

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8844 SENATE COMMUNITY & REGIONAL AFFAIRS

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
DIVISION OF BANKING, SECURITIES AND CORPORATIONS  
SUGGESTED DRAFT REVISIONS

CS FOR HOUSE BILL NO. 251( )

IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES MOSES, MacLean, Williams

A BILL

FOR AN ACT ENTITLED

"An Act relating to the meetings, shareholder proposals, and removal of directors of Native Corporations."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\*Section 1. AS 10.06.480(a) is amended to read:

(a) In addition to other liabilities, a director is liable in the following circumstances unless the director complies with the standard provided in AS 10.06.450(b) for the performance of the duties of directors:

(1) A director who votes for or assents to a distribution to the corporation's shareholders contrary to the provisions of AS 10.06.358, AS 10.06.360, AS 10.06.363, or AS 10.06.365 or contrary to a restriction in the articles of incorporation, is liable to the corporation, jointly and severally with all other directors voting for or assenting to the distribution, for the amount of the distribution that is paid or the value of the assets that are distributed in excess of the amount of the distribution that could have been paid or distributed without violation of AS 10.06.405 - AS 10.06.438, AS 10.06.960(1), or the restrictions of the articles of incorporation.

**DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
DIVISION OF BANKING, SECURITIES AND CORPORATIONS  
SUGGESTED DRAFT REVISIONS**

(2) A director who votes for or assents to a distribution to the corporation's shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation is liable to the corporation, jointly and severally with all other directors voting for or assenting to distribution, for the value of the assets that are distributed, to the extent that the debts, obligations, and liabilities of the corporation are not thereafter paid and discharged.

(3) A director who votes for or assents to a loan of assets of the corporation to an officer or employee or a loan secured by the corporation's shares contrary to the provisions of AS 10.06.485 or contrary to a restriction in the articles of incorporation, is liable to the corporation, jointly and severally with all other directors voting for or assenting to the loan, for the amount of the loan that is in excess of a loan that could have been extended without a violation of AS 10.06.485 or the restriction in the articles of incorporation.

**\*Sec.2.** AS 10.06.960 is amended by adding new subsections to read:

(1) Notwithstanding AS 10.06.405 and AS 10.06.465(c), special meetings of the shareholders of a corporation organized under the Act may only be called by the board, the chair of the board, the president, a petition of the holders of not less than fifteen percent (15%) of all the shares entitled to vote at the meeting if the corporation has five hundred (500) or more shareholders, a petition of the holders of not less than twenty-five percent (25%) of all the shares entitled to vote at the meeting if the corporation has fewer than five hundred (500) shareholders, or other persons as may be authorized in the articles of incorporation or the bylaws.

**DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
DIVISION OF BANKING, SECURITIES AND CORPORATIONS  
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(m) A corporation that is organized under the Act is not required to consider or submit to a vote of the shareholders a shareholder proposal that deals substantially with the same subject matter as a proposal that was submitted to a vote of, and voted upon by, the shareholders within the previous twelve (12) consecutive months preceding receipt of the proposal or the signed petitions calling for a vote on the proposal at a meeting.

\* **Sec. 3.** AS 45.55.990 is amended by adding new paragraphs to read:

(14) "proxy" means a written authorization which may take the form of a consent, revocation of authority, or failure to act or dissent, signed by a shareholder or his attorney-in-fact and giving another person power to vote with respect to the shares of the shareholder; "signed" for the purpose of this paragraph means the placing of the shareholder's name on the proxy by manual signature by the shareholder or the shareholder's attorney-in-fact;

(15) "consents or authorizations" include a petition or other request for a special meeting of shareholders under AS 10.06.960(1) and material distributed in connection with the petition or request or with the solicitation of support for the petition or request;

LPC/gm 2/29/95  
041995a

**FISCAL NOTE**

**DCED Work Draft  
BILL NO. CSHB251**

**STATE OF ALASKA  
1995 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_  
 Title: Native Corporations  
 Sponsor: Representative Moses  
 Requestor: \_\_\_\_\_

Department Affected: Commerce and Economic Development  
 BRU: Banking, Securities and Corporations  
 Component: Banking, Securities and Corporations  
 COMPONENT SERIAL NO. 1233

**Expenditures/Revenues: (Thousands of Dollars)**

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
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<b>CHANGE IN REVENUES ( )</b>	0	0	0	0	0	0
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimate of current year (FY 95) cost: \$ 0

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director  
 Division: Banking, Securities and Corporations

Phone: 465-2521  
 Date: \_\_\_\_\_

Approved by Commissioner: William L. Hensley  
 Agency: Commerce and Economic Development

Date: \_\_\_\_\_

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## MEMORANDUM

State of Alaska

TO: Willis F. Kirkpatrick  
Director  
Division of Banking, Securities and Corporations

DATE: May 8, 1995

FILE NO:

TELEPHONE NO: 907-465-2521

FROM: Lawrence P. Carroll  
Senior Securities Examiner  
Division of Banking, Securities and  
Corporations  
Department of Commerce and  
Economic Development

SUBJECT: Kito Amendments CSHB 251

DRAFT

RECEIVED

MAY 12 1995

Ans'd.....

Per our discussion I have reviewed the faxed material from Julie Petro which included proposed amendments to CSHB 251 as passed by the House. The amendment package principally revises Section (n) which deals with the shareholders ability to remove directors. This proposal while improving CSHB 251 as passed by the house still falls short of restoring full shareholder rights enjoyed by the stockholders of any other Alaska Corporation. The operative provisions of AS 10.06.460 that would allow shareholders the right to petition removal for 'no cause' would still be suspended for all ANCSA shareholders as would their ability to have any type of recall resolution put on the management proxy for the annual meeting. The amendment is an attempt to allow shareholders the ability to 'petition' a "for cause" removal of one or more directors without the necessity of instituting suit to effect the removal. The narrowly described grounds for removal create a difference without distinction as there is little doubt that the Corporate boards subject to these petitions will routinely turn them down for insufficient grounds resulting in the necessity of shareholders to seek a court remedy anyway. Any scheme that places the burden of cause on ANCSA shareholders is inherently unfair and the resultant disparity of standards will effectively silence the dissent. Historically while no shareholders group has attained the simple majority of outstanding shares to remove a board some have come close and a strong effective message was sent to management that change was in order.

If one looks at the 'grounds' for removal enumerated in the amendment its clear that if such malfeasance existed on the part of a particular board member it would be incumbent on the remaining members of the board to take steps to affect the members removal sans shareholder petition. If in fact the described grounds were actually prevalent in a majority of the board no amount of petitioning by shareholders would ever result in such a board allowing the question to be put to a vote unless ordered by a court, who could an should order direct removal with no vote given the proper showing of evidence. Either way any type of 'for cause' provision will result in shareholders having to wind up in court which is an effective barrier when they are confronted with the costs and well financed opposition they will no doubt encounter.

The amendments the Division submitted in the House Labor and Commerce Committee hearings on this legislation seek the removal of section (n) in its entirety to insure a level playing field for shareholders of ANCSA corporations.

SAM  
Kito ?

**CSHB 251**

**Proposed Amendments**

The attached proposed amendments to CSHB 251 amend AS 10.06.960(m), (n), and (o), all of which concern shareholders' resolutions. The proposed amendment permits petitions for removal as under current law, but only on the grounds of misconduct in office, incompetence, failure to perform prescribed duties, or failure to meet the qualifications to serve as a director. Except for the failure to meet the corporation's qualifications as a director, these grounds are identical to those allowed under AS 29.26.250 for recalling local officials. The grounds must be stated with particularity, as is the case with municipal recall petitions. The primary change is to section .960(n), which has been the subject of considerable discussion. The House Labor and Commerce Committee substitute, like the original version of the bill, would have eliminated removal of directors by shareholder vote in most Native corporations, requiring shareholders to file suit to remove directors on a narrow range of grounds. These amendments would restore the shareholders' right to vote on removal.

The voting standard for removal in the proposed amendment is identical to current law (AS 10.06.460(a)(2)); it protects the seats of minority directors by preventing removal as long as they have enough support from shareholders to get them elected through cumulative voting.

The proposed amendments to CSHB 251 are intended to balance the shareholders' rights to control their corporation with the legitimate needs of the corporation for stability and to be free from burdensome, repetitive, and frivolous removal demands.

(m) In addition to the other requirements of this chapter, a written notice of a petition or other request for a special meeting of shareholders under (l) of this section shall be filed with the corporation before a person solicits support for the petition or request. The notice must state in detail the purpose of the special meeting and, if the meeting is requested or petitioned for the purpose of removal of one or more of the directors, the grounds for removal, stated with particularity, and include a copy of the petition or request and all materials to be used in connection with the solicitation concurrent with the distribution of the petition or request to shareholders. A petition or request bearing the original signatures of the holders of the requisite number of shares supporting the petition or request shall be filed with the corporation within 180 days after the filing.

(n) Notwithstanding the [THE] provisions of AS 10.06.460, upon petition of the shareholders pursuant to AS 10.06.960(l), any or all of the directors may be removed by a vote of the outstanding voting shares at an annual or special meeting of shareholders. Grounds for removal are misconduct in office, incompetence, failure to perform prescribed duties, or failure to meet the qualifications to serve as a director of the corporation, as those qualifications may be established under AS 10.06.230(e)(4) by the corporation's bylaws [DO NOT APPLY TO A CORPORATION ORGANIZED UNDER THE ACT, IF THE CORPORATION HAS ADOPTED ARTICLES THAT PROVIDE FOR CLASSIFICATION OF DIRECTORS UNDER AS 10.06.455, OR IF THE CORPORATION IS ALLOWED BY SEC. 57, CH. 82, SLA 1989, TO PROVIDE IN ITS BYLAWS FOR THE CLASSIFICATION OF DIRECTORS]. Unless cumulative voting rights under As 10.06.420(d) have been eliminated by the articles of incorporation, a director may not be removed, unless the entire board is removed, if

the votes cast against removal would be sufficient to elect a director if voted cumulatively at an election at which the same total number of votes were cast.

(o) A corporation that is organized under the act is not required to consider or to submit to a vote of the shareholders a shareholder proposal that deals substantially with the same subject matter as a proposal that was submitted to a vote of the shareholders within the preceding year.

**CS FOR HOUSE BILL NO. 251( )**  
**IN THE LEGISLATURE FOR THE STATE OF ALASKA**  
**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY THE \_\_\_\_\_ COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVES MOSES, MacLean, Williams**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the meetings, shareholder proposals, and removal of directors of Native**  
2 **corporations."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **\* Section 1. AS 10.06.960 is amended by adding new subsections to read:**

5 **(1) Notwithstanding AS 10.06.405 and 10.06.465(c), special meetings of the**  
6 **shareholders of a corporation organized under the act may only be called by**

7 **(1) the board;**

8 **(2) the chair of the board;**

9 **(3) the president;**

10 **(4) a petition or other request of the holders of not less than 15 percent**  
11 **of all the shares entitled to vote at the meeting, if the corporation has 500 or more**  
12 **shareholders;**

1 (5) a petition or other request of the holders of not less than 25 percent  
2 of all the shares entitled to vote at the meeting if the corporation does not have 500 or  
3 more shareholders; or

4 (6) other persons as may be authorized in the articles of incorporation or  
5 the bylaws.

6 (m) In addition to the other requirements of this chapter, a written notice of a  
7 petition or other request for a special meeting of shareholders under (l) of this section  
8 shall be filed with the corporation before a person solicits support for the petition or  
9 request. The notice must state in detail the purpose of the special meeting and, if the  
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14 request bearing the original signatures of the holders of the requisite number of shares  
15 supporting the petition or request shall be filed with the corporation within 180 days after  
16 the filing.

17 (n) Notwithstanding the provisions of AS 10.06.460, upon petition of the  
18 shareholders pursuant to AS 10.06.960(l), any or all of the directors may be removed by  
19 a vote of the outstanding voting shares at an annual or special meeting of shareholders.  
20 Grounds for removal are misconduct in office, incompetence, failure to perform prescribed  
21 duties, or failure to meet the qualifications to serve as a director of the corporation, as  
22 those qualifications may be established under AS 10.06.230(e)(4) by the corporation's  
23 bylaws. Unless cumulative voting rights under AS 10.06.420(d) have been eliminated by

1           the articles of incorporation, a director may not be removed, unless the entire board is  
2           removed, if the votes cast against removal would be sufficient to elect a director if voted  
3           cumulatively at an election at which the same total number of votes were cast.

4                   (o) A corporation that is organized under the act is not required to consider or to  
5           submit to a vote of the shareholders a shareholder proposal that deals substantially with  
6           the same subject matter as a proposal that was submitted to a vote of the shareholders  
7           within the preceding year.

April 19, 1995

The Honorable Pete Kott  
House of Representatives  
State Capitol  
Juneau, AK 99801-1182

STATE OF ALASKA  
DEPARTMENT OF COMMERCE  
AND ECONOMIC DEVELOPMENT  
BANKING AND SECURITIES  
P O BOX 110807  
JUNEAU AK 99811-0807  
PHONE (907) 465-2521

Dear Representative Kott:

Re: Division Draft Revisions to CS for  
HB 251 as Requested

Willis Kirkpatrick, Director of the Division of Banking, Securities and Corporations, has reviewed proposed CSHB 251 with the staff and has asked that we prepare this correspondence and the enclosed proposed draft amended CSHB 251 for consideration by you and members of the Committee.

We have made an effort to digest the concerns and practical considerations expressed by the sponsors of HB 251. Both the curtailment of **disruptive, frivolous, and repetitive** petition practices and preservation of basic redress rights of 70,000 plus Alaska Native Settlement Act (ANCSA) shareholders are paramount. We recognize the considerable testimony already presented on the proposed legislation, and have attempted to identify and condense the language to some basic elements that will impact the problem without impeding legitimate shareholder curative processes.

Our proposed Committee Substitute focuses primarily on the threshold requirements for signatures on petitions and distinguishes between corporate entities having fewer than 500 shareholders and those having 500 or more shareholders. The required percentage of outstanding shares required to call special meetings in the former would be 25 percent, and be reduced to 15 percent in the latter. The threshold would be raised for ANCSA Corporate entities, and would require more meaningful effort and participation by shareholders seeking special meetings for whatever purpose.

The only other amendment that we would suggest is to adopt the proposed language that allows a corporation to reject a particular proposal if offered more than once annually. In such a manner, the Corporations are protected from addressing issues repeatedly in any given year while shareholders are guaranteed the right to petition for any particular issue at least once annually as they see fit under the existing Corporate code. We would not seek any other amendments to either the Alaska Corporate Code, Alaska Statute (AS) 10.06 (ACC), or the Alaska Securities Act AS 45.55 (ASA).

We believe that these two elements are central to the issue of limiting frivolous petitions and curtailing disruptive processes while providing for essential Corporate governance. Elimination of all other amendments will simplify the administrative process, and avoid the necessity of submitting a fiscal note with the proposed legislation.

The division remains at the Committee's disposal to discuss these suggestions or any other recommendations effecting proposed HB 251, and we appreciate the opportunity to be heard on this matter.

Sincerely yours,

Lawrence P. Carroll  
Acting Director  
Division of Banking, Securities  
and Corporations

LPC/go329.bsc

041795a

Enclosure

cc: William L. Hensley, Commissioner  
Department of Commerce and  
Economic Development

The Honorable Eileen MacLean  
House of Representatives

The Honorable Carl E. Moses  
House of Representatives

The Honorable Bill Williams  
House of Representatives

CIRI  
Sealaska

# FISCAL NOTE

**DCED Work Draft**  
BILL NO. CSHB251

**STATE OF ALASKA**  
**1995 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_  
Title: Native Corporations  
Sponsor: Representative Moses  
Requestor: \_\_\_\_\_

Department Affected: Commerce and Economic Development  
BRU: Banking, Securities and Corporations  
Component: Banking, Securities and Corporations  
COMPONENT SERIAL NO. 1233

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MISCELLANEOUS	0	0	0	0	0	0
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<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
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<b>CHANGE IN REVENUES ( )</b>	0	0	0	0	0	0
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Other	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimate of current year (FY 95) cost: \$ 0

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: William E. Kirkpatrick, Director  
Division: Banking, Securities and Corporations

Phone: 465-2521  
Date: \_\_\_\_\_

Approved by Commissioner: William L. Hensley  
Agency: Commerce and Economic Development

Date: \_\_\_\_\_

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DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
DIVISION OF BANKING, SECURITIES AND CORPORATIONS  
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CS FOR HOUSE BILL NO. 251( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

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**DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
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SUGGESTED DRAFT REVISIONS**

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**DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
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(14) "proxy" means a written authorization which may take the form of a consent, revocation of authority, or failure to act or dissent, signed by a shareholder or his attorney-in-fact and giving another person power to vote with respect to the shares of the shareholder; "signed" for the purpose of this paragraph means the placing of the shareholder's name on the proxy by manual signature by the shareholder or the shareholder's attorney-in-fact;

(15) "consents or authorizations" include a petition or other request for a special meeting of shareholders under AS 10.06.960(1) and material distributed in connection with the petition or request or with the solicitation of support for the petition or request;

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**CSHB 251 ( )**  
**Section Analysis**

**Section 1**

This section amends AS 10.06.480(a)(1) which holds directors liable for voting for or assenting to distributions to shareholders in excess of the amounts that could be made without violating sections of the Alaska Corporations Code (ACC) dealing with shareholders. This amendment adds reference to special meetings called pursuant to the new subsections added by Section 2 of this bill.

