Petersburg Borough

12 South Nordic Drive
Petersburg, AK 99833

Meeting Agenda

Borough Assembly
Regular Meeting

Monday, May 17, 2021 | **6:00 PM** | **Via Zoom**

1. **Virtual Meeting Information**

   A. You are invited to a Zoom webinar.
   When: May 17, 2021 06:00 PM Alaska
   Topic: May 17, 2021 Regular Assembly Meeting

   Please click the link below to join the webinar:
   https://zoom.us/j/97210319825?pwd=THNuZlJTMGtRNXpsbUdkS1FFeG1oZz09
   Passcode: 599011

   Or Telephone:
   Dial(for higher quality, dial a number based on your current location):
   US: +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 or +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592
   Webinar ID: 972 1031 9825
   Passcode: 599011

2. **Call To Order/Roll Call**
3. **Voluntary Pledge of Allegiance**
4. **Approval of Minutes**
   - **A. June 15, 2020 Regular Assembly Meeting Minutes**
   - **B. June 19, 2020 Special Assembly Meeting Minutes**
   - **C. July 9, 2020 Special Assembly Meeting Minutes**
   - **D. July 15, 2020 Regular Assembly Meeting Minutes**
   - **E. May 3, 2021 Regular Assembly Meeting Minutes**
5. **Amendment and Approval of Meeting Agenda**
6. **Public Hearings**

A. Public Hearing for Ordinance #2021-09: An Ordinance of the Petersburg Borough Adopting the Budget for the Fiscal Year July 1, 2021 through June 30, 2021

Any public testimony regarding Ordinance #2021-09 should be given during this public hearing. A copy of Ordinance #2021-09 may be found under agenda item 14D.

7. Bid Awards

8. Persons to be Heard Related to Agenda
Persons wishing to share their views on any item on today's agenda may do so at this time.

9. Persons to be Heard Unrelated to Agenda
Persons with views on subjects not on today's agenda may share those views at this time.

10. Boards, Commission and Committee Reports

11. Consent Agenda

12. Report of Other Officers

A. SEAPA CEO Acteson

SEAPA CEO Acteson will update the Assembly on SEAPA activities.

13. Mayor's Report

A. May 17, 2021 Mayor's Report

14. Manager's Report

A. May 17, 2021 Manager's Report

15. Unfinished Business

A. Ordinance #2021-08: An Ordinance to Reduce the Boundaries of Borough Service Area No. 1 by Removing Frederick Point East Subdivision, and to Direct that the Proposed Boundary Amendment be Submitted to the Voters Residing within the Service Area at the Regular Election to be Held on October 5, 2021, in Accordance with Borough Charter Section 14.03B(1)-(2) -Third and Final Reading

At the July 20, 2020 meeting, the Assembly requested an ordinance to bring the question of removing Frederick Point East Subdivision from Service Area No. 1 to the voters at the 2021 Municipal Election. The ordinance was unanimously approved in its first and second reading.

B. Ordinance #2021-09: An Ordinance Adopting the Budget for the Fiscal Year July 1, 2021 Through June 30, 2022 - Second Reading

If adopted, Ordinance #2021-09 will set the Borough's FY 2022 Budget. Ordinance #2021-09 was amended to increase the Community Services budget to KFSK to

$35,000 and to use $117,000 from the General Fund to allow the property tax mill rate for FY 2022 to stay at the current rate of 11.5 mills. Ordinance #2021-09, as amended, was unanimously approved in it's first reading.

16. New Business

A. Ordinance #2021-10: An Ordinance Amending Section 2.20.010 of the Petersburg Municipal Code to Establish Term Limits for the Assembly - First Reading

Assembly Member Norheim requested that the subject of term limits for Assembly Members go before the voters at the municipal election on October 5, 2021.

B. Resolution #2021-04: A Resolution Supporting the Petersburg Hospital Board and Petersburg Medical Center in the Planning for a New Hospital Facility in Petersburg to be Completed in Phases

The Petersburg Hospital Board requests Assembly support for the planning of a new hospital facility to be completed in phases.

17. Communications

A. Alaska Natives Without Land's Response to Borough's Questions on Landless Bill

B. Correspondence Received Since April 29, 2021

18. Assembly Discussion Items

A. Borough Marine Facilities

Members Lynn and Kensinger will discuss the Borough's Marine Facilities.

B. Assembly Member Comments

C. Recognitions

19. Adjourn

Petersburg Borough

12 South Nordic Drive
Petersburg AK, 99833

Meeting Minutes
Borough Assembly

Monday, June 15, 2020 | **6:00 PM** | **Assembly Chambers**

1. Call To Order/Roll Call

Vice Mayor Stanton Gregor called the meeting to order at 6:00pm

Present: 6 - Assembly Member Bob Lynn, Assembly Member Brandi Marohl, Assembly Member Jeffrey Meucci, Assembly Member Taylor Norheim, Assembly Member Jeigh Stanton Gregor and Assembly Member Chelsea Tremblay

Excused: 1 - Mayor Mark Jensen

2. Voluntary Pledge of Allegiance

The Pledge was recited.

3. Approval of Minutes

There were no minutes available for approval.

4. Amendment and Approval of Meeting Agenda

The agenda was amended to add under Assembly Discussion: Item A, Update on Submarine Cable; and under Report of Other Officers: Item A, Report from EOC Incident Commander, Karl Hagerman. The amended agenda was unanimously approved.

5. Public Hearings

6. Bid Awards

7. Persons to be Heard Related to Agenda

No views were shared.

8. Persons to be Heard Unrelated to Agenda

No views were shared.

9. Board, Commission and Committee Reports

10. Consent Agenda

11. Report of Other Officers

A. Incident Commander Hagerman

Incident Commander Hagerman gave an update on current COVID conditions in the community and mandates from the State.

12. Mayor's Report

A. June 15, 2020 Mayor's Report

Attachments: June 15, 2020 Mayor's Report

Vice Mayor Stanton Gregor read his report into the record.

13. Manager's Report

A. June 15, 2020 Manager's Report

Attachments: June 15, 2020 Manager's Report

Manager Giesbrecht read his report into the record, a copy of which is attached and made a permanent part of these minutes.

14. Unfinished Business

15. New Business

A. Ordinance #2020-19: An Ordinance Amending Borough Code Chapter 3.72 to Provide for Civil Emergency Provisions

Attachments: Ordinance #2020-19 for third and final reading

Ordinance #2020-19 was amended to remove the word "pandemic" from Section 3.72.010. The ordinance, as amended, passed unanimously in its first reading.

B. Resolution #2020-09: A Resolution Approving the Expenditure of $70,178 from the CARES Act Special Revenue Fund for Petersburg School District Personnel Costs in Responding to the COVID-19 Health Emergency and PPE Needed to Mitigate the Needs of the Upcoming School Year

Attachments: Resolution #2020-09

PSD Request for CARES Act Funding

Resolution #2020-09 passed unanimously.

C. Resolution #2020-10: A Resolution Approving the Sole Source Purchase of 2-Station Handicap Accessible Restroom Trailers

Attachments: Resolution #2020-10

Comfort of Home Services, Inc. Quote

Resolution #2020-10 was unanimously approved.

D. Petersburg Borough Public Health Mandate #3 - In-Person Participation at Public Meetings - Amendment

Attachments: Public Health Mandate #3 - Amended

COVID-19 Public Meeting Attendance Policy

Public Health Mandate #3 was approved by a vote of 5-1, Member Meucci opposed.

E. Petersburg Borough Public Health Mandate #5 - Borough Harbor Facilities - Revised and Extended

Attachments: Public Health Mandate #5 - Amended and Extended

IC Hagerman Memo

Public Health Mandate #5 was unanimously approved.

F. Joatman Enterprises LLC Request to Lease Tidelands at the Scow Bay Turnaround

Attachments: Joatmon Enterprises LLC Lease Application

Planning Commission Report - Joatman Enterprises LLC

J. Murgas Letter of Support

PEDC Letter of Support

By unanimous roll call vote, the Joatman Enterprises LLC lease of tidelands at the Scow Bay Turnaround was approved.

G. Letter to Lt. Governor Meyer Regarding 2020 State and Local Elections

Attachments: 2020 State and Local Elections - Voting By Mail

The letter was amended to ask Lt. Governor Meyer to send letters of request for ballots to all registered voters of the State, not just those voters 65 years of age or older. The letter was unanimously approved as amended.

H. Letter to University of Alaska Board of Regents in Support of the University of Alaska Southeast in its Current Form in Southeast Alaska

Attachments: Letter to UofA Board of Regents

Approval of the letter to University of Alaska Board of Regents failed by a vote of 3-3, Members Meucci, Stanton Gregor and Tremblay in favor.

I. Borough Manager 2020 Evaluation Form

Attachments: 2020 Evaluation Form

The Borough Manager 2020 Evaluation Form passed unanimously.

16. Communications

A. Salvation Army 5.12.2020 Letter

Attachments: Salvation Army 5.12.2020

B. Thread Letter 6.3.2020

Attachments: Thread 6.3.2020

17. Assembly Discussion Items

A. SEAPA Marine Cable Update

Member Lynn reported that three responsive bids have been received for the marine cable replacement.

B. Assembly Member Comments

C. Recognitions

Vice Mayor Stanton Gregor recognized retail workers in Petersburg for their dedication over the last 3 months.

Member Tremblay recognized and appreciates everyone for wearing their masks indoors.

18. Adjourn

The meeting was adjorned at 7:56pm

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Debra K. Thompson

Date Approved_____

Petersburg Borough

12 South Nordic Drive
Petersburg AK, 99833

Meeting Minutes
Borough Assembly

Friday, June 19, 2020 | **11:00 AM** | **Assembly Chambers**

Special Meeting - COVID Airport Testing Contract Approval

1. Call To Order/Roll Call

The meeting was called to order at 11:00am.

Present: 4 - Assembly Member Bob Lynn, Assembly Member Jeffrey Meucci, Assembly Member Jeigh Stanton Gregor and Assembly Member Chelsea Tremblay

Excused: 3 - Mayor Mark Jensen, Assembly Member Brandi Marohl and Assembly Member Taylor Norheim

2. Persons to be Heard Related to Agenda

No views were shared.

3. New Business

A. State Mandate #10 - Airport Support

Attachments: IC Hagerman Memo re Airport Support

Petersburg Airport COVID-19 Greeting.Screening.Testing Services Contract

PMC & PB Memo of Agreement re Airport COVID Testing

State Mandate #10 was amended to add wording that Petersburg Medical Center must meet all provisions, terms and conditions of the contract. The mandate, as amended, was unanimously approved.

4. Adjourn

The meeting was adjourned at 11:14am.

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Debra K. Thompson

Date Approved_____

Petersburg Borough

12 South Nordic Drive
Petersburg AK, 99833

Meeting Minutes
Borough Assembly

Thursday, July 9, 2020 | **8:00 AM** | **Assembly Chambers**

Special Meeting - Emergency Ordinances #2020-20 & #2020-21

1. Call To Order/Roll Call

The meeting was called to order at 8:06am.

Present: 6 - Mayor Mark Jensen, Assembly Member Bob Lynn, Assembly Member Jeffrey Meucci, Assembly Member Taylor Norheim, Assembly Member Jeigh Stanton Gregor and Assembly Member Chelsea Tremblay

Excused: 1 - Assembly Member Brandi Marohl

2. Persons to be Heard Related to Agenda

No views were shared.

3. New Business

A. Ordinance #2020-20: An Emergency Ordinance Amending Borough Code Section 3.08.080 to Provide for Temporary Establishment of a Quorum of the Assembly (Four or More) Even if Participating by Teleconference

Attachments: Ordinance #2020-20

Emergency Ordinance #2020-20 was unanimously approved in its one and only reading.

B. Ordinance #2020-21: An Emergency Ordinance Amending Borough Code Section 3.08.080 to Provide for Temporary Establishment of a Quorum of the Assembly (Four or More) Even if Participating by Teleconference

Attachments: Ordinance #2020-21

Emergency Ordinance #2020-21 was unanimously approved in its one and only reading.

4. Adjourn

The meeting was adjourned at 8:13am.

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Debra K. Thompson

Date Approved_____

Petersburg Borough

12 South Nordic Drive
Petersburg AK, 99833

Meeting Minutes
Borough Assembly

Wednesday, July 15, 2020 | **12:00 PM** | **Assembly Chambers**

1. Call To Order/Roll Call

The meeting was called to order at 12:00pm.

Present: 6 - Mayor Mark Jensen, Assembly Member Bob Lynn, Assembly Member Brandi Marohl, Assembly Member Jeffrey Meucci, Assembly Member Jeigh Stanton Gregor and Assembly Member Chelsea Tremblay

Excused: 1 - Assembly Member Taylor Norheim

2. Voluntary Pledge of Allegiance

The Pledge was recited.

3. Approval of Minutes

There were no minutes available for approval.

4. Amendment and Approval of Meeting Agenda

The agenda was unanimously approved as submitted.

5. Public Hearings

A. Public Hearing for Ordinance #2020-19: An Ordinance Amending Borough Code Chapter 3.72 to Provide for Civil Emergency Provisions

Spencer Cheney, Ron Ware, Dana Thynes, Angela Davis, Melinda Olsen and Nancy Hoschar spoke in opposition or Ordinance #2020-19.

6. Bid Awards

7. Persons to be Heard Related to Agenda

No views were shared.

8. Persons to be Heard Unrelated to Agenda

No views were shared.

9. Board, Commission and Committee Reports

10. Consent Agenda

11. Report of Other Officers

A. PMC CEO Hofstetter

PMC CEO Hofstetter updated the Assembly on activities at the Medical Center.

B. Assembly and SEAPA Board Member Lynn

Member Lynn gave an update on the submarine cable replacement reporting that three bids were received and a Japanese firm has been chosen to perform the work.

12. Mayor's Report

A. July 15, 2020 Mayor's Report

Attachments: July 15, 2020 Mayor's Report

Vice Mayor Stanton Gregor read his report into the record.

13. Manager's Report

There was no manager's report for this meeting.

14. Unfinished Business

Ordinances for Second Reading

A. Ordinance #2020-19: An Ordinance Amending Borough Code Chapter 3.72 to Provide for Civil Emergency Provisions

Attachments: Ordinance #2020-19 for third and final reading

Ordinance #2020-19, Section 3.72.020, was amended to add "The assembly may review and disapprove of the borough manager's appointment of a designee as incident commander." The ordinance, as amended, was approved in its third and final reading by a vote of 4-2, Mayor Jensen and Member Marohl opposed.

15. New Business

A. Resolution #2020-11: A Resolution Approving the Sole Source Procurement for EMD Generator Re-Sealing Parts and Service

Attachments: Resolution #2020-11

Marine Systems, Inc. Quote

Resolution #2020-11was unanimously approved.

B. Ernie Haugen Public Use Area Cooperative Resource Management Agreement Renewal

Attachments: PW Director Cotta Memo
2020 CRMA
Expired CRMA

The Ernie Haugen Public Use Area Cooperative Resource Management Agreement renewal was approved unanimously.

C. Local Fish Processing Workers Asymptomatic COVID Testing Memorandum of Agreement

Attachments: EOC IC Hagerman Memo
Asymptomatic COVID Testing Memorandum of Agreement
COVID Testing Agreement with Processor
Exhibit A - Asymptomatic COVID Testing Request Form

The Local Fish Processing Workers Asymptomatic COVID Testing Memorandum of Agreement was unanimously approved.

D. Letter to ADOT Regarding the Kake Access Road Project

Attachments: Response to ADOT re Kake Access Road Project
4.13.2020 ADOT Letter to Borough re Kake Access Road Project

The letter to ADOT regarding the Kake Access Road Project was approved by unanimous roll call vote.

16. Communications

A. Correspondence Received Since Publishing the June 15, 2020 Assembly Meeting Packet

Attachments: 6.12.2020 Chamber of Commerce
6.13.2020 D. Marsh
6.15.2020 S. Flint
6.15.2020 C. Mathisen (Lee's Clothing)
6.15.2020 N. Strand
6.15.2020 P. Wilson (Icicle Seafoods)
6.19.2020 R. McKay (WAVE)
6.26.2020 K. Schramek
6.26.2020 K. Schramek 2
6.27.2020 K. Schramek
6.30.2020 E. Dreisbach
6.30.2020 P. Wilson (OBI Seafoods)
6.30.2020 D. Thynes
7.2.2020 D. Marsh
K. Schramek 7.5.2020
B. Tremblay 7.6.2020
Jennifer Thynes 7.6.2020
K. Thynes 7.6.2020
JoAnn Thynes 7.6.2020
J. Bertagnoli 7.7.2020
D. Marsh 7.7.2020
J. Floyd 7.8.2020
N. Strand 7.8.2020
J. Thynes 7.8.2020
T. Falter 7.9.2020

17. Assembly Discussion Items

A. Discussion of Protective Actions Request

Attachments: IC Hagerman Memo re Protective Actions
PMC CEO & IC Hofstetter Letter re Protective Actions
Public Health Officer Tucillo Memo re Protective Actions
Public Health Nurse Michael Letter

The Assembly discussed IC Hagerman, PMC CEO/IC Hofstetter and Public Heath Officer/Dr. Tuccillo's requests for further protective actions in light of the recent increase of COVID-19 cases in Alaska and Petersburg.

B. Assembly Member Comments

Member Meucci asked for an update of the Solid Waste Study.

C. Recognitions

Member Stanton Gregor recognized OBI and Trident Seafoods for their efforts in keeping their workers and our community safe while processing product.

