United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

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Honorable Don Young, Chairman
Committee on Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In testimony delivered at a hearing before the House Resources Committee on June 11, 1996, on H.R. 2505, the Department of the Interior testified that the Secretaries of both Agriculture and Interior would recommend a Presidential veto of any legislation containing a "Landless Natives" proposal such as that formerly contained in S. 2539 in the 103rd Congress. We reiterate this position with respect to any so-called "landless" Natives legislation which would either recognize additional Native corporations in Alaska or provide a premise for the conveyance of additional Federal lands or money in furtherance of such new corporations under the Alaska Native Claims Settlement Act (ANCSA).

We are concerned that such a proposal might be appended to the so-called "Presidio" legislation, containing numerous land use measures, or to other legislation, now being considered by the Congress.

There is no equitable or legal justification for Congressional recognition of "landless" Natives in southeast Alaska or elsewhere as new corporations under ANCSA. We conclude this because:

-- There is no inequity in ANCSA to redress. Each of the five communities of Ketchikan, Petersburg, Wrangell, Tenakee Springs and Haines was considered for village status during the formulation of ANCSA and none met the general statutory criteria for eligibility.

-- Natives in the five "landless" communities are enrolled as "at-large" shareholders in Sealaska Corporation, have received fair and substantial equitable benefits of the original ANCSA settlement, and the dividends received by these at-large shareholders substantially exceed those paid by the regional corporations to village shareholders.

-- There are no "landless" Natives in southeast Alaska since all Natives have a beneficial interest in lands owned by Sealaska, including surface and subsurface estates.

-- Recognition of the five "landless" communities in southeast Alaska would itself effect an inequity among other "landless" communities elsewhere in Alaska.

-- Recognition of the five "landless" communities could reopen the entire settlement scheme of ANCSA and result in a never-ending, extremely costly, and unattainable effort to effect total equality of treatment among all Natives in all communities.

These conclusions are not ameliorated by legislative proposals which would merely recognize the creation of the five corporations without addressing their ultimate entitlement to land. One proposal would amend section 14(h) of ANCSA by merely allowing Haines, Ketchikan, Petersburg and Wrangell to organize as urban corporations and allowing Tenakee to organize as a group corporation. Creation of such shell corporations with no assets merely sets the stage for their potential insolvency and later demands that the Federal Government provide them with a land base and other assets.

In 1993, Congress authorized the Secretary of the Interior to conduct a study of the entitlements of Natives in southeast Alaska with particular respect to Native populations in the communities of Haines, Ketchikan, Petersburg, Wrangell and Tenakee. The study subsequently prepared by the Institute of Social and Economic Research of the University of Alaska was inconclusive on the issue of equitable treatment. While the named five communities may not have received land, their treatment was like that of many other communities elsewhere in Alaska. Further, the study did not consider adequately the actual distribution of regional stock dividends to "landless" Natives.

ANCSA effected a final settlement of the aboriginal claims of Native Americans in Alaska through payment of over $900 million and conveyances of 40 million acres of Federal land. Although it was impossible for Congress to have effected total parity among all villages in the state, there was a distinction made in ANCSA between the villages in the southeast and those located elsewhere. All recognized southeast villages had the opportunity to select timbered land, the value of which far exceeded the foreseeable values in the surface estate available to villages in the other eleven regions of Alaska. In addition, Natives in the southeast had received payments from the United States for the taking of their aboriginal lands. For these reasons, ANCSA specifically named the ten villages that were to be recognized in the southeast as opposed to subjecting the villages to a determination by the Secretary of the Interior of their eligibility prior to the receipt of any lands.

The proposed five "landless" communities meet none of the criteria for corporate recognition, that is, having a majority

Native population, and not being modern or urban in character. None of the five has a Native majority and four out of the five are modern and urban in character. Tenakee has no actual Native residents and the enrollees only represent seven percent of the population of the community. Three of the communities appealed their status through the administrative processes prescribed by the Secretary of the Interior and were denied. Recognition of any of these five communities would substantially lower the standards set out in ANCSA for village recognition with implications elsewhere.

There are many "landless" villages in Alaska which do not meet the Act's criteria for eligibility to select land. In section 11(b)(1) of ANCSA, Congress listed more than two hundred villages which were presumed to be eligible villages unless the Secretary of the Interior determined otherwise under criteria set out in section 11(b)(2). Under section 11(b)(3), communities not named in section 11(b)(1) were provided with the opportunity to petition for an eligibility determination, but were presumed ineligible unless the Secretary found them eligible. Twenty-three named villages were found ineligible, and a number of unnamed villages could not prove their eligibility.

Once recognition of heretofore ineligible communities in the southeast is commenced, pressure will mount for similar treatment by other communities. For example, Anchorage and Fairbanks have larger native enrollments than any of the communities now seeking recognition. There is no land available in either of those communities for granting a new corporation a land base.

As ANCSA is currently structured, recognition of the five communities as villages, urban or group corporations could also have a substantial impact on section 14(h)(8) entitlements of all twelve regional corporations. The land conveyed to urban and group corporations must be subtracted from the amount of land divided among the twelve regional corporations under section 14(h)(8). Consequently, the amount of land held by the regional corporations as a land-base for economic development and benefit to all the stockholders of the regional corporation will be reduced. Two of the regional corporations, Cook Inlet Region, Inc. (CIRI) and Chugach Alaska Corporation, have settled with the Department in agreements ratified by the Congress for their section 14(h)(8) entitlements by receiving specified quantities of land in particular places. Therefore, the burden of the reduction will be borne by the remaining ten regions.

