TESTIMONY OF RICHARD (*TASHEE*) RINEHART

On behalf of

THE SOUTHEAST ALASKA LANDLESS NATIVE COMMUNITIES

prepared for the

HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS

regarding

H.R. 4748 - Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act

December 5, 2023

Chair Hageman, Ranking Member Leger Fernandez, and Members of the Subcommittee:

Thank you for inviting me to speak to you today regarding H.R. 4748, the *Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act*. I am here representing the Southeast Alaska Landless Native Communities. This legislation would redress a historic injustice in the context of Congress's efforts to settle aboriginal lands claims in Alaska. I look forward to answering any questions Committee Members may have about our communities, our struggle for justice, or this legislation.

My name is Richard Rinehart. I am Tlingit/Raven, *Kiks.ádi* (Frog clan), *Gagaan Hít* (Sun House), *Teeyhíttaan yádi* (child of), and Haida. My Tlingit names are *Du aani Kax Naalei* and *Tashee*.

I was born and raised in *Kaachxana aakw* or Wrangell, Alaska, one of the five "landless" Native communities left out of the Alaska Native Claims Settlement Act of 1971 (ANCSA). I was a child when ANCSA passed. The legislation was debated around my kitchen table. This legislation is deeply personal to me, as it will rectify the injustice that the Native people from my community—along with those from the four other landless communities—have faced for more than 50 years. It will return a tiny sliver of our ancestral homelands to our communities.

Background and Context for Legislation

H.R. 4748, the *Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act*, would redress the omission of five Alaska Native communities from the settlement of aboriginal land claims in Alaska.

When Congress settled the land claims of the Alaska Native people in 1971, Congress elected to establish 12 “regional” Alaska Native Corporations and approximately 200 “village” and “urban” Alaska Native Corporations throughout the state. Through ANCSA, Congress transferred more than 44 million acres of land to the new Alaska Native Corporations, and these Native Corporations were directed by Congress to provide for the economic, social, and cultural well-being of their Alaska Native owners.

For all regions of Alaska except the Southeast Alaska region, Native villages presumed to be eligible to establish Village Corporations were listed in Section 11 of ANCSA. Section 11 of ANCSA also included language allowing any village not listed in Section 11 to appeal their status to the Secretary of the Interior.

Because the U.S. Court of Claims had previously authorized a small (and partial) monetary settlement for the Tlingit and Haida people of Southeast Alaska in 1968, Congress addressed the Southeast villages in a separate section of ANCSA—Section 16. Ten Southeast Alaska villages were listed in Section 16 and—due to the partial settlement in 1968—each village was limited to receiving just one township (23,040 acres) of land. (Native communities in other regions of Alaska were authorized to select between 3-7 townships of land.) However, unlike Section 11, Section 16 did not include language authorizing any village not listed to appeal their status to the Secretary.

Our five communities—the Alaska Native communities that predated the current municipalities of Haines, Ketchikan, Tenakee, Petersburg, and Wrangell—were left off the list of Native communities authorized to establish Alaska Native Corporations despite the fact that nearly 3500 Alaska Native individuals were enrolled by the Bureau of Indian Affairs (BIA) to our communities. Three of our communities appealed to the Department of the Interior, but the Department concluded that Section 16 of ANCSA did not establish a right of appeal for Southeast communities. Our only recourse was to return to Congress to seek legislation to be included in ANCSA.

In an attempt to understand why our five communities were left out of ANCSA, Congress in 1991 directed the Department of the Interior to produce a study examining the historical and legislative record relevant to each of our five communities. The Department contracted with the University of Alaska’s Institute of Social and Economic Research (ISER) to produce a report. The 128-page ISER report, published in 1994, outlines the long history of each of our communities as a Native community. The report provides no policy recommendations but makes clear that Congress did not give a reason for leaving our five communities out of ANCSA.

The *Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act* would create “urban” Alaska Native Corporations for each our five communities and authorize the conveyance of one township (23,040 acres) of land to each, just as ANCSA in 1971 authorized for every other Alaska Native community in Southeast Alaska.

The five townships (115,200 acres) of land involved in this legislation necessarily would be withdrawn from the 17-million acre Tongass National Forest, which comprises most of the federal lands in Southeast Alaska. (Glacier Bay National Park is the only other significant unit of federal land in the region.)

The fact that our five communities all are located within the Tongass National Forest has been a challenge for us in our efforts to seek redress. Our five communities appear to have been excluded from ANCSA because the Forest Service and the timber industry were historically opposed to aboriginal land claims in the Tongass. We briefly address this history below and we have provided a more detailed history as well, attached.

For decades prior to the passage of ANCSA, the Forest Service opposed the recognition of traditional Indian use and aboriginal title in the Tongass National Forest. As late as 1954, the Forest Service formally recommended that all Native claims to the Tongass be extinguished because of continuing uncertainty affecting the timber industry in Southeast Alaska.[1] Our communities all were located near sawmills and pulp mills in the 1960s, prior to the passage of ANCSA. There was a concern at that time that the Native peoples would lock up the land, blocking access to the timber industry. In other words, our communities were a serious inconvenience in the context of federal efforts to address aboriginal land claims in Southeast Alaska.

