therefore, Table 4.2 shows Native enrollment in several ways: total Natives living in a community but not necessarily regarding it as their permanent residence; the total number of Natives enrolled to each community and regarding it as their permanent residence, even though they may not have been living there at the time; and the total enrolled to a community but living elsewhere. (See Chapter 6 for a more complete discussion of the definition of Native residence for Native enrollment purposes.)

Table 4.2 reveals, for example, that the Native roll reported more than twice as many Natives living in Sitka at the time of enrollment than the census reported as residents in 1970. Both Juneau and Ketchikan had about 76 percent more enrolled Native residents than the 1970 census of Native residents showed. A similar pattern was also true for Petersburg and Wrangell. Hence, the larger and urban study communities were similar in this regard to both Sitka and Juneau.

The differences between the two data sources for the medium-sized communities were modest, with the exception of Haines, where the Native roll reported three times as many Natives living in Haines as did the census. In the smaller communities, the Native roll reported no Natives living in Tenakee and only a third as many Natives living in Klukwan as did the census. Whereas the 1970 U.S. Census reported six Natives living in Tenakee on the enumeration date (March 1969), the Alaska Native roll compiled in 1972-73 reported no Natives living in Tenakee.

Table 4.2. Comparison of 1970 Census Population to 1974 ANCSA Enrollments and Residency

PLACES	1970 CENSUS NATIVE POP (1)	ENROLLED NATIVES, 1974				SEALASKA CORPS SE VILLAGE CORP POTENTIAL ENROLLMENT (6)
		BY CURRENT RESIDENCE (2)	BY PLACE ENROLLED TO			
			TOTAL (3)	RESIDING WHERE ENROLLED (4)	RESIDING ELSEWHERE (5)	
URBAN						
Juneau	1,231	2,167	2,640	1,758	882	2,722
Ketchikan	1,064	1,781	1,831	1,174	657	1,862
Sitka	762	1,694	1,804	1,396	408	
LARGE VILLAGES						
Petersburg	242	324	417	302	115	428
Wrangell	380	526	737	476	261	747
MEDIUM VILLAGES						
Angoon	377	398	620	386	234	629
Craig	153	185	317	167	150	317
Haines	109	334	314	160	154	321
Hoonah	534	589	868	547	321	876
Hydaburg	189	236	570	230	340	565
Kake	401	453	552	437	115	558
Klawock	194	242	507	233	274	508
SMALL VILLAGES						
Kasaan	8	6	121	47	73	120
Klukwan	92	36	251	35	216	253
Tenakee	6	0	61	0	61	64
Saxman	135	147	191	109	82	196
Yakutat	156	245	334	234	100	342

Source: 1970 Census of Population and 2(c) Report

Study communities; not certified under ANCSA

Column 3 of Table 4.2 reports the total number of Natives who enrolled to each community (as their permanent residence). Column 4 shows how many of those who declared each community to be their permanent residence also lived there at the time they enrolled, and column 5 shows the number who enrolled in the community but lived elsewhere. The last column reports the Native roll for Southeast villages as of December 31, 1985. (The numbers in the last column vary from those in column 3 because of an opportunity for Natives who were originally left off the roll to be put on later or for those who may have been enrolled to a place incorrectly to correct their place of enrollment. Chapter 6 further discusses the enrollment process.)

To facilitate comparisons of the study communities (shown in shaded areas on the tables) to other Native villages and recognized urban places, Table 4.3 shows what percentage of a community's total Native enrollment was comprised of Natives who physically resided in that community at the time of enrolling (column 1). The data reveal that in all three of the urban places and in the two large communities the percent of enrolled Natives who lived in those communities at the time they enrolled varied from a low of 64 percent in both Ketchikan and Wrangell to a high of 77 percent in Sitka. Thus, in the three large study communities and the two urban communities recognized in the settlement act, there were no significant differences in the share of Native enrollees who also lived in the enrollment community. The data, expressed as percentages, imply that the balance of any community's enrollment came from Natives residing elsewhere.

Table 4.3. A Comparison of ANCSA Enrollments to Residence in Southeast Alaska Communities, 1974

	% OF TOTAL COMMUNITY ENROLLMENT WHO RESIDED IN COMMUNITY	% OF TOTAL NATIVE RESIDENTS OF COMMUNITY WHO ENROLLED ELSEWHERE
URBAN PLACES		
Juneau	67	19
Ketchikan	64	34
Sitka	77	18
LARGE COMMUNITIES		
Petersburg	72	7
Wrangell	64	10
MEDIUM COMMUNITIES		
Angoon	62	3
Craig	53	10
Haines	51	52
Hoonah	63	7
Hydaburg	40	3
Kake	79	4
Klawock	46	4
SMALL COMMUNITIES		
Kasaan	39	NA
Klukwan	14	3
Tenakee	0	0
Saxman	57	26
Yakutat	70	4

Source: 2(c) Report

Study communities; not certified under ANCSA

In reviewing the smaller communities' percentages of Native enrollees who were also physically residing there at the time they enrolled, with the exception of Tenakee, which had none of its enrollees living there when they enrolled, the percentages ranged from a low of 14 percent in Klukwan to a high of 79 percent for Kake. This means that 86 percent of Klukwan's enrollment was comprised of Natives who did not reside in Klukwan at the time of enrollment. The study community of Haines was in the middle of this range, with 51 percent of its enrollment comprised of Natives who also physically resided there when they enrolled.

The second column of Table 4.3 shows the percentage of a community's Native population which elected not to enroll in the community in which they were residing but rather to enroll to another place they regarded as their permanent residence. Petersburg had only 7 percent and Wrangell had 10 percent of their Native resident populations enroll elsewhere, whereas Juneau and Sitka had 19 and 18 percent of their Native populations enroll elsewhere. Ketchikan had 34 percent of its Native residents enroll elsewhere. Thus, the three study communities are distinct from the two recognized urban communities in that two of them, Petersburg and Wrangell, had only half as many of their residents enroll elsewhere as did Juneau and Sitka, while twice as many Natives living in Ketchikan enrolled elsewhere.

Among the medium-sized communities, 10 percent or less of the Native residents enrolled elsewhere except for Haines, one of the study communities, in which 52 percent of the Natives residing in Haines enrolled elsewhere. The pattern among the smaller communities varied significantly, ranging from Klukwan, in which only 3 percent of it Native resident population enrolled elsewhere, to Saxman where 26 percent enrolled to another place. Tenakee had no resident Native population at the time, and data on Kasaan was not available.

The general pattern of the data suggests similarities among the larger communities, some differences between Haines and the other medium-sized communities, and a significant difference between Tenakee and the other small communities which became certified as Native villages.

Chapter 5. Comparison of Historical Native Use and Occupancy in the Study Communities and in Other Southeast Communities

BY CHARLES W. SMYTHE

This chapter compares Native historical use and occupancy in the five study communities and in the twelve Southeast communities that were recognized under ANCSA. It uses a number of specific criteria—from the character of traditional Native settlements to presence of Native cemeteries, graves, and totem poles—to assess similarities and differences between the study communities and the recognized communities.

The comparison is based on histories prepared for Haines, Ketchikan, Petersburg, Tenakee, and Wrangell. Summaries of those histories are presented in this chapter; the entire histories are presented in Appendix A. The histories examine Native use and occupancy of the five communities from before the time of the arrival of white settlers up to about 1970. However, because there was substantially more information available for the period prior to the 1950s in regard to ethnicity, the discussions place a greater emphasis on earlier periods. We used many sources to compile these histories, including archival sources, published and unpublished materials, and personal interviews with selected community historians and representatives.

Archival sources consulted and searched included letters and annual school reports of the Bureau of Education's Indian schools, townsite records of Indian possession lands, census records, administrative records of executive land orders, Bureau of Fisheries reports, field notes and unpublished manuscripts of anthropologists, historical files at the Alaska State Historical Library, records of selected legal cases, and affidavits. Materials collected as available were from special collections such as the Curry-Weissbrodt Papers and the William Paul papers and also from community Native organizations, local historical museums, and churches. Finally, community residents generously provided us with much useful archival information.

Published sources consulted included works of anthropologists, archaeologists, explorers, historians, economists, missionaries, government officials, and church authorities.

The third principal source of information was 70 interviews and discussions with community historians, elders, tribal leaders, long-term residents, and local experts in each of the five communities. Material from those interviews appears in quotations throughout the community histories in Appendix A, informing and elucidating the discussions. However, to maintain the confidentiality of sources, individual discussants in the histories are not identified. A list of persons interviewed for this study appears in Appendix B.

Below we first present a broad overview of historical Native use and occupancy of the Southeast region and then outline our specific criteria for comparing the study communities and the ANCSA communities in Southeast. Then we profile the study communities before making our analytic comparisons.

Regional Overview

At the time of the arrival of white settlers, the Tlingit Indians were divided into fourteen tribal subdivisions, or kwan. From the north, these divisions are the Yakutat, Chilkat/Chilkoot, Hoonah, Auk, Taku, Sumdum, Hutsnuwu, Sitka, Kake, Kuiu, Stikine, Henya, Sanya and Tongass. Together with the Kaigani Haida, who pushed their way into the southern Tlingit area in the eighteenth century, these kwans used and occupied all of the southeastern region, with the exception of the steeper mountain slopes and tops, at the time of first contacts with whites. The aboriginal possession of the lands and waters of Southeast Alaska, including trade routes into the interior across the Canadian border, were recognized by the U.S. Court of Claims (discussed in Chapter 3) and mapped in a federal investigation of the possessory rights of southeastern Indians (Goldschmidt and Haas 1946).

The Tlingit kwan are geographical groupings of smaller political divisions, or clans, which lived together in a common area. Under formal Tlingit property law, the places used and occupied by the Indians were owned by the respective clans. Traditionally, members of the kwan would congregate in larger communities for the winter season. Each kwan is associated with one or more principal villages that contained large clan houses constructed of hand-hewn wooden planks. During the spring, summer and fall, community members would disperse to smaller villages and fish camps depending upon the availability of resources and clan relationships. The Indians would harvest and preserve a variety of wild and renewable resources and other materials for their consumption in other seasons and for trade and ceremonial exchanges.

Throughout the period of administration by the Russian-American Company, the Russian traders followed a policy of non-intervention in the internal political affairs of the Tlingit and Haida Indians. This practice was favorable to their trading relationships with the aboriginal inhabitants, and in consequence the Russians had little or no impact on the political control and autonomy exercised by the Indians throughout Southeast Alaska. Following the acquisition of the Alaskan territory by the United States in 1867, the military administration erected stockades at Sitka, Wrangell, and Tongass, but these were abandoned within a few years. Several instances of bombardment of Indian villages at Wrangell, Kake, and Angoon impressed upon the Indian residents the power of the military to enforce its imposition of civil authority in specific cases. But the period of military administration has been referred to as an 'era of neglect' which, at least in the first ten years after the purchase, had negligible impact on the Tlingit and Haida Indians' use and possession of Southeastern Alaska (U.S. Court of Claims 1959; Emmons 1905; Gruening 1954).

Beginning in Wrangell in the mid-1870s, the influx of white settlers into the region substantially altered the political landscape and settlement patterns by which the Indians had lived for centuries. The principal cause of this migration was economic: the availability of gold and other minerals, rich salmon stocks, and extensive timber stands brought thousands of whites into Southeastern Alaska. They established new towns and industrial sites at many locations. The rush for gold in Canada up the Stikine River brought more than a thousand miners, traders, merchants, and laborers through Wrangell in the mid-1770s, as described below. The first gold camp was established in Alaska in 1878, and in the same year, the first salmon canneries at Klawock and Sitka (Rogers 1960: 198). Two years later, the discovery of gold at Juneau resulted in the founding of the town of that name, and another discovery in 1887 across the channel led to the establishment of the city of Douglas.

The small community at Haines, which was started as a trading post and mission to the Chilkat and Chilkoot Indians in 1881, shifted among several canneries which operated in the area after 1884, and it was not until the Klondike stampede in 1897 that the town became more established. Skagway also traces its beginning to this gold rush. The white town of Ketchikan places its start with a succession of salteries and canneries that began operation at the mouth of Ketchikan Creek in 1886. The incipient town of Petersburg was constructed as a fish cannery and sawmill which opened for operation in 1900. The town of Craig was similarly initiated as the site of a commercial saltery and cannery in about 1910-11.

Although located in or near the site of Indian settlements, the towns that grew up at these locations were essentially white towns. The first land laws that applied to Alaska (acts of 1884 and 1900) provided for the protection of areas used and occupied by Native Alaskans, but did not entail the issuance of deeds of ownership to the aboriginal residents, who were not acknowledged with citizenship rights at this time. Nor did these provisions actually protect Indian-occupied areas from conveyance to non-Natives. Non-Natives were able to file for town and industrial sites and acquire ownership deeds to lands used for exploiting the mineral, fish, and timber resources, or settled as villages and towns in service to these industries. These towns were later organized formally with townsites and municipal governments, with little or no political participation by the local Indian residents.

Rogers (1960) has described these modern communities as new "non-indigenous" towns which, after their formation between 1480 and 1910, became the principal towns and cities of the region, associated with the massive growth of the non-Native population of the region. He analyzes census data to show the reorientation of Tlingit kwan to these communities from traditional villages and seasonal settlements: the Sitka Indians becoming citizens of the white town of Sitka, the Stikine moving to Wrangell, the residents of Auk settlements moving to Juneau, Taku people to Douglas, the Tongass people to Ketchikan and the Chilkat dividing themselves between Klukwan and Haines (ibid.:205-7). He does not detail historical Tlingit settlement at these places; instead he emphasizes the formation and development of larger, modern towns dominated by the non-indigenous population. During this period, traditional villages continued at Yakutat, Klukwan, Hoonah, Angoon, Kake, Klawock and Kasaan.

Some of the new communities were Indian settlements formed at the urging of missionaries and school authorities. In 1887, the Tsimshians moved under the direction of the missionary William Duncan in a large group (800 strong) to Annette Island from Old Metlakatla in British Columbia, and in 1891 this land was set aside by Congress as a reservation. Saxman was a new community formed through the encouragement of the Presbyterian church and territorial school authorities in 1897; it was settled initially by the Cape Fox (Sanya) kwan. The first missionary was a Tsimshian minister and discontented former adherent of William Duncan. There was a consolidation of Haida communities into the new communities at Craig, Hydaburg, and Ketchikan and a movement from Old to New Kasaan. Hydaburg was a new settlement organized specifically for the former Prince of Wales Island communities of Howkan and Klinquan by educational authorities; it was established by the Bureau of Education by 1911.

The initial movements into the new communities took place as group movements. They occurred principally for economic reasons, although in some cases they were the result of the force of missionary and school personalities and the desire to escape the constraints of tradition. There was continued population movement to the new white towns at a more gradual rate in subsequent years, but there was an acceleration of migration after 1950, prompted by the crash in the fish stocks, which many Indians depended on. Rogers (1960) considered that the future economic well-being of the Native population would be tied up with employment opportunities in the new pulp timber industry that developed in some of these towns in the 1950s. What is overlooked in Rogers and other accounts is the history of social cohesion and cultural vitality within the Indian communities in these towns.

Criteria For Comparison

The following criteria served as a basis for comparisons between the study communities and the recognized Southeast ANCSA communities:

- Traditional Native settlements (villages or camps) at sites of modern communities, before the arrival of whites
- Indian occupancy of identifiable areas in the early towns
- Indian land reservations or exclusions from the Tongass National Forest
- Indian possessions and Native townsite lands
- Federal schools for Indians
- Churches or missions serving Natives
- Alaska Native Brotherhood and Sisterhood local camps
- IRA (Indian Reorganization Act) organizations
- Central Council of the Tlingit and Haida Indians of Alaska Community Council
- Native cemeteries, graves, and totem poles

Information about each of these topics helps provide a picture of Native use and occupancy of the study areas before white settlement and in the modern communities that developed later. The discussion is concerned principally with the historic period—that is, after the appearance of non-Natives. There is little reference to extensive prehistoric and archaeological resources that exist in the areas surrounding the communities.

In most of the study communities, white businesses in the early days depended heavily on the Native trade for their livelihood. Another feature of the early economy in most of these communities was the fishing industry's reliance on Indian labor. Also apparent in the histories of these communities is the widespread discrimination against Natives that existed. Natives we interviewed reported that discrimination was a facet of everyday life and that it had a strong influence on their lives.

The activities of the Alaska Native Brotherhood, Alaska Native Sisterhood, and the Central Council are significant because they document Native institutions that formed in the five study communities and, in most cases, have been active throughout the historical period since the 1920s. The brotherhood and sisterhood developed particularly as a response to the discrimination Natives experienced in Southeast Alaska. Churches in the study communities often indicate the presence of a living Native institution. In most of these communities, one or more churches were at some time devoted principally to the local Native community and had mostly Native members.

Native cemeteries, graves, and totem poles are discussed briefly as further evidence of Native use and occupation in the communities. Native cemeteries and graves largely date from the historic period since Indian customs for disposing of the dead involved cremation (with the exception of shaman's graves). Burial of the dead started after Christian churches came into the communities. Totem poles were in use in Wrangell and Ketchikan but not in other study communities; the northern Tlingit did not adopt that custom.

Profiles of Study Communities

Haines

The Tlingit of Haines are largely Chilkoot and Chilkat Indians who trace their families back to several communities that existed in the area before the arrival of white settlers. The modern community of Haines—the site of which was selected with the approval of the Tlingit owners—began as a trading post, school, and mission established for Natives in 1881. A large village was formerly located on that site. The region's economy underwent a rapid transformation, particularly during and after the Klondike gold rush of 1897-98, and Chilkoot and Chilkat people moved into Haines from the outlying areas. The Native people came into town partly because they wanted education and jobs, but also because diseases and natural disasters had affected outlying Native communities. The Native community at Haines has been a stable component throughout the history of the modern town of Haines.

Haines Traditional Native Settlement

The principal Chilkoot village was along both banks of the Chilkoot River close to its outlet from Chilkoot Lake. The existence of a large prehistoric village, as well as historic houses, fishing platforms, fish weirs, smokehouses, cemeteries, grave sites, shamans' burials, and caves with pictographs have been documented in the area. Another large village was located on the Chilkat River about three miles from the center of the modern town of Haines. About equal numbers of Chilkoot and Chilkat Indians lived there. A third village was occupied on Chilkoot Inlet where the tank farm was later constructed in modern Haines.

Identifiable Native Area in Early Haines

The main Native community at Haines was known as "the village" and was located along the shore in Portage Cove just north of Main Street. Historical photographs from the turn of the century show a line of small, modern houses in a row, with smokehouses in front across the path of the beach. Another area of Native occupation was on mission land along Main Street. But by the 1920s, Natives had also moved to other areas of town.

Haines Indian Land Reservation or Exclusion

Between 1913 and 1918 four reservations for the use of Haines and Klukwan Indians were created under executive orders of the President. Those included land around the Klukwan village and areas along the banks of the Chilkat River, used by Natives from both communities. One of these, the Yendistucky Reserve, was three miles from Haines and covered 144 acres. The executive order establishing the Yendistucky Reserve said, "A large part of the area is secured by the claim of the Natives by long occupation for use for their subsistence. . . . Other parts contain a large number of graves of their ancestors and kindred. . . ." (Executive Order No. 2388, May 25, 1916, U.S. Survey 908).

Indian Possessions in Haines Townsite

On the original 1918 plat of the Haines townsite, there were four "Native" and three "Indian possession" tracts. Much of this land was not deeded until the 1950s.

Haines Churches or Missions Serving Natives

In 1881 the Presbyterian Church started as a mission to the Chilkoot and Chilkat Indians. It opened and closed twice between 1882 and 1891, but in 1893 the Haines Presbyterian Church was formally organized. Church records show regular addition of new Native members through 1970, although local residents report that in the 1930s the church began turning away from its former close relationship with the Native community, segregating church services and establishing a separate Sunday school for Natives.