**Section 2**

This section amends AS 10.06.960 (Corporations organized under Alaska Native Claims Settlement Act) by adding two new subsections. The first subsection requires petitions for special meetings to contain signatures of 15% of all shares entitled to vote at the meeting if the corporation has 500 or more shareholders. Petitions for corporations with 499 or fewer shareholders would have to contain 25% of all shares entitled to vote at the meeting. The reasons for requiring a smaller percentage of shares for larger corporations are: (1) it would be prohibitively expensive to conduct a petition solicitation for large corporations with many shareholders, often including those living outside of Alaska, (2) a smaller percentage of a much larger number of shareholders equals a larger actual number of shareholders of the larger corporation signing petitions, and (3) the shareholders of small corporations often are geographically nearby, making it relatively easier to obtain signatures on a petition.

The second subsection limits to once within a 12-month period the requirement of corporations to submit to a vote shareholder proposals which deal with substantially the same subject matter. This prevents the disruption and expense of calling special meetings, or otherwise, voting on proposals which have already been dealt with during the previous 12 months. This subsection also addresses the time frame for solicitation of petitions for a special meeting, which was proposed in an earlier version of this bill. Specifically, this subsection makes moot any need to place additional restrictions on the time frame for solicitation, since the question can only come up once in a 12-month period. With the limitation on the ability to bring the same question before the shareholders, there is no further need to place a time limitation on the solicitation itself.

**Section 3**

This section adds two new paragraphs to the definition section of the Alaska Securities Act (ASA), AS 45.55.990. The first paragraph adds the definition of proxy, which conforms to the definition of proxy currently in related regulations, with the addition of defining the word "signed."

The second paragraph adds the definition of "consents or authorizations" found at AS 45.55.139, to include petitions and related materials. While we have always required petitions to be filed with us for corporations with more than 500 shareholders, this definition will clarify current practice for everyone.



Official Business

# Alaska State Legislature

Chairman - International Trade & Tourism

REPRESENTATIVE  
BEVERLY MASEK

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H C B9 Box 251  
Willow Alaska 99606  
(907) 495-6812

State Capitol  
Juneau, AK 99801-1182  
(907) 465-2679

COMMITTEES  
Vice-Chairman Transportation  
Member  
Labor & Commerce

## MEMORANDUM

TO: MEMBERS OF HOUSE LABOR & COMMERCE  
FROM: REP. BEVERLY MASEK  
DATE: May 1, 1995  
RE: CSHB 251

\*\*\*\*\*

After being tabled CSHB 251 was amended and moved from Committee. While I respect the right of the Committee to take such action, I am disappointed in the manner in which it occurred.

Evidently those members in support of moving the bill were contacted, however I was not notified CSHB 251 was coming up for action. Neither was I given a copy of amendments or the CS. The dozens of local representatives of the shareholders opposed to this bill were not notified or given copies either. Banking and Securities was given less than 20 minutes notice of the intent to address the bill. At least they were notified.

I have reviewed the changes and while they make the bill less restrictive in minor ways, the major threat to shareholders remains in the body of the bill. By leaving subsection (n) in CSHB 251, the Committee indicated through non-objection, either their ignorance or approval of a policy change which, in effect eliminates the ability of shareholders to remove their corporate directors. (see attached Banking and Securities documents). Under Subsection (n), shareholders may not remove a director without cause. As you know the legal standards for cause are very narrow.

It is for precisely this reason the legislature in 1988, enacted AS 10.06.460: to give shareholders the ability to vote out of office those officers with whom they are unhappy.

The only statute addressing cause (AS 10.06.463) requires court removal. Obtaining standing and the necessary expense for this remaining remedy will be next to impossible for shareholders. Therefore what the Committee has done is leave in place for all other corporations the ability to vote out officers but, they have taken away the provision for Native Corporations. These shareholders, unlike other corporate shareholders, cannot sell their stock. I am one of those shareholders so I know their situation. Not only are we locked into our corporation, the Labor and Commerce Committee has thrown away the key to change.

I intend to make all these points on the floor if CSHB 251 should get there. I also intend to take exception to the technical procedures used by the Committee in resurrecting the bill and adopting amendments. The tape of the proceedings is very confusing and at least some motions were improperly stated. I am also told at least one member was there who wished not to be shown as present and may not have signed the Committee report.

To say I am disappointed in how all this came about may be an understatement. I am both incensed and embarrassed that a legislative process claiming to be open to the public would use such irresponsible tactics. It is apparent to me the Chair did not want those opposed to this bill present to give testimony on the CS nor, did he want anyone to know what he was about to do until just before he did it.

I have apologized to the shareholders and encouraged them to not give up on trying to use the system to protect their rights.

cc: Speaker Phillips  
Majority Leader Vezey  
Representative Moses

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES AND CORPORATIONS

April 27, 1995

The Honorable Beverly Masek  
House of Representatives  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Masek:

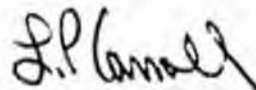
Re: Response to Information Request CSHB 251

Pursuant to your April 26, 1995, memorandum requesting additional information on CSHB 251, we enclose, herewith, as requested, a copy of the original executed fiscal note submitted March 24, 1995, in conjunction with CSHB 251. In addition, we furnish a copy of our transmittal letter of April 19, 1995, together with the division's draft recommendations and accompanying draft fiscal note. Finally, we also enclose a zero fiscal note dated April 28, 1995, as requested by the House Labor and Commerce Committee in response to CSHB 251(L&C) as amended, and passed out of the Committee on April 27, 1995.

You have also requested an analysis on the effect of CSHB 251(L&C) on the ability of shareholders to petition for the recall of directors, and whether such ability is unique with respect to other Alaska Corporate entities. Section "N," of proposed CSHB 251, excuses ANCSA Corporations, who have adopted staggered terms of office for their directors (most have), from the provisions of Alaska Statute (AS) 10.06.460, providing among other things for the recall of directors without cause. The ultimate result of this provision is that for these corporations' directors may be removed then, for cause only. The only provision for removal for cause is found at AS 10.06.463, and provides for court removal. Thus, shareholders seeking removal will need to bring Court action and meet judicial standards to affect removal of one or more directors. The inability to petition and recall a board with a majority vote will be unique to ANCSA corporations only.

We trust that this information is responsive to your request, and that you will not hesitate to contact this office if we may offer any further information or assistance.

Very truly yours,



Lawrence P. Carroll  
Senior Securities Examiner

LPC/go349.bsc  
042795a

Enclosures: Draft transmittal of April 19, 1995  
Original Fiscal Note of March 24, 1995  
New Zero Fiscal Note of April 28, 1995

RECEIVED  
APR 27 1995  
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**THE DUAL POLITICAL STATUS  
OF ALASKA NATIVES  
UNDER U.S. POLICY**

by  
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Institute of Social and Economic Research  
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Supported by  
The Henry M. Jackson Foundation

Anchorage, Alaska

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## ACKNOWLEDGMENTS


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David Case, Lee Gorsuch, Gerald McBeath, and George Irvin provided valuable comments on previous drafts of this paper. I am solely responsible, however, for interpretation, conclusions, and any remaining errors.

Thomas Morehouse

*Thomas Morehouse is professor of political science with the Institute of Social and Economic Research (ISER) at the University of Alaska Anchorage. He has studied Native government issues for more than 20 years, and has written a number of books and articles on the subject. Those include "Rebuilding the Political Economies of Alaska Native Villages," ISER Occasional Paper No. 21, 1989; and The Dynamics of Alaska Native Self-Government, by Gerald McBeath and Thomas Morehouse, published by University Press of America in 1980.*

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## INTRODUCTION

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Alaska Natives hold a complex, dual political status, as both U.S. citizens and aboriginal Americans. Just what that dual status entails is uncertain and controversial. But it is clearly a tool Alaska Natives can use to help change policy and increase self-determination.

This paper examines the political status of Alaska Natives. One objective of the paper is to show why Alaska Natives can claim both special status under federal Indian law and policy as well as equal status with all other citizens under federal and state law. Another objective is to explain why Natives' special status is so intensely disputed, particularly by Alaska state government and some of the non-Native interests it represents. A third objective is to explore the consequences of dual status for current policies and programs affecting Alaska Natives: tribal status and powers, village and regional governance, village services, and subsistence. The concluding section of the paper describes issues related to those policies and programs, and raises specific questions that could help guide policymakers.

Courts, legislators, and executives disagree about the rights, status, and powers of Alaska Natives. The Alaska Supreme Court has said that, except for the Metlakatla Indian Community, there are no Native tribes in Alaska possessing inherent powers of self-government or tribal sovereignty (*Native Village of Stevens v. Alaska Management and Planning* 1988). The U.S. Ninth Circuit Court of Appeals, on the other hand, says that most of Alaska's Native villages may be tribes with inherent governmental powers (*Native Village of Noatak v. Hoffman* 1990; *Native Village of Tyonek v. Puckett* 1992).

The U.S. Congress, in the Alaska National Interest Lands Conservation Act of 1980, said that Natives and other rural residents of Alaska should have a "subsistence preference" for harvesting fish and wildlife when these resources are in short supply. The Alaska Legislature, in 1990, disagreed. After the Alaska Supreme Court decided that a preference based on rural residence was unconstitutional, the legislature refused to place a rural preference amendment to the state constitution on the election ballot.

In 1990, Governor Steve Cowper issued an administrative order directing that Alaska's villages should be treated as tribes with certain sovereign governmental powers, limited mainly to control of their internal affairs (State of Alaska 1990). Contradicting the Alaska Supreme Court, he included powers that the court had explicitly denied existed. Then, in 1991, Cowper's successor, Governor Walter Hickel, revoked Cowper's administrative order with an order of his own, declaring that "Alaska is one country, one people. The State of Alaska opposes expansion of tribal governmental powers and the creation of 'Indian Country' in Alaska" (State of Alaska 1991).

Which of these conflicting positions authoritatively describes the current political status of Alaska's approximately 200 Native villages? Paradoxically, they all do. In questions of Indian policy in the United States, history and politics have conspired with the legal system to defy consistent, straightforward answers. Moreover, Alaska Natives represent an unusually complicated case in the larger context of American Indian policy.

The complexities of Indian policy arise not just from the convolutions of the American political and legal systems or the creative imaginations of lawyers. It is primarily the body of American Indian law itself, as it has evolved during two centuries, that provides the basis for contradictory opinions about the political status of Alaska Natives and Native Americans generally. Indian law is not unique in this regard; American law abounds in contradictions. Yet, Indian law represents an extremely volatile case. This is so because contemporary Indian law is the product of many abrupt and dramatic changes in the relationship between America's aboriginal peoples and the Euro-Americans who took the continent away from them.

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## EVOLUTION OF U.S. INDIAN POLICY

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Native Americans were originally independent, self-sufficient tribal peoples. European colonial and then U.S. government authorities recognized many tribes as politically independent nations. Based on their different territorial interests and relationships with the major combatants, Indian tribes took different sides in the wars between the colonial powers and in the war for American independence. Tribes were also strong defenders of their territories, especially during the early years of European settlement (Jennings 1975; Josephy 1976). In part because tribes for a time had the physical power to resist invading settlers (in the west, well into the nineteenth century), colonial and U.S. authorities dealt with them "government-to-government." Another rationale for attributing sovereign governmental status to the Indian tribes was provided in early American legal doctrine.

At the foundation of American Indian law lies the "Marshall trilogy" (Wilkinson 1987:24; Smith and Kancewick 1990:474-476; Berger 1985:121-124). Chief Justice John Marshall wrote three decisions for the U.S. Supreme Court in the 1820s and 1830s that established the principles of aboriginal land title, the federal trust responsibility, and inherent governmental powers of Indian tribes. These decisions continue to shape American Indian law and policy today (Case 1984:3-6).

The first decision was *Johnson v. McIntosh* in 1823. In this case, Marshall held that although tribes might sell or otherwise transfer Indian lands to non-Indians, the courts would recognize only those transfers made to the federal government. In the absence of such recognized conveyances, the occupying tribes retained "aboriginal title" to their lands. This was a title subject to disposition only by the federal government.

Marshall based his argument for aboriginal title on the "rule of discovery," an international legal principle derived from the historical practices of European "discovering nations." In order to control competition among themselves, those nations agreed to recognize each others' "first discovery" claims on various parts of the western hemisphere. Although the Indian tribes of course were not parties to the Europeans' agreements, the legal theory was that the tribes held rights of first possession, and that these rights could be transferred, changed, or extinguished only by the affected discovering nation. This remains the basic limitation distinguishing "aboriginal" title from conventional forms of land ownership today.

The second decision of the Marshall court was *Cherokee Nation v. Georgia* in 1831. This case arose because the State of Georgia asserted jurisdiction over the Cherokees and seized lands reserved to the tribe by treaties with the United States. Marshall's decision focused on the nature of the relationship of Indians to the U.S. government. He wrote that although Indian tribes could not properly be considered "foreign nations," they should be deemed "domestic dependent nations.... Their relation to the United States resembles that of a ward to his guardian.... They look to our government for protection; rely upon its kindness and power; appeal to it for relief to their wants; and address the president as their great father." Again drawing on international law and practice, Marshall laid down the principle of the trust relationship—the legal and moral responsibility of the federal government to protect the vital interests of "dependent sovereign" tribes.

Chief Justice Marshall made his third and most comprehensive statement about the political status of Indian tribes in the case of *Worcester v. Georgia* in 1832. This decision recognized inherent powers of Indian self-government. Samuel Worcester was a politically active missionary on the side of the Cherokees in their struggle with the State of Georgia over control of their lands. Desiring to put a stop to Worcester's activities, state officials arrested him, found

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him guilty of residing on Cherokee land without a permit or an oath of loyalty to the state, and sentenced him to four years at hard labor. The Marshall court ruled that Georgia's law was "repugnant to the constitution, treaties, and laws of the United States" because it interfered with the federal government's exclusive relationship with the Cherokee tribe, a relationship guaranteed by the supremacy and commerce clauses of the U.S. constitution.

Marshall's *Worcester* opinion reviewed the discovery rule and aboriginal title, the history of contact with the Indian tribes, and the trust relationship between the tribes and the U.S. government. He noted that the U.S. constitution gave Congress exclusive power to make treaties and to regulate commerce with the Indian tribes, and that constitutional treaties and acts were the supreme law of the land. Having established the principle of federal supremacy in Indian affairs, he went on to the question of tribal sovereignty:

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power....The very fact of repeated treaties with [the Indians recognized their entitlement to self-government]; and the settled doctrine of the law of nations is that a weaker power does not surrender its independence—its right to self government, by associating with a stronger, and taking its protection.

The tribes, in other words, retained "dependent" sovereignty—their original powers as separate nations—except as these powers were limited by the tribes' association with the United States. "Sovereignty," therefore, is not an absolute. It is rather a dynamic and relative condition of self-government, and it is subject to redefinition and adjustment as relationships between tribes and the U.S. government change (Case 1984:435).

The Marshall Court laid down the principles of aboriginal title, federal trust, and inherent powers, but the real political status of the Indian tribes would be more directly determined by the overwhelming force of superior power. Upon hearing of the *Worcester* decision, President Andrew Jackson, who had risen in national politics partly on his reputation as an Indian fighter, reportedly said "John Marshall has made his judgment, now let him enforce it." Whether Jackson actually said this or not, the statement accurately shows where he stood on the issues of Indian sovereignty and the federal trust responsibility (Prucha 1985:14-16). The State of Georgia in fact rejected Marshall's decision in the *Worcester* case, and the Reverend Worcester served out his sentence.

Marshall's decisions established the basic rules, but political action and the use of force determined the outcomes. In nineteenth century America, the combined ideologies of capitalism, Christianity, racial and cultural superiority, and Manifest Destiny provided justifications for the guile and the force used to suppress and often destroy the Indian tribes.

After the Civil War, the last of the western tribes were conquered, subdued, and forced onto ever smaller reservations. Now all of the tribes were under federal control. Because of the defenseless condition to which most of them had been reduced, they were under federal protection as well. Although still termed "government-to-government," the relationships between federal authorities and tribes had degenerated to that of a superior power attending to defeated and demoralized subjects. Federal troops put down the last of the organized Indian resistance by the end of the century.

Around this time, many tribes lost most of what was left of their reservation lands under the notorious allotment policy authorized by the Dawes Act of 1887. This act was finally to solve the "Indian problem" by breaking up the reservations and distributing tribal lands to individual Indians who, as private land owners, would eventually enter the mainstream society and economy (Dippie 1982:161-176). Between 1887 and 1934, when the Indian Reorganization Act ended the discredited allotment program, Indian landholdings fell from 138 million to 48 million acres, a loss of 90 million acres or two-thirds of all Indian lands.

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By the end of the nineteenth century, assimilation policy had generally replaced physical force as the principal means of controlling the tribes. Bureau of Indian Affairs boarding schools were the main assimilative institutions and BIA superintendents the reigning powers on the reservations. "Industrial education" was to provide young Indians with skills needed to enter the bottom ranks of a rapidly industrializing society, and Native languages and religions were to be eradicated. Like the waves of European immigrants flowing into the country at about the same time, Indians were to be "Americanized." It was not until the Indian Citizenship Act of 1924, however, that Indians (including Alaska Natives) who had not previously been made citizens under specific treaties and statutes were granted United States citizenship.

Franklin Roosevelt's New Deal in the 1930s included a new deal for Indians. Social and economic conditions on the reservations, which had continued to deteriorate, were documented by the Brookings Institution in the Meriam Report of 1928. John Collier, the new head of the Bureau of Indian Affairs, was determined to change all this, and he had the President's support (Dippie 1982:297-321).

At the urging of the Roosevelt Administration, Congress passed the Indian Reorganization Act of 1934 (which was fully extended to Alaska in 1936). The act ended the break-up of reservations and allotment of lands, which Collier had previously suspended by administrative order. It also provided new protections for trust lands, encouraged tribes to adopt constitutions for self-government, and authorized federally-chartered corporations and funds to support tribal economic development.