Additionally, we have also seen proposals which would recognize these communities as villages. If this approach is taken, the amount of land available for distribution under section 12(c) would be substantially reduced.

Some "landless" legislative proposals would exempt existing

entitlements of regional corporations under section 14(h)(8). The result of such an exemption would be to substantially raise the cost of the overall ANCSA settlement beyond the original settlement package of 40 million acres. We oppose more public land being used to increase the size of the original settlement.

It is unclear how various recognition proposals would be affected by State selections. When ANCSA was originally passed, the State of Alaska and Congress knew that many villages would be without a land base unless lands selected by the State were made available for selection by the new village corporations. If landless Natives are provided land on a statewide basis, this cooperation will again become necessary. However, because the period of State selection is over, the State of Alaska may be unable or unwilling to cooperate with a new round of selections by newly created Native corporations.

Notwithstanding the ineligibility of some communities for corporate status under ANCSA, all Natives receive benefits from the ANCSA settlement. Natives enrolled in eligible village communities received one hundred shares of regional corporation stock, and one hundred shares in the village corporation organized for their community. Natives not enrolled in a village or a group are "at-large" stockholders in the regional corporation.

The regional corporations were instructed on how to divide any dividends they would declare. Natives who are members of villages are sent regional dividends for fifty percent of the per capita share of dividend to be divided. The other half of the dividend is sent to the village corporation. The village corporation subtracts part of the per capita dividend to be used for running the village corporation, and then declares a dividend on the remainder of the money received from the region.

Individual Natives who are enrolled in communities that were not eligible to be village corporations receive one hundred percent of the per capita dividend declared by the regional corporation. As a result, "landless" Natives receive much larger dividends than Natives enrolled in villages. No realistic assessment of true equity among affected Natives can be made without consideration of the distribution of regional dividends, a subject not adequately considered in the Landless Natives Study. The extra benefits received over the last twenty-five years by at-large stockholders compared to those received by village stockholders is a factor heretofore not considered in this debate.

Were additional corporations recognized by Congress, equity with other regional shareholders should require the potential members of those corporations to turn back their "at-large" stock in exchange for stock in the new corporations. Since this would have

a substantial impact on the family economy of at-large stockholders, we believe that these people should be given time to consider these impacts before Congress considers any action to recognize new corporations and before these Natives are forced into a new corporate alliance.

Some current proposals which would allow the members of newly created corporations to continue to receive distributions as "at-large" shareholders create inequities among shareholders. Members of the new communities would get all the benefits of "at-large" membership, including receiving one hundred percent of per capita dividends, in addition to the potential benefits afforded as stockholders in land based Native corporations, thus creating new inequities.

No additional corporate recognitions should occur because of the substantial unknown land and fiscal liabilities which would be created by this new round of corporate recognitions. Every regional corporation has "at-large" stockholders who are "landless" Natives, and even if Congress recognizes the five communities in the southeast, Sealaska Corporation will continue to have "landless" at-large stockholders. Therefore, recognition of these five communities will become a precedent for other unrecognized communities in all twelve regions all demanding recognition along with more land and financial resources.

The recognition of additional Native corporations under the landless Natives rationale will also have substantial and unacceptable fiscal impacts on the Federal budget. Unlike village corporations, urban and group corporations are subjected to additional financial stresses because those corporations do not receive a share of regional dividends. All stockholders of urban and group corporations retain their status as at-large regional stockholders. It has been up to the Congress to infuse these financially strapped corporations with "start up" money, but these infusions have been insufficient to prevent the corporations from entering into hasty financial arrangements.

A subject unrelated to ANCSA concerns legislative proposals which would not only recognize Haines, Ketchikan, Petersburg, and Wrangell as urban corporations, and Tenakee as a group corporation, but would also give these communities and Sealaska the power to make recommendations for the Tongass Land Management Plan. Under the National Forest Management Act, affected state and local governments, Indian tribes and native corporations, and the public are consulted in the preparation of land and resource management plans for the National Forests. All have a voice and an opinion which the Forest Service must consider, but none have deference over others. In southeast Alaska, the five communities and Sealaska already have a voice in the land management planning process. The Secretary of Agriculture advises that any legislation proposing to give outside parties power independently

to impose recommendations on the Tongass Land Management Plan will subvert the land management planning process, delay adoption of the plan, and further unsettle the economy and stability of southeast Alaska.

In summary, efforts to reopen ANCSA settlements under the guise of equity will be costly to the American public and unsettling to public and private land allocations in Alaska. The proposed recognition of landless Native corporations will upset the entire settlement regime of ANCSA which has been so carefully and laboriously implemented over the last two decades. Recognition would not redress inequities but result in new ones among Native shareholders and among groups, villages and communities throughout Alaska.

The Secretaries of the Interior and Agriculture will recommend that the President not approve any legislation recognizing so-called landless Native corporations, or which grant Native corporations authority to impose recommendations on the Tongass Land Management Plan.

The Office of Management and Budget advises that the presentation of this report is in accord with the Administration's program.

Sincerely,

ACTING Assistant Secretary
Department of the Interior

Under Secretary
Department of Agriculture

cc. Honorable Ted Stevens