ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1971 (PUBLIC LAW 92-203): HISTORY AND ANALYSIS TOGETHER WITH SUBSEQUENT AMENDMENTS

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ABSTRACT

This report analyzes the history and background of the Alaska Native Claims Settlement Act of 1971, as amended, which settled the claim of Alaska's Native Indian, Aleut, and Eskimo population to the aboriginal lands on which they have lived for generations. The claim had been unresolved during the more than 100 years since the United States purchased Alaska from Russia in 1867.

Under provisions of the settlement, the Natives received title to a total of 40 million acres, to be divided among some 220 Native villages and twelve Regional Corporations established by the Act. The twelve Regional Corporations (together with a thirteenth Regional Corporation comprised of Natives who are non-permanent residents of Alaska) were to share in a payment of $462,500,000 (to be made over an eleven-year period from funds in the U.S. Treasury), and an additional $500 million in mineral revenues deriving from specified Alaska lands.

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ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1971 (P.L. 92-203)

Introduction

On December 18, 1971, Public Law 92-203, the "Alaska Native Claims Settlement Act," was signed into law by President Nixon. Public Law 92-203 was enacted by Congress to settle the claim of Alaska's native Indian Aleut and Eskimo population to aboriginal title to the land on which they have lived for generations. This claim had been unresolved during the more than 100 years since the U.S. purchased Alaska from Russia in 1867.

A summary of the background to the Alaskan native land claims issue is provided by the House Interior and Insular Affairs Committee Report to accompany H.R. 10367 (House Report No. 92-523, pp. 3-4), which is followed by a detailed analysis of the history of government action over the past century regarding native land claims. As stated in House Report No. 92-523:

"When the United States acquired the Territory of Alaska by purchase from Russia, the treaty (proclaimed June 21, 1867, 15 Stat. 539) conveyed to the United States dominion over the territory, and it conveyed title to all public lands and vacant lands that were not individual property. The lands used by the 'uncivilized' tribes were not regarded as individual property, and the treaty provided that those tribes would be subject to such laws and regulations as the United States might from time to time adopt with respect to aboriginal tribes.

"Congress provided by the Act of May 17, 1884 (23 Stat. 24), that the Indians and other persons in the territory (now commonly called Natives) should not be disturbed in the possession of any lands actually in their use or occupation or then claimed by them, but that the terms under which such persons could acquire title to such lands were reserved for future legislation by Congress. Congress has not yet legislated on this subject, and that is the purpose of this bill.

"Aboriginal title is based on use and occupancy by aboriginal peoples. It is not a compensable title protected by the due process clause of the Constitution, but is a title held subject to the will of the sovereign. The sovereign has the authority to convert the aboriginal title into a full fee title, in whole or in part, or to extinguish the aboriginal title either with or without monetary or other consideration.

"It has been the consistent policy of the United States Government in its dealings with Indian Tribes to grant to them title to a portion of the lands which they occupied, to extinguish the aboriginal title to the remainder of the lands by placing such lands in the public domain, and to pay the fair value of the titles extinguished. This procedure was initiated by treaties in the earlier part of our history, and was completed by the enactment of the Indian Claims Commission Act of 1946. That Act permitted the Indian Tribes to recover from the United States the fair value of the aboriginal titles to lands taken by the United States (by cession or otherwise) if the full value had not previously been paid.

"The Indian Claims Commission has not been available to the Natives in Alaska, in a practical sense, because the great bulk of the aboriginal titles claimed by the Natives have not been taken or extinguished by the United States. The United States has simply not acted.

"The extent to which the Natives in Alaska could prove their claims of aboriginal title is not known. Native leaders asserted that the Natives have in the past used and occupied most of Alaska. Use and occupancy patterns have changed over the years, however, and lands used and occupied in the past may not be used and occupied now. Moreover, with development of the State, many Natives no longer get their subsistence from the land.

"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 tests developed in the courts with respect to Indian Tribes were applied in Alaska, the probability is that the acreage would 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 on Interior and Insular Affairs of the House that a legislative rather than a judicial settlement is the only practical course to follow. The enactment of H.R. 10367 would provide this legislative settlement.

"The Committee found no principle in law or history, or in simple fairness, which provides clear guidance as to where the line should be drawn for the purpose of confirming or denying title to public lands in Alaska to the Alaskan Natives. The lands are public lands of the United States. The Natives have a claim to some of the lands. They ask that their claim be settled by conveying to them title to some of the lands, and by paying them for the extinguishment of their claim to the balance.

"As a matter of equity, there are two additional factors that must be considered. When the State of Alaska was admitted into the Union in 1958, the new State was authorized to select and obtain title to more than 103,000,000 acres of the public lands. These lands were regarded as essential to the economic viability of the State. The conflicting interests of the Natives and the State in the selection of these lands need to be reconciled. The discovery of oil on the North Slope intensified this conflict. A second factor is the interest of all of the people of the Nation in the wise use of the public lands. This involves a judgment about how much of the public lands in Alaska should be transferred to private ownership, and how much should be retained in the public domain."

History

I. Alaska under Russian Administration

The history of Alaskan native land rights predates the U.S. purchase of Alaska in 1867 and is rooted in the colonial policies of Russia regarding the natives who inhabit[at]ed Alaska during Russian administration of the territory.

Russian authority in Alaska was first decreed in 1766.[1] While this decree left the Aleutian Islands and the Alaska peninsula open to separate, competing groups of Russian traders, the Russian government did, however, declare the natives to be Russian subjects and gave them protection against maltreatment by private trading groups.[2]

In 1799 the Russian American Company was granted a monopoly of trade and administration in Russian possessions in America for twenty years.[3] A charter, granted in 1821 for a period of twenty years, was superseded in 1844 by yet another charter, which remained in force until the sale of Alaska.[4] The Charter of 1844 is important to the history of Alaskan native claims, for its classification of the Alaska

natives influenced the American classification of these natives in the 1867 Treaty of Cession confirming America's purchase of Alaska from Russia. And it is upon the provisions of this Treaty that subsequent Congressional legislation regarding the Alaskan natives has been based.

To explain how this is so, we must examine the Russian Charter of 1844. This document had distinguished three different categories of natives: (a) "dependent," or "settled" tribes; (b) "not wholly dependent" tribes; and (c) "independent" tribes.[5]

The "dependent" tribes, mostly of Aleut and Eskimo stock,[6] were defined by the charter as including "the inhabitants of the Kuril Islands, the Aleutian Islands, Kodiak and the adjacent islands, and the Alaska peninsula, as also the natives living on the shores of America, such as the Kenais, the Chugach and others" (sec. 247). While not delineated with any greater specificity, the "settled" tribes were primarily those most directly involved with the Russian enterprises. They were recognized as Russian subjects (sec. 249), and as such, were guaranteed the protection of the "common laws of the government." (sec. 250.)

The "not wholly dependent" tribes were described by the 1844 Charter as "dwelling within the boundaries of the Russian colonies, but not wholly dependent." (sec. 280.) They apparently had some contact with the Russian colonies but were not wholly integrated into the Russian trading economy. It appears they were nomadic tribes wandering in and out of the Russian colonial area. "Independent" tribes, on the other hand, were those inhabiting the mainland outside the area of Russian activity. Both the 1821 and the 1844 Charters refrained from stating whether or not the "not wholly dependent" or "independent" natives were Russian subjects.[7] The "not wholly dependent" tribes, moreover, were eligible for "the protection of the colonial administration only on making request therefore, and (only) when such request (was) . . . deemed worthy of consideration." (sec. 280.) The relations of the colonial administration with the "independent" tribes was "limited to the exchange, by mutual consent, of European wares for furs and native products." (sec. 285.)

Article III of the 1867 Treaty of Cession (15 Stat. 539) recognizes two groups within the Alaska populations—(a) all inhabitants guaranteed "the rights, advantages, and immunities of citizens of the United States," and (b) "uncivilized native tribes," who are excluded from citizenship, and who are subject to "such laws and regulations as the United States may from time to time adopt in regard to the aboriginal tribes of that country." Article III reads in full, as follows:

"The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes,

shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country." (Emphasis added.)