A number of tribes, understandably distrustful of federal authorities, rejected the IRA as a continuation of BIA paternalism and assimilation in a new form, but more of them accepted the new program (Dippie 1982:318-319). Overall, the IRA probably did more to reinforce the idea of Indian self-government through formal recognition of tribal powers than it did to improve social and economic conditions on the reservations (Gross 1989:20; Wilkinson 1987:68).

Another reversal of federal Indian policy occurred after World War II. Arguing that Indians should be "freed" of all federal supports and controls, in 1953 Congressional opponents of the reservation system, the trust relationship, and special status for Indians won passage of House Concurrent Resolution 108 (Gross 1989:21-23). The resolution called for an end to the trust relationship and the "termination" of tribes. Under the new termination policy, tribal lands once again were to be broken up and transferred to private groups and individuals. All special federal programs for tribes and individual Indians were to be eliminated. State government powers were to be imposed on all Indians and their reservations. Also in 1953, Public Law 280 extended state criminal and civil jurisdiction over "Indian country"—generally, Indian reservations—in specified states. (In 1958 this law was extended to Alaska.)

P.L. 280, not federal termination of tribes, may be the most important legacy of the termination policy of the 1950s. Congress passed legislation terminating more than 100 tribes or tribal groups, but many of them have since been restored to tribal status and the trust relationship (Gross 1989:22-23). The termination policy itself was terminated. Congress abandoned HCR 180 (though the resolution was never officially rescinded), and yet another new federal policy, "self-determination," emerged in the late 1960s and the 1970s.

The self-determination era of federal Indian policy has emphasized powers of tribal self-government in a number of Congressional acts, presidential pronouncements, and judicial decisions (Gross 1989). In 1968, Congress passed the Indian Civil Rights Act, requiring tribal governments to observe the principles of the Bill of Rights, and amending P.L. 280, prohibiting further extensions of state jurisdiction in "Indian country" without tribal consent.

The legislative centerpiece of the new policy was the Indian Self-Determination and Education Assistance Act of 1975, Congress's clearest rejection of termination policy. This act (referred to as "638" because it was enacted as Public Law 93-638) reaffirms the trust relationship and special federal programs for Indians. These programs generally were expanded during the 1970s. Most important, the Self-Determination Act also encourages tribes to take over the planning and administration of Indian programs under contracts with federal agencies.

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In 1978, Congress passed the Indian Child Welfare Act, which strengthens tribal control over adoption and guardianship of Indian children. Other legislation in the 1970s, when Indian self-determination policy reached its high point, included measures to support Indian economic development, health care, and educational programs.

All of this legislation explicitly included Alaska Native villages as "tribes"—for the specific purposes of these legislative acts. This qualification is important because it implies that Congress, which is the ultimate authority in Indian affairs, has not spoken unequivocally or unconditionally about the tribal status and powers of Alaska Natives (State of Alaska 1986:57ff.).

More generally, this is also a reminder that federal Indian policy—a cumulative product of changing times and different legislative, executive, and judicial arenas—has never pointed clearly in any one direction, whether toward separatism, assimilation, or self-determination.

Congress was the main arena of Indian policymaking in the 1970s. In the 1980s, the federal judiciary became relatively more important as Congressional activism receded. As a "political" institution, Congress can define broad problems and goals, such as "Indian self-determination," and adopt general courses of action. Courts, on the other hand, typically focus on specific problems laid before them, and, although there are many exceptions to the rule, they generally like to avoid venturing too far from established law and precedent in their decisions.

In a policy area like Indian law, where many different and inconsistent statutes have been enacted over the years, court decisions, too, will give conflicting answers to questions about tribal status and powers. These include questions about changes in aboriginal land title, the extent of Indian hunting and fishing rights, the relative jurisdictions of tribal and state courts, and limits of tribal and state tax powers, among many others. Thus, when the initiative in Indian policy passed from Congress to the courts in the 1980s, policymaking tended to become relatively more disjointed and piecemeal, and the inconsistencies and conflicts in Indian law were highlighted once again.

University of Colorado law professor Charles Wilkinson describes this evolution of federal Indian policy in the following way:

Inevitably, Indian policy has been cyclic. This is due in part to the sheer length of time during which it has been made. Even more fundamentally, federal Indian policy has always been the product of the tension between two conflicting forces—separatism and assimilation—and Congress has never made a final choice as to which of the two it will pursue. Thus the laws are not only numerous; they are also conflicting, born of the explicit regimen and implicit tone of the eras in which they were enacted (Wilkinson 1987:13).

The current policy of self-determination says that tribes are to some extent sovereign as well as dependent. It says that all Native Americans, including Alaska Natives, are equal citizens under the law and, at the same time, it says that they are a distinct group of Americans with special political status under a unique set of laws. The law says that Native Americans can have collective, aboriginal title to tribal land and special rights to hunt and fish but, like other Americans, they can also have individual and corporate ownership of private land and resources. The law further says that, like Americans generally, Native Americans have access to federal programs, but that they also have additional, exclusive rights to programs enacted especially for Indians.

Self-determination policy gives Native Americans choices about all these matters and, in doing so, the policy often sounds unsure and ambivalent. Further, despite the broad range of choices legally provided, Native American tribal communities have derived limited benefits from these choices.

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The contemporary record of Indian policy is one of ambiguity and contradiction. Yet, this record also indicates that federal courts have preserved the special political status of Indian tribes, or what Wilkinson refers to as a "measured separatism." He attributes this record ultimately to the commitment judges have to the rule of law and their belief that "real promises" were made in old treaties that the U.S. Senate approved and made into "real laws" (Wilkinson 1987: 121).

It is a remarkable fact of American political and legal history that, despite Andrew Jackson and all the opposition and contradiction, John Marshall's Indian law principles have survived. Originally derived from the legal doctrines and moral philosophy of the late eighteenth and early nineteenth centuries, the principles of aboriginal title, the trust relationship, and inherent governmental powers continue to be reinterpreted and applied by the Congress, courts, and executive today. The preservation of these principles can be attributed not only to the moral and legal sensibilities of judges, but to the American tradition of minority rights.

Although denied or substantially qualified at different times in different policymaking arenas, Marshall's principles continue to distinguish the special status of Native Americans from the formally equal status they share with all other Americans. There is no question, however, that these two statuses are in tension with one another, and that they continue to be a matter of sharp legal and political conflict. Nowhere is this more apparent than in Alaska.

### FEDERAL INDIAN POLICY IN ALASKA

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The case of the Alaska Natives is both similar to and different from that of Native Americans elsewhere. It is similar in that Alaska Natives, as the original inhabitants of the region, could claim aboriginal rights, a trust relationship, and inherent governmental powers (Case 1984; Price 1982; Smith and Kancewick 1990; Berger 1985). It is different primarily in that, until recent times in most of Alaska, there was little or no pressure on Natives to surrender their lands, including their traditional hunting and fishing grounds. (A major exception was the Russian occupation of southern coastal and Aleutian regions before the American purchase.) Thus, Alaska Natives, unlike most other Native American tribes, were not conquered by Euro-Americans, did not sign one-sided treaties, and were not forced onto reservations.

Alaska Natives' "dependent sovereignty," or inherent governmental power, was not documented in treaties or institutionalized on reservations (although many special purpose reservations were created in Alaska; see discussion below). Ironically, the absence in Alaska of these traditional instruments of Indian subordination and control has tended to undermine rather than reinforce the tribal status and powers of Alaska Natives.

This issue has two interrelated but analytically distinct parts: tribal status and tribal powers. As a practical matter, there may be less at stake in the question of whether Alaska Native communities are formally recognized as "tribes" than in the question of what tribal powers they may have. Although the record is contradictory (see, for example, the majority and minority opinions of the Alaska Supreme Court in the *Stevens Village* case), Congress has referred to Alaska Natives as "tribes" in Indian legislation beginning in the early years after the Alaska Purchase. Alaska Natives' status as tribes, though often qualified, has many times been affirmed in executive and judicial actions (Case 1984; Smith and Kancewick 1990).

The more significant issue is what specific tribal powers Alaska Native communities possess. The actual extent of their powers depends on such questions as their individual histories and capabilities; the significance of the power to their tribal existence and well-being; the state's interest in the matter; and what federal laws may or may not say about the power in question (State of Alaska 1986: 145-147; Case 1984:472-473). Such tribal powers are likely to be determined on a case-by-case basis. It is as if the exercise of powers establishes tribal status, rather than the other way around.

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If Alaska Native tribal communities were within reservation "Indian country," their governmental powers would presumably be greatest (Cohen 1982:472-473). Despite the absence of reservations in Alaska, Native communities may still claim independent governmental powers: federal courts have held that Native allotments and "dependent Indian communities" may also be Indian country (Case 1984:457-458). The problem lies in determining the extent and applicability of these more elusive (dependent Indian communities) or limited (allotments) forms of Indian country in Alaska and elsewhere (State of Alaska 1986:121ff.).

Given the ambiguities and contradictions in the record and the peculiarities of the case of the Alaska Natives, the questions of tribal status, sovereign powers, and Indian country are more in dispute in Alaska than elsewhere. With one exception, the Alaska Native Claims Settlement Act of 1971 abolished all the reservations and reserves previously existing in Alaska. To date only the Metlakatla Indian community's tribal status and powers have been recognized by state as well as federal courts as being the same as those of tribes on reservations in the Lower 48 states.

Yet, even in the case of Lower 48 reservations and treaties, disputes continue over the nature and extent of tribal powers—for example, access to fish and game, water rights, law enforcement, taxation, and gaming operations. Relationships between tribal and state powers are continually being disputed, redefined, and adjusted, whether covered by treaty provisions or not.

In Alaska, the political conflict extends beyond definitions of specific powers to the fundamental issue of whether Native communities have any special powers or rights at all. This more basic issue underlies the current conflict over Alaska Native subsistence. Thus, many Alaskans see the subsistence issue as a fundamental ideological conflict between equality and special privilege, and they assert that, whatever the law may say, Natives' rights to fish and game are no different from those of anyone else. It is the clash of absolutist positions that makes the issue so difficult to define and resolve politically.

The question of the status and powers of Alaska Natives ultimately needs to be reviewed in historical perspective. One of the more salient facts in modern Alaska Native history is that Natives came under U.S. rule during the post-Civil War assimilation era of federal Indian policy, when American Indian tribes had been reduced to a condition of almost complete dependency. As viewed by federal authorities and no doubt by popular opinion, Indians had to be trained, educated, and morally uplifted—"civilized"—so that they might eventually be absorbed into mainstream society (Prucha 1985:28-54). This attitude carried over into the federal government's relationships with its new Native wards in Alaska.

The first agents of the U.S. government in Alaska were not teachers and missionaries, however, but military officers (Price 1990:23-42). After the Civil War, their mission was to control and pacify Indians on what was left of the American frontier. On the far edges of that frontier, in Alaska, the military could try to assure relative peace and order, but they were equipped to do little else to "civilize" the Natives. Whatever their attitudes toward Natives (and some were quite hostile), the military's responsibility was to enforce federal customs and Indian liquor laws, preserve order, and protect non-Native traders and settlers (State of Alaska 1986:74ff.).

From the Alaska Purchase until the early 1900s, many statutes, court decisions, and administrative rulings stated directly or indirectly that Alaska Natives were subject to the same federal and territorial laws that applied to non-Natives (State of Alaska 1986: 71ff.). At the same time, Congress, courts, and administrators also recognized the unique interests and needs of Natives and made many special provisions for them. These special provisions culminated in 1936 amendments to the Indian Reorganization Act which, according to Case (1984:10), "were apparently intended to place Alaska Native land ownership and governmental authority on the same footing as that of other Native American reservations."

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Alaska Natives had experienced devastating problems by the end of the nineteenth century: cultural disruption that came with western occupation, trade, religion, and schools; degradation and collapse of subsistence economies following importation of new technologies and commercial harvests; and spread of demoralization, hunger, disease, and death. Sheldon Jackson introduced reindeer herding to Alaska in the 1890s in part as a means of warding off starvation among Natives (Case 1984:208-210; Jenness 1962: 35-37). By then, large numbers of Natives had died from new diseases, primarily smallpox and influenza, brought by outsiders.

At the time of contact with the Russians in the 1740s, the estimated population of Alaska's aboriginal peoples was 75,000. By the end of the nineteenth century, their numbers had been reduced to about 25,000 (Rogers 1962:61). The largest declines occurred among the Aleuts and Eskimos of the coastal regions. Only in recent years has the size of the Native population returned to the level where it was two and a half centuries ago.

Sheldon Jackson also established missionary schools, which later came under the control of the U.S. Commissioner of Education. At the end of the century, the commissioner described his agency's mission in Alaska, vowing to avoid mistakes made on Indian reservations elsewhere: The agency would "provide such education as to prepare the natives to take up the industries and modes of life established in the States by our white population, and by all means not to try to continue the tribal life after the manner of the Indians in the western states and territories" (Chance 1987:92-93).

In 1905, however, the Nelson Act established separate systems of public schools, one for "white children and children of mixed blood who lead a civilized life," and the other for "uncivilized Alaska Natives." The Native schools were patterned after the Indian reservation and boarding schools established in other territories and states.

Other special "Indian" measures were extended to Alaska Natives during a period in which the overall objective of federal policy was assimilation. Both the 1884 and 1912 Alaska Organic Acts contained provisions protecting Native land rights (though legal dispute continues even today about whether these were intended to protect "aboriginal title"). As early as 1870, Congress exempted Natives from a general prohibition on harvesting fur seals. Several other exemptions from fish and game laws and international treaties followed, including Native hunting provisions in the Migratory Bird Treaty Act of 1916. Earlier, in 1902, Congress had exempted Native subsistence hunting from regulation under the Alaska Game Act (Smith and Kancewick 1990:506; State of Alaska 1986:15).

Native land reserves were another area in which Congress and the executive made special provisions for Alaska Natives (Case 1984: 83-111). Congress made reindeer herding an exclusively Native activity with the Alaska Reindeer Act of 1937. Through such special measures, Congress and the executive were treating Alaska Natives in much the same way they dealt with Indian tribes elsewhere.

Officially, federal assimilation and allotment policies ended with the coming of Indian reorganization in the 1930s. In Alaska, allotments allowed individual Natives to own land, but they were not based on the breaking up of reservations as they were in the Lower 48 states. (Alaska Natives were eligible to apply for allotments until ANCSA was passed in 1971.) Many Native villages—about 70 as of recent years—adopted IRA constitutions. Indicating separate status and possible assertions of Indian country, these constitutions were opposed by Alaska's political leaders (as they generally still are today). Some of the most intense controversies of the pre-statehood years centered on the creation of IRA reservations, which could potentially provide the territorial bases for Indian country and assertions of Native sovereignty (State of Alaska 1986:118-119; Naske and Slotnick 1987:191).

Before the IRA, over 150 special Native reserves had been created in Alaska by executive order. (Metlakatla was established under unique circumstances by an act of Congress in 1891 [Price 1990: 78-83]). The main purposes of these special reserves were to support reindeer herding, schools, and vocational education. Some of the reserves

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encompassed extensive areas for subsistence activities. Only six reserves were established under the IRA in Alaska, and they helped to secure Native hunting and fishing rights in such villages as Venetie, Hydaburg, and Karluk (Case 1984:10-12, 99-107).

IRA reserves provoked fierce battles between territorial leaders and the Secretary of the Interior over control of Alaska lands and resources. Ernest Gruening, who was governor of the territory from 1939 to 1953, viewed reservations as barriers to the future development of Alaska and the progress of its people. Writing for the statehood cause in the early 1950s, Gruening vehemently opposed Secretary of the Interior Harold Ickes's "arbitrary and disingenuous efforts to impose his reactionary concepts [i.e., IRA and other reservations] on the people of Alaska." Gruening believed that the "people of Alaska" eventually would prevail:

While it was probable that the considerable damage that [Ickes] had inflicted on orderly democratic progress and to a growingly harmonious interracial relationship in Alaska would, for a time, persist, it was clear that, in fairness to all the people of Alaska, the flames into which an issue unresolved for seventy years had been needlessly fanned should be promptly extinguished. The issue needed to be resolved particularly in justice to the native people who had been led to believe that they had valid claims to extensive land or to compensation for it.... Congress could, if it would, provide to have that basic issue determined promptly, fairly—and finally (Gruening 1954:381).

Alaska leaders' opposition, which was reinforced by federal termination policy, blocked all but a few IRA reservations (State of Alaska 1986:118-121). Also under the termination policy, Congress extended P.L. 280 to Alaska, giving the state broad powers over criminal matters, and more limited powers in civil matters, in Native communities that might qualify as Indian country.

In 1957, a federal court had determined that the village of Tyonek, an executive-order reserve created in 1915 for education, subsistence, and related purposes, was Indian country. As such, the court declared that the tribal government, not the Territory of Alaska, had jurisdiction to try a criminal case in the village (Case 1984:14). Congress responded by making Alaska a P.L. 280 state in 1958, which brought Tyonek and all Native villages under state criminal jurisdiction (State of Alaska 1986:139-141).

Later, however, in 1971, Congress granted concurrent criminal jurisdiction to Metlakatla's tribal government at the request of both the state and the tribal government. The state found it impractical and too costly, because of the difficulties of travel and communication, to meet the village's law enforcement needs (Case 1984:456).

The ambivalent historical record of American Indian policy had already been extended to Alaska by the end of the territorial period. Thus, in his dispute with Secretary Ickes, Ernest Gruening was able to cite court decisions to support his condemnation of reservations and related claims of aboriginal title. One federal court, for instance, had held that the 1867 Treaty of Cession had extinguished aboriginal title, which was a legal basis for reservations (Miller v. U.S. 1947). Also, at about the time Gruening was writing his statehood book, another federal district court blocked an attempt by the Hydaburg IRA reservation to take over fish traps owned by a national food processing company. In this instance, the court held that the reservation had been created illegally (*U.S. v. Libby, McNeill and Libby* 1952).

