<table>
<thead>
<tr>
<th>SEC.</th>
<th>SUB-SEC.</th>
<th>TITLE &amp; DESCRIPTION OF ACTION</th>
<th>STATUS OF IMPLEMENTATION</th>
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<tbody>
<tr>
<td>11</td>
<td>(a)</td>
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<tr>
<td>11</td>
<td>(b)</td>
<td>Review of Village Eligibility</td>
<td></td>
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<tr>
<td>II</td>
<td>SOL</td>
<td>(Sept. 2, 1972) is illegal and should be set aside. The case is still pending in the U.S. District Court of Alaska.</td>
<td></td>
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<tr>
<td>II</td>
<td>BIA</td>
<td>The status of village eligibility determination under the provisions and criteria of section 11 and 43 CFR 2650 is as follows:</td>
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<td>215 Villages listed in the act (sections 11 and 16):</td>
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<td></td>
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<td>198 - Eligible</td>
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<td></td>
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<td>17 - Ineligible</td>
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<td>215</td>
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<tr>
<td>III</td>
<td>ANCAH</td>
<td>Under the regulation 43 CFR 2650, the Secretary appointed an Alaska Native Claims Appeals Board (ANCAH)(^4) of four members to give de novo review to the original determination of the Juneau Area Director, BIA, of the claimed eligibility of any Native village. The Board is supported by 3 clerical/administrative staff and 2 staff attorneys. It is located at 712 W. Fourth Ave., P.O. Box 2433, Anchorage, Alaska 99510.</td>
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<td>At the Board’s direction, under 43 CFR 4.704, all hearings were conducted by Administrative Law Judges. All parties had the opportunity to appear, present evidence and oral argument, and cross-examine opposing witnesses. The Board then prepared decisions for approval of the Secretary based on the appeal record consisting of the pleadings, motions, and other documents filed in each appeal, transcript of hearing, and exhibits, and recommended decision of the Administrative Law Judge.</td>
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\(^4\) Also referred to as the "Board."
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<tr>
<th>C. SUB-SEC.</th>
<th>TITLE &amp; DESCRIPTION OF ACTION</th>
<th>STATUS OF IMPLEMENTATION</th>
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<td>(Cont'd.)</td>
<td>NARRATIVE</td>
</tr>
<tr>
<td>I</td>
<td>(b)</td>
<td>III</td>
</tr>
<tr>
<td></td>
<td>Unlisted Villages: Withdrawal of land for Native selection pending determination of eligibility of the Native community.</td>
<td>ANCAB</td>
</tr>
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<td>All 33 appeals from final decisions of the Juneau Area Director, BIA, on eligibility of listed villages, have been resolved as follows:</td>
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<tr>
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<td>Afognak, Chitina, Kaguyak, Kasaan, and Manley Hot Springs found eligible;</td>
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<tr>
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<td></td>
<td>Pauloff Harbor-Sanak, Salamatoff, and Uyak found ineligible.</td>
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<td>Appeals on Atkasook, Point Lay, Nooiksut and Unga were settled and withdrawn, resulting in eligibility of these villages. (Original appeal on Pauloff Harbor Sanak was withdrawn following remand by Board to Area Director, BIA and issuance of revised decision by Area Director finding village eligible based on administrative correction to Roll, resulting in enrollment of 25 Natives to village. Three new appeals filed in response to this revised final decision.)</td>
</tr>
<tr>
<td>I</td>
<td>(b)</td>
<td>II</td>
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<td>Approximately 12 million acres have been withdrawn for all unlisted Native villages (31) which applied for eligibility. These lands have been withdrawn from all forms of appropriation to protect the land pending determination of their eligibility to make land selections.</td>
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<tr>
<td>Sub-sec.</td>
<td>Title &amp; Description of Action</td>
<td>Status of Implementation</td>
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<td>II (b)</td>
<td>(Cont'd.)</td>
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**BIA**

31 - Villages not listed in the act filed applications for determination of eligibility.

Determinations:

3 - Ineligible, final determination of the Secretary.

9 - Ineligible, by the Area Director, BIA. Pending administrative review.

18 - Eligible by the Juneau Area Director, BIA. Pending administrative review.

1 - (Paimute) filed after deadline with regulatory waiver. No appeal, and will probably be eligible.

**ANCAB**

Sixty-seven appeals from final decision of the Juneau Area Director, BIA on eligibility or ineligibility of the following, 23 unlisted villages are now before the Board (as of June 30, 1974):

Aiaktlik, Alexander Creek, Anton Larsen Bay, Attu, Ayakulik, Bells Flats, Caswell, Chenega, Chickaloon, Council, Eyak, Haines, Kasilof, Knik, Litnik, Little Afognak, Montana Creek, Point Possession, Port William, Solomon, Tenakee, Uganik, Woody Island.
II (b) (Cont'd.)

**STATUS OF IMPLEMENTATION**

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These appeals have been filed by:

1. State of Alaska  
2. Department of the Navy  
3. Forest Service; Department of Agriculture  
4. Bureau of Sports Fisheries and Wildlife, Department of the Interior  
5. Various National and State conservation organizations  
6. State political subdivisions  
7. Affected Native Regional Corporations  

All appeals were withdrawn on:

Betless Field, Chuloonawick, King Island  
Unkumiute.

Hearings to be conducted by Administrative Law Judges have been scheduled during July and August on all appeals except Haines, Tenakee, and Attu.
Statutory Construction: Generally

Although there may be no general rule for distinguishing between mandatory and directory provisions, a statute should be construed according to its subject matter and the purpose for which it was enacted, and the intention of the legislature should be controlling.

Statutory Construction: Administrative Construction

Where a statute directs that administrative action be taken within a stated time frame, but indicates no consequences for failure to comply with the time limit provided, it is necessary to distinguish between the action and the time frame.

Statutory Construction: Generally—Statutory Construction: Legislative History

To deny status as an eligible village to persons in fact entitled to that status would be an unjust and unfair denial of a right specifically granted by Congress, as evidenced in the legislative history.


To deny a legislative determination of

*Not in Chronological Order.

Alaska Native Claims Settlement Act (ANCSA) 85 Stat. 688, 700, December 18, 1971 provides:

Within two and one-half years from the date of enactment of this Act, the Secretary shall review all of the villages listed in subsection (b)(1) hereof, and a village shall not be eligible for land benefits under subsections 14(a) and (b), and any withdrawal for such village shall expire, if the Secretary determines that—

Subsection 11(b)(3) provides:

Native villages not listed in subsection (b)(1) hereof shall be eligible for land and benefits under this Act and lands shall be withdrawn pursuant to this section if the Secretary within two and one-half years from the date of enactment of this Act, determines that—

The language of these two subsections dealing with determinations by the Secretary of the eligibility of both listed and unlisted villages does not dictate that the two and one-half year time provision is mandatory or directory.

Although there may be no general rule of thumb for distinguishing between mandatory and directory provisions, a statute should be construed according to its subject matter and the purpose for which it was enacted, and the intention of the legislature should be controlling. Sutherland, supra. "Consideration must be given to the legislative history, the language of the statute, its subject matter, the importance of its provisions, their relation to the general object intended to be accomplished by the act, and finally, whether or not there is a public or private right involved." Wilson v. Billings, 200 Kan. 654.

Before any conclusions can be drawn on whether or not the two and one-half year provision is mandatory or directory, it is necessary to distinguish between the action which the Secretary is directed to complete under subsections 11(b)(2) and (3) and the time period during which he must complete such action. There can be little argument that the Secretary must complete a review of all the listed villages, and that such a review is mandatory and essential to the purposes of the legislation. Furthermore, the Secretary is directed to make determinations of the eligibility of both listed and unlisted villages. The question at hand, however, is whether or not June 18, 1974, is in fact, a "deadline" after which the Secretary can make no further determinations of village eligibility.

The legislative history makes it clear that it was the intent of Congress "to see that all villages—whether listed in the Act or not—which meet the requirements are granted lands under this Act." Senate Report No. 92-405, pages 138-9. Furthermore, lands surrounding the villages, whether listed or unlisted, are withdrawn "to insure that these lands are protected from disposition to other parties pending a determination of the villages eligibility for benefits under the Act." supra, at 136.
Congress intended that all villages eligible for benefits should be granted these benefits and specifically insures their protection before final determination through the withdrawal procedures. At the same time, however, Congress intended that only those villages which meet the requirements of subsections 11(b) (2) and (3) can receive these benefits and insured that result by requiring the Secretary to make a final determination of the eligibility of each listed and unlisted village before the benefits are conferred upon these villages.

While it may be difficult to distinguish between the action directed and the time frame provided, it is necessary to make that distinction here. Because the statute may be classified for some purposes as directory does not mean that for all purposes it can be "ignored at will." Borough of Pleasant Hills v. Carroll, 152 Pa. Super. 102. The Secretary must complete certain actions under subsections 11(b) (2) and (3); the question is whether or not he can exceed a time frame which may be directory only. It should be noted at this point that the differences between mandatory and directory, between the imperative and the permissive, represent a continuum involving matters of degree instead of separate, mutually exclusive characteristics, Sutherland § 25.04, and that the distinctions may not be as finely drawn as wished.

As a rule, a statute prescribing the time within which public officers are required to perform an official act regarding the rights of others, and enacted with a view to the proper, orderly and prompt "conduct of business," is directory unless it denies the exercise of the power after such time, or the phraseology of the statute, or the nature of the Act to be performed and the consequence of failing to do it at that time are such that the designation of time must be considered a limitation on the power of the officer. When the legislature prescribes the time when an official act is to be performed, the broad legislative purpose is to be considered in deciding whether the time prescribed is directory or mandatory. If the statute is directory, the legislative intention is to be complied with as nearly as practicable. Therefore, a statute requiring a public body, merely for the orderly transaction of business, to fix the time of performance of certain acts which may as effectively be done at another time is usually regarded as directory. 67 C.J.S. Officers, Section 114 (b).

Statutory provisions fixing the time for performance of acts may be either mandatory or directory, in accordance with the legislative intent and will ordinarily be held directory where there are not negative words restraining the doing of the act after the time specified, and no penalty is imposed for delay. On the other hand, such provisions are to be taken as mandatory where consequences attach to the failure to comply; and where the act concerns vested rights, procedure or other similar matters, the statute is generally mandatory. 82 C.J.S. Statutes, Section 379.