The Salvation Army Church came to Haines after 1912. Many Native residents became members of the Haines Native Army band. The Salvation Army still serves the Native community in Haines today.

Haines Government Schools for Natives

One of the first three government schools for Natives in Alaska was established in Haines in 1883, and it remained in operation until 1948. The school went only through the sixth grade, and for many years Natives who finished the sixth grade got no more education or had to leave home for boarding schools. Beginning in the 1920s, the Alaska Native Brotherhood in Haines was able to gain admission to the local public schools for a few Natives, but there was opposition in the community.

Alaska Native Brotherhood and Sisterhood in Haines

The Haines Progressive Club, a forerunner to the Haines Alaska Native Brotherhood and Sisterhood, was organized in 1916. The brotherhood was established in the early 1920s. A former officer of the brotherhood said in an interview that the goals of the organization were to obtain equal rights for Natives in Haines, end discrimination in the schools and in the work place, gain the right to vote, and otherwise promote development of the Native community. In 1934, the brotherhood organized Native voters and a Native mayor was elected. The 1929 convention at which the Alaska Native Brotherhood decided to file land claims against the federal government was held in Haines, and the Haines brotherhood and sisterhood took part in meetings and other activities associated with the land claims in later years.

Haines IRA Council

In 1941 Natives in Haines formed the Chilkoot Indian Association—a council set up under terms of the federal Indian Reorganization Act (IRA). The association attempted to have a reservation set aside for the Haines Indian village and submitted a petition to the Department of the Interior. The department had held hearings in Klukwan for a possible reservation and acknowledged that the Klukwan and Haines Natives "still use much of the territory in common" (Warne 1948), but no Haines village reservation was established.

Tlingit and Haida Central Council in Haines

In the 1960s Haines Natives participated in activities of the Tlingit and Haida Central Council through its association with the Klukwan delegation. Concerns over a proposal for a river crossing of a new highway in the Yendistucky Reserve prompted the Haines community to organize its own chapter of the council in 1971, and the Haines community council has remained active since then.

Haines Native Cemeteries and Grave Sites

Eight historical Native cemeteries and two shamans' burials are in the Haines area.

Ketchikan

A Native village was located in an area on both sides of Ketchikan Creek before white settlers arrived. The mouth of Ketchikan Creek was a summer village for Tlingit families who put up fish from the huge runs of pink salmon that returned to the creek each year. Those large salmon runs also attracted the first white settlers, who built a saltery and cannery by the village in the 1880s. The Native school and mission erected on Indian land in the 1890s were the first such institutions established in the small town. The development of the salmon fishing industry, together with logging, milling, and merchant businesses, helped establish Ketchikan as a commercial center after the turn of the century.

Economic growth attracted a large number of Tsimshians, and smaller numbers of Tlingit and Haida, to Ketchikan. The Tsimshians have remained the largest group in the Ketchikan Native community. A large area south of the commercial district became known as Indian town. The decline of salmon stocks in some areas of Southeast Alaska and the construction of a large pulp mill at mid-century attracted a second wave of Native migration to Ketchikan. This time the new arrivals were from Tlingit and Haida communities on Prince of Wales Island. Today Ketchikan is home to the third largest Native community in Southeast Alaska.

Ketchikan Traditional Native Settlement

Before the arrival of white settlers, the mouth of Ketchikan Creek was a summer village to which Indian family groups regularly came to dry fish. They built large smokehouses which also served as their summer homes. The creek and the land around its mouth was owned by members of the Ganaxadi clan of the Tongass Kwan.

Ketchikan Indian Land Reservation or Exclusion

In the early 1900s the area on both sides of the mouth of Ketchikan Creek was occupied mainly by Natives, and they used the tidelands in front of the village for storing boats and gear and for access to the water. In 1905 the Department of the Interior reserved the tide flats on either side of Ketchikan Creek "for the use of the Natives of Alaska for landing places for canoes and other craft used by such Natives." The reserve was ineffective in stopping commercial development along the shore and on adjacent tidelands. The DOI took some action to stop encroachment on the tidelands, but by 1932 it held that DOI's statutory authority to reserve tidelands had been clouded by recent federal legislation that called for tidelands to be held in trust for a future state government.

Early Ketchikan Native Community

Originally Native homes in Ketchikan were clustered around the mouth of Ketchikan Creek. In the 1890s and early 1900s Native people began building small frame houses and cabins to replace the large smokehouses that had doubled as houses in the early days. After the turn of the century the Native population grew and began building houses on a hill along the creek and across on the opposite shoreline, down the beach. This area became known as Indian Town. Later the Tsimshians settled on the knoll overlooking Thomas Basin. In the 1920 and 1930s more Natives moved to Ketchikan and the Native community expanded inland above the knoll, into the area known as Mahoney Heights.

Ketchikan Indian Possessions and Native Townsite Lands

When the survey of the Ketchikan townsite was approved in 1913, the townsite trustee issued deeds to all white occupants and to some persons of mixed Native-white blood. The remaining lots were not deeded, and in the subsequent administration of the townsite, the Government Land Office (GLO) treated undeeded lands as Native possessions. Later, in the late 1920s, the GLO investigated the status of Native-occupied lots, including areas near the mouth of Ketchikan Creek and lots south of the creek that were not included in the original townsite. The lots were surveyed, but no deeds had been issued to Natives as of 1939, when a new townsite trustee called for another investigation because "there is interest to dispose of remaining lots within the townsite, including Native possessions. Many of the lots involved are very valuable . . ." (Parks 1939). The Department of the Interior investigated the ownership of 33 lots in the Native possessions and in 1941 reported that about half remained in Native ownership and the rest had passed to whites. There is no further record of actions on Native possessions until 1957, when DOI began issuing deeds for another 38 lots in the Native possessions. That activity continued through the late 1960s, but by that time much of the land was no longer occupied by Natives.

Ketchikan Churches or Missions Serving Natives

Five churches—two Episcopal churches, the Presbyterian Church, the Salvation Army Church, and the Catholic Church—were established roughly between 1900 and 1920 and served the Native community in Ketchikan. The Episcopal mission opened the first church and school in Ketchikan in 1898 in the Indian community, on the shore adjacent to the Native village. Later, when the Indian members experienced segregation in church activities, the largely Tsimshian congregation formed a separate institution and built St. Elizabeth's Church in 1927. The Presbyterian Church in Ketchikan has its roots in Saxman, which was initiated as a Presbyterian mission in 1897. The church was later relocated to Ketchikan, because much of Saxman's early population moved there. It was formally organized in 1925. The Salvation Army mission was established in Ketchikan by the 1920s. That church was formed partly because the Native community was being exposed to conditions in Ketchikan's red light district, and partly because some Native members felt they were being excluded from participation in Ketchikan's older churches.

Ketchikan Government Schools for Natives

The Bureau of Education opened an Indian school in Ketchikan in 1923. The government school went only through the eighth grade, and Native students who wanted to go to high school largely attended boarding schools in Sitka and later Wrangell. The local public schools in Ketchikan were essentially closed to Natives until around 1930, when attorney William Paul won a court decision that essentially allowed Natives to attend the local public schools if they chose. However, Ketchikan residents interviewed for this report said it was not until the 1940s and 1950s that Natives began to feel better accepted in the public schools.

Alaska Native Brotherhood and Sisterhood in Ketchikan

As in most Southeast communities, the Alaska Native Brotherhood and Sisterhood in Ketchikan operated informally until the 1920s. Equal opportunity for Natives, particularly in education and employment, were long-standing goals of ANB activity in Ketchikan. The Ketchikan camp supported attorney William Paul in his 1929 court case that won Natives the right to attend Ketchikan's public schools.

Representatives of the Ketchikan camp also attended the historic 1929 ANB convention in Haines, when the ANB decided to sue the federal government over land claims. The local membership of the Ketchikan ANB declined in the 1930s and 1940s, when the ANB decided to pursue Tlingit and Haida land claims to the exclusion of the Tsimshians. The Ketchikan camp was invigorated in the 1950s by new members who had moved to Ketchikan from Prince of Wales Island.

Ketchikan IRA Government

The Native community in Ketchikan organized a government under terms of the Indian Reorganization Act (IRA) in the 1930s. The constitution for the Ketchikan Indian Corporation was ratified in 1940. In the late 1930s and early 1940s the IRA helped members get loans to buy commercial fishing boats. It was inactive for a period, but was reactivated by new members in the 1950s, when more Natives moved to Ketchikan from Tlingit and Haida communities on Prince of Wales Island.

Tlingit and Haida Central Council in Ketchikan

Ketchikan representatives attended the 1929 meeting in Haines when the ANB decided to file a court suit over land claims, and Ketchikan Natives also took part in organizational meetings of the Tlingit and Haida Indians of Alaska. After the U.S. Court of Claims decision in 1959, Ketchikan was actively involved in meetings and organizational proceedings of the Central Council. Ketchikan Natives were among the organizing officers of the Central Council and served on the council's executive committee, planning committee, and rules of elections committee in the 1960s.

Ketchikan Totem Poles and Grave Sites

Ketchikan has two principal totem poles—the Kyan and the Chief Johnson poles—dating from the turn of the century. There are also large collections of nineteenth century totem poles and grave carvings that were transferred from abandoned Tlingit and Haida villages on Tongass, Cat, Prince of Wales, and other islands. The Ketchikan Totem Heritage Center houses 39 poles, the Saxman Totem Park 25 poles, and Mud Bight Village 13 poles.

A large Native cemetery and burial site are located on Pennock Island.

Petersburg

Petersburg was a Native family fishing settlement when white settlers arrived at the turn of the century. Two homesteads acquired by the first white settler, Peter Buschmann, were located on either side of the Native fish camp on Hammer Slough. Other Native fish camps were south of town, in the Wrangell Narrows. The site of a former village was across the narrows at the mouth of Petersburg Creek. Local Natives held jobs as fishermen and cannery workers for the cannery that opened at Petersburg around 1900. More Natives moved to Petersburg in the 1920s and later, when the town began to grow and prosper as a modern fishing community with a population dominated by people of Norwegian ancestry. Today the Native community in Petersburg includes many descendants of the early Indian migrants to Petersburg.

Petersburg Traditional Native Settlement

Two villages were once located in the immediate vicinity of Petersburg, but residents of those villages had amalgamated with people in the Wrangell community before white settlers came to the area. One village was at the mouth of Petersburg Creek and another across Frederick Sound in Thomas Bay. By the time white settlers arrived, Natives occupied seasonal camps that they had long used for drying fish, hunting, trapping, and gardening.

Indian Occupancy of an Identifiable Area in the Early Petersburg

Early in the century a cannery was opened at Petersburg. In 1902, 24 Indians fished for the cannery, and Natives continued to fish and work in the cannery in subsequent years. The early Native residents of Petersburg came from small settlements in the area and from Kake and Wrangell. Natives lived and moored their boats in an area of small cabins next to the cannery and on the north side of Hammer Slough, up the hill behind the waterfront. That latter area became the center of the Native community in Petersburg, and was known as "Indian Street" or "Indian Bridge."

Petersburg Indian Possessions and Native Townsite Lands

The Petersburg townsite survey was approved in 1919 and included three lots in Indian possessions and a Native allotment. The city of Petersburg gained ownership of two of the Indian possession lots, and a descendant of the original Indian owner deeded the third to the Petersburg Moose Club.

Churches or Missions to Serve Natives

The first organized church in Petersburg was the Salvation Army, which started activity in the Native community in 1909. A prominent Indian from Wrangell took charge of the church in 1913 and was responsible for organizing the construction—with Indian labor—of the Salvation Army Hall, which stood on Indian Street. The Salvation Army has been active continuously in Petersburg since its inception, and it has maintained its emphasis on the lower-income and Native populations.

The Petersburg Tlingit Presbyterian Church was established at the request of the Indian community in 1924. It was organized with a Tlingit governing body and congregation, and it retained that ethnic character through the 1950s. In the 1940s, when the church was without a minister, a leader of the Tlingit community was instrumental in convincing the state church to station another minister in the town. The name of the church was changed to the First Presbyterian Church in 1947, a change that reflected the church's shifting orientation to a wider segment of Petersburg's population.

Alaska Native Brotherhood and Sisterhood in Petersburg

The Petersburg camps of the Alaska Native Brotherhood and Sisterhood were formally organized in the early 1920s—about the same time as in other Southeast communities. A long-time resident interviewed for this report said that in the 1930s the Petersburg camp worked for equal access to schools and other facilities and for land claims. Petersburg was represented at the 1929 ANB meeting in Haines when the ANB decided to file suit against the federal government over land claims. A very prominent leader of the Petersburg ANS in the 1940s and 1950s was Amy Hallingstad, who was elected camp president seven times and worked for land claims, integration of the local schools, union organization of cannery workers, and the abolition of fish traps. In 1955 and in 1970 the ANB annual conventions were held in Petersburg.

Petersburg Government Schools for Natives

A government school (through eighth grade) for Natives was open in Petersburg for most of the period from 1904 to 1937. Students who wanted to attend high schools first went to boarding schools as far away as Oregon and Washington, but later to Sheldon Jackson School in Sitka and the Wrangell Institute in Wrangell. In 1937, Native students won the right to attend local public schools in Petersburg.

IRA Organization in Petersburg

The Petersburg IRA, named the Petersburg Indian Association, was organized and approved in 1948. Initially the organization mainly helped Natives get loans to buy fishing boats.

Tlingit and Haida Central Council in Petersburg

The Petersburg Indian community participated in meetings of Tlingit and Haida Indians in the early years of the land claims action, but later (in the 1950s) it supported the land claims mainly through the Petersburg camp of the Alaska Native Sisterhood. After the 1959 decision of the U.S. Court of Claims, Petersburg formed a Tlingit and Haida community council and took part in formation of the Central Council. In 1967 Petersburg delegates were elected to the executive committee of the Central Council, and Petersburg remains a listed community of the central committee.

Petersburg Native Cemeteries and Grave Sites

A cemetery with Native graves dating from 1911 to about 1930 is across the narrows from Petersburg, behind Sasby Island. The site is included as a Native cemetery site in Sealaska regional corporation's compilation of Native historical and cemetery sites in Southeast Alaska.

Tenakee

A Tlingit village was located at the Tenakee hot springs when white settlers arrived around 1900. The village and the surrounding area, including Tenakee Inlet, were owned and occupied by members of the Wooshkeetan clan. The development of a small commercial fishing industry at Tenakee attracted more Tlingit families to the area in the 1920s and 1930s.

Early in the century the federal government had established the Tongass National Forest throughout much of Southeast Alaska, including the area around Tenakee. In 1935, the federal government issued an executive land order that recognized the Native community at Tenakee as "an Indian settlement" and excluded it from the national forest. The Native population at Tenakee declined in the 1940s and 1950s with the decline in the commercial fisheries. Some Natives also moved to other places where their children could have a chance to go to high school.

Tenakee Traditional Native Settlement

The village of Tenakee, or Tenakee Springs, is situated at a hot springs that was the location of a Tlingit village before the whites arrived. The Tlingit village at that location was recognized in the 1891 U.S. Coast Pilot, which reported "a small Native village" and said that Tenakee Inlet was "constantly used by

the Indians in their journeys from Chatham Strait to Port Frederick." The village was also reported by the operator of a saltery in the area in 1901. The operator described the actions of the local clan leader, who asserted ownership of fishing sites in Tenakee Inlet.

Occupancy of Identifiable Area in Early Tenakee

Several Tlingit families lived in Tenakee at the turn of the century. Some lived in the area known as Indian village, which was near the modern boat harbor, and some remained in the original location near the hot springs. In the 1920s and 1930s the Native population grew as more Natives moved in from nearby communities to take advantage of jobs with the two canneries at Tenakee. Some of those new Native residents moved into the Indian village.

Tenakee Indian Land Reservation or Exclusion

The Indian village at Tenakee was recognized as an "Indian settlement" in an executive order of President Franklin Roosevelt in 1935. That order excluded the village from the Tongass National Forest. Native rights to the village tract were reaffirmed in 1965, when the BLM turned down a non-Native application for a trade and manufacturing site there, noting that "possessory rights to this tract are claimed and that the lands have been used and occupied by these Indian people for many years" (Peters 1965).

Tenakee Churches or Missions Serving Natives

Native residents built their own church in Tenakee in the 1920s or 1930s. Local residents credit Charlie Walters, an old-time Native resident, with starting the church by donating land for a building and urging local residents to build a church. Community members began meeting in the hall, which later became a Salvation Army Hall. Nearly all Native families in Tenakee belonged to the Salvation Army Church in the 1940s and the church was active there until 1950, when the Salvation Army Hall burned. It did not reopen because about that time the local economy went into decline and Natives began moving to other communities.

Alaska Native Brotherhood and Sisterhood in Tenakee

Tenakee had an active ANB camp from the 1920s to about 1950. Tenakee ANB members attended the 1929 meeting in Haines, where the ANB decided to sue the federal government over land claims, and the 1941 meeting of the Tlingit and Haida Indians in Wrangell, at which the group approved a contract with attorneys to pursue the land claims case. After the 1940s ANB membership declined as residents left Tenakee to look for jobs elsewhere. Lawyers pursuing the land claims case included Tenakee on their mailing list through the early 1950s.

Tenakee Native Cemeteries and Grave Sites

Opposite the Indian village at Tenakee is a small island the Native community uses as its principal burial area. A second, smaller cemetery is near the town of Tenakee on Chichagof Island. There is another burial site across the inlet on a small island north of Kadashan Bay.

Wrangell

Before white settlers and traders came to the area, Wrangell was the site of a summer village of the Stikine kwan, the largest and most powerful of the southern Tlingit tribal groups. In the 1830s and 1840s, when the first white settlement was established at Wrangell, the Tlingit population was estimated to be several thousand. Except for Sitka, Wrangell has the longest history of contact with non-Natives in Southeast Alaska. In the nineteenth century, Wrangell was an important trading center for Natives from Alaska and Canada and a transit point to gold fields in the interior. Over the years, Wrangell developed as a predominantly white town. Natives from other Tlingit and Haida communities in the region moved to Wrangell to take advantage of jobs and schools there. As a result, the Native community in Wrangell today has diverse origins.

Wrangell Traditional Village Site

In the nineteenth century the Stikine Tlingit occupied many villages and camps in a large area around what is now Wrangell. Wrangell was a summer village owned and occupied by the Naanyaa.aayi clan of the Stikine Kwan. A leading member of the clan gave the Russian permission to establish the first trading post in Wrangell.

Occupancy of Identifiable Area in Early Wrangell

The ten Stikine clans lived in separate areas along the south shore surrounding the modern-day harbor in Wrangell. This large village area was described by the early American military authorities and missionaries in the 1860s and 1870s. The 1906 subdivisional survey of the Wrangell townsite identified Indian possessions in this area. Another expanse of Indian occupation has existed since the 1870s. Located north of town and separated from the Stikine settlements by the white settlement, this was the home of numerous Indian migrants to Wrangell. It became known in the local Indian community as the "foreign" town, and was the locus of trade and settlement for members of other kwan who came to Wrangell. Native people from Craig, Klawock, Hydaburg, Kake, Ketchikan, Sitka, Haines, and other villages—and from cannery sites in the area—established residence in Wrangell.

Wrangell Indian Possessions and Native Townsite Lands

The map of the original Wrangell townsite from 1906 identifies Native possessions in twelve townsite blocks, including areas around Wrangell Harbor, on the northern and southern peninsulas of the harbor, all of Shakes Island, and extending northward along Front Street. In 1926 the Wrangell townsite trustee was authorized to subdivide the Indian Village and issue deeds to Native occupants. The village was subdivided into 104 lots. In 1931, the trustee issued 23 deeds to Natives, eight deeds to others who were not local Natives, and decided that whites had gained legal possession of 20 lots. The remaining lots were held in trust for future settlement by Natives. By 1958, townsite records indicate that Indians held about 53 percent of the Native possession lots, non-Natives another 44 percent, and 3 percent remained undeeded.