Yet, for virtually every judicial or executive decision cited on one side of a case, there was another decision that could be cited in opposition. For example, an important case at the time was the land claims of the Tlingits and Haidas, which were based on aboriginal title. As noted above, a federal court had ruled that the Treaty of Cession extinguished aboriginal title, but later the U.S. Supreme Court disapproved this decision (*Tee-Hit-Ton v. U.S.* 1955). Subsequently, in a major decision in 1959, the Court of Claims awarded the Tlingits and Haidas a monetary settlement for the loss of their aboriginal lands (Case 1984:65-68).

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The ambiguity of the law sometimes made it possible to use the same judicial or executive authority (such as the Treaty of Cession, and the 1884 and 1912 organic acts) to support opposing sides of a dispute.

Gruening and other Alaska political leaders achieved the goal of statehood, but aboriginal land claims were not resolved as they had hoped. In fact, statehood added substantial momentum to the Native land claims movement.

In the early 1960s, the state began selecting lands from the public domain in fulfillment of its land entitlement under the Alaska Statehood Act. This and related threats to aboriginal land rights caused Native leaders throughout the state to organize regional associations to protest state selections and to intensify their pursuit of a Congressional settlement. Both the statehood act and the Alaska Constitution included provisions (similar to those in the Treaty of Cession and the Alaska organic acts) disclaiming state rights to Native lands and looking to Congress to resolve aboriginal claims.

State land selections as well as all other major land transactions in Alaska were stopped by Secretary of the Interior Stewart Udall's "land freeze," beginning in 1966, pending settlement of Native claims. The final impetus to the settlement was the discovery of vast petroleum deposits at Prudhoe Bay in 1968. Transport of the oil required construction of a pipeline across lands claimed by Natives, and the economic stakes were much too great to permit a long delay of the project. This supplied the incentive—to the state, the oil companies, and Congress—for agreement with Native leaders on the terms of a settlement act compensating Alaska Natives for extinguishment of aboriginal title.

In some respects, the Alaska Native Claims Settlement Act of 1971 was an Alaska Native "treaty" or "treaty substitute" with the U.S. government (Wilkinson 1987:8). Like traditional Indian treaties, in return for grants of limited, designated lands and other benefits to Natives, ANCSA extinguished aboriginal title to much more extensive lands traditionally used and occupied by them. In other respects, ANCSA clearly is not like a traditional treaty. Congress deliberately wrote ANCSA to exclude the traditional features of treaties: reservations and BIA trust responsibility for the land and monetary benefits of the settlement. Moreover, Alaska Natives were not signatories to ANCSA, as would have been the case in an agreement.

ANCSA is an equivocal product of overlapping termination and self-determination eras of federal Indian policy. It speaks the language of self-determination, but it does so with a distinct accent of termination and assimilation. While ANCSA granted Alaska Natives full control of unprecedented amounts of money and land, it assigned this control not to tribal governments but to state-chartered Native corporations. Further, ANCSA extinguished not only aboriginal land title but aboriginal hunting and fishing rights as well (Section 4 [b]).

Although ANCSA extinguished aboriginal hunting and fishing rights, the conference committee responsible for the act "expect[ed] both the Secretary [of the Interior] and the State to take any action necessary to protect the subsistence needs of the Natives" (U.S. Senate 1971:37). Such action could include withdrawing lands for subsistence uses and closing them to non-residents when resources were scarce.

Finding that Native subsistence was not adequately protected and that neither the state nor the secretary had responded adequately, Congress later included provisions for subsistence hunting and fishing preference rights in the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). These rights were to be assigned to all eligible "rural residents," however, and not exclusively to Natives. Congress thus avoided the issue of "special privileges" for Natives, to which the state strongly objected, and struck a political compromise. But Congress also made clear that its primary concern was to protect the subsistence activities of Alaska Natives, invoking "its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause...." (ANILCA, section 801 [4]).

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The federal courts generally support the special political status of Native Americans, including Alaska Natives. This does not mean, however, that complexity, ambiguity, and contradiction have been eliminated from Indian law and policy, as the Alaska case continues to demonstrate. Even where policies appear consistent, there almost always is room for disputes about the meaning and application of the policies. This is because critical factors affecting the meaning and application of policies—contexts and questions, needs and demands, and values, expectations, and interests—are always changing.

These conditions give rise to *political* questions and conflicts. Usually, only limited parts of such questions and conflicts are susceptible to being resolved at a given time by a relatively straightforward statute, court decision, or executive action. Further, the sheer diversity of Alaska Native village conditions, like the diversity of Indian reservations and communities in the Lower 48, compounds the problem of devising comprehensive statutory, judicial, or administrative solutions (Wilkinson 1987: 7-9).

Despite their historical failure and disrepute, treaties and reservations elsewhere have provided the basis for clearer answers to questions about the status and powers of Indian tribes. A significant consequence of their absence from Alaska is that the political status of Alaska Natives is more in question than is the status of reservation Indians elsewhere. The question of special status involves extreme ideological and group conflict, particularly when it concerns competition for scarce resources, like fish and wildlife in Alaska. Political leaders either try to avoid such an issue or, if it cannot be avoided, they will try to deal with it indirectly or ambiguously. The result is more unsettled and ambiguous policy.

This is not to argue that Alaska Natives should have had treaties and reservations in the Lower 48 style, or that ANCSA should not have been enacted. Depending on timing and circumstance, Alaska Natives could have done much worse than they have under ANCSA. We simply have no way of knowing "what might have been"; the political uncertainties involved in such speculation are much too great.

From the Marshall trilogy on down, American Indian policy ultimately has been shaped by assumptions about what is the right thing to do as well as by what is considered to be legally sound, socially desirable, and politically possible. Like people generally, legislators, executives, and judges often disagree about such matters. This suggests that there is no single, simple, "correct" solution to the issue of Alaska Natives' special political status under American Indian laws. The issue instead breaks down into more specific and concrete questions about Native status and powers, and it involves alternative, often conflicting proposals for Alaska Native policies and programs.

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## POLICY ISSUES

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This section briefly explores issues of tribal status and powers, village and regional governance, village services, and subsistence. For each, we first state the main issues, then summarize effects of the Alaska Native Claims Settlement Act and related federal and state policies, and finally pose specific questions that could help inform policy.

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### TRIBAL STATUS AND POWERS

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*Are Alaska Native communities "tribes?" If so, what inherent powers of self-government do they have?*

ANCSA did not focus on or directly affect the tribal status or powers of Alaska Native communities. ANCSA dealt primarily with the question of aboriginal title. Eligibility of Natives for special federal programs continued under the trust relationship. Congress recognizes Alaska Natives as tribes for the purposes of these programs, and it has also included them under many other Indian laws, such as the Indian Self-Determination Act.

Further, in determining that it was necessary to extinguish aboriginal title ("if any," says ANCSA in section 1(b)) in order to settle land claims, Congress implied that some 200 Native villages may be tribes in the fullest legal sense, since only such tribes can have aboriginal title. Whatever one makes of this implication, extinguishing aboriginal title does not extinguish tribal status.

On the other hand, ANCSA raised more questions about tribal powers. Most important, the act undermined the tribal powers of Native communities by assigning land title to state-chartered corporations rather than to tribal (IRA or traditional) governments. Consequently, tribal governments were separated from the land base that might otherwise be considered the territorial jurisdiction of Indian country, where tribal powers are greatest.

None of these actions constitutes denial of tribal government status or powers of Alaska Natives. However, they do show that, at least for purposes of ANCSA, Congress intended that Alaska Natives establish and operate corporate institutions under state law instead of Native institutions under the trust responsibilities of the Bureau of Indian Affairs.

Congress has the ultimate power to recognize tribes or to withdraw recognition from them. Although Congress has recognized Alaska Native tribes for many different purposes since the Treaty of Cession, it has not declared unambiguously that Alaska Native tribes exist for all purposes, and it is unlikely to do so now. Such a move would be strongly opposed by the State of Alaska as well as by other states also having to deal with tribes lacking treaties and reservations. Moreover, even in the current era of Indian self-determination, Congress is reluctant to make broad pronouncements about the separate political status and powers of tribes in Alaska or elsewhere, because it remains a very sensitive and contentious political issue 160 years after the Marshall trilogy.

In the case of Alaska Natives, tribal status is something of an abstraction that becomes real and concrete in the form of a build-up of specific tribal powers. Native communities themselves can expand their tribal powers, one-by-one, as IRA or traditional governments under specific federal and state laws and through court action. By developing their powers incrementally, and increasing their capabilities to exercise them, Native communities enhance their tribal status. This, in fact, is the principal way tribal governments have actually developed in Alaska after ANCSA.

There are many examples of this "building-block" approach to strengthening tribal status. Some villages have increased their control over the importation of alcohol under both federal and state liquor control laws. Others have expanded their access to fish and wildlife under court decisions supporting special subsistence harvests for Natives. Native IRA and traditional villages, as well as Native regional non-profit organizations, contract with federal and state agencies for the administration of services and funds.

#### QUESTIONS FOR POLICYMAKERS:

What have individual Native IRA and traditional village governments done to strengthen their tribal powers, function-by-function, under existing federal and state laws and judicial decisions, and have these actions produced desired results?

What is the specific relationship of tribal land ownership to the question of recognizing "Indian country" in Alaska?

What is the effect on "Indian country" status of transfers of ANCSA lands to tribal governments under federal law? under state law?

What likely impacts would establishment of "Indian country" have on a village's or region's further economic and political development?

### VILLAGE AND REGIONAL GOVERNANCE

*Should there be exclusively Native local or regional governments? What forms might they take? How would the rights of non-Native residents be protected?*

This issue is closely related to the question of tribal status and powers. ANCSA designated state-chartered corporations, not IRA or traditional Native governments, to control the land and money provided in exchange for the extinguishment of aboriginal title. In addition, section 14(c)(3) of ANCSA encouraged incorporation of municipal governments (cities or, possibly, boroughs) by requiring that certain village lands be transferred to state-chartered municipalities rather than to tribal governments.

Many Native communities oppose incorporating as cities or boroughs for different reasons. Some perceive that municipal forms, powers, and procedures are too complex and not suited to rural, Native village, or regional conditions. Some believe there is no need for another form of government in communities that already have several local and regional institutions. Those forms include IRA governments, traditional councils, and village corporations at the local level, and regional corporations, non-profit organizations, and special service authorities at the regional level. Some places also fear that municipal governments, which must be open to participation by all local residents, may be taken over by non-Natives, even when they constitute a minority of voters.

On the other hand, the state government has promoted incorporation of cities and boroughs in rural Alaska because they are familiar institutions subject to state standards, including equal protection and participation of all residents (State of Alaska 1986:24). In the *Noatak* case, for example, the state Department of Law opposed special grants of state funds to tribal governments because state lawyers determined that these governments were "racially exclusive." (In taking this position, the state set aside the question of tribal governments' special political status, focusing instead on their "racial" constituencies.)

→ The non-Natives are racially "exclusive" - they racially excluded our Native people from our country by killing - "excluding" them.

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Many Native villages have incorporated as cities, and some Native regions have incorporated as boroughs. Village municipalities are not strong organizations, however, and a number of them have been superseded by tribal governments, village corporations, or regional organizations. Yet others have preserved their direct links to state funding agencies and have served local needs. Boroughs have also been incorporated to serve the interests and needs of the Inupiat of the North Slope and of the northwest regions. These Native-controlled boroughs have exercised important powers of taxation and land use control over the North Slope oil fields and NANA regional corporation's Red Dog zinc mine.

Incorporation of boroughs and the continuing development of Native regional non-profit organizations suggest that many Natives recognize the limitations on individual village capacities, and the need to pool economic and political resources at the regional level.

The authority to recognize tribal governments lies at the federal level, but the state can choose either to assist tribal governments or to provide benefits only to municipalities. While the state prefers to work with municipalities, it nonetheless provides financial aid and services to Native village tribal governments and regional non-profits on condition that state interests and the rights of non-Natives are protected (State of Alaska 1986:28ff.). In such cases tribal governments and Native organizations agree to abide by equal protection standards and to waive "sovereign immunity" for the purpose of participating in state programs.

#### QUESTIONS FOR POLICYMAKERS:

Are there alternative models of "successful" village and regional governance?

What is the range of government options available at the village level, and what is the existing pattern of village governance structures? What range and pattern exist at the regional level?

Can tribal and other Native-controlled structures fulfill the functions of boroughs and municipalities?

Under what terms and conditions can boroughs and cities usefully co-exist with Native governments?

In what main ways does the state now cooperate with Native governments and vice-versa? Could these be expanded or should they be lessened?

What forms of recognition does the state extend to Native governments at village and regional levels? Should these be expanded or reduced?

How have regional non-profits adapted to their post-ANCSA roles as service agencies and quasi-governments, and how has the state adapted to the roles of the regional non-profits?

### VILLAGE SERVICES

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*Should high-cost village services and facilities be subsidized? Who should pay? Can Native villages be both economically dependent and self-governing?*

ANCSA continued Alaska Native eligibility for special federal programs. However, section 2(c) of the act directed the Secretary of the Interior to conduct a study of all federal programs for Native people and make recommendations to Congress for the operation and management of these programs. The Secretary did conduct a

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comprehensive survey of Native programs but did not submit recommendations. Nonetheless, Congress generally expanded Native programs in the 1970s and, although rates of funding slowed or were reduced in the 1980s, overall levels of support have been maintained.

State funding for Alaska local government has followed a pattern similar to that of Native program funding at the federal level. The decline in state revenues caused by the fall of oil prices in the mid-1980s was felt primarily in capital budgets, not operating budgets. Together, federal and state programs for Native and non-Native communities in rural Alaska sustain a major share of the local economies. Government employment, cash payments, and services accounted for as much as half of the personal income and two-thirds of the economic base of village economies in the mid-1980s. This is why economists often refer to the "transfer economies" of Native villages. In many villages, state and federal government transfers play a vital role in filling the gaps left by the erosion of the subsistence economy and the absence of a market economy.

Janie Leask, then president of the Alaska Federation of Natives (AFN), commented before the U.S. Senate Select Committee on Indian Affairs in 1989 that "despite substantial improvements in health, standard of living, economic opportunity, and institutional services, an increasing number of Alaska Natives now face greater risks and declining opportunities." She went on to describe the dilemma confronting Native villagers who depend on government support for their survival:

Most Alaska Natives live in communities in which the local economies cannot provide a life-sustaining standard of living without substantial ongoing public subsidies. And public policies intended to assist Native individuals, families, and communities, have created and perpetuated dependence rather than self-sufficiency (U.S. Senate 1989:13)

In many villages provision of increased state funding from surplus oil wealth has aggravated the dependency problem. Operation and maintenance costs associated with the schools, community halls, public utilities, and other facilities made possible by state oil revenues are probably beyond the financial capabilities of many villages, without continuing assistance. State and federal programs provide essential benefits, but they also perpetuate dependence.

#### QUESTIONS FOR POLICYMAKERS:

What are the current types and levels of federal funding for Native programs in Alaska and of state funding for rural communities?

What are the prospective levels of rural need, costs, and funding during the next decade?

Does the tribal or municipal status of Native communities affect their access to federal and state funds and, if so, how?

What special arrangements does the state make with Native governments and organizations as conditions of state funding?

What organizational arrangements are used for the administration of federal "P.L. 638" programs?

How effective are these state and federal arrangements, and what changes are needed?

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## SUBSISTENCE

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*Is "subsistence" more than hunting and fishing for basic economic sustenance? Is subsistence a fundamental element of Native culture and a Native "right"? If so, is it protected by Congress?*

ANCSA extinguished aboriginal hunting and fishing rights, but Congress established rural Native (and other rural resident) subsistence rights on federal lands in Alaska under the 1980 Alaska National Interest Lands Conservation Act. The State of Alaska, in order to retain management authority on all Alaska lands, at that time agreed to apply the same subsistence rules on state lands.

Thus, ANCSA extinguished aboriginal hunting and fishing rights, and ANILCA created a new set of "statutory rights." Although subsistence preference was extended to all rural residents as a political compromise, Congress's primary concern was to protect "Native physical, economic, traditional, and cultural existence" (ANILCA, section 801 (1)).

Majority interests represented in state government view "subsistence" primarily as hunting and fishing for sustenance and recreation, an activity conducted by Natives and non-Natives alike. In this view, there is no distinctive connection to Native culture or traditions. Natives (and many non-Natives), on the other hand, see subsistence as a vital element of Native culture and a special Native right. They point out that Congress, despite having extinguished aboriginal hunting and fishing rights in ANCSA, also indicated in the Conference Committee report that it did not intend to abolish or restrict the practice of Native subsistence. In fact, finding that Native subsistence was in jeopardy after ANCSA, Congress "restored" subsistence as a Native (and rural resident) "civil right" in Title VIII of ANILCA.

The Alaska Supreme Court in 1989 (*McDowell v. Collingsworth*), ruled the state's rural preference subsistence law unconstitutional under the "common use" and other provisions of the Alaska Constitution's article on natural resources. Restoring the rural preference would require a constitutional amendment. A proposal to place an amendment before the voters failed by one vote in the Alaska Legislature in 1990.

The current stalemate over subsistence will not be broken without a significant shift in the political alignments involved. As in the case of the broader questions of tribal status and powers, Congress is reluctant to choose between state and Native positions, particularly where basic interests of strong, well-organized groups are affected. Additionally, in this case, the ANILCA subsistence provisions remain in force on federal lands (but not in navigable-water fisheries, which remain under state jurisdiction). These factors tend to work against further federal action to resolve the subsistence issue, and it appears that the issue will need to be resolved at the state level.