In the determination of whether time provisions should have mandatory or directory effects there is an outstanding example of statutory construction not on the basis alone of ascertaining the actual intent of the legislature, but on the grounds of policy and equity to avoid harsh, unfair or absurd consequences. Although these considerations may be couched in terms of legislative intent, it is apparent that the decision rests on an inference of what the legislature can be presumed to have intended had it anticipated a situation that may have arisen in a particular case. Sutherland, supra, at Section 57.19.

It may be difficult to conceive of anything more absolute than a time limitation. And yet, for obvious reasons, founded in fairness and justice, time provisions are often found to be directory merely, where a mandatory construction might do great injury to persons not at fault, as in a case where slight delay on the part of a public officer might prejudice private rights or the public interest. It has been aptly stated that "when there is no substantial reason why the thing by statute required to be done might not as well be done after the time prescribed as before; [when there is] no presumption that, by allowing it to be done, it may work an injury or wrong; [when there is] nothing in the act itself *** indicating that the legislature did not intend that it should rather be done after the time prescribed than not done at all—the courts will deem the statutory directory merely." State v. Industrial Commission, 283 Wis. 461.

A statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others is directory unless the nature of the act to be performed, or the phraseology of the statute, is such that the designation of time must be considered a limitation on the power of the officer. Sutherland, supra.

The language of the two and one-half year provision contained in both subsections 11(b) (2) and 11(b) (3) is neither directory nor mandatory on its face. With respect to listed villages the two and one-half year provision would appear to limit the time within which the Secretary must review all the listed villages and make a determination of the eligibility of each village listed. With respect to unlisted villages, the same provision would limit the time within which the Secretary may determine an unlisted village eligible for benefits under the Act.

The mere language of these subsections can in no way resolve the ambiguity of the time provision. A time provision cannot be mandatory "unless it both expressly requires an agency or public official to act within a particular time period and specifies consequences for failure to comply with the time provision." Fort Worth National Corp. v. Federal
Savings and Loan Insurance Corp., 469 F.2d 47 (5th Cir. 1972). No "express requirements" can be read into either of these provisions.

It is necessary, therefore, to determine the legislative intent relating to this particular provision and to the Act as a whole. Whether the language of a statute is imperative or merely permissive depends on the intention as disclosed in the nature of the Act. Ballou v. Kemp, 92 F.2d 556 (1939). The intent of the act controls, and when the spirit and purposes of the act require the words to be construed as permissive, it will be done. Antonopoulos v. Aerojet-General Corporation, 295 F. Supp. 1390 (D.C. Cal. 1968). "Whether a statutory requirement is mandatory in the sense that failure to comply therewith vitiates the action taken, or directory, can only be determined by ascertaining the legislative intent." Vaughn v. John C. Winston Co., 83 F.2d 370 (1936).

The legislative history on this particular provision is in no way helpful, as there is no mention made of either of the two and one-half year provision, or of mandatory or directory time requirements in general. It may only be said that, if there is no substantial reason why the determinations by the Secretary might not well be done after June 15 as before, there is nothing in the legislative history to indicate that the legislature did not so intend, and therefore the provisions will be deemed directory. Diamond Match Company v. United States, 181 F. Supp. 932 (1960).

In order to determine legislative intent of the Act and in order to put the subsections 11(b) (2) and (3) in perspective, it is necessary to examine language relating to these subsections and to other provisions in the Act which contain time limits.

The definition of "Native Village" in section 3(c) contains no requirement that the Secretary make his determination of eligibility within two and one-half years; the only prerequisite under the definition is that the group "meets the requirements of this Act," and that "the Secretary determines [it] was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives."

The Alaska Native Claims Settlement Act does, however, contain language which clearly contains mandatory time requirements. These express requirements require the Secretary to act within a particular time period and specify a consequence for failure to comply with such time limit. These requirements are clearly mandatory. Fort Worth Nat. Corp., 1d.

Paragraph 17(d) (2) provides that:

Lands withdrawn pursuant to paragraph (A) hereof must be withdrawn within nine months of the date of enactment of this Act. All unreserved public lands not withdrawn under paragraph (A) or subsection 17(d) (1) shall be available for selection by the State and for appropriation under the public land laws. (Italics added.)

Unmistakably the time period imposed here is mandatory. The Secretary must act within a certain time or a penalty is imposed.

Likewise, paragraph 17(d) (2) (C) provides:

Every six months, for a period of two years from the date of enactment, the Secretary shall advise the Congress and submit his recommendations. Any lands withdrawn pursuant to paragraph (A) not recommended for addition to or creation as units of the National Park, Systems at the end of the two years shall be available for selection by the State and the Regional Corporations, and for appropriation under the public land laws. (Italics added.)

Paragraph 17(d) (2) (D) provides:

Areas recommended by the Secretary pursuant to paragraph (C) shall remain withdrawn from any appropriation until such time as the Congress acts on the Secretary's recommendations, but not to exceed five years from the recommendation dates. The withdrawal of areas not so recommended shall terminate at the end of the two year period. (Italics added.)

It is obvious that Congress is explicit when it intends that a particular time provision be mandatory. Not only is the requirement expressly set forth; a consequence for failure to abide by such a schedule is specified.

Furthermore, the withdrawals which are accomplished for purposes of village eligibility do not automatically expire two and one-half years from date of enactment if the Secretary fails to make his determinations of eligibility. Paragraph 22(h) (1) provides that all withdrawals shall terminate within four years of date of enactment, except that withdrawals for the Southeast villages (section 16) shall terminate three years from date of enactment. Therefore, the fact that such withdrawals run substantially past the two and one-half year period and that such withdrawal does not terminate automatically indicates that the two and one-half year period is directory. Furthermore, the Secretary is given the authority in paragraph 22(h) (4) to terminate any withdrawal when he determines that the withdrawal is no longer necessary to accomplish the purposes of the Act. Such authority is discretionary and not triggered by the lapse of a two and one-half year period.

Paragraph 22(h) (2) specifically states that the terminations of withdrawals set forth in section 22 do not apply to section 17, which is the one section of the Act where the Secretary is burdened with mandatory time schedules and specific penalty provisions. The failure of section 22 to make any provisions for the withdrawals authority contained in subsections 11(b) (2) and (3) is therefore significant. If the two and one-half year period were intended to be mandatory, section 22 would have stated that the withdrawal provisions which call for termination in three or four years would specifically not apply to subsections 11(b) (2) and (3).
The Act does set forth a definite time schedule and a series of guidelines for purposes of precipitating an orderly and prompt settlement. The Secretary is, for example, directed to divide Alaska into 12 regional corporations within one year, to complete enrollment within two years, to make a (2) (c) study within three years, to convey lands immediately after selection by patent, to submit annual reports. And it is clear that Congress intended that the settlement be completed in as prompt and orderly a fashion as possible. Subsection 2(b) provides that “the settlement should be accomplished rapidly, with certainty, * * * without litigation * * *.” But it is important to note that the only provisions relating to acts by the Secretary which are expressly mandatory and which contain a penalty clause are those contained in section 17.

When no consequences attach to failure to comply; when no penalty is imposed for delay, and when there are no negative words restraining the doing of the Act after the time specified as contained in paragraphs 17(d) (2) (B), (C) and (D), the courts will deem the statute directory merely. * * * * * * * * * * *

Although the Secretary was directed to complete his division of the State within one year, he was unable to complete this task within the time frame set forth by Congress. Stipulations were made by the Regional Corporations and the Secretary after the time period had passed. These agreements were approved by the Courts in Arctic Slope v. Doyon and Morton, Civil No. A-38-73 (D. Alaska, April 1973), Alkna, Inc. v. Doyon and Morton, Civil No. A-198-72 (D. Alaska, August 1973); thereby giving express judicial approval of a Secretarial determination after the time period set forth by Congress in the Act itself.

Furthermore, § 5, which directs “the Secretary [to] prepare within two years from the date of enactment of this Act a roll of all Natives * * *” requires that the roll “show for each Native the region in which he resided on the date of the 1970 census enumeration.” In order for the Secretary to undertake the preparation of the roll, he needed to ascertain the regional boundaries. The one determination is dependent on the other; similarly, a delay in the former necessarily caused a delay in the initiation of the latter. But the courts, realizing the complexities of the problems involved and the necessity for a certain and just determination at each step in this long procedure leading to final resolution of the settlement, recognized that the time frame cannot be imposed in such a manner that the very interests protected by the Act would suffer because of a slight delay in the implementation of its provisions.

The preparation of the roll was completed by December 18, 1973, as provided in § 5. The magnitude of that undertaking caused many administrative difficulties. The possibility of error, through fraud or mistake, in preparation of the roll cannot be denied. The Secretary has the power, after notice and an opportunity to be heard, to strike from the roll names placed thereon through fraud or mistake, Garfield v. Goldsbey, 211 U.S. 249 (1908), Campbell v. Wadsworth, 245 U.S. 169 (1918). This power exists even though the roll has been made “complete,” Lowe v. Fisher, 223 U.S. 95 (1912).

Under § 12(a) (1), the Village corporations are given a period of three years in which to select, in accordance with rules established by the Secretary, the acreages to which the village is entitled under § 14(b) and provides that the villages shall make additional selections for land which the Regional Corporation shall reallocate from acreage included in the difference between twenty-two million acres and the total area selected by the eligible villages pursuant to 12(a). No time period is set by the Act for this differential selection by the villages, but the Secretary has construed § 12(b) as allowing the villages four years to make such selections and has provided in 43 CFR § 2651.4(f), the villages a four year period in which to file their applications for these selections. The Secretary further provides in § 2651.4(f) that villages may file applications in excess of their total entitlement.

Again the statute has set a three year period for land selections by Village Corporations. The Secretary has required that the filing of appropriate applications be within this three year period, and the applications for differential acreage within four years, but has made allowance for the settlement and adjudication of these crucial rural land selections for a later time. Land selections can be made contemporaneously with determinations of the village eligibility and the Secretary has so provided in order to facilitate the quickest solution to a tremendously complex situation. The end result is that the land selection process moves forward contemporaneously but separately from the determinations of village eligibility. Furthermore a
delay in determination of village eligibility will neither delay nor interfere with the selection of lands by the villages.

There is nothing to indicate that Congress did not intend that the determination should be made by the Secretary after June 18 rather than not done at all. If Congress had intended to dissolve the Secretary's authority to make such determinations of village eligibility after June 18, it would have been explicit in denying him the exercise of that authority after the two and one-half year period. The Secretary retains his authority over the withdrawals for either three or four years, or until such time as he determines that the withdrawal is no longer necessary to accomplish the purposes of the Act. And it is settled Departmental policy that the Secretary may exercise his authority over lands that are still within his control as part of the public domain.