In respect to the Treaty's classification of Alaska natives (in Article III), the Alaska court held in 1904, and again in 1905, that the Treaty had regarded as "citizens"—with the right to "property"—those natives whom the Russian Charter of 1844 had regarded as "dependent" tribes, and thus, as Russian subjects. According to the court, the Treaty withheld citizenship from those natives whom the Russian Charter of 1844 had characterized as "not wholly dependent" and "independent":

"It appears, then, that the imperial law recognized the Russian colonists in Alaska, their creole children, and those settled tribes who embraced the Christian faith as Russian subjects; those tribes not wholly dependent—the independent tribes of pagan faith who acknowledged no restraint from the Russians, and practiced their ancient customs—were classed as uncivilized native tribes by the Russian laws. Those laws and these social conditions continued to exist at the date of the treaty of cession in 1867. . . . It was these people (Russian colonists, creoles, and settled tribes members of her national church) whom Russia engaged the United States to admit as citizens, and to maintain and protect 'in the free enjoyment of their liberty, property, and religion.' "[8]

Thus a correlation can be seen between the "dependent" or "settled" tribes mentioned in the 1844 Charter (whom the Russians considered as "subjects") and those inhabitants of Alaska who were guaranteed American citizenship by Article III of the 1867 Treaty—just as a correlation may be drawn between the "not wholly dependent" and the "independent" tribes mentioned in the 1844 Charter and the "uncivilized" tribes excluded from American citizenship by Article III of the Treaty.

It would be erroneous to assume an exact correlation, however, since in many cases it was not clear which tribes the Russians considered to be "not wholly dependent" and "independent"; nor was it clear precisely what conditions the Russians considered prerequisite to a definition of "not wholly dependent" or "independent" status.[9]

Moreover, since the "independent" natives who had been Christians under Russian rule[10] were considered by the Alaska court (In re Minook, U.S. v. Berrigan, above) to be American citizens by provision of Article III of the Treaty, it must be concluded that American citizenship was not necessarily limited to those natives whom the Russians had considered "dependent" or "settled":

"Thus it may appear that a tribe not wholly dependent or independent according to some Russian authorities may nevertheless answer the requirements set forth in decisions of the American court for that part of the Alaskan population which does not belong to the "uncivilized tribes" contemplated by Article 3 of the Treaty of 1867."[11]

Both the 1844 Russian Charter and the 1867 Treaty of Cession are unclear as to native property rights. The 1844 Charter fully recognized "property rights" of "settled" tribes: "Any fortune acquired by a native through work, purchase, exchange, or inheritance shall be his full property; whoever attempts to take it . . . shall be punished . . ." (sec. 263). However, "this referred primarily to personal property. The right to landholdings in any form remained totally unregulated. At that time, land titles were unknown among the peasants in the greater part of Russia and were not regulated in the colonies. The actual holdings of the natives were, however, to be respected. This is the evident intention of section 263 (above)."[12] This intention was also expressed in sec. 235 of the 1844 Charter: "In the allotment of ground to the Russian colonists the Company shall particularly bear in mind that the natives are not to be embarrassed and that the Colonists are to support themselves by their own labor without any burden to the natives."

No restriction is to be found in the Charter of 1844 concerning the disposal of land for the needs of the Company, however: "Provisions of sec. 49 of the Charter of 1821 according to which the Company was 'obligated to leave at the disposal of Islanders as much land as is necessary for all their needs at the places where they were settled' or will be settled' was not repeated in the Charter of 1844."[13]

It is officially affirmed that "with reference to the rights of the independent and not wholly dependent tribes to the lands they occupied, certain provisions of the Charter of 1844 suggest, by implication, that they were to be respected by the colonial administration. . . . The Russian laws not only refrained from granting the Company any rights or privileges regarding the land occupied by such natives, but also . . . positively prohibited the Company from any 'extension of the possessions of the Company in regions inhabited' by such tribes. The rights of the tribes to undisturbed possession was tacitly recognized by virtue of that fact."[14]

According to this interpretation, however, nothing in the Treaty of 1867 suggests that any such obligation was undertaken by the United States and the property rights guaranteed the "settled" tribes by Article III are not defined. Moreover, the Federal government was to maintain in 1947 and again in 1954 that Articles II and VI of the Treaty extinguished all claims of the natives to aboriginal title.[15]

In sum, the 1867 Treaty gave Congress a blank check regarding the uncivilized tribes at least, by providing that such tribes "will be subject to such laws and regulations as

the United States may from time to time adopt in regard to the aboriginal tribes of that country."

II. Allotment

While not considered a recognition of aboriginal title, passage of the Alaska Native Allotment Act (34 Stat. 197) in 1906 did provide for allotment of up to 160-acre homesteads on nonmineral land to Eskimos or Alaska Indians of full or mixed blood, 21 years old, and head of families. Allotments under this Act were inalienable and nontaxable.[16] This reflected a national policy thought at the time to be the best means of "civilizing" the Indian.

Allotment was accomplished in the lower States at that time by breaking up reservations into individually owned tracts of land or by allotting public lands to Indians who did not live on reservations.

The specific means by which allotment was achieved in the lower States were incorporated in the General Allotment Act of 1887 (24 Stat. 388), sometimes called the Dawes Act. According to provisions of this Act, the head of the family was to be allotted 80 acres of agricultural land or 160 acres of grazing land; a single person over eighteen or an orphan child under eighteen, was to receive one-half this amount. In order to protect the Indians from being cheated by unscrupulous adventurers who might take advantage of their inexperience with private ownership, the Federal government retained title to the lands allotted until the expiration of a trust period of twenty-five years, or longer, if the President deemed an extension desirable. Then, the allottee was to secure a patent in fee; to be able to dispose of the land as he wished; and to be subject to the laws of the state or territory where he resided. The Act granted citizenship to every allottee as well as to those Indians who had voluntarily taken up residence within the U.S. apart from their tribes and who had adopted the habits of "civilized" life.

The absence of reservations in Alaska at the time the General Allotment Act was enacted meant that the provisions of the Act allowing for allotment of reservation lands was, by definition, inapplicable.[17]

That Congress in 1906 enacted a separate allotment act for Alaska, however, indicated that the 1887 Allotment Act was felt to be inapplicable in its entirety in Alaska—even in regard to the creation of allotments out of non-reservation lands. This was owing to the view of the Federal government that, in a legal sense, the Alaska natives were not equivalent to "Indians" and that laws pertaining to Indians did not therefore pertain to Alaska natives. Thus, while the General Allotment Act, as well as the homestead laws

(by provision of the Act of July 4, 1884 [23 Stat. 96]), were applicable to "Indians," they were not held applicable to Alaska natives:

"In the beginning, and for a long time after the cession of this Territory Congress took no particular notice of these natives; has never undertaken to hamper their individual movements; confine them to a locality or reservation, or to place them under the immediate control of its officers, as has been the case with the American Indians; and no special provision was made for their support and education until comparatively recently. And in the earlier days it was repeatedly held by the courts and the Attorney General that these natives did not bear the same relation to our Government, in many respects, that was borne by the American Indians."[18]

This view was upheld in numerous opinions rendered by the courts, the Attorney General and the Department of the Interior during the last quarter of the nineteenth century. (See United States v. Ferueta Seveloff (2 Sawyer U.S., 311) (1872); Hugh Waters v. James B. Campbell (4 Sawyer, U.S., 121) (1876); 16 Ops. Atty. Gen., 141 (1878); In re Sah Quah (31 Fed. 327) (1886); and John Brady et al. (19 L.D. 323) (1894).