### QUESTIONS FOR POLICYMAKERS:

What precisely is the constitutional-legal basis for a rural resident subsistence preference under federal law? under state law?

What is the constitutional relationship between federal and state levels of authority over Native subsistence?

Are there federal constitutional grounds (under Indian law doctrine) for Congress to authorize a Native subsistence preference?

Given ANCSA's extinguishment of aboriginal hunting and fishing rights, can traditional "use and occupancy" doctrine be used in defining Native subsistence rights on federal lands? on state lands?

How effective is Native participation in the state system of fish and game regulation? Should changes be made in the management system to strengthen Native participation?

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## CONCLUSION

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Charles Wilkinson (1987:103) remarks that "the Founding Fathers almost certainly assumed that tribes would simply die out under the combined weight of capitalism, Christianity, and military power." He notes how right the Founding Fathers were about the constitutional structures and processes of government, but how wrong they were about the survival of Indian tribes. This belief in the withering away of the tribes persisted through the nineteenth century and into the twentieth. It is still held by some people even now.

Although often with great reluctance, American politics and law accommodated the existence of the tribes, inventing and applying the doctrines of aboriginal rights, the trust relationship, and inherent powers. In most of the country, these doctrines were institutionalized in treaties and reservations that did as much to mark successive reductions in tribal power as to protect what was left of it. Nonetheless, the Indian tribes had a foothold in the American political system, and they refused to withdraw. Successive Congresses, courts, and executives have, as Wilkinson observes, continued "squarely to acknowledge this third source of sovereignty in the United States" (1987:103-104). Particularly during the late twentieth century, there has been a resurgence of political consciousness and action among the American Indian tribes.

Alaska Natives were the last of the Native Americans to feel the weight of capitalism, Christianity, and superior power on their cultures. They did not, for the most part, need to be conquered because there was plenty of land in Alaska and relatively few takers. After the early Russian occupation, Natives' contact with outsiders was mostly peaceful, and they made room for missionaries, traders, miners, fishermen, government agents, adventurers, and settlers. Alaska Natives were "conquered" by this process and by an invasion of politics and bureaucracy. The rules governing land ownership and claims on resources changed virtually beneath their feet, often without their knowledge or their understanding of the implications. In Alaska, too, non-Natives probably shared a widespread belief that the Native peoples would (and should) gradually wither away through assimilation.

By statehood, it was clear that Alaska Natives would lose their lands, resources, and cultures by default if something was not done. What followed was the land claims movement and Alaska Native Claims Settlement Act. ANCSA, however, underscored the equal and potentially assimilated status of Alaska Natives, not their special status, which was not as clearly set forth in federal law and policy for them as it was for Native Americans elsewhere. Yet, over the years Congress, courts, and executives built an incremental, often contradictory record of special provisions for Alaska Natives. In recognizing many specific tribal powers, this complex record supports recognition of their special tribal status, too.

Given the ambiguity of the record and the political resistance in Alaska to abstract and threatening claims to "sovereignty," Alaska Natives have increasingly turned to practical political and social action to strengthen their special status and their distinctive cultural identities. It seems increasingly clear that the issue of Alaska Natives' special status is ultimately a political question, not a legal one, and that their political status depends less on what federal policymakers say about it than on what Natives themselves choose to do.

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**THE DUAL POLITICAL STATUS  
OF ALASKA NATIVES  
UNDER U.S. POLICY**



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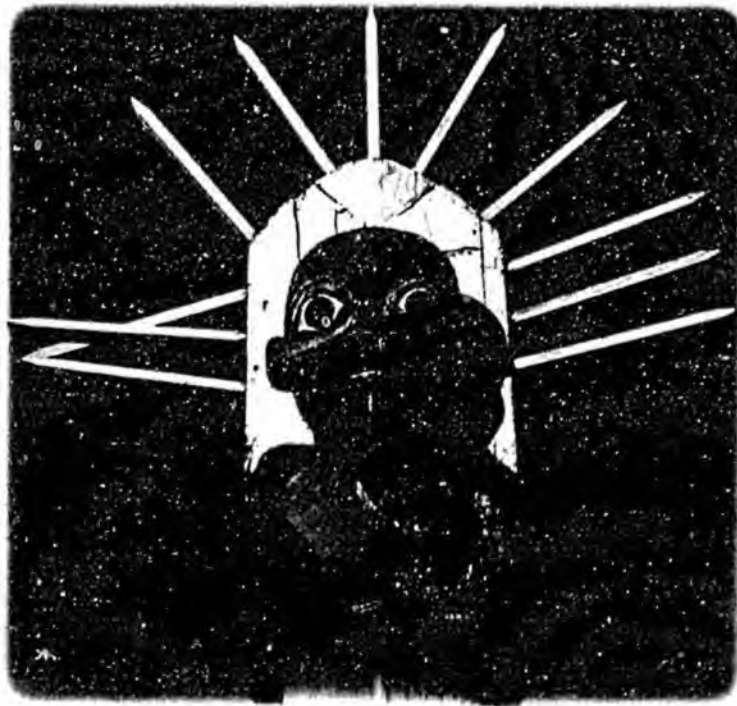
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UNIVERSITY OF ALASKA ANCHORAGE



1994 ANNUAL REPORT



 *Sealaska*  
CORPORATION



## DEDICATION



**T**his 1994 Annual Report is dedicated to L. Embert Demmert of Seattle, who is retiring from the Sealaska board this year. The Board of Directors and management of Sealaska Corporation joins Sealaska shareholders in saying "thank you" to Mr. Demmert for his dedication and leadership.

Mr. Demmert is a retired educator and commercial fisherman who began his service to the Sealaska board in 1985. In recent years he has taught the Tlingit language to others and has served as Chairman of the Shareholder Communications Committee, as Vice Chairman of the Finance Committee, and as a Trustee of the Sealaska Heritage Foundation.

*We wish him well with his future plans.*



## TABLE OF CONTENTS

Operations .....	Page 3
Our Land .....	5
Culture Support .....	7
New Natives .....	9
Letter to Shareholders .....	10
Our Mission & Philosophy .....	12
Financial Table of Contents .....	13

### ANNUAL SHAREHOLDERS' MEETING

Sealaska Corporation will be holding its 21st Annual Meeting of Shareholders in Klawock, on Prince of Wales Island. The meeting will start at 10 a.m. October 1 at the Klawock City Gym.

### ABOUT THE CHILDREN'S DRAWINGS

In April, Sealaska conducted an artwork contest for children 10 years of age or younger, with the winners' artwork to be published in this annual report. The themes of the contest were: *What does being Native mean to you?*, *What is your favorite Native symbol?*, and *Sealaska operations*.

We received several entries representing a broad variety of topics including village life, subsistence activities, culture, totems, land, timber harvesting and other subjects.

The artwork featured in this annual report is that of the contest winners: Samuel Hamilton, age 9; Kyle Anderson, Jr., age 9; Jeannette Brown, age 8; and Lani Jimenez, age 9.

Congratulations to the winners, and thank you to everyone else who submitted artwork. We hope you all keep drawing, and encourage you to participate in future contests.

COVER PHOTO:  
TOTEM AT KLAWOCK TOTEM PARK



*ur timber remains one of our most valuable assets.  
We continue to venture into other timber operations to increase  
the use of our available timber supply.*

*Trees are  
important to us.  
We make lots  
of things  
from trees.*



**Samuel Hamilton**

Age 9

Olivehurst, California

Son of Richard and  
Debra Hamilton

Haida name:  
Skiliiwaangs

Raven Clan



ONS OPERATIONS OPERATIONS OPERATI

STC is a significant Alaska business. It is the state's largest exporter of round logs, and it is well known for its timber harvesting business. Less widely known is that STC is an important source of sawn cants and milled lumber, primarily for East Asia, and of pulp for domestic markets.

Our investment portfolio is a good performer for us, as well. It recorded another positive year for us, and it did so even though the stock and bond markets, in general, turned in their worst performances in several years.

In the future, we will continue to develop our extensive subsurface land holdings. The mining industry is one where development of an operating mine may take decades. Even so, Sealaska may have mining operations under way before the end of the 1990s.

Also on the horizon are the expected fruits of the business acquisition efforts launched by the board of directors. The tourism industry is one possible direction targeted. Among the many advantages offered by tourism are the long-term nature of the business and the appeal to tourists of our arts, crafts, culture and land.





*O*ur history is carved in the landscape of Southeast Alaska. Through the land claims, our grandparents' dream was fulfilled ... their children and grandchildren have this land to hold, now and forever.

*My favorite  
Native symbol is  
the Love Birds,  
the Eagle and  
the Raven.*



*Kyle Anderson, Jr.*

Age 9

Kake, Alaska

Son of Kyle and Candi  
Anderson

Tlingit name: Lgein

Tsimshian name: Naash

Raven Clan

policies, guide all aspects of our timber harvesting activities and provide strict requirements to protect water quality and fish and wildlife habitat.

- Our forest management program focuses strongly on planting and thinning trees to optimize future productivity. Natural new growth works to our advantage on many of our forest lands, while hand planting is used to replace trees in selected areas, particularly where water quality or aesthetic appearance is important. Thinning of new growth increases tree growth and shortens the time in which a second harvest will occur.
- We continuously undertake and cooperate in forest management, stream and ecosystem studies to ensure our forest practices protect water quality and fish habitats, and maintain healthy, productive forests. Based upon these studies, we can change our forest practices to ensure productive forest lands for fish, wildlife and timber.
- Since 1974, Sealaska has sought to locate and survey Native historic and cemetery sites throughout Southeast Alaska and, ultimately, to gain conveyance of them from the federal government. This effort has helped us save permanent and seasonal villages, forts, burial grounds, petroglyphs and pictographs.



# OUR LAND OUR LAND OUR LAND



**Our land is the strongest tangible tie with our past**

Our history is carved in the landscape of Southeast Alaska. From time immemorial, our people have lived along the forested shorelines of the North Pacific and its inland waterways. Our languages, our traditions, and our culture are rooted here.

Modern society has taken its toll on our existence, but we have never given in. This was particularly so when our long struggle resulted in the 1971 passage of ANCSA — the Alaska Native Claims Settlement Act.

Many Native leaders fought for years to reach that goal. They succeeded in convincing Congress to recognize our aboriginal rights to our land, making it possible for us to keep part of that land and to be compensated for the rest.

### A dream was fulfilled

ANCSA was shaped around our historic concept that land was owned collectively by the clan. ANCSA also fulfilled our grandparents' dreams that our children and grandchildren would have this land to hold — now and forever.

This is why the following major segment of Sealaska's mission statement is so important: "Retain

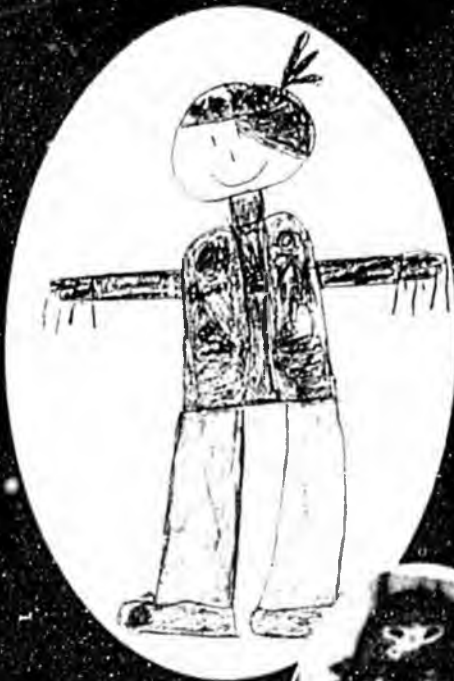
*Our history is carved in the landscape of Southeast Alaska. Through our grandparents' dream was fulfilled and our grandchildren have this land*





*Our past is woven closely into our lives today.  
More than 1,200 shareholders and family members were  
drawn to the Celebration biennial dance gathering to  
celebrate our culture, our heritage, our identity.*

*Tlingit people are special to me because of my grandma Katherine Mills ... I am proud of my culture. I am proud to learn Tlingit words.*



**Jeannette Brown**

**Age 8**

**Hoonah, Alaska**

**Daughter of  
Greg and Judy Brown**

**Tlingit name: Yakwxwaan Tl'áa**

**Raven Clan**



## CULTURE SUPPORT CULTURE SUPPORT C

Foundation's programs are broad Sealaska's support for the Foundation, an independent non-profit organization, also helps make possible scholarships, language and cultural studies and related books and tapes, the creation of tribal archives, the Naa Kahidi Theater, and many other programs.

It should also be noted that Sealaska has continued its efforts to speak out for its shareholders and for all Alaska Natives on cultural, social and economic issues of importance. We do this through our own voice and through our support of, and involvement in, the Alaska Native Brotherhood, Alaska Federation of Natives and other organizations.

We have persevered for more than two decades. Our progress has not always been easy. But we have a corporate instrument we are using to help our people and protect our land. It is giving us an important means for perpetuating our heritage, our culture, and our identity, just as it is helping to build our economic and social status. Ultimately, the responsibility lies with each of us individually, so Sealaska is not the only answer for us. But it is an important one, and it is one we can draw on as we go forward individually and as a people.





**C**ultural values are at the heart of our philosophy

We are Tlingits, Haidas and Tsimshians, and, for a great many of us, our past is woven closely into our lives today. Our past is rich with tradition, and it often sustains us, just as we hope it will sustain countless future generations.

In the formation of our corporation, we recognized the special meaning of our heritage. In our corporate philosophy, we included words rarely used in such statements by traditional American businesses. Underlined here, the importance of those words is clear: "... to support and preserve the economic, cultural and social values of its shareholders ..."

Some of our people have never lost sight of their cultural ties. Language, music, arts, crafts and dance have always been important to them. Yet the danger exists that the values and the ways of the past could erode and disappear.

*Our past is woven close  
More than 1,200 shareholders  
drawn to the Celebration  
celebrate our culture, o*

**We are on a unique path**

To help keep the tangible reflections of our heritage alive, Sealaska set out on its unique path to use a portion of its business revenue to protect our values.

For example, it is unlikely that many events in this century have underscored the Native heritage of Southeast Alaska more powerfully than Celebration. Every other year since its start in 1982, the biennial Celebration has been an occasion to draw together thousands of Alaska Native people.

Celebration '94 in Juneau was an event in which Sealaska's contributions were evident in many ways, including direct financial support; continuing support over the years to Celebration's organizer, the Sealaska Heritage Foundation; and shareholder involvement in everything from planning to participating and observing.

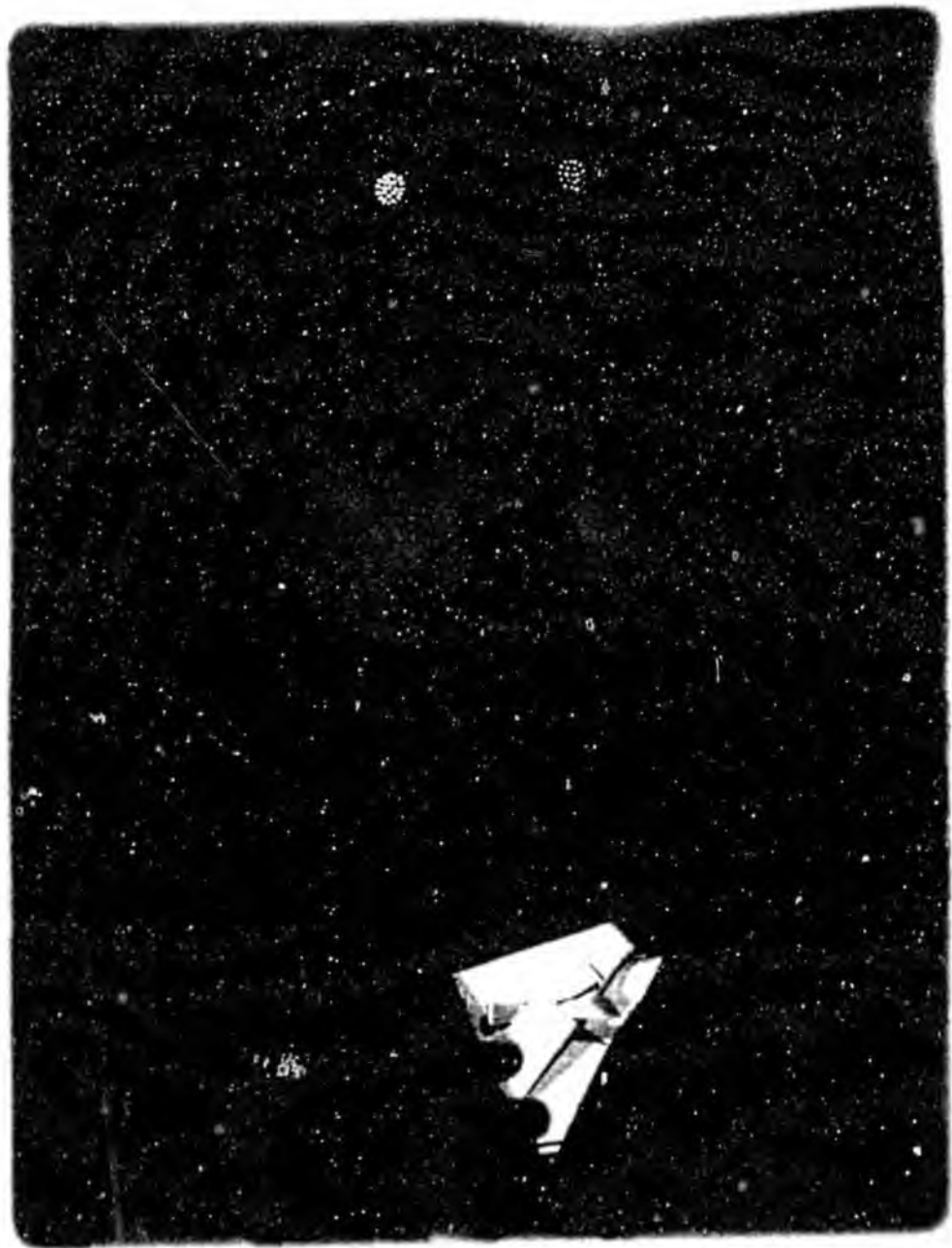
**Foundation's programs are broad**

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**W** *hat shall we do about our children and grandchildren? Shareholders will decide whether or not they want to enroll "New Natives" in the corporation in a special vote next spring.*

*Being Native means  
my mom can come to my  
school and teach  
about the Haidas.*



**Lani Jimenez**

Age 9

Seattle, Washington

Daughter of John and  
Jeanne Jimenez

Haida name: Gudaxiigans

Double Fin Killer  
Whale/Raven Clan



- The number of Sealaska shareholders will increase by about 65 percent if stock is issued to New Natives.
- Shareholder comments ranged across the board — from giving New Natives stock, to providing lesser benefits or doing nothing.



