



Questions on Landless Bill April 2021

1. Please provide specific rationale why individuals from these five communities now qualify for 115,000 areas of Tongass public lands despite they were previously found ineligible under ANCSA and received equitable compensation in lieu of eligibility?

It is important for us to hear from everyone in the community, and we appreciate the opportunity to address this question. It is clear that there are some assumptions and misunderstandings that we need to clear up, and a judgment that there is no equity that should be addressed.

These “individuals” were *not* “found ineligible” under ANCSA nor did they “receive[] equitable compensation in lieu of eligibility.” Congress did not explain why it chose to exclude these five communities. The only seemingly rational basis that has ever been articulated—other than the political influence of the U.S. Forest Service and the logging industry at the time (see attached testimony)—is that “villages” in ANCSA generally were required to have a majority-Native population in order to establish “village” corporations. Unlike most regions of Alaska, a large population of non-Native settlers had moved into the Southeast region by the early twentieth century to exploit the natural resources of what is now the Tongass National Forest—gold, timber, and salmon. It is our hope that this historical reality—the arrival of non-Native settlers into the region and their settlement in what were originally Native communities—will not be held against us.

Interestingly, Congress apparently did recognize—and in fact did address—this issue of non-Native settlement for other, similarly situated Native communities in Alaska. In ANCSA itself, the general criteria for villages—that a community must have a majority-Native population—did not in any way prevent Congress from extending recognition to other traditional Native communities (in fact, every other traditional Alaska Native community of which we are aware) that technically did not meet the population criteria used to define villages under ANCSA, including four urbanized villages (Kenai, Sitka, Juneau and Kodiak) in which urban corporations were established. Other urbanized Alaska Native communities, like Nome, were able to establish village corporations. So, why these five communities?

The answer to this question cannot be answered in short form. We invite you to review the 28 pages of testimony (attached) that we recently submitted to the Senate Committee on Energy and Natural Resources. It examines this issue in detail. Additionally, please see our answer to Question #2, below, which addresses the suggestion that Landless shareholders received “in lieu” benefits.

2. If this legislation is enacted, will the newly formed corporations refund the “in lieu” benefits they have received since 1971?

Actually, the Landless shareholders have not received (and would not receive, if this legislation passes) anything more than any other Alaska Native individual who enrolled to a community that incorporated as an Alaska Native Urban Corporation.

Under Section 7(i) of ANCSA, Alaska Native Regional Corporations must share 70 percent of their net revenue from natural resource development. Section 7(j) of ANCSA requires that this Section 7(i) income must then be divided equally between the Regional Corporation and its Village Corporations *as well as* the original shareholders of the region who were not shareholders of a Village Corporation. Sealaska shareholders who are “at large” shareholders (including individuals who enrolled from outside Alaska) as well as Sealaska shareholders who are “urban” shareholders (including both the Landless shareholders and shareholders of the existing Urban Corporations) all currently receive a pro rata share of the 7(j) payments, as required by ANCSA. A shareholder in a Village Corporation may or may not receive such benefits; that is up to the Village Corporation. A Village Corporation may choose to reinvest the funds or distribute the revenue directly to their shareholders.

The Alaska Native individuals who enrolled to these five communities have now lost *50 years* of the benefits of having a Native Village or Urban Corporation. In fact, we would submit that if a “refund” is in order, it is for a half century of lost opportunities for these newly recognized and established Native Corporations. Other Village and Urban Corporations have provided additional benefits to their shareholders beyond what a 7(j) payment could ever provide, including scholarships, internships, employment opportunities, cultural preservation activities and a tie to Native land ownership in and around their communities, to name just a few benefits.

3. Please provide a detailed list and monetary value of all public infrastructure and their locations which will be conveyed to each corporation and the value of that infrastructure, including a grand total. This includes roads, bridges, culverts, cabins, marine access facilities, and the investments made for silvicultural treatments, for instance timber stand thinning.

This is a question more appropriately directed to the U.S. Forest Service. We do not have the resources to develop such an analysis.

For decades prior to the passage of ANCSA, the Forest Service opposed the recognition of traditional Indian use and aboriginal title in the Tongass National Forest. We know that this does not reflect the sentiment of the public servants and good people who work for the Forest Service today. Nevertheless, the reality is that as late as 1954, the Forest Service formally recommended that all Indian claims to the Tongass be extinguished because of continuing uncertainty affecting the timber industry in Southeast Alaska. That opposition became less public but remained in many ways through 1971 and the enactment of ANCSA. In fact, somewhat remarkably, we sometimes see it today. Still, it is relatively rare in the United States that the U.S. Government has managed to completely deny a Native American group the ability to recover some small portion of their homeland. If we use Petersburg Borough (roughly 2,450,000 acres) as a simplified proxy for the original territorial base of the Tlingit who originally occupied Petersburg, we can see that the Native people who enrolled to Petersburg as their village have sought the return, against great resistance, of just 1 percent of that original territory.

As the Forest Service develops the analysis requested above, we would ask, respectfully, that the Forest Service develop an accounting of the monetary value to the public of such infrastructure over the last 154 years so that we can understand what the United States has gained as a result of excluding the five Landless Native communities from the settlement of their aboriginal land claims.

4. Please address a possible dispute with the State of Alaska turning over part or all of the potential \$40 million investment in the “Kake Access Project” to the new Petersburg native corporation if this legislation is enacted?

We see no cause for a dispute. The Petersburg Landless representatives are not interested in nor have we advocated for conveyance of part or all of the Kake Access Road to the new Urban Corporation for Petersburg.

The legislation establishes that the conveyance of land to the new Urban Corporation will be subject to myriad limitations, including, that conveyances are subject to valid existing rights under Section 14(g) of ANCSA and the reservation of public easements under Section 17(b) of ANCSA.