This concept of the Alaska natives' Federal status was gradually revised, however, so that by 1932 the Interior Department declared the Alaska natives to have the same status as Indians in the rest of the United States and thus to be entitled to the benefit of and . . . subject to the general laws and regulations governing the Indians of the United States to the same extent as are the Indian tribes within the territorial limits of the United States. . . ."[18a]

III. Federal Protection of Use and Occupancy

Despite arguments that aboriginal rights to land were extinguished by the 1867 Treaty (see p. 13 above), Congress did, through various laws, protect the Alaska natives in the "use or occupation" of their lands and such legislation was upheld in the courts of Alaska.[19] According to the Interior Department, "Congress and the administrative authorities have consistently recognized and respected the possessory rights of the natives of Alaska in the land actually occupied and used by them (United States v. Berrigan, 2 Alaska, 442, 448 [1905]; 13 L.D. 120 [1891]; 23 L.D. 335 [1896]; 26 L.D. 517 [1898]; 28 L.D. 427 [1899]; 37 L.D. 334 [1908]; 50 L.D. 315 [1924]; 52 L.D. 597 [1929]; 53 L.D. 194 [1930]; 53 I.D. 593 [1932] . . .) The rights of the natives are in some respects the same as those generally enjoyed by the Indians residing in the United States, viz: the right of use and occupancy, with the fee in the United States (50 L.D. 315 [1924]). However, the recognition and protection thus accorded these rights of occupancy have been construed as not constituting necessarily a recognition

of title . . ." (Cf. Tee-Hit-Ton Indians v. United States [348 U.S. 272 (1955)], below, p. 27).[20]

The first legislation to protect the Alaska natives in their use and occupation of lands was the Alaska Organic Act of 1884 (23 Stat. 24), which provided a civil government for Alaska and established the area as a land district. Sec. 8 of the Organic Act declared that:

". . . the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress." (Emphasis added.)

The Alaska Native Claims Act of 1971 therefore embodies the "terms under which (the Alaska natives) may acquire title to such lands," and is thus the "future legislation" reserved to Congress by sec. 8 of the 1884 Alaska Organic Act. Subsequent to 1884 (and previous to 1971) laws enacted by Congress (and resulting judicial decisions) have protected the natives' right to "use and occupancy." The Act of March 3, 1891 (26 Stat. 1095), to repeal timber-culture laws, and for other purposes; the Act of May 14,. 1898 (30 Stat. 409), extending the homestead laws to Alaska; and the Act of June 6, 1900 (31 Stat. 321), making further provision for civil government in Alaska, all contained clauses protecting native use and occupancy of land.[21]

Congressional protection of native use and occupancy was repeatedly upheld by Alaska courts. Among the most important such decisions were United States v. Berrigan (2 Alaska Reports, 448) (1905); United States v. Cadzow (5 Alaska Reports 131) (1914); and United States v. Lynch (7 Alaska Reports 573) (1927).

IV. The Reservation Question in Alaska

Passage of the Indian Reorganization Act in 1934 (48 Stat. 984) (also known as the Wheeler-Howard Act) laid the foundation for a new Indian policy which ended the division of reservation lands into private allotments. While certain sections of the Indian Reorganization Act applied to Alaska, the balance of its provisions was extended to the Territory by enactment of the Act of May 1, 1936 (49 Stat. 1250). Section 2 of the 1936 Act authorized the Secretary of the Interior to designate as "Indian reservations" such areas of the State as had been reserved for the use and occupancy of Indians or Eskimos by sec. 8 of the Act of May 17, 1884 (23 Stat. 26); by sec. 14 or sec. 15 of the Act of March 3, 1891 (26 Stat. 1101); by executive order; or which were at the time (1936) "actually occupied by Indians or Eskimos." Such action was to be effective upon vote of the adult native residents within the proposed

reservations. Under authority of the 1936 Act six reservations were proclaimed and approved.[22]

The entire issue of whether, with the exception of Annette Island and Klukwan (cf. footnote 17, above), areas withdrawn by executive order or Interior Department proclamation in Alaska are "reservations" in the same sense of the word as it applies in the lower 48 States, is a matter of some confusion. The Interior Department Task Force Report on Alaska Native Affairs (1962) states that "the question of the permanent entitlement of the natives to lands within reservations created pursuant to the 1936 Act [49 Stat. 1250] [Cf. p. 21, above] was raised in a case involving the village of Karluk (Hynes v. Grimes, 69 U.S. 968) and, in its decision, the U.S. Supreme Court commented that the Karluk Reservation constituted a withdrawal which was 'temporary . . . until revoked by him (the Secretary of the Interior) or by Act of Congress. . . .' This decision cast doubt upon the permanent entitlement of the natives to other lands previously reserved for their benefit, use, and occupancy, and the Solicitor of the Department of the Interior has held that the authority of the Bureau of Indian Affairs to lease land for the benefit of the natives may not extend to Alaska, except in the cases of Klukwan and Metlakatla." The Task Force Report concludes:

"In addition to the lands reserved for native use at Klukwan, Metlakatla, and the six communities included under the 1936 Act, the Federal Government has since 1900 made more than 150 separate withdrawals from the public domain for native use, for native use and occupancy, for 'Indian purposes,' for the establishment of schools and hospitals, and for other programs of benefit to the natives. The extent of the natives' use rights to land in these reserves may differ with the language of the various orders and proclamations, but in no case does it appear to be as great as the Indians' interest in lands reserved by treaty or statute, or by Executive Order in the lower 48 States."[23]

V. Aboriginal Claim as a Judicable Issue in Individual Cases

Ever since 1884, Congress and the courts had, as is demonstrated above, upheld the right of the Alaska natives, in varying degrees, to "use and occupancy" of the land where they lived. This did not constitute, however, a recognition of aboriginal title.

The case of U.S. v. Alcea Band of Tillamooks et. al (329 U.S. 40) (1946) was therefore a landmark in that it recognized the claim of aboriginal title for certain Oregon Indians (the Tillamooks) as a judicable issue: i.e., the Court held that "tribes which successfully identify themselves as entitled to sue . . ., prove their original Indian title to designated lands, and demonstrate that their interest in such lands was taken without their consent and without compensation, are entitled to recover compensation therefor without showing that the original Indian title ever was formally recognized by the United States.[24] (The case prefigures two cases involving Alaska

Indians (as will be demonstrated below) and thus is pertinent to the presentation of Alaska native claims as a judicable issue.)

The right of the Tillamooks to sue was based on a 1935 Act of Congress (49 Stat. 801) granting authority to the Court of Claims to hear the designated claims of certain Indian tribes or bands described in certain unratified treaties negotiated with Indian tribes in the State of Oregon.[25] Eleven Indian tribes sued the United States under authority of this Act and four of eleven tribes (the Tillamooks included) were held by the Court of Claims to have successfully identified themselves as entitled to sue under the Act, to have proved their original Indian title to designated lands, and to have demonstrated "an involuntary and uncompensated taking of such lands." The Court of Claims thus held that original Indian title was an interest the taking of which without the consent of the Indian tribes entitled them to compensation (59 F. Supp. 934) (1945).

The Supreme Court affirmed the Court of Claims decision.

Results similar to those obtained by the Tillamooks were sought by the Tee Hit Tons, a group of 60 to 70 Alaska Indians who brought suit before the Court of Claims to obtain compensation for the taking of forest timber from lands which they claimed to own in the Tongass National Forest (Tee Hit Tons v. United States, 120 F. Supp. 202) (1954).[26]

In this suit, the natives claimed title to 350,000 acres of land and 150 square miles of water in the Tongass National Forest area. They maintained that timber taken from that area had been sold to a private company by the Department of Agriculture pursuant to the Joint Resolution of August 8, 1947 (61 Stat. 920). This, the natives claimed, amounted to a taking of their " 'full proprietary ownership' of the land; or, in the alternative, at least [of their] 'recognized' right to unrestricted possession, occupation and use" (348 U.S.C. 277); and thus warranted compensation.

The Court of Claims had refused to address itself to the petitioner's questions dealing with the problem of aboriginal title. The Court of Claims did conclude, however, that "there is nothing in the legislation referred to which constitutes a recognition by Congress of any legal rights in the plaintiff tribe to the lands here in question." (120 F. Supp. 202, 208). (1954).

In reviewing this case the Supreme Court (348 U.S. 272) (1955) noted that "the compensation claimed does not arise from any statutory direction to pay. Payment, if it can be compelled, must be based upon a constitutional right of the Indians to recover." The Court concluded that since the Congress had never specifically recognized the Indians' title to the land in question, the Indians did not possess title

thereto, and thus were not entitled to compensation as a constitutional right (under the Fifth Amendment). Accordingly, "Indian occupancy, not specifically recognized as ownership by action authorized by Congress, may be extinguished by the government without compensation."