At meetings held earlier this year in shareholder communities many important points were raised. More shareholder education will be done in fall workshops, at the October annual meeting, and in the *Sealaska Shareholder* and special mailings.

**Resolution will be written**

Sealaska's board of directors will then draft resolutions for shareholders to vote on next spring. The ballot measures will cover New Natives and leftouts and must deal with basic questions such as these:

- Should New Natives and leftouts be enrolled in the corporation?
- If the answer is "yes," should Settlement Common Stock be issued, or should another stock type that is fully alienable or partially restricted be issued? Or should benefits to New Natives take some other direction?

The ultimate decision will be up to the shareholders.



**W**hat shall we do about grandchildren? Shareholders not they want to enroll the corporation in a spe

### Shareholders will decide on New Natives and leftouts

Congress set the basic rules for Native corporations in ANCSA, the Alaska Native Claims Settlement Act. When ANCSA became law on December 18, 1971, it said that Alaska Natives born on or before that day were eligible to become shareholders of the new corporations. Anyone born after that day was not eligible for the original enrollment — and it is these young people who we now call New Natives.

For many years, inheritance of Native corporation stock was the only way a young person could become a shareholder. Then, in 1987, the "1991 Amendments" were passed by Congress. The Amendments made it possible for a living shareholder to give stock to a living child, grandchild, great-grandchild niece, or nephew. Further amendments later made it possible to gift to siblings.

### New possibility opened

The new amendments went a step further by stating that Native corporations could issue stock to New Natives, if existing shareholders voted to approve such a measure.

In 1989, Sealaska's shareholders were polled in an advisory vote on this issue and were split evenly between "yes" and "no".

Next spring, the question of New Natives will be on the ballot again. This time it will be a binding vote to decide if shareholders want to issue Sealaska Corporation stock to New Natives.

**Information program under way**

Between now and then, an extensive education program is providing shareholders with information about the pros and cons of issuing such stock to descendants who meet three conditions: A birth date after December 18, 1971; at least one-quarter Alaska Native blood; and U.S. citizenship.

Shareholders also will be asked to decide if "leftouts" should be enrolled in the corporation. These are the 200 or so people who were eligible for the original ANCSA enrollment, but who were left out for such reasons as being away in military service or unaware at the time of the original enrollment.

**Impact measured**

As a first step toward the 1995 vote, Sealaska asked an independent research firm to find out more about New Natives and how shareholders feel about them. These highlights emerged:

- There are an estimated 10,000 New Natives. In comparison, there are approximately 15,500 current Sealaska shareholders.

- The number of Sealaska shareholders will increase by about 65 percent if stock is issued to New Natives.
- Shareholder comments ranged across the board — from giving New Natives stock, to providing lesser benefits or doing nothing.

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The ultimate decision will be up to the shareholders.

Dear Shareholder,

We are pleased to report to you that your corporation accomplished its 10th consecutive year of profitability for the fiscal year ended March 31, 1994.

Net earnings for your company totaled \$22.8 million from total revenues of approximately \$227 million. This excellent performance is largely attributable to historically high timber prices for Sealaska's export timber in our predominantly Asian markets.

The second major contributor to net earnings came from profits generated by Sealaska's diversified investment portfolio. The portfolio grew to \$238 million, up from \$216 million, even though the bond and equity markets during the year were volatile. An additional net amount of \$15 million was also added to the investment and growth component of the portfolio. This was done in anticipation of acquiring new and diverse businesses that will increase shareholders' equity and dividends into the future.

Overall shareholders' equity increased again, growing 8.1 percent. Dividends totaling \$7.0 million were paid to shareholders during the year, bringing the total amount paid to \$82 million since the company's start.

In 1994, we also saw Sealaska reach an amicable settlement agreement with Kake Tribal Corporation over a lawsuit stemming from timber stumpage purchases.

In addition to the major business issues affecting your company in 1994, Sealaska continued its strong program of supporting shareholder advocacy in areas such as subsistence, education and cultural activities. Strong support also continues for the landless villages within the Sealaska region as they work to achieve recognition by the U.S. Congress.

An educational effort was launched to consider whether or not to include "New Natives" — those born after the original enrollment in 1971 — as shareholders in the corporation. Continuing our efforts to work and interact with shareholders, in the next several months we will examine with you the pros and cons of possible enrollment.

Other ongoing activities include our active investment into mineral exploration on Sealaska's subsurface estate. Reconnaissance programs were conducted by both Sealaska and major mining companies on portions of Sealaska's land. This will continue into this fiscal year, and will develop and strengthen our overall natural resource production program.

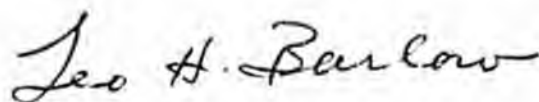
As many of you know, Sealaska, like many other ANCSA corporations, is being audited by the Internal Revenue Service on its net operating loss (NOL) transactions. Unlike other Southeast Native urban and village corporations, the size and complexity of Sealaska's transactions is making our audit process much slower. This has been the case with most regional corporations having similar NOL transactions. Your board and management are concentrating their efforts to bring this process to conclusion in an expeditious fashion that does not harm the long-term fiscal health of the company. It is our goal to keep shareholders continually updated on the progress of the audit as it occurs. We are hopeful a resolution will be reached this year.

A significant challenge facing Sealaska this year is our effort to reduce the amount of 7(i) liability as mandated under the ANCSA resource revenue sharing agreement among regional corporations. As directed by the board of directors, management is working to supplement the cash flow from our ANCSA timber with new revenue streams from acquisitions. Shareholders can expect to hear more about this in the coming twelve months.

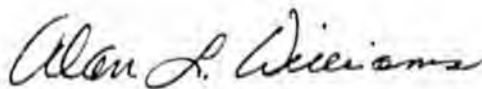
As we enter 1995, timber will continue to play a primary role in Sealaska's business. Our wholly owned subsidiary, Sealaska Timber Corporation (STC), projects another profitable year with continued high prices for Sealaska's timber resource. STC also will work to expand its diversification efforts with the sawn lumber operations now under way.

Looking forward to this fiscal year, new and exciting opportunities lie before us. Clearly, the economic success of the past ten years, coupled with a strong board and management team, will allow us to launch a stronger and stable future as we move ahead. One thing is certain — the strength of our future largely depends on you, the shareholder, to constantly remind us of our mission and goals that must be achieved for the long term success we all envision.

Sincerely,



Leo H. Barlow  
President & CEO



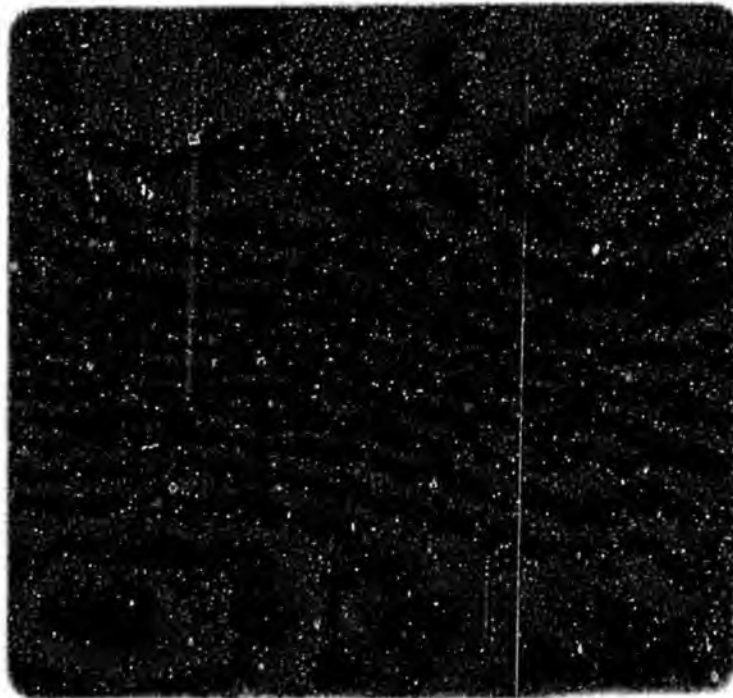
Alan L. Williams  
Chairman of the Board



## CORPORATE PHILOSOPHY

**S**ealaska Corporation's origin is in the culture and tribal land base of Southeast Alaska, the Alaska Native Brotherhood, and the Alaska Native Claims Settlement Act.

Sealaska's Corporate Philosophy is to support and preserve the economic, cultural and social values of its shareholders through excellence in management and profitability and to preserve its special status as an ANCSA corporation and as a tribe.



## MISSION STATEMENT

**I**n keeping with the Corporate Philosophy, Sealaska's Mission is to:

- Maximize return for dividends and shareholder benefits by increasing corporate equity value.
- Maintain regional Native control and ownership of Sealaska Corporation.
- Retain control and ownership of Sealaska's ANCSA lands in perpetuity for the original shareholders, their heirs, and their descendants.

## DETAILED FINANCIAL INFORMATION

<b>Five-Year Summary of Selected Financial Data</b> A capsule look at important financial information since 1990 .....	Page 14
<b>Management's Discussion and Analysis</b> A discussion of data in the financial tables and a comparison with previous years .....	15
<b>Consolidated Financial Statements</b> A detailed financial picture of Sealaska .....	22
<b>Notes to Consolidated Financial Statements</b> Notes about the financial tables .....	28
<b>Report of Independent Accountants</b> The summary opinion of the firm that examined Sealaska's financial information .....	39

## FIVE-YEAR SUMMARY OF SELECTED FINANCIAL DATA

<i>(In thousands of dollars, except per share amounts and ratios)</i>	1994	1993	1992	1991	1990
			(as restated)		
Total revenues	\$227,174	\$167,023	\$128,205	\$129,046	\$108,893
Earnings from continuing operations	22,749	22,260	22,757	16,651	19,814
Net earnings	22,749	21,900	22,257	31,030	16,813
Total assets	320,520	282,897	272,888	262,956	277,154
Shareholders' equity	208,773	193,057	174,310	166,632	172,774
Long-term debt	3,900	5,223	6,467	7,979	18,579
Short-term bank debt	9,300	12,790	4,800	6,500	43,919
Current ratio	2.32	2.71	2.48	1.97	1.11
Debt/equity ratio	0.33	0.24	0.23	0.31	0.60
Shareholders' equity per share	132.39	122.42	110.53	105.66	109.56
Net earnings per share	14.43	13.89	14.11	19.68	10.66
Book value per 100 shares	<b>\$ 13,239</b>	<b>\$ 12,242</b>	<b>\$ 11,053</b>	<b>\$ 10,566</b>	<b>\$ 10,956</b>

## MANAGEMENT'S DISCUSSION AND ANALYSIS

### **F**iscal year 1994 highlights

- Sealaska had its 10th consecutive year of profitability, reporting a net income of \$2,749,000.
- Gross revenues of \$227,174,000 were the highest ever recorded for Sealaska's continuing operations.
- As the largest exporter of round logs in Alaska, Sealaska had timber earnings before Section 7(i) revenue sharing of \$53,006,000 — our most profitable year ever for timber.
- Section 7(i) revenue sharing from Sealaska's Alaska Native Claims Settlement Act (ANCSA) timber of \$35,788,000 is the highest amount paid out by any Native corporation. Sealaska has paid out \$138,000,000 to other regional corporations since inception.
- Sealaska's investment portfolio grew to \$238,335,000 from \$215,925,000 during the year.
- Shareholders' equity grew 8.1 percent.
- Shareholders received dividends totaling \$7,011,000 (\$227 and \$218 per 100 shares in December 1993 and June 1994, respectively) on fiscal year 1994 earnings.
- Urban and at-large shareholders also received \$3,357,000 (\$255 and \$39 per 100 shares from Sealaska and other regional corporations, respectively, in June 1994) from natural resource revenue sharing among regional corporations.
- Sealaska Elders' Settlement Trust distributed \$275,000 during the year to eligible shareholders reaching their 65th birthday.
- Exploration of the mineral potential by the corporation's own geologic reconnaissance team and by several major mining companies continued on portions of Sealaska's 600,000 acres of subsurface lands.

## MANAGEMENT'S DISCUSSION AND ANALYSIS

### FINANCIAL ANALYSIS OF CONSOLIDATED OPERATIONS

#### Revenues

Revenues of \$227,174,000 increased 36 percent and 77 percent from fiscal year 1993 and 1992, respectively.

Sales from timber harvests of \$112,147,000 increased 44 percent and 55 percent from fiscal year 1993 and 1992, respectively. Sales from the purchase and resale of timber of \$107,682,000 increased 38 percent and 178 percent from fiscal year 1993 and 1992, respectively. Approximately 66 percent of the increase from fiscal year 1993 was due to price increases, 26 percent due to volume increases and 8 percent due to changes in quality and species mix.



Export timber sales represented approximately 95 percent of total sales in fiscal year 1994, compared to 81 percent in fiscal year 1993 and 88 percent in fiscal year 1992. Sales to Japan accounted for approximately 77 percent of total fiscal year 1994 sales, compared to 67 percent for fiscal year 1993. Three major customers of Sealaska Timber Corporation accounted for approximately 48 percent of total sales in fiscal year 1994, compared to 61 percent and 60 percent in fiscal year 1993 and 1992, respectively.

Investment and interest income of \$7,345,000 decreased 34 percent and 57 percent from fiscal year 1993 and 1992, respectively. This was reflective of the decline in investment securities markets during this period, especially February and March 1994. Short-term fixed income securities, of which Sealaska allocates at least 30 percent of the investment portfolio, earned an average of 3.5 percent in fiscal year 1994, a decrease from 6 percent average earnings in fiscal year 1992.

#### Costs of products and services



The average cost of products and services to net sales of approximately 71 percent for the year decreased from 76 percent for fiscal year 1993 and 73 percent for fiscal year 1992. This was primarily due to higher export ANCSA timber prices which averaged \$965 per thousand board feet compared to \$727 and \$659 for fiscal year 1993 and 1992, respectively.

#### Natural resource revenue sharing

The portion of Sealaska revenue distributable to other ANCSA corporations of \$35,788,000 for the year is the highest amount ever for any single year of operations. This is partially due to higher ANCSA timber volumes, but primarily due to the high export timber prices experienced during the year.

### Income taxes

As stated in Note 10, Sealaska retroactively adopted a new accounting standard, SFAS 109, Accounting for Income Taxes, during the year. This resulted in tax benefits of \$3,000,000 for fiscal year 1994, \$3,000,000 for fiscal year 1993 and \$1,000,000 for fiscal year 1992.

The resulting deferred tax asset of \$30,000,000 at March 31, 1994 represents the estimated benefit of not paying federal and state income taxes on projected operating income over the next three years. Sealaska will not pay income taxes because of depletion from ANCSA timber harvested.

### Earnings per share

Earnings have been fairly consistent over the last three years at \$14.43 per share for fiscal year 1994, compared to \$13.89 and \$14.11 per share for fiscal year 1993 and 1992, respectively. Although export timber prices increased, the investment securities portfolio earnings decreased.

## ANALYSIS OF FINANCIAL POSITION

### Assets

Total assets increased 13 percent to \$320,520,000 from the prior fiscal year end. As disclosed in Note 7 to the financial statements, the value of Sealaska's ANCSA assets, although they have significant economic value to Sealaska, are not included in this amount. Major line item changes were from the following:

- Investment securities increased approximately \$20,000,000 from timber and investment security earnings.
- Amounts payable under ANCSA Sections 7(i) and 7(j) increased approximately \$20,000,000 from fiscal year 1993. This was due to the higher ANCSA timber sales volume and timber prices than in fiscal year 1993. This amount is paid out three months after fiscal year end.
- Shareholders' equity increased 8 percent to \$208,773,000 from fiscal year 1993. The increase was from earnings of \$22,749,000, offset by the dividends of \$7,033,000 paid out during the year.



## MANAGEMENT'S DISCUSSION AND ANALYSIS

### Liquidity and capital resources

Sealaska has a current investment securities portfolio in excess of \$110,000,000 and unused lines of credit at year-end of \$22,700,000. The corporation has adequate short-term capital resources to cover short-term cash needs.

Sealaska's current ratio at year-end of 2.32 (current assets divided by current liabilities) decreased slightly from 2.71 the prior year. This decrease was primarily due to the Section 7(i) revenue sharing for fiscal year 1994 which represents a \$20,000,000 increase in both current assets and current liabilities from fiscal year 1993. Net working capital (current assets less current liabilities) of \$79,739,000 increased from \$66,723,000 the prior year.

