

**Testimony of
Nathan McCowan, Chair
Alaska Native Village Corporation Association
801 B Street, Suite 300, Anchorage AK 99501**

House Committee on Natural Resources
Subcommittee on Indian and Insular Affairs

Hearing on H.R. 6489
Alaska Native Village Municipal Lands Restoration Act of 2023
July 24, 2024

Chairwoman Hageman, Ranking Member Leger Fernandez, and members of the Subcommittee, thank you for the opportunity to provide written testimony for the hearing record in support of H.R. 6489, the “Alaska Native Village Municipal Lands Restoration Act of 2023”. I would also like to thank Representative Peltola for her sponsorship, work, and assistance with this important legislation.

My name is Nathan McCowan and I am providing this testimony as Chair of the Alaska Native Village Corporation Association (ANVCA). I am also President & CEO of St. George Tanaq Corporation, the village corporation formed for the Unangax people of St. George Island pursuant to the Alaska Native Claims Settlement Act (ANCSA). ANVCA is a State-wide organization that represents the 176 Village Corporations that were created by Congress over 50 years ago, including a shareholder base of over 140,000 individuals and their families.

A departure from status quo, ANCSA served as the modern-day Indian Treaty between Alaska Native People and The United States. It is important to understand the moment in time that ANCSA was passed in 1971 was long after Congress had discontinued signing Treaties with Native Nations and the unfortunate “Indian Termination Era” that followed. Beginning in the 1960s, the United States made a positive turn towards a new era in Indian policy focused on “Indian Self Determination”. ANCSA reflects this Indian policy approach providing Native Alaskans the tools and resources necessary for economic and cultural self-determination.

The Act settled long standing land claims that dated back over one hundred years, beginning with the sale of Alaska to the United States from Russia and accelerating with the passage of the Alaska Statehood Act (1958) and a significant discovery of oil deposits on Alaska's North Slope. In the late 1960s Native Alaskan claims of aboriginal title to the land remained unsettled. As the State and Federal Government began selecting lands the Alaska Native people united and filed aboriginal claims to all of Alaska lands. Then Secretary of Department of Interior Stewart Udall responded by instituting a "Land Freeze" and halted State and Federal land selections until an agreement was reached with Alaska Natives. The discovery of oil at Prudhoe Bay and the desire to build an 800-mile pipeline across Alaska to deliver that oil to market incentivized the federal government to settle the land claims of Native Alaskans as soon as possible.

ANCSA was signed into law on December 18, 1971. In extinguishing aboriginal claims, Alaska Natives were compensated with fee simple title to 44 million acres of land and \$962.5 million for lands lost to state, federal and private interests. The Act created 13 regional for-profit corporations and more than 200 village corporations to receive and oversee the land and monetary entitlements, each charged with providing for their people's economic, social, and cultural wellbeing in perpetuity. One of the matters addressed in the statute was what to do with the individual localities, the individual villages, cities, and the private property interests of individuals who had created homes in some of the unincorporated portions of the state. Section 14(c) of ANCSA sought to address many of these concerns.

Section 14(c)(3) of ANCSA required every Native Village Corporation formed under the Act to turn a portion of the lands it received in its village under the Act over to the State of Alaska to be held in trust for the eventual creation of a municipal government in the area. The land conveyed to the State was to include "the surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs", with the amount of lands to be transferred to "be no less than 1,280 acres unless the Village

Corporation and the Municipal Corporation or the State in trust can agree in writing on an amount which is less than 1,280 acres.” Many Village Corporations, but less than half, came to agreement with the State on lands to be turned over to the trust, and in only a few instances has that land become municipal lands as anticipated by Congress.

In the case of many of these rural Village Corporations, however, the land is still being managed in apparent perpetuity by the State Municipal Land Trust (MLT), an office that is underfunded and overtasked. Decades after passage of ANCSA, and many years after these Village Corporations turned over their settlement land, no municipalities have been formed and no end is in sight. The State has administered this program for nearly 50 years and there have been only 8 ANCSA villages that have formed a new municipality, the last in 1995 nearly 30 years ago. Perpetual management of these lands in a state trust was not envisioned by the crafters of ANCSA; the provision should have included an expiration date. For remote Native villages in Alaska, with no foreseeable possibility of a feasible municipality in sight, it is time to return these lands to those Villages Corporations so they can own and manage the lands for the benefit of their Native shareholders as ANCSA intended.