Section 14(g) of ANCSA establishes that “[a]ll conveyances made pursuant to [ANCSA] shall be subject to valid existing rights” and that each patent issued to a Native corporation “shall contain provisions making it subject to [valid existing rights, including] the lease, contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him.” 43 U.S.C. 1613(g). According to the Environmental Impact Statement prepared for the Kake Access Project, the Alaska Department of Transportation and Public Facilities will provide road access to Kake following the State’s 300-footwide right-of-way easement from Kake to Petersburg. Under Section 14(g) of ANCSA, any such State easements will remain in State ownership.

To the extent that any part of the road is not within an existing public easement, which seems unlikely at this juncture, Section 17(b) of ANCSA directs the BLM, working with the U.S. Forest Service in this case, to identify public easements across Native Corporation lands which are reasonably necessary to guarantee a full right of public use and access for recreation, hunting, transportation, utilities, docks, and such other public uses.

Please see our answer to Question #7, below, for more background on Section 17(b) easements.

- 5. Although supporters of the legislation state current public access to these lands is guaranteed under the proposed legislation, the bill’s language provides a caveat: “subject to—(I) any reasonable restrictions [emphasis added] that may be imposed by the Urban Corporation on the public use.” Please explain how that terminology cannot be subject to interpretation at the whim of current and future beneficiaries of the legislation. In this case, verbal assurances are not consistent with the language, which clearly could be interpreted, to prohibit access. Nor are verbal assurances sufficient to protect existing access to public lands.**

It is helpful to read this language in context with the language surrounding it, which follows:

(5) HUNTING, FISHING, RECREATION, AND ACCESS.—

(A) IN GENERAL.—Any land conveyed under paragraph (1)(A), including access to the land through roadways, trails, and forest roads, shall remain open and available to subsistence uses, noncommercial recreational hunting and fishing, and other noncommercial recreational uses by the public under applicable law—

(i) without liability on the part of the Urban Corporation, except for willful acts of the Urban Corporation, to any user as a result of the use; and

(ii) subject to—

(I) any reasonable restrictions that may be imposed by the Urban Corporation on the public use—

(aa) to ensure public safety;

(bb) to minimize conflicts between recreational and commercial uses;

(cc) to protect cultural resources;

(dd) to conduct scientific research; or

(ee) to provide environmental protection; and

(II) the condition that the Urban Corporation post on any applicable property, in accordance with State law, notices of the restrictions on use.

(B) EFFECT.—Access provided to any individual or entity under subparagraph (A) shall not—

(i) create an interest in any third party in the land conveyed under paragraph (1)(A); or

(ii) provide standing to any third party in any review of, or challenge to, any determination by the Urban Corporation with respect to the management or development of the land conveyed under paragraph (1)(A), except as against the Urban Corporation for the management of public access under subparagraph (A).

Generally, land conveyed to Alaska Native Corporations is considered private land and the Native Corporation may choose to allow public access to the land, or not. This is the same for all other private landowners in Alaska.

The Landless communities asked Alaska's congressional delegation to include this public access language in the legislation because we know these lands are used by so many people in our communities, and we wish for that access to continue.

The legislation does include language (above) that allows the Urban Corporations to impose reasonable restrictions on public access, *but only for one of the specific, enumerated reasons*. The new Native Corporations will need to have the ability to manage the lands to address basic public health and safety needs, and to protect cultural or scientific resources. All land managers—including the U.S. Forest Service with respect to federally managed lands within the Tongass—necessarily have this ability.

The legislation establishes that these public access provisions “shall not ... create an interest in any third party in the land conveyed” or “provide standing to any third party in any review of, or challenge to, any determination by the Urban Corporation with respect to the management or development of the land conveyed ... *except as against the Urban Corporation for the management of public access.*” This last clause (“except as against...”) means that a member of the public has standing to sue an Urban Corporation for failure to allow the public access. We reiterate that *we asked for this language* to protect the public interest in access to the land, which does not exist in ANCSA. We seek to be good neighbors and land managers, while also addressing the inequity that we have suffered for decades.

- 6. The 1997 Forest Service Tongass Conservation Strategy includes a series of mapped Small, Medium, and Large Old Growth Reserves (OGR's) intended for “sustaining habitat to help ensure the maintenance of well distributed viable populations of all old-growth associated wildlife species across the Tongass.” Please provided a map and detailed list of the proposed selections with an overlay that depicts the location of these reserves in relation to the selections. Will the**

new corporations respect these reserves and not infringe on them? If so, that should be codified in the legislation.

We can ask for help developing such a map, but it will take time.

The new corporations will not be subject to such restrictions (as is also true for the State, the University of Alaska, municipal landowners like the Borough, private landowners, and other Alaska Native landowners). The objective of the legislation is to transfer this land into Native ownership in settlement of Native land claims for Native self-determination—not into Federal ownership for Federal decision making—subject, of course, to State and Federal laws and the protections in the legislation for public access and valid existing rights.

As you know, the 1997 Tongass Conservation Strategy is now almost a quarter century old. It was drafted at a time when there was significantly more concern about the scope of timber operations in Southeast Alaska. Since that time, even more lands have been set aside in the Tongass for conservation purposes, including OGRs. The Forest Service is also able to adjust the location, composition, and size of OGRs if it believes that doing so is necessary to meet its old growth habitat goals and objectives.

7. Please provide a detailed list and map overlay of the locations and status (red, grey, etc.) of the impaired culverts on the road systems to be conveyed to the corporations. Will the corporations immediately start a comprehensive repair program to remedy impaired “aquatic organism passage” (mainly fish) through culverts and other crossings etc.?

Culverts on roads for which easements are retained by the Federal Government (see below regarding Section 17(b) easements) will continue to be the responsibility of the Federal Government. Management of any roads (and culverts) for which the Federal Government does not wish to retain an easement, which are conveyed to the new Urban Corporation, will be subject to Federal and State law, as applicable. We cannot speak for leadership that will be elected to the new Urban Corporation, their priorities, and the order in which they address those priorities, including the repair of impaired culverts.