Wrangell Churches or Missions Serving Natives

The Presbyterians organized the first church and school in Wrangell in 1877, with its primary mission to the Native community. Later, after some white residents asked for segregated services, some Native members left that church and built their own. That church ultimately became St. Elizabeth's Episcopal Church. It provided activities for Native youth and started a high school for Native boys. Church records

indicate the congregation was largely Native through the 1950s. Native residents also organized a corps of the Salvation Army in Wrangell before the turn of the century, and Wrangell was the army's headquarters for Alaska, the Yukon, and part of British Columbia until 1939.

Wrangell Government Schools for Natives

The Bureau of Education (BOE) opened Wrangell's first public school in 1885. At first mostly Native but also some non-Native children attended; the BOE opened a separate school for white children in 1901. The BOE and its successor, the Bureau of Indian Affairs, operated an elementary school for Natives in Wrangell until 1932. The BIA opened the Wrangell Institute in 1932. The institute was a boarding high school for Native students and operated until 1975.

Alaska Native Brotherhood and Sisterhood in Wrangell

Wrangell Natives began organizing a camp of the Alaska Native Brotherhood in 1913, and Wrangell was formally recognized as an ANB camp in 1921. In 1922, the Wrangell ANB and ANS took up a collection to support attorney William Paul in a test case for Native voting rights. Paul was representing a Wrangell Native who had been denied the right to vote and who had been arrested when he challenged authorities at the polls. Paul's client was found not guilty, and the right of Indians to vote in Alaska was accepted in practice. The ANB hall became the social center for the Indian community in Wrangell. In 1935, Wrangell hosted the organizational meeting of delegates establishing the Tlingit and Haida Central Council, which was formed to help advance the land claims suit against the federal government.

IRA Organization in Wrangell

Wrangell formed an IRA organization, the Wrangell Cooperative Association, in 1948. The organization helped Native fishermen get loans to buy boats, and at least one Native received a loan to finance a shop.

Tlingit and Haida Central Council in Wrangell

Wrangell participated in all the meetings involving tribal communities and representatives involved in the Tlingit and Haida land claims suit against the federal government. As noted above, it hosted the organizational meeting of delegates establishing the Tlingit and Haida Central Council in 1935, and in 1941 it hosted the meeting at which the Tlingit and Haida Indians approved a contract with attorneys pursuing the land claims. After the favorable decision in the case in 1959, two competing groups in Wrangell established community councils to represent Wrangell in the Tlingit and Haida Indians of Alaska; after several years one group prevailed.

Wrangell Totem Poles, Indian Cemeteries, and Grave Sites

The use of totem poles was well established among the Stikine Tlingit by the early nineteenth century, and many important poles originated in Wrangell. These include the Shakes totems, associated with the Shakes family (including a succession of Chief Shakes); the Kadashan poles (in honor of a prominent Haida peacemaker from Wrangell); the Kiksadi pole (commissioned in memory of a Kiksadi chief in Wrangell); and the Shustak pole (originally erected on Shustak Point to honor a dead chief).

One large and several smaller burial and cemetery sites in Wrangell attest to Tlingit occupancy of the area, and to the influence of the missionaries, from the 1880s. The largest is south of the old village.

Comparison of Communities

We now turn to a comparison of the five study communities described above and the Southeast communities that were recognized under the Alaska Native Claims Settlement Act (ANCSA). Section 16 of ANCSA listed ten Southeastern villages that had participated in the Tlingit and Haida claims settlement and that were also considered eligible to form village corporations: Angoon, Craig, Hoonah, Hydaburg, Kake, Kasaan, Klawock, Klukwan, Saxman, and Yakutat. Section 14(h)3 provided special consideration for two more Southeastern communities, Juneau and Sitka, that were classified as "modern and urban" communities. Juneau and Sitka were also entitled to form corporations and select land under the act, but their benefits differed from those of village corporations.

For this comparison of the recognized communities and the study communities we present comparative information for communities of similar size, ethnicity, and history. For the most part, we compare the five study communities with four recognized ANCSA communities: Juneau, Sitka, Craig, and Kasaan. We compare Haines, Ketchikan, and Wrangell principally with Juneau and Sitka. Petersburg can be contrasted with Craig, and to a lesser extent with Juneau and Sitka. Tenakee can be assessed relative to Kasaan. Where significant and useful differences exist between the study communities and other recognized ANCSA communities in Southeast, we note those differences.

The aim of this discussion is to present salient facts indicating similarities and differences among communities, based on the criteria listed earlier. We do not attempt to reach a conclusion for each topic or category of information presented. Instead, we consider the picture that emerges from all the criteria taken together. These comparisons indicate significant historical similarities between the five study communities and various other Southeast communities, based on the above described criteria of historical use and occupancy.

Indian Settlements At Sites of Modern Communities

All five of the study communities are located on sites of Tlingit settlements that were present before white settlers came to the area. Three were summer villages and fish camps, while two (Haines and Tenakee) were winter villages.

The recognized communities of Juneau, Sitka, Craig, and Kasaan had similar settlement patterns before the arrival of non-Natives. Sitka was the site of a principal village of the Sitka kwan when the Russians erected a fort next to the Tlingit village in 1801. The Russians settled there with the permission of the Tlingit owners, according to one report (Krause 1956:30). The Sitkans destroyed the fort later in the year, but the Russians returned with gunships and re-established the settlement in a new location nearby in 1804. The Sitka Native community has had the longest continuous contact with non-Natives in Southeast Alaska.

The town of Juneau was established on the site of a fish camp owned by a clan of the Auk kwan at the mouth of "Flounder Creek," which today is known as Gold Creek. The "discovery" of Juneau was described by the late Austin Hammond, a tribal leader of the Chilkoot Lukaax̲.adi clan. He said the area was rich in natural resources, which is why Native people lived there. Two white men arrived, looking for gold. They were hungry and asked for food, and they were fed by the Auk Indians living at the mouth of Flounder Creek. While they were in the Indians' house, they noticed a box containing some gold and learned that

it was from the river (Flounder Creek). They prospected in the river and soon made a strike. Juneau thus began as a gold rush town in 1880. It grew rapidly and soon replaced Sitka as the seat of the territorial government. The Tlingit name for Juneau is Tsa'ntik!i-hin (Swanton 1908:397).

The Haida community at Craig was founded in about 1910 when a white man named Craig Millar built a saltery and cold storage plant there. By 1912, a cannery had been erected on the site, which is named "Shaan-Seet" in Tlingit (Langdon 1977:152). The new town was established directly across from a small former village on Fish Egg Island, and it was called by that name ("Fish Egg") in the early school reports. Located six miles from Klawock, the community was first settled by Haida and Tlingit from nearby communities, and it has been associated with the Haida tribe since its beginning. Natives were in the minority in the early years.

Kasaan was one of the first Haida communities to be established in Alaska and was perhaps the second largest Haida village—after Howkan—in the immediate pre-contact period (Langdon 1977:119-20). The only Haida village on the eastern coast of Prince of Wales Island, Kasaan appears in early historical photographs that show houses of traditional and modern construction styles, as well as totem poles. In 1901, the manager of a mining company encouraged residents of the village to move about five miles to the site of a new village. The manager offered to help lay out a new village, provide permanent annual employment, and construct a school and a church. He also said he would prevent saloons from locating in the vicinity (Jackson 1908). After conferring with Bureau of Education officials and the territorial governor, who promised to establish a school there, villagers moved to the place which was originally known as "New Kasaan," but is now referred to as Kasaan.

What is common to all these communities—the study communities and the recognized Southeast communities—is that modern communities were established directly on, or in close proximity to, areas and sites in use as Native settlements and camps. Non-Natives were drawn to these places by minerals, fish, timber, and other resources. Indian settlement patterns were characterized by seasonal population dispersal and aggregation. The comparative information indicates that the actual sites of Southeastern villages and larger towns were often determined by the location of non-Native commercial activities or because of the active encouragement of school and church authorities, or both.[1]

A notable example is the ANCSA-recognized community of Hydaburg, which was established in 1911 through the substantial influence and involvement of the Bureau of Education (BOE). This community, modeled on the Christian community at Metlakatla, came into being through BOE's efforts to consolidate the traditional communities of Howkan and Klinquan on western Prince of Wales Island, and to provide opportunities to the younger residents there to adopt western ways unencumbered by opposition from elders and traditionalists. In return for leaving their traditional communities, the BOE provided new residents with assistance in moving and constructing the new village, with efforts to establish a reservation, and with financial assistance for the development of commercial enterprises (a cannery and sawmill).

[1] The influence of these factors on village location is not limited to the Southeastern region. Similar outcomes occurred in all regions of the state.

Indian Occupancy of Identifiable Areas in the Early Towns

In all five of the study communities, there were one or more areas local residents considered to be "Indian villages" or "Indian towns." Often these places corresponded with actual or proposed reservations, and with the locations of Indian possessions in the townsite.

In Juneau and Sitka, the Indian community was similarly identified with geographic areas of town. Tlingits occupied a large area on the beach in front of the early town of Juneau. Within a year of the gold strike in Juneau, a large influx of miners and prospectors and an even larger influx of Natives took place. In 1881 there were already 150 whites and 450 Indians in Juneau. (See Smythe 1989b for more information on the early history of Juneau.)

The area around Gold Creek, or "Flounder Creek" as it was known to the Tlingits, was associated with the Indian community and particularly with the Auk kwan throughout the history of Juneau. Although most residents of the "Auk village" district, now largely a business and office district close to downtown, have been displaced by subsequent developments, the area is still associated with the Auk kwan. Indian families live there today.

In Sitka, two areas were occupied by Indians. The "Indian village" was the original Sitka kwan settlement, a large area along the beach. In 1914, Judge Wickersham wrote that "This Indian village has existed where it now stands for more than a century. It was laid out under the eye of Baranof, the first Russian Governor of Alaska, and has been kept up and occupied by the Sitka Indians and their children from that day to the present."

The other area of Native occupancy in Sitka was known as "the Cottages." It was associated with the Sheldon Jackson School. Graduates were given plots of land, encouraged to erect single-family structures and to live apart from the traditional influence of "the village." The mission school authorities taught that smaller, modern-style houses were free from disease and more progressive than the "communal" homes that were common in the village. The missionaries believed the communal houses had a "back-pulling influence" on the young graduates (Annual School Reports, 1917-18).

The villages of Craig and Kasaan had more dispersed and mixed settlement patterns. Initially (1920), Natives were in the in the minority in Craig, but they became the majority by 1930 and Craig has remained predominantly Native through subsequent years. There were Native homes throughout the community. Native residents in Kasaan were likewise dispersed throughout the village. This more integrated residence pattern contrasted with that in the larger towns, in which the early Native communities were geographically—as well as economically, socially, and culturally—segregated from the non-Native areas.

Land Reservation or Exclusion from the Tongass National Forest

In the early decades of the century the Bureau of Education began establishing land reservations for Natives. These reservations were to protect the Indian communities from encroachment on and appropriation of Indian-owned land by non-Natives and to provide Natives an opportunity to develop businesses free from competition with whites, who were more experienced in business. Federal land reservations were made by Executive Order in the study communities of Haines and Ketchikan, as described earlier. Additional land reservations were made in the ANCSA-recognized villages of Hydaburg (1912), Klawock (1914) and Klukwan (1915).

The tidelands reserve to protect Ketchikan Natives' use of and access to the tidelands was described earlier. There were similar concerns over the protection of tidelands in front of the Auk Village in Juneau, although a reserve was not created there. In 1916, for example, some of the Indian residents protested against encroachments on their waterfront. A local attorney wrote the Secretary of the Department of the Interior (DOI) about their concerns: the electric company had built a pipeline on pilings which ran out in front of the village; white residents had put up houses on pilings which went over onto village tidelands; and a road had been built on pilings in front of the village, creating an obstacle to the beach and preventing all but small boats from reaching the shore. The attorney wrote, "The beach and waterfront has been the landing place and harbor for the Indians for more than thirty years" (Folsom 1916).

The matter of tidelands protection was referred to the attorney general. In 1918 he replied that the regional attorney general had established two lines at either end of the village, extending out to deep water, and ordered that no obstructions or structures be erected between them (Kearful 1918). The tidelands in the Juneau Indian village were still under federal protection in 1960, according to George W. Abbott, a DOI solicitor. He issued an opinion pertaining to proposed development of the area, and found that title to the ten acres of tidelands in the village "must be retained by the federal government" instead of being transferred to the state under the statehood act, as had been expected (*Alaska Daily Empire* 12/29/60).

As described earlier, the Indian village in the study community of Tenakee was excluded from the Tongass National Forest under a federal land order in 1935. This exclusion prevented outsiders from subsequently entering on the land and using it for commercial or other purposes that were allowed in the national forest. The Indian village at the ANCSA-recognized community of Kasaan was likewise eliminated from the national forest in the 1930s because it was a Haida community dating from the turn of the century. However, the original parcel was patented to the miner who acquired the tract as a trade and manufacturing site. The ANCSA-recognized town of Craig was at first included within the Tongass National Forest, but in 1922 the townsite was eliminated from the national forest to enable townspeople to apply for ownership deeds. Previously, residents had leased their lots from the Forest Service (Langdon 1977:156).

School reserves for government Indian schools were also made in most communities in Southeast Alaska, including the study communities of Petersburg, Wrangell, and Haines, as well as Sitka, Juneau, Douglas, Kake, Chilkat, Killisnoo, Tee Harbor, Klukwan, Shakan, Klawock, Kasaan, Saxman, Klinquan, and Howkan (Warne 1948b).

Indian Possessions and Native Townsite Lands

The study communities of Haines, Ketchikan, Petersburg, and Wrangell had Indian possession lands identified when the townsites were first established. Haines, Ketchikan, and Wrangell had the largest areas that were defined in this way, while Petersburg had only a few lots. There is no record of Indian possessions in the Tenakee townsite, but an area outside the townsite was excluded from the Tongass National Forest because it was occupied as an Indian village.

In comparison, the original townsite of the ANCSA-recognized community of Juneau had no areas recognized as Indian possessions, while Sitka had only three such tracts totaling less that one acre. This is explained by the fact that the Indian villages were located outside the original townsite surveys. In both communities, later surveys subdivided the Indian villages and awarded deeds to the Native owners.

The Sitka Indian village was first surveyed in 1941, but the survey was not completed until 1957, when a supplemental survey of areas left out of the initial survey was approved. Deeds were still being issued in the 1960s, in both restricted and unrestricted form. In Juneau, a special act of Congress (P.L. 88-34) passed on May 29, 1963 (77 Stat. 52) authorized the survey and establishment of a townsite for the Juneau Indian village, which was partially located on filled-in tidelands. The village, which covered 3.5 acres, was surveyed in 1963 or 1964, and deeds were awarded beginning in 1965.

Under the laws and regulations governing the administration of townsite lands occupied by Natives, there was no difference between the study communities of Haines, Ketchikan, Petersburg and Wrangell, on the one hand, and Sitka, Juneau, or any village that was classified as an Indian townsite, such as Kasaan. With regard to the administration of Indian possessions, in this case in Ketchikan, BLM officials repeatedly stated that the administrative procedures of Native townsites were held to "automatically apply" (Parks 1939; Stegner 1958; Gustafson 1972). "The Natives of Ketchikan are considered the same as any 'normal' townsite such as the Natives of Sitka, Juneau or Barrow. The same rules and regulations apply" (Gustafson 1972).

However, the townsites of Haines, Ketchikan, Petersburg, and Wrangell were established by non-Natives and patented before the 1926 Native townsite law was enacted and before citizenship (and voting) rights were granted to Natives in 1924.[2] Townsite trustees sometimes (as described in the community histories) transferred Indian possession lands within the townsites to non-Natives, and local governments sometimes seized Indian possession lands for tax delinquency.[3] In Juneau and Sitka, as well as in the study community of Tenakee, the Indian villages were afforded better protection because they were outside the townsites.

Craig was very similar to Petersburg in the recognition of Indian possessions in the original townsite. The town of Craig was incorporated in 1922 by the mostly white residents, and by 1931 all townsite lots had been disposed of. The administrative records of the townsite make no mention of Indian residents, nor are any Indian possessions identified. Similarly, in Petersburg there were only three lots identified as Indian possessions, and there was no Native participation in incorporation. In Craig, Petersburg, and Wrangell, all unclaimed lots were treated according to procedures followed in non-Native towns: public sale of unclaimed lots and subsequent transfer to the municipality of any that remained. In describing the early development of Craig, Langdon (1977:158) made the point that "Craig's founding and early settlement clearly made it a white man's town." The subsequent history of Craig differed from that of Petersburg, however, since the Native population of Craig became the majority, while Petersburg continued to be a "white man's town."

[2] In this period, Indians did not have the right to vote unless they had a certificate of citizenship. (This remedy was available if the Native met the requirements of a 1915 territorial act which provided a mechanism to acquire citizenship).

[3] DOI regulations in 1908 provided that Indian or Native Alaskan possessions shall not be assessed or conveyed by the trustee pending future legislation contemplated for this purpose in the Organic Act of 1891 (which authorized the establishment of townsites). Hence, Native tracts within townsites were designated as Indian possessions and were excluded from patent to the townsite trustee, with title remaining with the government. The authority to convey title to such land was provided in the Act of 1926, which ordered the survey and disposal of Indian or Eskimo possessions (and the issuing of a patent to the townsite trustee for the Native townsite if not already in place). Indian possessions in Southeastern communities were deeded under this legislation, as long as a chain of occupancy back to the date of the survey could be demonstrated.

Like the Indian village in Tenakee, the Kasaan Indian Village was eliminated from the Tongass National Forest (U.S. Survey 1896, accepted in 1939). By this time, the economic mainstay of Kasaan was fishing. Townsite records show that the Pacific American Fisheries operated a cannery in Kasaan on the trade and manufacturing site that was originally awarded to the Kasaan Mining Company in 1902. After 1939, the Kasaan Indian village (townsite) was subdivided into 5 blocks containing 45 lots.

That subdivision in the Kasaan Indian village took place shortly after the Tenakee village was eliminated from the national forest. However, elimination from the national forest by itself did not confer townsite status or provide a means for the owners to acquire formal title. Residents had to make further application to the BLM for the establishment and administration of a townsite. There is no information in the Tenakee townsite file which suggests that an addition was made—or that a separate application was filed—to include the Indian village elimination in the original Tenakee townsite. The area at Tenakee remained in use as an Indian village, with its land held by the federal government.

As occurred in Tenakee, the fishing economy in Kasaan declined in the early 1950s, and many Indian residents moved to other communities, particularly Ketchikan. According to an OEDP report, "With the closure of the cannery in 1953, the population dwindled to just a handful of people." But the inhabitants returned to Kasaan after it was recognized as a village in ANCSA. The report continues, "In 1971 Kasaan was declared a village under the Alaska Native Claims Settlement Act, eligible to receive benefits on behalf of its shareholders. With confidence restored in the community, people began moving back. The corporate headquarters of Kavilco, Inc., the village corporation for Kasaan, was located there in 1974. Then in February 1976 the community was organized under State law as a second-class city, electing seven council members, with the mayor elected by the council" (Kasaan 1977). Later (in 1981) the one remaining tract in the village townsite was subdivided into 26 lots.