Where the time or manner of performing the action directed by statute is not essential to the purpose of the statute, provisions in regard to time or method are generally interpreted as directory only. Sutherland, Section 25.04. It cannot be said that Congress intended that the time frame set forth in the Act is to be disregarded or to be taken lightly. Such a framework was imposed for the purposes of orderly and prompt processing of the settlement package. In the one sense, the time frame must be considered an essential part of the statute; at the same time, however, the time limits do not dictate strict compliance where the broad purpose of the legislation would be sacrificed. The particular time provision in question does not go to the substance of the act to be completed, namely the determination of those villages eligible for benefits under the terms of the settlement, and therefore is directory. Vaugn, I.d.

In the absence of direct evidence of legislative intent with regard to this particular provision, it is appropriate to ascertain what Congress would have intended had it anticipated the situation at hand. It is difficult to imagine that Congress would have intended that the determinations of village eligibility should suffer because the Secretary could not meet the tremendous statutory burden imposed upon him within a certain time frame. Neither should persons be denied or granted village status by default, nor should decisions of eligibility be made in such a cursory fashion that the rights of all parties to the settlement should suffer. Congress did not intend that a slight “overrun” should prejudice private rights or the public interest. Because a delay in the determination of village eligibility is allowed under the overall framework of the Act, because a delay would not hamper the workings of the other provisions, because proper allowances can be made for such a delay without prejudicing the interests of those parties to the settlement, it would seem inconceivable to precipitate deliberation by for-
of the Act, the qualified villages will receive patent to the lands selected under § 12 (a) and (b). The total amount of land allocated to the villages is 22 million acres and villages that would qualify because the Secretary was unable to make a proper determination of eligibility would be depriving valid, qualified villages of their differential land under § 12(b). The Native villages are entitled to 22 million acres of land, period. It would be unfair for the Secretary to distribute land to a village that, in fact, should not qualify as a village at the expense of those villages which Congress intended be granted specific benefits apart from those associations of people who could qualify only as groups under the Act (§ 3(d)).

It is obvious that the converse, to wit, the denial of status as an eligible village to a number of persons in fact entitled to that status, would be an unjust and an unfair denial of a right specifically granted to those qualified by Congress.

Furthermore, under § 12(a)(1), an improperly qualified village may select lands from within National Wildlife Refuge Systems, National Forests and from lands tentatively approved to Alaska under the Statehood Act. If these selections were ultimately conveyed to an unqualified village, the State, a specific party to the settlement, would suffer unjustly. In addition, if lands were improperly conveyed from within National Wildlife Refuges and National Forests, such a conveyance would be in direct conflict with the purposes of paragraphs 17(d)(9)(A) and 22(e) which specifically provide for additions to such systems. These additions were considered necessary by Congress in providing for the public interest and the interests of the Federal Government as the third party to this settlement.

The settlement must be accomplished rapidly and without litigation. It is clear by the very nature of the Act that Congress intended "the certainty, the flexibility and the detail of a legislative settlement rather than a judicial settlement." Senate Report, 92-405, supra, at 62. To deny a legislative determination of village eligibility because of a delay caused by the very magnitude of the problem that Congress felt necessary to confront would be contrary to the essence of the settlement itself. Congress would not have intended that the proper determination of something as basic as village eligibility be thwarted by a slight delay in the implementation procedures.

The settlement is unique. Years of effort and study created this complex but final solution to an insoluble problem. It is certain that Congress did not intend that the implementation procedure be so precise that the very rights of those it had labored to protect be subject to the vagaries of the judicial process. It is inconceivable that Congress could have considered that the complexities and magnitude of the problem would vanish in the face of orderly procedural guidelines. In those instances where Congress felt that time periods must be imposed, it provided the appropriate penalties for failure to meet such deadlines. But where guidelines were imposed for the purposes of activating the most rapid procedures possible under the burdensome circumstances, Congress did not see fit to bridle the Secretary beyond any reason.

In United States v. Morris, 252 F. 2d 643 (5th Cir. 1958), a migrant labor agreement between the United States and the Republic of Mexico whereby United States guaranteed that employers would pay the prevailing wage rate or contract rate, whichever was higher, required that a "joint determination" that the United States agricultural employer had failed to pay the prevailing wage rate be concluded within ten days. The court held that the ten day requirement was directory only and that a determination concluded some 23 days later was a valid determination.

The court's discussion of the Agricultural Act of 1949 and its legislative intent is appropriate to the Settlement Act and the question at hand.

This procedure for joint determination covered many areas of possible controversy in addition to this simpler question of the actual wage paid in comparison to the administratively determined "prevailing wage." With workers scattered over the wide geographical area of this agricultural employment, the scheme of adjustment calling for adjudication by the two sovereigns through selected representatives, each of whom had other governmental duties to perform, and the nature of potential disputes comprising many of substantial complexity and controversy, it is not reasonable to believe that these two Governments intended, by this language, to establish a procedural remedy that would fail altogether for any case, no matter how serious or aggravated, which was incapable of resolution within ten days. On the contrary, these considerations suggest strongly that the ten-day limitation was directory, not mandatory, and prescribed out of recognition that two independent sovereigns with no coercive sanctions available were pledged each other to handle these complaint proceedings with dispatch, that neither would needlessly delay them, and as a specific target, the period of ten days would normally be sufficient.

Whether construed as a statute, or a treaty, or a statutorily authorized contract we discern no intention to adhere to literalism. It is not decisive and must give way to the purpose otherwise so clearly revealed. * * *

The problems confronted by the Secretary in administering the Alaska Native Claims Settlement Act are of substantial complexity and controversy. It is unreasonable to believe that Congress intended for determinations of village eligibility either to fail or be hasty made because they were incapable of resolution within two and one-half years. Congress intended that the Secretary proceed with dispatch in administering the Act, within the time framework set forth by Congress. Needless delays must be avoided and the schedule
must be used as a guideline, but not at all costs.

The timetable set forth by Congress is an estimate of time reasonable enough to accomplish the basic purposes of the Act. Two and one-half years was the specific target date set forth by Congress, but it cannot be blindly met, at the expense of the basic purposes of the act, namely a proper and reasoned settlement for once and for all of long-standing disputes between the Natives, the State of Alaska and the Federal Government.

Kent Frizzell,
Solicitor.

QUARTO MINING COMPANY
AND
NACCO MINING COMPANY

3 IBM 199 Decided June 19, 1974

Appeal by the Mining Enforcement and Safety Administration (MESA) from an initial decision by an Administrative Law Judge (Docket Nos. VINC 74-62, 74-63 and 74-69), dated February 13, 1974, vacating three Orders of Withdrawal.

Affirmed.


In an application for review of a section 104(a) order, the order is properly vacated where the operator, by a preponderance of the evidence, proves that imminent danger was not present when the order was issued.

APPEARANCES: Richard V. Backley, Esq., Assistant Solicitor, and W. Hugh O’Riordan, Esq., Trial Attorney, for appellant, Mining Enforcement and Safety Administration; Timothy M. Biddle, Esq., for appellees, Quarto and Nacco Mining Companies.

OPINION BY CHIEF ADMINISTRATIVE JUDGE ROGERS

INTERIOR BOARD OF MINE OPERATIONS APPEALS

The procedural and factual background of this case is adequately set forth in the Administrative Law Judge’s (Judge) decision.2

As we review the record, there is nothing that would tend to establish the probability of imminent danger. As a matter of fact all of the surrounding circumstances would support at most a bare possibility that such a condition could exist. On the other hand, the evidence adduced by the operators clearly overcame this bare possibility and in our view preponderates, i.e., an imminent danger condition did not exist at the time the Orders were issued.

In our opinion the record fully supports the Judge’s conclusion that these Orders were issued to bring about more rapid compliance with the cited safety standard and not because of the presence of an imminent danger. The record contains substantial evidence to the effect that when an inspector observes a “wheel parked on a cable” (in accordance with his instructions) he is required to issue a 104(a) withdrawal order and that if he didn’t he would have to justify such a failure to his supervisor.

This Board in the past has held that a 104(a) order of withdrawal is to be issued only where imminent danger is found to exist (United Mine Workers of America, District #21 v. Clinchfield Coal Company, 1 IBM 31, 78 I.D. 153 (1971)) in Freeman Coal Mining Corp., 2 IBM 197, 80 I.D. 610, CCH Employment Safety and Health Guide par. 13,567 (1973), we determined, inter alia, that the determination of whether imminent danger is present in a given situation, is that the cited condition or practice would be the conclusion by a reasonable man that imminent danger existed at the time of issuance of a 104(a) withdrawal order. Imminent danger is defined in section 3(j) of the Federal Coal Mine Health and Safety Act of 19692 to be “the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.”

Applying the foregoing to the circumstances in this case we find imminent danger was not present. Accordingly, we conclude that the Orders of Withdrawal were properly vacated by the Judge.

ORDER

WHEREFORE, pursuant to the authority delegated to the Board by

the Secretary of the Interior (43 CFR 4.1(4)), IT IS HEREBY ORDERED that the decision of the Administrative Law Judge issued February 13, 1974, IS AFFIRMED.

C. E. Rogers, Jr.,
Chief Administrative Judge.

I CONCUR:

H. J. Schellenberg, Jr.,
Alternate Administrative Judge.

DECISION

3 IBM 203

February 13, 1974

This is a review proceeding under section 105(a) of the Federal Coal Mine Health and Safety Act of 1969. The operators, Quarto Mining Company and Nacco Mining Company, seek to have Orders of Withdrawal No. 1 RWU, October 23, 1973; 1 JET, October 24, 1973; and 1 RWU, October 12, 1973, vacated. The Mining Enforcement and Safety Administration (MESA) and the United Mine Workers of America have filed answers in opposition to the applications for review.

Hearings on the applications were held in the U.S. Tax Courtroom, Federal Building, Pittsburgh, Pennsylvania, on January 7, 1974. The operators were represented by Timothy M. Biddle, Esq., Washington, D.C. MESA was represented by Hugh O’Riordan, Esq., Office of the Solicitor, Washington.
IN RE: Appeal of Ketchikan Indian Corp. from Bureau of Indian Affairs Land Entitlement Decision of January 19, 1977

ANCAB & LS 77-33

FINAL ORDER

DISMISSING APPEAL


1. Alaska Native Claims Settlement Act: Village Eligibility: Unlisted Villages

A village or community in Southeast Alaska which is not listed within §16(a) of the Alaska Native Claims Settlement Act is not eligible for benefits under the Act.