The Court explicitly distinguished between the case of the Tee Hit Tons and that of the Tillamooks:

"The recovery in the United States v. Tillamooks . . . was based upon statutory direction to pay for the aboriginal title in the special jurisdictional act to equalize the Tillamooks with the neighboring tribes, rather than upon a holding that there had been a compensable taking under the Fifth Amendment." (348 U.S. 272)[27]

The dissenting justices in this case held that the Organic Act of Alaska (1884) had recognized the claims of the natives in sec. 8:

"the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress. . . ."

The dissenters concluded, in effect, that in 1884 Congress had recognized the claim of these natives to title to their lands, leaving the specification of the "metes and bounds" of such lands and the terms of the acquisition of title for future legislation to determine.

* * *

A third case, that of the Tlingit and Haida Indians, was finally settled in 1968 and should be noted, as it bears directly upon provisions of the Alaska Native Claims Settlement Act (sec. 16, Cf. p. 79 below).

The Tlingits and Haidas had been authorized by Congress in 1935 to bring suit in the Court of Claims for the adjudication and judgment "upon any and all claims which said Indians may have, or claim to have, against the United States" (49 Stat. 388) (1935). Of particular concern was the provision in Sec. 2 which provided that:

"the loss to said Indians of their right, title, or interest arising from occupancy and use, in lands or other tribal or community property, without just compensation therefor, shall be held sufficient ground for relief hereunder . . ."

Congress did not directly confront the issue of aboriginal title, as it required only that the Tlingits and Haidas prove "use and occupancy" to establish claim to the lands for which compensation could be made. The Court of Claims found that the Tlingits and Haidas had used and occupied the land area in question and had thus established "Indian title" thereto (p. 468), and that the United States had taken such land, thus entitling these Indians to compensation under the 1935 Act (177 F. Supp. 452) (1959). The Court held that use and occupancy title of the Tlingit and Haida Indians to the land in question was not extinguished by the Treaty of 1867 between the United States and Russia dealing with the sale of Alaska by Russia to the United States.

A separate determination of the amount of the liability was made and handed down on January 19, 1968 (Tlingit and Haida Indians of Alaska and Harry et al. Interveners v. United States [Ct. Cl. No. 47900, January 19, 1968]). Thus, while the Tlingit-Haida ruling would seem to constitute a limited recognition of the Tlingits' and the Haidas' claims to aboriginal title, it did not settle the larger issue of the claim of all Alaska natives to aboriginal title. Nevertheless, because the Tlingits and Haidas were awarded some compensation for lands taken by the U.S., such compensation was recognized in the Native Claims Act (sec. 16); as follows:

"(c) The funds appropriated by the Act of July 9, 1968 (82 Stat. 307) to pay the judgment of the Court of Claims in the case of the Tlingit and Haida Indians of Alaska et al. against the United States, numbered 47.99, and distributed to the Tlingit and Haida Indians pursuant to the Act of July 13, 1970 (84 Stat. 431), are in lieu of the additional acreage to be conveyed to qualified villages listed in section 11." (Cf. p. 79 below.)

VI. Background since Passage of the Alaska Statehood Act (85 Stat. 508), July 7, 1958

The Alaska Statehood Act of 1958 (Section 4) required the new State to disclaim all right and title to:

"any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property belonging to the United States or which may belong to said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: Provided, That nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States

applicable thereto; and nothing in this Act is intended or shall be construed as a finding, interpretation or construction by Congress that any law applicable thereto authorizes, establishes, recognizes, or confirms the validity or invalidity or any such claim, and the determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this Act: And providedfurther, That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation."

As can be seen, the apparent. effect of this section, from the point of view of the natives, was to hold the situation regarding aboriginal claims in status quo. Except where titles have already been bestowed upon Indians, Eskimos, and Aleuts, or where lands are held in trust for them, no definition of native entitlement is set forth.[28]

The following account which appeared in the January 1972 issue of Indian Affairs (newsletter of the Association on American Indian Affairs) is a useful summary of the history of the Alaska native claims issue since passage of the Alaska Statehood Act on July 7, 1958:

"The Statehood Act granted the State the right to select 103 million acres from the public domain. Although the Act stipulated that Native lands were exempt from selection, nonetheless the State swiftly moved to expropriate lands clearly used and occupied by Native villages and to claim royalties from Federal oil and gas leases on Native lands.

"The Department of Interior's Bureau of Land Management, without informing the villages affected and ignoring the blanket claims the Natives already had on file, began to process the State selections.

"As word of the State's action spread from village to village, the Natives began to organize regional associations for their common defense, and in 1962 the Tundra Times, a Native weekly, was founded to provide a voice for Native aspirations.

"To block the State, the Native villages filed administrative protests against State selections with the Department of the Interior and Interior Secretary Stewart Udall refused to award the State title to protested lands. By 1964, the State selections program had come to a halt, and the State government in Juneau began to listen more attentively to Native demands for Federal legislation to settle aboriginal land claims.

"In 1964, Indian and Eskimo leaders from across the State met in Fairbanks to mobilize their joint forces; and two years later the Alaska Federation of Natives was formed to champion Native rights.

"In 1966, Native protests broadened to include not only State selections but also an important, new Federal oil and gas lease sale on lands on the North Slope claimed by Natives. Late that year Secretary Udall ordered the lease sale suspended, and shortly thereafter announced a 'freeze' on the disposition of all Federal land in Alaska, pending Congressional settlement of Native land claims.

"In 1967, soon after he took office, Governor Walter J. Hickel struck back. He condemned as illegal Secretary Udall's failure to act on the State selections, and filed suit against the Secretary in Federal Court to force him to complete transfer of Native lands around the village of Nenana.

"In a landmark case, argued by the attorneys for the AAIA and the village of Nenana, the U.S. Court of Appeals reaffirmed that traditional Native use and occupancy created legal land rights and that lands subject to Native use and occupancy are exempt by the Statehood Act from expropriation. The U.S. Supreme Court refused to hear the State's appeal.

"In January 1969, as one of his last acts in office, Secretary Udall formalized his 'land freeze' with the issuance of Public Land Order 4582. The freeze, in addition to preserving Native land rights, also helped block construction of the 800-mile pipe-line to carry crude oil from the rich Arctic oil fields on the Beaufort Sea south to the all-weather port of Valdez on Prince William Sound. Despite enormous political pressures by the oil companies and the State of Alaska, the freeze was reluctantly extended by Secretary Hickel and later by Secretary Morton to protect Native interests while Congress was considering their claims.

"Additionally, the Athabascan Indians of Stevens Village on the Yukon won a Federal Court injunction against the Secretary of the Interior forbidding him to grant a right-of-way for the construction of the pipeline across their lands.

"The first important step toward Congressional settlement was taken in July 1970 by the U.S. Senate. The Senate passed legislation that would grant Alaska's more than 200 Native villages title to only 10 million acres of land—less than 3 per cent of the lands to which they had valid legal claim. In return for extinguishing their claims to the rest of Alaska's 375 million acres, the Senate bill offered the Natives cash compensation amounting to $1 billion in payments deferred over many years.

"Senator Fred Harris (D-Okla.) led a last-minute drive to increase the land title provision to the 40 million acres requested by the Natives. His land amendment was crushed by a vote of 71-13. At this point, Native hopes for a fair land settlement were dim. Former Attorney General Ramsey Clark, legal counsel for the Alaska Federation of Natives, advised acceptance of the Senate bill by the Natives.

"The Natives, however, refused to give up, and they seized the initiative in lobbying for their land settlement. Mr. Emil Notti, then President of the Alaska Federation of Natives, condemned the 10 million acre Senate land provision, stating: 'To deny the Alaska Natives an adequate land base of at least 40 million acres will contribute to their dependency, to the disintegration of the communities, and to the erosion of their culture. To strip the Alaska Natives of their land will destroy their traditional self-sufficiency, and it is certain to create among them bitterness towards other Alaskans and a deep distrust of our institutions and our laws.'