Government Schools for Indians

There were Indian schools (run first by the Bureau of Education and later by the Bureau of Indian Affairs) in the study communities of Haines (1881-1948), Ketchikan (1923-48), Petersburg (1904-37), and Wrangell (1885-32) (Barnhardt 1985). Those federal agencies also operated Indian schools in all twelve of the Southeast communities recognized by ANCSA. In addition, the BOE and later the BIA operated Indian schools in thirteen other villages and towns in Southeast Alaska. Indian schools in ANCSA-recognized and in other communities included:

ANCSA Communities	Other Communities	
Angoon	Haines	Metlakatla
Craig	Ketchikan	Treadwell
Hoonah	Petersburg	Tee Harbor
Hydaburg	Wrangell	Shakan
Juneau	Chilkoot	Skagway
Kake	Douglas	
Kasaan	Dyea	
Klawock	Howkan	
Klukwan	Killisnoo	
Saxman	Klinquan	
Sitka	Loring	
Yakutat	Louden	

Tenakee Indians were served by a territorial school. Tenakee is similar to Craig in its school history. There was a BOE school in Craig for three years (1910-13), but it was also served by a territorial school from 1905-35. The school was transferred to the city school district after 1935 (ibid.).

The Wrangell Institute, a BIA boarding high school, operated in Wrangell from 1935 until 1975. There was one other boarding high school for Natives in Southeast Alaska—the Sheldon Jackson School in Sitka. However, that was a private institution operated by the Presbyterian Church. The Sheldon Jackson high school remained open until 1975; the institution continues today as a college.

Churches and Missions Serving Indians

In all of the five communities investigated in this study, the first church to organize in the town was a Native church, in the sense that the institution was either started as a mission to the Natives or established by the Natives themselves. In three of the communities, the church mission also established the first school in the emerging towns and those schools were specifically for Native children. In four of the five study communities, Natives contributed their own scarce cash and provided labor to help erect church buildings.

The establishment of the first American schools in Southeast Alaska is associated with missionary activity in the region. Sheldon Jackson was placed in charge of the Presbyterian efforts in Alaska in 1877, after which schools were opened. The first Protestant mission in Alaska was opened in Wrangell in 1877 by the Presbyterian Board of Home Missions. Its purpose was to serve the Native community, and a school was an integral part of the mission. The next school to open was in Sitka, also under the Presbyterians. In 1881, a school was opened in Haines by Mrs. Dickenson, an educated Tongass woman from the Wrangell mission, who taught there until a missionary (Mrs. Willard) relieved her. Another school was established in 1881 in Hoonah, also by the Presbyterian Board of Home Missions. By 1882, there were six Presbyterian mission schools and one of another denomination in the Southeast region (Drucker 1958:12-3).

The Presbyterian mission activity was modeled on the Metlakatla community, which combined Christian teaching with education, put a value on individual effort, and directly opposed Native language and customs. "In the gestation period of Presbyterian missions, from 1877 to 1885, Jackson and his lieutenants often identified Duncan's success as a model of what Americans might likewise achieve north of 54 40" (Hinckley 1961:198). In 1885, when he was appointed federal General Agent for Education in Alaska, Jackson opened government schools in Juneau, Sitka, Wrangell, Howkan, Hoonah, and Haines, and continued with the subsequent BOE efforts described above. The Jackson orientation toward a Christian education is evident in annual reports of school teachers from many communities well into this century.

Other denominations also started schools for Natives as a component of their missionary activity. The first school in Ketchikan was opened by the Episcopalians and later, in the 1920s, the church started a high school for Native boys in Wrangell. The Russian Orthodox church also established early schools for Natives in Juneau, Sitka, and Yakutat. In Yakutat, an American school was started by the Swedish Evangelical Church, which later contracted for the BOE school. In at least eight Southeastern communities, then, the first schools were those operated by church missionary organizations for the benefit of the Native community. Some of these denominations, as well as others, established themselves in communities but were not associated with schools.

The presence of the Salvation Army Church was also felt in Southeast communities. This church depended almost completely on the local parishioners for its economic support in the community, and often the ministry was comprised of Native preachers. In many communities, the Salvation Army was identified closely with the Native community, in part because its activity was focused on the lower socioeconomic segment of the population. The encouragement of music as an expression of Christian sentiment met with an enthusiastic response in the Native community, and local Native residents joined the Salvation Army bands in significant numbers in the early years of this century. The first Salvation Army church in Alaska derived from the Klondike area in about 1897 or 1899, when it spread to Skagway. Active Salvation Army posts were subsequently established in each of the five study communities, as well as in Juneau, Sitka, Kake, Angoon, and other villages.

The Alaska Native Brotherhood and Sisterhood

The Alaska Native Brotherhood (ANB) was formed in 1912 by Tlingit and Tsimshian Indians from Sitka, Juneau, Wrangell, Angoon, and Klawock. The Bureau of Education encouraged its inception, and the first organizational meeting was held in Juneau in the office of the Alaska BOE superintendent, W.G. Beattie (formerly superintendent of the Sheldon Jackson School). The founders were strongly influenced by the Presbyterian missionaries at the Sheldon Jackson School and the Russian Orthodox priests from the Russian orphanage for Indian children in Sitka (Hope III 1975). The ANB's original purposes were to encourage the assimilation of the Alaska Native into the "cultivated" society represented by the missionaries and school authorities, to oppose discrimination and racial prejudice, and to assist in the development of Alaska. Shortly after the establishment of the ANB, a parallel organization, the Alaska Native Sisterhood, formed among Native women as an auxiliary organization which assisted substantially with fund-raising and other efforts.

After 1920, under the influence of William and Louis Paul, the objectives of the organization changed to be more principally concerned with ending discrimination, including the abolition of the dual school system, recognition of citizenship and voting rights, and pursuit of property rights in land and fisheries. ANB brought test cases to court on these issues, funded by donations from the local community ANB camps. William L. Paul, Sr., a Tlingit attorney practicing in Wrangell and later in Ketchikan, was active in the early actions. Several of the foremost cases originated from the five study communities. As described above, Paul brought a voting rights case out of Wrangell in 1922, and subsequently pursued the right to an equal opportunity for local education in white schools in a case in Ketchikan. He was also instrumental in persuading delegates at the 1929 ANB annual convention in Haines to pursue land claims against the federal government.

Sitka, Juneau, and Douglas were the first communities to form local ANB chapters, called camps. Other communities joined slowly at first, but by the early 1920s nearly every Indian community in Southeast Alaska had local camps of both the men's and women's organizations (Drucker 1958:21; see Drucker for a more extended discussion of the ANB and its formation). All five of the communities in this study were members and attended the historical 1929 convention in Haines, as described above. In his speech encouraging the assembly to take action on land claims, Judge Wickersham named the following communities: Angoon, Douglas, Haines, Hoonah, Hydaburg, Juneau, Kake, Kasaan, Ketchikan, Klukwan, Petersburg, Sitka, Wrangell, and Yakutat.

By the 1950s, nearly all the local camps had their own meeting halls in the communities. Attorneys pursuing the Tlingit-Haida land claims included all five study communities on their mailing list. The complete mailing list of Southeast ANB/ANS communities in the early 1950s, which is the best available information on community membership in the organization, is the following:

Angoon
Craig
Douglas
Haines
Hoonah
Hydaburg
Juneau
Kake
Kasaan
Ketchikan
Klawock
Klukwan
Metlakatla
Petersburg
Saxman
Sitka
Tenakee
Wrangell
Yakutat

IRA Government Organization

Nearly all Southeast Indian communities formed IRA organizations, including IRA village councils and corporations, after the Indian Reorganization Act provisions were extended to Alaska in 1936. Adequate employment and income among local Indian residents was a major concern in this period, and communities were interested in taking advantage of opportunities under the legislation to obtain loans for Native owned and operated businesses. Such loans were not available to them from conventional sources. The BIA encouraged the formation of chartered corporations which were entitled to receive such loans on behalf of the Indian membership. In many communities, the interest in the local government functions of the IRA did not develop until later.

Among the five study communities, Tenakee did not organize under the IRA, but the remaining four did. The following Indian communities formed IRA government and corporation organizations (the date of BIA approval of government constitution and corporate charter is also indicated):

Angoon	(1939)	Ketchikan	(1940)
Craig	(1938)	Klawock	(1938)
Douglas	(1941)	Klukwan	(1941)
Haines	(1941)	Metlakatla	(1944)
Hoonah	(1939)	Petersburg	(1948)
Hydaburg	(1938)	Saxman	(1941)
Kake	(1948)	Sitka	(1938)
Kasaan	(1938)	Wrangell	(1947)

Summary Comparisons

Table 5.1 shows a summary comparison, under the criteria discussed throughout this chapter, of the five study communities and the Southeast communities recognized under ANCSA.

Table 5.1. Summary Comparisons of Study Communities and ANCSA Communities

	Haines	Ketchikan	Wrangell	Juneau	Sitka	Petersburg	Craig	Tenakee	Kasaan
Settled Prior to Arrival of Whites	X	X	X	X	X	X	X	X	X
Occupancy of Area in Early Town	X	X	X	X	X	X	X	X	X
Land Reservation or Exclusion	X	X					X	X	X
Indian Possessions in Townsite	X	X	X		X	X			
BOE Government Indian School	X	X	X	X	X	X	X		X
Church or Mission Serving Natives	X	X	X	X	X	X		X	
Alaska Native Brotherhood/Sisterhood	X	X	X	X	X	X	X	X	X
IRA Government Organization	X	X	X	X	X	X	X		X
Tlingit and Haida Central Council Chapter	X	X	X	X	X	X	X		X
Native Cemeteries, Graves or Totems	X	X	X	X	X	X	X	X	X
Identified in Tlingit and Haida Settlement	X	X	X	X	X	X			
Identified in ANCSA				X	X		X		X

Study communities; not recognized under ANCSA

Tlingit and Haida Central Council Community Council

Communities of Tlingit and Haida Indians participate in the Central Council by forming local community councils and electing delegates to the annual conventions. The opportunity to form a community council and elect delegates is open to any group of Tlingit and Haida Indians living in a community that decides to organize. This membership structure operated informally during the years leading up to the favorable decision in the Tlingit and Haida settlement. Following the amendments to the 1935 jurisdictional act, they were codified in a constitution and rules for election by which the Central Council was formally organized and reconstituted as a representative tribal organization.

The participation of the five study communities in the Tlingit and Haida Central Council since its formal organization in 1941 was described earlier. At that time, the participation of communities was identical to that of the ANB and ANS organizations (see above). During the 1950s, Haines, Tenakee, and Kasaan became inactive as individual communities. Members of those communities participated through other communities. In the early 1960s, after the favorable claims decision and when the Central Council began to take steps to reorganize itself, the list of Tlingit and Haida communities was adjusted slightly. In 1964, for example, Douglas was no longer identified separately, while Kasaan, Metlakatla, Oakland, California and Seattle, Washington were added.

Events concerning the Yendistucky Reservation, and other developments within the community of Haines, led that community to seek approval to form a Tlingit and Haida Community Council in 1971. As of 1971, nineteen communities of Tlingit and Haida Indians belonged to the Central Council. They were the following:

Angoon
Craig
Haines
Hoonah
Hydaburg
Juneau
Kake
Kasaan
Ketchikan
Klawock
Klukwan
Metlakatla
Oakland
Petersburg
Saxman
Seattle
Sitka
Wrangell
Yakutat

References Cited

Alaska Boundary Tribunal

1904a. Proceedings of the Alaska Boundary Tribunal, Vol 1. 58th Congress, 2nd Session, Document No. 162. Washington: Government Printing Office.

1904b. Proceedings of the Alaska Boundary Tribunal, Vol 2. 58th Congress, 2nd Session, Document No. 162. Washington: Government Printing Office.

Alaska Department of Community and Regional Affairs

1984. Petersburg Community Profile. Juneau: State of Alaska.

Andrews, Clarence L.

1937. Wrangell and the Gold of the Cassiar. Seattle: Luke Tinker.

Arndt, Katherine L.

1980. Potential Cultural Resources Relating to the Fishing Industry, Stikine Area, Tongass National Forest. Unpublished Manuscript. U.S. Forest Service.

1988. Russian Relations with the Stikine Tlingit, 1833-1867. Alaska History 3:1:27-43. Anchorage: The Alaska Historical Society.

Arndt, Katherine L., and Russell H. Sackett and James A. Ketz

1987. A Cultural Resource Overview of the Tongass National Forest, Alaska. Juneau: USDA Forest Service.

Balcom, Mary G.

1961. Ketchikan: Alaska's Totemland. Chicago: Adams Press.

Bancroft, Hubert Howe

1959 (1886). History of Alaska, 1730-1885. New York: Antiquarian Press.

Barnhardt, Carol

1985. Historical Status of Elementary Schools in Rural Alaskan Communities 1867-1980. Fairbanks: Center for Cross-Cultural Studies, University of Alaska Fairbanks.

Beardslee, Captain L. A.

1882. Reports of Captain L.A. Beardslee, U.S. Navy, Relative to Affairs in Alaska, and the Operations of the U.S.S. *Jamestown* Under his Command, While in the Waters of that Territory, Part II: Operations in Connection with Indians. 47th Congress, 1st Session, Senate Ex. Doc. No. 71.

Beattie, W. G.

1913. Letter to Charles E. Davidson, Surveyor General, Juneau, Alaska, from District Superintendent of Schools, Bureau of Education, Alaska School Service, Juneau, Alaska. December 8, 1913.

Borbridge, John, Jr.

1969. Newsletter to Executive Committee and Delegates on Alaska Native Land Rights. December 15, 1969.

1970. Letter to I.S. Weissbrodt. November 17, 1970.

1975. Statement of John Borbridge, Jr., President, Sealaska Corporation, before the Committee on Interior and Insular Affairs of the United States Senate on S. 131 and other bills to amend the Alaska Native Claims Settlement Act. May 16, 1975.

Brown, Richard B.

1983. Letter to Scott Keep, Assistant Solicitor, Division of Indian Affairs, Office of the Solicitor, U.S. Department of the Interior, Re: Fred Donnelly ANCSA Enrollment. March 3, 1983.

Bureau of Land Management
1980. Site Certification and Claims Examiner Report: Chilkoot River Village and Burial, BLM #AA-10508. Anchorage: Bureau of Land Management.

Campbell, Chris
1983. Interview with Jack Olofson.

Carruthers, W.J.
1956. Letter to Captain A. Smith, Petersburg, Alaska.

Carver, John A.
1964. Letter to Senator Jackson reporting on and recommending amendments to the Act of June 19, 1935, relating to the Tlingit and Haida Indians of Alaska, from John A. Carver, Assistant Secretary, USDOI. (Same letter sent to Hon. Wayne N. Aspinall, House of Representatives)

Case, David S.
1984. Alaska Natives and American Laws. Fairbanks: University of Alaska Press.

Chipperfield, W.A.
Report on East Tenakee Elimination. May 22, 1935. Approved by Wellman Holbrook, Assistant Regional Forester, June 3, 1935.

Choate, Glenda (Project Manager)
1983. Building History. City of Haines: Survey of Historic Structures. Haines: City of Haines.

Colyer, Vincent
1870. Report ... as relates to the Indian village of Wrangell, Alaska, showing the condition of that village previous to its recent bombardment by United States troops. Senate Committee on Military Affairs, 41st Congress, 2nd Session, Ex. Doc. No. 68, March 22, 1870.

Corser, H.P.
1932. Totem Lore of the Alaska Indian and the Land of the Totem. Wrangell: the Bear Totem Store.

Curry, James E.
letter 12/19/47)
1951. Memorandum for David Cobb, Re: Alaska Claims, from James E. Curry, Law Office (7/13/51). Unpublished manuscript.

Dalton, Jessie
1971. Alaska Native Allotment Application and Evidence of Occupation. Anchorage: Bureau of Land Management.

Dauenhauer, Nora Marks, and Richard Dauenhauer, eds.
1990. Haa Tuwunaagu Yis, for Healing Our Spirit: Tlingit Oratory. Seattle: University of Washington Press.

Davies, Bruce O.
n.d. History of the Chief Johnson Totem Pole. Memorandum of Ellis Law Offices, Inc., Ketchikan.
1982. Litigation Report on Native Possessions in Ketchikan, Alaska. October 18, 1982. Ketchikan: Ketchikan Indian Corporation.

Drucker, Philip
1958. The Native Brotherhoods: Modern Intertribal Organizations on the Northwest Coast. Smithsonian Institution, Bureau of American Ethnology Bulletin 168. Washington, D.C.: U.S. Government Printing Office.

Emmons, Lieutenant G.T.

1905. Condition and Needs of the Natives of Alaska. Report to the President, transmitted to the Senate and House of Representatives, January 19, 1905. 58th Congress, 3rd Session, U.S. Senate Document No. 106.

Emmons, George Thornton

n.d. History of Tlingit Tribes and Clans. Unpublished manuscript.

1991. The Tlingit Indians, edited with additions by Frederica de Laguna. Anthropological Papers of the American Museum of Natural History Number 70. Seattle: University of Washington Press.

ESG

1984. Alaska Native Claims Settlement Act (ANCSA) 1985 Study. Unpublished June 29, 1984, Draft. Washington, D.C.: United States Department of the Interior.

Favorite, J.H.

1941. Report re Native Possessions, Ketchikan Townsite, to Dale B. Whiteside, Director of Investigations, DOI. 6/5/41.

Folsom, H.H.

1916. Letter to the Secretary of the Interior, Washington, D.C. March 3, 1916.

Fortuine, Robert

1989. Chills and Fever. Fairbanks: University of Alaska Press.

General Accounting Office (United States)

1974. The Native Enrollment and Village Eligibility Provisions of the Alaska Native Claims Settlement Act (B-180940). Report to the Subcommittee on Fisheries and Wildlife Conservation and the Environment, Committee on Merchant Marine and Fisheries, House of Representatives, by the Comptroller General of the United States. December 13, 1974. Washington, D.C.: United States General Accounting Office.

Goenett, Paddy

1947. Statement dated at Haines, Alaska, this 17th day of February, 1947. Curry & Weissbrodt Papers, File 5-7.1 Juneau: Sealaska Heritage Foundation.

Goldschmidt, Walter R., and Theodore H. Haas

1946. Possessory Rights of the Natives of Southeast Alaska. A Report to the Commissioner of Indian Affairs. (Mimeographed.) Chicago: Office of Indian Affairs.

Gruening, Ernest

1954. The State of Alaska. New York: Random House.

Gustafson, George E. M.

1972. Letter to William H. Timme from Townsite Trustee, 2/23/72. Anchorage: BLM.

Hakkinen, Elizabeth S.

1979. Haines: The First Century. Haines: Elizabeth S. Hakkinen.

Hammond, Austin

n.d. Deishu Village to Lkoot [Chilkoot]. Unpublished pamphlet.

Hawkins, James E.

1960. Letter to Mr. Robert Cogo, Chairman, Tlingit-Haida Land Committee, Craig, Alaska, from James E. Hawkins, Area Director, Juneau Area Office, BIA, USDOI.

Haycox, Stephen

1986. William Paul, Sr., and the Alaska Voters' Literacy Act of 1925. Alaska History 2:1:17-38.

Hinckley, Ted C.

1961. The Alaska Labors of Sheldon Jackson, 1877-1890. Unpublished Ph.D. Dissertation, Indiana University.

1970. The Canoe Rocks — We Do Not Know What Will Become of Us. *Western Historical Quarterly* I: 265-90 (July 1970). Logan: Utah State University.

1972. The Americanization of Alaska, 1867-1897. Palo Alto: Pacific Books.

1989. Missionaries, Indians and Politics. In Interpreting Alaska's History: An Anthology, ed. by Mary Childers Mangusso and Stephen W. Haycox. Anchorage: Alaska Pacific University Press. (originally published in Journal of Presbyterian History 46: 175-96, September, 1968)

Hirst, Claude M.

1943a. Letter to General Land Office, Department of the Interior, Anchorage, Alaska, from General Superintendent, Alaska Indian Service.

1943b. Letter to Joe Hamilton, Jr., Indian Service Teacher, Haines, Alaska, from General Superintendent, Alaska Indian Service.