2. Alaska Native Claims Settlement Act: Generally

The Alaska Native Claims Appeal Board cannot ignore existing and related laws and decisions whether raised by the parties or not when the same are dispositive of the appeal itself.

APPEARANCES: Edward K. Thomas, President, Ketchikan Indian Corp., and Robert G. Mullendore, Esq., Roberts, Sheffelman, Lawrence, Gay & Moch, for Ketchikan Indian Corp.; Dan A. Hensley, Esq., Office of the Regional Solicitor, on behalf of Bureau of Indian Affairs; James F. Vollintine, Esq. and Elizabeth Johnston, Esq., for Bristol Bay Native Corp.; and James D. Sourant, Esq., for Calista Corp.

MEMORANDUM OF EVENTS


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The objection is based on the fact that Ketchikan should be recognized under the Alaska Native Claims Settlement Act as a village and be granted the opportunity to form a village corporation under the ANCSA and receive a portion of the land distribution to villages in Alaska.

By letter dated March 24, 1977, the Appellant elaborated its reasoning for appeal and stated in part:

The basis upon which this appeal is the fact that Ketchikan is an Indian community recognized by Congress since 1940 via the Indian Reorganization Act (IRA) and historically recognized by local Indians (and non-Natives through survey maps prior to 1900).

By letter dated April 14, 1977, the Appellant's position was restated and amplified contending, among other things, that "The passing of prior regulatory deadlines cannot have legal significance under all of the circumstances of this case."

On April 26, 1977, an Answer and Motion to Dismiss was filed by the Area Director, Bureau of Indian Affairs, contending that the Appellant made no application for a determination of eligibility as a Native village under ANCSA prior to September 1, 1973, as provided in 43 C.F.R. §2651.2(a)(6).

On June 23, 1977, this Board issued an Order requiring the Appellant to show cause why its appeal should not be dismissed on the grounds it did not file an application for determination of its eligibility prior to September 1, 1973, as required by regulation 43 C.F.R. §2651.2(a)(6).

On July 22, 1977, the Appellant filed its response brief and stated in part that sufficient mitigating circumstances could be established at a hearing sufficient to show that the appeal should not be barred on the grounds of timeliness.

On August 26, 1977, the Area Director, Bureau of Indian Affairs, again reiterated its previous position regarding the regulation requirement of 43 C.F.R. §2651.2(a)(6), but alluded in a footnote to the eligibility of unlisted (§16(a) ANCSA) Southeast Alaska villages.

By Order dated September 16, 1977, this Board required the parties to file additional briefing on the issue of whether unlisted villages in Southeast Alaska could be certified eligible for benefits under ANCSA in view of a previous Final Order of this Board in the Appeal of Village of Tenakee, VE 9 74-60.
On October 13, 1977, the Appellant filed its response objecting to the "piecemeal approach to the resolution of the various issues in this appeal" and refused to address the issue raised by the Board's Order of September 16, 1977, on the grounds it went to the "merits of the case."

On October 17, 1977, the Area Director, Bureau of Indian Affairs, filed its response requesting this Board to apply its previous ruling in Appeal of Tenakee, VE 9 74-60, and dismiss the present appeal on the grounds that a Southeastern Alaska village which is not listed in §16(a) of ANCSA cannot as a matter of law be certified as an eligible village under the exclusive procedures prescribed in §11(b)(3) of ANCSA.

FINDINGS

On August 30, 1974, this Board issued a Final Order in re Appeal of Village of Tenakee, VE 9 74-60, finding the Village of Tenakee not eligible for benefits under the Act and the same was approved by then Secretary of the Interior Rogers E. Morton on September 9, 1974. The Final Order, a copy of which is hereby attached and made a part of this Order, developed the legislative history of the Southeast Region, discussed applicable sections of the Alaska Native Claims Settlement Act and concluded that the designation of villages in Southeastern Alaska in §16(a) of ANCSA created an exclusive list of eligible villages of Southeast Alaska which cannot be added to, stating:

***

It is ... apparent from a comparison of the appropriate provisions relating to withdrawals, selections and conveyances of land that unlisted Southeast villages are not intended to receive benefits under the Act. The distinction made between 'identified' non-Southeast villages and listed Southeast villages is consistent throughout all of the withdrawal, selection, and conveyance procedures spelled out in the Act. It is thus apparent that Congress did not intend that unlisted Southeast villages could be made eligible for benefits under the Act.

***

[1] The Appellant in the present appeal, Ketchikan Indian Corporation, is located in Southeastern Alaska and purports to be a village or community entitled to benefits under the Alaska Native Claims Settlement Act despite the fact it did not seek a determination of eligibility prior to the September 1, 1973, deadline established by 43 C.F.R. §2651.2(a)(6). However, just as the Village of Tenakee, the Appellant is not listed within §16(a) of ANCSA and thus regardless of the significance of the application deadline for determination of eligibility this appeal must be controlled by the previous decision of the Board and therefore dismissed.
[2] The stated purpose of the Alaska Native Claims Settlement Act is to accomplish a rapid, fair and just settlement of all claims. Pursuant to 43 C.F.R. §4.901(a) "The Board is authorized to decide finally for the Secretary appeals under the Act, ..." In this regard, the Board cannot ignore existing and related laws and decisions whether raised by the parties or not, for nothing would be accomplished by allowing the Appellant to continue expensive and protracted procedures before this Board on one subject while another is, and will remain, dispositive of the appeal.

ORDER

Based upon the above findings and conclusions, the Board hereby issues this Final Order dismissing the above-designated appeal from the Bureau of Indian Affairs Land Entitlement Decision of January 19, 1977, and further Orders that the Appellant, Ketchikan Indian Corporation, is ineligible for benefits under the Alaska Native Claims Settlement Act.

DATED this 8th day of November, 1977, at Anchorage, Alaska.

[Signature]
JUDITH M. BRADY
Chairman

APPROVED: DEC 5 - 1977

[Signature]
Secretary of the Interior
IN RE: Village of Tenakee
VE 474-60
(Appeal of
Ineligibility)

FINAL ORDER
DISMISSING THE APPEAL OF
THE VILLAGE OF TENAKEE
AND
SEALASKA CORPORATION
AND
CERTIFYING VILLAGE
INELIGIBLE

TO: All Parties in Distribution

The Alaska Native Claims Appeal Board, pursuant to delegation of authority in the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. §§1601-1624 (1970) (the Act), and the implementing regulations in 43 CFR, Part 2650, hereby makes the following findings and conclusions, and issues a Final Order dismissing the above-designated appeal from the Final Decision of the Director, Juneau Area Office, Bureau of Indian Affairs (the Area Director), on the eligibility of the village of Tenakee Springs, also known as Tenakee, for benefits under the Act.

Pursuant to the regulations contained in 43 CFR, Part 2650, the Area Director published his Final Decision on February 21, 1974, 39 Fed. Reg. 6627, determining the Native village of Tenakee ineligible to receive benefits under the Act.

On March 22, 1974, Sealaska Corporation, on its own behalf and on behalf of the Native village of Tenakee, filed a Notice of Appeal from this same decision with the Board pursuant to 43 CFR 2651.2(a)(4).

On April 3, 1974, the State of Alaska filed with the Board its Response to said Notice of Appeal, pursuant to 43 CFR 2651.2(a)(5).

On April 18, 1974, the Forest Service, pursuant to an April 16, 1974 Order of the Board, filed an Answer to Sealaska, Inc., Brief, pursuant to 43 CFR 2651.2(a)(5).

On April 26, 1974, the Board issued an Order Requiring Briefs on a Question of Law which order was directed at all parties to this appeal. Such order directed all parties to submit briefs by May 10, 1974, on a question of law, to wit:

"Whether the designation of villages in Southeastern Alaska in §16(a) of the Alaska Native Claims Settlement Act, created an exclusive list of

2 AN cab 173
eligible villages in Southeastern Alaska, which cannot be added to ... under the authority of 
§11(b) of the Act.

On July 29, 1974, the Board issued a Show Cause Order requiring Sealska Corporation and/or the Village of Tenakee to file a brief on 
such point of law.

The Board, having considered all briefs filed by the parties to 
this appeal, makes the following findings and conclusions.

The Tlingit-Haida villages in Southeast Alaska have been treated in 
a separate and distinct fashion from all other Native villages 
throughout the legislative history of the Alaska Native Claims 
Settlement Act.

As the Senate Committee Report on S. 35 states:

.... The Southeast region requires special treatment 
for a number of reasons. First, the villages in this 
area are located in the Chugach and Tongass National 
Forests and special treatment is required to prevent 
conflict between the purposes for which lands are 
granted by this Act and the purposes for which these 
National Forests were established. Second, the claims 
of some of the Native people in this area have already 
been the subject of litigation in the Court of Claims. 
The Tlingit-Haida Native groups were awarded $7.5 million 
as a result of this litigation and their right and 
interest to an additional 2.6 million acres of land was 
recognized but not valued. Third, the value of the 
lands in this area with its water access and commercial 
timber is greater than that of other regions of 

For these reasons, separate and distinct provisions are made in the 
Act with respect to withdrawals for land selections by and conveyances 
to the Southeast villages. The Joint Statement of the Committee of 
Conference states that Section 16 of the Act:

.... provides appropriate and necessary 
limitations with respect to land grants to 
Native villages located in the National 
Forests in Southeast Alaska which parti-
cipated in the Tlingit-Haida Settlement ....

--Senate Report No. 92-581, page 44

Withdrawals for Southeast villages are made pursuant to Section 16(a):

All public lands in each township that encloses 
all or any part of a Native village listed below, 
and in each township that is contiguous to or 
corners on such township ... are hereby withdrawn ....
Southeast withdrawals are limited to the core township and the contiguous or bordering townships. Furthermore, such withdrawals are to be made only for Native villages "listed below."

Withdrawals for Native villages other than those listed in Section 16 are made pursuant to Section 11. The lands to be withdrawn are not limited to the core township and the bordering townships, but also include the townships contiguous to or cornering on the first layer of bordering townships. Section 11(a)(1)(2). Furthermore, the withdrawals are not limited to villages listed in Section 11, but include withdrawal for any Native village identified pursuant to subsection (b), which, in turn, provides for the qualification of both listed (Sections 11(b)(1) and (2)) and unlisted (Section 11(b)(3)) villages. Section 11(b)(3) further limits its application to non-Southeast villages by making reference only to "villages not listed in Section 11."