"Two months later, in September 1970, the Natives won their first legislative victory, when the House Subcommittee on Indian Affairs agreed in closed sessions to a provision that would grant the Natives title to 40 million acres. However, the Interior Committee failed to report a bill and so the question was held over for the next Congress.

"This delay gave the Natives an opportunity to mount a strong campaign to build on their victory in the House Subcommittee. Their objectives were to overturn the unfavorable Senate bill and to convince the Nixon Administration to abandon its own position (which was worse than the 1970 Senate bill) and support the AFN position.

"In February 1971 Senator Fred Harris and Senator Edward M. Kennedy introduced legislation sponsored by the Natives, and they were joined by 12 co-sponsors, including the leading prospects for the Democratic presidential nomination. A companion bill was introduced in the House by U.S. Representative Lloyd Meeds (D-Wash.), with more than thirty co-sponsors.

"By the end of March, the Natives had picked up enough votes in the Senate to be virtually certain of winning a floor fight against the Senate Interior Committee, if it again reported out a bill for less than 40 million acres.

"In April 1971, President Nixon met with AFN President Wright and publicly announced his own support for legislation that would convey to the Natives title to 40 million acres, thus assuring a Native victory in the Senate. (Only two months earlier Interior Secretary Rogers C.B. Morton, testifying before the Senate Interior Committee, stated he would submit legislation conferring title to only 1 million acres of land.)

"The House and Senate Interior committees labored through the spring and summer to produce one of the most complex pieces of legislation ever considered by them. In September both committees reported out bills for 40 million acres of land. The House bill, managed by Representative Wayne Aspinall, was adopted by a vote of 334-63 on October 20 and the Senate bill, managed by Senator Henry M. Jackson, passed by a vote of 76-5 on November 1. On December 13 the joint House-Senate conference bill was adopted by both chambers and sent to President Nixon for his signature."

Public Land Order No. 4582 was to expire on December 31, 1970. It was extended by Public Land Order No. 4962 [December 8, 1970], until June 30, 1971, or upon passage of the Alaska Native Claims Settlement Act, whichever should occur first. It was extended a second time by Public Land Order No. 5081 [June 17, 1971], until the last day of the first session of the 92nd Congress [or until passage of the Alaska Native Claims Act, whichever should occur first]. It was extended yet a third time by Public Land Order No. 5146 [December 7, 1971] until the end of the second session of the 92nd Congress [or until passage of the Act]. The Alaska Native Claims Settlement Act, passed on December 18, 1971, revoked Public Land Order No. 4582 by provision of sec. 17 (d) [Cf. p. 81 below].

The Senate Interior and Insular Affairs Committee has explained the "status quo" observed by the Federal government (as embodied in the land freeze order) as deriving from Congress itself. Accordingly, both the Organic Act of 1884 and the Alaska Statehood Act of 1958 clearly prohibited the Federal government from making any decisions concerning land claims without specific Congressional authorization. This was the Committee's interpretation of the legal situation previous to enactment of the Alaska Native Claims Settlement Act on December 18, 1971 (Senate Interior and Insular Affairs Committee, Report No. 92-405, pp. 75-76):

"3. The Common Legal Thread: A Claim of Aboriginal Use or Occupancy

"An early problem this Committee had to face in the 91st and this Congress in considering any settlement of Alaska Native land claims was the bewildering diversity among the claims and claimants. Claimants include individuals as well as traditional and corporate tribal and regional associations. Many are of different language and cultural groups and differ in the patterns of their historic use of the land and in their present location with respect to it; they vary widely in their levels of acculturation and in their economic condition. The claims differ in the type of relief sought, in the apparent ownership and status of the lands claimed, and in the length of time over which they have been formally asserted. . . .

"The common legal thread which runs through the diversity indicated above is the assertion of rights or claims based upon aboriginal use or occupancy. The crux of the

legal issue raised by Native land claims in Alaska was set out first and most definitively in Section 8 of the Alaska Organic Act of 1884 (Act of May 17, 1884, 23 Stat. 24):

"'***That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress.'

"The same issue has been posed sharply in recent years by the implementation of the Alaska Statehood Act (72 Stat. 339) which in Section 6 authorizes the State to select for itself public land within Alaska, but which in Section 4 (as amended by the Alaska Omnibus Act, 73 Stat. 141) provides that '***the State and its people *** forever disclaim all rights and title *** to any lands or other property (including fishing rights), the right and title to which may be held by any Indians, Eskimos, or Aleuts.' Such lands, '*** remain under the absolute jurisdiction of the United States until disposed of under its authority***'

"The ultimate implications of these respective provisions of the 1884 and 1958 Acts and of similar and related provisions of other laws are subject to a variety of legal interpretations. However, the intention of Congress is beyond dispute with respect to two issues:

"(1) Congress refused in each instance to determine substantively what lands were in fact used or occupied by the Natives, or what was the nature of the title that the Natives held by virtue of that use or occupancy; and that

"(2) Congress intended in each instance that the status quo be maintained with respect to Native use, occupancy and title to lands in Alaska until Congress should act upon these questions.

"These intentions are explicitly reinforced in further language of Section 4 of the Alaska Statehood Act, '. . . that nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States . . .'

"Congress has, therefore, given Native claims precedence over other claims on the public lands of Alaska, but it has reserved to itself the full power to define, confirm, deny, or extinguish Native title, and, with minor exceptions, Congress has so far declined to do so [as of October 21, 1971, the date of this publication]. As a result:

"(1) There is doubt about the authority of the Department of the Interior to grant to the State or other parties rights in, or patent to, public lands in Alaska claimed by Natives;

consequently, almost all mineral leasing on and state selection of such lands have been brought to a halt . . .

"(2) The title to public lands or other property in Alaska transferred to the State or to private persons in the face of a Native protest is seriously compromised; yet . . .

"(3) Congress to date has granted no agency or court the jurisdiction to make a determination on their merits concerning Native claims in Alaska."

VII. General Summary of the Provisions of the Alaska Native Claims Settlement Act

The Alaska Native Land Claims Act provides for the conveyance of both property title and monetary award to the natives in settlement of their aboriginal claims. Following is a summary of the provisions of settlement contained in the Act and set forth in the accompanying conference report:

1. Land

(a) The Natives will receive title to a total of 40 million acres, both surface and subsurface rights, divided among the some 220 villages and 12 Regional Corporations.

(b) The villages will receive the surface estate only in approximately 18 1/2 million acres of land in the 25 township areas surrounding each village, divided among the villages according to population.

(c) The villages will receive the surface estate in an additional 3 1/2 million acres, making a total of 22 million acres, divided among the villages by the Regional Corporations on equitable principles.

(d) The Regional Corporations will receive the subsurface estate in the 22 million acres patented to the villages, and the full title to 16 million acres selected within the 25 township areas surrounding the villages. This land will be divided among the 12 Regional Corporations on the basis of the total area in each region, rather than on the basis of population.

(e) An additional 2 million acres, which completes the total of two million, will be conveyed as follows:

(1) Existing cemetery sites and historical sites will be conveyed to the Regional Corporations.

(2) The surface estate in not more than 23,040 acres, which is one township, will be conveyed to each of the native groups that is too small to qualify as a Native village. The subsurface estate will go to the Regional Corporations.

(3) The surface estate in not more than 160 acres will be conveyed to each individual Native who has a principal place of residence outside the village areas. The subsurface estate will go to the Regional Corporations.

(4) The surface estate in not to exceed 23,040 acres will be conveyed to Natives in four towns that originally were Native villages, but that are now composed predominantly of non-Natives. These conveyances will be near the towns, but far enough away to allow for growth and expansion of the towns. The subsurface estate will go to the Regional Corporations.

(5) The balance of the 2 million acres, if any, will be conveyed to the Regional Corporations.

(f) If the entire 40 million acres cannot be selected from the 25 township areas surrounding the villages because of topography or restrictions on the acreage which may be selected from within the Wildlife Refuge System, lieu selection areas will be withdrawn by the Secretary of the Interior as close to the 25 township areas as possible.