The legislation establishes that conveyances of land to the new Urban Corporations “shall be” subject to the reservation of public easements under Section 17(b) of ANCSA. Under Section 17(b) of ANCSA, BLM is required to “identify public easements across lands selected” by Alaska Native Corporations, including lands which are reasonably necessary to guarantee “a full right of public use and access for recreation [including camping], hunting, transportation, utilities, docks, and such other public uses ...” 43 U.S.C. 1616(b)(1).

Community members (and Petersburg itself) can participate in the identification of Section 17(b) easements. Specifically, in establishing Section 17(b) easements, BLM must “consult with appropriate State and Federal agencies, shall review proposed transportation plans, and shall receive and review statements and recommendations from interested organizations and individuals on the need for and proposed location of public easements.” 43 U.S.C. 1616(b)(2).

Roads across Alaska Native lands that are subject to Section 17(b) easements are reserved and managed by the public easement holder, with oversight from the Federal Government. For roads located on Section 17(b) easements across the new Urban Corporation’s land, the U.S. Forest Service or other public easement owner will remain responsible for the culverts, just as they are today.

8. If approved, bill supporters state the lands granted to them would not be logged but are reluctant to specify that in the bill. In the absence of such legal assurance, can the public assume that those lands will be logged? Could the reluctance to codify in the legislation whether logging will occur

on the transferred lands be because lucrative carbon credits cannot be claimed for lands that are not intended for logging in the first place?

The supporters of the bill have not committed to one form of land management or another. It appears, based on the tone of this question, that the author is opposed to Alaska Native landowners using Alaska Native lands either for timber harvest *or* for carbon credits. It is correct that without the right to log in the first place, these new urban corporations could not apply for a carbon credit project.

The objective of this legislation is to return a tiny fraction of what was once Native aboriginal territory to a new Urban Corporation for Petersburg. We observe that Alaska Natives statewide were able to recover 12 percent of what was originally Native land in ANCSA; but in Southeast Alaska, Alaska Natives recovered less than 1.5 percent. Much of the history—as articulated in the attached testimony—suggests that Alaska Natives received less land in Southeast Alaska in part because the Forest Service and the timber industry were concerned that Alaska Natives *would not* harvest timber. Today, Alaska Natives find themselves under attack by those who are concerned that they *will* harvest timber. We are truly damned if we do, and damned if we don't. But we return to the fundamental point: Our interest in this land goes back 10,000 years. We are asking for a tiny fraction of it back to manage for the next 10,000 years. As articulated elsewhere in this document and in our other public statements, we plan to manage the land to support the entire community, Native and non-Native alike.

9. Is there an updated copy of the maps that include locations of the property they will be requesting in the Petersburg Borough? Testimony from representatives of the Landless community have stated to the Petersburg Borough Assembly they have modified their requests and changed which parcels they are requesting.

The maps that accompanied the Landless legislation, as introduced in November 2020, are available at this link:

<https://www.energy.senate.gov/services/files/8B1EA6FA-7E17-4E1E-8A29-81210F3681C6>

We have asked the delegation to make two changes to the Petersburg maps that would result in the removal of the two recreational cabin sites from the proposed selections. If these changes are approved by the delegation, the official maps will need to be amended by the U.S. Forest Service to reflect these changes.

10. Will the bill include any tidelands or special rights related to fishing or aquaculture harvesting?

Tidelands were conveyed to the State of Alaska under the Submerged Lands Act of 1953. The bill does not convey tidelands. The bill does not include any special rights related to fishing or aquaculture harvesting.

11. Will the new corporations that would be formed have the authority to conduct mining or logging activities on this land, either as themselves or through a partnership with Sealaska who will own the subsurface rights?

The new Urban Corporations will have the same basic standing as any other private landowner and will have to comply with all applicable laws and regulations related to any development.

12. Can there be language inserted into the bill that would outline a Payment in lieu of taxes requirement by the new corporation since they will not be paying local property taxes?

Actually, the new Urban Corporations *will* pay local property taxes on any land that is not “undeveloped.” 43 U.S.C. § 1636(d). Please see our answer to Question #22 for more detail.

Several questions are asked throughout this document about impacts of the legislation to federal payments made pursuant to the Payments In Lieu of Taxes (PILT) program and federal payments made pursuant to the Secure Rural Schools (SRS) program. Therefore, we provide some additional information below.

First, we acknowledge that we do not have all of the data required to quantify any loss of PILT or SRS payments as a result of the proposed legislation. However, as discussed below, we believe any loss of PILT or SRS payments will be easily offset by increased contributions to the local economy and community tax revenues.

Secure Rural Schools

Since 1908, federal law has directed the Forest Service to pay 25 percent of its gross receipts to states for expenditures on roads and schools in counties where national forests are located. The program is referred to as the “Forest Service Payments to States” program because the Forest Service directs the 25 percent payment to state governments. However, the program ultimately benefits county-level governments, including boroughs in Alaska, because each state allocates funds received by the Forest Service to roads and schools in counties or boroughs based upon the acreage of National Forest lands in each county or borough.

Due in large part to declining National Forest receipts, but also to the fact that annual payments under the Payments to States program typically fluctuate widely from year to year, Congress in 2000 enacted the Secure Rural Schools Act, which established an optional, alternative system, for payments to states with National Forest lands.

The Secure Rural Schools Act provides payments to counties and boroughs based on multiple factors, including acres of federal land within an eligible county, the county’s share of the state’s average of the three highest payments during fiscal year 1968 through fiscal year 1999, and an income adjustment based on the per capita personal income for each county. While we do not have all pertinent information to precisely calculate the impact of the legislation, it appears that a reduced number of federal acres within the Petersburg Borough will have a roughly proportional reduction in the SRS payments to the Borough. See Congressional Research Service, *The Secure Rural Schools and Community Self-Determination Act: Background and Issues* (2000), available at <https://crsreports.congress.gov/product/pdf/R/R41303>.