The Conference Report itself comments that Subsection 11(b) "provides that Native villages not listed in the bill may, if they meet designated criteria, later qualify for benefits under the Act." The Conference Report makes no similar comment on Section 16 of the Act and the withdrawals thereunder.

The provisions for land selections by Southeast villages are contained in Section 16(b) of the Act, which limits any selection by these villages to 23,040 acres. These selections can be made only by "the villages listed in subsection [16](a)." Section 16(b) also contains the requirement that selections made by Southeast villages need only be compact and contiguous.

Provisions for land selections by non-Southeast villages, on the other hand, are contained in Section 12(a)(1), which allows for selections of at least 69,120 acres and which further allows for selections by villages "identified pursuant to Section 11," thereby allowing for selections by unlisted non-Southeast villages, and not for selections by villages identified pursuant to Section 16. Furthermore, selections by non-Southeast villages, listed and unlisted, must not only be compact and contiguous, but also "in whole sections and, wherever feasible, in units of not less than 1280 acres." Section 12(a)(2).

Section 16(b) contains the only provision under which a Southeast village can select land. Any selection by a listed Southeast village is limited to 23,040 acres. Villages outside the Southeast region must select lands under the separate provisions in Section 12(a)(1). Section 12(a)(1) does not limit land selections to any specific acreage, but allows selection up to the maximum amount which a village may be entitled because of its population under Section 14(a).

Section 12 also contains the provision under which all regions, except for the Southeast region which is specifically excluded, are allocated, on the basis of the Native population in each region, the difference between twenty-two million acres and the total acreage selected by the non-Southeast villages under Section 12(a).

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The eleven regions then reallocate such land to all the non-Southeast villages. It is clear that Congress did not intend that such land be reduced by the acreage granted to unlisted Southeast villages, but only by that selected under Section 12(a) by the non-Southeast villages themselves.

Although the acreage allotted to listed Southeast villages is specifically excluded from the operation of Section 12(b), and therefore in no way reduces the amount to be reallocated to the non-Southeast villages, Section 12(c) makes specific reference to lands selected pursuant to Section 16. The land selected by Southeast villages reduces the amount of land to be allocated to the regions from the sixteen million acres granted the regions under this section. Section 12(c)(1)(B).

If Congress had intended that the acreage reallocated to the non-Southeast villages under Section 12(b) be reduced by the acreage selected by the Southeast villages under Section 16(b), the Act would have allowed for such a reduction. Congress did determine that acreage selected by the Southeast villages would instead apply only and specifically to the reduction of acreage allocated among the eleven regions under the "land-lost" formula contained in Section 12(c).

If an unlisted Southeast village were to be made eligible for benefits under the Act, the only provision under which it could select lands would be Section 12(a). Such a selection would necessarily reduce the acreage to be reallocated to the non-Southeast villages by the eleven regions under Section 12(b) and would thus be inconsistent with the intent of Congress. Acreage selected by Southeast villages must reduce acreage to be granted the eleven other regions, and not the land to be granted all the villages in those eleven regions.

The provisions for land conveyances to Southeast villages are contained in Section 14(b) of the Act. The Secretary shall issue "a patent to the surface estate to 23,040 acres" to any "Native village listed in section 16 which the Secretary finds is qualified for land benefits under this Act ...." Such conveyances must be made from the lands selected by the Village Corporation from lands "withdrawn for the Native village by subsection 16(a)," which, as pointed out above, were lesser withdrawals than those for non-Southeast villages, and which further were limited to selection only by villages listed in Section 16(a).

The provisions for land conveyances to non-Southeast villages are contained in Subsection 14(a) of the Act. The Secretary shall convey to any village "listed in section 11 which the Secretary finds is qualified for land benefits" a minimum of 69,120 acres. The "lands patented shall be those selected by the Village Corporation pursuant to subsection 12(a)," which, as pointed out above, allows for selections by Native villages identified pursuant to Section 11, and are not merely those listed in Section 11.

It is clear that Congress intended that Southeast villages receive no more than 23,040 acres because of their special status. Sections 16(b), selections, and 14(b), conveyances, contain express acreage limitations of 23,040 acres. The only provisions under which an unlisted Southeast village could withdraw, select and be conveyed land contain no such limitation. Sections 11(b)(3), 12(a), 14(a). It is inconsistent that unlisted Southeast villages should
be subject to no limitation on the land they receive, whereas listed Southeast villages must select and receive no more than 23,000 acres. An additional inconsistency that would result from the eligibility of unlisted Southeast villages is that such a village would also be required to select in whole sections (Section 12(c)(2)), while a listed Southeast village has been excluded from such a requirement by Section 16(b).

The Act provides distinctly different benefits for listed Southeast villages than it does for both listed and unlisted non-Southeast villages. It is also apparent from a comparison of the appropriate provisions relating to withdrawals, selections and conveyances of land that unlisted Southeast villages are not intended to receive benefits under the Act. The distinction made between "identified" non-Southeast villages and listed Southeast villages is consistent throughout all the withdrawal, selection, and conveyance procedures spelled out in the Act. It is thus apparent that Congress did not intend that unlisted Southeast villages could be made eligible for benefits under the Act.

The intent of Congress with regard to unlisted Southeast villages is further clarified by the fact that S. 35 did, in fact, provide for the eligibility of unlisted Southeast villages in Section 23(d). The language dealing with "Native Villages(s) located within Southeast Alaska and not listed in subsection (b) hereof" is almost identical to and definitely parallel with the language contained in Section 13(d) of S. 35, which provides for the eligibility of unlisted Southeast villages. That Congress in enacting its final version of the Act deleted the specific provision dealing with unlisted Southeast villages is clearly indicative of its intent to grant benefits only to those Southeast villages listed in Section 16 and consistent with the other provisions of the Act dealing with withdrawals for, selections by, and conveyances to qualified villages. The provisions for the Southeast and non-Southeast villages are parallel, but distinctly different, and the failure of Congress to provide any parallel provision for the eligibility of unlisted Southeast villages is consistent with the other distinctions made by Congress in conferring land benefits upon the listed Southeast villages subject to the Tlingit-Haida Settlement, and upon the listed and unlisted villages elsewhere in Alaska.

Based upon the above findings and conclusions, the Board hereby issues this Final Order dismissing the above-designated appeal from the Final Decision of the Area Director on the eligibility of the Village of Tenakee for benefits under the Act.

Therefore, the Area Director is directed to certify the Native Village of Tenakee as ineligible for benefits under the Alaska Native Claims Settlement Act and to publish the information contained herein in the Federal Register.

The administrative record of the Bureau of Indian Affairs, together with a copy of this Final Order, will be promptly returned to the Director, Juneau Area Office, Bureau of Indian Affairs.

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Pursuant to Secretarial Order No. 2965, this Final Order shall become final upon approval by the Secretary of the Interior.

DATED this 30th day of August, 1974, at Anchorage, Alaska.

Judith M. Brady
Chairman

APPROVED: September 9, 1974

Rogers C.B. Morton
Secretary of the Interior

DISTRIBUTION: Clarence Antioquia, Director, Juneau Area Office, BIA
Wm. E. Spear, Field Solicitor, Office of the Solicitor, USDI
Sealaska Corporation
Weissbrodt & Weissbrodt, Attorneys for Sealaska Corporation
Village of Tenakee
Alton C. Gaskill, Office of General Counsel, Forest Service, USDA
Attorney General, State of Alaska
ALASKA NATIVE LAND CLAIMS

HEARINGS
BEFORE THE
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE
NINetiETH CONGRESS
SECOND SESSION
ON
S. 2906
A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO GRANT CERTAIN LANDS TO ALASKA NATIVES, SETTLE ALASKA NATIVE LAND CLAIMS, AND FOR OTHER PURPOSES AND
S. 1964, S. 2690, S. 2020, and S. 3586
RELATED BILLS

JULY 12, 1968

PART 2
of the Department of the Interior is very properly objected to. I have made that point before in relation to an earlier bill. The time has come now that the native people have good leadership, that they can hire the necessary engineering, economic planning, and legal and other talent to fend for themselves. The record during many past decades appears to be that the Bureau of Indian Affairs has exercised a retarding influence on the development and progress of the native people in Alaska. This is no criticism of individuals—but of overall policy. So, I share these criticisms and to the extent that my voice and vote in the committee will prevail, I will try to get those changes made. But we do confront this practical problem of how much the Congress will go for and how much the Department will approve, and this is one of the things I would like very much to have the witnesses give attention to in their future comments.

Thank you.

Senator McCALF. Your next witness, Mr. Notti.

Mr. NOTTI. It will be Mr. John Borbridge, president of the Tlingit and Haida Association.

Senator McCALF. We are pleased to have you again before the committee. Go right ahead.

Mr. BORBRIDGE. Thank you. My name is John Borbridge, Jr.

First, may I express my thanks for the opportunity to appear today before this committee.

The hearings which this committee held in Anchorage, Alaska, in February of this year and the present hearings manifest that the committee has a sincere interest in the formulation and enactment of legislation which will deal equitably and fairly with the land rights of over 55,000 citizens of the United States who are natives of Alaska—persons of Indian, Eskimo, and Aleut descent.

I am president of the Central Council of the Tlingit and Haida Indians of Alaska. I am also a director of the Alaska Federation of Natives. I, along with other leaders of Alaska natives, appear before this committee to petition Congress in accordance with our rights under the Constitution and laws of our land.

I am proud to state my belief that there is no nation on the earth which has, during its history, set so high standards of dealing with native aboriginal peoples as the United States and no nation which has been more willing to rectify situations when it has fallen from those high standards.

I believe that the record will show that if Congress adheres to the same high standards and its own past actions in conformity with those standards, it will undertake to seek and obtain a consensus of the native groups of Alaska before approving any acquisition or other disposition of the ancestral lands belonging to the native groups.

When the European and American ships visited Alaska during the second half of the 18th century, they found the natives of Alaska of Indian, Eskimo, and Aleut descent were in occupancy of the several parts comprising all of Alaska.

Today, descendants of these native groups still continue to hold, by “rights of aboriginal occupancy,” the great bulk of the same territory.