Mayor Jensen expressed hope that the public has patience with the telephonic meetings.

18. Adjourn

The meeting was adjourned at 2:08pm.

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Debra K. Thompson

Date Approved_____

12 South Nordic Drive
Petersburg, AK 99833

Petersburg Borough

Meeting Minutes

Borough Assembly
Regular Meeting

Monday, May 03, 2021 **12:00 PM** **Via Zoom**

1. Call To Order/Roll Call

Vice Mayor Stanton Gregor called the meeting to order at 12:00 pm.

PRESENT
Assembly Member Bob Lynn
Assembly Member Chelsea Tremblay
Assembly Member David Kensinger
Vice Mayor Jeigh Stanton Gregor
Assembly Member Jeff Meucci
Assembly Member Taylor Norheim

ABSENT
Mayor Mark Jensen

2. Voluntary Pledge of Allegiance

The Pledge was recited.

3. Approval of Minutes

A. Regular Meeting Minutes of May 18, 2020

Regular Meeting Minutes of June 1, 2020

Special Meeting Minutes of June 1, 2020

All minutes were approved as submitted.

Motion made by Assembly Member Meucci, Seconded by Assembly Member Tremblay.
Voting Yea: Assembly Member Lynn, Assembly Member Kensinger, Vice Mayor Stanton Gregor, Assembly Member Norheim

4. Amendment and Approval of Meeting Agenda

The agenda was approved as submitted.

Motion made by Assembly Member Meucci, Seconded by Assembly Member Kensinger.
Voting Yea: Assembly Member Lynn, Assembly Member Tremblay, Assembly Member Kensinger, Vice Mayor Stanton Gregor, Assembly Member Meucci, Assembly Member Norheim

5. Public Hearings

A. Public Hearing for Ordinance #2021-08: An Ordinance to Reduce the Boundaries of Borough Service Area No. 1 by Removing Frederick Point East Subdivision, and to Direct that the Proposed Boundary Amendment be Submitted to the Voters Residing within the Service Area at the Regular Election to be Held on October 5, 2021, in Accordance with Borough Charter Section 14.03B(1)-(2)

No testimony was given.

6. Persons to be Heard Related to Agenda

No views were shared.

7. Persons to be Heard Unrelated to Agenda

No views were shared.

8. Boards, Commission and Committee Reports

9. Consent Agenda

A. Inga's Galley Liquor License Renewal Application

The Assembly unanimously supported the liquor license renewal for Inga’s Galley.

Motion made by Assembly Member Meucci, Seconded by Assembly Member Tremblay.
Voting Yea: Assembly Member Lynn, Assembly Member Tremblay, Assembly Member Kensinger, Vice Mayor Stanton Gregor, Assembly Member Meucci, Assembly Member Norheim

10. Report of Other Officers

A. Petersburg Medical Center Update

PMC CEO Hofstetter provided an update on the Medical Center.

B. Petersburg Volunteer Fire Department Report

Fire Chief Stolpe provided his quarterly report to the Assembly.

C. Borough Assembly Meeting Change to Zoom Format

Clerk Thompson provided a report to the Assembly regarding the transition to using a Zoom format for Assembly and other public meetings.

11. Mayor's Report

A. May 3, 2021 Mayor's Report

Vice Mayor Stanton Gregor read the Mayor's report into the record.

12. Manager's Report

A. May 3, 2021 Manager's Report

Borough Manager Stephen Giesbrecht read his report into the record; a copy of which is attached and made a permanent part of these minutes.

13. Unfinished Business

A. Ordinance #2021-05: An Ordinance Adjusting the FY 2021 Budget for Known Changes - Third and Final Reading

Ordinance #2021-05 adjusts the FY 2021 Borough budget to: transfer funds from the General Fund to the Property Development Fund; delegate funds to the purchase of a new E911 System; delegate funds to the Motor Pool Shop Alternate Modifications; delegate funds to the Southeast Storm Local Emergency Disaster Fund to repair the City Shop Culvert Failure; delegate funds to repair the Ira II Street sewer main; and accept grant funding for Testing and Vaccination expenses from the Department of Health and Social Services

Ordinance #2021-05 was amended to transfer $52,650 from the Property Development Fund to the Motor Pool Shop Fire Damage Repair Project. The ordinance, as amended, was unanimously approved in its third and final reading.

Motion made by Assembly Member Meucci, Seconded by Assembly Member Tremblay.
Voting Yea: Assembly Member Lynn, Assembly Member Tremblay, Assembly Member Kensinger, Vice Mayor Stanton Gregor, Assembly Member Meucci, Assembly Member Norheim

B. Ordinance #2021-06: An Ordinance Determining that Property Conveyed to the Borough in a Tax Foreclosure Proceeding Shall Not be Retained for a Public Purpose and Shall Hereafter be Sold - Third and Final Reading

Ordinance #2021-06 was unanimously approved in its third and final reading.

Motion made by Assembly Member Meucci; Seconded by Assembly Member Kensinger.
Voting Yea: Assembly Member Lynn, Assembly Member Tremblay, Assembly Member Kensinger, Vice Mayor Stanton Gregor, Assembly Member Meucci, Assembly Member Norheim

C. Ordinance #2021-07: An Ordinance Determining that Property Conveyed to the Borough in a Tax Foreclosure Proceeding Shall Not be Retained for a Public Purpose and Shall Hereafter be Sold - Third and Final Reading

Ordinance #2021-07 was unanimously approved in its third and final reading.

Motion made by Assembly Member Meucci; Seconded by Assembly Member Kensinger.
Voting Yea: Assembly Member Lynn, Assembly Member Tremblay, Assembly Member Kensinger, Vice Mayor Stanton Gregor, Assembly Member Meucci, Assembly Member Norheim

D. Ordinance #2021-08: An Ordinance to Reduce the Boundaries of Borough Service Area No. 1 by Removing Frederick Point East Subdivision, and to Direct that the Proposed Boundary Amendment be Submitted to the Voters Residing within the Service Area at the Regular Election to be Held on October 5, 2021, in Accordance with Borough Charter Section 14.03B(1)-(2) - Second Reading

Ordinance #2021-08 was unanimously approved in its first and second reading.

Motion made by Assembly Member Meucci; Seconded by Assembly Member Lynn.
Voting Yea: Assembly Member Lynn, Assembly Member Tremblay, Assembly Member Kensinger, Vice Mayor Stanton Gregor, Assembly Member Meucci, Assembly Member Norheim

14. New Business

A. Ordinance #2021-09: An Ordinance Adopting the Budget for the Fiscal Year July 1, 2021 Through June 30, 2022

Ordinance #2021-09 was amended to increase the Community Services budget to KFSK to $35,000 and to use $117,000 from the General Fund to allow the property tax mill rate for FY 2022 to stay at the current rate of 11.5 mills. The ordinance, as amended, was unanimously approved.

Motion made by Assembly Member Lynn, Seconded by Assembly Member Meucci
Voting Yea: Assembly Member Lynn, Assembly Member Tremblay, Assembly Member Kensinger, Vice Mayor Stanton Gregor, Assembly Member Meucci, Assembly Member Norheim

B. Borough Comments to DNR's Preliminary Decision Regarding Petersburg Borough Municipal Land Selections ADL 108981 (Thomas Bay)

The Borough's response to DNR's Preliminary Decision Regarding Petersburg Borough Municipal Land Selections was unanimously approved.

Motion by Assembly Member Meucci, Seconded by Assembly Member Kensinger. Voting Yea: Assembly Member Lynn, Assembly Member Tremblay, Assembly Member Kensinger, Vice Mayor Stanton Gregor, Assembly Member Meucci, Assembly Member Norheim

15. Communications

A. Correspondence Received Since April 15, 2021

B. Tremblay 4.19.2021

S. McCullough 4.28.2021

16. Assembly Discussion Items

A. Seasonal Sales Tax

The Assembly discussed the idea of a seasonal sales tax, as requested by Assembly Member Norheim.

B. Assembly Member and Mayor Term Limits

Assembly Member Norheim informed the Assembly he would be bringing forward an ordinance to submit the question of imposing term limits for Assembly Member and Mayor.

C. Assembly Member Comments

Assembly Member Tremblay discussed the status of COVID in Petersburg and the amazing vaccination rates. She said this will be a summer of transition.

D. Recognitions

No recognitions.

17. Adjourn

Meeting adjourned at 1:15 pm.

Mayor's Report
For
May 17, 2021 Assembly Meeting

1. **Alaska Natives Without Land Legislation:** Alaska's Federal Delegation plans to reintroduce the Landless Native legislation soon. Comments and questions regarding the transfer of ownership of federal lands and infrastructure to the Southeast Alaska native communities that were not included in the Alaska Native Claims Settlement Act (ANCSA) may be emailed to assembly@petersburgak.gov.

   A copy of Senate Bill 4891, which was introduced in the 116th Congress but failed to move to a vote of Congress before the end of the last session, is on the Borough website for public viewing along with maps of the federal lands selected for transfer to Haines, Ketchikan, Petersburg, Tenakee and Wrangell.

2. **Seeking Letters of Interest:** The Assembly is seeking letters of interest from Borough residents who wish to serve the community by filling a vacant seat on the following Boards/Commissions until the October 2021 Municipal Election:

   Planning Commission – 1 vacant seat
   Public Safety Advisory Board – 2 vacant seats

   Letters of interest should be submitted to Clerk Thompson at the Borough office located at 12 S. Nordic Drive; by mailing to PO Box 329, Petersburg, AK 99833; or by emailing to dthompson@petersburgak.gov.

PETERSBURG
ALASKA

Borough Manager's Report
Assembly Meeting 17 May 2021

- Petersburg area 911 will soon have Text 911 available. We have received training materials and are working towards the testing of the system. Petersburg PD will put out announcements once it is available.

- Both Police Officer new hires have passed all steps in the hiring process. One Officer is set to arrive in Petersburg, June 18th and the other is working on housing.

- A HUGE thank you to The Petersburg Community Foundation as they awarded the Manor a $3000 grant to go toward the deck project! Cummins Custom Woodworking waiting on the State Fire Marshall approval of the deck plans so we can move forward with construction.

- Water Staff continuing to clean the exterior of the water storage tank as time allows. They also are in the process of completing spring maintenance on air relief valves on the Cabin Creek pipeline.

- The Ira II Sewer Project is out for bids. A pre-bid meeting was on May 12th and bids are due by May 28th.

- Rock N Road is continuing for the Scow Bay Pump Station project. The wet well and valve vault are in place and plumbing continues. Excavation for the southside gravity sewer and new manhole should begin soon. Justin Haley, WW Operations Supervisor, is acting as our inspector on the job.

- Thanks to many departments for setting up the public restroom trailers. WW crew is set up the sewer connections. PMPL and Mattingly Electric set up the electrical service at the site and PMPL moved in the eco-blocks for site protection. Thanks to Building Maintenance for mounting various fixtures in the trailers and to Parks and Rec for handling the initial cleaning duties. The police department will be closing the restrooms at 8pm and they will be opened in the morning at 8am. A team effort on this one! Thanks all!

- The annual SEAPA shutdown is scheduled for the first 10 days of June.

- The Electrician and Powerplant Mechanic have been working on restoring the 1929 400kW hydro unit to operational status. Keeping this unit in operation has become harder over the years but it does help us maintain our current overall facility rating of 2MW with FERC.

- The line crew recently assisted the Chamber of Commerce with hanging of the festival banners and will be arranging for power for a couple of the festival venues. They also recently finished the service to the new duplex on 8th and Ira II Streets, and removed several large trees from under the power lines on 8th Street. Busy month!

- The Public Works crew coordinated with Parks-N-Rec and the Chamber to assist with putting up the Little Norway Festival tent and to provide traffic control signs and barriers as needed.

- Motor Pool is working with the Wastewater Dept to assemble a septic pumping truck. We are re-using the old water truck chassis and other materials on-hand. The current septic pumping provider (based in

Wrangell) has indicated he is retiring and will no longer be providing this service for most customers on Mitkof Island, and no other private enterprise has been found to take over these duties.

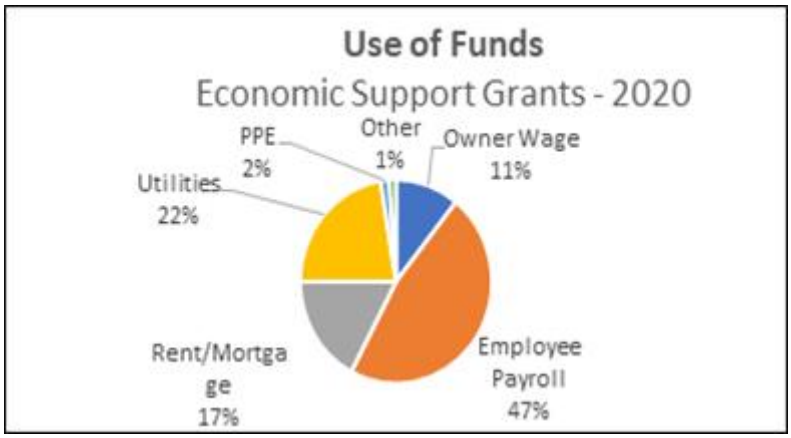
- The Sanitation crew has been working on removing a backlog of non-burnable waste oil from the storage tanks and various drums stored at the baling facility. This has been a significant effort and we appreciate the help we have received from other departments, including the Harbor Dept and Streets crew.

- Sam coordinated with Fleet Refrigeration for the installation of an additional heat pump unit at the museum.

- Framing crew is here and starting work on the next phase of Valhalla Place apartment building.

- HB 80, to reinstate the sportfish license surcharge to help pay for salmon enhancement facilities like Crystal Lake Hatchery, has passed the House and is being considered by the Senate.

- With most grant reports submitted, below is a breakdown of how local businesses used their borough CARES Act economic support grants:



- Finance Director Tow and Police Sargent Holmgrain are currently going through a SECAD/JAG Grant Audit with the Alaska Department of Public Safety.

- The Alaska Remote Sellers Commission has given each member a list of remote sales tax code changes that need to be made. Each community in the commission will need to adopt these changes. Director Tow will have those changes into a draft ordinance at the next Assembly meeting. Clinton Singletary, Statewide Municipal Sales Tax Director for the Alaska Remote Seller Sales Tax Commission will be virtually at the meeting on June 7th to go over the changes and help answer any questions.

- Finance Director Tow, Director Hagerman, Clerk Thompson, and Manager Giesbrecht have started union negotiations with IBEW. We also had mediation on May 14th with PMEA.

- Parks and Rec hosted an AMSEA Instructor course for their water/pool portion. They will look for more opportunities to offer AMSEA courses.

- Parks and Recreation Advisory Board meeting on May 20th at 4:00 pm. For details, please see our Facebook page or call for details.

- Harbor Staff has spent the last week assisting the USACE on SH dredge sampling as required by EPA to use authorized in water disposal of dredge spoils. 150 gals of samples have been taken and sent via air cargo to their lab in Vicksburg, MS. A nine-month study will begin using dredge samples and living organisms to see survival rates. At this point the dredge project has been pushed to fall/winter of 2022.

- Tour ship schedule has stabilized, and we are set for our first arrival on June 2nd.

PETERSBURG BOROUGH
ORDINANCE #2021-08

AN ORDINANCE TO REDUCE THE BOUNDARIES OF BOROUGH SERVICE AREA NO. 1 BY REMOVING FREDERICK POINT EAST SUBDIVISION, AND TO DIRECT THAT THE PROPOSED BOUNDARY AMENDMENT BE SUBMITTED TO THE VOTERS RESIDING WITHIN THE SERVICE AREA AT THE REGULAR ELECTION TO BE HELD ON OCTOBER 5, 2021, IN ACCORDANCE WITH BOROUGH CHARTER SECTION 14.03B(1)-(2)

WHEREAS, on January 3, 2013 the Election Division for the State of Alaska certified the election results of the December 18, 2012 incorporation election for the Petersburg Borough; and

WHEREAS, the election confirmed the incorporation of the Petersburg Borough and dissolved the City of Petersburg; and

WHEREAS, upon borough formation, Borough Service Area No. 1 was created, with boundaries coinciding with the boundaries of the prior City of Petersburg; and

WHEREAS, those prior City boundaries included Frederick Point East Subdivision (ASLS 83-32, Plat No. 84-5), which had been annexed to the City of Petersburg in 1978; and

WHEREAS, some property owners within Frederick Point East Subdivision have expressed a belief that Frederick Point East Subdivision has more in common with the portions of the Borough located outside of Service Area No. 1 than it does with the remainder of Service Area No. 1; and

WHEREAS, the Assembly has determined to put this matter before the Service Area voters in accordance with Borough Charter Sec. 14.03(B)(1)-(2), to have the voters consider whether to reduce the boundaries of Borough Service Area No. 1 to remove Frederick Point East Subdivision.

THEREFORE, THE PETERSBURG BOROUGH ORDAINS, as follow:

Section 1. Classification: This ordinance shall not be codified in the Petersburg Municipal Code.

Section 2. Purpose: The purpose of this ordinance is to put before the voters residing within Service Area No. 1 a proposition as to whether to reduce the boundaries of the service area by removing Frederick Point East Subdivision.

Section 3. Substantive Provisions:

A) In accordance with Section 14.03B(1)-(2) of the Borough Charter, the Borough Clerk shall submit this ordinance, as a single proposition, to the qualified Borough voters residing within Borough Service Area No. 1 at the regular election to be held on October 5, 2021.