It appears that Petersburg expects to receive approximately \$468,000 (\$397,800 + \$70,200) in SRS payments in FY 2020/21. Note that SRS funding to Petersburg will *automatically* decline by 5% annually (\$23,400), as required by federal law. See 16 U.S.C. §7102(11).

The Petersburg Borough contains 1,801,163 federal acres that are relevant to the SRS program. See U.S. Forest Service, *SRS Payments for FY 2019*, available at <https://www.fs.usda.gov/main/pts/securepayments/projectedpayments>.

A reduction of one township of land (23,040 acres) for the Urban Corporation from the federal land base appears to result in a reduction in annual SRS payment of approximately \$6,000.

Note, however, that a reduction in Petersburg’s SRS payment may result in an increase in Petersburg’s PILT payment. *The Secure Rural Schools and Community Self-Determination Act: Background and Issues* 3 (April 21, 2020) (see link above) (“PILT payments are reduced (to a minimum payment per acre) by other payment programs as specified in statute. ... This also means that decreases in [SRS] payments may increase a county’s payments under PILT in the following year (and vice versa), although the difference is rarely proportionate.”).

Borough Administration

PO Box 329, Petersburg, AK 99833 – Phone (907) 772-4519 Fax (907)772-3759
www.ci.petersburg.ak.us

PILT

The Payments In Lieu of Taxes (PILT) program, administered by the Department of the Interior, provides payments to county-level governments to help offset losses in property taxes due to the presence of nontaxable federal lands within their boundaries. PILT payments are made annually for tax-exempt federal lands administered by the Bureau of Land Management, the National Park Service, the U.S. Fish and Wildlife Service, the U.S. Forest Service, and other statutorily listed lands.

The number of federal acres relevant to the PILT program in the Petersburg Borough is 1,798,235 acres. *See* U.S. Department of the Interior, Payment in Lieu of Taxes County Payments, available at <https://www.nbc.gov/pilt/counties.cfm>

It appears that Petersburg has budgeted \$600,000 in revenue from PILT for FY 2020/21.

The formula used to compute PILT payments is based the number of acres of qualifying federal land within an affected county. Counties receive the greater of (1) an established ceiling payment for each qualifying federal acre within the county adjusted for inflation, with a deduction for other federal receipt-sharing payments received by the county (including payments under the SRS program), and a limit on total payments based upon population; or (2) an established minimum payment for each federal acre within the county adjusted for inflation.

We do not have the data to determine how the PILT payment is calculated for the Petersburg Borough. However, a *proportional* reduction that reflects the removal of 23,040 acres from the 1,798,235-acre federal land base would result in a reduction in annual PILT payments of approximately \$6,000.

Note that PILT payments are reduced to account for income from the SRS program, meaning that a deduction in SRS payments may result in an increase in PILT payments.

Other Considerations

Although legislation has been introduced to make SRS funding and PILT funding permanent, Congress needs to appropriate funds for these programs every year. There is no guarantee that these programs will continue.

More importantly, revenue from the SRS and PILT program, while significant, is significantly less than revenues derived from local property and sales taxes. It appears that the Petersburg Borough could lose a maximum of \$12,000 annually (see discussion above) from PILT and SRS payments associated with a transfer of 23,040 acres to the Urban Corporation, an amount is dwarfed by income from property taxes \$3,042,820 (expected in FY 2020/21) and sales taxes \$3,192,000 (expected in FY 2020/21).

Unlike land held by or for an Indian tribe within a reservation or held in trust, developed ANCSA lands are subject to property taxes imposed by the local government—only *undeveloped* ANCSA lands are not taxable—and businesses located on those lands (as well as, of course, any offices or other facilities located within the community) are also subject to property and sales taxes by the local government.

Assuming that the Petersburg Borough could lose as much as \$12,000 annually in PILT and SRS payments (though the amount may be much less, for the reasons discussed above), this amounts to 0.192% (less than 1/500th) of the total expected revenue from property and sales taxes in FY 2021.

We hope that establishing a new Alaska Native Corporation and conveying land in the area into private ownership will bring in new revenues and more than offset small losses from SRS and PILT. Alaska Native Corporations can bring significant new revenue to a community. For example, Huna Totem Corporation's Icy Strait Point—located outside of Hoonah—has supported more than one-third of the city's sales tax base and Huna Totem Corporation has maintained 80 percent local hire, with well over 200 employees in the summer.

13. The borough has received numerous questions asking for specific explanations of why there needs to be a redress of former decisions regarding the southeast communities of Haines, Ketchikan, Petersburg, Tenakee Springs and Wrangell?

For a full history of what happened to the five Landless communities, please see the attached testimony.

14. The question has been asked if the members or the Corporation can sell, transfer, or trade their shares to another entity?

As originally written in 1971, ANCSA had a twenty-year prohibition on the sale of Alaska Native Corporation stock. In other words, under the original terms of ANCSA, Alaska Natives would be able to sell their stock in Alaska Native Corporations starting in 1991. However, in 1988, ANCSA was amended to prohibit the sale of stock, in perpetuity, unless the shareholders of an Alaska Native Corporation vote to amend the articles of incorporation of their corporation to remove restrictions on stock sales. To date, no Alaska Native Corporation has amended their articles of incorporation to allow for the sale of stock.

15. If these native villages are a Corporation as an entity why should they continue to receive distributions as at-large members of the Regional Corporation for Southeast Alaska?

Please see our answer to Question #2, above. The shareholders of the new Urban Corporations will be treated the same way as the shareholders of every other Urban Corporation.

16. There are existing rights to some parts of the land including mining, roads, and other facilities. Some of these are recorded and easy to find. Some are for commercial operations. Since the bill does not allow commercial operations how does a person or entity doing commercial work continue to use the roads since only non-commercial uses are to be allowed?

The legislation is subject to Section 14(g) of ANCSA, which establishes that “[a]ll conveyances made pursuant to [ANCSA] shall be *subject to valid existing rights*,” including mining claims, and that each patent issued to a Native corporation “shall contain provisions making it subject to [valid existing rights, including] the lease, contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him.” 43 U.S.C. 1613(g).