Today, Alaska, the last great frontier of our Nation, is the sole remaining part of the United States which includes extensive areas,
comprising several hundred millions of acres, still held by native inhabitants based on rights of aboriginal occupancy. Aside, possibly, from small tracts which may have been missed, the "original" Indian or native "title" to all lands in all parts of the country has, over the years, been extinguished by the Federal Government, except in Alaska.

Now there are a number of bills pending before Congress which propose to deal with the extensive occupancy rights of the native groups of Alaska.

We, the natives of Alaska, have trust and confidence that Congress will adhere to the same honorable national policy and just principles which have uniformly guided it in dealing with aboriginal occupancy rights in all other parts of the country, ever since the founding of our Nation.

The keynotes of our Federal policy from the beginning have been honor and protection of the aboriginal occupancy rights of the native groups.

The underlying principles have been that native occupied lands should be acquired by the United States only with the voluntary consent of the native groups and for a fairly negotiated price.

These keynotes and principles are embodied in a consistent course of legislative acts of Congress, treaties made with the Indian tribes, executive agreements made with Indian tribes and approved by both Houses of Congress, Executive proclamations, and in a long series of decisions of the Supreme Court.

It is not suggested that our country's dealings with native groups are without blot. However, the record shows that when Congress has been apprised of mistakes or unfair or inequitable transactions, it has sought to provide appropriate restitution or other remedies, including the vesting of jurisdiction in tribunals, such as the U.S. Court of Claims and the Indian Claims Commission, to hear and determine the claims of injured native tribes or groups.

In considering the current legislative proposals to deal with the land occupancy rights of the Alaska native groups, it is worthwhile to remind ourselves of certain basic historical facts.

During our early history, the rapid population growth gave impetus to drives to acquire additional lands for purpose of increasing the resources and wealth of our Nation and for the use of our pioneering settlers, who, in ever-rising numbers, were migrating westward. Conflicts broke out between the settlers and the Indians. These were periods of great stress.

The Federal Government was denounced for trying to protect Indian lands. Complaints were made that Indian occupancy of lands was hindering the progress of the Nation.

It was asserted that a policy of honoring tribal occupancy rights and purchasing Indian lands would impose vast liabilities on the Federal Government.

It was argued that Indian occupancy of lands created no valid rights; and proposals were advanced to expropriate the Indian lands against the will of the Indians and without payment of any compensation.

However, Congress firmly stood by its policy of respect for the land occupancy rights of the Indians. In acquiring lands for the expansion of the Nation and the use of the settlers, Congress recognized the just principle of voluntary purchase and sale for a negotiated price in its dealings with the Indian tribes.

Thus, up to 1871 the Federal Government pursued a program of negotiating and making treaties with the Indian tribes, whereby portions of ancestral tribal lands were retained by the tribes as "reservations," and the Indian title to the balance of the lands was "extinguished" by voluntary cessions by the tribes and upon payment by the United States of agreed prices.

After 1871, the Federal Government acquired Indian lands by executive agreements which were subject to ratification by both Houses of Congress.

By such treaties and agreements made with Indian consent, the United States purchased the great bulk of the lands of the Indian tribes of the first 48 States at prices which, in the aggregate, have conservatively been estimated to exceed $800 million—indeed, a vast sum considering the national budgets of those early years of our Nation's history.

Further, despite the loss of many millions of acres during the years 1860-1934, by reason of improvident governmental policies, it has been estimated that more than 90 million acres of lands of these States have been retained to this day in tribal or individual Indian trust ownership.

Once again, now, in this sixth decade of the 20th century, when the matter of dealing with the existing land occupancy rights of the native groups of Alaska has come to the fore, we are hearing from some quarters the same inequitable arguments and the same discredited assertions and complaints which were advanced during earlier periods of our Nation's history and which Congress has repeatedly rejected.

Some argue that the claims by the native groups of Alaska of land occupancy rights are invalid.

Our answer is that our land occupancy rights are the same as the occupancy rights of the Indian tribes of the first 48 States. Our occupancy rights are entitled to the same respect, honor, and protection that have been uniformly accorded to such rights under Federal policy and laws.

Further, we answer that if there is any serious doubt about the validity of our occupancy rights, we ask only that Congress give us our day in court so that we may have a judicial determination of the validity, scope, and extent of our existing occupancy rights, and then afford us full Federal protection of such rights as are judicially established.

From some lips fall the familiar complaints that native occupancy of lands is hampering the economic development and progress of the State of Alaska.

Our answer is that though we have the right of complete beneficial use of our aboriginally occupied lands and all the resources of such lands, we have been prevented and restrained from exercising our rights to deal with and develop such lands and resources. We say that only after we have been permitted the reasonable opportunity to exercise such rights a judgment may fairly be made as to whether our occupancy is hampering the economic development and progress of Alaska.
We believe that we have sufficient leadership ability to direct the
development of our lands and resources.

We believe that we have the capacity—at least equal to the Federal
and State bureaucracies—to make wise selection of experts and
technicians to assist us, including engineers, geologists, foresters,
managers, investment advisers, accountants, economists, and lawyers.

Some argue that since the discoveries of valuable oil and gas re-
sources on the native lands have been recent and since the natives in
their aboriginal way of life did not exploit their lands for oil and
gas, the natives have no basis for complaint if the Federal Government
permits the natives to continue to use the lands solely for hunting,
trapping, and fishing purposes, or if the Federal Government appro-
priates the lands and compensates the natives only for the value of the
lands for such aboriginal uses without regard to the oil and gas
values.

This is an argument which has been repeatedly rejected by the
Supreme Court and the Court of Claims in cases involving Indian
tribal lands.

By a parity of poor reasoning, it may be suggested that if Senator
Jackson owned a 5,000-acre tract of mountain lands in his home State
of Washington which he used exclusively for hunting and for enjoy-
ing its beauty, and then valuable mineral deposits were discovered on
the land, the Federal Government could, lawfully and in good con-
science, appropriate the tract and pay Senator Jackson only for its
value for hunting purposes and for its beauty.

Many have suggested that since the Alaska Statehood Act gave to
the State of Alaska the right of selection of some 103 million acres of
land, a serious dilemma has been created in that the exercise of such
right by the State would necessarily require the selection of much
land presently held by the Alaska natives.

Our answer is that Congress was fully aware of this problem when
the statehood act was passed. In accordance with the uniform Federal
policy to honor and protect lands held by aboriginal occupancy rights,
Congress explicitly required the State of Alaska in the statehood act
to "forever disclaim" all right or title to any lands held by Indian,
Eskimo, and Aleut groups.

We say that any State selection of lands which are held by native
aboriginal title is violative of the terms, intent, and spirit of the state-
hood act and contrary to other acts of Congress as well as Federal
policy.

History shows that on the occasions when other States were earlier
admitted to the Union, the acts of admission included provisions sub-
stantially identical to the "disclaimer" clause of the Alaska Statehood
Act. Following the admission of such States, the Federal Government
by agreement with the Indian tribes acquired such Indian title lands
as were committed to the newly admitted State. The same procedure is
applicable to Alaska.

During the debates on the bill that became the Alaska Statehood Act
a number of distinguished state senators advocated amendments to the bill
so as to provide a mechanism for resolving the problem of any State
selection of lands which might conflict with native occupancy rights.
However, Congress in its wisdom, decided to postpone the final res-
olution of this problem to a later day. We trust that the day is now

and that in its resolution of the problem the Congress will act fairly
and honorably as it has in the past.

Some complain that for the Congress to deal with the native groups
to acquire the native lands in order to fulfill the commitment to the
State of some 103 million acres would result in a great drain on the
Federal Treasury, considering the oil, gas and other valuable resources
of the lands. It is further argued that since lands held by native title
are not constitutionally protected against a taking by the United
States, and for purpose of avoiding such a drain on the Treasury, Con-
gress should expropriate the native lands or pay a unilaterally fixed
amount far below the value of the lands.

These are akin to the arguments of our earlier history which sought
to place a dollar sign on national honor and integrity and which
Congress rejected when it purchased the lands of the Indian tribes of
the first 48 States.

The natives of Alaska are aware that efforts to work out fair and
equitable solutions of their occupancy rights are fraught with great
complexities and conflicting pressures. We understand that accom-
modations must be made in the national interest and in the interests
of the State of Alaska.

I believe that the natives of Alaska are prepared to make reasonable
accommodations. This is evidenced by the substantial proposals which
were drafted with the participation of the native leaders and have
been reported in S. 2906. This bill was drafted under great pres-
sure of time. We recognize the need for technical amendments.

We reject the so-called administration bill, S. 3695, as illogical and
as misconceived in many important respects.

Finally, I say again that we trust and believe that, in accor-
dance with the Federal policy which has prevailed throughout
the history of our Nation, and as a matter of fairness and equity, this
committee will seek and obtain a consensus of the native groups of
Alaska before approving any acquisition or disposition of the native
lands.

I would like to ask the permission of the chairman to interject a
few comments which are not a part of the statement.

Senator Mercer: Without objection.

Mr. Bové: Thank you, Mr. Chairman. The comment has been
made and question has been raised as to the status of the Tlingits
and Haidas Indians. For purposes of clarification, for the understanding
of the committee, I would like to point out that under the 1938 juris-
dictional act the Tlingits and Haidas were allowed their day in
court, receiving in 1959 a unanimous decision which substantiated
their claim to Indian title. However, in 1968 on the matter of the
evaluation in a decision issued this past January the court held that
not only would the Tlingits and Haidas Indians receive $74.2 million
as compensation for those lands to which Indian title had been ex-
guished but further that the Tlingits and Haidas still held judicially
allowed Indian title to 2.6 million acres.

Further, when the language under Executive order created the
Tongass National Forest, it was within the context that the Tlingits
and Haidas were claiming Indian title to the entire area. The lan-
guage creating the national forest specifically indicated that the lands
set aside and thus taken would be from the mean high tide to the
uplands. This leaves a residual area from the mean high tide to the adjacent submerged lands.

We feel that this combination of circumstances clearly indicates that while in fact the Tlingits and the Haidas have had their day in court, the full issue of the matter of native land rights pertaining to this group of the aboriginal population of the State of Alaska justifies its inclusion in the final settlement of all land claims for the State of Alaska.

We are in complete accord with the proposed amendments which have been suggested by our fellow spokesmen.