B) If approved by the voters in accordance with Borough Charter Sec. 14.03(B)(1)-(2), the boundaries of Borough Service Area No. 1 would be reduced by removing the area encompassed within Frederick Point East Subdivision, as demonstrated on Alaska State Land Survey (ASLS) 83-32 (recorded as Plat No. 84-5).

C) Borough Service Area No. 1 would, upon such amendment to its boundaries, continue to exercise the same powers that it exercised prior to the amendment.

D) A map demonstrating the existing boundaries of Service Area No. 1 and the boundaries of Frederick Point East Subdivision is attached hereto as Exhibit A. Upon approved boundary reduction, the boundaries of Borough Service Area No. 1 would be reduced by removing the area encompassed within Frederick Point East Subdivision.

E) In order to be considered approved by the voters, the boundary reduction must be approved by both:

1. A majority of the voters who will remain within the boundaries of Service Area No. 1 after the reduction; and
2. A majority of the voters residing in Frederick Point East Subdivision; if no voters reside within that area, the written consent of all owners of real property within the area shall be deemed sufficient in lieu of such voter approval. Such written consent must be received by the Borough Clerk on or before the date of the election.

The term "majority of the voters" shall mean a majority of the qualified voters casting a ballot on the proposition at the election.

F) The proposition to be submitted to the voters shall read substantially as follows, with the Borough Clerk to administratively insert the 2021 mill rate and tax information where indicated:

Proposition #1

Reduction in the Boundaries of Borough Service Area No. 1 to Remove Frederick Point East Subdivision

Shall the boundaries of Borough Service Area No. 1 be reduced by removing the area known as Frederick Point East Subdivision, as demonstrated by ASLS 83-32 (recorded as Plat No. 84-5)?

O Yes
O No

A “Yes” vote means that the area known as Frederick Point East Subdivision would be removed from Borough Service Area No. 1. If this proposition is approved, Frederick Point East Subdivision would become part of the area of the Borough located outside of any service area (unless subsequently included within a service area).

A "No" vote means that the area known as Frederick Point East Subdivision would remain within Borough Service Area No. 1.

For year 2021, the area wide mill rate in the Borough was _____, and the Service Area No. 1 mill rate was an additional _____ mills (including debt service). If this boundary amendment is enacted, Frederick Point East Subdivision would be taxed at the area wide mill rate only beginning with year 2022 (unless subsequently included within a service area).

The amount of real property taxes for year 2021 imposed upon all properties within Service Area No. 1 totaled $_____ (including both the area wide mill rate and the additional Service Area No. 1 mill rate). The real property taxes imposed on properties located within Frederick Point East Subdivision accounted for $_____ of those total taxes ($_____ for the area wide mill rate and $_____ for the additional Service Area No. 1 mill rate).

In order to be enacted, this boundary reduction must be approved separately by both:

1. A majority of the voters who will remain within the boundaries of Service Area No. 1 after the reduction; and
2. A majority of the voters residing in Frederick Point East Subdivision. [*or, if there are no such voters residing within that area, then:* The written consent, received by the Borough Clerk on or before the date of the election, of all owners of real property within Frederick Point East Subdivision.]

Section 4. Severability: If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected.

Section 5. Effective Date: This ordinance shall become effective immediately upon adoption. The proposed Borough Service Area No. 1 boundary reduction, if approved by the voters in accordance with Borough Charter Sec. 14.03(B)(1)-(2) and certified by the election judges, shall become effective at 12:01 am on January 1, 2022.

PASSED AND APPROVED by the Petersburg Borough Assembly, Petersburg, Alaska this _____ day of _____, 2021.

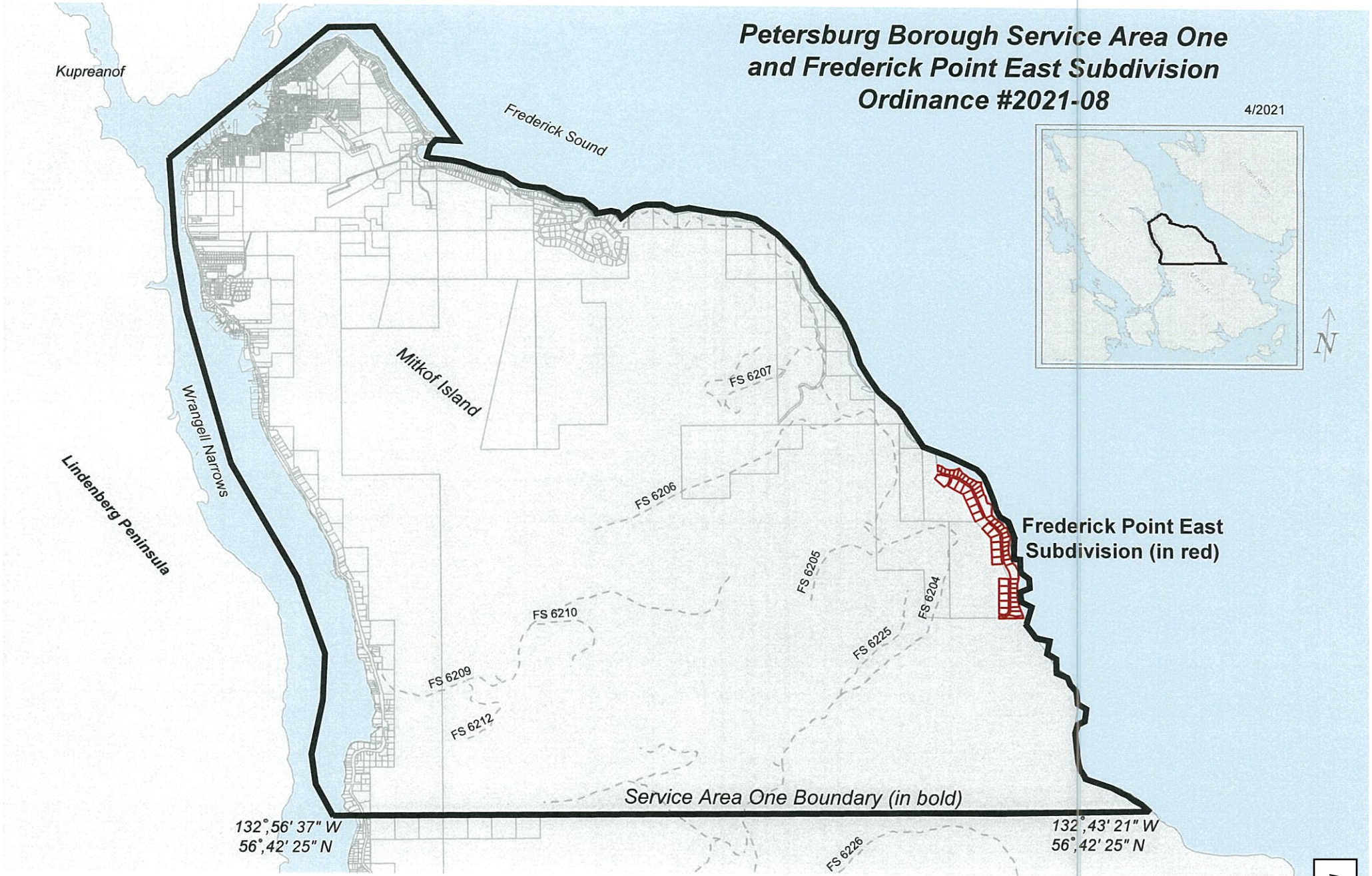
_____
Mark Jensen, Mayor

ATTEST:

_____
Debra K. Thompson, Borough Clerk

Adopted:
Noticed:
Effective:

Exhibit A


Petersburg Borough Service Area One
and Frederick Point East Subdivision
Ordinance #2021-08
4/2021
Kupreanof
Frederick Sound
Mitkof Island
Wrangell Narrows
Lindenberg Peninsula
FS 6207
FS 6206
FS 6205
FS 6204
FS 6225
FS 6210
FS 6209
FS 6212
FS 6226
Frederick Point East
Subdivision (in red)
Service Area One Boundary (in bold)
132°,56' 37" W
56°,42' 25" N
132°,43' 21" W
56°,42' 25" N
N

PETERSBURG BOROUGH
ORDINANCE #2021-09

AN ORDINANCE OF THE PETERSBURG BOROUGH ADOPTING THE BUDGET FOR THE FISCAL YEAR JULY 1, 2021 THROUGH JUNE 30, 2022

Section 1. Classification: This ordinance is not of a permanent nature and shall not be codified in the Petersburg Municipal Code.

Section 2. Purpose: The purpose of this ordinance is to set forth budgetary requirements for the operation of the various divisions, departments and organizations of the Petersburg Borough for Fiscal Year 2022. Support to the Petersburg School District has been included in the General Fund Expenditures.

Section 3. Substantive Provisions: In accordance with Section 11.07 of the Charter of the Petersburg Borough, the budget for the fiscal period beginning July 1, 2021 and ending June 30, 2022 is hereby approved in the amounts and for the purposes as stated below. The supporting line item budget detail, as reviewed by the Assembly, is incorporated as part of this ordinance.

A. Fiscal Year 2022 Revenue and Expenditure Budget

FUND	REVENUES	EXPENDITURES BUDGET
GENERAL FUND		
General Fund	$ 9,744,364	$ 9,744,364
ENTERPRISE FUNDS		
Electric Fund	$ 5,456,763	$ 8,233,322
Water Fund	$ 1,147,127	$ 1,979,423
Wastewater Fund	$ 908,668	$ 1,324,220
Sanitation Fund	$ 1,227,285	$ 1,460,792
Harbor Fund	$ 1,400,368	$ 3,611,358
Elderly Housing Fund	$ 445,870	$ 534,415
Assisted Living Fund	$ 1,781,558	$ 1,953,788
INTERNAL SERVICE FUNDS		
Motor Pool Fund	$ 937,680	$ 1,860,774
DEBT SERVICE FUND	$ 840,500	$ 840,500
SPECIAL REVENUE FUNDS		
Miscellaneous Grants	$ 215,232	$ 215,232
Economic Development Fund	$ 100,000	$ 722,320
Secure Rural Schools Fund	$ 500,000	$ 475,000
Secure Rural Roads Fund	$ 74,000	$ 244,000
Property Development Fund	$ 38,000	$ 480,000
Transient Room Tax Fund	$ 36,000	$ 46,000
E911 Surcharge Fund	$ 86,000	$ 81,971
Marine Passenger Fee	$ 12,000	$ -
COVID-19 Fund	$ 420,000	$ 420,000
American Rescue Plan - ARPA	$ 633,420	$ 633,420
Local Disaster Fund - FEMA	$ 289,000	$ 289,000
Borough Organizational Fund	$ -	$ 61,128
CAPITAL PROJECTS FUNDS	$ 10,520,318	$ 14,986,710

Section 4. Severability: If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person and circumstance shall not be affected.

Section 5. Effective Date: This ordinance shall become effective July 1, 2020.

Passed and approved by the Petersburg Borough Assembly, Petersburg, Alaska this 7th day of June, 2021.

_____
Mark Jensen, Mayor

ATTEST:

_____
Debra K. Thompson, Borough Clerk

Adopted:
Published:
Effective:

PETERSBURG BOROUGH
ORDINANCE #2021-10

AN ORDINANCE AMENDING SECTION 2.20.010 OF THE PETERSBURG MUNICIPAL CODE TO ESTABLISH TERM LIMITS FOR THE ASSEMBLY

Whereas, §2.02E of the Petersburg Borough Charter provides that the Assembly, by ordinance ratified by the voters, may adopt term limitations for the offices of Mayor and Assembly Member; and

Whereas, there is support among voters for term limitations for elected officials for a number of reasons, including that limitations (1) encourage new people to get involved in government, (2) broaden the base of potential candidates, providing voters with more choices, and (3) deemphasize re-election to office as a factor in decision making while governing.

Therefore, the Petersburg Borough Ordains, Section 2.20.010 of the Borough Code shall be amended as follows:

Section 1. Classification: This ordinance is of a general and permanent nature and shall be codified in the Petersburg Municipal Code.

Section 2. Purpose: The purpose of this ordinance is to amend the Borough Code to impose term limits for the Assembly.

Section 3. Substantive Provisions:

Section 2.20.010, *Qualifications of candidacy,* of the Petersburg Municipal Code is hereby amended as follows (the language proposed for addition is in bold and underlined, and the language proposed for deletion is in brackets and struck through):

2.20.010 - Qualifications of candidacy **and term limits**.

A. Only a voter of the borough, as defined in section 2.08.010, who has been a resident of the borough for at least one year immediately preceding the date of their election, shall be qualified for any elective borough office, except school board. School board candidates must have resided in the borough for at least thirty days immediately preceding the date of their election. If an elected person ceases to be a resident of the borough, the person shall thereupon cease to hold office.

B. A person who has been elected to the office of assembly member for two (2) consecutive full terms may not be a candidate for, or be re-elected to, that office without a break in service of at least one (1) full term. A full term means the regular term of office for assembly member and does not include portions of a term served by election to

the remainder of an unexpired term vacated by another person. During such break in service, the person may not be appointed to fill a vacancy in the office of assembly member.

C. A person who has been elected to the office of mayor for two (2) consecutive full terms may not be a candidate for, or be re-elected to, that office without a break in service of at least one (1) full term. A full term means the regular term of office for mayor and does not include portions of a term served by election to the remainder of an unexpired term vacated by another person.

D. A person who has been elected to serve on the borough assembly for three (3) consecutive full terms, serving as both an assembly member and as the mayor, may not be a candidate for, or be re-elected to, either the office of mayor or the office of assembly member without a break in service of at least one (1) full term. A full term means the regular term of office for assembly member or mayor and does not include portions of a term served by election to the remainder of an unexpired term vacated by another person. During such break in service, the person may not be appointed to fill a vacancy in the office of assembly member.

Section 4. Date of Application: If approved by the borough voters, the provisions of Section 2.20.010B-D shall apply commencing with the October 2022 regular election and prior terms of office as mayor or assembly member shall be counted for purposes of determining eligibility to be a candidate in that election. Accordingly, for the October 2022 election, (a) a person then holding office who has been elected to two (2) or more consecutive full terms in the office of mayor or assembly member shall not be eligible to seek re-election to that office; (b) a person then holding office who has been elected to one (1) full term in the office of mayor or assembly member shall be eligible to be a candidate for, and be re-elected to, one (1) additional consecutive full term for that office; and (c) a person then holding office who has been elected to three (3) or more consecutive full terms on the assembly, serving as both an assembly member and as the mayor, shall not be eligible to be a candidate for either the office of mayor or the office of assembly member.

Section 5. Submittal to the Borough Voters:

(A) The Borough Clerk shall submit this ordinance, as a single proposition, to the qualified Borough voters at the regular election to be held on October 5, 2021. In order to be considered approved by the voters, the proposition must be approved by a majority of the voters. The term "majority of the voters" shall mean a majority of the qualified voters casting a ballot on the proposition at the election.

(B) The proposition to be submitted to the voters shall read substantially as follows:

Proposition #_____

Establishment of Term Limits for the Assembly (Ordinance #2021-10)

Shall the following term limits be established for service on the borough assembly as either the mayor or as one of the six assembly members?

Assembly Member. A person who has been elected to the office of assembly member for two consecutive full terms may not be a candidate for, or be re-elected to, that office without a break in service of at least one full term.

Mayor. A person who has been elected to the office of mayor for two consecutive full terms may not be a candidate for, or be re-elected to, that office without a break in service of at least one full term.

Combination of service as Mayor and Assembly Member. A person who has been elected to serve on the borough assembly for three consecutive full terms, serving as both an assembly member and as the mayor, may not be a candidate for, or be re-elected to, either the office of mayor or the office of assembly member without a break in service of at least one full term.

A full term means the regular term of office and does not include portions of a term served by election to the remainder of an unexpired term vacated by another person. During any break in service, the person may not be appointed to fill a vacancy in the office to which he or she is not an eligible candidate.

O Yes

O No

A **"Yes"** vote means that: (i) an assembly member or the mayor could be elected to serve a maximum of two consecutive full terms (totaling six years), and then would not be eligible to be a candidate for that office again until a full three year term has intervened, and (ii) a person could be elected to serve a maximum of three consecutive full terms (totaling nine years) on the assembly as both an assembly member and the mayor, and then would not be eligible to be a candidate for either the office of assembly member or the office of mayor until a full three year term has intervened.

If adopted, the term limits would apply commencing with the next regular election in October 2022, and prior terms of office shall be counted in determining the eligibility of a person then holding office to be a candidate for the assembly at that election, as follows:

(a) A person then holding office who has been elected to two or more consecutive full terms in the office of mayor or assembly member would not be eligible to seek re-election for that office;

(b) A person then holding office who has been elected to one full term in the office of mayor or assembly member would be eligible to be a candidate for one additional full term for that office; and

(c) a person then holding office who has been elected to three or more consecutive full terms on the assembly, serving as both an assembly member and as the mayor, would not be eligible to be a candidate for either the office of mayor or the office of assembly member.

A **"No"** vote maintains the status quo of no term limitations for the assembly.

Section 6. Severability: If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected.

Section 7. Effective Date: The provisions set out in Section 3 of this ordinance shall be effective upon certification of the election at which the majority of the qualified voters of the borough voting on the question approve the proposition.

Passed and approved by the Petersburg Borough Assembly, Petersburg, Alaska this _____ day of _____ 2021.