Once ANCSA became law the Bureau of Land Management pushed to get ANCSA 14(c)(3) settled in the early 1980s, resulting in many communities transferring deeds in the momentum of that federal effort to implement the law. The State received the bulk of deeds it has in that push. There are 83 villages across Alaska still included in the MLT program. A number of village corporations defied the law and never transferred land into the MLT. Other than the push by the BLM there was no enforcement mechanism at the state level to require participation. However, for these Village Corporations who failed to participate a cloud on title remains on lands subject to ANCSA 14(c)(3). Any use of this land authorized by the Village Corporation requires the State’s written disclaimer of interest, which is not easily obtained. This results in the current law having a much broader negative impact beyond the 83 communities currently tied up in the MLT.

Today, the MLT has in trust approximately 11,550 acres that are nearly impossible to transfer into private hands or put to Village Corporation use due to restrictions on use imposed by ANCSA. This blocks the lands from needed development and is expected to continue to do so into perpetuity unless the trust responsibilities and mission are eliminated in federal statute. The State has previously transferred some lands for residential lots and for public purposes but this has proved cumbersome and an impediment to basic community growth. The State's view of its trust responsibilities is that conveyance in fee simple is not possible under the federal law. Because the MLT is a trust, it has a legal and fiduciary obligation to manage the lands in the best interests of the municipality, or in the absence of one, the future municipality. The MLT takes this trust responsibility seriously and this obligation severely limits the available uses of what are often the most important parcels of land in these remote rural villages, many desperately in need of facilities and economic development. Several MLT communities have indicated a desire to have the lands they transferred to the State returned to expand economic development in their communities. Many communities in all regions of the state could eventually see the benefits of land "locked up" in the Trust being transferred to private hands within the community for residential, commercial, and other economic development.

One example is the Village of Chenega located on Evans Island in Prince William Sound. They currently have approximately 385 acres of land locked up in the MLT and have asked for their land back but have been denied. Most of the core lands in the Chenega Village are held in the MLT leaving limited options for land use where the topography and wetlands severely limit developable lands. When looking at future development sites, many of the buildable areas fall within MLT lands. This undermines Chenega's right to self-determination and self-governance. While 211 acres are subject to MLT lease agreements to accommodate public facilities, these leases are subject to fees and are cumbersome to update or amend to accommodate evolving community needs. Even Chenega's cemetery is held in the MLT. Chenega Corporation should control these settlement lands, not the State of Alaska. Most critically, the MLT program prevents Chenega from building additional housing, particularly needed workforce housing, and creating other economic opportunity for its residents.

Another example is the Village of Minto, a small Athabascan Indian Village in interior Alaska 130 miles northwest of Fairbanks, where winter temperatures drop below -60°F. Lands tied up in the MLT have created roadblocks and hurdles for needed village development. A new structure to serve as both housing and a detention facility for use by the Village Public Safety Officer has been delayed for years while the old existing structure falls apart on village lands held by the MLT. The village of Minto has worked hard to create jobs only to now have those jobs remain unfilled because there is no available housing in the community. The village ANC, Seth-De-Ya-Ah Corporation, has sought to build workforce housing but can not get its land back from the MLT for that purpose. The Minto diesel power plant, now close to 50 years old, provides some of the highest cost energy in the region. Efforts by the Alaska Village Electric Cooperative to replace the power plant and incorporate renewable energy on the microgrid have been frustrated by the inability to get the necessary rights to the land from the MLT.

Finally, in the Village of Iliamna, located 225 miles southwest of Anchorage and accessible only by small plane, a needed roads project and landfill expansion have been tied up for over 5 years due to the cumbersome process and requirements imposed by the MLT. Needed land swaps to consolidate the ownership of buildings and the land they sit on have not been able to proceed inhibiting needed infrastructure development. The village council and village corporation look forward to the day when they can work together toward the productive use of village lands without the interference of and permission from the MLT. This was the ANCSA promise of self-determination and it remains unfulfilled.

Many communities in all regions of the State could eventually see the benefits of land held in the MLT being transferred back to the Village Corporations so they can fulfill their role in providing for economic and cultural self-sufficiency. The holding of this land by the State of Alaska in trust for a purpose that will never materialize is a significant inhibitor to the self-determination promised these rural and often isolated Native communities by ANCSA.