I would like to add another comment relative to the figures which have been advanced as they have pertained to the issue of evaluation relative to the lands taken from the Tlingits and Haidas. It has been pointed out that the Tlingits and Haidas received land the value of which was fixed at 43 cents an acre and in some of the proposed settlements it has been proposed that this would be an equitable method of determining the value which we might have attached to the lands that we would receive today.

I would like to point out that these valuations of the Tlingit lands were dated as of the dates of 1891, 1902, 1907, 1909, and 1925. Thus, it would be inequitable to take as a basis for settlement of those lands which are claimed by the native peoples of Alaska today a taking date and evaluations fixed as of a much earlier time.

We believe essentially that what we are trying to establish today before the Commission is that not only do we have native land rights which national policy has consistently honored but that policy has further dictated that in some methods the final settlement has always been a matter of negotiations, whether it be through treaties, agreements or even judicial determination where we have always been able to have attorneys representing us in a judicial process. We feel, therefore, that the terms of this settlement should likewise be a matter of negotiation.

I would like to add my final comment. I sincerely believe that the native leaders of Alaska have assumed a very statesmanlike posture. They have indicated a willingness to accommodate the interested parties. We have demonstrated a concern far beyond the sole concern for the settlement of land claims. We have demonstrated a concern for the well-being both of our country and of our State, because we are inseparably a part of each.

We further feel that the settlement of this problem is not only a challenge but a great opportunity for the United States. You have before you representatives who firmly believe and are dedicated to the principle that these can be settled and justice and equity can be achieved by the channels which are afforded us under the Constitution and which Congress has provided us in the past. We feel, therefore, that such equitable settlement where there have been other blots perhaps in dealing with Indian tribes in the past will furnish a fine opportunity for justice to prevail.

Thank you very much, Mr. Chairman.

Senator Metcalf. I would like to finish the panel this morning, but if there are any question there will be opportunity to interrogate when we are through.

Mr. Notti, your next witness.

Mr. Notti. Mr. Cliff Groh, attorney for the federation, also attorney for other groups of Indians, will be our next witness.

Mr. Groh. Mr. Chairman, my name is Clifford Groh. I have appeared before you before.

Senator Metcalf. Delighted to have you again before the committee.

Mr. Groh. Thank you, sir. I think in response to Senator Gruening's question, and I will not testify from my statement—

Senator Metcalf. It will be incorporated in the record.

Mr. Groh. We, of course, are in favor of a legislative settlement of this matter and I think it is important that the committee recognize the two maps that Mr. Wright put up on the board.

Now, this map is showing now represents a settlement of 500 acres per person to the native people of Alaska and that is how the land would be distributed.

Now, these are the provisions of Senate bill 2906. The other map that he put up there which had an occasional red dot on it would be the settlement proposal under Senate bill 2586 which is the Secretary's, the administration's proposal. We do not think that by any stretch of the imagination the 40 million acres that would be represented there is too much land for the native people of Alaska. The offer in Senate bill 2586, the Secretary's proposal, is completely inadequate and it would not provide the land base that these people need.

I think it is also important that the committee realize that we must be able to get into the withdrawn areas because the villages are there and—

Senator Metcalf, you will recall the testimony of George King from Unimak Island during the Anchorage field hearings. Unimak Island is about 200,000 acres, as I recall. It is set aside for reindeer and musk ox. There is a village there and those people cannot get the capital to build up their village because they cannot get the land and, of course, this is completely unreasonable. The same thing is true in many other areas in the Cordova area, Chugach National Forest. The villages there cannot get any land and this 40 million acres is going to have to include some kind of a provision so that these people can get the land in the withdrawn areas.

In the moose reserve, for example, they cannot get any—

Senator Gruening. I would like to say for the benefit of my colleagues who were not at these hearings that this was a shocking example of arbitrary action, in my view, by the Department of the Interior. The Department of the Interior merely declared entire Unimak Island to be a wildlife reserve without consulting the natives living there. They just took it right away from them and now they are subject to dual control both from the Fish and Wildlife Service and Bureau of Indian Affairs, and they have no right to utilize their resources, all of them are strictly limited.

This is the kind of action that is very properly protested. I was shocked to hear it, that this was done without any compensation to the people who lived there. Just as if they moved into your home and took it away from you and established new rules of conduct for you on land that you had always lived on.

Mr. Groh. And I think that in connection with the settlement of the 40 million acres, the broad settlement, of course, there was extensive use by these people of these lands for hunting purposes. That use, of course, and occupancy has gone on for thousands of years.
The Honorable John D. Dingell, Chairman  
Subcommittee on Fisheries and Wildlife  
Conservation and the Environment  
Committee on Merchant Marine and Fisheries  
House of Representatives  

Dear Mr. Chairman:

On June 11, 1974, you requested that the General Accounting Office (1) furnish an opinion as to whether the Department of the Interior's Alaska Native enrollment and village eligibility regulations are within the intent of the Alaska Native Claims Settlement Act (85 Stat. 688) as reflected by its legislative history, and (2) review the Native enrollment and village eligibility portions of the act to see if they have been properly administered.

We furnished you with our opinion on the regulations on August 12, 1974. This letter reports on our review of the administration of the enrollment and eligibility portions of the act.

The Alaska Native Claims Settlement Act extinguished the aboriginal land claims and any aboriginal hunting and fishing rights of Alaska Natives. It provided the framework for establishing the basic land ownership pattern of Alaska through which Alaska Natives may fully participate in the social, political, and economic life of the State and Nation. Among other things, the act provides for:

--The ultimate conveyance of some 40 million acres of Federal land to Alaska Natives in fee simple ownership.

--The enrollment within 2 years of all Alaska Natives living on the date of the act of one-fourth or more Alaska Indian, Eskimo, or Aleut blood or, if blood quantum cannot be proved, of those who are accepted as Alaska Natives by the village or group in which they claim membership.
The formation of Native villages and regional corporations to take title to most of the lands granted and to administer the funds and revenues granted.

The act made the Secretary of the Interior responsible for enrolling Natives to the places they resided on the 1970 census enumeration date and for determining the eligibility of Native villages for land and monetary benefits. The Secretary delegated these responsibilities to the Commissioner of Indian Affairs, who in turn re-delegated them to the Director of the Juneau Area Office, Bureau of Indian Affairs (BIA). The Secretary also established the Alaska Native Claims Appeal Board to hear appeals of BIA's village eligibility determinations.

We reviewed the Juneau Area Office's procedures and evidence for enrolling Natives and determining the eligibility of Native villages. In agreement with your office, the review of village eligibility was directed to 11 villages located near and having land selection rights from within the Kodiak National Wildlife Refuge, Kenai National Moose Range, and the Chugach and Tongass National Forests. We also reviewed one village having land selection rights within the Izembek National Wildlife Refuge. BIA had determined that the 12 villages were eligible, but such eligibility had been appealed to the Appeal Board in every case by other Federal agencies, the State of Alaska, and private organizations. (See app. I for a list of the 12 villages.)

Our review at the Juneau Area Office showed the procedures for enrolling Natives and determining village eligibility were being followed. These procedures did not provide for any independent verification of the data furnished by the individual Natives which was used to determine whether (1) the Natives qualified as residents of the village in which they wished to enroll and (2) the Natives used and occupied the village site during 1970.

BIA contracted with Native organizations, from which the regional corporations were later formed, to assist the Natives in preparing their enrollment applications. The Native organizations had a possible conflict of interest because they could influence the Natives' decisions as to the villages in which they should enroll, thereby, impacting on the land benefits to which the regional corporations would subsequently become entitled. The Department
of the Interior believes, however, that there was no evidence that any real advantage was taken of this possibility.

According to Juneau Area Office officials, an independent verification of the data submitted by the Natives was not made by BIA. They also stated that the Native organizations assisted in the enrollment process because BIA did not have sufficient staff to carry out these functions within the statutory time frame.

We also determined the Alaska Native Claims Appeal Board procedures for processing appeals to BIA's determinations of village eligibility and reviewed the eight decisions which they made as of August 16, 1974. When BIA's decisions on village eligibility were appealed to the Board, it seemed to have adequately considered the information presented by BIA and those making the appeals.

NATIVE ENROLLMENT PROCEDURES

BIA officials in the Juneau Area Office said they did not anticipate being assigned the responsibility for preparing the Alaska Native roll; when the act was being finalized a bill in the Congress provided for establishing an independent commission to enroll Natives. When the enrollment responsibility was given to the Secretary of the Interior and then delegated to BIA, a shortage of funds, manpower, and facilities existed.

In February 1972 the Juneau Area Director established the Enrollment Coordinating Office in Anchorage with the responsibility to coordinate and complete enrollment activities by December 17, 1973. In early 1972 a hiring freeze prevented the hiring of any additional permanent staff in the BIA Juneau Area Office. The Area Director told us that, because of this hiring ceiling, the Enrollment Office was staffed initially with temporary employees, BIA personnel from divisions within the Juneau Area Office, and personnel from area offices in other States.

To overcome these staffing problems and complete the enrollment within the required time, BIA contracted with Native organizations in Alaska (from which the regional corporations were formed)
to meet with the Natives within the organization's geographical area and prepare the Natives' enrollment applications.

The Native organizations' personnel prepared the enrollment applications for almost all Natives living in Alaska. In some instances, meetings were held with Natives living outside Alaska; in other instances, these Natives obtained enrollment applications by mail. The enrollment application requested such information as the applicant's social security number, address, sex, date of birth, degree of Native blood, permanent residence on April 1, 1970, and family tree.

BIA officials told us that they were aware that the Native organizations personnel who met with the Natives could influence where a Native enrolled. Although we believe there was a possible conflict of interest on the part of a Native organization (regional corporation) helping to enroll Natives (the distribution of monetary and land benefits under the act depends partially upon the number of Natives enrolled in villages within the geographical boundaries of the regional corporation), the Department of the Interior found no evidence that any real advantage was taken of this possibility.

The Juneau Area Director told us that, considering the staffing and time constraints involved, the use of these organizations was the only feasible way of completing the enrollment on time.

The BIA Enrollment Coordinator told us that March 30, 1973, was the deadline for a Native filing a completed enrollment application. Although there was no formal regulation prescribing a deadline for changing information on the applications, BIA allowed the Natives until May 9, 1973, to change the place stated on the enrollment application as their permanent residence on April 1, 1970, if it was demonstrated that an error had been made. Until May 9, 1973, such a change could be made by the BIA Enrollment Office, or in the event that the Enrollment Office denied the request for a change, by formally appealing to the Alaska Regional Solicitor, Department of the Interior. After May 9, 1973, the Enrollment Office denied all requests for change without consideration of their merit, and such changes could only be made through
the appeal process. Subsequently, the Department of the Interior established August 15, 1973, (25 CFR 43h.14) as the deadline for making any changes to enrollment applications; therefore amendments to applications that were not on file on or before this date were returned to the applicant without action. We were told that these deadlines were necessary to enable BIA to complete the processing of applications before the December 17, 1973, statutory deadline.