_____
Mark Jensen, Mayor

ATTEST:

_____
Debra K. Thompson, Borough Clerk

Adopted:
Noticed:
Effective:

Petersburg Borough, Petersburg, Alaska
RESOLUTION #2021-04

A RESOLUTION SUPPORTING THE PETERSBURG HOSPITAL BOARD AND PETERSBURG MEDICAL CENTER IN THE PLANNING FOR A NEW HOSPITAL FACILITY IN PETERSBURG TO BE COMPLETED IN PHASES

WHEREAS, the Petersburg Borough Assembly recognizes the need for quality health care for Petersburg residents; and

WHEREAS, the Assembly recognizes the health care industry's substantive changes in health care regulations, privacy concerns, treatment processes, equipment, communications and procedures; and

WHEREAS, our current health care facility, Petersburg Medical Center, is reaching forty (40) years of age and infrastructure can no longer be remodeled to accommodate the necessary upgrades, making the existing facility obsolete and in need of replacement; and

WHEREAS, there are safety concerns with structural deficiencies and age of equipment; and

WHEREAS, PMC departments are in need of more space to meet the needs of their patients and staff; and

WHEREAS, the cost of a new facility far exceeds the Boroughs ability to finance or bond for the project, making it imperative that the project be completed in phases as external sources of funding are available; and

WHEREAS, the Assembly support the concept and planning association with building a new hospital, but would like PMC to proceed in phases; and

WHEREAS, the Assembly has agreed to provide 1 of 3 sites to PMC as part of the planning for construction of a new hospital; and

WHEREAS, the Assembly supports PMC moving forward with the geotechnical work so that a specific site can be designated by the Borough to PMC for the planning for a new hospital; and

WHEREAS, the Assembly supports the Hospital Board in moving forward with phase 2 to bring the selected site to shovel ready status.

THEREFORE BE IT RESOLVED, the Petersburg Borough Assembly:

1) Supports the efforts of the Petersburg Hospital Board and PMC in their endeavor to engage the public and develop a plan for a new facility that will meet the needs of Petersburg Borough residents for health care services well into the future; and

2) Supports the continual need for public dialogue and participation in the planning for a new facility, and

3) Wishes to participate with the Hospital Board and CEO in the planning for a new facility, and

4) Supports the manager and staff working with the Hospital CEO and potential contractors in connection with planning for a new facility, and

5) Supports the Board in its effort to seek external financing for the facility; and

6) Lends it support in the search for external sources of funding.

Passed and Approved by the Petersburg Borough Assembly on June 6, 2021.

_____
Mark Jensen, Mayor

ATTEST:

_____
Debra Thompson, Clerk

Debra Thompson

From: Cecilia Tavoliero <cecitavoliero@gmail.com>
Sent: Friday, April 30, 2021 10:33 AM
To: Debra Thompson
Subject: Responses to questions
Attachments: Testimony of the Landless Representatives re S. 4889 12.2.2020 Final.pdf; Responses to Questions on Landless Bill Final.pdf

Dear Debbie,

Thank you for the opportunity to respond to questions regarding the Landless legislation that the Borough gathered from Petersburg area residents. We have drafted responses to each of the questions, which are attached. It is important for us to hear from, and to understand the questions and concerns of community members, and we hope that our responses address the questions and concerns you forwarded to us. We are available to answer any follow-up questions you may receive.
I am also attaching a copy of testimony that we submitted to the Senate Committee on Energy and Natural Resources in December when the Committee held a hearing on our legislation. This document is referred to as an "attachment" in several of our responses. The testimony provides a detailed overview of the history of the Landless claims and addresses a number of questions that we have received over the years. I hope this testimony will serve as a helpful resource as well.

Thank you, again, and we look forward to continuing our conversation with the Borough!

--
Cecilia Tavoliero
SALC President
425.512.2460

PETERSBURG
ALASKA

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 ANSCA 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.

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

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.").

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 though 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 needs 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 are 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 ANSCA 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.

WRITTEN TESTIMONY OF THE
REPRESENTATIVES OF THE
SOUTHEAST ALASKA LANDLESS NATIVE COMMUNITIES

prepared for the

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS, FORESTS, AND MINING

regarding

S. 4889, the Alaska Native Claims Settlement Act Fulfillment Act of 2020

December 2, 2020

Chairman Lee, Ranking Member Wyden, and Members of the Subcommittee:

We appreciate the opportunity to submit testimony regarding S. 4889, the Alaska Native Claims Settlement Act Fulfillment Act of 2020, which was considered during the Subcommittee's November 18, 2020 legislative hearing on multiple bills.

Our testimony focuses on Section 7 of S. 4889, which redresses the omission of the Southeast Alaska Native communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell from the Alaska Native Claims Settlement Act of 1971 (ANCSA) by authorizing the Alaska Natives enrolled to those communities under ANCSA to form Urban Native Corporations and to receive certain settlement land pursuant to ANCSA. The omission of these Native communities is an inequity that has had long term, negative impacts on these communities and the Alaska Natives enrolled to these communities. This inequity will continue without an Act of Congress. For that reason, we humbly ask for your due consideration and support.

Executive Summary and Responses to Concerns Raised by Members of the Subcommittee

In ANCSA, Southeast Alaska Was Treated Differently Due to a Previous, Partial Settlement of Land Claims; As A Result, the Landless Communities Were Unable to Appeal Their Exclusion

As Congress developed ANCSA in the late 1960s, it recognized that it had previously authorized a partial settlement of aboriginal land claims for Alaska Native groups in Southeast Alaska. Specifically, in 1935, Congress had authorized the Tlingit and Haida Indians to sue the federal government for land that was taken without compensation, and in 1968, the U.S. Court of Claims authorized a payment of $7.5 million to settle Tlingit and Haida land claims.

In 1971, just three years after the Tlingit and Haida Settlement, Congress enacted ANCSA, authorizing almost $1 billion and 44 million acres to settle the aboriginal land claims of all Alaska

Natives. As Congress developed ANCSA, Congress determined that the Tlingit and Haida settlement had failed to cover all of the claims of the Tlingit and Haida Indians, and so the Southeast Alaska region was included in ANCSA.

Although Southeast Alaska was included in ANCSA, the settlement for the Southeast region was very limited. Each of 12 villages received only one township of land rather than—as in other regions of Alaska—multiple townships based on population size. ANCSA returned roughly 12 percent of the lands in Alaska to the Native peoples of the state; the Native people of Southeast Alaska, by comparison, received less than 3 percent of their original homelands under ANCSA. Remarkably, Alaska Natives in Southeast Alaska—who made up 22 percent of the Alaska Native population in 1971—received less than 1½ percent of the land settlement. This was our reward for having the audacity to be the first to pursue our aboriginal land claims.

To add insult to injury, Congress in Section 11 of ANCSA, which lists villages outside of the Southeast Alaska region, included a provision that allowed unlisted villages to appeal their status. Section 16 of ANCSA, which lists villages in the Southeast Alaska region, does not include similar appeal language. When ANCSA passed, five Alaska Native villages were left out of the settlement: Wrangell, Petersburg, Ketchikan, Tenakee and Haines. No reason was given for their exclusion although, as detailed below, opposition from the Forest Service and the non-Native timber industry appears to have played a dominant role. Three of the five communities appealed their status, but because Congress failed to establish a right of appeal for Southeast villages, their appeals were rejected outright. Thus, for almost 50 years, the five Landless villages have sought the equitable redress of their exclusion from the 1971 aboriginal land claims settlement.

<u>The Five Landless Communities Did Not Meet the Technical Criteria for *Village* Corporations as A Direct Result of the influx of Non-Native Settlers into the Five Communities; However, Congress Included Similarly Situated Native Communities in ANCSA</u>

During the November 18, 2020 hearing, **Senator Heinrich** asked whether the five Landless communities met "the legal qualifications of population" for villages listed in ANCSA in 1971. We appreciate Senator Heinrich's question because it raises important issues of law and equity that underlie this legislation.

The Tlingit and Haida people have been fighting to establish a legal right to own a fraction of their traditional homelands for more than a century. In the 1940s, the Tlingit leader and attorney William Paul won a short-lived legal victory in the Ninth Circuit Court of Appeals in *Miller v. United States*, 159 F. 2d 997 (9th Cir. 1947), which ruled that Native lands could not be seized by the government without the consent of the Tlingit landowners and without paying just compensation. To reverse this decision, Congress passed a Joint Resolution authorizing the Secretary of Agriculture to sell timber and land within the Tongass, "notwithstanding any claim of possessory rights" based upon "aboriginal occupancy or title." This action ultimately resulted in the *Tee-Hit-Ton Indians v. United States* decision, in which the U.S. Supreme Court held that Indian land rights are subject to the doctrines of discovery and conquest, and "conquest gives a title which the Courts of the Conqueror cannot deny." 348 U.S. 272, 280 (1955). **The Court concluded that Indians do not have 5th Amendment rights to aboriginal property. Instead, the Congress, in its sole discretion, would decide if there was to be any compensation**

whatsoever for lands stolen. And so, here we are. We start at a clear disadvantage. We have been told that we have no 5th Amendment rights to aboriginal property, and Congress, without explanation, excluded our communities from the 1971 settlement of land claims in ANCSA.

As a technical matter, like many other Native communities listed in ANCSA, the five Landless communities met most, but not all, of the nominal requirements set forth in ANCSA for *village* corporations; that is, in fact, why this legislation establishes five *urban* corporations. **As we detail below, the reason that the five Landless communities did not meet this technical requirement for *village* corporations was due to the influx of white settlers into the five Landless communities, an experience over which our people had no control.**

Villages in ANCSA generally were required to have a majority-Native population in order to establish village corporations. But unlike most regions of Alaska, a large population of white settlers had moved into the Southeast region by the early twentieth century to exploit the rich natural resources of what is now the Tongass National Forest—gold, timber, and salmon. It is our hope that our historical reality—the arrival of non-Native settlers in our region and their settlement in our communities—will not be held against us.

Fortunately, Congress *has* recognized and addressed 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 prevent Congress from extending recognition to other traditional villages (in fact, *every* other traditional Alaska Native village of which we are aware) that technically did not meet the population criteria used to define villages under ANCSA, including at least two villages in Southeast Alaska (Saxman and Kasaan) in which village corporations were established and four urbanized villages (Kenai, Sitka, Juneau and Kodiak) in which urban corporations were established.

The fact that non-Natives made their homes in the five Landless Native communities in the early twentieth century should not be held against these communities; in fact, the opposite should be true. The five Landless communities have long, rich indigenous histories and our communities should have an opportunity to be recognized and to receive a sliver of our original homelands. Recognizing our five Landless communities would not open the door to similar efforts elsewhere in Alaska. We are not aware of even a single community elsewhere in the State of Alaska that finds itself in the same position. As detailed below, other Alaska Native communities like Nome also experienced a large influx of non-Natives in the early twentieth century yet were listed in ANCSA and were authorized to establish village or urban corporations. Southeast Alaska was different, and the inequities that resulted are redressed in this legislation.

<u>They're Going to Clear Cut the Tongass!</u>

In the late 1960s, the then-powerful non-Native timber industry held significant political sway within the Southeast Alaska region; a pulp mill and sawmills were located within four of the five communities. Congress did not explain why it chose to exclude *these* five communities, and we can only wonder whether it was politically expedient to be silent as to the true reason: timber.

Opponents of our land claims have always objected to our claims based on their own parochial views of natural resource development. For decades, the Forest Service and the timber industry

actively fought indigenous land claims in the Tongass over fears that Native peoples would *not* develop timber or support the timber industry. We document some of this history below. Some environmental groups today oppose our legislation over fears that we *would*, as owners of the land, have the *right* to develop timber resources. We are certain that you will find their testimony to this effect in the hearing record. Truly, we are damned if we do, and we are damned if we don't. **But ultimately, for our people, what these arguments really boil down to is this: "We don't trust those people to make responsible decisions about their land."** These sentiments are the epitome of degrading and paternalistic thoughts towards Native people that should no longer be tolerated.

In this context, some of the opponents of the Landless claims have raised the specter of the so-called "Sealaska land bill," which was enacted by Congress in 2014. The Sealaska land bill identified specific lands within the Tongass for conveyance to Sealaska Corporation, the regional Alaska Native corporation for Southeast Alaska, to complete its 1971 entitlement under ANCSA. Sealaska has harvested some timber on some of its lands over the course of several decades, and this was largely the basis (for some) for opposing that legislation. What these groups probably will not tell you is that Sealaska entered into one of the largest forest carbon-sequestration contracts in U.S. history after it received its final entitlement lands in 2014. The reality is that Sealaska and other Alaska Native corporations in Southeast Alaska are working with local communities and even conservation groups to build and support environmentally responsible businesses in the Tongass. In short, we no longer live in the 1970s, and it is unfair for those who opposed timber development in the Tongass during that era to continually deploy the specter of decades-old logging politics and practices as a reason to oppose indigenous rights.

The legislation before this Subcommittee would convey 115,200 acres in total to the five Landless communities (one township, or 23,040 acres each) in Southeast Alaska, a region that comprises 21.9 million acres of federal land (of 22.9 million acres total in the regional land base). This legislation returns ½ of 1 percent of that land to Native ownership.

One organization has submitted testimony articulating their concern that the legislation would convey 4,800 acres of the so-called TU-77 watersheds in Southeast Alaska to the new Native corporations. The TU-77 comprise 1.9 million acres of watersheds in the Tongass National Forest. It is remarkable, frankly, that our proposed selection overlaps just .25 percent of these massive TU-77 areas that have been earmarked for conservation in the Tongass. It is even more remarkable given the fact that 80 percent of the Tongass is already effectively set aside for conservation, over 6.6 million acres of which has been set aside into permanent conservation status through direct acts of Congress and 7 million additional acres insulated from development through administrative land planning. The fact that the Tongass is "public" does not mean that those who advocate to set aside more of it do not have their own parochial interests in its use. The reality is that our Native land selections must come from the "scraps" left over after every other stakeholder interest in the Forest has selected or set aside land to serve their own interests.

<u>The ISER Report to Congress—The Point of the Report Is the Truth of Our History</u>

In 1993, Congress instructed the Secretary of the Interior to investigate the exclusion of the Landless communities from ANCSA. In turn, the U.S. Forest Service (USFS), the Bureau of Land Management (BLM), and the Bureau of Indian Affairs (BIA) contracted with the University of

Alaska's Institute of Social Economic Research (ISER) to investigate why the Landless communities were excluded from ANCSA. This research materialized into a lengthy report titled, "A Study of Five Southeast Alaska Communities" ("ISER Report"), which was to be used by Congress to help determine "whether the exclusion of the five [Landless] study communities was intentional or inadvertent." The ISER Report provides a detailed overview of "how the historical circumstances and conditions of the study communities compare with those of the Southeast communities that were recognized under ANCSA."

The ISER Report does not draw any specific conclusions about the validity or invalidity of claims that the Landless communities met (or did not meet) the general criteria for inclusion in ANCSA. The ISER Report does demonstrate, however, that all five of the Landless communities share the same litany of cultural, historical, and social characteristics that define traditional Alaska Native villages. These characteristics are addressed in more detail below.

The Native Village of Tenakee

Somewhat remarkably, at least one individual has submitted testimony suggesting that the village of Tenakee "was never a Native village." As detailed by the ISER Report, Tenakee has a long history as a Native village. But the reality is that the Native population in Tenakee has largely been displaced by a non-Native population, and so our testimony must address this history.

During the period leading up to ANCSA, the federal government recognized Tenakee as a Native place. Tenakee was identified as an "Indian settlement" in a 1935 executive order *excluding Tenakee from the Tongass National Forest* and, in 1965, the federal government rejected a non-Native application for a trade and manufacturing site at the Indian village in Tenakee in recognition of the "possessory rights to this tract" and use and occupancy of the site by the Native people of Tenakee.

Unlike the four large Landless communities, the1970 Census showed that Tenakee had fewer than 25 Native residents in 1970. However, 64 Native individuals enrolled to Tenakee, and Tenakee in 1970 shared many similarities with the Southeast village of Kasaan, which, unlike Tenakee, was listed in ANCSA. Kasaan, which had only 8 Native residents according to the 1970 Census, was ultimately able to demonstrate that it *did in fact meet the requirements* for a listed village. This may reflect the fact, as acknowledged in the ISER Report, that the 1970 Census likely undercounted the Alaska Native population. The Census did not take into account Alaska Native movement between Native villages, which was common at the time. The residents of Tenakee did not have an opportunity to make the same showing that Kasaan was successfully able to make because Tenakee was not listed in ANCSA.

The similarities between Tenakee and Kasaan are compelling. Kasaan, like Tenakee, experienced an out-migration of Native residents due to impacts of unregulated, non-Native fishing. **But, as detailed in the ISER Report, Kasaan repopulated and revitalized as a Native community after it was given the opportunity to incorporate under ANCSA.**

The Bottom Line: "Technicalities" Do Not Erase the Native-ness of Our Five Communities

In failing to list these communities, Congress precluded 4,400 Alaska Natives from five traditional Native communities in Southeast Alaska from forming Alaska Native corporations with land in and around their communities and pursuing the economic, social, and cultural benefits of operating an Alaska Native corporation in each of their respective communities.

As noted above, none of the five Landless communities met all the requirements under ANCSA to incorporate as village corporations. And, as discussed below, it is impossible to articulate whether the five Landless communities "met" the requirements for incorporation as urban corporations because, in fact, ANCSA did not establish any specific requirements for urban corporations; the point of the urban corporation model was to provide a solution for communities that did not meet ANCSA's definition of a village due to the size of the village's non-Native population. However, like the Alaska Native populations in the four towns that were authorized to incorporate urban corporations, the five Landless villages "originally were Native villages, but [came to be] ... composed predominantly of non-Natives."