Representative Peltola introduced H.R. 6489, the “Alaska Native Village Municipal Lands Restoration Act of 2023”, to finally address this oversight in ANCSA that has left core village lands locked up in perpetuity without purpose. Amending the ANCSA 14(c)(3) provision to dissolve the municipal land trust will empower Alaska Native village corporations and their communities to make informed decisions about how to best utilize their lands and resources in the future, leading to greater economic prosperity and self-sufficiency. We support this legislation which includes the following elements:

- 1) If a village corporation conveyed all required land to the state, then the property conveyed to the state in trust reverts to the village corporation if a municipal corporation was not formed.
- 2) If a village corporation conveyed only a portion of required lands to the state in trust, then those lands revert to the village corporation and the village corporation is relieved of any further requirement to convey remaining lands.
- 3) If the village corporation has not conveyed lands to the state in trust the conveyance requirement is eliminated.
- 4) All trusts created are terminated.
- 5) Reversion of the lands to the village corporations is subject to all valid and existing rights created by the trust and the village corporations assume all obligations of the trust with regard to those valid existing rights.

We note that the Alaska State Legislature has unanimously passed a joint resolution in support of the passage of H.R. 6489 (attached). We urge full consideration of H.R. 6489 before Congress and ultimately its passage into law. The ANCSA 14(c)(3) MLT program should have included a sunset provision when it was passed. This is an over 50-year-old legislative loose end that needs to be addressed to fulfill the promise made of self-determination embodied in the 1971 ANCSA settlement.

Thank you for the opportunity to submit this testimony for the record.

STATE OF ALASKA THE LEGISLATURE

2024

Source
SJR 13

Legislative
Resolve No.
29



Encouraging the United States Congress and the President of the United States to pass and sign legislation amending the Alaska Native Claims Settlement Act to release certain land held in trust back to affected Alaska Native village corporations.

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

WHEREAS, in 1971, to resolve land claims of Alaska Native peoples, the United States Congress passed, and President Richard Nixon signed into law, the Alaska Native Claims Settlement Act (ANCSA); and

WHEREAS sec. 14(c)(3) of ANCSA required each Alaska Native village corporation to convey a portion of the land it received to the state to be held in trust for a future municipal government; and

WHEREAS, out of the 101 villages in which Alaska Native village corporation land has been held in trust for a future municipality under ANCSA, only eight villages have incorporated, with the most recently established municipality being incorporated in 1995; and

WHEREAS there are 93 villages that have not decided to incorporate, with approximately 11,500 acres of Alaska Native village corporation land currently held in trust

by the state; and

WHEREAS the requirement under ANCSA that land must be held in trust for a future municipality was drafted over 50 years ago and is now a detriment to enabling Alaska Native village corporations and communities to engage in economic development activities and use the land to its full potential; and

WHEREAS amending ANCSA by removing the requirement that each Alaska Native village corporation must have land held in trust for a future municipality will empower the Alaska Native village corporations and communities to decide how to best use the land and resources, leading to greater economic prosperity and self-sufficiency; and

WHEREAS Senators Lisa Murkowski and Dan Sullivan introduced in the United States Senate and Representative Mary Peltola introduced in the United States House of Representatives the Alaska Native Village Municipal Lands Restoration Act of 2023, which restores the Alaska Native village corporation land, held in trust for the establishment of future municipalities, to the Alaska Native village corporations;

BE IT RESOLVED that the Alaska State Legislature respectfully urges the United States Congress to pass the Alaska Native Village Municipal Lands Restoration Act of 2023 or similar legislation in the 118th United States Congress that restores the land held in trust under sec. 14(c)(3) of the Alaska Native Claims Settlement Act to the affected Alaska Native village corporations; and be it

FURTHER RESOLVED that the Alaska State Legislature respectfully requests the President of the United States to sign the Alaska Native Village Municipal Lands Restoration Act of 2023 or similar legislation into law.

COPIES of this resolution shall be sent to the Honorable Joseph R. Biden, President of the United States; the Honorable Kamala D. Harris, Vice President of the United States and President of the U.S. Senate; the Honorable Mike Johnson, Speaker of the U.S. House of Representatives; the Honorable Charles Schumer, Majority Leader of the U.S. Senate; the Honorable Deb Haaland, United States Secretary of the Interior; and the Honorable Lisa Murkowski and the Honorable Dan Sullivan, U.S. Senators, and the Honorable Mary Peltola, U.S. Representative, members of the Alaska delegation in Congress.