Hope, Andrew

1965a. Statement of Andrew Hope, President of the Central Council of Tlingit and Haida Indians before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs of the House of Representatives in support of H.R. 874 relating to the Tlingit and Haida Indians. Unpublished manuscript.

1965b. Statement of Andrew Hope, President of the Central Council of Tlingit and Haida Indians before the Senate Interior Subcommittee on Indian Affairs on S. 893. Unpublished manuscript.

Hope III, Andrew, ed.

1975. Founders of the Alaska Native Brotherhood. Sitka: Andrew Hope III.

1982a. On the Organization of the Central Council: An Interview with Judson Brown. In Raven's Bones, ed. by Andrew Hope III.

1982b. Raven's Bones. Sitka: Sitka Community Association.

Jackson, Dr. Sheldon

1908. Letter to Harlan Updegraf, Chief of the Division, Bureau of Education, Washington, D.C. January 17, 1908.

Jacobs, Leo, Secretary

1948. Statement accompanying pictures. Haines: Alaska Native Brotherhood and Sisterhood Camps No. 5.

Jones, Charlie

1943. Deposition in William Paul v. Pacific American Fisheries.

Kasaan

1977. Annual Progress Report and Two-Year Work Plan: Kasaan, Alaska. Report Prepared by Kasaan Overall Economic Development Planning Committee and Tlingit and Haida Central Council Office of Development Planning.

Kearful, F.J.

1918. Letter to the Secretary of the Interior from the Assistant Attorney General, Washington, D.C. June 26, 1918.

Keithahn, Edward L.

1953. Monuments in Cedar. New York: Bonanza Books.

1981 [1940]. The Authentic History of Shakes Island and Clan. Reprinted from a pamphlet first printed by the Wrangell *Sentinel*. Wrangell: Wrangell Historical Society.

Kito, Lucy
1990. Interview Notes. Unpublished manuscript. Petersburg: Tongass National Forest, Petersburg Ranger District.

Koester, Susan H.
1988. "By the Words of the Mouth Let Thee Be Judged:" The Alaska Native Sisterhood Speaks. *Journal of the West* 27:2:35-44 (April 1988). Manhattan, Kansas: Journal of the West.

Lee, Magnhild
1976. Olden Days in Petersburg. In Petersburg: Heritage of the Sea, ed. by Ruth Sandvik. Seattle: James Spahr.

Lewis, W.J.
1913. Report to the Commissioner, General Land Office, U.S. Department of the Interior, Washington, D.C. April 8, 1913.

Lipps, Oscar H.
1937. The Indian Tribes of Southeast Alaska. A Report on their Location, Village Organization and their Social and Economic Conditions. Chicago: Office of Indian Affairs.

Lopinsky, Frances
1948. Memorandum for Mr. Curry: Haines, November 6, 1948. Sealaska Heritage Foundation: Curry-Weissbrodt Papers File C5-15.2.

Lythgoe, Sylvia
n.d. The First Lady of the First People. Unpublished manuscript.

Mather, Gertrude
n.d. A Brief History of St. Elizabeth's Episcopal Church. MS on file at the Ketchikan City Museum.

McCallum, W. Mark
1993. Sandy Beach Fish Traps. Paper presented at the 20th Annual Meeting of the Alaskan Anthropological Association, Anchorage, Alaska.

McMahan, J. David and Charles E. Holmes
1991. Interim Report: 1990 Archaeological Investigation at Site SKG-018 in Chilkoot Lake State Recreation Site, Haines, Alaska. Office of History and Archaeology Report Number 27. Anchorage: Alaska Department of Natural Resources.

Metcalfe, Peter M.
1985. The Central Council 50 Years: A Historical Profile of the Central Council and the Tlingit and Haida People. Juneau: The Central Council of the Tlingit and Haida Tribes.

Mishler, Craig, and Charles Holmes
1986. A Cultural Resources Investigation of Two Parcels on the Chilkoot River, Haines Borough (Final Report). Alaska Division of Geological & Geophysical Surveys Public Data File Report 85-16. Fairbanks: Alaska Department of Natural Resources.

Muir, John
1915. Travels in Alaska. New York: Houghton Mifflin Company.

Olson, R.L.
1976 (1967). Social Structure and Social Life of the Tlingit in Alaska. University of California Anthropological Records, Volume 26. Millwood: Kraus Reprint.

Parks, George A.

1943. Memorandum for Miss Kolb from District Cadastral Engineer, Juneau, Alaska. May 5, 1943.

1959. Letter to Commissioner of the General Land Office from Townsite Trustee. November 15, 1939.

Paul, William A.

1923a. Letter to Hubert Work, Secretary of the U.S. Department of the Interior, Washington, D.C. September 11, 1923.

1923b. Letter to Hubert Work, Secretary of the U.S. Department of the Interior, Washington, D.C. November 6, 1923.

Paul, William L., Sr.

1946. Letter to Conrad Mather.

Peters, Pearl C.

1965. Letter to Robert E. Allen from Chief, Adjudication Section, Lands Branch. Anchorage: Bureau of Land Management.

Petroff, Ivan

1884. Report on the Population, Industries, and Resources of Alaska. Tenth Census of the United States, Vol. VIII. Washington, D.C.: Bureau of the Census.

Ramsey, J.A.

1926. Letter to H.D. Kyle, Wrangell, Alaska, June 9, 1926, from Division Inspector, General Land Office.

1932. Letter to Commissioner, General Land Office, Washington, D.C., March 23, 1932, from Trustee, Indian Townsites.

1933. Letter to Commissioner, General Land Office, Washington, D.C., May 10, 1933, from Special Agent in Charge, General Land Office.

Rogers, George W.

1960. Alaska in Transition: The Southeast Region. Baltimore; Johns Hopkins University Press.

Ruddy, Susan L., and Irene Sparks Rowan

1976. Letter from Kish Tu, Inc., to John Borbridge, President, Sealaska Corporation. August 17, 1976.

Sackett, Russell

1979. The Chilkat Tlingit: A General Overview. Anthropology and Historic Preservation, Cooperative Park Studies Unit, Occasional Paper No. 23. Fairbanks: University of Alaska.

Scherer, Joanna Cohan

n.d. The Rise and Fall of the Houses of Kadashan: A Photographic Case Study of the Tlingit. Smithsonian Institution: Unpublished manuscript.

Schulte, Priscilla

1991. Chief Kyan Totem Pole Project. Ketchikan: City of Ketchikan Museum Department.

Sealaska Corporation.

1973. Report to Future Stockholders of Sealaska Corporation. January, 1973, S.C. 73-1. Juneau: Sealaska Corporation.

1976. People and Progress. Stockholder Report January-July 1976. Juneau: Sealaska Corporation.

Simpson, George

1978 [1847]. Excerpt from A Narrative of a Journey Round the World During the Years 1841 and 1842. *In* Early Visitors to Southeastern Alaska, ed. by R.N. De Armond. Anchorage: Alaska Northwest Publishing Company.

Smythe, Charles W.

1988. Harvest and Use of Fish and Wildlife Resources by Residents of Petersburg, Alaska. Technical Paper No. 159. Juneau: Alaska Department of Fish and Game, Division of Subsistence.

1989a. Tlingit History of Landless Villages: Ketchikan, Tenakee Springs, Wrangell, Petersburg and Haines. Report Prepared for Southeast Alaska ANCSA Land Acquisition Coalition, Inc. Juneau: SAALAC.

1989b. The Tribal Status of the Auk Tribe. A Report of the Central Council of the Tlingit and Haida Indian Tribes of Alaska. Juneau: Central Council.

Sorensen, Conner, William Johnson and Douglas Reger

1981. Lutak Road Cultural Resource Survey, Haines Vicinity. *In* Archaeological Survey Projects, 1979, ed. by Douglas Gibson. Misc. Publications, History and Archaeology Series No. 28. Anchorage: Alaska Department of Natural Resources.

Sparks, Mildred

1980. Ethnographic Notes: Statements of Mildred Sparks, November 4, 1978. ANCSA 14(h)1 Site Report and Findings, Chilkoot River Village - AA10508. USDOI National Park Service, Anthropology and Historic Preservation Cooperative Parks Study Unit. Fairbanks: University of Alaska.

Stabler, Howard D.

1932. Letter to U.S. Attorney General from U.S. Attorney. Washington, D.C. 6/10/32

Stegner, Al P.

1958. Memorandum to Townsite Trustee from Land Law Examiner, 10/7/58. Anchorage: BLM.

Swanton, John R.

1908. Social Condition, Beliefs, and Linguistic Relationship of the Tlingit Indians. Twenty-Sixth Annual Report of the Bureau of American Ethnology, 1904-1905. Washington: Government Printing Office.

Tallman, Clay

1915. Letter Re Yendistucky Reservation Near Haines, to U.S. Surveyor General, Juneau, Alaska, from Commissioner, General Land Office, Washington, D.C., January 20, 1915.

Tamaree, William

1976 [1940]. "Scutdoo Hero in Native Version of 1869 Battle." Originally published on May 31, 1940. Wrangell: The Wrangell Sentinel.

Tucker, Phil

1984. History and Preservation, Ketchikan Historical Buildings. Ketchikan: Ketchikan Gateway Borough Planning Department.

U.S. Court of Claims

1959. The Tlingit and Haida Indians of Alaska v. The United States. Opinion and Findings of Facts. No. 47900. Decided October 7, 1959.

1968. The Tlingit and Haida Indians of Alaska and Harry Douglas, et al., Intervenors v. The United States. Opinion and Findings of Facts. No. 47900. Decided January 19, 1968.

U.S. House of Representatives

1965. Amending the Acct of June 19, 1935 (49 Stat. 388), as amended, relating to the Tlingit and Haida Indians of Alaska. Report No. 521. 89th Congress, 1st Session.

U.S. Senate

1965. Amending the Acct of June 19, 1935 (49 Stat. 388), as amended, relating to the Tlingit and Haida Indians of Alaska. Report No. 159. 89th Congress, 1st Session.

Vollmann, Tim

1983. Memorandum To Chief, Tribal Government Services, Branch of Tribal Enrollment Services, From Acting Associate Solicitor, Division of Indian Affairs, on the Scope of Secretary's responsibility under subsection 1(c) of the 1976 ANCSA amendments. June 23, 1983. Washington, D.C.: U.S. Department of the Interior, Office of the Solicitor.

Warne, William E.

1948a. Native Land Rights in Alaska. Statement by Assistant Secretary William E. Warne before the Senate Committee on Interior and Insular Affairs. February 24, 1948.

1948b. Letter to Miss Frances Lopinsky, Law Offices of Curry, Cohen & Bingham, from William S. Warne, Assistant Secretary, U.S. Department of the Interior. April 2, 1948.

Warne, W. W.

1965. Letter from his father. Alaska Sportsman, September, 1965. Edmonds: Alaska Northwest Publishing Company.

Waterman, Thomas T.

1922. Tlingit Geographical Names for extreme Southeast Alaska. Unpublished MS. Washington, D.C.: Smithsonian Institution.

Wickersham, James A.

1914. Letter to Franklin H. Lane, Secretary of the Interior, Washington, D.C. December 29, 1914.

1924. Letter to the Attorney General of the United States, Honorable Harlan F. Stone, Washington, D.C. July 23, 1926.

1931. Letter to Commissioner of General Land Office, 5/7/31, from Delegate from Alaska.

Williamson, F.W.

1939. Field Notes of U.S. Survey No. 2459, East Tenakee Elimination from Tongass National Forest, Approved September 26, 1941.

Witten, James W.

1904. Report on the Agricultural Prospects, Natives, Salmon Fisheries, Coal Prospects and Development, and Timber and Lumber Interests of Alaska. 1903. Washington: Government Printing Office.

Worl, Rosita

1984. Our Ancestor's Spirits. Alaska Native News, August 1984: 25-28. Anchorage: Alaska Native News.

Wright, Joe

Letter received at the Governor's Office, March 7, 1933, from Salvation Army Envoy, Haines, Alaska.

Wright, Robin K.

1992. Kadashan's Staff. American Indian Art Magazine, Autumn 1992.

Yzermans, Vincent A.

1979. Saint Rose of Wrangell: The Church's Beginning in Southeast Alaska. St. Paul: North Central Publishing Company.

Zimmerman, William

1933. Letter to J.A. Ramsey, Special Agent, General Land Office from Assistant Commissioner, Office of Indian Affairs.

Chapter 6. Enrollment

BY CHARLES W. SMYTHE

This chapter describes the Alaska Native Claims Settlement Act (ANCSA) enrollment process as it was applied to the five study communities and identifies the cumulative enrollments for the communities during both the original and a subsequent open enrollment period. The study communities were not listed in ANCSA and were not certified as being eligible to form village corporations and receive land entitlements. But Natives from these communities enrolled under terms of ANCSA and became at-large shareholders of Sealaska regional corporation.

The enrollment figures for the five communities provide an estimate of potential enrollment, should they be certified to form village corporations. Based on interviews with individuals involved in the enrollment process, the author found that the enrollment policies and procedures were the same for the five study communities as for the twelve Southeast communities that were recognized. However, respondents reported that the unlisted status of the five communities was a factor in decisions of some shareholders during the enrollment process, and probably resulted in lower overall enrollment figures for the unlisted communities. Also, provisions of the 1976 amendments to ANCSA—which allowed for re-determining the place of enrollment for Natives who originally enrolled to places that were later found to be ineligible—were denied to members of the five study communities under a 1983 opinion issued by the Solicitor of the Department of the Interior. Therefore, the original enrollment certifications of Natives to the five study communities are the only certain basis for projecting potential enrollments, if those communities were authorized to form village corporations.

Overview of Procedures

The Alaska Native Claims Settlement Act (P.L. 93-203), enacted on December 18, 1971, required that persons eligible to receive benefits under the act enroll within two years. On March 27, 1972, the Department of the Interior (DOI) issued regulations governing application for enrollment and preparation of the Alaska Native Roll. Enrollment was opened from April 1, 1972, until March 30, 1973. ANCSA assigned responsibility for preparing the roll to the DOI, which delegated this function to the Bureau of Indian Affairs (BIA). The BIA established an enrollment coordinating office in Anchorage, but due to a hiring freeze and a shortage of funds, the agency decided to contract enrollment to regional Native organizations (ESG 1984; GAO 1974).

In Southeast Alaska, the BIA contracted with the Central Council of the Tlingit and Haida Indians to conduct the enrollment. The central council hired an enrollment coordinator for the region and hired and trained enumerators in all Southeastern communities. The number of enumerators in each community varied according to population. Haines and Petersburg each had one enumerator, for example, while Wrangell had at least two, and Ketchikan had six to eight. Enumerators received training at three-day workshops conducted in Juneau by the BIA enrollment coordinator and the Southeast enrollment coordinator.

The enumerators helped local residents complete enrollment applications, which were in the form of a survey questionnaire. The form requested such information as the applicant's name, address, date and place of birth, names of parents, degree of Native ancestry, permanent residence as of April 1, 1970, and family tree. The BIA enrollment coordinator determined the region and village of enrollment based on the set of residence questions in the application. The BIA allowed applicants to change their applications, including the place of their permanent residence, until May 9, 1973. Decisions about granting changes rested with the Alaska regional solicitor of the Department of the Interior. An appeal process for enrollment decisions was established through the regional solicitor, and it was in force through August 15, 1973 (GAO 1974; ESG 1984:III-7).

Changes in the declared place of permanent residence became an issue in the enrollment process. Because questions of village eligibility or village land entitlements were based on the number of Native residents, DOI allowed changes in the places to which Natives enrolled. In part that provision was to enable applicants to make more informed choices based on final village eligibility determinations, which were not scheduled to be finalized until after the issuance of land selection regulations. ANCSA set June 18, 1974, as the deadline for DOI village eligibility determinations, but not all determinations had been made by that date (ESG 1984:III-14). Controversy over the complications and delays which resulted was one reason enrollment was re-opened in 1976. Native enrollees of the five unlisted Southeast communities were ultimately determined to be ineligible to apply for changes in their places of enrollment.

Amendments to ANCSA enacted on January 2, 1976 reopened enrollment for one year. Concern over the number of Natives (estimated to be 2,000 worldwide) who were effectively excluded from the Native roll because they had not been informed in sufficient time, or did not fully understand the enrollment process, was a principal consideration in this action (ibid.: III-7). The amendments also afforded Natives an opportunity to change their enrollment applications under two special circumstances. One such circumstance of interest here was that DOI was authorized to redetermine the place of residence for those Natives who had enrolled as residents of places which had been accepted as eligible Native villages or groups during enrollment, but which were subsequently determined ineligible "on grounds which include a lack of sufficient number of residents..."

Pursuant to the amendments, more Natives applied for enrollment to the five Southeast communities, and some who had already enrolled requested redetermination of their places of residence. However, the only adjustment DOI made in the rolls of the five communities was to add newly recognized ANCSA beneficiaries. These new enrollments are reported in Table 6.1. Although the language in the amended bill led Sealaska regional corporation and residents of some of the five Southeast communities to believe that their places of enrollment could be changed, a 1983 opinion of a DOI solicitor held that the provision for redetermination of residence did not apply to the five unlisted Southeast communities. As a consequence, the BIA denied requests from enrollees in the five study communities to redetermine their places of enrollment under this provision.

Proposed Enrollment to the Five Southeast Communities

Based on 1985 enrollment data acquired from the BIA, we found that 3,342 Natives enrolled to the five unlisted communities during the initial application period ending March 30, 1973. That constituted 22 percent of the region's total enrollment. Following the addition of new enrollees at the close of the re-opened enrollment period in January of 1977, an additional 80 enrollees were added to the total, comprising a final enrollment of 3,422 Sealaska shareholders for the five communities. A listing of the potential enrollment for the five communities, together with a complete listing of the enrollments from the two periods in the Sealaska region, is provided in Table 6.1.

The data in the table show the number of Alaska Natives enrolled pursuant to both the original act and the 1976 amendments. These are the official numbers of Natives in the Alaska Native Enrollment certified and maintained by the BIA. They provide a useful estimate for proposed enrollment to the five communities. Since they are based on *original* numbers of shareholders, there is direct comparability with other village and community corporations' enrollments and with Sealaska's total enrollment.

Table 6.1. Community Enrollments in the Sealaska Region

Sealaska Corporation—Region 12 By Village/Corporation Name		Public Law 92-203	Public Law 92-204	Totals As Of 12-31-85
020	Angoon — Kootznoowoo, Inc.	628	1	629
108	Craig — Shaan-Seet, Inc.	317	0	317
128	Douglas	19	0	19
186	Haines	319	2	321
198	Hoonah — Huna Totem Corporation	867	9	876
211	Hydaburg — Haida Corporation	552	13	565
212	Hyder	1	0	1
228	Juneau — Goldbelt, Inc.	2,655	67	2,722
229	Kake —Kake Tribal Corporation	551	7	558
238	Kasaan — Kavilco, Inc.	120	0	120
248	Ketchikan	1,801	61	1,862
257	Klawock — Klawock Heenya Corporation	507	1	508
259	Klukwan — Klukwan, Inc.	251	2	253
311	Metlakatla — Annette	17	16	33
377	Pelican	56	2	58
380	Petersburg	423	5	428
393	Port Alexander	5	0	5
427	Saxman — Cape Fox Corporation	196	0	196
442	Sitka — Shee-Atika, Inc.	1,809	54	1,863
443	Skagway	15	0	15
481	Tenakee	62	2	64
532	Wrangell	737	10	747
533	Yakutat —Yak-Tat Kwaan, Inc.	340	2	342
537	Kuiu Island	6	0	6
538	Thorne Bay	3	0	3
539	Auke Bay	10	2	12
551	At Large — Sealaska	3,020	183	3,203
552	M I Point	1	0	1
559	Washington Bay	1	0	1
596	Hidden Inlet	23	0	23
617	Loring	1	0	1
619	Funter Bay	1	0	1
621	Excursion Inlet	10	0	10
639	Dotys Cove	1	0	1
642	Klinkwan	1	0	1
645	Halibut Bay	6	0	6
648	Portland Canal	1	0	1
661	Dyea	3	0	3
800	Knight Island	0	7	7
9**	Region 12 — Totals	15,336	446	15,782

Study communities; not certified under ANCSA

These figures do not show the current distribution of Sealaska shares. Initially, each enrollee received 100 shares of stock of a regional corporation and an additional 100 shares of stock in a village corporation, or—for those enrolled to villages that were not certified to form village corporations—100 shares of stock as at-large shareholders of a regional corporation. However, over the years since the initial distribution, the actual numbers of shareholders have become larger than the initial enrollments, because the original blocks of stock have been divided among more persons through inheritance and other transfers. So the number of shareholders has increased while the average number of shares held by each shareholder has declined. Estimating actual numbers of shareholders, and accounting for individual differences in the numbers of shares held, would introduce a level of complexity beyond the scope of this study.