As you review testimony submitted by a few of our detractors, you will note that most objections to legislation introduced on behalf of our communities focus not on the right of the Landless communities to establish Native corporations but instead arise from a generalized fear about what we might do with the land conveyed to our people. Specifically, you will see concerns about timber development. This may be unavoidable given the fact that our homeland is a forest. In any event, these fears are unfounded and inappropriate. First, given the modern timber economy in our region, the threat of mass timber harvesting is, as a practical matter, an empty fear. No one has engaged in large-scale timber harvesting in our region in decades, and we challenge anyone to demonstrate otherwise. Second, as noted above, we no longer live in the clear-cut-the-forest economy of the 1970s, and it is unfair for those who opposed timber development in the Tongass during that era to continually raise the specter of logging 40-50 years later. Third, the only federal land available for conveyance to the five Landless communities comes from the Tongass National Forest, and any perceived threat to the integrity of the Tongass tends to spur both local and national resistance. We understand that political reality, and we recognize that your constituents will raise these concerns. But the fact is that these lands were taken from our people; we do not recognize generalized fear about the capacity of Native landowners to make decisions for ourselves to be valid grounds for precluding Native ownership of aboriginal homelands, and neither should the Members of this Subcommittee.

Congress has significant discretion to settle aboriginal claims, and Native American claims have often been settled by Congress not only out of legal obligation but as a result of "moral and political persuasion." Congress acted both in ANCSA and—on numerous occasions—after ANCSA to extend the benefits of the Settlement to Alaska Native communities that had been impacted by non-Native settlement.

Congress in 1971 and in the years following took steps to extend the benefits of the settlement to identifiable Alaska Native groups where equity demanded it. In ANCSA itself, four "urban" communities were authorized to incorporate despite the fact that they did not meet ANCSA's definition of a Native village or group. Similarly, although the Governor of Alaska specifically objected to the establishment of a Native corporation for Nome, Congress authorized Nome to

incorporate as a village corporation. After ANCSA was enacted, in 1980, Congress authorized seven additional communities in the Koniag region to incorporate as villages under ANCSA.

Congress provided no reason to exclude the five Landless villages in 1971. Congress has taken steps to resolve other inequities under ANCSA, and the entire Alaska Native community recognizes that the Landless claims still need to be resolved. No other Native communities in Alaska find themselves in the same unique position. We believe it is clear that our villages were left out due to the political influence of the timber industry in the 1960s, and the notion that some groups would prefer to see us left out of ANCSA today out of fear that an Urban Corporation might harvest some amount of timber reeks of irony and paternalism.

Every other Native community in Alaska that experienced an influx of non-Native settlers, like the five Landless communities, was authorized by Congress to have a village or an urban corporation under ANCSA. This is the truth, and Congress should consider this truth when others throw technicalities in front of our pleas for justice. The five Landless villages should be allowed to fully participate in the United States' settlement of aboriginal land claims in Alaska.

Other Questions Raised by Members of the Subcommittee

During the November 18 hearing, Senator Heinrich asked whether the mineral rights associated with lands conveyed to the Urban Corporations would be retained by the Government or would be conveyed to Sealaska Corporation, the regional Native corporation for Southeast Alaska.

Under the terms of ANCSA, regional Alaska Native 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 Native corporations. Although Sealaska has not actually developed any subsurface minerals in Southeast Alaska over the last 49 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 other Regional Corporations. In any event, the fact that Sealaska would receive the subsurface estate only reflects a reality that the entire Native population of Southeast Alaska was given short shrift in the context of ANCSA as Sealaska's ownership in Southeast Alaska is minimal.

During the November 18 hearing, Senator Heinrich also asked whether any of the proposed Landless selections would be located within Misty Fjords National Monument. None of the proposed selections are located within National Monuments, National Parks, Wilderness Areas or so-called "LUD II" conservation areas, which are special conservation areas within the Tongass set aside by Congress. This is not to say, however, that Alaska's indigenous people do not have legitimate aboriginal ties to Misty Fjords. Conservation areas in Alaska—and for that matter, throughout the United States—were largely set aside without regard to indigenous rights.

Issues Raised by the U.S. Forest Service

The U.S. Forest Service (USFS) in testimony submitted to this Subcommittee identified a number of technical issues they would like to see resolved. We note that USFS did not propose solutions

to the technical issues raised in their testimony, and for this reason we commit to work with USFS to resolve issues to the greatest extent possible.

The USFS notes that, "although the total acreage proposed for transfer to new urban corporations is a small portion of the National Forest System lands within southeast Alaska, due to the high value of these lands for forest management activities and public use, the Forest Service anticipates that these selections could adversely impact the implementation and viability of the 2016 Forest Plan broadly across program areas."

The challenge we face is that—in the words of Senator Lisa Murkowski—every acre of the Tongass is precious to someone. In working to identify parcels of land for conveyance to the five Landless communities, we truly do find that every acre of land proposed for conveyance has been classified by the USFS or categorized by third party groups for one public use or another.

USFS notes that the "proposed selection acreage will decrease the Tongass National Forest land base suitable for timber by nearly 37,000 acres, or 10 percent." First, it is notable that only 370,000 acres of the 17 million-acre Forest is categorized as suitable for timber development, signifying that the vast majority of the Forest has been set aside for non-timber uses. Second, it is remarkable, frankly, that the 115,200 acres identified for selection by the Landless communities overlaps only 37,000 acres of the Tongass land base identified as suitable for timber. Clearly, we are under pressure to avoid selections in many other areas, including all conservation areas, that are *not* classified as suitable for timber development.

USFS notes that the Landless selections include about 40,500 acres of land designated by the 2016 Forest Plan as Old Growth Habitat, 21,200 acres of land designated as Scenic Viewshed, and 2,850 acres designated as Semi-Remote Recreation. It is important to note that this is acreage allocated to specific land use designations, or LUDs, in the Tongass Forest Plan. It is important to view these numbers in context. For example, 2,008,582 acres are set aside under the 2016 Forest Plan within the Semi-Remote Recreation LUD alone. About 5 million acres of the Tongass are considered "productive old-growth"—which is a subset of total old growth—of which 4.5 million acres are set aside in conservation areas.

The USFS also notes the following selections in roadless areas:

> The selections include nearly 9,000 acres that are subject to the 2020 Alaska Roadless Rule direction to modify the timber land suitability and become available for timber harvesting. These 9,000 acres may be considered a nearly 50 percent addition to the estimated 18,650 acres that were projected to be harvested in roadless areas under the Alaska Roadless Rule.

It is unclear whether the inclusion of these roadless areas are of concern to the USFS. As a matter of public policy, it seems reasonable to include both roadless and roaded areas of our homeland within the acreage designated for settlement of our land claims. The USFS notes that it recently identified certain roadless areas within the Tongass to be suitable for timber harvesting. This decision was the subject of public debate. However, the potential selection of roadless areas by the Landless communities does not suggest that the Landless communities will deem such areas to be suitable for timber harvest. The fact that Indian tribes and Alaska Native corporations have

an interest in economic development—among many other interests in the management of Native lands—does not mean that Indian tribes or Alaska Native corporations will deem resource development to be appropriate within a given area. We hope that is not the presumption here with regard to the five Landless communities. Moreover, the inclusion of this small amount of roadless acreage is entirely reasonable given that 9.6 million acres of the 16.8 million-acre Tongass are inventoried roadless.

The USFS also notes that the proposed selections would impact three timber harvest projects currently in planning, including 17 percent of the Central Tongass Project, 5.2 percent of the South Revilla Project and 2.5 percent of the Twin Mountain II Project. The USFS notes that these are "not large percentages of the overall projects," but suggests that "the inclusion of selections within the three project areas is likely to impact the Forest Service's ability to complete a timely review under the National Environmental Policy Act, issue decisions on schedule, and offer timber in fiscal years 2021 and 2022." It is unclear whether or how the Landless communities can possibly avoid impacting proposed project areas, with are sub-regional in scope. The Landless communities are effectively left to choose from the scraps to begin with—approximately 6 million acres of the Tongass is set aside within Wilderness LUDs, and approximately 7.5 million acres of the Tongass is within Natural Setting LUDs, leaving just 3.36 million acres within development LUDs (including scenic viewsheds). Municipalities have already selected much of the land near the Landless communities themselves. Focusing largely on selections within the development LUDs—as we have been pressed to do—the Landless communities generally have sought to identify large, contiguous blocks located within reasonable proximity to the Landless communities, which necessarily results in overlap with multiple land use designations and selections within timber harvest projects that span sub-regions of the Tongass.

Finally, the USFS indicates that it "anticipates the proposed conveyance of the lands will affect the Tongass National Forest's delivery of its recreation program," including "13 developed recreation sites (3 camping sites, 7 public use cabins, 1 picnic site, 1 shelter, 1 trailhead), 3.5 miles of hiking trail, 26.5 miles of designated Off Highway Vehicle trails, 90.9 miles of open roads, and an estimated 12 marine access facilities." USFS has also "identified that outfitter/guide activity is [currently] authorized under special use permits within or adjacent to more than half of the selected parcels."

We would like to work with the USFS to see if we can resolve issues involving specific recreational sites. However, with regard to roads and trails, and with regard to public access, the USFS is aware that any conveyances of land to the Urban Corporations "shall be" subject to the reservation of public easements under Section 17(b) of ANCSA. Under Section 17(b), the Bureau of Land Management (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 ..." 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." 17(b) easements are reserved and managed by the Federal Government. The rights are reserved when the BLM conveys land to an Alaska Native corporation under ANCSA.

Further, this legislation, unlike ANCSA, preserves public access to all of the lands conveyed to the new Urban Corporations, guaranteeing 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." The legislation preserves all existing special use permits and provides for the issuance of an additional 10-year special use permit to each permit holder. The legislation also preserves the right of the USFS and its designees to continue to use the roads and other transportation facilities conveyed with the land to the Urban Corporations. By our count, *eight pages* of the legislation are devoted to preserving public access and access to roads, trails, and other facilities by the USFS and others.

Again, it is impossible for the Landless communities to pursue conveyances without overlapping areas currently in use by members of the public. It is *for this reason* that the legislation has been amended to guarantee public access on roads and trails, guarantee access to the land for recreational uses and subsistence hunting and fishing, and preserve and extend all existing special use permits. All of this is in addition to the existing process—under Section 17(b) of ANCSA—that provides for the reservation of public easements on the land. It is unclear why the USFS does not mention or discuss the several pages of language in the legislation detailing these guarantees of public access. In our view, the legislation could not be clearer that public access will be maintained. But we are willing to work with the USFS on these issues.

Background: The Tlingit and Haida Settlement, ANCSA, and the Landless Villages

In order to properly introduce the "Landless" legislation, we must first provide an overview of the Tlingit and Haida Settlement, the mechanics of ANCSA, and a brief historical description of the five Landless Alaska Native communities in Southeast Alaska.

The Tlingit and Haida Settlement

Congress has significant discretion to settle aboriginal claims, and Native American claims have often been settled by Congress not out of legal obligation but as a result of "moral and political persuasion."[1]

ANCSA was the second of two agreements to settle aboriginal land claims authorized by Congress for Alaska Natives. The first of the two major settlements was the Tlingit and Haida Settlement.[2] This settlement was achieved through a lawsuit brought by the communities of the Tlingit and Haida Indians against the federal government.[3] The lawsuit was made possible through the enactment of the Jurisdictional Act of June 19, 1935, which authorized Tlingit and Haida Indians to sue the federal government for land that was taken or used by the United States without providing compensation.[4] The Act also authorized a community settlement, which would have provided "'all persons of Tlingit or Haida blood, living in or belonging to any local community of these tribes' [] in Southeast Alaska" a share of the judgment.[5] Administration of a subsequent

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[1] ISER Report at 1-2 (citing LUCY KRAMER COHEN, ET AL., COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 3-7, 12-13 (1982)).
[2] ISER Report at 3.
[3] *Id.* at 25; *see also Tlingit and Haida Indians of Alaska v. United States*, 389 F.2d 778, 781 (Ct. Cl. 1968).
[4] ISER Report at 25; *see also* Jurisdictional Act of June 19, 1935, ch. 275, 49 Stat. 388 (1935).
[5] ISER Report at 25.

settlement was to be administered by the Tlingit and Haida Central Council ("Central Council"), which was recognized as the beneficiary entity of the settlement and the regional tribal organization.[6] The Central Council worked to create a roll of tribal membership through input from "tribal communities," which would be sent to the Secretary of the Interior for approval.[7]

The Tlingit and Haida lawsuit was not organized and filed until the 1950s. In 1959 the U.S. Court of Claims held that the Tlingit and Haida Indians established aboriginal title to the land in Southeast Alaska and were entitled to compensation from the United States.[8] In 1968, after almost a decade of litigation and work from the Central Council and communities, the Court of Claims valued the loss of Tlingit and Haida lands at $7,546,053.80 and held that the claimants were to receive compensation in that amount.[9] The payment was ultimately distributed to the Tlingit and Haida Indians pursuant to the Act of July 13, 1970.[10]

ANCSA

In 1971, just a few years after the Tlingit and Haida Settlement, Congress passed ANCSA[11] to settle the aboriginal claims of all Alaska Native groups that arose from the United States' acquisition of Alaska from Russia. ANCSA extinguished all Alaska Native aboriginal land claims and created a corporate structure for governing the assets awarded to the communities that were eligible for benefits under ANCSA.[12] In total, ANCSA awarded almost $1 billion and 44 million acres of land to Alaska Native communities.[13]

ANCSA dictated a very different structure for distributing the settlement award as compared to the payment associated with the Tlingit and Haida Settlement and the treaty and reservation structure common in the lower 48 states. Rather than dividing the land into reservations to be held "in trust" for Native communities by the federal government, or appointing a tribal council to divide a monetary award, Congress in ANCSA relied on modern business structures to manage settlement assets.[14] Specifically, ANCSA divided Alaska into twelve regions, directing Alaska Natives from each of those regions to establish regional corporations. A thirteenth regional corporation was established for Alaska Natives who had left Alaska before ANCSA's passage.

ANCSA also created village and group corporations as well as four urban corporations. These smaller, community-oriented corporations are organized under State law either as for-profit or nonprofit corporations "to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of" a Native village, Native group, or the Native residents of an urban community, respectively.[15]

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[6] *Id.* at 25, 31.
[7] *Id.* at 31.
[8] *Id.* at 25.
[9] *Id.* at 34.
[10] Pub. L. No. 91-355, 84 Stat. 431 (July 13, 1970).
[11] Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1629h (2018).
[12] ISER Report at 5.
[13] *Id.* at vii.
[14] *Id.* at 16.
[15] 43 U.S.C. §§ 1602(j), (n), (o).

Alaska Native individuals were to benefit from ANCSA by becoming shareholders in their respective regional corporation and the village, group, or urban corporation established for their community. **ANCSA established a process by which every Alaska Native individual would enroll 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.***[16]

In the decades that have passed since ANCSA was enacted, Congress has sought to significantly strengthen the role of Alaska Native corporations as Native-serving institutions. For example, ANCSA as enacted provided for the alienation of stock from Native ownership 20 years after enactment, a policy reflective of the United States' allotment era policies of distributing tribal assets to individual Indians, the ownership of which would become alienable within, in many cases, 20 years. But the Indian status of Alaska Native corporations was not frozen in time in 1971, just as the Indian status of tribes was not frozen in time during the allotment era or the termination era, or through the passage and implementation of ANCSA. In 1988, Congress enacted the so-called 1991 amendments, reversing course and establishing that Native corporation stock could not be alienated unless Alaska Native stockholders so choose.

Congress has amended ANCSA numerous times to grant Native corporations new rights, duties, and preferences, many of which overlap with rights, duties, and preferences granted to sovereign tribes. For example, though a non-Native can inherit stock from a Native spouse or parent, Congress required that only Alaska Natives have the power to vote as stockholders. Congress has exempted Native corporations from certain employment restrictions contained in Title VII of the Civil Rights Act to protect shareholder hiring. 43 U.S.C. § 1626(g). Congress has enacted laws protecting undeveloped ANCSA lands from taxation and involuntary alienation, 43 U.S.C. § 1636(d). Congress has required federal agencies to consult with Alaska Native Corporations "on the same basis as" federally-recognized Tribes. Pub. L. No. 108-447, 118 Stat. 2809, 3267 (2005) (amending Pub. L. No. 108-199, 118 Stat. 3, 452 (2005).). These are actions taken to ensure that the actions of Congress, though ANCSA and its amendments, serve the long-term interests of the Alaska Native owners of Native corporations because of their status as Indians. These actions reflect the fact that ANCSA, and the dozens of statutes that amend ANCSA, are part of the framework of "Indian legislation enacted by Congress pursuant to its plenary authority under the Constitution of the United States to regulate Indian affairs."[17]

Village Corporations

For an Alaska Native community to incorporate as a village corporation, the community had to qualify as a "Native village," which ANCSA defined as a village listed in Sections 11 or 16 of ANCSA or any other village that met certain minimum requirements.[18] As discussed below, Section 11 of ANCSA included a provision that generally allowed any unlisted village an opportunity to demonstrate that it met the eligibility criteria for forming a village corporation.

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[16] ISER Report at xiii.
[17] Pub. L. 100–241, §2, 101 Stat. 1788 (1988).
[18] 43 U.S.C. § 1602(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;").

For all regions of Alaska other than the Southeast Alaska region, villages presumed to be eligible to establish village corporations were listed in Section 11 of ANCSA.[19] Village corporations established for villages listed in Section 11 were authorized to receive up to seven townships of land based on the size of the village population.