Aside from valid existing rights, the bill does *not* prohibit other commercial operations; however, in the absence of a valid existing right, commercial activities generally would require an agreement with the Urban Corporation.

The legislation also preserves all existing special use permits and provides for the issuance of an additional 10-year special use permit to each permit holder. Additionally, each Urban Corporation will be able to issue special use permits on their own.

17. What will be the legal process to assure all the current rights-of-way, mining claims, etc. are noted and carried forward?

Please see our answer to Question #16 above, regarding the protections contained in Section 14(g) of ANCSA for valid existing rights. BLM, when conveying land to Native Corporations, routinely identifies valid existing rights in the patent. We recommend that any individual concerned about a valid existing right seek confirmation from BLM regarding its role in identifying valid existing rights in any patent to be conveyed to the new Urban Corporation. However, the administrative act of listing an interest as a valid existing right (or of failing to list it) does not create or extinguish the right; the right can be asserted even if BLM fails to list it.

18. What is the rationale and reasons for the number of acres to be selected by each proposed corporation?

Each new Urban Corporation would receive one township of land, or 23,040 acres.

Under ANCSA, for all regions of Alaska *other than the Southeast Alaska region*, Village Corporations were authorized to receive up to seven townships of land based on the size of the village population. Thus, Petersburg, for example, with 423 Alaska Native enrollees in 1971, could have established a new Village Corporation with a right to select six townships of land, or 138,240 acres. *See* 43 U.S.C. § 1613(a).

Because the Tlingit and Haida Indians had received a partial settlement of aboriginal land claims in 1968, albeit only through a cash settlement and no land, Southeast Alaska was treated differently. Village Corporations established for villages in Southeast Alaska were limited to selecting just one township of land each, despite the large Native populations of many of the Southeast villages. Urban Corporations, similarly, were limited to selecting just one township of land.

This legislation follows the precedent established for Southeast Alaska, proposing to convey one township to each Urban Corporation.

19. What is the rationale behind conveying subsurface rights to the Regional Corporation for Southeast Alaska if each of the native corporations to be established are their own entity with their corporate board? Why not leave the subsurface rights to the United States?

Under the terms of ANCSA, Alaska Native Regional Corporations receive the subsurface estate under the surface estate conveyed to a Village or Urban Corporation, subject to valid existing rights, including valid mining claims. This legislation applies all of the usual rules and legal requirements of ANCSA to the proposed establishment of the five new Urban Corporations. Although Sealaska has not actually developed any subsurface minerals in Southeast Alaska over the last 50 years—other than some minor quarrying activity—it is worth noting that, under the terms of ANCSA, 70 percent of any revenues generated by a Regional Corporation from the development of subsurface revenues must be shared with the entire Alaska Native community through the mechanism established under Section 7(i) and 7(j) of ANCSA.

20. The bill is quite specific allowing for non-commercial use subject to restrictions under (5) (A) (ii). Some of the selected lands have roads that pass through and are contiguous. It is assumed by this legislation no commercial vehicles can traverse these roads. There are also existing commercial facilities. With no commercial use how can these uses continue? What are the provisions for maintenance?

The legislation establishes that conveyances of land to the new Urban Corporations “shall be” subject to the reservation of public easements under Section 17(b) of ANCSA. Under Section 17(b) of ANCSA, the BLM is

required to “identify public easements across lands selected” by Alaska Native Corporations. 43 U.S.C. 1616(b)(1).

Roads across Alaska Native lands that are subject to Section 17(b) easements are reserved and managed by the Federal Government. We are unaware of any prohibition on the use of such easements by commercial vehicles. As articulated by the BLM, a Section 17(b) easement “is very similar to the street in front of many homes. The public has the right to travel on the street.”

With regard to commercial facilities, the legislation preserves the right of the Forest Service and its designees to continue to use roads and other transportation facilities conveyed with the land to the Urban Corporations. We would be interested to know about specific commercial facilities that are of concern.

21. Since these lands are in the Borough there is no provision for any authorized uses of Borough entities and designees to use the roads for borough business. Will this be changed in the final bill?

Please see above regarding continued public management and use of the roads. Also, if of interest to the Petersburg Borough, the Federal Government can transfer administrative responsibility for Section 17(b) easements to the State of Alaska, a borough, or other municipal government.

22. Conveyance of these lands from National Forest to Native Corporation will have a substantial impact on the future viability of the local economies. The lands selected are all very valuable (highly productive, ease of marine access, relatively flat, and within reasonable distance from a town, and somewhat developed). Conveyance of these lands will limit economic activity and viability which is now available to all. Please define what the ability of the State of Alaska and the municipalities to tax these lands and activities upon? Will the corporation be required to follow all applicable state and local laws, ordinances, and building codes?

We believe that the conveyance of these lands will have a substantial *positive* impact on the future viability of the local economy! We noted the example of Huna Totem Corporation, above, and the significant positive economic impact within Hoonah. Goldbelt, the Urban Corporation for Juneau, is another example of a Native Corporation that has had a remarkably positive impact on the local economy. Alaska Native Corporations bring many *billions* of dollars into the State of Alaska every year.

Unless federal law (e.g., ANCSA) or state law establishes otherwise, Native Corporations are generally subject to all applicable state and local laws, ordinances, and building codes.

Developed ANCSA lands are subject to property taxes. *Undeveloped* ANCSA lands are not subject to real property taxes. 43 U.S.C. § 1636(d). The term “developed” generally means: “a purposeful modification of land, or an interest in land, from its original state that effectuates a condition of gainful and productive present use without further substantial modification.” 43 U.S.C. § 1636(d)(2)(A)(i). With regard to subsistence and recreation uses, land is not considered developed. 43 U.S.C. § 1636(d)(2)(B)(i). If the land is subdivided at the request of the landowner, the land will be considered developed on the date that an approved subdivision plat is recorded by owner. 43 U.S.C. § 1636(d)(2)(B)(iii).