The State does not make its selection before all of the Native lands have been selected, but the State's interests are recognized as follows:

(a) State selections made before the date of the Secretarial Order imposing a "land freeze," amounting to about 26 million acres, are protected against Native selection, except that a Native Village (not the Regional Corporations) may select from the area surrounding the Village not to exceed three townships of the lands previously selected by the State.

(b) The Regional Corporations can select lands within the 25 township areas only on a checkerboard pattern of odd and even numbers, and the State may select the checkerboarded townships not available to the Regional Corporations.

Under the provisions of subsection 12(c) (3) ". . . the Regional Corporation may select only even numbered townships in even numbered ranges, and only odd numbered townships in odd numbered ranges." This language is meant to insure "checkerboard" selections by the Regional Corporations.

The effect of this provision of the bill is to limit the selections of the Regional Corporation to townships 2, 4, 6, 8, 10, et cetera, North or South of a principal or special base line, in ranges 2, 4, 6, 8, 10, et cetera, East or West of a principal or special meridian. With respect to odd numbered ranges, East or West of a principal or special meridian, i.e. Range 1 West, Range 1 East, Range 3 West, Range 3 East, et cetera, the Regional Corporation could select from townships 1, 3, 5, 7, 9, et cetera, North or South of a principal or special base line. The numbering system of the townships and ranges is the system used by the United States Land Survey System.

(c) The withdrawal of land to facilitate Native selections will terminate in four years, and State selections will not thereafter be impeded.

(d) State selections may proceed immediately in areas outside the 25 township areas around Native Villages, and lieu selection areas.

2. Money

The Natives will be paid $462,500,000 over an eleven-year period from funds in the United States Treasury, and an additional $500,000,000 from mineral revenues received from lands in Alaska hereafter conveyed to the State under the Statehood Act, and from the remaining Federal lands, other than Naval Petroleum Reserve Numbered 4, in Alaska. Most of the $500,000,000 paid to the Natives would otherwise be paid to the State under existing law, and the State has agreed to share in the settlement of Native claims in this manner.

3. Corporate organization

(a) The Natives in each of the Native villages will be organized as a profit or non-profit corporation to take title to the surface estate in the land conveyed to the village, to administer the land, and to receive and administer a part of the money settlement.

(b) Twelve Regional Corporations will be organized to take title to the subsurface estate in the land conveyed to the villages, and full title to the additional land divided among the Regional Corporations. The Regional Corporations will also receive the $962,500,000 grant, divided among them on the basis of Native population. Each Regional Corporation must divide among all twelve Regional Corporations 70 percent of the mineral revenues received by it.

Each Regional Corporation must distribute among the Village Corporations in the region not less than 50 percent of its share of the $962,500,000 grant, and 50 percent of all revenues received from the subsurface estate. This provision does not apply to

revenues received by the Regional Corporations from their investment in business activities.

For the first five years, 10 percent of the revenues from the first two sources mentioned above must be distributed among the individual Native stockholders of the corporation.

(c) Natives who are not permanent residents of Alaska may, if they desire, organize a 13th Regional Corporation, rather than receive stock in one of the 12 Regional Corporations. The 13th Regional Corporation will receive its pro rata share of the $962,500,000 grant, but it will receive no land and will not share in the mineral revenues of the other Regional Corporations.

4. Other major provisions

(a) Land use planning

A Joint Federal-State Land Use Planning Commission is established. The Planning Commission has no regulatory or enforcement functions, but has important advisory responsibilities.

(b) National interest areas

The Secretary of the Interior is authorized to withdraw from selection by the State and Regional Corporations (but not the Village Corporations) and from the operation of the public land laws up to, but not to exceed, 80 million acres of unreserved lands which, in his view, may be suitable for inclusion in the National Park, Forest, Wildlife Refuge, and Wild and Scenic River Systems.

(c) Interim operation of the public land laws

The Secretary is authorized, where appropriate, under his existing authority, to withdraw public lands and to classify or reclassify such lands and to open them to entry, location and leasing in a manner which will protect the public interest and avoid a "land rush" and massive filings on public lands in Alaska immediately following the expiration of the so-called "land freeze."

(d) Reservation of easements

Appropriate public access and recreational site easements will be reserved on lands granted to Native Corporations to insure that the larger public interest is protected.

(e) Attorney and consultant fees

Fees to attorneys and consultants are limited to $2 million. All contracts based on a percentage fee related to the value of the lands and revenues granted by this Act are declared unenforceable.

(f) Valid existing rights

All valid existing rights, including inchoate rights of entrymen and mineral locators, are protected.

(g) National Petroleum Reserve No. 4 and wildlife refuges

No subsurface estate is granted in Naval Petroleum Reserve Number 4 or in the National Wildlife Refuges, but an in lieu selection to subsurface estate in an equal amount of acreage outside these areas is provided for the Regional Corporations.

(h) National forests

Appropriate limitations are placed on the amount of lands which may be granted from National Forests to Native villages located in the National Forests.[29]

VIII. Section-by-Section Analysis

SECTION 1. Enactment Clause.

SECTION 2. Declaration of Policy.

Declares –

"(a) an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims;

"(b) that the settlement should be accomplished rapidly, in conformity with the real economic and social needs of Natives, with maximum participation by Natives in decisions affecting their rights and property. . . " and, further, that the lands granted by this act are not "in trust' and the native villages are not "reservations."

(c) that "no provision of this Act shall replace or diminish any right, privilege, or obligation of Natives as citizens of the United States or of Alaska, or relieve, replace, or diminish any obligation of the United States or of the State of Alaska to protect and promote the rights or welfare of Natives as citizens of the United States or of Alaska; the Secretary is authorized and directed, together with other appropriate agencies of

the United States Government, to make a study of all Federal programs primarily designed to benefit Native people and to report back to the Congress with his recommendations for the future management and operation of these programs within three years of the date of enactment of this Act;"

(d) that "no provision of this Act shall constitute a precedent for reopening, renegotiating, or legislating upon any past settlement involving land claims or other matters with any Native organizations, or any tribe, band, or identifiable group of American Indians;"

(e) that "no provision of this Act shall effect a change or changes in the petroleum reserve policy reflected in sections 7421 through 7438 of title 10 of the United States Code except as specifically provided in this Act;"

(f) that "no provision of this Act shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, nor to grant implied consent to Natives to sue the United States or any of its officers with respect to the claims extinguished by the operation of this Act; and"

(g) that "no provision of this Act shall be construed to terminate or otherwise curtail the activities of the Economic Development Administration or other Federal agencies conducting loan or loan and grant programs in Alaska . . ."

SECTION 3. Definitions.

Defines the terms utilized in the act, as follows:

"(a) 'Secretary' means the Secretary of the Interior;

"(b) 'Native' means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Any decision of the Secretary regarding eligibility for enrollment shall be final;

"(c) 'Native village' means 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;

"(d) 'Native group' means any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the locality;

"(e) 'Public lands' means all Federal lands and interests therein located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installations, and (2) land selections of the State of Alaska which have been patented or tentatively approved under section 6(g) of the Alaska Statehood Act, as amended (72 Stat. 341, 77 Stat. 223), or identified for selection by the State prior to January 17, 1969;

"(f) 'State means the State of Alaska;

"(g) 'Regional Corporation' means an Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of this Act;

"(h) 'Person' means any individual, firm, corporation, association, or partnership;

"(i) 'Municipal Corporation' means any general unit of municipal government under the laws of the State of Alaska;

"(j) 'Village Corporation' means an Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village in accordance with the terms of this Act.

"(k) 'Fund' means the Alaska Native Fund in the Treasury of the United States established by section 6; and

"(l) 'Planning Commission' means the Joint Federal-State Land Use Planning Commission established by section 17."

SECTION 4. Declaration of Settlement.

Declares that (a) all prior conveyances of public land are regarded as an extinguishment of the aboriginal title thereto; (b) all use and occupancy claims of aboriginal title are extinguished; and that (c) all actual claims based on claims of

aboriginal right, title, use or occupancy are extinguished. Such claims pending before any Federal or state court or the Indian Claims Commission, are hereby extinguished.