Using the original enrollment figures as measures of potential enrollment requires assuming that those who enrolled to the five study communities were not influenced by ANCSA's failure to recognize those communities. It also assumes that the enrollment process for the five study communities proceeded in the same way as it did in communities that were ultimately certified.

Because these assumptions about enrollment are so important, we interviewed seven persons who had been involved in the enumeration process in the Southeast region. Six of the persons we interviewed had been community enumerators (in Klukwan, Haines, Ketchikan, Wrangell, and Sitka), and one had been the regional enrollment coordinator. We also held several discussions with individual shareholders about how they made decisions during enrollment.

The enumerators reported that in the five study communities some applicants were aware that their communities were not eligible for certification, and that knowledge influenced where they enrolled. Others were aware of the issue, but chose to ignore it. For yet another group of shareholders, community eligibility was not an issue, largely because they did not know anything about it. Based on the limited number of interviews we conducted, those who were unaware of the community eligibility issue appear to have been the largest group. The enumerators told us that many enrollees did not understand the nature of the settlement and its future results—that corporations would be formed, land selections made, and money distributed. The enumerators we interviewed said they believed that many enrollees did not appreciate the significance of enrolling to an unlisted community until after the enrollment process had been completed.

According to the region's enrollment coordinator, the application process entailed a lot of discussion and explanation about the complexity of the settlement and particularly about corporations, because most applicants were unfamiliar with corporations. "We tried to be as up front as possible, saying you know if you registered to a village corporation they have assets and they have timber. The question would come up, well, if we have the timber why don't we own the land, how come Sealaska owns the subsurface rights? I mean there was a lot of that, and there was a lot of anger over that. And then while we have the biggest, richest region why should we have to share it with those Eskimos up there? And you try to answer that question. There were a lot of things. There were so many things...." Another enumerator put it succinctly, "People had no idea they were going to get a corporation, money, or land."

The regional enrollment coordinator was from Wrangell, and his description of the questions and concerns about enrollment in that community illustrates the potential effects on enrollment to villages not recognized under ANCSA. He said Wrangell residents had questions about the procedure for enrolling through the local community. "Well, there was a lot of hesitation. I mean, they didn't fully understand what the impact would be." He said many people in Wrangell asked him whether they should enroll in Wrangell

or in a recognized village. In reply, he would tell them, "If you have relatives in the village, it is your choice," and then try to explain the advantages and disadvantages of either course of action. The coordinator said that some people chose to enroll back to a village, believing that the recognized villages would receive more money at the start.

Others considered enrolling back to a village, but rejected that option, the regional coordinator remembered. "So a lot of them took their chances with the regional corporation, rather than the village corporation, because they didn't know whether the villages had people that were trained to handle it. And in a lot of cases there weren't, there weren't people there." Some others saw that they would get larger cash distributions from Sealaska as at-large shareholders and took that option, and in so doing took a chance on future distributions which were uncertain.

The coordinator believes that enrollment was lower in Wrangell than it would have been, had it been an eligible community. He reported that some local residents who would have enrolled to Wrangell enrolled to recognized ANCSA villages instead, believing that it would be more advantageous to be shareholders in village corporations. (However, Table 4.2 in Chapter 4 shows that only 10 percent of the enrolled Natives living in Wrangell chose to enroll elsewhere. Twice the percentage of Natives living in Juneau and Sitka chose to enroll elsewhere.) The coordinator also believes that Natives living in other communities, who might have enrolled back to Wrangell, did not. "But that question came up all over, [in] villages and in Ketchikan. There was people in Ketchikan that would have registered back here, if it was a village corporation, but couldn't. But that question was asked quite often, and it was very difficult to explain, the money part of it. Because we didn't know how much money the villages were going to hold back, no one knew that."

In contrast to the coordinator's view, two of the enumerators from Wrangell said that enrollment to Wrangell was not considered different from enrollment to any other community. Village eligibility had not been brought up in their training, and they had not been aware of a list of eligible villages. While one enumerator confirmed that there were always some enrollees who knew about the issue of village eligibility, she also said that people in her circle, the people she was associated with, "did not ever talk about it." She also said they did not care, believing the issue had already been decided for them: "They don't want you to have it, so they don't want you to have it."

Interviews in other communities confirmed that, as in Wrangell, there were people in Haines, Ketchikan, Petersburg, and Tenakee who saw the significance of communities being unlisted, and there were representatives from Haines, Petersburg, and Tenakee who actively encouraged Natives to enroll to those villages. In some cases, this was a deliberate effort to attain a sufficient number of enrollees for the unlisted villages to gain recognition. Others believed that participation through ancestral villages was outmoded, and that it was better to enroll as at-large shareholders.

Those who did not know of or understand the significance of village eligibility at the time are illustrated by a Petersburg enrollee who stated, "It was never explained what a difference it would make, whether I was signed up to Kake or Petersburg." Ketchikan residents were not aware of being unlisted until later, after enrollment closed, according to a local enumerator. "It wasn't brought to our attention that they [Ketchikan] would be at-large, not receive land. Even as an enumerator I didn't know. ... It was quite some time after that they began to have meetings in Ketchikan. That was when my husband and I found out they did not receive land; they were at-large." In Haines, some residents did not ask about Haines' eligibility, because

they did not believe it was in doubt. This was expressed by a relative of an enrollee, who said, "No one really understood: [my husband] just took it for granted Haines was a village—it always was. There was an Indian school, Haines ANB—always."

Enumerators interviewed pointed out that enrollment was a process that not all residents accepted right away. For example, in some communities enumerators "couldn't get people to sit down and fill out the forms. They all wanted to be chief; they wanted someone to ask them to do it." This was a problem in Haines and Wrangell, according to one report. In the words of one enumerator, "A lot of people didn't make it in the first enrollment because they didn't take it seriously, didn't think it would amount to anything."

In the larger communities where Natives were in the minority—including Sitka, Juneau, Haines, Ketchikan, Petersburg, and Wrangell—there was an additional difficulty that grew out of the history of prejudice and discrimination against Natives. Enumerators interviewed reported that some Natives who previously had identified themselves as non-Natives were afraid of coming forward and openly filing their applications. As one enumerator put it, "My phone rang off the hook with non-Natives who wanted to be Native. They were afraid because they always had identified themselves as non-Native. They were members of the Moose and Elk and all. They didn't want to come down to the office, in case they might be seen, or be seen with the application forms. ... In Sitka, some people didn't want to be seen coming into my office to pick up an application form. My office was across from the Pioneer Bar. These people were in social circles that they didn't want to know they were Native. I kept a list of who sent their kids down to pick up the forms. All I required was that they sign it in front of me."

There was a similar report from an enumerator in Juneau: "And I had people come in like 10 o'clock at night. I thought we were going to clean out the Elk's Club at Juneau, you know, they'd come sneaking down there at 10 o'clock at night and register their kids and stuff, you know. There were a lot of things like that ...."

The Natives' long experience of racism and discrimination—as well as of assimilation—was combined with strong and overt opposition to ANCSA among many non-Native interests and businesses in most of these larger communities. This combination of forces influenced the enrollment process in at least four of the five study communities, according to persons we interviewed, and made it different from that in the villages. These experiences contributed to potential applicants' initial reluctance to enroll and to their lack of concern about community eligibility. Some people also wanted to turn away from the village solution and embrace the "modern" vehicle of settlement embodied in the regional corporation. In Petersburg, for example, one respondent reported that an influential leader encouraged local residents to enroll at-large, "We were told not to enroll to our roots in Kake. Amy Hallingstad said this, so I enrolled to Petersburg. Those (Natives) married to Norwegians were like this."

Enumerators were also asked about any potential bias that might have been introduced into the application process because of policies or procedures that may have treated enrollment to the five communities differently from enrollment to recognized communities. Respondents reported there was no evidence of such bias, either in the training of enumerators or in the procedures they followed. The goal of the process was to accomplish the enrollment as fully and completely as possible within the allotted time. One enumerator said, "The door closed after a while; if you dragged your feet, you lost out." Another said, "The push was to get everybody signed up—that's all. The main objective was to get your name and family on this application in time. Congress mandated that this be done in a short time, and that was all there was to it."

The distinction between eligible and ineligible communities did not appear on the application form or on the accompanying instructions. Nor did the materials discuss the significance of community enrollment. The form included the following general explanatory language:

Purpose: To prepare a roll of Alaska Natives who are eligible for cash settlement under the conditions of the Alaska Native Claims Settlement Act.

Use: This application will be used to determine eligibility for cash settlement under the conditions of the Alaska Native Claims Settlement Act.

The BIA's procedure was to enroll Natives to where they resided on April 1, 1970. Applicants were asked to specify a permanent place of residence as of that date, and the form stated that the answer would be used to determine whether the applicant was a resident or non-resident of the state of Alaska. The instructions for this question declared that the answer would affect where the applicant may be enrolled, but said no more about enrollment.

Applicants were also given a copy of regulations that defined "permanent residence" for the purpose of enrollment. A Native did not have to be physically living in his permanent residence on April 1, 1970, as long as he "continued to intend" to make his home at that place:

> "Permanent residence" means the place of domicile on April 1, 1970, which is the location of the permanent place of abode intended by the applicant to be his actual home. It is the center of the Native family life of the applicant to which he has the intent to return when absent from that place. A region or village may be the permanent residence of the applicant on April 1, 1970, even though he was not actually living there on that date, if he continued to intend that place to be his home (25 CFR 43h. 1(k)).

The application also included a series of questions about previous residence and ancestral ties. The form did not make reference to any place or site in these questions; it was left to the applicant to fill in the blanks.

When asked about their training, enumerators reported they were handed the application form and given instructions about how to fill it out. They were expected to follow the form as if it were a survey, asking the questions and helping the applicants to complete it. Several enumerators pointed out that the application had multiple objectives. Among those were establishing that the applicant was of at least one-quarter Native ancestry and a resident of the state of Alaska, and providing sufficient identifying personal information. For example, one enumerator explained, "The purpose of the family tree was to show you were Native." It does not appear that residence questions were singled out for any kind of special treatment during training.

One enumerator described his job in this way: "We asked, where were you from, which village do you wish to be enrolled to, who are your parents, maybe grandparents." Regarding training, he said there was "...no influencing answers: they give us this form and told us how to fill it out." Another enumerator said, "T and H [Tlingit and Haida Central Council] had no policy regarding the five communities. T and H never raised the question or brought it to our attention. We weren't even aware of a list of eligible villages." A third reported that there was "no different treatment given to [those in the five communities], compared to others. In fact, no one was much aware of that issue—it was ignored in training. It didn't make any difference for the five communities. In signing up, all it was was your family history: your tribe, Indian blood, grandmother's name, etc.—like a survey."

Applicants were expected to fill out the forms according to their own choices and preferences, and enumerators were trained to communicate that freedom of choice and to aid the process. On the issue of residence, enumerators reported they were instructed to give applicants the opportunity to express their preference. Some enumerators believed that where an individual lived often determined where he enrolled, but they all said that applicants had a choice—usually between where they resided and where they came from.

Another indication that the five communities were not treated differently in enrollment procedures is that the communities were involved in reviewing and approving the community enrollments, as recognized communities did. People interviewed in Haines and Petersburg recalled that it was up to the village to approve or reject people for enrollment. "In Haines, we had to turn names in to the village." In Petersburg, the local Tlingit and Haida council did the approvals because the IRA council was not active in those years (1974 or 1975). About 11 Petersburg Tlingit and Haida members met to do the enrollment reviews. One who took part said, "Print-outs were sent here, and we spent 8 to 10 hours a day on the names. Sometimes we didn't know names, so we would ask who they were. Later, we found people who weren't on the list were enrolled." In villages and communities authorized to form corporations under the act, such review lists were sent to the local corporation.[1]

Although Sealaska regional corporation had no formal role in the enrollment process, toward the end of the enrollment period it initiated a public information campaign to explain enrollment to potential stockholders. In January 1973, it distributed a report that notified "future shareholders" of the application amendment process, gave a detailed explanation of enrollment procedures, and described the different outcomes from enrolling to the ten recognized villages, to Juneau and Sitka, to "cities such as Petersburg, Wrangell, Haines or Ketchikan," and to communities outside the region or the state. The report focused on enrollment options available to non-resident Natives interested in enrolling to the Southeast region, and included other announcements and information of relevance to the corporation (Sealaska Corporation 1973).

With regard to the five study communities, the Sealaska report clearly stated that for the four "cities" (Petersburg, Wrangell, Haines, and Ketchikan), no village or local corporation would be organized and no village or local land grants were provided for under ANCSA. Persons enrolled to these places "will for practical purposes be enrolled in the Southeast Region at large...the same as a non-resident Native who regards some place outside of Alaska as his real home..." Sealaska also explained that the ten villages and the two communities of Juneau and Sitka would presumably organize corporations, and it described the differences between the village corporations and the "community corporations" the act established for Juneau and Sitka.

Nothing in the report expressed a preference among the alternatives for enrollment in the region. Moreover, the specific description of the four communities (Haines, Ketchikan, Petersburg, and Wrangell) reflected Sealaska's acceptance of the ANCSA eligibility determinations. The principal concern of Sealaska at that time was the possible creation of a thirteenth regional corporation, since Sealaska stood to gain or lose shareholders depending on how Natives living outside the region or the state filed. Sealaska explained

[1] However, this process was not executed consistently in every community; according to one study, not all village corporations reported they were involved in the approval process (GAO 1974). Several enumerators spoken with in the course of this study did not recall the approval process in their own communities.

the advantages and disadvantages of being a stockholder in a thirteenth regional corporation and in Sealaska or one of the other regional corporations. In September 1973, Sealaska announced the appointment of an enrollment consultant to organize Sealaska's efforts to help prepare appeals for potential stockholders who had been rejected by the BIA's enrollment office.

Reopening of the Roll

After the initial enrollment process was completed, several issues arose before a final roll could be prepared. Approximately 1,000 applications were filed between the March 30, 1973, deadline and the final cut-off date of December 18, 1973—indicating that the enrollment period had not been sufficient. The BIA denied these "late" applications. The Department of the Interior (DOI) estimated that as many as 2,000 eligible persons had not filed by the March deadline. In 1975, DOI itself questioned the accuracy of the roll and proposed procedures to remove individuals.

The short time allowed for amending applications and appealing enrollment decisions—and the perceived incomplete information and misapprehensions about amending or appealing—together with the concerns of individuals who had enrolled to villages that were later determined ineligible constituted issues to be addressed before the roll could be finalized (ESG 1984:III-7).

In 1975, ANCSA amendments to rectify some of these problems were proposed. Sealaska was one of the sponsors of the legislation and testified in support of several amendments, including one that authorized enrollment for qualified Natives who had failed to submit applications by the March 30 deadline. In 1975 testimony, Sealaska's President Borbridge stated, "Most of the problems the Natives have experienced in connection with implementation of the act did not result from its provisions but from administrative actions and constructions that sometimes have been patently incompatible with the plain language of the law, not to mention its spirit" (Borbridge 1975). This was a position Sealaska was also to take later, in dealings with DOI over redetermining place of residence for those enrolled to the five study communities.

In an act referred to as the "Omnibus Bill," ANCSA was amended on January 2, 1976 (P.L. 94-204). The amendments addressed several issues, some of which are relevant to this study. They authorized re-opening of the Native roll for one year, to allow enrollment of those who had missed the March 1973 deadline. They allowed redetermination of the place of residence for Natives who had enrolled to villages or groups later found to be ineligible. They gave Natives who resided on the lands of—but were not members of—village corporations that had taken title to their former reserves a choice of enrolling to those corporations or being "at-large" stockholders of regional corporations.

The BIA carried out the second enrollment through its enrollment office, which still operated in Anchorage. It contracted with a private consulting firm, Kish Tu, Inc., to publicize the second enrollment period. Publicity efforts included sending advertisements to 500 newspapers and magazines, radio spots to 226 radio stations, and video tape dubs to approximately 185 television stations. Kish Tu also mailed 6,000 posters, issued monthly news releases, and arranged speaking engagements for Alaska Native leaders (Ruddy and Rowan 1976).

Sealaska notified its shareholders of the renewed opportunity to enroll, informed them about other amendments, and explained that they must apply to the BIA, not to Sealaska, for enrollment (Sealaska Corporation 1976). According to one former Sealaska official, the re-enrollment was successful, but still

did not result in a complete enrollment. "There were people who didn't sign up [originally] because they wanted no part in it—then after seeing the benefits of enrollment, they signed up in the re-enrollment period. Some people didn't even do it then."

The BIA received many more applications than were ultimately certified. Of 12,362 applications, 1,905 were determined eligible. The remaining were determined ineligible (6,036) or were duplicates (4,421). Within the Southeast region, 446 new shareholders were added; 80 (18 percent) of these were from the five study communities.

Redetermination of Place of Residence

The 1976 amendments also included a provision for redetermining residency for shareholders who originally enrolled to places later found to be ineligible in determinations of village or group eligibility. This amendment addressed differences between communities recognized for enrollment purposes and communities subsequently recognized in village eligibility determinations. Since enrollment was approved before village eligibility was determined, some enrolled Natives found themselves enrolled to places that did not meet the criteria for village or group eligibility as determined by the BIA or on appeal by ANCAB.[2]

When the amendments first passed, Sealaska regional corporation informed its shareholders that redetermination of residency would be available to Southeast communities. "The Omnibus Bill also directs the Secretary of Interior to identify the places of residence of Natives whose communities were declared ineligible as a Native village or group. Because of this, some of those enrolled to Haines or Tenakee may have an option to change their residence or enrollment" (Sealaska Corporation 1976:4). After Tenakee and Haines were denied recognition as eligible communities in 1978, a number of enrollees from both places requested that the BIA authorize a change in their community enrollment under the 1976 amendment. In 1979, Sealaska again notified shareholders from these communities about the applicability of the provision and referred them to the BIA's enrollment office, which was responsible for making the decisions in such cases.

The BIA did not act rapidly on this particular amendment. Unlike the provision re-opening enrollment, the provision for re-determining eligibility had no deadline attached. Significant village and group eligibility questions, which were decided in specific proceedings, still remained unresolved for some years after the ANCSA amendments were passed. The eligibility of Haines and Tenakee were among these. Following those eligibility determinations, Sealaska was informed that the BIA had not started to make residence re-determinations, but would begin the process in early 1979. In April 1979, a Haines enrollee wrote to Alaska's Senator Ted Stevens to ask for his help in initiating the process, since the BIA had still not taken any action. Sometime later, the BIA sent the files of all applicants under this provision to the Federal Records Center in Seattle for storage.