Sealaska has no long-term capital commitments at this time. Sealaska expects to have adequate capital available for long-term uses such as acquisition of new businesses. The strategic plan acquisition process is progressing, which would use available funds from the current investment securities portfolio and leveraging Sealaska's financial position through long-term debt. Of the total \$238,335,000, approximately \$99,000,000 of investment securities are not available for current use pending resolution of the IRS examination of Sealaska's NOL sales.

Sealaska generated positive cash flows of \$20,184,000 in fiscal year 1994, compared to \$25,628,000 and negative cash flow of \$1,849,000 in fiscal year 1993 and 1992, respectively. This was primarily from earnings from the timber operations and investment portfolio.

## FACTORS AFFECTING CORE BUSINESS PERFORMANCE

### Export timber prices

Sealaska's results of operations are significantly affected by business conditions and pricing of round logs in the Japanese market. It is not unusual for export log prices to swing from season to season based upon the exchange rate of the yen to the U.S. dollar, U.S. government regulations and court decisions that affect timber supply, and general business and political conditions in Japan.

Each \$1 average change in price per thousand board feet will impact the bottom line by an estimated \$100,000, prior to natural resource revenue sharing.

### Export timber quality

Normal business operations for Sealaska include timber harvests in several areas each year. As areas are closed down, new areas are opened. As a result of the volumes harvested from various locations, the quality and species mix of the timber varies. This results in differing amounts of revenue generated for the same volume of timber.



### Interest rates and equity prices

Approximately 11 percent of Sealaska's \$238,335,000 investment portfolio is invested in international investment securities. The remaining 89 percent is invested in U.S. fixed income and equity securities.

Interest rate movements influence investment allocation decisions and affect overall investment earnings. A change of 1 percent in interest rates on notes and bonds could impact Sealaska's earnings by as much as \$3,500,000 in gains or losses.

Earnings from equity securities, which usually comprise approximately 21 percent of the investment portfolio, are very sensitive to changes in equity prices. A change of 1 percent change in average stock prices could impact earnings by as much as \$500,000 in gains or losses.

## ANALYSIS OF CORE BUSINESS OPERATIONS

### Timber

Fiscal year 1994 was the 13th year of timber harvesting and marketing operations for Sealaska Timber Corporation (STC). During this year, 109 million board feet of timber was harvested. A total of 261 million board feet of timber was marketed, including timber from the ANCSA operations, purchase and resale activities and logs marketed for others.

STC generated earnings and revenues as follows:

	Earnings	Revenues	Return on revenues
Fiscal year 1994	\$20,761,000	\$215,419,000	10 percent
Fiscal year 1993	\$18,611,000	\$154,539,000	12 percent
Fiscal year 1992	\$16,480,000	\$110,042,000	15 percent

Although earnings and revenues increased, return on revenues decreased due to the growth in timber purchase and resale activity. This activity has lower margins than ANCSA timber sales.

## MANAGEMENT'S DISCUSSION AND ANALYSIS

### Timber (Cont.)

Timber volumes sold by major category compared to prior years were as follows:

<i>(Thousands of board feet)</i>	ANCSA	Purchase and resale	Marketed for others	Other	Total
Fiscal year 1994	109,648	92,042	49,093	10,044	260,827
Fiscal year 1993	86,721	78,529	38,399	27,818	231,467
Fiscal year 1992	100,859	57,494	27,171	18,951	204,475

STC volumes show an increase in purchase and resale activity. This is reflective of the strategic direction STC has taken to continue to grow while maintaining ANCSA harvesting volumes.

Harvest of ANCSA timber in fiscal year 1994 was conducted in Southeast Alaska in the areas of Hoonah, Hydaburg, Klawock and east Prince of Wales Island on approximately 5,000 acres of land.

Purchase and resale of timber activities include the purchase of logs from private landowners in the Pacific Northwest, Southcentral and Southeast Alaska and sales into the export market, either in conjunction with or separate from ANCSA timber.

### Investment Portfolio

The investment portfolio had earnings as follows:

	Year-end balance	Earnings	Average return
Fiscal year 1994	\$238,335,000	\$ 7,345,000	3.2 percent
Fiscal year 1993	\$215,925,000	\$11,067,000	5.5 percent
Fiscal year 1992	\$188,540,000	\$16,944,000	9.2 percent

The lower returns on the investment portfolio in fiscal year 1994 are due to the general performance of the investment securities markets. Short-term fixed income securities earned just over 3 percent for fiscal year 1994, down from an average return of 6 percent in fiscal year 1992.

Earnings on long-term fixed income investments earned higher rates than short-term fixed income securities until February 4, 1994, when the Federal Reserve increased short-term interest rates for the first time since 1989. Sealaska usually allocates approximately 50 percent of its investment portfolio to intermediate (3 to 5 year maturities) fixed income securities. This type of security lost approximately 4 percent of its value during the last two months of fiscal year 1994 due to declines in the domestic bond market. Sealaska earned approximately 2 percent on this investment allocation during fiscal year 1994.

The equity markets, sensitive to changes in interest rates, performed substantially below historical levels. The Standard and Poor's 500 earned just over 1.4 percent for fiscal year 1994, primarily due to declines in the U.S. equity markets in February and March 1994. Sealaska earned approximately 8.5 percent on this investment allocation during fiscal year 1994.

Sealaska's board, in an effort to reduce the price and earnings volatility of Sealaska's investment portfolio, diversified into international investment securities in January 1994 with an allocation of approximately \$20,000,000.



## OUTLOOK

### IRS audits

Sealaska expects to move to the IRS appeals level for the audit years 1982 to 1988 during the second quarter of fiscal year 1995. The IRS examination of the 1989 to 1990 audit is expected to continue and be completed during the third quarter of fiscal year 1995.

### Timber

The export prices of timber sold in Japan and Korea are expected to remain at late fiscal year 1994 prices. STC expects fiscal year 1995 earnings to remain at comparable levels to fiscal year 1994 earnings. Resource management will continue to be an integral part of the overall operating plan.

### Investment Portfolio

Earnings from the investment portfolio for the first half of fiscal year 1995 are expected to continue to perform below historical levels. However, interest rates should stabilize at higher levels by year end. Uncertainty in the investment securities markets continues as market watchers have differing expectations of the Federal Reserve again raising interest rates in the near term. Until the markets have stabilized, Sealaska will remain in a defensive position.

### Minerals

Sealaska will continue to explore the potential for mineral extraction of its 600,000 acres of ANCSA subsurface estate through its own efforts and those of major mining companies.

### Business acquisitions

The board and management will continue to assess businesses to acquire. While an acquisition is not expected this year, they will continue with the process.

## CONSOLIDATED BALANCE SHEETS

<i>(In thousands of dollars)</i>	March 31, 1994	March 31, 1993
		<i>(as restated)</i> <i>(Notes 1 and 17)</i>
<b>ASSETS</b>		
<i>Current assets:</i>		
Cash	\$ 475	\$ 503
Investment securities (Note 4)	110,769	90,557
Receivables (Notes 5 and 8)		
Trade	5,870	5,110
Other	6,617	754
Inventories (Note 8)	13,819	8,457
Prepaid and other current assets	2,423	428
	139,973	105,809
<i>Investment securities (Note 4):</i>		
Permanent Fund	72,133	70,979
Endowment Funds	4,319	3,979
Elders' Settlement Trust	4,277	4,070
Other	46,837	46,340
	127,566	125,368
<i>Property and equipment, at cost (Notes 6, 8 and 9)</i>	83,788	82,756
<i>Less - Accumulated depreciation and amortization</i>	(62,112)	(60,143)
	21,676	22,613
<i>Timber, timberland and mineral resources received pursuant to ANCSA (Notes 2 and 7)</i>	—	—
<i>Deferred taxes (Note 10)</i>	30,000	27,000
<i>Other assets</i>	1,305	2,107
<b>TOTAL ASSETS</b>	<b>\$320,520</b>	<b>\$282,897</b>

*(Continued)*

*See accompanying notes to consolidated financial statements.*

<i>(In thousands of dollars)</i>	March 31, 1994	March 31, 1993 (as restated) (Notes 1 and 10)
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
<i>Current liabilities:</i>		
Notes payable (Note 8)	\$ 9,300	\$ 12,790
Current installments of long-term debt (Note 9)	1,419	1,323
Accounts payable	11,528	6,347
Amounts payable under ANCSA Sections 7(i) and 7(j) (Note 2)	34,533	14,038
Other accrued expenses	3,454	4,588
	60,234	39,086
<i>Long-term debt, less current installments (Note 9)</i>	2,481	3,900
<i>Other noncurrent liabilities (Note 4)</i>	6,207	4,029
<i>Deferred income (Note 10)</i>	42,825	42,825
<i>Shareholders' equity (Note 2):</i>		
Common stock, no par or stated value- Authorized 2,000,000 shares; issued 1,577,000 shares		
Contributed capital	93,162	93,162
Retained earnings	115,611	99,895
	208,773	193,057
<i>Commitments and contingencies (Notes 2, 10 and 12)</i>	—	—
<b>TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY</b>	<b>\$320,520</b>	<b>\$282,897</b>

See accompanying notes to consolidated financial statements.

## CONSOLIDATED STATEMENTS OF OPERATIONS

*(In thousands of dollars,  
except per share amounts)*

Years ended	March 31, 1994	March 31, 1993	March 31, 1992
	<i>(as restated, Notes 1 and 10)</i>		
<b>Revenues:</b>			
Net sales	\$219,829	\$155,956	\$111,261
Investment and interest income	7,345	11,067	16,944
	<u>227,174</u>	<u>167,023</u>	<u>128,205</u>
<b>Costs and expenses:</b>			
Costs of products and services	155,464	119,180	80,800
Selling, general and administrative	12,342	11,888	14,711
Interest	510	855	1,420
Other, net	3,932	2,355	1,439
	<u>172,248</u>	<u>134,278</u>	<u>98,370</u>
<b>Earnings from continuing operations before natural resource revenue sharing and income taxes</b>			
Natural resource revenue sharing (Note 2)	54,926	32,745	29,835
	<u>(35,177)</u>	<u>(13,485)</u>	<u>(8,078)</u>
<b>Earnings from continuing operations before income taxes</b>			
Income tax benefit (Note 10)	19,749	19,760	21,757
	<u>3,000</u>	<u>3,000</u>	<u>1,000</u>
<b>Earnings from continuing operations</b>			
	<u>22,749</u>	<u>22,260</u>	<u>22,757</u>
<b>Loss from discontinued operations (Note 3)</b>			
		(360)	(500)
<b>Net earnings</b>			
	<u>\$ 22,749</u>	<u>\$ 21,900</u>	<u>\$ 22,257</u>
<b>Earnings per share of common stock:</b>			
Earnings from continuing operations	\$ 14.43	\$ 14.12	\$ 14.43
Earnings (loss) from discontinued operations		(.23)	(.32)
<b>Net earnings</b>			
	<u>\$ 14.43</u>	<u>\$ 13.89</u>	<u>\$ 14.11</u>
<b>Dividends (Note 13)</b>			
	<u>\$ 4.46</u>	<u>\$ 2.00</u>	<u>\$ 5.00</u>

See accompanying notes to consolidated financial statements.

## CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY

<i>(In thousands of dollars)</i>	Shares of common stock	Contributed capital	Retained earnings	Total shareholders' equity
Balance at March 31, 1991	1,577,000	\$93,162	\$ 50,470	\$143,632
Cumulative effect of change in method of accounting for income taxes (Note 10)			23,000	23,000
Restated balances at March 31, 1991	1,577,000	93,162	73,470	166,632
Net earnings for the year ended March 31, 1992			22,257	22,257
Elders' Settlement Trust established (Note 4)			(6,697)	(6,697)
Dividends to shareholders			(7,882)	(7,882)
Balance at March 31, 1992	1,577,000	93,162	81,148	174,310
Net earnings for the year ended March 31, 1993			21,900	21,900
Dividends to shareholders			(3,153)	(3,153)
Balance at March 31, 1993	1,577,000	93,162	99,895	193,057
Net earnings for the year ended March 31, 1994			22,749	22,749
Dividends to shareholders			(7,033)	(7,033)
Balance at March 31, 1994	1,577,000	\$93,162	\$115,611	\$208,773

See accompanying notes to consolidated financial statements.

## CONSOLIDATED STATEMENTS OF CASH FLOWS

<i>(In thousands of dollars)</i> Years ended	March 31, 1994	March 31, 1993	March 31, 1992
	<i>(as restated, Notes 1 and 10)</i>		
<i>Cash flows from operating activities:</i>			
Net income	\$ 22,749	\$21,900	\$22,257
Adjustments to reconcile net income to net cash provided by operating activities-			
depreciation, amortization and depletion	7,963	9,622	8,658
(Increase) decrease in receivables	(6,752)	(321)	8,984
Increase in inventories	(5,362)	(1,405)	(2,152)
Increase in deferred taxes	(3,000)	(3,000)	(1,000)
Increase (decrease) in accounts payable	5,182	741	(2,353)
Increase (decrease) in amounts payable under ANCSA Sections 7(i) and 7(j)	20,495	4,387	(7,850)
Decrease in other accrued expenses	(1,201)	(2,429)	(809)
Increase (decrease) in other noncurrent liabilities	2,178	(2,409)	3,747
Other	(678)	(213)	764
<b>Net cash provided by operating activities</b>	<b>41,574</b>	<b>26,873</b>	<b>30,246</b>
<i>Cash flows from financing activities:</i>			
Dividends to shareholders	(7,033)	(3,153)	(7,882)
Repayments of long-term debt	(1,323)	(1,245)	(1,512)
Elders' Settlement Trust established			(6,697)
Increase (decrease) in notes payable	(3,490)	7,990	(1,700)
<b>Net cash provided by (used in) financing activities</b>	<b>(11,846)</b>	<b>3,592</b>	<b>(17,791)</b>

*(Continued)*

*See accompanying notes to consolidated financial statements.*

(In thousands of dollars)

Years ended	March 31, 1994	March 31, 1993	March 31, 1992
			(as restated, Notes 1 and 10)
<i>Cash flows from investing activities:</i>			
Proceeds from disposition of property and equipment	\$ 2,065	\$ 6	\$ 2,807
Proceeds from sales of discontinued operations		6,000	
Increase in restricted assets	(2,198)	(1,682)	(9,549)
Capital expenditures	(9,411)	(9,161)	(7,562)
Net cash provided by (used in) investing activities	(9,544)	(4,837)	(14,304)
Net increase (decrease) in cash and cash equivalents	20,184	25,628	(1,849)
Cash and cash equivalents at beginning of year	91,060	65,432	67,281
Cash and cash equivalents at end of year	\$111,244	\$91,060	\$65,432
<i>Supplemental disclosure of cash flow information:</i>			
Cash paid during the year for interest	\$ 510	\$ 934	\$ 1,484
Cash paid during the year for income taxes		\$ 2,376	

See accompanying notes to consolidated financial statements.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### NOTE 1—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### Basis of presentation

The consolidated financial statements include the accounts of Sealaska Corporation (Sealaska) and its wholly owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

#### Income taxes

On April 1, 1993, Sealaska prospectively adopted Statement of Financial Accounting Standards No. 109 (SFAS 109), Accounting for Income Taxes. The income tax provisions and related deferred tax assets have been restated for years ended March 31, 1993 and 1992. Under SFAS 109, the deferred tax asset is calculated by computing the estimated tax benefit for the next three years which arises from the net operating loss generated by depletion of the ANCSA timber for tax purposes for which the value for book purposes is zero (Note 2). The change in the deferred tax asset is included in the determination of earnings.

#### Investment securities

On April 1, 1993, Sealaska adopted Statement of Financial Accounting Standards No. 115 (SFAS 115), Accounting for Certain Investments in Debt and Equity Securities. Under SFAS 115, Sealaska's investments securities (Note 4) are classified as trading securities and are recorded at fair value. Fair value is based upon market prices. Previously, investment securities were stated at the lower of cost or market. The excess of cost over market, relating to marketable securities included in Sealaska's investment portfolio, was included in the determination of earnings. Gain or loss on the sale of marketable securities is determined on a specific identification basis.

Sealaska has designated certain investments for long-term uses, and therefore classifies these amounts as non-current.

Sealaska's investment trading activities include the use of futures contracts to manage market price exposure. Realized and unrealized gains and losses are included in investment income.

#### Inventories

Inventories consist of logs held for sale and are stated at the lower of average cost or estimated net realizable value.

#### Depreciation, amortization and depletion

Depreciation and amortization of property and equipment are provided primarily by the straight-line method for the expected useful lives of the assets as follows:

Buildings, leaseholds and improvements	5 to 45 years
Equipment and furnishings	3 to 10 years

Costs of logging roads, yards and camps are amortized as timber is harvested, based upon the estimated volume of timber to be removed.

Depletion of purchased timber is provided based on amounts harvested in relation to volume purchased. As described in Note 7, timber and mineral resources received under the provisions of the Alaska Native Claims Settlement Act (Note 2) are carried at zero value and no depletion expense is recorded when such resources are harvested or extracted. For tax purposes, depletion is reported based upon the higher of the estimated fair value of a specific timber block or mineral deposit as of the date of conveyance or first commercial development.

#### **Earnings per share**

Earnings per share information in the consolidated financial statements is based on shares outstanding as of March 31, 1994.

#### **Cash**

Sealaska maintains zero balance checking accounts and resulting bank overdrafts are included as accounts payable.

For purposes of the statement of cash flows, Sealaska considers all current investment securities to be cash equivalents.

#### **Restatements and reclassification of prior year amounts**

The income tax provision and related deferred tax assets have been restated for the years ended March 31, 1993 and 1992 for adoption of SFAS 109 (Note 10). Certain amounts in the consolidated financial statements for the years ended March 31, 1993 have been reclassified to conform with the manner of presentation used for the year ended March 31, 1994.