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. Ten Native communities presumed to be eligible to establish village corporations were listed in Section 16 of ANCSA.[20] Village corporations established for villages listed in Section 16 were limited to selecting just one township of land each, despite the large Native populations of many of the Southeast villages.

Under ANCSA, in order for any listed or unlisted village to qualify to establish a village corporation, the Secretary of the Interior was required to make a determination that the village was "composed of" at least 25 Native individuals on the date of the 1970 Census.[21] No reason was given by Congress for establishing the minimum village Native population to be 25.[22] Additionally, the village could not be modern and urban in character, nor could a majority of residents be non-Native.[23] The BLM promulgated regulations to implement these criteria at 43 C.F.R. § 2651.2(b):

> (1) There must be 25 or more Native residents of the village on April 1, 1970, as shown by the census or other evidence satisfactory to the Secretary. A Native properly enrolled to the village shall be deemed a resident of the village.
>
> (2) The village shall have had on April 1, 1970, an identifiable physical location evidenced by occupancy consistent with the Natives' own cultural patterns and life style, and at least 13 persons who enrolled thereto must have used the village during 1970 as a place where they actually lived for a period of time: Provided, That no village which is known as a traditional village shall be disqualified if it meets the other criteria specified in this subsection by reason of having been temporarily unoccupied in 1970 because of an act of God or government authority occurring within the preceding 10 years.
>
> (3) The village must not be modern and urban in character. A village will be considered to be of modern and urban character if the Secretary determines that it possessed all the following attributes as of April 1, 1970:
>
> (i) Population over 600.
>
> (ii) A centralized water system and sewage system that serves a majority of the residents.

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[19] 43 U.S.C. § 1610(b)(1).
[20] 43 U.S.C. § 1615(a).
[21] 43 U.S.C. § 1610(b)(2).
[22] ISER Report at 11.
[23] 43 U.S.C. § 1610(b)(2)(B). Note that Alaska Natives made up just 27 percent of Saxman's population and 27 percent of Kasaan's population, so, clearly exceptions were made, at least in the case of Southeast Alaska. ISER Report at xii.

(iii) Five or more business establishments which provide goods or services such as transient accommodations or eating establishments, specialty retail stores, plumbing and electrical services, etc.

(iv) Organized police and fire protection.

(v) Resident medical and dental services, other than those provided by Indian Health Service.

(vi) Improved streets and sidewalks maintained on a year-round basis.

(4) In the case of unlisted villages, a majority of the residents must be Native, but in the case of villages listed in Sections 11 and 16 of the Act, a majority of the residents must be Native only if the determination is made that the village is modern and urban pursuant to subparagraph (3) of this paragraph.

As noted above, ANCSA included a provision that gave unlisted villages a chance to demonstrate that they met the eligibility criteria for forming village corporations. Specifically, Section 11 of ANCSA, which lists villages outside of the Southeast Alaska region, included a provision that allowed any village not listed in Section 11 an opportunity to qualify as a Native village if the Secretary made a determination, within two and a half years, that the village met all of the criteria applicable to Native villages, as detailed above.[24]

Critically, however, Section 16 of ANCSA, which lists villages in the Southeast Alaska region, did not include language authorizing the Secretary to reconsider the status of unlisted villages in the Southeast region. Three of the Landless communities—Tenakee, Ketchikan, and Haines—appealed their unlisted status to the Alaska Native Claims Appeal Board ("ANCAB"). The ANCAB denied all three appeals, finding that Congress' failure to provide an explicit right of appeal to unlisted Southeast Alaska villages was apparently intentional (but unexplained) and foreclosed the opportunity to pursue such an appeal with the Secretary of the Interior.[25] In sum, no due process was provided to unlisted Alaska Native villages.

Group Corporations

Under ANCSA, a "Native group" is defined as "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."[26] Native groups were authorized to incorporate group corporations,[27] and Native group corporations were entitled to receive up to 23,040 acres of land surrounding the group's locality.[28]

[24] 43 U.S.C. § 1610(b)(3).
[25] *Id.* at xii (citing *In Re: Appeal of Ketchikan Indian Corp.*, 2 A.N.C.A.B. 169, 171 (Dec. 5, 1977)).
[26] 43 U.S.C. § 1602(d) (emphasis added).
[27] *Id.* § 1602(n).
[28] *Id.* § 1613(h)(2).

At least one early version of legislation that ultimately became ANCSA defined Native "groups" more expansively.[29] For example, Governor Wally Hickel established a Task Force—a committee comprised of State officials, representatives of the Alaska Federation of Natives, and other representative leaders of the Native community—to develop legislation that was eventually introduced in the U.S. Senate as S. 2906.[30] That bill called for the enrollment of every Native to one Native group, with each Native group to determine its own membership and enrollment. Alaska Natives under this model could have enrolled to the villages where they currently lived, or to the villages where they or their ancestors had come from. Native groups that failed to enroll at least 25 Natives would have their members enrolled to another group.[31] According to the ISER Report, nothing in the legislative history of S. 2906 indicates why the 25 person population figure was used, and the definition of Native group in S. 2906 did not include a population requirement.[32] The ISER Report explains:

> Natives did not need to constitute a majority of a Native village or exhibit current aboriginal use and occupancy of land under S. 2906 to participate in its proposed settlement. Two sections of the bill proposed exceptions that persist in subsequent settlement proposals. First, villages which were relatively new or which had relocated in recorded history could still file a claim based upon aboriginal use and occupancy during such period (S. 2906 § 504). Second, Native villages which had been abandoned involuntarily or which had been absorbed by non-Native communities could also file claims based on aboriginal use and occupancy before their involuntary abandonment or absorption (S. 2906 §505). These exceptions broke from an early tendency in the claims commission bills (e.g. 1964) to tie Native group land entitlements to present use by a Native community and a traditional use or need standard. The official Governor's Task Force commentary explains these exceptions:
>
> > Section 504. Claims of New Villages
> >
> > Native villages which have relocated or been reestablished during the last 100 years as a result of volcanic explosion, flood, loss of game, and other reasons. This section permits these villages to participate in the settlement.
> >
> > Section 505. Claims of Abandoned Villages
> >
> > This section provides for situations such as Kenai, where the native village has been absorbed, and villages which have been involuntarily abandoned. In the latter case, only a few native group corporations based upon abandoned villages are expected, as most members of these villages have formed or have affiliations with other groups (Alaska Native Land Claims: Hearings on 2906 at 108).

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[29] ISER Report at 13.
[30] *Id.*
[31] *Id.*
[32] *Id.*

> Despite the disavowal of the requirement of present aboriginal use and occupancy and the need for a majority Native population, the exceptions tend to prove the rule—only current Native aboriginal land use (that is, subsistence lifestyles exhibited by a predominantly Native community) would assure an entitlement under the Governor's Task Force proposal. The exceptions (relocated villages and the original urban corporation provision) were tightened or eliminated in subsequent acts.[33]

The ISER Report provides little additional information about Congressional objectives in allowing the establishment of group corporations, and our own research indicates that relatively little information regarding the establishment in practice of group corporations is available.

While ANCSA itself says little about the creation of group corporations, the BLM promulgated regulations to facilitate the incorporation of and distribution of land to group corporations. The BLM defined "Native group" to mean "any tribe, band, clan, village, community or village association of Native composed of less than 25, but more than 3 Natives, who comprise a majority of the residents of a locality and who have incorporated under the laws of the State of Alaska."[34] The regulations specify the eligibility requirements for Native group incorporation and the application process.[35] Additionally, the regulations specify that Native groups are allowed to select 320 acres for each Native member of a group, or 7,680 acres for each Native group, whichever is less.[36]

Urban Corporations

Four Alaska Native communities were incorporated as "urban" corporations: Juneau and Sitka in Southeast Alaska, and Kenai and Kodiak in Southcentral Alaska.[37] Section 14(h)(3) of ANCSA provided each corporation with an entitlement to 23,040 acres of land.[38] **Urban corporations do not have a specific population requirement for incorporation, as compared to Native villages, which had to be composed of 25 or more Alaska Native residents to incorporate a village corporation.** Also, although there were exceptions, Native villages generally were not able to incorporate a village corporation or a group corporation if the majority of the residents of the village were non-Native in 1970. Although we do not have data for Kenai and Kodiak, Sitka and Juneau both had large Alaska Native enrollment populations (at 1,863 and 2,722, respectively); however, the Native population did not comprise a majority of the residents of these communities (at 23 percent and 20 percent, respectively).[39]

The term "urban"—at least, in relation to the designation by Congress of four urban corporations—is not defined in ANCSA.[40] ANCSA describes the four communities that incorporated urban

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[33] *Id.* at 14.
[34] 43 C.F.R. § 2653.0-5 (2020).
[35] *Id.* § 2653.6(a).
[36] *Id.* § 2653.6(b).
[37] ISER Report at 17.
[38] 43 U.S.C. § 1613(h)(3).
[39] ISER Report at xiii.
[40] Congress did not define "urban community" in ANCSA, though it did define the term "urban corporation." *Id.* § 1602(o) ("'Urban Corporation' means an Alaska Native Urban Corporation organized under the laws of the State of

corporations as communities that were "originally Native villages, but [came to be] ... composed primarily of non-Natives."[41] Thus, the inclusion of the four urban corporations in ANCSA allowed for the inclusion of Native communities that did not meet the standard eligibility requirements for village or group corporations under ANCSA. However, the four communities authorized to form urban corporations were not the only Native communities that technically did not meet the eligibility requirements for village corporations under ANCSA. For example, Alaska Natives made up just 27 percent of Saxman's population and 27 percent of Kasaan's population, both of which were listed villages, bucking the general rule that Native villages were not able incorporate a village corporation or a group corporation if the majority of the residents of the village were non-Native in 1970. These exceptions to the general eligibility criteria enabled Congress to fulfill the equitable objectives of ANCSA as a settlement of aboriginal land claims. In fact, these exceptions appear to be the rule in ANCSA; we are not aware of any other traditional Alaska Native villages that became predominantly non-Native but were excluded by Congress from ANCSA, or later amendments to ANCSA. Only the Landless communities are left.

While there is no legislative definition of "urban community," the legislative history indicates that the term stemmed from an understanding that many Native people had to abandon their aboriginal village and relocate, or that their village may have been absorbed into a larger non-Native community.[42] The allowance for urban corporations evolved from the question of how to allow Native groups located in urban areas—meaning those not in small, rural Native villages—to participate in ANCSA.[43]

The Landless Communities and ANCSA

Alaska Natives residing in Alaska were to be enrolled by the BIA to their community of permanent residence as of April 1, 1970.[44] Applicants were asked to specify a permanent place of residence as of that date and were given a copy of regulations that defined "permanent residence" for the purpose of enrollment. **An Alaska Native individual did not have to be physically living in his or her permanent residence on April 1, 1970, as long as he or she "continued to intend" to make his or her home at that place.** The relevant regulations provided:

> "Permanent residence" means the place of domicile on April 1, 1970, which is the location of the permanent place of abode intended by the applicant to be his actual home. It is the center of the Native family life of the applicant to which he has the intent to return when absent from that place. A region or village may be the permanent residence of the applicant on April 1, 1970, even though he was not

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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 members of an urban community of Natives in accordance with the terms of this chapter.").

[41] ISER Report at xi (quoting 43 U.S.C. § 1613(h)(3)).

[42] ISER Report at 18 (citing the Governor's Task Force commentary using Kenai as an example of a native village being absorbed).

[43] ISER Report at xi, 18.

[44] 25 C.F.R. § 43h.4(a) (1981) ("Permanent residents of Alaska: A Native permanently residing in Alaska on April 1, 1970, shall be enrolled in the region and village or other place in which he or she was a permanent resident on that date.")

> actually living there on that date, if he continued to intend that place to be his home.[45]

In Southeast Alaska, the BIA contracted with the Central Council to conduct the enrollment.[46] The Central Council hired an enrollment coordinator for the region and hired and trained enumerators throughout Southeast Alaska to help local residents complete enrollment applications.[47] The authors of the ISER Report interviewed seven individuals who were involved in the enumeration process, along with several individual shareholders.[48] The enumerators reported that some applicants from the Landless communities were aware that their communities were not eligible for certification, and others were not; however, based on these limited interviews, "those who were unaware of the community eligibility issue appear to have been the largest group."[49]

Nearly 3,500 Natives—or 22 percent of total enrollment in the Southeast Alaska region—enrolled to the five Landless communities.[50] The Landless and their descendants have now grown to a population of 4,400, although, unfortunately, approximately one half of the original Landless shareholder population has now passed away waiting for the resolution of their land claims.

After ANCSA passed, as discussed above, three of the Landless communities appealed their unlisted status to the ANCAB, only to be denied in 1974 and 1977 for lack of an appeals process for Southeast villages in Section 16 of ANCSA.[51]

In 1976, Congress amended ANCSA to reopen enrollment for one year, which appeared to provide an opportunity to those Landless enrollees who might wish to change their place of enrollment to do so.[52] In fact, when the amendment was first passed, Sealaska Corporation informed its shareholders that redetermination of residency would be available to Southeast communities, including the Landless communities.[53] However, seven years later, a 1983 opinion of the Solicitor of the Department of the Interior held that the amendment did not apply to those enrolled to the five Landless communities.[54] Attorneys were unsuccessful in challenging that opinion.[55] The Solicitor's opinion found that the legislative history demonstrated that Congress enacted the amendment to address nine places in the Koniag region where 25 or more Alaska Natives had enrolled, but for which during eligibility proceedings had been found to lack 25 Native residents. The Solicitor did not view the Landless communities as similarly situated. Importantly, Congress ultimately decided that seven of the nine Koniag communities, as well as two other Native communities, should be dealt with legislatively through provisions of the Alaska National Interest Lands and Conservation Act of 1980 (ANILCA); Congress directed that eight of the Native

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[45] 25 C.F.R. § 43h.1(k) (1981).
[46] ISER Report at 79.
[47] *Id.*
[48] *Id.* at 82.
[49] *Id.*
[50] *Id.* at xiv.
[51] *See id.* at 17 (citing *In Re: Village of Tenakee*, VE # 74-60, 2 AN CAB 173, 177, Sept. 9, 1974; identical opinion *In Re: Village of Haines*, VE # 7 4-85, Sept. 9, 197 4; acc'd, *In Re: Appeal of Ketchikan Indian Corp.*, 2 ANCAB 169, Dec. 5, 1977).
[52] Pub. L. No. 94-204 § 1(c), 89 Stat. 1145-46 (1976).
[53] ISER Report at 88.
[54] *See* ISER Report at 89.
[55] *Id.*

communities were to be treated as Native villages (and were authorized to incorporate as village corporations), and the ninth was to be treated as a Native group.[56]

Thus, after more than a decade of legislation and subsequent amendments, confusion about enrollment and re-enrollment, and appeals to the Department of the Interior, residents of the five Landless communities were finally left with the reality that Congress had granted other similarly situated Alaska Native communities the right to incorporate under ANCSA, while the five Landless communities were left with no recourse but to turn to Congress.

The Landless communities have, since the 1970s, advocated first for an administrative solution and then, for a legislative solution that would allow Alaska Native enrollees to the Landless communities to receive the full benefits shared by other Alaska Native villages under ANCSA. This would include the right of each community to establish a Native corporation, the right to enroll Alaska Natives from each of the communities as shareholders of their respective corporations, and the right of each corporation to receive one township of land near their community. As a result of lobbying efforts that started in the 1980s, Congress in 1993 instructed the Secretary of the Interior to investigate the exclusion of the Landless communities from ANCSA.[57] The ISER Report, produced as a result of this directive, was to be used by Congress "to help determine whether the [Landless] study communities were intentionally or inadvertently denied recognition under ANCSA."[58]

History and Characteristics of the Five Landless Villages

In general, Southeast Alaska Native communities faced significant obstacles to participate in ANCSA.[59] By the time the Tongass National Forest was created, in 1907, the Tlingit and Haida people had been marginalized. As white settlers and commercial interests moved into the Alaska territory, they utilized the resources as they found them, often taking over key areas for cannery sites, fish traps, logging, and mining.[60] The Act of 1884, which created civil government in the territory, also extended the first land laws to the region, and in combination with legislation in 1903, settlers were given the ability to claim areas for canneries, mining claims, townsites, and homesteads, and to obtain legal title to such tracts. **Since Alaska Natives were not recognized as citizens, they did not have corresponding rights to protect their interests.**[61]

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. **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.**[62]

In the 1940s, the Tlingit leader and attorney William Paul won a short-lived legal victory in the Ninth Circuit Court of Appeals in *Miller v. United States*, 159 F. 2d 997 (9th Cir. 1947), which

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[56] *Id.* at 90.
[57] *Id.* at i.
[58] *Id.* at i.
[59] ISER Report at 16.
[60] Robert Baker, Charles Smythe and Henry Dethloff, A New Frontier: Managing the National Forests in Alaska, 1970-1995 17 (1995).
[61] *Id.* at 18.
[62] *Id.* At 31 (citations omitted).

ruled that Native lands could not be seized by the government without the consent of the Tlingit landowners and without paying just compensation. To reverse this decision, Congress passed a Joint Resolution authorizing the Secretary of Agriculture to sell timber and land within the Tongass, "notwithstanding any claim of possessory rights" based upon "aboriginal occupancy or title." This action ultimately resulted in the *Tee-Hit-Ton Indians v. United States* decision, in which the U.S. Supreme Court held that Indian land rights are subject to the doctrines of discovery and conquest, and "conquest gives a title which the Courts of the Conqueror cannot deny." 348 U.S. 272, 280 (1955). **The Court concluded that Indians do not have 5th Amendment rights to aboriginal property. Instead, the Congress, in its sole discretion, would decide if there was to be any compensation whatsoever for lands stolen.**

The Tlingit and Haida Settlement of 1968 injected additional uncertainty into the claims of the Tlingit, Haida and Tsimshian people, and an early ANCSA bill excluded Southeast Native communities entirely.[63] Once the case was made that the Tlingit and Haida Settlement had not extinguished all Native claims in Southeast Alaska, Congress decided to include the Southeast region in ANCSA.[64] Still, while ANCSA established a process through which Alaska Natives would ultimately take title to roughly 12 percent of their original homeland in Alaska, the Alaska Native communities in Southeast received less than 3 percent of their own homelands.