23. Much of the land selected contain roads, and other facilities that were paid for by all Americans when a credit was given as timber was removed for the roads and other facilities. Since these lands now become private could this value be paid back in the form of cash through annual payments or in reduction in the amount of land that can be selected?

Without wanting to belabor the point, the objective of the legislation is to take into account the taking of land from its original *Native* owners by the United States. This history is not disputed by the Federal Government.

The roads, as noted above, will generally remain in public ownership through the establishment of Section 17(b) easements.

The legislation also preserves the right of the Forest Service and its designees to continue to use roads and other transportation facilities conveyed with the land to the Urban Corporations; this is another protective provision that was not included in ANCSA but is included in the Landless legislation.

24. Some of these lands selected contain bays and harbors which provide a valuable safety net for recreational and commercial boats in inclement weather. Will the bill need to be modified to include a Samaritan clause that will protect these people and boats when they seek shelter?

We would hope that the new Urban Corporation will have the opportunity to demonstrate that it is a good neighbor; particularly, in a situation such as this. As a technical matter, however, Alaska law allows trespass “for an emergency in the case of immediate and dire need.” AS 11.46.340. With regard to the need to shelter in the bay or harbor itself, these areas constitute State waters.

25. Will residents adjacent to Landless Native land allocations still be allowed to hunt, fish, trap and harvest timber on the potentially allocated land?

The legislation establishes in perpetuity that the land shall “remain open and available to *subsistence uses, noncommercial recreational hunting and fishing*, and other noncommercial recreational uses by the public.” Noncommercial hunting and fishing would therefore continue, subject to State regulation.

This language does not extend to commercial trapping or timber harvesting. Such activities would require the permission of the Urban Corporation, but, again, we have every intention of being good neighbors and want to work with the adjacent landowners and community members.

26. Why are the Landless group choosing land adjacent to privately owned property?

Each parcel was selected for a different reason. None of the parcels were selected because they are adjacent to private land (or any other landowner, for that matter). The Landless communities, at this point in time, have very limited lands from which to select, and are doing their best to select lands with cultural, social and economic significance, while also taking into consideration the concerns of all community members.

27. Who selected the land chosen on the maps and how were the specific lands chosen?

The maps have been changed many times over the last 50 years and selections have been informed by the input of many of the original Native enrollees to Petersburg over the decades. Priority is given to lands traditionally used by the original Tlingit community (e.g., seasonal village or other cultural sites), with other considerations informing selections, including proximity to the community and potential for economic use.

We have tried our best to balance the interests of stakeholders. The broader Landless community has been criticized for proposing to select land too close to the communities just as we have been criticized for proposing to select land too far away from the communities. The Landless community is criticized for selecting lands identified as appropriate for timber development but also is criticized for selecting lands identified as inappropriate for timber development. The Landless community is encouraged to select lands traditionally used

by the Tlingit, and yet these are often the same lands that have been used for the last few generations by the broader community (which, in turn, informed our request to guarantee public access to the land).

Notably, relatively few of the original selections identified by the Landless communities remain because lands originally prioritized for selection have since been selected by the State or municipalities or set aside for conservation. The Landless communities are essentially left with the scraps after decades of selections and set-asides by other entities and, to be honest, the political balkanization of the forest. Please bear with us as we try to do our best by our Native shareholders, and our communities.

28. What is the organizational structure of the Landless Natives Group?

Currently, due to lack of recognition in ANCSA, the five Landless communities are organized as non-profits under State law. Petersburg's nonprofit is the Landless Natives of Petersburg, Alaska, Inc. The communities also have an umbrella non-profit organization organized under State law – the Southeast Alaska Landless Corporation. If recognized under ANCSA, the umbrella organization would dissolve and the village non-profits would convert to for-profit ANCSA Corporations. Similar to their sister organizations, there are boards for each entity, consisting of the shareholders enrolled to these communities. For the umbrella organization, there are two representatives from each community that serve on the Board and who lead this effort to recognition.

29. Will ANCSA have to be modified to make this lands and infrastructure transfer possible?

ANCSA will be amended to establish the new Urban Corporations for Southeast Alaska. In ANCSA, Congress took a new approach to settling aboriginal land claims; Congress has amended ANCSA dozens of times over the last 50 years to provide for the equitable resolution of issues that Congress failed to address when the statute was enacted in 1971.

30. Can the transfer of Federal infrastructure, docks, roads, cabins and buildings, etc. be prohibited in the bill?

To the extent that the Landless representatives have proposed selections that contain public infrastructure, such as roads, some stakeholders object on that basis. To the extent that the Landless representatives select lands without public infrastructure (i.e., roadless areas), other stakeholders object to the selections on that basis.

If there is infrastructure of concern, we would like to know about it so that we can avoid a conflict if possible. For example, we were made aware of concerns about the conveyance of a parcel that includes a cabin and dock at Portage Bay, within the Petersburg selection. The cabin and dock were located near the edge of the proposed selection, so the removal of that small tract of land should be relatively straightforward. We have asked the delegation to amend the maps to ensure that all public use cabins are removed from the proposed selections, and we understand that the delegation supports the change and that the new legislation and maps will reflect this change.

As noted above, under Section 17(b) of ANCSA, the BLM is required to “identify public easements across lands selected” by Alaska Native Corporations, including lands which are reasonably necessary to guarantee “a full right of public use and access for recreation [including camping], hunting, transportation, utilities, docks, and such other public uses ...” Community members (and Petersburg itself) can participate in the identification of Section 17(b) easements. Roads across Alaska Native lands that are subject to Section 17(b) easements are reserved and managed by the Federal Government. Additionally, taking a belt-and-suspenders approach to the question of road access, the legislation also requires that “access to the land *through roadways, trails, and forest roads*, shall remain open and available to subsistence uses, noncommercial recreational hunting and fishing, and

other noncommercial recreational uses by the public...”

31. There is concern about guides losing their permits when the current license plus 10 years expires. Can these guides be protected in the bill?