The Department of the Interior (DOI) began to act in 1982, when the Assistant Solicitor for Indian Affairs prepared a draft memorandum on the scope of the Secretary of the Interior's responsibility under the provision. DOI adopted an interpretation of the provision's language and intent such that it did

[2] In village eligibility determinations, other evidence such as testimony of witnesses, census and voter registration data were also considered, in addition to enrollment information. Decisions were based on a preponderance of the evidence (Vollmann 1983).

not apply to Haines, Tenakee, and the other study communities. An attorney for Sealaska and an attorney representing a Haines enrollee (Mr. Donnelly) submitted objections to that interpretation. The DOI's final opinion, issued on June 23, 1983, maintained the original interpretation (Vollmann 1983). As a consequence, enrollees to the five study communities were not eligible to have their places of residence redetermined, and the enrollment in these communities remained unchanged.

The Solicitor's opinion turned on the specific conditions under which the subsection of the redetermination amendment is activated. It states:

> In those instances where, on the roll prepared under section 5 of the Settlement Act, there were enrolled as residents of a place on April 1, 1970, a sufficient number of Natives required for a Native village or Native group, as the case may be, and it is subsequently and finally determined that such a place is not eligible for land benefits under the act *on grounds which include a lack of sufficient number of residents*, the Secretary shall, in accordance with the criteria for residence applied in the final determination of eligibility, redetermine the place of residence on April 1, 1970, of each Native enrolled to such a place, ...(Subsection 1(c) of the Act of January 2, 1976, 89 Stat. 1145, 43 U.S.C. 1604; emphasis added).

In the Solicitor's opinion, which referred to the subsection's grammar and punctuation, the provision *mandated* that lack of sufficient numbers of residents be a condition of the final eligibility determination. That is, the provision limited the statute's application to those communities in which an insufficient number of residents was a cause for ineligibility. The Solicitor also cited Congressional intent as indicated by legislative history. That history referred to nine places in Koniag regional corporation's area where 25 Natives had enrolled but which during eligibility proceeding had been found to lack 25 Native residents. The Solicitor also noted that the amendment had been proposed by the president of Koniag regional corporation.

The attorneys for Sealaska and for Mr. Donnelly of Haines argued that the provision could also be read to signify that the lack of sufficient numbers of residents was one among several grounds for ineligibility, and that any one of those grounds would qualify enrollees for a residence redetermination under the amendment. In their view, people enrolled to communities that were disqualified for any reason—for example, because Natives were not in the majority, as was the case in Haines—should also receive the benefits of the amendment. Indeed, they claimed that Congress intentionally chose the broader language and further, indicated by example one type of situation to which this section was directed: "Congress intended that residents in all villages deemed ineligible have redetermination rights so that they may be able to protect their entitled benefits" to land selection. Under this argument, Haines and all similarly situated Southeast villages would fall within the scope of the amendment.

Mr. Donnelly's attorney, Richard B. Brown, also contended that Haines would qualify for redetermination even under DOI's interpretation of the amendment, since Haines' disqualification turned on a lack of sufficient number of residents. Haines had been found to be ineligible because it did not meet the condition that required the majority of the community's population to be Native. Thus, Brown argued, the finding of ineligibility was based on an insufficient number of Natives, and Haines was classified as "modern and urban in character." Brown argued that Haines enrollees qualified for a redetermination of residence because they had been "subjected to a disqualification based on a lack of sufficient number of residents" (Brown 1983:7).

In responding to commenters (the attorneys mentioned above were the only two), the Solicitor's opinion cited in support of its position a letter from DOI that was part of the legislative history of the provision. In the letter, DOI opposed the proposed ANCSA amendment before it was enacted and objected to *any* redetermination of residence. DOI held that the Natives affected by the provision "theoretically designated their residence properly," and it would not be fair to "authorize forum shopping to give these Natives a chance to circumvent the consequences of their original choice," which also would give them a disproportionate share of ANCSA benefits at the expense of those Natives "who enrolled properly in the beginning" (in Vollman 1983).

In listing reasons for opposition, the Solicitor wrote that the provision discriminated in favor of at-large shareholders enrolled to a place found to have an insufficient number of residents who "get a second chance, while those at-large shareholders who enrolled to a location found ineligible as a village on other grounds, do not. This result is inequitable." The letter also states that "section 1(c) is unclear as to whether the section applies only to those Natives enrolled to villages found ineligible because of insufficient number of residents, or to villages also found ineligible on other grounds" (ibid.:8).

Under DOI's implementation of the "redetermination" amendment, the nine Koniag region communities would have been eligible for redetermination. However, seven of these cases, as well as two others, were dealt with legislatively through provisions (subsection 1427 (e) and section 1432) of the 1980 Alaska National Interest Lands and Conservation Act. At the time the Solicitor's opinion was issued in 1983, final determinations of group eligibility had not been made. According to the current BIA administrator in charge of maintaining the roll, the 1983 opinion is still in effect, and no redeterminations have ever been carried out.

Summary

We can summarize several findings about the enrollment process in the study communities, based on source documents and interviews with seven persons who took part in the enrollment process. The policies and procedures for enrollment were uniformly applied to the study communities and to the ANCSA-certified communities in Southeast Alaska. However, perceptions of the persons we interviewed differed on how much enrollment to the study communities was affected by the fact that they were unlisted. A 1976 amendment to ANCSA offered some enrollees the opportunity to change their places of enrollment, but a 1983 opinion of the solicitor of the Department of the Interior held that the amendment did not apply to those enrolled to the five study communities. Attorneys for Sealaska and for a resident of Haines challenged that opinion, but it still stands.

References

References cited in this chapter are included in the References Cited Section at the end of Chapter 5.

Chapter 7. Financial Benefits Generated by Southeast Village Corporations

BY STEVE COLT

Introduction

This chapter reviews the actual financial benefits which shareholders of village and urban ANCSA corporations in Southeast Alaska received, but which at-large shareholders of the Sealaska regional corporation did not receive. Sealaska's at-large shareholders include all those who enrolled to the five study communities, as well as several thousand others, mostly living outside Alaska.

Out of necessity and the need for objectivity, the analysis that follows concentrates on financial benefits, including cash distributions and employment opportunities. At the outset, however, it is critical to recognize that the subsistence, social, cultural, and spiritual values derived from the ownership of one's ancestral lands are very real and quite substantial. Most economists would agree that these values should count in a complete assessment of economic benefits, because we take the term "economic benefit" to mean anything that increases a person's well-being. But most people would also agree that it would be pointless and perhaps insulting to attempt to place dollar figures on these values.

Most observers would also agree that the corporations have provided valuable economic and social benefits through their political power, skills, and ability to nurture leadership qualities among shareholders. It seems to be a political fact that land ownership and economic power increase political effectiveness. But, as with cultural and spiritual values, it is not the goal of this chapter to place dollar values on the political effectiveness of the village and urban corporations.

There are ten village corporations and two urban corporations certified under ANCSA in Southeast Alaska. Table 7.1 presents basic data on their size and landholdings. Southeast Alaska village corporations differ from village corporations throughout the rest of the state in two important ways. First, the Southeast corporations each received only one township (23,040 acres), while most other villages each received between three and six townships, depending on their populations. They received less land because of the earlier Tlingit-Haida cash payment, which ANCSA section 16(c) deemed to be "in lieu of the additional acreage" conveyed to other villages by ANCSA section 11. Second, much of the land selected by the Southeast corporations contained valuable standing timber resources. Very few other villages in Alaska found themselves surrounded by such an economically valuable resource.

Taken together, these two unique features fairly guaranteed that all twelve Southeast village corporations would become heavily involved in timber harvesting. As we discuss below, this involvement produced great economic benefits for many Southeast urban and village corporation shareholders. However, at-large shareholders did not share in these benefits, because they owned only a relatively small amount of timber per person, through Sealaska.

Table 7.1: Southeast Alaska Village and Urban Corporations

Corporation	Village or City	Number of share-holders	ANCSA Land Entitlement	Actual Land Conveyances (a) Before 1979	1979-1981	1980-1991	Total thru 1991
Cape Fox Corporation	Saxman	230	23,040	3,763	14,019	3,793	21,575
Haida Corporation (b)	Hydaburg	563	23,040		20,810	(5,204)	15,606
Huna Totem Corporation	Hoonah	876	23,040		21,326	1,269	22,594
Kake Tribal Corporation	Kake	551	23,040		21,711	794	22,505
Kavilco, Inc.	Kasaan	119	23,040		23,053	14	23,067
Klawock-Heenya Corporation	Klawock	508	23,040		19,792	2,539	22,331
Klukwan, Inc.	Klukwan	253	23,040	892	21,349	1,489	23,730
Kootznoowoo, Inc. (c)	Angoon	628	34,000		7,710	18,120	25,830
Shaan-Seet, Inc.	Craig	317	23,040		20,857	1,710	22,567
Yak-Tat-Kwaan, Inc.	Yakutat	392	23,040	1	20,103	2,901	23,005
Subtotal 10 Village Corporations		4,437	241,360	4,656	190,729	27,424	222,810
Shee-Atika, Inc. (d)	Sitka	1,853	26,070		26,263		26,356
Goldbelt, Inc. (d)	Juneau	2,722	31,316		30,736		30,881
Subtotal 2 Urban Corporations		4,575	57,386	0	56,999	0	57,237
Total Village and Urban Corporations (excludes Sealaska)		9,012	298,746	4,656	247,728	27,424	280,047
Percentage of Land Entitlement Conveyed				2%	83%	9%	94%

(a) Table shows conveyances of surface estate only.
(b) The Haida Exchange Act of 1986 resulted in a reduction in entitlement of about 5,000 acres.
(c) Section 506(a)(3-6), ANILCA granted additional acres to Kootznoowoo, some with restrictive covenants
(d) Shee Atika and Goldbelt were entitled to 23,040 acres through ANCSA; subsequent negotiations and land trades resulted in additional entitlements in exchange for giving up claims to Admiralty Island lands.
Source: U.S. Department of Agriculture, Forest Service, Region 10, Native Land Selections
Statistics as of July 19, 1991; Village Corporation Reports; Hoffman (1987)
File: VREPORTS.WK3

Some Economic Benefits Were and Are the Same for All Shareholders—Village, Urban, and At-Large

ANCSA required all eligible Alaska Natives to enroll in a regional corporation. In addition, every ANCSA enrollee is also a village corporation shareholder within that region *or* an urban corporation shareholder *or* an "at-large" shareholder—a shareholder (like all of those enrolled to the five study communities) who has no village or urban corporation.

There are two categories of financial benefits from ANCSA which village and urban shareholders and at-large shareholders received in equal amounts but in different ways. Payments from the Alaska Native Fund were disbursed on what was essentially an "equal payments per capita" basis. First of all, every ANCSA shareholder received about $1,000 in cash from the fund. These payments totalled about 8 percent of the total cash settlement. Next, regional corporations received about 46 percent of the total cash, allocated according to the number of shareholders enrolled to each region. On average, each regional corporation received about $6,000 per shareholder as start-up capital. The remaining 46 percent of the cash was distributed at the rate of about $6,000 per ANCSA enrollee among the village corporations and the urban and at-large shareholders.

The same general distribution scheme was mandated by ANCSA section 7(i) for the sharing of net natural resource revenues earned by regional corporations. Section 7(i) requires that 70 percent of all such resource revenues (from subsurface resources and timber) be put into a pool which is shared equally among all ANCSA shareholders. As with Alaska Native Fund payments, half of the pool is distributed to all twelve in-state regional corporations (including the corporation generating the revenues). The other half of the pool is distributed to village *corporations* and directly to urban and at-large *shareholders*. The payments are distributed as equal amounts per person.

The village corporations typically treat their 7(i) receipts as part of their general revenue stream, so the immediate disposition of these payments depends on how the corporations choose to distribute or invest the funds for their shareholders' benefit. It is likely that some corporations invested their ANCSA cash and 7(i) payments to earn higher returns than those received by at-large shareholders who got their cash directly. Some corporations may have squandered these payments on bad investments. We don't know because we can't trace individual dollars once they become general corporation revenues. In any event, we show below that both of these cash payment streams have proven to be of minor importance when compared with the financial benefits produced from timber harvesting on corporate lands.

In summary, then, *every* ANCSA shareholder had and still has an equal claim to both initial ANCSA cash payments and section 7(i) resource revenue payments. Regional corporations collect half of these payments. The other half is collected either by a village corporation *or* by the individual urban or at-large shareholder. Because of the way these Alaska Native Fund payments and section 7(i) resource revenue payments are equally distributed among all shareholders, regardless of status, we do not consider these payments further.

Land Selections of Southeast Village and Urban Corporations

Section 16(b) of ANCSA required village corporations to select lands that included the villages themselves. However, the land selection process in Southeast Alaska has been particularly complex and arduous and has resulted in five village selections a considerable distance from the villages. As Knapp (1991) notes:

> This is due in part to restrictions within ANCSA on where selections could take place and in part to later provision of alternative selection areas off of Admiralty Island to resolve disputes. In addition, several land trades have taken place between the Forest Service and Native village corporations after the original conveyances. (p. III-1)

The written record is poor on what criteria villages used in selecting lands. The limited evidence—and the final outcome—suggests that many lands were selected primarily for their timber values. Such a strategy would be economically rational, particularly if it was not possible to select lands surrounding the village. In these cases, there would be no conflict between local subsistence and aesthetic values and timber harvest goals.

The urban corporations, for their part, certainly could not select land containing the cities of Juneau and Sitka. They were required by the implementing regulations of ANCSA to propose four townships within 50 miles of their cities. Goldbelt, the Juneau corporation, was explicit about the economic basis for its selections:

> The basis for evaluation [of proposed withdrawals] were long-run net-dollar returns from the land with consideration given to the special needs and values of Native shareholders. (Goldbelt 1975 Annual Report).

Using these criteria, Goldbelt selected lands on western Admiralty Island. These selections, as well as Admiralty selections by Shee Atika (Sitka's urban corporation) and Kootznoowoo (Angoon's village corporation), caused a major dispute with environmental groups. The dispute was resolved through negotiated land trades, additional legislation in the 1980 Alaska National Interest Lands Conservation Act (ANILCA), and—in Shee Atika's case—through a protracted court battle. The end result was that land conveyances were delayed until 1981 and, for Shee Atika, logging was further delayed until 1986.

These outcomes are not atypical of the overall land selection process. As Table 7.1 shows, only two percent of Southeast's village and urban land entitlements were conveyed prior to 1979. With the exception of Kootznoowoo, the corporations received most of their land between 1979 and 1981. By 1991, about 94 percent of the total entitlement for Southeast corporations had been conveyed.

The Amount of Timberland Per Shareholder Varied Widely

Overall, the many constraints on the land selection process resulted in substantial disparities in the value of timberlands conveyed to the corporations. An additional—and perhaps more important—source of the difference between the amount of economic benefits received *per shareholder* by at-large, urban, and village shareholders is the simple fact that several fixed pools of the key economic resource—timber—were divided among widely varying numbers of people. Thus, although Goldbelt (an urban corporation) gained title to slightly more timberland than Klukwan (due to a land trade), Goldbelt had more than ten times the number of shareholders among which to divide the benefits of any timber harvest.

Of even greater significance is the difference between the amount of timberland "owned" by the average at-large Sealaska shareholder, and the average village or urban corporation shareholder. The data in Table 7.1 and in Knapp (1991, p. II-5) can be used to show that the average Sealaska shareholder "owns" about 17 acres of timberland conveyed to Sealaska. However, section 7(i) resource sharing obligations reduce the effective amount owned to only 8 acres per Sealaska shareholder.[1] This is all the timberland that is available to generate timber revenue for an at-large shareholder. However, the average urban corporation shareholder "owns" an additional 13 acres of land, for a total of 21 acres. The average village corporation shareholder "owns" an additional 54 acres of land, for a total of 62 acres. And a shareholder of Kavilco Corporation—Kasaan's village corporation, which has the smallest number of shareholders—owns an additional 194 acres, for a total of 202 acres per shareholder.

Finally, in considering these differences, it is important to remember that while ANCSA section 7(i) was designed to share the economic benefits of unequally distributed resources by requiring that *regional* corporations share 70 percent of their net revenues from natural resource development, the act required no such redistribution of village corporation timber revenues.

Direct Financial Benefits from Village Corporations

With this background established, we now consider the direct financial benefits which urban and village corporation shareholders received but at-large shareholders did not receive. Of course, financial benefits are only one type of benefit received by shareholders of the land-owning corporations. Nevertheless, they seem to be important to many shareholders, judging from the repeated calls made on corporate management for faster and greater cash distributions. In addition, the financial results are one of the few outcomes which can be measured objectively.

The financial data available for this study are limited to a fairly complete set of annual reports from five village corporations and both of the urban corporations.[2] Since it is not our goal to compare and contrast the financial performance of individual village corporations, we present the village data in composite form, as a weighted average of the five sets of village data. The result gives a sense of what the "average shareholder" of these five corporations received.

Legitimate concerns have been raised by reviewers regarding the extent to which the "sample" of five village corporations adequately represents the total population of ten village corporations. (This is not an issue for the two urban corporations, both of which provided data). The five villages for which we present data are a "non-random" sample because four of the five have more than 500 shareholders, while only five of the ten villages in the population have more than 500 shareholders. As a result, the average number of shareholders used to compute per capita figures for the sample is 563, while the average number of

[1] Section 7(i) receipts data compiled in Colt (1991) suggest that for every dollar of net resource revenue generated by Sealaska, 45 cents is ultimately retained within the Sealaska region by Sealaska, the village corporations, and the urban and at-large shareholders. 45 percent of 17 equals 8.

[2] We asked all twelve corporations for their annual reports, but the majority declined to provide them. We thus relied mainly on the publicly available data at the State of Alaska division of securities. These data cover only the corporations with more than 500 shareholders. Smaller corporations are not required to file the data.

shareholders for the population is only 444. This size bias means that, if the average corporate income generated by the five sample corporations is equal to the average for all ten, then the per capita figures reported below are an understatement of the average per capita figures for the entire population.

Since village corporations received essentially equal amounts of timberland, it seems reasonable to assume that large size is not correlated with higher cash profits. This assumption is supported by the fact that two of the smallest corporations (Kavilco and Klukwan) are widely recognized to be among the most profitable of all ten village corporations, while the two "large" urban corporations distributed substantially less cash than the five village corporations in our sample. Therefore, we can be fairly confident that per capita results presented here for five village corporations are a slight understatement of the population averages.

Finally, while the sample only covers five of ten village *corporations*, it covers almost two-thirds (64 percent) of the village *shareholders*. With 100 percent of the 4,575 urban shareholders covered, the data presented in this chapter reflects the actual benefits received by 82 percent of the affected village and urban shareholder population.

Table 7.2 presents a summary of the financial benefits received by the shareholders of the five corporations in our sample. The table focuses on three things: appraised timber value, cash distributions, and reported book equity in 1992. We report the data as totals and as amounts per shareholder. In addition to the weighted average values, we show the maximum and minimum values for each data item for each year. These minimum and maximum numbers are a mixture of data from various corporations, and *do not* represent the complete set of values from two particular corporations.

Appraised Value of Timberland

The table shows that these five village corporations received timberlands with a final appraised value that ranged from about $100 million to $300 million. These values translate into an appraised resource wealth which averaged over $330,000 per shareholder. These appraised value numbers do not, of course, equate to money in the bank for village corporations or their shareholders. There are two reasons for this. First, these final appraised values represent the result of several re-appraisals undertaken to establish the basis for computing taxable net operating losses (NOLs). The corporations had a strong incentive to maximize the value of these appraisals. Second, the appraised value was computed as of the time of conveyance, when timber prices were high (Knapp 1992, p. 23). In spite of these limitations, the data provide general support for the conclusion that the timber endowments of the village corporations were quite substantial when compared to any other available measure of ANCSA-related wealth.