All four of the larger Landless communities share multiple characteristics that arguably made our communities good candidates to incorporate either village or urban corporations under ANCSA—namely the relatively large size of our Alaska Native populations, our participation in the land claims effort, and the strong history of each community as an Alaska Native community. The ISER Report considers a number of measures to compare the histories of Native use and occupancy in the Landless (unlisted) communities and the listed communities (those that incorporated village corporations or urban corporations) in Southeast Alaska:

- *Enrollment Populations:*
  - When comparing the three larger Landless communities (Ketchikan, Wrangell, and Petersburg) and the two Southeast urban communities listed in ANCSA (Juneau and Sitka), the percentage of Native enrollees who resided in the communities where they enrolled was similar.[65] The proportion of enrollees who lived in the communities varied from 64 to 77 percent.
  - Among the small and medium communities listed in ANCSA, between 14 and 79 percent of enrollees lived in the communities where they enrolled.[66] The Landless community of Haines fell into that range, with 51 percent of those who enrolled to Haines also living there.[67]

- *Native Population as a Percentage of Total Community Population:*
  - In the 1970 Census, Alaska Natives made up close to the same percentage of the total population in Ketchikan (15 percent) and Wrangell (19 percent) as in

[63] ISER Report at 16.
[64] *Id.*
[65] *Id.* at 43.
[66] *Id.*
[67] *Id.*

Juneau (20 percent), for which an urban corporation was established.[68] Petersburg's Native population (12 percent) was smaller.[69]

- In the 1970 Census, Alaska Natives made up 24 percent of Haines's population, which was similar to Saxman (27 percent) and Kasaan (27 percent), for which village corporations were established.

- *Indian Settlements, Land Reserves, Land Possessions:*
  - One or more areas in all of the Landless communities were considered to be Indian villages or Indian towns; this was also true of Juneau, Sitka, and other smaller ANCSA communities.[70] Ketchikan and Petersburg were summer villages before white settlers arrived, while Haines and Tenakee were winter villages before white settlers arrived.[71] Wrangell was a summer village and then became the primary village of the Stikine kwan in 1836.[72] That was also true in the ANCSA-listed urban communities of Juneau and Sitka and in a number of smaller ANCSA-listed communities.[73]
  - Federal land reservations were set aside for Native communities at Haines and Ketchikan in the early 1900s, as well as for the ANCSA-listed communities of Hydaburg, Klawock, and Klukwan.[74]
  - Tenakee, Kasaan, and Craig were excluded from the Tongass National Forest.[75]
  - Haines, Ketchikan, Wrangell, and Petersburg had Indian possession lands identified when townsites were first established. In this respect, the Landless communities differed from Juneau (which had no Indian possession lands in the original townsite), Sitka (which had Indian possession lands totaling less than an acre), and Craig (which had no record of Indian possession lands in the original townsite).[76] There is no record of Indian possession lands in the Tenakee townsite, but an area outside the townsite was excluded from the Tongass National Forest because it was occupied as an Indian village.[77]
  - School reserves for federal Indian schools were also set aside in many Southeast communities, including the Landless communities of Petersburg, Wrangell, and Haines.[78]

- *Government Schools for Indians*
  - Federal Indian schools operated in Haines, Ketchikan, Petersburg, and Wrangell during the period between 1881 and 1948, and all twelve ANCSA-listed Southeast communities had federal government schools.[79]

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[68] *Id.* at 40.
[69] *Id.*
[70] *Id.* at xv-xvi, 62-64.
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] ISER Report at xv-xvi, 62-64.
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.* at xvi, 64-65.

- *Churches and Missions Serving Indians:*
  - The first churches to organize in all five of the Landless communities were Native churches—that is, churches that were either started as missions for Alaska Natives, or churches that were established by the Alaska Native community. The establishment of Native churches was common among ANCSA-listed communities as well.[80]

- *Participation in Native Organizations*
  - All five of the Landless communities had local camps of the Alaska Native Brotherhood and Sisterhood beginning in the 1920s, as did the ANCSA-listed communities.[81]
  - Ketchikan, Petersburg, Wrangell, and Haines belonged to the Tlingit and Haida Central Council as of 1971, as did the ANCSA-listed communities, as well as Metlakatla; Seattle, Washington; and Oakland, California.
  - All four of the larger Landless communities formed Indian Reorganization Act (IRA) organizations in the 1930s and 1940s, as did the ANCSA-listed communities.[82]

Although the four larger Landless communities were majority non-Native, and therefore technically did not meet the population requirements to establish *village* corporations, we have noted above that Saxman and Kasaan, too, had populations that were majority non-Native.

As discussed above, all four of the larger Landless communities share multiple characteristics that arguably made our communities good candidates to incorporate village corporations under ANCSA. However, given the size and the predominately non-Native populations in these communities, one might reasonably argue—based solely on these statistics—that the four larger Landless communities were more appropriately situated to establish urban Native corporations. The four larger Landless communities are good examples of the Native communities identified by Governor Hickel's Task Force; i.e., communities that had been absorbed by the time of ANCSA, through no fault of their own, into larger, non-Native communities—a problem for which the establishment of urban corporations provided an equitable, if only partial, solution in ANCSA.

Like Ketchikan, Petersburg, Wrangell, and Haines, Tenakee shares many of the historical characteristics typical of Southeast Alaska Native communities that were listed in ANCSA.

First, the village of Tenakee is, without doubt, historically a Native village.[83] Located at the Tenakee hot springs, Tenakee was a winter village that existed before white settlers came to the area in 1900.[84] Tenakee is similar to the ANCSA-listed communities of Juneau, Sitka, Craig, and Kasaan in this regard.[85] In 1891, the U.S. Coast Pilot reported that Tenakee was a "small Native village . . . constantly used by the Indians in their journeys from Chatham Strait to Port

[80] ISER Report at xvi, 65-66.
[81] *Id.* at xvi, 66-67.
[82] *Id.*
[83] *Id.* at 55.
[84] *Id.* at 55, 59.
[85] *Id.* at 68.

Frederick."[86] In 1901, the historic use of the village was also accounted by the owner of a saltery in the area who reported that there was a local clan leader who asserted ownership of the fishing sites in Tenakee Inlet.[87] Tenakee's Native population grew in the 1920s and 1930s when Alaska Natives from nearby villages moved to take advantage of jobs at Tenakee's two canneries.[88] After ANCSA was enacted, 64 Alaska Native individuals enrolled to the village of Tenakee.[89]

For decades, Tenakee was recognized as a Native community by the federal government. The village was formally recognized in 1935 as an "Indian settlement" in an executive order by President Franklin Roosevelt that operated to exclude the Tenakee Indian village from the Tongass National Forest.[90] As late as 1965, the BLM rejected a non-Native application for a trade and manufacturing site at the Indian village.[91] In rejecting the application, the BLM noted that the "possessory rights to this tract are claimed and that the lands have been used and occupied by these Indian people for many years."[92] The communities of Haines, Ketchikan, Craig, and Kasaan also had established land reservations or exclusions, like Tenakee.[93]

Second, all of our communities, including Tenakee, had local camps of the Alaska Native Brotherhood and Sisterhood beginning in the 1920s, as did other ANCSA-listed communities.[94]

Third, all of our communities had churches or missions serving Alaska Natives, and all had active Salvation Army posts similar to Juneau, Sitka, Kake, Angoon, and other villages.[95]

Fourth, all of our communities had Native cemeteries, graves, or totems, as did Juneau, Sitka, Craig, and Kasaan.[96]

Although all five of our communities were part of the Tlingit and Haida Central Council at some point, Tenakee did not belong to the Central Council when ANCSA was passed in 1971.[97] During the 1950s, Haines, Tenakee, and Kasaan all became inactive, at least for some time, as individual communities. The ISER Report notes that, "Members of those communities participated through other communities."[98]

At seven percent of the population (and just six individuals), according to the 1970 Census, Tenakee did not have a significant Native population—at least, on paper—when ANCSA passed, which distinguishes Tenakee from the four larger Landless communities.[99] However, the ISER report concedes that the 1970 Census may have undercounted the Native population in many

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[86] *Id.* at 55-56.
[87] ISER Report at 56.
[88] *Id.*
[89] *Id.* at 80.
[90] *Id.* at 56.
[91] *Id.* (emphasis added).
[92] *Id.*
[93] *Id.* at 61-62.
[94] ISER Report at 66.
[95] *Id.* at 65-66.
[96] *Id.* at 68.
[97] *Id.* at 69.
[98] *Id.*
[99] *Id.* at xii.

Alaska Native communities,[100] and Tenakee—like Kasaan, which was included in ANCSA—faced a unique socio-economic situation that deserves special attention.

The 1970 Census shows that, of the ANCSA-listed Native communities and the five Landless communities, the only communities that did not meet the minimum population threshold were Tenakee and Kasaan.[101] The 1970 Census reported that Tenakee had a total population of 86 people, of whom only six were Alaska Native.[102] However, 64 Alaska Native individuals enrolled to Tenakee. Kasaan, which was listed under ANCSA, had a population of 30 according to the 1970 Census, of whom only eight were Alaska Native. Kasaan, however, was able to overcome a challenge to its eligibility status. We discuss the case of Kasaan—and its relevance to Tenakee—in more detail below.

The equitable claim for Tenakee is straightforward. First, the Alaska Natives who enrolled to Tenakee qualify broadly as a distinct Alaska Native group that sought for decades to settle aboriginal land claims associated with the group's traditional occupation of the village.

Congress has previously authorized identifiable Native "groups" to pursue claims against the federal government, and Congress considered a similar approach in the context of Alaska Native land claims. As noted in the ISER Report:

> Senator Gruening of Alaska introduced one of the first Native claims bills on February 1, 1968. That bill authorized Alaska "native groups" to incorporate under state or federal law, select lands, and receive royalties derived from Outer Continental Shelf development as compensation for their claims, based on aboriginal use and occupancy of Alaska lands. . . . S. 2906 [legislation introduced by Governor Wally Hickel's Task Force, discussed above] borrowed elements of its definition for "native group" from S. 1964, the first bill prepared for the first session of the 90th Congress by the Secretary of the Interior. That bill provided jurisdiction in the Court of Claims to compensate Alaska Natives for losses of aboriginal or "Indian title" lands. . . . Congress had done the same for southern Indian tribes in the Indian Claims Commission Act (25 U.S.C. §§ 70 to 70v-2, 1983). The Indian Claims Commission provided groups not generally regarded as Indian tribes an opportunity to assert their claims against the federal government. The act allowed the commission to hear claims "on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States of Alaska" (25 U.S.C. § 70a; emphasis added). The commission later clarified its position noting that so long as a "group can be identified and it has a common claim, it is ... an 'identifiable group of American Indians'" (Loyal Creek Band or Group of Creek Indians, 1 Indian Cl. Comm'n 122, 129, 1949).[103]

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[100] *Id.* at 41.
[101] *Id.* at 40.
[102] ISER Report at 40. Of the four larger Landless communities, Haines had the smallest Alaska Native population with just over 100 residents. *Id.*
[103] ISER Report at 8.

The 64 Alaska Native individuals who enrolled to Tenakee are, if anything, an "identifiable group" with a "common claim" to lands that were, for decades, recognized by the United States as lands "used and occupied" by the Tenakee people. A Tlingit village was located at the Tenakee hot springs when white settlers arrived around 1900. As the ISER Report notes:

> The village and the surrounding area, including Tenakee Inlet, were owned and occupied by members of the Wooshkeetan clan. . . . In 1935, the federal government issued an executive land order that recognized the Native community at Tenakee as "an Indian settlement" and excluded it from the national forest. . . . Native rights to the village tract were reaffirmed in 1965, when the BLM turned down a non-Native application for a trade and manufacturing site there, noting that "possessory rights to this tract are claimed and that the lands have been used and occupied by these Indian people for many years."[104]

Second, given the clear, documented evidence that the Tenakee enrollees are an identifiable group with a common claim to land, Congress should treat this identifiable group of enrollees in an equitable manner, i.e., in a manner that reflects Congress' treatment of other identifiable Alaska Native groups under ANCSA and subsequent legislation.

Although ANCSA designated villages with 25 or more residents as the principal claimants and beneficiaries of ANCSA, Congress in 1971 and in the years following took steps to extend the benefits of the Settlement to other identifiable groups, including the four Alaska Native "urban" communities that were "originally Native villages, but [came to be] ... composed primarily of non-Natives," and—in the context of group corporations—smaller groups of between 3 and 25 individuals. Although Governor Hickel objected to the incorporation of Alaska Native communities in Kenai or Nome, Congress nevertheless authorized Kenai to incorporate as an urban corporation and Nome to incorporate as a village corporation.[105] As noted above, when it enacted ANILCA in 1980, Congress deemed seven additional communities in the Koniag region to be eligible villages under ANCSA, terminated an eligibility review for an eighth village, and authorized a ninth community to establish a Native group corporation. There is no reason Tenakee should not be treated equally.

Third, in the context of Congress' unique approach to Southeast Alaska, Congress should consider its own approach, in 1971, to the village of Kasaan, a Southeast Alaska village that was listed under ANCSA but had to confirm its eligibility to receive benefits.

Historically, Tenakee and Kasaan share important characteristics in that they both: (1) were settled prior to the arrival of whites; (2) occupied an area in the early towns; (3) were excluded from the Tongass National Forest, with land reserved for Native use; (4) had Alaska Native Brotherhood/Sisterhood organizations; and (5) had Native cemeteries, graves, or totems near their villages.[106]

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[104] *Id.* at 56.
[105] *Id.* at 15.
[106] *Id.* at 68.

Kasaan, unlike Tenakee, was listed as a village by Congress in Section 16 of ANCSA. For villages listed in Section 11 or 16 of ANCSA, like Kasaan, a majority of the residents had to be Native only if the determination was made that the village was modern and urban in character.[107]

Kasaan's status as a Native village was nevertheless challenged by the U.S. Forest Service and at least two other groups. On appeal, Kasaan was able to demonstrate that it met the requirements for a listed village, including that at least 25 of the Alaska Native individuals who enrolled to Kasaan could be considered permanent residents of the community as of April 1, 1970, and that at least 13 persons who enrolled to Kasaan used the village during 1970 as a place where they actually lived for a period of time. In ruling for Kasaan, the ANCAB made these observations:

> In determining the "permanent residence" of a Native enrolled under the Act, it is necessary, as it is in determining "home" and "domicile," to consider the physical characteristics of the dwelling place, the time spent therein, the things done therein, the intention when absent to return to that place, other dwelling places of the individual, and similar factors concerning them. As demonstrated above, it is also necessary to recognize the mobility of the Native life style necessitated by economic and educational pressures. It is impossible to ignore the impact of the cash economy upon a traditional subsistence existence. The fact that education and employment can be acquired in many instances only without the village dictates the emphasis upon the intent to return to the Native home when absent from that place contained in the definition of "permanent residence."
>
> The majority of Natives enrolled to Kasaan who testified at the hearing were born and raised in Kasaan, moved to Ketchikan, and returned to Kasaan seasonally to live according to their Native family life style. The obvious lack of employment and educational opportunity in Kasaan has forced people away from the village. But a majority of Natives enrolled to Kasaan who testified at the hearing have indicated by word and by their frequent contact with the village a genuine and continuing intent to return to that place they consider home. These Natives have been forced to leave the village at some time in their lives. But they have always returned and lived in the village on a frequent and continuous basis. Such objective evidence of their intent must be given appropriate consideration. A majority of these individuals and those related to them must be considered "permanent residents" of the village of Kasaan.
>
> Based on the foregoing, the Board finds that the Native village of Kasaan did have 25 or more Native residents on April 1, 1970. Although the question of whether or not 13 Natives enrolled to Kasaan who were residents thereof used the village as a place where they actually lived for a period of time was not in issue in this appeal, the Board further finds that 13 Native residents of Kasaan did use the village during 1970 as a place where they actually lived for a period of time.[108]

Unfortunately for Tenakee, it was not listed in Section 16 of ANCSA, and it did not have the right to appeal its unlisted status (as discussed above).

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[107] 43 C.F.R. § 2651.2(b)(4) (2020).

[108] *U.S. Forest Serv. v. Village of Kasaan*, A.N.C.A.B. VE# 74-17, VE# 74-18 (June 14, 1974) (emphasis added).