SECTION 5. Enrollment.

Explains the procedure governing enrollment of all natives preparatory to implementation of the native claims settlement: (a) declares that the Secretary of the Interior shall prepare within two years from the "date of enactment of this Act a roll of all Natives who were born on or before, and who are living on, the date of enactment of this Act. Any decision of the Secretary regarding eligibility for enrollment shall be final.

"(b) The roll prepared by the Secretary shall show for each Native, among other things, the region and the village or other place in which he resided on the date of the 1970 census enumeration, and he shall be enrolled according to such residence. Except as provided in subsection (c), a Native eligible for enrollment who is not, when the roll is prepared, a permanent resident of one of the twelve regions established pursuant to subsection 7(a) shall be enrolled by the Secretary in one of the twelve regions, giving priority in the following order to —

"(1) the region where the Native resided on the 1970 census date if he had resided there without substantial interruption for two or more years;

"(2) the region where the Native previously resided for an aggregate of ten years or more;

"(3) the region where the Native was born; and

"(4) the region from which an ancestor of the Native came: "The Secretary may enroll a Native in a different region when necessary to avoid enrolling members of the same family in different regions or otherwise avoid hardship.

"(c) A Native eligible for enrollment who is eighteen years of age or older and is not a permanent resident of one of the twelve regions may, on the date he files an application for enrollment, elect to be enrolled in a thirteenth region for Natives who are non-residents of Alaska, if such region is established pursuant to subsection 7(c). If such region is not established, he shall be enrolled as provided in subsection (b). His election shall apply to all dependent members of his household who are less than eighteen years of age, but shall not affect the enrollment of anyone else."

The Federal regulations governing enrollment procedures, as published in the February 4, 1972, issue of the Federal Register, are reproduced in Appendix B.

SECTION 6. Alaska Native Fund.

(a) Establishes the Alaska Native Fund into which shall be deposited (1) $462 million from the U.S. Treasury over an 11-year period; and (2) $500 million from mineral revenues received from lands in Alaska hereafter conveyed to the State under the Statehood Act and from the remaining Federal lands in Alaska (other than Federal Petroleum Reserve Number 4). (See sec. 9, "Revenue Sharing," for details.)

(b) Prohibits fund expenditures for propaganda or political campaigns and declares such expenditures subject to penalty.

(c) Declares that after completion of the roll (as prescribed in sec. 5, above), all money in the fund (except that provided for attorneys and fees according to sec. 20, below), must be distributed among the Regional Corporations organized pursuant to sec. 7 (below).

SECTION 7. Regional Corporation.

(a) Declares that the State of Alaska is to be divided by the Secretary of the Interior into twelve geographic regions, "with each region composed as far as practicable of natives having a common heritage and sharing common interests." The Regions shall approximate the areas covered by existing native associations, as listed in sec. 7.

(b) States that if request is made within a year following enactment of this act, the Secretary of the Interior is authorized to merge two or more of the regions, provided that the total number of regions not be less than seven.

(c) Provides for establishment of a thirteenth region if a majority of all eligible natives who are not permanent residents of Alaska elect to be enrolled therein.

(d) (e) (f) Declare that each region shall incorporate as a Regional Corporation to conduct business for profit. Sets forth regulations governing such incorporation and management thereof.

(g) Authorizes the Regional Corporations to issue one hundred shares of common stock to each native enrolled in the region (pursuant to sec. 5).

(h) Delineates stockholders' rights.

(i) Explains the method of distribution of certain natural resource revenues.

(j) (k) (l) (m) Provide for the method of distribution of corporate funds.

(n) Declares that a Regional Corporation may undertake on behalf of one or more Village Corporations within the region any project authorized and financed by them.

(o) Provides for annual audit and report to stockholders and Congressional committees of the Regional Corporation accounts.

(p) Provides for resolution of any conflict between Federal and State laws.

(q) Explains allowable contracts between Regional Corporations and business management groups.

SECTION 8. Village Corporations.

(a) Declares that the native residents of each village entitled to receive lands and benefits under this act (according to sec. 11) must organize as a business for profit or nonprofit corporation before any native village may receive patent to such lands or benefits (except as otherwise provided).

(b) Provides for preparation of articles of incorporation for Village Corporations.

(c) Makes applicable to Village Corporations the provisions for Regional Corporations (sec. 7) regarding stock alienation, annual audit, and transfer of stock ownership.

SECTION 9. Revenue Sharing.

Delineates the disposition of the $500 million to be paid to the natives from mineral revenues received from lands in Alaska hereafter conveyed to the State under the Statehood Act and from the remaining Federal lands in Alaska (excluding Native Petroleum Reserve Numbered 4) (cf. p. 38 above). The mineral revenues will take the form of a two percent royalty on minerals extracted and two percent of bonuses and rentals, with no time limitation.

SECTION 10. Statute of Limitations.

(a) Vests exclusive jurisdiction over any civil action to contest the authority of the United States to legislate on the subject matter or the legality of this act in the United States District Court for the District of Alaska. Any such action must be filed within one year of the date of enactment of this act.

(b) Provides that should the State of Alaska initiate such litigation, all rights of land selection granted to the State by the Alaska Statehood Act (72 Stat. 340) shall be

suspended regarding any public lands determined by the Secretary of the Interior to be potentially valuable for mineral development, timber, or other commercial purposes. No selections shall be made, no tentative approvals shall be granted, and no patents shall be issued for such lands while such litigation is pending.

SECTION 11. Withdrawal of Public Lands.

(a) Withdraws (subject to valid existing rights) from all forms of appropriation under the public land laws (and from selection under the Alaska Statehood Act) public lands comprising the township areas around the native villages identified in subsec. (b) (below). Exceptions from such withdrawal are lands in the National Park system and lands withdrawn or reserved for national defense purposes (other than Naval Petroleum Reserve Numbered 4).

(b) Enumerates the 305 native villages subject to the provisions of this act and subsec. (a) (above). Sets forth provisions by which the Secretary of the Interior shall determine which villages shall continue to be eligible (or shall newly qualify) for land benefits set forth in sec. 14(a) and (b).

SECTION 12. Native Land Selections.

(a) Provides that for three years from the date of enactment of this act, the Village Corporation for each native village identified in sec. 11 shall select all of the township or townships in which any part of the village is located, plus an area that will make the total selection equal to the acreage to which the village is entitled under sec. 14 (a total of 18 1/2 million acres). Defines limitations on acreage to be selected.

(b) Allocates acreage to Regional Corporations for reallocation to villages (total of 3 1/2 million acres).

(c) Allocates to the Regional Corporations 16 million acres.

(d) Insures that the Village Corporation for the native village at Dutch Harbor, if found eligible for land grants under this act, shall have a full opportunity to select lands within and near the village.

(e) Provides for arbitration of disputes over land selection rights and boundaries of Village Corporations.

SECTION 13. Surveys.

(a) Provides for the Secretary of the Interior to survey the areas selected or designated for conveyance to Village Corporations.

(b) Provides that all withdrawals, selections, and conveyances shall be as shown on current plans of survey or protraction diagrams of the Bureau of Land Management (or the Bureau of State) and shall conform as nearly as possible to the United States Land Survey System.

SECTION 14. Conveyance of Lands.

(a) Declares that immediately after a qualified Village Corporation has selected land for a native village listed in sec. 11, the Secretary shall issue to that Village Corporation a patent to the surface estate in the number of acres indicated by the table in this section. The lands patented shall be those selected by the Village Corporations pursuant to subsec. 12(a) and 12(b).

(b) Declares that the Secretary shall issue a patent to the surface estate in the amount of 23,040 acres to each qualified Village Corporation enumerated in sec. 16 (below) (i.e., the Tlingit and Haida settlements).

(c) Provides that each patent issued pursuant to subsec. (a) and (b) (above) shall be subject to certain requirements set forth herein, including conveyance by the Village Corporation to any native or non-native resident of title to the surface estate of any tract used as a primary residence or place of business.