### **NOTE 2—ALASKA NATIVE CLAIMS SETTLEMENT ACT**

Sealaska was incorporated in 1972 as a regional Native corporation pursuant to the provisions of the Alaska Native Claims Settlement Act (ANCSA). Sections 7(i) and 7(j) of ANCSA are significant to the consolidated financial statements and are further described herein.

Under the provisions of ANCSA, Sealaska has received or expects to receive conveyance of approximately 340,000 acres of land in the Tongass National Forest in Southeast Alaska of which it will own the surface and subsurface estate. At March 31, 1994, Sealaska has received conveyance of approximately 247,000 acres. ANCSA also provides for selection of land in Alaska by the village and urban corporations formed thereunder, the subsurface estate of which accrues to the related regional corporations. It is anticipated that the village and urban

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### NOTE 2—(CONT.)

corporations in Sealaska's region will receive conveyance to 289,000 acres of land within the Tongass National Forest of which Sealaska will own the subsurface estate. Of the approximately 289,000 acres, conveyance has been received of approximately 265,000 acres. As described in Note 7, the land and related surface and subsurface resources received under ANCSA are carried at zero value in the accompanying consolidated financial statements.

Section 7(i) of ANCSA requires that each Alaska regional corporation that received revenue or value from certain resources conveyed pursuant to ANCSA distribute 70 percent of net revenues to twelve of the thirteen regional corporations, including the distributing corporation. Sealaska and the other regional corporations have entered into a Section 7(i) Settlement Agreement which establishes specific definitions and methods for calculating shareable revenues. Revenues received by Sealaska from the timber resources and subsurface estate obtained through ANCSA are subject to the revenue sharing provisions of Section 7(i).

Distributions to Sealaska from other regional corporations under the provisions of Section 7(i), after reductions for distributions required by Section 7(j) of ANCSA, are recorded as income in the fiscal year the amounts become determinable and collection is reasonably assured.

Section 7(j) of ANCSA requires that not less than 50 percent of monies received by Sealaska from other regional corporations under Section 7(i) must be distributed to village corporations, shareholders of urban corporations and at-large shareholders. Required distributions to village corporations, shareholders of urban corporations and at-large shareholders are based on the ratio of the total number of Sealaska shares owned by shareholders of village corporations, by shareholders of urban corporations and by at-large shareholders.

A summary of the composition of natural resource revenue sharing expense as presented in the accompanying consolidated statements of operations is as follows:

<i>(In thousands of dollars)</i>			
<b>Years ended</b>	<b>March 31, 1994</b>	<b>March 31, 1993</b>	<b>March 31, 1992</b>
Revenue from other regional corporations, net of Section 7(j)	\$ 611	\$ 582	\$ 1,225
Portion of Sealaska revenue distributable to other ANCSA corporations	(35,788)	(14,067)	(9,303)
	<b>\$(35,177)</b>	<b>\$(13,485)</b>	<b>\$(8,078)</b>

### NOTE 3—DISCONTINUED OPERATIONS

In March 1989, Sealaska adopted a plan to discontinue operation of its building materials segment, comprising Alaska Aggregate Corporation (ALAGCO) and Fairbanks Sand & Gravel (FS&G), effective October 1989. During the year ended March 31, 1993, Sealaska sold the stock of FS&G and the assets of ALAGCO.

The operating results of the building materials segments for the years ended March 31, 1993 and 1992 are presented in the accompanying consolidated statements of operations as a component of earnings (loss) from discontinued operations. Losses on disposal of discontinued operations for the years ended March 31, 1993 and 1992 relate primarily to additional losses on the disposition of assets and discontinuation costs for the building materials segment.

### NOTE 4—INVESTMENT SECURITIES

Investment securities consist of the following:

<i>(In thousands of dollars)</i>	March 31, 1994	March 31, 1993	
	Carrying & fair value amount	Carrying amount	Fair value
Domestic			
Money market funds	\$ 106,985	\$ 14,031	\$ 14,031
Certificates of deposit	4,140	12,211	12,211
Commercial paper	536	2,200	2,185
Govt. bonds & notes	71,021	97,728	97,820
Corporate bonds & notes	20,759	38,832	39,232
Common stock	6,902	40,317	40,515
Mutual funds		8,863	8,963
Other	2,100	1,743	1,743
International			
Cash & cash equivalents	7,099		
Debt securities	9,506		
Equity securities	9,287		
<b>Total</b>	<b>238,335</b>	<b>215,925</b>	<b>\$216,700</b>
<i>Less: current portion</i>	<i>(110,769)</i>	<i>(90,557)</i>	
<b>Noncurrent investment securities</b>	<b>\$ 127,566</b>	<b>\$ 125,368</b>	

In a September 19, 1987 advisory vote, the majority of shareholders voted to establish a Permanent Fund with no less than 50 percent of the NOL sales proceeds. Accordingly, the Sealaska board of directors has designated certain amounts arising from net operating loss (NOL) transactions (Note 10) and related

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### NOTE 4—(CONT.)

investment earnings for long-term uses (Permanent Fund) and, accordingly, they are not available for current operations.

Additionally, endowments have been established for which the earnings accrue to the benefit of the Sealaska Heritage Foundation scholarship program and the Alaska Native Brotherhood. Further, investment securities relating to deferred NOL income (Note 10) are classified as noncurrent assets.

On November 2, 1991, the majority of shareholders voted to establish an Elders' Settlement Trust. Accordingly, and pursuant to ANCSA, during the year ended March 31, 1992, the Sealaska Board of Directors established an Elders' Settlement Trust for the benefit of Sealaska shareholders. Trustees of the Trust are Sealaska directors. A liability was established for future one-time distributions which will be made from the Trust to shareholders when they reach age 65. The amount distributed during the years ended March 31, 1994 and 1993 was \$275,000 and \$233,000, respectively.

Pursuant to the agreements governing the NOL transactions, at March 31, 1994 and 1993, \$99,233,000 and \$96,137,000, respectively, investment securities were held in restricted interest bearing escrow trusts. Subsequent to March 31, 1994, \$10,500,000 was released from escrow.

During the years ended March 31, 1994 and 1993, Sealaska realized net gains of \$1,190,000 and \$3,000,000, respectively, on the sales of securities, including gains and losses on futures contracts. Financial markets declined significantly in the last quarter of fiscal year 1994. Sealaska had unrealized net gains (losses) of (\$3,785,000) and \$775,000 at March 31, 1994 and 1993, respectively, which included losses on open futures contracts.

To reduce its exposure to fluctuations in securities values, Sealaska's trading activities include the use of financial instruments with off-balance-sheet risk. These financial instruments are bond, note, S&P 500 and currency futures contracts and involve elements of credit and market price risk in excess of the amount recognized in the statement of financial position. The notional amounts of those instruments reflect the extent of involvement Sealaska has in particular classes of financial instruments.

For futures contracts, the notional amounts do not represent the financial exposure to credit loss at March 31, 1994. The financial amounts potentially subject to credit loss are much smaller. Sealaska controls the credit risk of its futures contracts through guidelines set by management. Unless noted otherwise, Sealaska does not require collateral or other security to support financial instruments with credit risk.

At March 31, 1994, the notional amount of the outstanding bond and note contracts was approximately \$37,192,000.

At March 31, 1994, Sealaska had currency futures contracts maturing between April 5, 1994 and June 15, 1994 to purchase \$35,468,000 and sell \$35,659,000 in various currencies to hedge the currency risk for its international investment securities.

Futures contracts are contracts for delayed delivery or receipt of securities or money market instruments in which the seller or buyer agrees to make delivery or take receipt at a specified future date of a specified instrument, at a specified price or yield. Risks arise from the possible inability of counterparties to meet the terms of their contracts and from movements in securities values.

#### NOTE 5—RECEIVABLES

Receivables consist of the following:

<i>(In thousands of dollars)</i>	March 31, 1994	March 31, 1993
Trade accounts receivable	\$ 5,870	\$5,110
Amounts receivable from other Alaska regional corporations under ANCSA Section 7(i)	705	375
Receivable from ANCSA village corporation	4,583	
Other, less allowance for doubtful accounts of \$470,000 and \$324,000 in 1994 and 1993, respectively	1,329	379
<b>Total receivables</b>	<b>\$12,487</b>	<b>\$5,864</b>

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### NOTE 6—PROPERTY AND EQUIPMENT

The cost of property and equipment consists of the following:

<i>(In thousands of dollars)</i>	March 31, 1994	March 31, 1993
Land, non-ANCSA (Note 7)	\$ 5,645	\$ 6,189
Buildings, leaseholds and improvements	8,419	8,395
Equipment and furnishings	6,653	5,881
Logging roads, yards and camps	63,071	62,291
	<hr/>	<hr/>
	\$83,788	\$87,756

Land held for development as recreational or residential property aggregating \$3,290,000 is included in the caption "Land" above.

### NOTE 7—TIMBER

As of March 31, 1994, Sealaska has received approximately 247,000 acres of land under the provisions of ANCSA as described in Note 2. Under generally accepted accounting principles, specifically Accounting Principles Board Opinion No. 29, assets received in nonmonetary transactions are recorded at their estimated fair value at the transaction date unless the fair value is not determinable within reasonable limits due to major uncertainties, in which case the assets received are recorded, and remain, at a value of zero. It was not practical for Sealaska to determine the estimated fair value of the resources received on the date of receipt within reasonable limits for financial reporting purposes. Accordingly, Sealaska carries assets received under ANCSA at zero value. However, these assets have significant economic value to Sealaska.

Because timber received under ANCSA is carried at a zero value, there is no charge to operations for depletion when such timber is harvested and sold. However, the direct costs of harvesting are reported as costs of products and services in the accompanying statements of operations. Through March 31, 1994, Sealaska has harvested the timber on approximately 38,000 acres of land received under ANCSA yielding approximately 983,000,000 board feet of timber. Estimates of the remaining volume and value of harvestable standing timber received under ANCSA vary based upon assumed fluctuations in future log market conditions. For economic and cultural reasons it is probable that not all of the lands will be harvested.

A summary of the volume of ANCSA timber sold and related revenue during years ended March 31, is as follows:

<i>(In thousands of dollars)</i>	Board feet	Revenue
Fiscal year 1994	109,648	\$91,038
Fiscal year 1993	86,721	\$51,833
Fiscal year 1992	100,859	\$56,423

### NOTE 8—NOTES PAYABLE

Notes payable consist of the following:

<i>(In thousands of dollars)</i>	March 31, 1994	March 31, 1993
Note payable to bank under a line of credit totaling \$10,000,000 at March 31, 1994, unsecured with interest at the prime rate less .25 of 1% and expiring October 31, 1994		\$ 6,700
Note payable to bank under a line of credit totaling \$10,000,000 at March 31, 1994 secured by certain log trade receivables and inventories with interest at the prime rate plus .25 of 1%, and expiring September 30, 1994	\$8,300	6,090
Note payable to bank under a revolving line of credit of \$12,000,000 secured by the remaining log trade accounts receivable, inventories and logging roads with interest at the prime rate and expiring April 1, 1995	500	
	<u>\$9,300</u>	<u>\$12,790</u>

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### NOTE 9—LONG-TERM DEBT

Long-term obligations consist of the following:

<i>(In thousands of dollars)</i>	March 31, 1994	March 31, 1993
Deed of trust loan with a bank, payable in monthly installments of \$37,000 plus interest at prime plus .65 of 1%, maturing in the year 2000. The loan is secured by Sealaska's headquarters facility and contains certain financial ratio covenants	\$2,742	\$3,187
Other notes and contracts payable	1,158	2,036
	3,900	5,223
Less: Current installments	(1,419)	(1,323)
	<u>\$2,481</u>	<u>\$3,900</u>

The carrying value of long-term debt approximates fair market value.

Principal maturities of long-term obligations over the next five years ending March 31 are as follows (in thousands):

1995	\$1,419
1996	621
1997	449
1998	448
1999	445
Thereafter	518
	<u>\$3,900</u>

### NOTE 10—INCOME TAXES

During the years ended March 31, 1989, 1988, and 1987, Sealaska entered into agreements with unrelated non-ANCSA corporations to share in the tax benefits available from utilization of Sealaska's accumulated federal net operating losses (NOLs) and investment tax credits. These tax benefit sharing arrangements were authorized by the Tax Reform Acts of 1984 and 1986 to specifically benefit ANCSA corporations that had been unable to utilize the substantial tax attributes they had accumulated.

Sealaska received compensation equal to approximately 80 percent of tax benefits sold. A portion, or in some instances all, of Sealaska's compensation is held in interest-bearing escrow accounts or trusts until the tax returns for the years involved are examined by the Internal Revenue Service (IRS), and either adjustments to the returns are statutorily barred or certain other events occur (a final determination).

The entire proceeds from certain NOL sales in the amount of \$45,214,000 are required to be held in escrow accounts until a final determination is made by the IRS with respect to the tax return reflecting the NOL utilization and have been recorded as deferred income. The proceeds from all other NOL sales have been recognized as income, as has the interest income earned on all NOL compensation proceeds.

The IRS is currently examining Sealaska's income tax returns for the years 1982 to 1990, inclusive. As a result of the examination of the returns for 1987 and 1988, several audit adjustments were proposed which would substantially reduce the tax basis of Sealaska's timber and related depletion deductions. Sealaska filed an extensive protest with the IRS appeals office and the IRS subsequently withdrew the proposed adjustments and returned the case to the IRS examination function for additional review. During fiscal year 1994, Sealaska, the IRS and a purchaser of NOLs reached an agreement which formally recognized the 1987 sale of approximately \$83,000,000 of NOLs. In addition, Sealaska has reached a tentative agreement with the IRS that recognizes NOL sales of approximately \$40,000,000 and \$20,000,000 in the 1987 and 1988 tax years, respectively. The ultimate outcome of the IRS examination is not determinable at this time, but is expected to impact Sealaska's net operating loss carryforward. Upon resolution of this matter, it is believed that there will not be a material impact on Sealaska's financial position. Under the terms of the NOL sales agreements, Sealaska would be required to pay interest at federal statutory rates to the NOL purchasers with respect to any tax benefit disallowed.

On April 1, 1993, Sealaska retroactively adopted Statement of Financial Accounting Standards No. 109 (SFAS 109), Accounting for Income Taxes. The impact of adoption of the standard is recognition of a non-current asset, "Deferred Taxes," of \$23,000,000 at March 31, 1991 and income tax benefit of \$3,000,000, \$3,000,000, and \$1,000,000 for the years ended March 31, 1994, 1993, and 1992, respectively. The deferred tax asset of \$30,000,000 at March 31, 1994 arises from the net operating loss generated by depletion of ANCSA timber. There is no current tax liability due to tax depletion of ANCSA timber in excess of book depletion.

At March 31, 1994, Sealaska had net operating tax loss carryforwards of approximately \$326,000,000, principally expiring in 2004 to 2009, available to offset future taxable income. As described above, resolution of the IRS examination is expected to impact the amount of the carryforward.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### NOTE 11—RETIREMENT PLAN

Sealaska maintains a money purchase pension plan for all corporate headquarters employees and certain subsidiaries' full-time participating employees who are at least 21 years old. Contributions are funded on a quarterly basis and are accrued based on a maximum percentage of the covered payroll for the year, less any forfeitures applicable to employees no longer employed. The maximum contribution percentage is 10 percent of the covered payroll, and participants vest over a seven-year period.

### NOTE 12—CONTINGENCIES

Sealaska and its subsidiaries are parties to several legal actions. Management believes Sealaska and its subsidiaries have meritorious claims or defenses and that the ultimate resolution of these matters will not have an adverse material effect on the financial condition of Sealaska.

### NOTE 13—DIVIDENDS

Subsequent to March 31, 1994, Sealaska's Board of Directors declared a dividend of \$2.18 per share, totaling \$3,432,000, to be paid June 29, 1994. This amount represents the remaining dividend amount for fiscal year 1994, bringing the total fiscal year 1994 dividend to \$7,011,000 or \$4.45 per share. A dividend of \$2.27 per share was paid to shareholders December 1993 as an advance payment for fiscal year 1994.

In addition to dividends, natural resource revenue sharing distributions will be made to urban and at-large shareholders in the amount of \$3,357,000 or \$2.94 per share on June 29, 1994. Sealaska accounts for \$2,915,000 of this amount and \$442,000 is from other ANCSA regional corporations.

## REPORT OF INDEPENDENT ACCOUNTANTS

To the Board of Directors and Shareholders of Sealaska Corporation

We have audited the accompanying consolidated balance sheets of Sealaska Corporation and its subsidiaries as of March 31, 1994 and 1993, and the related consolidated statements of operations, of shareholders' equity and of cash flows for each of the three years ended March 31, 1994. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As described in Notes 2 and 7, the Company has received or is entitled to receive surface and subsurface rights to certain lands in Alaska. The fair value of these lands and related natural resources is not reasonably determinable and, accordingly, is not included in the accompanying financial statements.

In our opinion, the consolidated financial statements audited by us present fairly, in all materials respects, the financial position of Sealaska Corporation and its subsidiaries at March 31, 1994 and 1993, and the results of their operations and their cash flows for each of the three years ended March 31, 1994 in conformity with generally accepted accounting principles.

As discussed in Note 10, the Company's federal income tax returns for the years 1982 to 1990 inclusive are being examined by the Internal Revenue Service pursuant to its net operating loss sales. The ultimate outcome of this examination is not determinable at this time.

As discussed in Notes 1 and 10, during the year ended March 31, 1994 the Company retroactively adopted Statement of Financial Accounting Standards No. 109, Accounting for Income Taxes.



Price Waterhouse  
Seattle, Washington  
May 27, 1994