In the 1940s, the Tlingit leader and attorney William Paul, who was from Wrangell, won a short-lived legal victory pertaining to Alaska Native aboriginal title in the Ninth Circuit Court of Appeals in *Miller v. United States*, which ruled that Tlingit lands held by original Indian title could not be seized by the government without the consent of the Tlingit landowners and without paying just compensation. 159 F. 2d 997 (9th Cir. 1947). Recognizing that this presented a problem for the Forest Service and the timber industry, Congress passed a Joint Resolution authorizing the Secretary of Agriculture to sell timber and land within the Tongass "notwithstanding any claim of possessory rights" based upon "aboriginal occupancy or title." Joint Resolution of August 8, 1947, 61 Stat. 920, 921. A timber sale authorized pursuant to this authorization was challenged by the Tlingit people. The action ultimately resulted in the *Tee-Hit-Ton Indians v. United States* decision, in which the U.S. Supreme Court held that Native land rights are subject to the doctrines of discovery and conquest, and "'conquest gives a title which the Courts of the Conqueror cannot deny.'" 348 U.S. 272, 280 (1955). The Court concluded that Native peoples do not have 5th Amendment rights to aboriginal property and that Congress, in its sole discretion, must decide whether or how to compensate Native peoples for the loss of their lands.

The land at issue in *Tee-Hit-Ton Indians* involved our Tlingit people who settled in Wrangell, one of the five communities that is <u>still</u> seeking a settlement of its aboriginal land claims today.[2] That litigation stemmed from a decision by the Forest Service to offer up 350,000 acres of land near

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[1] Robert Baker, Charles Smythe and Henry Dethloff, *A New Frontier: Managing the National Forests in Alaska, 1970-1995* 31 (1995).
[2] Rashah McChesney, *In Tlingit Land-Rights Loss, a Native American Rights Attorney Lays Out Injustice and Hope for the Future* (Nov. 9, 2019).

Wrangell for a timber sale.[3] Ironically—and sadly—more than 70 years later the Forest Service is still resisting the conveyance of land to the Native community at Wrangell because—as stated by the Forest Service just six weeks ago—those conveyances "will affect the ability of the Forest Service to . . . meet[] current timber harvest goals."[4]

It has been suggested by some that our five communities were excluded from ANCSA because the populations of our five communities had become predominantly non-Native by the time ANCSA was enacted in 1971. If that were true, it would be a poor excuse to deny Native communities a just settlement of their land claims. But it is not the case. ANCSA as enacted did not restrict the establishment of Alaska Native Corporations to communities with populations that were predominantly Native. Congress listed all other similarly-situated Alaska Native communities in Alaska, including the predominantly non-Native villages of Kasaan and Saxman (for which Village Corporations were established), the urbanized village of Nome (for which a Village Corporation was established), and the urbanized, predominantly non-Native communities of Sitka, Juneau, Kodiak, and Kenai (for which Urban Corporations were established). Our exclusion from ANCSA simply cannot be justified by ANCSA itself, its legislative history, precedential concerns, or by broader policy considerations relating to aboriginal land claims in the United States.

We have now waited more than 50 years, and more than half of the original "Landless" shareholder population has passed away waiting for the equitable resolution of our omission from ANCSA. That's not right. In the context of a statewide effort like ANCSA, we are a small group. Perhaps that makes it hard for us to be heard. But nearly 3,500 Alaska Native people—or 22 percent of total enrollment in the Southeast Alaska region—were enrolled by BIA to these five communities. Despite our losses, our community continues to grow. Our Landless shareholders and the descendants of our original shareholders together have grown to a population of 4,800.

For more information about the history of the five landless Native communities, we direct your attention to two background documents, which are attached and briefly described below.

University of Alaska ISER Report

In 1991, Congress instructed the Secretary of the Interior to investigate the exclusion of our five unrecognized communities from ANCSA. In turn, the Forest Service, the Bureau of Land Management, and BIA contracted with the University of Alaska's Institute of Social Economic Research (ISER) to investigate why our five communities were excluded from ANCSA. This research materialized into a lengthy report titled, "A Study of Five Southeast Alaska Communities" (ISER Report). The ISER Report provides a detailed overview of "how the historical circumstances and conditions of the [five] study communities compare with those of the

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[3] *Id.*

[4] *See* Testimony of Jacqueline Emanuel, Associate Deputy Chief, United States Department of Agriculture Forest Service before the United States Senate Committee on Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining 8 (Oct. 25, 2023), available at https://www.energy.senate.gov/services/files/100D8EEB-E0D6-4926-9FC5-D4E32BA97BB2.

Southeast communities that were recognized under ANCSA." You will find that the ISER Report, attached, does a good job of detailing the history of the five unrecognized communities as historical Native communities.

Nov. 18, 2020 Landless Testimony before the Senate Committee on Energy and Natural Resources Subcommittee on Public Lands, Forests and Mining

Following a November 18, 2020 hearing before the Senate Committee on Energy and Natural Resources Subcommittee on Public Lands, Forests and Mining on a substantially similar version of this legislation, we prepared lengthy written testimony that provides a thorough analysis of the claims of our five communities in the context of the broader Alaska Native land claims movement; much of our analysis summarizes the findings of the ISER Report. The testimony also provides answers to a range of questions that have been asked over time about the five communities and about legislation introduced on our behalf. The detailed testimony is attached.

Conclusion

The Tongass National Forest is a politically sensitive place. We understand this. But it is also true that the Tlingit and Haida people have been pursuing a fair settlement of aboriginal land claims in the Tongass National Forest for over 100 years.

With respect, we believe that Congress erred in omitting five of our communities from the list of Alaska Native communities eligible to form Alaska Native Corporations in 1971. The ISER Report, prepared at the direction of Congress, provides a more-than-adequate documentation of the history of our communities as historical Native communities.

In the infamous *Tee-Hit-Ton Indians* decision, the U.S. Supreme Court held that the Tlingit and Haida claims to the land are subject to the doctrines of discovery and conquest, and "conquest gives a title which the Courts of the Conqueror cannot deny." The Court concluded that Native peoples do not have 5th Amendment rights to aboriginal property and that Congress, in its sole discretion, must decide whether or how to compensate the Tlingit and Haida people for the loss of their lands. For five Alaska Native communities in Southeast Alaska, Congress has yet to act.