



# ALASKA'S UNIQUE FORMS OF NATIVE SELF-DETERMINATION AND TRIBAL SELF-GOVERNANCE

## I. OVERVIEW

Similar to American Indian land divestitures by the federal government in the Lower 48s, the Alaska Native Claims Settlement Act (ANCSA)<sup>1</sup> was passed to: (1) extinguish the aboriginal land claims of Alaska Natives; and (2) compensate Alaska Natives for the lands relinquished.

Unlike the American Indian experience, however – which was generally negotiated through treaties with hundreds of individual Tribes, the federal government used a single piece of sweeping legislation, ANCSA, to dispose Alaska Natives of our lands. Moreover, unlike the American Indian experience – which vested the assets retained (lands) or gained (money) with the respective Tribe and created a corresponding reservation, ANCSA required Alaska Natives to form regional and village corporations to receive these assets and extinguished every reservation except one within the state.

As a result of the time and manner in which Alaska Natives settled our aboriginal land claims with the federal government, our tribal self-governance and Native self-determination models differ from those of American Indians. Specifically, Congress decided to spread the responsibilities for the betterment of Alaska Natives over multiple Native entities, including Regional Native Non-Profit Organizations, Regional Native Non-Profit Health Entities, Alaska Native For-Profit Corporations, and Alaska Native Tribes. This is what Native self-determination looks like in Alaska. It does not take away from tribal self-governance.

This document reviews the history of the treaty era, post treaty era, ANCSA – which created Alaska Native Corporations (ANCs) in an effort to tailor Alaska Native self-determination to the unique circumstances of Alaska, the Indian Self Determination and Education Assistance (ISDA)<sup>2</sup> – which sets forth a national-level self-determination policy, and concludes with an overview of the different types of Alaska Native entities within the state that have responsibilities for Alaska Natives.

## II. TREATY ERA: 1778–1871 (RESERVATIONS)

From 1778 to 1871, Congress ratified hundreds of treaties negotiated with Indian tribes under the power of the President. These treaties almost always resulted in the establishment of a reservation for the treaty-making tribe and vested the respective tribal government with powers to manage its tribal members and its lands retained, which was held in trust by the Department of the Interior.<sup>3</sup> Contact between the United States and American Indians was high during this era, but almost non-existent as compared to Alaska Natives because Russia owned

<sup>1</sup> 43 U.S.C. § 1601 et seq.

<sup>2</sup> 25 U.S.C. § 450 et seq.

<sup>3</sup> Advisory Council on Historic Preservation, Tribal Treaty Rights in the Section 106 Process (Sept. 20, 2018), available at <https://www.achp.gov/native-american/information-papers/tribal-treaty-rights> (last visited May 24, 2020).

Alaska until 1867. Consequently, the Lower 48s have a checkerboard of Indian reservations, while Alaska only has one.

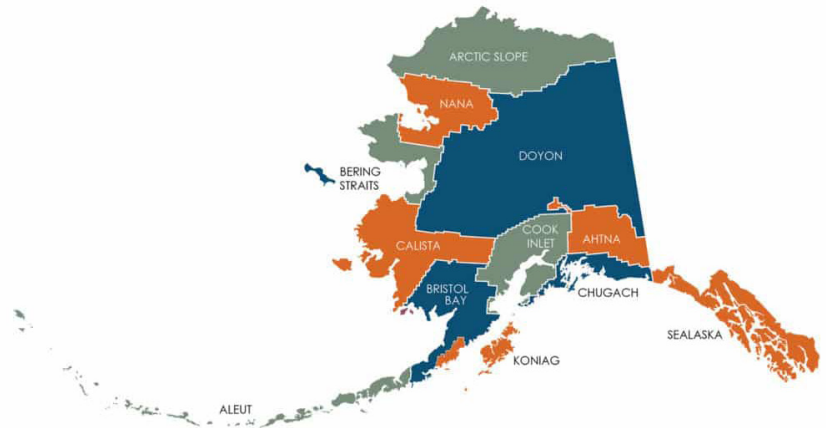
### III. POST TREATY ERA: 1871–PRESENT (LEGISLATION)

In 1871, four years after the United States purchased Alaska from Russia, the House of Representatives ended the federal-tribal treaty making practice through a rider to an appropriations bill. The dramatic shift in federal Indian policy came about because the House of Representatives resented the amount of power the Senate exercised over Indian affairs through its treaty advise and consent powers.<sup>4</sup> Accordingly, because Congress was prohibited from ratifying a federal-tribal treaty to extinguish the aboriginal title of Alaska Natives when the first major oilfield was discovered in 1957, two years before Alaska became a state, it had to use federal legislation.

### IV. ALASKA NATIVE CLAIMS SETTLEMENT ACT (CORPORATIONS)

Due to the remoteness and vastness of Alaska, and the relative lack of effort by non-Natives to drive Alaska Natives from our homelands, the federal government did not initially seek to settle the land claims of Alaska Natives when it purchased the territory from Russia in 1867. Instead, the issue was held in abeyance for a century. However, the aboriginal land claims of Alaska Natives could no longer be ignored after 1968.