(d) Declares that the Secretary of the Interior may apply the rule of approximation with respect to the acreage limitations contained in this section.

(e) Declares that the Secretary must immediately convey to the Regional Corporations title to the surface and/or subsurface estates, as is appropriate, in the lands selected by the Regional Corporations.

(f) Provides for ownership by the Regional Corporations of all subsurface estates in lands issued to Village Corporations pursuant to subsec. (a) and (b), except lands located in the National Wildlife Refuge System and lands withdrawn or reserved for national defense purposes. The right to explore, develop, or remove minerals from lands within the boundaries of any native village is subject to the consent of the Village Corporation.

(g) Provides that all conveyances made pursuant to this act are subject to valid existing rights.

(h) Authorizes the Secretary to withdraw and convey 2 million acres of unreserved and unappropriated public lands (located outside the areas withdrawn by sec. 11 and 16) for various purposes outlined herein, including granting of the surface estate in up to 160 acres of land to each individual native who has a principal place of residence outside the village areas. (The subsurface estate will go to the Regional Corporations.)

SECTION 15. Timber Sale Contracts.

Authorizes the Secretary of Agriculture to modify existing National Forest timber sale contracts that are directly affected by conveyances authorized by this act.

SECTION 16. The Tlingit-Haida Settlement.

(a) Provides for withdrawal of all public lands in each township that encloses all or any part of the native villages listed herein (Tlingit-Haida). (A total of ten villages are listed.)

(b) Provides that within three years from the date of enactment of this act, each Village Corporation for the villages listed in subsec. (a) shall select an area of 23,040 acres within the township where the village is located, or from contiguous townships.

(c) Provides that "funds appropriated by the Act of July 9, 1968 (82 Stat. 307), to pay the judgment of the Court of Claims (in the case of the Tlingit and Haida Indians of Alaska, et al. against the United States) and distributed pursuant to the Act of July 13, 1970 (84 Stat. 430) are in lieu of the additional acreage to be conveyed to qualified villages listed in section 11."

SECTION 17. Joint Federal-State Land Use Planning Commission for Alaska.

(a) Sets forth procedures, membership, and duties of Joint Federal-State Land Use Planning Commission. Authorizes appropriations and establishes termination date (December 31, 1976).

(b) Provides for the identification of public easements by the Planning Commission.

(c) Specifies that if the Secretary of the Interior sets aside a utility and transportation corridor for the trans-Alaska pipeline, neither the State, the Village Corporations, nor the Regional Corporations may select lands in the corridor.

(d) Revokes Public Land Order No. 4582 (Federal Register 1025) (January 17, 1969) by which the disposition of all Federal land in Alaska was suspended pending settlement of native claims by Congress.

Authorizes the Secretary to withdraw public lands; to classify or reclassify such lands; and to open them to entry, location and leasing in a manner which will protect the public interest and avoid a "land rush" and massive filings on public lands in Alaska immediately following expiration of the so-called "land freeze" created by Public Land Order 4582.

Further authorizes the Secretary to withdraw from selection by either the State or the Regional Corporations up to 80 million acres of unreserved lands for possible inclusion in the national park, forest, wildlife refuge or scenic river systems. Establishes procedures and limitations in connection therewith.

SECTION 18. Revocation of Indian Allotment Authority in Alaska.

(a) Bars further allotments to natives covered by this act as authorized by the General Allotment Act of 1887 (24 Stat. 389), the Act of June 25, 1910 (36 Stat. 363), or the Alaska Native Allotment Act of 1906 (34 Stat. 197). Further, the Alaska Native Allotment of 1906 is repealed. Pending allotment applications may be approved, in which case the allottee will not be eligible for a patent to 160 acres as provided in sec. 14(h)(5) of the present act. (Cf. discussion of Alaska Native Allotment Act, p. 14 above).

(b) Charges any allotments approved pursuant to this section against the two million acre grant provided for in subsec. 14(h).

SECTION 19. Revocation of Reservations.

(a) Revokes all reservations set aside in Alaska by legislation, Executive Order, or Secretarial Order for native use (subject to any valid existing rights of non-natives). The Annette Island Reserve is exempted from this provision and no person enrolled therein is eligible for benefits under this act. (See footnote 17, p. 15 above.)

(b) Allows any Village Corporation within two years to elect to acquire title to the surface and subsurface estates in any reservation set aside for the use of the natives in said corporation before enactment of this act. Such Village Corporations as shall elect to take advantage of this provision will not be eligible for any other land selections under this act or to any distribution of Regional Corporation funds, or eligible to receive Regional Corporation stock.

SECTION 20. Attorney and Consultant Fees.

(a) (b) (c) (d) (e) (f) (g) Authorize and delineate allowable attorney and consultant fees, to be paid from the Alaska Native Fund (from the appropriation made pursuant to sec. 6 for the second fiscal year).

SECTION 21. Taxation.

(a) Exempts revenues originating from the Alaska Native Fund from Federal, State or local taxation at the time of receipt by a Regional Corporation, Village Corporation, or individual native. (This exemption does not apply to income from the investment of such revenues, however.)

(b) Exempts the receipt of shares of stock in the Regional or Village Corporations by a native from Federal, State or local taxation.

(c) Exempts the receipt of land pursuant to this act from Federal, State, or local taxation.

(d) Exempts real property interests conveyed by this act to native individuals, native groups, or Village or Regional Corporations, which are not developed or leased, from State and local real property taxes for 20 years.

(e) Declares that real property interests conveyed pursuant to this Act which remain exempted from State or local taxation shall continue to be regarded as public lands for purpose of computing the Federal share of any highway project (pursuant to title 23 of the U.S. Code) (et al.).

SECTION 22. Miscellaneous.

(a) Declares that all revenues granted by sec. 6, and all lands granted to Regional Village Corporations, native groups and individuals are not subject to any contract which is based on a percentage fee of the value of all or some portion of the settlement granted by this act, and that any such contract is non-enforceable against any native or native group.

(b) Directs the Secretary promptly to issue patents to all persons who have made lawful entry on the public lands for the purpose of gaining title to homesteads, etc.

(c) Delineates mining claims and possessory rights.

(d) States that provisions of Revised Statute 452 (43 U.S.C. 11) shall not apply to any land grants or other rights granted under this act.

(e) Provides for in lieu additions to the National Wildlife Refuge System if land within the Refuge System is selected by a Village Corporation.

(f) Provides for exchanges of land of the Village Corporations, Regional Corporations, individuals, or the State in order to effect land consolidations or to facilitate the management or development of land. Authorization for this is granted by the Secretary of the Interior, Defense, and Agriculture.

(g) Grants the right of first refusal to the United States if a patent is issued to any Village Corporation for land in the National Wildlife Refuge System and if such land is ever sold by the Village Corporation.

(h) Establishes termination dates of withdrawals under this act.

(i) Places lands withdrawn pursuant to sec. 11, 14, and 16 (prior to conveyance) under administration by the Secretary of the Interior (or, in the case of National Forest Lands, the Secretary of Agriculture). The authority to make contracts and grant leases, permits, rights-of-way, or easements is guaranteed.

(j) Grants authority to the Secretary of the Interior to take necessary action to implement the provisions of the act in areas for which protraction diagrams of the Bureau of Land Management or the State do not exist; which do not conform to the United States Land Survey System; or which have not been surveyed in an adequate manner to effect withdrawal and granting of lands.

(k) Sets forth conditions for granting land patents in national forests.

(l) Limits land selections in certain areas.

SECTION 23. Review by Congress.

Requires submission to the Congress by the Secretary of the Interior of annual reports on implementation of this act until 1984.

SECTION 24. Appropriations.

Authorizes appropriations necessary to implementation of the act.

SECTION 25. Publications.

Authorizes the Secretary of the Interior to publish in the Federal Register such regulations as are necessary to implement the act.

SECTION 26. Saving Clause.

Gives precedence to provisions of this act in cases where there is conflict with other Federal laws applicable in Alaska.

SECTION 27. Separability.

Should any provision of this act be held invalid, the remainder of the act is not affected thereby.