The Forest Service does not guarantee that guides can be issued special use permits in perpetuity, and neither does this legislation require that of the Urban Corporations. The legislation makes clear, however, that the Urban Corporations can continue to issue special use permits after the additional 10-year term. Beyond that, it is at the discretion of the new corporation, and they will be open to those discussions on ongoing relationships.

32. Will land within the Borough boundaries that is transferred be taxable, and will this land be subject to Borough land use requirements?

Please see our answer to Question #22, above.

33. Will the landless groups follow Federal Logging Standards or State Logging Standards? Would the group be willing to adopt the Federal standards as part of the bill?

The Alaska Forest Resources and Practices Act governs how timber harvesting, reforestation, and timber access occur on state, private, and municipal land in the state. The Landless representatives are not interested in a federal overlay but instead would like to be treated as any other landowner in the State of Alaska. In fact, in many cases, the State standards provide stronger protections, based on science, land topography, and water resources, than the inflexible federal standards would provide.

34. The landless members of the community are at large shareholders of Sealaska. How will this new corporation change? Will they still be at large members of Sealaska? Will the new corporation be eligible for shares of both corporations?

ANCSA established a process by which every Alaska Native individual enrolled to the community in which he or she resided on the date of the 1970 Census enumeration or to the community where they or their families had traditionally lived. For most Alaska Natives, each individual enrollee received 100 shares of stock in their respective Regional Corporation and 100 shares of stock in their respective Village or Urban Corporation.

Landless shareholders are not “at large” shareholders but instead are “urban” shareholders of Sealaska Corporation, the Alaska Native Regional Corporation for the Southeast Alaska region (please see our answer to #2, above). When the Landless legislation is enacted, the Landless shareholders of Sealaska Corporation will also become shareholders of their respective Urban Corporation. Thus, the Landless shareholders will be shareholders both of their Regional Corporation and of their respective Urban Corporation, just like any other Alaska Native individual whose community was listed in ANCSA.

35. Turning over taxpayer funded infrastructure, which include high use FS recreational cabins, is a big concern to members of the community. Is it necessary to include land that contains these public assets?

Please see our answer to #30 above. We have no interest in taking ownership of public use recreational cabins. It is, however, difficult to select lands that avoid all “public assets,” which is why ANCSA requires the reservation of Section 17(b) easements and protects valid existing rights, as discussed throughout this document.

Questions which have received full, or partial answers

(in some cases, questions have been resubmitted on the prior list if the answer was incomplete)

1. How will removing acreage from the National Forest System under the proposed legislation affect future PILT payments to the Petersburg Borough?

There may be small impacts to PILT payments, although currently the population of Petersburg drives PILT calculations. We are working with the Department of the Interior to confirm these affects. We are also evaluating how to avoid any impacts that might occur.

Please note that the partial answers (shown in italics) were included in the original document. Some of these answers were not provided by us. Please refer to our answer to Question #12 above for more detail.

2. How will removing acreage from the National Forest System under the proposed legislation affect future SRS payments to the Petersburg Borough?

There may be small impacts to SRS payments, although the acreage affected is a very small percentage of land driving SRS calculations. We are working with the Department of Agriculture to confirm these affects. We are also evaluating how to avoid any impacts that might occur.

Please refer to our answer to Question #12 above for more detail.

3. Will all lands selected within the Petersburg Borough be conveyed to the Urban Corporation formed by the Native residents of Petersburg?

All of the approximately 23,000 acres of federal land indicated on the map will be transferred to the urban corporation, without a preliminary "selection" step or phase.

The Landless legislation would convey one parcel comprising 4,991 acres on Zarembo Island to the new Urban Corporation for Wrangell. The land is located in relatively close proximity to Wrangell, but is within the Petersburg Borough. Please note that this could reduce PILT and/or SRS payments to the Petersburg Borough by roughly \$2-\$4,000.

4. Could lands selected under the proposed legislation within the Petersburg Borough be conveyed to one of the newly formed Urban Corporations in a different community?

Each new urban corporation will receive specifically the respective lands indicated on the respective map.

Yes, one such conveyance is proposed. Please see our answer to the question immediate above.

5. Could lands selected under the proposed legislation within the Petersburg Borough be conveyed to a Regional Corporation?

There are not general restrictions on future conveyances by the village corporations, but under the proposed legislation lands would not be conveyed to a regional corporation.

Under ANCSA, the subsurface estate under a Village Corporation's or Urban Corporation's surface estate is conveyed to the Regional Corporation for that region. Therefore, Sealaska Corporation would receive the subsurface estate underlying land conveyed to the new Urban Corporation for Petersburg.

6. Must the entire 23,040 acres of compensation for the proposed Petersburg Urban Corporation be selected from within the Petersburg Borough?

All of the approximately 23,000 acres of federal land indicated on the map will be transferred to the urban corporation, without a preliminary “selection” step or phase.

There is no requirement that the 23,040 acres must be conveyed from within the Petersburg Borough. However, the Landless shareholders from each community are generally committed to selecting land in relatively close proximity to their community while also attempting to balance other social, cultural, and economic interests.

7. Who will own the subsurface rights of lands conveyed under the proposed legislation?

It is the intent of the legislation that those rights would transfer to the regional Alaska Native Corporation (in this case Sealaska), however, the discussion draft that has been shared does not directly address this issue and implies the rights may remain with the prior federal landowner/manager. We are evaluating this for a possible change.

Under ANCSA, the subsurface estate under a Village Corporation’s or Urban Corporation’s surface estate is conveyed to the Regional Corporation for that region. Therefore, Sealaska Corporation would receive the subsurface estate underlying land conveyed to the new Urban Corporation for Petersburg.

8. Will public access be maintained on all existing federal forest roads conveyed under the proposed legislation?

Provisions of the legislation currently protect certain kinds of public access which may include certain uses on certain forest roads, but forest road access is not explicitly confirmed. There is the potential to include further protections based on the nature and extent of public use of forest roads on the identified parcels. Any areas of identified concern would be appreciated.