In that year, the largest oil reserve in North America was discovered on the Arctic coast at Prudhoe Bay, which prompted the need to settle Alaska Native aboriginal land claims to clear the way for natural resource development. The desires of Alaska Natives to continue to use and occupy our lands, and the inability of the federal government to utilize the treaty and reservation model to extinguish Alaska Native aboriginal title, required federal legislation resulting in the 1971 enactment of the Alaska Native Claims Settlement Act (ANCSA).



As relevant here, ANCSA:

1. conveyed the settlement funds owed to Alaska Natives, together with the lands retained, to 200-plus newly created regional and village ANCs, and charged those corporations with bettering the social and economic position of Alaska Natives;<sup>5</sup> and
2. clarified that this corporate model, as opposed to the reservation system, would not result in Alaska Natives receiving less benefits than American Indians.<sup>6</sup>

More specifically, Congress through ANCSA divided Alaska into 12 geographic regions and established an Alaska Native For-Profit Regional Corporation for each region, then nested upwards of 200 Native For-Profit Village Corporations under a single Regional Corporation based on geographical boundaries. Collectively, ANCs received nearly \$1 billion for the extinguishment of our aboriginal title and more than 45 million acres of retained lands, making Alaska Natives the largest private landowners in the world. A 13th regional corporation was also established for Alaska Natives living outside of Alaska that received part of the settlement funds but no lands.

Alaska Natives who were living on December 18, 1971 were invited to enroll in one Regional ANC and one Village

<sup>4</sup> National Archives, David M. Rubenstein Gallery, Rights of Native Americans: The End of Treaty Making 1871, available at <http://recordssof-rights.org/themes/4/rights-of-native-americans#the-end-of-treaty-making> (last visited May 24, 2021).

<sup>5</sup> 43 U.S.C. §§ 1601, 1606(r), 1607-1611.

<sup>6</sup> Id. at § 1626(d).

ANC depending on their residence or place of origin. Each Alaska Native who enrolled received 100 shares of stock in each corporation and collectively Alaska Natives continue to own and operate our ANCs, just as American Indians control their tribes and reservation lands. ANCSA also allowed for stock issuance and inheritance to Alaska Natives born after December 18, 1971.

American Indian Tribes do not have corporations and Alaska Native Tribes do not have reservations. Nonetheless, the legal status of Alaska Natives is the same as American Indians. Congress chose the corporate model to extinguish the aboriginal title of Alaska Natives in 1971 because federal Indian policy then and now favors self-determination. ANCSA actually marked the beginning of the self-determination era.

## V. INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

ANCSA was enacted in 1971, one year after President Nixon boldly declared “[t]he time has come to . . . create . . . a new era in which the Indian future is determined by Indian acts and Indian decisions . . .”<sup>7</sup> Four years later, the new federal Indian policy was fortified at the national level through the 1975 passage of the Indian Self Determination and Education Assistance Act (ISDA).

ISDA sought to recognize Native self-determination in different ways, including by empowering Alaska Natives Tribes and Corporations and American Indian Tribes to contract with federal agencies to administer education, health care, and other services formerly provided by federal employees.<sup>8</sup> However, because ANCSA placed the aboriginal lands retained by Alaska Natives with Regional and Village ANCs instead of Alaska Native Tribes, this required addressing the intersection between the new national policy and the Alaska self-determination policy. Congress did this by adopting a definition of “Indian Tribe” in ISDA that expressly includes ANCs—

(e) “Indian tribe” or “Indian Tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians[.]<sup>9</sup>

Moreover, because Alaska Natives are organized differently than American Indians, Congress through ISDA provided that any Alaska Native Non-Profit Organization established and authorized by an Alaska Native Tribe is to be treated as a tribal government for policy purposes through the following language:

In any case in which an Indian tribe has authorized another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out programs, services, functions, or activities (or portions thereof) on its behalf under this subchapter, the authorized Indian tribe, inter-tribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution or in this subchapter). In such event, the term ‘Indian tribe’ as used in this subchapter shall include such other authorized Indian tribe, inter-tribal consortium, or tribal organization.<sup>10</sup>

All of the Alaska Native entities described in greater detail immediately below are 100% owned and operated by Alaska Native Tribes.

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<sup>7</sup> President Nixon, Special Message on Indian Affairs (July 8, 1970), available at <https://www.epa.gov/sites/production/files/2013-08/documents/president-nixon70.pdf> (last visited May 24, 2021).

<sup>8</sup> 25 U.S.C. § 5302(a).

<sup>9</sup> 25 U.S.C. § 5304(e) (emphasis added).