Cash Distributions to Shareholders

Table 7.2 next presents the average, maximum, and minimum annual cash distributions to village shareholders. The maximum and minimum values are expressed only as dollars per shareholder. The table shows that there were minimal distributions before 1980. Average distributions increased steadily through the early 1980s, as the village corporations made money selling timber. There was a dramatic acceleration in 1987, when the first proceeds from the sales of net operating losses (NOLs) were received. The average distribution peaked at $10,040 per shareholder in 1989, at the height of the NOL sales wave. Since then, high distributions have been largely funded from the interest generated from invested NOL sales proceeds.

Table 7.2: Direct Financial Benefits from Five Southeast Village Corporations

	Average of 5 Village Corporations		Range of Values (1) Maximum	Minimum
Original Shareholders	563		876	253
Land Entitlement (acres)	25,232		34,000	23,040
	Total ($000)	Dollars per Shareholder	Maximum Total Value	Minimum Total Value
Final estimate of value of timber at time of conveyance	186,107	330,446	309,569	107,730
Shareholder Distributions Fiscal Year	Total ($000)	Dollars per Shareholder	Maximum $ per Shareholder	Minimum $ per Shareholder
1977	0	0	0	0
1978	0	0	0	0
1979	71	126	700	0
1980	338	601	2,000	0
1981	1,453	2,580	9,100	175
1982	26	46	255	0
1983	234	416	1,058	0
1984	501	889	5,100	0
1984A (2)	536	952	10,600	0
1985	840	1,492	9,500	0
1986	781	1,387	10,000	0
1987	3,492	6,200	20,000	300
1988	5,081	9,021	19,010	1,200
1989	5,655	10,040	30,000	1,000
1990	5,015	8,904	36,000	1,200
1991	3,643	6,469	28,000	1,003
1992 (3)	4,713	8,368	34,364	0
Total Distributions (4):	32,379	57,491	195,964	7,446
Reported Book Equity, 1992 (includes some ANCSA land assets)	65,936	117,073	423,813	41,866

Notes:

(1) The range of values is calculated separately for each item or year. Therefore, each column is a mixture of values from different corporations, and the maximum value for Total Distributions is not equal to the sum of each year's maximum values, etc.

(2) Several corporations adjusted the start of their fiscal year during the 1980s. As a result, there are in some cases more data points than calendar years.

(3) Distribution Data for 1992 are incomplete. Average is computed from only 3 corporations.

(4) The maximum and minimum values for total distributions are reported here. These are not the same as the sum of the maximums or minimums for partricula years. Therefore, the maximum and minimum totals do not equal the sum of the values in those columns.

The amount of cash distributed to village corporation shareholders largely speaks for itself. While not enough to render the shareholders millionaires, the distributions are very large compared to any other financial benefits received by shareholders of other ANCSA corporations around Alaska. For example, Cook Inlet Region, Inc. (CIRI) is the wealthiest regional corporation in the state, with substantial endowments of oil and gas resources. Through 1990, CIRI had paid cumulative total dividends of about $10,000 per shareholder (Colt, 1991) or only one sixth the average payments shown in Table 7.2.

Reported Book Equity at 1992

The final measure of financial benefit shown in Table 7.2 is the reported shareholder equity on the corporation's books as of 1992. Shareholder equity represents the portion of the corporation's assets which are owned "free and clear" by the shareholders. It is perhaps the best available objective indication of how much wealth the corporation currently holds on the shareholders' behalf. The use of book equity to describe the status of an ANCSA corporation is problematic for several reasons, all of which stem from the fact that the shares have never been available for selling or buying in the open market. But the practical effect of these problems is small for the Southeast village corporations. This is because the vast majority of the village corporations' assets are now in the form of financial securities—stocks and bonds—which do have market values.

Table 7.2 shows that the average book equity per shareholder was $117,000 for our sample of five village corporations. This can be compared to the highest level of regional corporation book equity in 1990—CIRI's $54,000 per shareholder. To make a truly fair comparison, however, one must remember that these equity numbers include the effect of the initial $6,000 per shareholder used as start-up monies by the corporations. If an at-large shareholder had invested the $6,000 which he or she received directly from the Alaska Native Fund in the stock market, that shareholder might have had a personal "equity" of perhaps $10,000 available by 1992.

Finally, it must be remembered that shareholder equity is not in and of itself a direct financial benefit to shareholders unless they can sell their stock at will. Such sales are currently prohibited. The level of equity can only be used to give a rough indication of the potential future earning power of the corporation. If the equity can be used to earn a "normal" three to five percent return over and above inflation, then the average equity level of $117,000 could support annual inflation-proofed distributions of between $3,500 and $5,800 per shareholder. The minimum equity amount, about $42,000, could support distributions of between $1,200 and $2,000 per shareholder.

Direct Financial Benefits from Urban Corporations

Table 7.3 presents the same financial data just discussed for the two urban corporations, Goldbelt and Shee Atika. All of the caveats mentioned above about interpreting the data also apply to these numbers.

There are three main messages from the data in Table 7.3. First, the total appraised timber values are well within the range of the village corporation values, but because of the large number of shareholders, they translate into lower levels of appraised timber wealth per shareholder—only about one quarter of the average village corporation level. Second, the total per capita distributions from the urban corporations has been far less than the total from the five village corporations reported in Table 7.2. The average total per capita distribution of $10,933 from the urban corporations is only about one quarter of the minimum

Table 7.3: Direct Financial Benefits from Two Southeast Urban Corporations

		Average of Two Urban Corporations		Goldbelt		Shee Atika	
Original Shareholders		2,288		2,722		1,853	
Land Entitlement (acres)		28,693		31,316		26,070	
Final estimate of value of timber at time of conveyance		Total ($000) 203,275	Dollars per Shareholder 88,864	Total ($000) 229,041	Dollars per Shareholder 84,144	Total ($000) 177,510	Dollars per Shareholder 95,796
Distributions to Shareholders	Fiscal Year	Total ($000)	Dollars per Shareholder	Total ($000)	Dollars per Shareholder	Total ($000)	Dollars per Shareholder
	1977	0	0	0	0	0	0
	1978	0	0	0	0	0	0
	1979	0	0	0	0	0	0
	1980	0	0	0	0	0	0
	1981	0	0	0	0	0	0
	1982	0	0	0	0	0	0
	1983	0	0	0	0	0	0
	1984	0	0	0	0	0	0
	1985	0	0	0	0	0	0
	1986	0	0	0	0	0	0
	1987	3,554	1,554	3,403	1,250	3,706	2,000
	1988	409	179	817	300	2	1
	1989	780	341	817	300	742	401
	1990	728	318	953	350	503	271
	1991	1,243	543	953	350	1,533	827
	1992	4,219	1,845	953	350	7,486	4,040
Total Distributions:		10,933	4,780	7,894	2,900	13,972	7,540
Reported Book Equity, 1992 (includes some ANCSA land assets)		72,820	31,834	96,921	35,607	48,719	26,292

Source: Corporation Annual Reports

amount in the village corporation sample. This is partly because land conveyances and logging were delayed for many years.

The third message is that because of their large numbers of shareholders, the urban corporations will not be able to maintain more than modest levels of future distributions, at least compared to the village corporations. This fact was recognized by Goldbelt's president as early as 1988:

> The past years have brought significant funds to Goldbelt, but they are not enough to make more than a small, one-time difference in the way of life for our shareholders... Goldbelt now has a solid economic basis to provide modest (as to real needs of our shareholders) cash dividends and to focus some of its energy on the legitimate concerns of our shareholders in such areas as education (Goldbelt 1988, p. 3).

In summary, the urban corporations have generated direct financial benefits on par with the most successful regional corporation and far in excess of those received by at-large shareholders of Sealaska. However, because of land conveyance delays, other business problems, and—most important—their larger number of shareholders, these two corporations have produced far less direct financial wealth than the village corporations, on a per-shareholder basis.

Sources and Uses of Financial Wealth

The data shown in Tables 7.2 and 7.3 conceal a rich and diverse history of the business operations and political struggles of the village and urban corporations. A detailed examination of that history is well beyond the scope of this study. However, it is important to be aware of the general features of this operating history.

Early Timber Harvests

In a nutshell, the village and urban corporations were largely dormant as large-scale business operators until they received conveyance of their timberlands. This occurred between 1979 and 1981 for most corporations. Timber prices at that time were at a historical high, but proceeded to slide rapidly during the next five years. Knapp reports:

> Prices for Alaska export logs were at historically high levels in 1980 when large-scale timber harvests were beginning on Native lands. By 1983, with world timber markets in a deep depression, export log prices had fallen sharply. In 1987 and 1988, export log prices rebounded, and by 1989 markets were at or above 1980 levels.
>
> Cape Fox Corporation (1983) reports that average timber prices received by the corporation declined from $750/MBF in 1980 to $375/MBF in 1982. With rising log production costs, the return to the corporation from trees sold dropped 45 percent in only a two-year span (Knapp, 1992, p. 23).

As indicated in the quotation above, the declines in the export price of timber are magnified when translated into the "netback" value of the timber itself. This occurs for two reasons. The first is that logging costs, which must be recovered out of export prices, do not drop when the export price drops. The full brunt of the export price decline is felt in the "residual" or "netback" price of the standing timber. The second reason is that when the export price drops, the quantity of timber which is economic to harvest at all drops—more trees must be left standing because they cost more to cut than they are worth.

For both these reasons, the value of standing timber and hence the return to logging operations declined sharply after 1980. Unfortunately, however, many corporations were trapped by heavy debt loads and forced to actually accelerate their harvests to meet these debt payments (Knapp, 1992, p. 32). As a result, several corporations made very little money from actually selling timber and logging during the 1980-1986 period, even when their ANCSA timber conveyances were treated as a free input to the business.

NOL Sales

In 1986, a provision of the Tax Reform Act made Alaska Native corporations the only legal sellers of accumulated tax net operating losses (NOLs). The legislation dramatically increased the corporations' bargaining power, and the village and urban corporations had significant accumulated losses to sell. The tax laws allowed them to compute losses as the difference between the value of a given log at the time of conveyance, and the value of that log when cut, sold, or written off as having no value. All seven of the corporations in our sample undertook at least one and in some cases several reappraisals of the value of their timber at the date of conveyance. These resulted in dramatic increases in the appraised value of timber for tax purposes.

Between 1986 and 1988, when Congress prohibited further sales, the seven corporations in our sample of Southeast village and urban corporations earned over $430 million by selling NOLs to other U.S. corporations. To do this, they claimed losses of about $1.2 billion. While some of these losses stemmed from timber which had already been cut or sold during the period 1981 through 1985, a significant number were generated in a flurry of last-minute transactions generated by the strong incentives of the tax law and the soundly-based fear that these opportunities might soon disappear.

As of 1992, much of the cash generated by NOL sales remained locked up in escrow accounts pending IRS audits of the transactions. The record to date suggests that, at least among other regional corporations, most of the NOL revenues for which examinations are complete have eventually been released. However, in the current proceedings related to timber transactions, the IRS has taken an aggressive posture, and it is clearly impossible to predict the outcomes. In the meantime, investment income from these funds generally belongs to the corporation.

Overall Financial Effect of Logging and NOL Sales

By 1991, almost all the village and urban corporation timber had been cut.[3] The overall financial effects of this decade of timber harvest and NOL sales are summarized in Tables 7.4 and 7.5. These tables provide a concise financial history of the five Southeast village corporations and two urban corporations in our sample for the period from inception through 1992. To focus on actual cash returns, the tables exclude the values assigned to ANCSA timber conveyances and the associated depletion expenses.

[3] The residual economic values of harvested lands could vary widely. Knapp (1991, p. IV-22) notes that such values could range from as high as several thousand dollars per acre to as low as $100 per acre depending primarily on access, property characteristics, and potential timber productivity. However, Knapp also notes that there is currently no stated interest by any village corporation in selling any of its harvested lands (p. I-2).

Table 7.4: Condensed Balance Sheet for 5 Southeast Village Corporations
(Average Values, Excluding Timber Valuations and Depletion Expenses)

Cumulative Flows of Wealth from 1973–1992	Average Total Amount ($ 000)	Average Dollars per Shareholder
Initial Cash from Alaska Native Fund	3,400	6,038
plus: Cumulative Cash Net Income Excluding NOL Sales	30,149	53,531
plus: Cumulative NOL Sales Income and interest thereon	54,496	96,761
equals: **Total Sources of Wealth**	88,045	156,329
less: Cumulative Distributions to Shareholders (1)	30,494	54,144
equals: 1992 Shareholder Equity (excluding valuations of ANCSA lands)	57,551	102,185
Total Uses of Wealth	88,045	156,329

Notes:

(1) Cumulative distributions differ slightly from those shown in Table 2, due to a different averaging process required for this balance sheet format.

Table 7.5: Condensed Balance Sheet for 2 Southeast Urban Corporations
(Average Values, Excluding Timber Valuations and Depletion Expenses)

Cumulative Flows of Wealth from 1973–1992	Average Total Amount ($ 000)	Average Dollars per Shareholder
Initial Cash from Alaska Native Fund	250	109
plus: Cumulative Cash Net Income Excluding NOL Sales	(6,937)	(3,032)
plus: Cumulative NOL Sales Income and interest thereon	79,019	34,544
equals: **Total Sources of Wealth**	72,332	31,620
less: Cumulative Distributions to Shareholders	10,933	4,780
equals: 1992 Shareholder Equity (excluding valuations of ANCSA lands)	61,399	26,841
Total Uses of Wealth	72,332	31,620

Sources for Tables 4 and 5: Calculated from Corporation Annual Reports

Table 7.4 shows the village corporation summary. It can be thought of as the condensed balance sheet for a "composite" village corporation created by averaging the results for the five corporations in our sample. On average, these corporations received initial start-up cash of $3.4 million. They earned an average of about $30 million in net income from all business operations, but the vast majority came from timber operations. (In fact, many of the non-timber ventures lost money, so this total may understate timber income). The village corporations earned an average of $54 million in NOL sales and the subsequent interest income from these invested funds.

From this total of $88 million in accumulated wealth, about $30 million was distributed to shareholders. The remaining $57 million is held by the corporations in the form of assets other than lands. Much of these assets are in the form of various restricted funds intended to provide long-term distributions to shareholders. At least one village corporation has even approved a highly restrictive settlement trust fund, as allowed by the 1987 amendments to ANCSA.

Table 7.5 shows broadly similar results for the two urban corporations. They received only a token $250,000 cash infusion for start-up costs. Excluding NOL sales, they had an average net loss of $7 million. This average reflects a small overall profit by Goldbelt and a large loss by Shee Atika, partly due to litigation costs and hotel construction costs. NOL sales proceeds averaged almost $89 million—cancelling the loss from other activities and bringing accumulated wealth up to $72 million. Total shareholder distributions averaging $11 million leave the urban corporations with an average $61 million in equity held as assets other than lands.

Other Economic Benefits of Village and Urban Corporations

Employment

Providing jobs to shareholders is clearly one of the most significant economic benefits from village and urban corporations. Only scattered data are available on employment, and it is not possible to calculate a defensible estimate of total employment by corporations over the past decade. Nonetheless, the available studies and anecdotal evidence clearly shows that the village and urban corporations have been a very important and effective source of jobs for shareholders. This evidence includes the following:

- A comprehensive study prepared for Sealaska estimated that the direct employment of all the village and regional corporations in 1985 was 633 persons. This total includes 450 people employed in the timber industry using Native lands (McDowell Group, 1986). Unfortunately, this study does not separate village corporations from Sealaska, does not break out shareholders, and is only available for a single year.
- One village corporation reported that during actual timber harvesting between 1982 and 1987, "up to 40 shareholders were employed by the logging contractor, up to 6 were employed in the [corporate] office..., and a full longshoring crew...were employed" (Personal communication, corporation name withheld by request, July 1993).

- Klukwan, one of the more financially successful village corporations during the 1980s, reported in 1983 that 29 shareholders were employed. By 1986 they reported "currently over 20 percent of the original [253] shareholders are employed by Klukwan, Inc., and subsidiaries" (Klukwan, Inc., 1986 and 1983 *Annual Reports*).
- Kake Tribal Corporation reported 1988 shareholder employment in their logging operations of more than 40 shareholders (KTC 1988 Annual Report). Kake Tribal recently re-opened its cold-storage fish facility, generating more than 45 jobs (*Tundra Times,* June 30, 1993, p. 8).

In evaluating this scattered evidence, it should be remembered that the data for both the years 1983 and 1985 reflect poor years for the timber industry, and thus are likely to understate the employment generated during the later part of the decade.

Scholarships and Charitable Giving

All the corporations in our sample of seven have established some form of scholarship program or charitable heritage foundation. These foundations have made substantial contributions to shareholders' educational needs. As one example, the Shee Atika foundation had by 1992 made over 395 grants totaling more than $234,000 (Shee Atika 1992 *Annual Report*).

Other Benefits

The village and regional corporations have provided other economic benefits which are undoubtedly important to individual shareholders. These include, for example, the provision of a group life insurance plan by Kake Tribal Corporation and a $1,500 death benefit for Shaan-Seet shareholders. Similar programs were under study by the Kootznoowoo board in 1987. But at least one corporation prefers to maintain a more narrow focus on profits, leaving the responsibility for social programs to the Bureau of Indian Affairs and other sources of public funding (Hoffman, 1987 p.15).

Possible Extrapolation of Results

It is clear that the Southeast Alaska village and urban corporations have been the most financially fortunate group of all ANCSA corporations on the basis of financial returns per shareholder to date. This comparison includes all the regional corporations. The data presented above show that there are two reasons for this financial performance. The first is the endowment of valuable timberlands conveyed to the corporations. The second was the opportunity to sell non-cash losses—NOLs from declines in the value of timber—for cash. Tables 7.4 and 7.5 above suggest that the NOL sales generated significantly more income than actual timber harvests for the village corporations as a group, and provided substantially all of the net income for the two urban corporations.

Does this mean that the financial fortune of these corporations is solely the result of the one-time ability to sell NOLs? The answer is a qualified no. Had there been no NOL sales opportunities, the corporations could have delayed their timber harvests until the late 1980s, when prices rebounded to 1980 levels.

If the financial results presented in this chapter are to be used for any sort of prediction of possible future performance, four important points must be kept in mind. First, the opportunity to generate large amounts of cash through NOL sales will not be available in the future. Second, the experience of several village corporations shows that is possible to generate large economic benefits for shareholders through timber harvesting alone, without depending on NOL sales. Third, the future income of any timber-based corporation will be based to a great extent on world market timber prices, which have proven to be quite volatile in the past.

Finally, the days of timber harvesting on their own lands are largely over for most of the village corporations.[4] They are entering a new era in which financial investments and diversified business operations will play the major role in determining their success.

References

Colt, Steve, 1991. "Financial Performance of Native Regional Corporations," *Alaska Review of Social and Economic Conditions.* Vol. XXVIII, No. 2. Anchorage. Institute of Social and Economic Research.

Hoffman, Dee Olin, 1987. "Southeastern Native Corporations," *Alaska Native Magazine,* December.

Kake Tribal Corporation, 1988 *Annual Report.* Kake, Alaska: Kake Tribal Corp.

Klukwan, Inc. *Annual Reports* [1975 through 1992].

Knapp, Gunnar, 1992. *Native Timber Harvests in Southeast Alaska.* Report PNW-GTR-284. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station.

Knapp, Gunnar, 1991. *Forest Service Acquisition of Harvested Native Lands in Southeast Alaska.* Anchorage: Institute of Social and Economic Research.

McDowell Group, 1986. *The Sealaska Economy: A Study of the Economic Impact of Native Corporations in the Southeast Region.* Juneau: The McDowell Group.

[4] The seven corporations in our sample had combined net timber assets of about $65 million in 1992. This is only 5 percent of their total appraised gross timber assets of $1.2 billion. While some of the difference between gross and net value is due to price changes, the vast majority of this accumulated depletions stems from actual harvest or sale of the trees.