Yes. The legislation, as introduced last fall, establishes that “[a]ny land conveyed [to the Urban Corporation], including access to the land through roadways, trails, and forest roads, shall remain open and available to subsistence uses, noncommercial recreational hunting and fishing, and other noncommercial recreational uses by the public under applicable law...”

However, as discussed above, the BLM and U.S. Forest Service must determine which roads and trails should be subject to federal Section 17(b) easements (in which the Federal Government maintains a property interest).

9. The State of Alaska Dept of Transportation is planning to construct the Kake Access Road. Per maps provided by the Senate Energy and Natural Resources Committee staff, portions of the route are within selected lands; will public access be maintained throughout this route?

The legislation is not meant to disrupt public access or infrastructure and will engage with the Department of Transportation to assess how the legislation may affect the route or could be adjusted to avoid the route.

Yes. Please see our answer to Question #4 (in the first set of questions) above.

10. Will utility corridors/easements be maintained along existing roads and platted rights-of-way on lands conveyed under the proposed legislation?

The legislation maintains public access and easements but does not explicitly identify utility corridors or rights-of-way. Examples of these on parcels identified on the maps would be appreciated.

Yes. Please see our answer to Question #4 (in the first set of questions) above.

11. Will existing boat ramps, LTF sites, and other transportation infrastructure be conveyed under the proposed legislation?

These facilities will be conveyed under the current discussion draft of the legislation.

In this legislation, as in ANCSA, any transportation infrastructure (including any LTF) on land to be conveyed will also be conveyed with the land to the Urban Corporation. However, the conveyance is “subject to ... all valid existing rights, including any reciprocal rights-of-way, easements, or agreements for the use of the roads, trails, log transfer facilities, leases, and appurtenances conveyed,” and the legislation directs the Urban Corporation and U.S. Forest Service to develop a binding agreement that will address the use of the roads and related transportation facilities by the Forest Service and designees of the Forest Service.

Boat ramps presumably are located on State tidelands. If there is a question about a specific boat ramp, we would be happy to forward the question to BLM for an answer.

12. Per maps provided by the Senate Energy and Natural Resources Committee staff, the selections appear to encompass the existing FS recreational cabin at Portage Bay. Will this cabin be conveyed under the proposed legislation?

We are evaluating this question with the U.S. Forest Service.

The Landless representatives for Petersburg have asked to the delegation to remove the tract of land that includes the recreational cabin at Portage Bay. Please see our answer to Question #30, above.

13. Per maps provided by the Senate Energy and Natural Resources Committee staff, the selections include existing road infrastructure used by Petersburg residents to access long-standing hunting (moose/deer/black bear) and trapping areas in Thomas Bay, Portage Bay, and Mitkof Island. How will individual and commercial hunting and trapping activities be preserved once the lands are conveyed under the proposed legislation?

There are provisions of the legislation meant to preserve both public and commercial hunting access in several respects.

Please see our answers to Question #7 (access) and Question #25 (hunting, fishing and trapping), above.

14. Could the Secretary of Interior accept or acquire lands conveyed under the proposed legislation in trust under the Indian Reorganization Act?

The legislation would not provide specific legal status to the lands conveyed to the five new urban corporations with respect to the Indian Reorganization Act, they would be treated as any other Alaska Native Corporation land for purposes of the Act. The scope of the Secretary's authorities to acquire lands in trust, or not, would not be affected by the legislation.

We agree with the answer provided above. Many Landless shareholders are often also tribal members, but the Urban Corporation will not represent the interests of a federally-recognized tribe, per se. The lands conveyed will be privately owned by the Urban Corporation and will not be held in trust by the United States.

As a technical matter, it is our understanding that the Secretary of the Interior can accept *any* land from *any* source into trust for an Indian tribe if requested to do so. For the Secretary to take ANCSA land into trust, the Native Corporation would have to convey its lands to a federally recognized tribe, and then such tribe would have to apply to the Secretary of the Interior to put those lands into trust. The Secretary would solicit the input of nearby municipalities when considering the request. That being said, the regulations that temporarily allowed lands to be taken into trust in Alaska are not currently being implemented. Additionally, if this were our objective, we would instead be advocating for legislation to accomplish this objective.

15. Copy of the current bill (if any) that is being proposed.

No new bill has been introduced yet. You may recall from the Zoom call with Senator Murkowski's staff earlier this year, they agreed to hold off on bill introduction until late May/early June to give SE communities time to meet with landless village advocates and other stakeholders, hold public discussions, and deliberate as elected bodies to provide comments and recommendations to the Senator on the legislation. So the best text to refer to is Section 7 of last year's bill which I think you already have but is also at the link --

<https://www.congress.gov/bill/116th-congress/senate-bill/4889/text?r=3&s=2>

We defer to Alaska congressional delegation staff on this matter.

16. Updated copy of the maps that include locations of the property they will be requesting in the Petersburg Borough.

There are no new maps, at least not publicly released ones at this point. For purposes of Assembly deliberation and whether to make any recommendations for changes to the area locations, borders, public access, rights of way, easements etc you should work off the existing maps.

As noted above, we have requested minor changes to the maps that will result in the removal of any recreational cabins. The delegation will need to respond as to their decision whether to accept these changes.

17. Who selected the land chosen on the maps and how were the specific lands chosen?

Cecilia & Nicole – The lands were chosen many years ago and have been reselected over time. Many were chosen because they were the only selections available at the time.

Please refer to the answer above or our answer to Question #27, above.

18. What is the organizational structure of the Landless Natives Group?

If recognized, each local corporation will have its own board of directors, and will hire executive management and staff. Sealaska will have no part of the management, but they will own the subsurface rights.

For further information on the current organizational structure, see Question #28, above.

19. Will the landless groups follow Federal Logging Standards or State Logging Standards? Would the group be willing to adopt the Federal standards as part of the bill?

Please see our answer to Question #33, above.