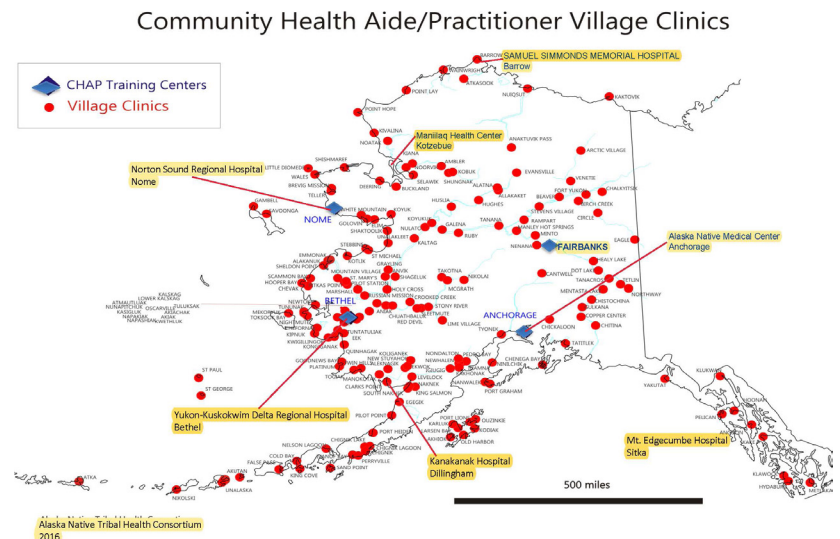
<sup>10</sup> (Pub. L. 93–638, title V, § 501, as added Pub. L. 106–260, § 4, Aug. 18, 2000, 114 Stat. 712.) 25 U.S.C. § 5381(b) (emphasis added).

## VI. REGIONAL NATIVE NON-PROFIT HEALTH ENTITIES

Regional Native Non-Profit Health Entities are tribal organizations that administer healthcare services on behalf of each of the Alaska Native villages in their respective service delivery areas (or regions). Each village is home to a federally recognized Alaska Native Tribe and that Tribe, through a resolution from its governing body, authorizes the Regional Native Non-Profit Health Entity to provide healthcare for its members on behalf of the Indian Health Service. Regional Native Non-Profit Health Entities operate under delegated tribal authority.

## VII. REGIONAL NATIVE NON-PROFIT ORGANIZATIONS

Regional Native Non-Profit Organizations are tribal organizations that administer public safety, education, natural resource, employment, transportation, children and family programs, and other tribal self-governance services on behalf of the Alaska Native villages in their respective regions. Each village is home to a federally recognized Alaska Native Tribe and that Tribe, through resolution from its governing body, authorizes the Regional Native Non-Profit Organization to provide tribal self-governance services on behalf of the Bureau of Indian Affairs, the State of Alaska, or private foundations (NOTE: State and private grants make up a small piece of the pie). Regional Native Non-Profit Organizations also operate under delegated tribal authority.



## VIII. STATEWIDE TRIBAL NON-PROFIT HEALTH CONSORTIUM

The Alaska Native Tribal Health Consortium (ANTHC) is Alaska's Statewide Tribal Non-Profit Health Consortium. It provides healthcare services to approximately 175,000 Alaska Natives and American Indians across Alaska on behalf of all of the 229 federally recognized Alaska Native Tribes within the state. ANTHC co-manages the Alaska Native Medical Center, a 173-bed hospital formerly operated by the Indian Health Service, which provides comprehensive inpatient medical services and is currently serving as the Alaska Tribal Health System's primary Covid-19 treatment and response center.

ANTHC was established by agreement of all of the Regional Native Non-Profit Health Entities within Alaska – and these Entities, as noted above, are authorized and established by Alaska Native Tribes.

## IX. REGIONAL AND VILLAGE NATIVE FOR-PROFIT CORPORATIONS

As noted above, ANCSA extinguished the aboriginal land of Alaska Natives and mandated the creation of 12 Regional Native For-Profit Corporations and more than 200 Village Native For-Profit Corporations, which are 100% owned and operated by Alaska Natives. Alaska Native Regional For-Profit Corporations are owned by over 130,000 Alaska Native shareholders and hold title to nearly 45 million acres of land across Alaska, which they hold in a split fee estate with the respective Village Native For-Profit Corporations in their regions.

ANCs are charged with providing economic returns for Alaska Natives in a socially responsible manner.



## X. ALASKA NATIVE TRIBES

Federally recognized Alaska Native Tribes possess certain inherent rights of self-government, including certain responsibilities, powers, limitations, and obligations. Most federally recognized American Indian Tribes are able to exercise their powers within a land base (e.g., reservations). Alaska Native Tribes are unique because aboriginal land title was extinguished through ANCSA and reservations were not created. Alaska Native Tribes are eligible to receive certain federal benefits, services, and protections, such as funding and services from the Bureau of Indian Affairs.

## XI. CONCLUSION

As a result of the time and manner in which Alaska Native Tribes settled our land claims with the federal government in the early 1970s, viewing an Alaska Native Tribe in combination with its affiliated Alaska Native entities produces a picture that looks more like a Lower 48 American Indian Tribe than attempting to view an Alaska Native Tribe in isolation. This is what Native self-determination looks like in Alaska. It does not take away from tribal self-governance.



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