If Tenakee had been listed, it would have had an opportunity to defend its status as a village pursuant to the same regulatory criteria that applied to Kasaan. With 64 enrollees, Tenakee more than met the requirement of 25 Alaska Natives enrollees. Tenakee was not modern or urban in character; therefore, Tenakee would not have had to establish that a majority of its residents were Native. Under 43 C.F.R. § 2651.2(b), Tenakee would have had to establish "an identifiable physical location evidenced by occupancy consistent with the Natives' own cultural patterns and life style, and at least 13 persons who enrolled thereto must have used the village during 1970 as a place where they actually lived for a period of time." We note that just eight individuals were identified as residents of Kasaan in the 1970 Census, and yet Kasaan was easily able to demonstrate that at least 13 persons who enrolled to Kasaan used the village during 1970 as a place where they actually lived for a period of time; Tenakee never had an opportunity to demonstrate that this standard was met. We do not have good population data for Tenakee in the years preceding 1970, but we do know that, as late as 1965, BLM rejected a non-Native application for a trade and manufacturing site at the Indian village of Tenakee on the basis that the "possessory rights to this tract are claimed and that the lands have been used and occupied by these Indian people for many years."

Fourth, and finally, ANCSA's implementing regulations established that "[t]hat no village which is known as a traditional village shall be disqualified if it meets the other criteria specified in this subsection by reason of having been temporarily unoccupied in 1970 because of an act of God or government authority occurring within the preceding 10 years."[109]

Tenakee, like Kasaan, saw its population decline starting in the 1950s due to the decline of commercial fisheries.[110] The ISER Report explains why this was so:

> There was continued population movement to the new white towns at a more gradual rate in subsequent years, but there was an acceleration of migration after 1950, prompted by the crash in the fish stocks, which many Indians depended on.[111]

In the 1950s, Alaska salmon runs were declared a federal disaster. According to the State of Alaska, several reasons were likely to blame:

> Lax federal management and a lack of basic research into salmon runs were surely factors. Federal law required half of all runs escape upriver to spawn the next generation, but nobody really counted. Wartime demand for protein resulted in an overharvest of Alaska's salmon runs which steepened the decline. Long-term fluctuations in climate, later known as the Pacific inter-Decadal Oscillation, also undoubtedly played a role.[112]

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[109] 43 C.F.R. § 2651.2(b)(2).
[110] ISER Report at 55, 64. The ISER Report indicates that there were only a "handful of people" remaining in Kasaan after its cannery closed in 1953.
[111] *Id.* at 47.
[112] Alaska Department of Fish and Game, Sustaining Alaska's Fisheries: Fifty Years of Statehood, Starbound (1949-1959) 1 (Jan. 2009).

Whether "an act of God" (i.e., the impact of climate fluctuations on the fisheries) or "an act [or lack thereof] of . . . government authority" (i.e., lax federal management and resultant overfishing, and the need to supply the wartime demand for protein), or both, Tenakee's Native residents appear to have left the village as a result of outside forces that began to impact Tenakee 20 years before ANCSA was enacted. We do not have specific population numbers for the Alaska Native residents of Tenakee during the period prior to the 1970 Census, so we do not know whether Tenakee would have been able to demonstrate that it met the threshold population requirement but became "temporarily unoccupied in 1970 *because of an act of God or government authority occurring within the preceding 10 years*." It certainly appears that this may have been the case.

ANCSA's implementing regulations, which appear to apply to situations like that faced by Tenakee; Congress's treatment of the village of Kasaan; and Congress's efforts to extend the benefits of ANCSA to multiple other Alaska Native groups, all reflect a broader effort on the part of the Federal Government to preserve the aboriginal rights of defined Alaska Native groups. The socio-economic pressures that forced Tenakee's Native residents to leave the village might have been truly temporary if the Native community had simply been afforded the same opportunity as Kasaan. In fact, the ISER Report points out that Kasaan *repopulated after it was listed* as a Native village under ANCSA because people's confidence was "restored in the community."[113]

Conclusions

It is impossible to demonstrate to this Subcommittee that the five Landless communities "met" the requirements of ANCSA for incorporation as urban corporations because ANCSA did not establish any requirements at all for urban corporations. However, like the Alaska Native populations in the four towns that did incorporate urban corporations, the five Landless villages all "originally were Native villages, but [came to be] ... composed predominantly of non-Natives."

All five of the Landless communities have well-documented histories as Native villages. Tenakee, certainly, was smaller, but like the four larger Landless communities, Tenakee has a long and well-documented history as a Native village. The federal government recognized Tenakee as a Native place, identifying Tenakee as an "Indian settlement" in a 1935 executive order excluding Tenakee from the Tongass National Forest and rejecting a non-Native application for a trade and manufacturing site at the Indian village in Tenakee in 1965 in recognition of the "possessory rights to this tract" and use and occupancy of the site by the Native people of Tenakee.[114] The 64 Alaska Native individuals who enrolled to Tenakee are in fact an "identifiable group" with a "common claim" to lands that were, for decades, recognized by the United States as lands "used an occupied" by this Native community.

Congress has significant discretion to settle aboriginal claims, and Congress has amended ANCSA on numerous occasions to extend the benefits of the Settlement to Native communities that were wrongly and unjustifiably excluded. The five Landless Alaska Native communities should be authorized to incorporate urban Alaska Native corporations based on the structure and objectives of ANCSA, and the inequitable and discriminatory history that resulted in their exclusion.

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[113] ISER Report at 64.
[114] *Id.* at 56.

Debra Thompson

From: Bob Martin <bobwmartin@yahoo.com>
Sent: Monday, May 3, 2021 9:39 AM
To: Assembly
Subject: Mask Mandate

Dear Mayor and Assembly,
I think it is time to lift the mask mandate. Vaccination has changed things, masks mandates have not proven to be very effective, and many people (including myself) are moving on to the point where the general mandate now seems kind of awkward and irrelevant. I'm happy to wear a mask at the post office or grocery stores or anywhere else indoors if people or businesses want me to, but during many of my indoor errands around town I would be the only person masking if I continued to do so. Please bring it up for consideration. Thank you, -Bob Martin

Debra Thompson

From: kathi riemer <riemerk@hotmail.com>
Sent: Thursday, May 6, 2021 9:34 AM
To: Assembly
Subject: Hospital

Thank you for letting the Hospital Board share information about our need for a new hospital. I found this article on the KTOO website that emphasizes my point about how lack of local control can be damaging to the organization and the community.

https://www.ktoo.org/2021/05/01/pointing-to-low-salmon-forecasts-trident-seafoods-to-keep-wrangell-plant-closed/

Pointing to low salmon forecasts, Trident Seafoods to keep Wrangell plant closed

One of Wrangell's two fish processors will remain closed for the second year in a row. Seattle-based Trident Seafoods cites a dismal salmon forecast for its decision. Chum and pink salmon ...

www.ktoo.org

It's also important not to make the assumption that another organization will move in and take over our hospital. The PRS liability is a burden that organizations don't want.

The price tag of a new hospital is daunting, but the cost of not having a hospital in Petersburg is greater to the community. The hospital provides more than 100 jobs to local people, with many being professional positions. These are tax payers, property owners, people with children in school, members of our community. Health care is the fastest growing industry with job availability all over the country. If our hospital closes many if not all of the PMC professionals, will be forced to leave Petersburg to work. It's important to note that many of the employees of PMC have graduated from Petersburg High School and have continued to live in Petersburg and college graduates have come back to work and live in Petersburg. PMC offers scholarships to graduating seniors, an RN nursing program, and in addition, professional positions to local college graduates.

I'm like you, we are getting older, less hungry. We like status quo, and can't see the forest for the trees. However, I see a new hospital as an opportunity, not a burden. Our long-term care wing houses people from all over the region, not just Petersburg residents. Some of the hospital staff provide needed services to other communities. Home health is becoming more viable every year allowing people to stay home for their care. Dr. Hofstetter continues to add lines of service that help people in our community, around Southeast and Alaska.

Redding, California is a lovely community in Northern California, and it is a medical center hub for the region. The medical industry provides employment, and tax funds to the municipality that make it a really nice place to be. While Petersburg can't be Redding, we can expand the services we do well and bring people into our community and serve people around the state.

Camas, Washington is a town just east of Vancouver on the Columbia River. The town grew around the pulp mill and was a prosperous little town until the pulp business crashed. The Camas Assembly met the challenge and made their community appealing for other, completely different kinds of business. Tech companies moved in and cost of real estate increased, and property taxes along with it. Just this year United Precision Corp moved a plant from California to Camas and will build a huge set of manufacturing buildings to produce parts for Boing, Space X, the US Navy and Lockheed Martin. With these new businesses come many new people, so more tax payers.

These are two examples I thought interesting when exploring the idea of change. I've driven through lots of communities with boarded store front windows and know that not all communities accept the challenge of finding new industry when theirs dries up. It's much more common actually.

I implore you to ask yourselves these questions when considering full support of our new hospital:

1. What is the future of Petersburg's economy?
2. Is it possible to add industry to our one industry town?
3. What do we already have that we can build upon and make stronger?
4. Taxing is a viable way to bring money into the general fund, but with an aging population is raising taxes an effective way for the city to raise funds? I will pay less property tax and will have the option of paying no sales tax very soon. Raising taxes won't affect me, but will add an additional burden on young families, a burden they may not be able to meet.
5. What kinds of business and industry bring young families to Petersburg? I will submit to you that the majority of the people who work for PMC have young children who are in or will be in our schools.
6. What kind of people do we want to attract to Petersburg? If we want to be strategic, it's a good idea to bring young professionals into town because they participate on boards and in organizations. We are currently watching a multi-family housing unit go up next to the hospital. This will house low-income people from all over the state. Is this the demographic we want to attract? I am not judging; I just think we also need the business and professional demographic to pay for the needs of our growing low-income demographic.

I believe we need to be forward thinking. We can stay here and fade away with our little town or we can look to the future and see what a new hospital can bring to Petersburg.

I agree that there are many who scoff at the new Fire Department, and even the new library, the parks and rec building and renovated borough buildings. These people are generally our age. Will we continue to listen to these old scoffers or will we take the long view and work bring young families to Petersburg; people who want to use the Parks and Rec facility, and the library and who enjoy a clean safe environment?

Please consider full support of our new hospital and as community fathers/mothers, please look forward to the opportunities a new hospital will bring to Petersburg. We are at a crossroads and what we do today will have long-term repercussions for our children and grandchildren.

Thank you again for working with us to keep our community healthy, viable and safe.

Kathi Riemer
PMC Board Member

May 10, 2021

Assembly Members and Mayor:

This letter is in rebuttal to Finance Director Jody Tow's comments during the May 3rd assembly meeting and the May 6th editorial by Ron Loesch regarding Ordinance 2021-08 which seeks to remove Frederick Point East (FPE) from Service Area 1 because Service Area 1 mill rates do not accurately reflect the actual borough on-site services provided to FPE. The Service Area 1 on-site services, such as road maintenance, police protection, trash service, etc, are not provided to FPE.

Ms. Tow's and Mr. Loesch's opposition rested on the statement that "Property values for properties are *already* lower for FPE than FPN". This hinted at questioning the accuracy of the assessment of land values by the Borough Assessor which are legally bound by the borough charter and state statutes to be assessed according to full and true value (current market values from sales figures). The assessor does not set artificially low valuations or use the level of services provided as an indicator for valuation. Any concerns on valuation need to be addressed to the Assessor.

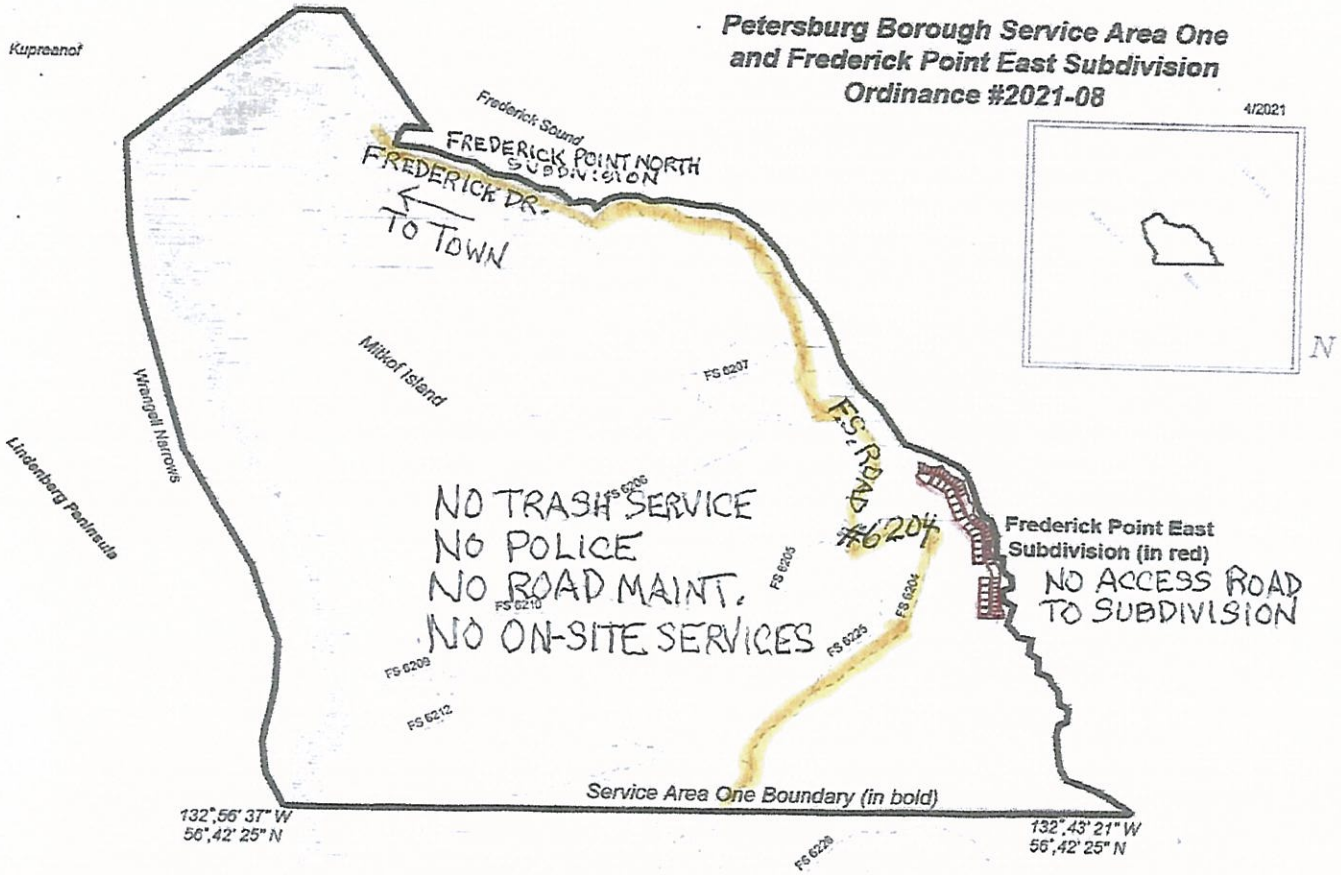
For FPE, the assessor's valuation and the non-existence of on-site borough services hinge on one important factor: Accessibility to the Subdivision. (See attached map) FPE is remote. FPE does not connect to a road system, like FPN. At points, Forest Service Road #6204 comes within one mile of FPE, but it is not snowplowed. Road #6204 is not a borough service road, but is maintained by the Forest Service. In winter, access to FPE is by boat only and is dependent on weather and sea conditions. Only 9 lots have dwellings out of 52 lots. Don and Jenny Cummins are the only full time FPE residents, whereas FPN has many families. Primary use for FPE is remote, seasonal recreation; most lots sit unused.

Borough Charter 14.04 establishes that the need of services by property owners and the economically feasible cost to provide the services by the borough are requirements for a service area. FPE owners do not need nor want on-site services and providing services is cost prohibitive for the borough. The first step to provide Service Area 1 services to FPE would be for the borough to obtain F.S. Road #6204 from the federal government, pay millions of dollars to upgrade ten miles of road and also put in an access road to FPE. Then a Local Improvement District could be created for roads and services inside the subdivision. Then the borough could take on the responsibility of the borough service road system by maintaining the roads and snowplowing in the winter. However, the borough has no intention in the foreseeable future to plan for these expensive improvements and maintenance activities. Clearly, the criteria has not been met to include FPE in any borough service area. If state lands are obtained that are remote and services are not provided, they should not be included in a service area either.

Ms. Tow stated the loss of borough revenue by removing FPE from Service Area 1 would be $10,000. a year. This is not a significant amount, but continuing to charge for any service that is not provided is illegitimate. It is the mill rate of Service Area 1 that reflects the on-site services provided.

The third and final reading of Ordinance 2021-08 will be on Monday, May 17 at 6 p.m. A "Yes" vote by an assembly member will give Petersburg Service Area 1 voters the opportunity to vote on the issue in October. A "No" vote by an assembly member will indicate that there is no concern regarding fair and equitable taxation for FPE property owners.

GIVE FPE FAIR TAXES!
Kandi Woodworth, FPE Property Owner


Petersburg Borough Service Area One
and Frederick Point East Subdivision
Ordinance #2021-08
4/2021
N
Kupreanof
Frederick Sound
FREDERICK POINT NORTH SUBDIVISION
FREDERICK DR.
TO TOWN
Mitkof Island
Wrangell Narrows
Lindenberg Peninsula
FS 6207
FS 6206
FS 6210
FS 6209
FS 6212
FS 6205
FS 6204
FS 6225
FS 6228
FS. ROAD #6204
NO TRASH SERVICE
NO POLICE
NO ROAD MAINT.
NO ON-SITE SERVICES
Frederick Point East Subdivision (in red)
NO ACCESS ROAD TO SUBDIVISION
Service Area One Boundary (in bold)
132°,56' 37" W
56°,42' 25" N
132°,43' 21" W
56°,42' 25" N