To insure that the information submitted by a Native had been accurately recorded, Enrollment officials sent each Native a computerized letter with the information obtained from his application. Each Native was asked to verify the accuracy of the information. The Enrollment Office officials said they generally sent the information to the village corporation to which the applicant claimed residency and to the regional corporation in which the village was located so that the village and regional corporations could protest the blood degree of any applicant.

We noted that this enrollment information had not been provided to 10 of the 12 village corporations we reviewed, although it was sent to the regional corporations. The BIA Enrollment Coordinator stated that, at the time BIA was sending this information to the villages, there were too few Natives enrolled or actually at the village sites to properly review the list. Consequently, this check on a Native's eligibility and place of residence was missing for these villages.

Section 5(b) of the act states that:

"The roll prepared by the Secretary (of the Interior) shall show for each Native, among other things, the region and the village or other place in which he resided on the date of the 1970 census enumeration (April 1, 1970), and he shall be enrolled according to such residence."

The act does not define "residence," so the Secretary, in his regulations, defined "permanent residence" as:

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

BIA's procedure for enrolling Natives to where they resided on April 1, 1970, was to have each Native state on his application form his place of residence (using the above definition) on April 1, 1970. BIA officials told us that this statement was relied on with no verification and the Native was not required to provide any evidence of his actual residence on April 1, 1970. The statement of residency was accepted as accurate because each individual preparing an application had to certify, subject to a penalty of not more than $10,000 or 5 years in prison, or both, that the information given in the application was accurate.

The Enrollment Coordinator told us that as of August 1974 the Alaska Native roll was still being reviewed to eliminate duplicate applications and individuals who do not qualify under the act.

DETERMINING VILLAGE ELIGIBILITY

The Juneau Area Director delegated to the Area Realty Office the responsibility for making findings of facts relating to village eligibility determinations, but he made the final eligibility determinations. The Realty Office (1) determined the number of Native residents of each village, (2) made a field inspection of villages when considered necessary, and (3) obtained affidavits, when necessary, from Natives who claimed to have used the village site in 1970.

Determining the number of residents

For a village to be eligible for benefits under the act 25 or more Natives must have resided in the village on the 1970 census enumeration date (April 1, 1970). According to the regulations,
a Native enrolled to a village is considered a resident of that village for eligibility determinations. To determine the number of Native residents of a given village, the Realty Office relied on the Enrollment Coordinating Office lists of Natives enrolled.

The Assistant Area Realty Officer said that census data was not used to determine the number of Native residents of a village, because the census procedures relied only on an individual's unverified statement that he was a Native having one-fourth Native blood. Thus, BIA could not rely on the census data to determine whether the Native residents of a village had one-fourth or more Native blood as required in the act. The Director of the Census Bureau, Department of Commerce, confirmed that census takers accept without verification an individual's statement that he is a Native.

The Census Bureau's criteria for determining residency differs from that of BIA. For census purposes, each person is "counted as an inhabitant of his usual place of residence, which is generally construed to mean the place where he lives and sleeps most of the time." BIA enrollment regulations could consider a Native a resident of a region or village, even though he was not actually living there on the census date (i.e. if he has continued to intend that place to be his home).

Field inspections

The act required the Secretary to make determinations of eligibility for 215 villages. BIA initially certified 170 villages eligible for benefits under the act. Field inspections were not made of these villages, and affidavits relating to use were not obtained. The former Area Realty Officer said that--on the basis of various studies, information available in the area office, and his personal knowledge--these villages were qualified and field inspections were not necessary. The eligibility of these 170 villages was not protested.

Field inspections were made of the remaining 45 villages listed in the act and of 29 of the 31 villages not listed in the act which applied for eligibility. We were told that field inspections were not necessary for two of the unlisted villages because they did not have the required number of Native residents for eligibility.
Field inspections were made to determine whether:

--- The village had an identifiable physical location.

--- There was evidence of use and occupancy in accordance with the Native's own life style and at least 13 Natives enrolled to the village used it for a period of time during 1970.

--- The village was not modern and urban in character.

--- The village was temporarily unoccupied in 1970 because of an act of God or government within the previous 10 years. (The regulations provide that a traditional Native village should not be considered ineligible if such an act caused it to be unoccupied in 1970.)

According to BIA officials, the field inspectors took pictures to show the nature of the various physical structures at the village sites and obtained affidavits from at least 13 Natives who claimed to have used each village site during 1970. BIA accepted these affidavits at face value without verification. These village eligibility procedures were followed at the 12 villages in our sample.

BIA officials told us that their field inspectors were not given any written instructions for making the above determinations because there was not time to prepare them. A 3-day meeting had been held in June 1973 where the field inspection approach was discussed and an inspection checklist developed.

Some superficial field inspections may have resulted from the lack of specific guidelines. For example, the Appeal Board decision on the village of Afoormak disclosed that the field inspection had not determined the actual use of the village by the various Natives who claimed to have used it for "a period of time" during 1970. The field inspector also was not clear as to what constituted "a period of time" during 1970, which could be expected since the regulations do not define "a period of time" for determining use.
APPEAL PROCEDURES

The Code of Federal Regulations relating to village eligibility (43 CFR 2651.2) requires that the BIA Juneau Area Director publish each BIA proposed determination of village eligibility in the Federal Register and in one or more newspapers of general circulation in Alaska, and mail a copy of the proposed decision to the affected village, all villages located in the region in which the affected village is located, all regional corporations within Alaska, and the State of Alaska. This procedure provided information to interested parties who could, if they had supporting evidence, protest the Area Director's proposed determination. BIA officials stated that this procedure was followed for each village. We verified that this procedure was followed for the 12 villages included in our review.

Upon receipt of a protest, the Area Director was responsible for

--examining and evaluating the protest and supporting evidence,

--preparing his record of findings of fact and proposed decision, and

--rendering a final determination on the eligibility of the village being protested.

The Area Director's determination on the protest was also published and furnished to interested parties in the same manner as his proposed decision on village eligibility. The Area Director's determination became final unless appealed to the Secretary by a notice filed with the Alaska Native Claims Appeal Board.

Statistics on BIA determinations of village eligibility

Of the 215 villages identified by the act, BIA determined 201 eligible and 14 ineligible. Twelve of the villages determined eligible were appealed to the Appeal Board.
Of the 31 villages not listed in the act which applied, BIA determined 24 eligible and 7 ineligible; 28 of these determinations (23 eligible and 5 ineligible) were appealed to the Appeal Board.

**Appeal Board procedures**

The Secretary of the Interior established the Alaska Native Claims Appeal Board to hear appeals of BIA's determinations of village eligibility. The Appeal Board consists of four members appointed from outside the Department of the Interior, most of whom have direct familiarity with Native village life. The Board is responsible for obtaining facts and making recommended decisions to the Secretary regarding village eligibility. Thus, the Appeal Board is an independent check of the adequacy of BIA's determinations.

The Appeal Board has interpreted broadly its responsibility to be a fact-finding body; it will consider any factual evidence presented to it relevant to the determination of a village's eligibility. For example, the Appeal Board will consider evidence bearing on the question of a village's number of residents which rebuts BIA's determination of the number of residents.

An administrative law judge from the Department of the Interior's Office of Hearings and Appeals hears all appeals of BIA's determinations of village eligibility scheduled by the Appeal Board. The Chairman of the Appeal Board told us that his Board decided to have the judges hear each case to insure compliance with provisions of the Administrative Procedures Act. The judges were instructed to prepare recommended decisions for the Appeal Board's consideration.

The Appeal Board decisions on village eligibility are based on the BIA village case files; the Board's files containing the Notices of Appeal, pleadings, briefs, and motions of the parties; exhibits submitted by the parties and admitted into evidence at the hearing; hearing transcripts; proposed findings of fact and conclusions of law submitted by the parties; and the recommended decisions submitted by the administrative law judges. The Appeal Board decisions were submitted to the Secretary of the Interior for his final decision.
Twelve appeals on listed villages were initially made to the Appeal Board. BIA had determined all 12 to be eligible. Four appeals were dropped by the appellant before a hearing was held. The Appeal Board determinations of eligibility on the remaining eight appeals follow.

<table>
<thead>
<tr>
<th>Village</th>
<th>Appeal Board Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manley Hot Springs</td>
<td>Eligible</td>
</tr>
<tr>
<td>Chitina</td>
<td>Eligible</td>
</tr>
<tr>
<td>Kaguyak</td>
<td>Eligible</td>
</tr>
<tr>
<td>Afognak</td>
<td>Eligible</td>
</tr>
<tr>
<td>Kasaan</td>
<td>Eligible</td>
</tr>
<tr>
<td>Salamatroff</td>
<td>Ineligible</td>
</tr>
<tr>
<td>Pauloff Harbor</td>
<td>Ineligible</td>
</tr>
<tr>
<td>Uyak</td>
<td>Ineligible</td>
</tr>
</tbody>
</table>

Seven of the eight law judge decisions upheld BIA, but the Appeal Board overturned two of these decisions. The Secretary accepted the Appeal Board's recommendations in all eight cases. A brief summary of the reasons the Appeal Board overturned BIA follows.

Salamatroff

The Appeal Board determined that Salamatroff was not a "Native village" on April 1, 1970, within the meaning of the act. It did not have an identifiable physical location evidenced by occupancy consistent with Native cultural patterns and life style.

There were Natives residing in the area, but the Appeal Board found little sense of community among these people and that the people living in the area were an offshoot of the town of Kenai. It said the people in the area were not a tribe, band, clan, group, village, community, or association within the meaning of the act. The Board overturned the administrative law judge and BIA in making this determination.
Pauloff Harbor (Sanak)

The Alaska Native Roll showed 25 Natives enrolled to Pauloff Harbor, which BIA accepted as the number of native residents in Pauloff Harbor on April 1, 1970. Evidence presented at the Pauloff Harbor hearing showed that certain of those individuals on the roll were not residents of Pauloff Harbor on April 1, 1970, so the 25 or more Native criteria of the act was not met. The Board determined that: (1) one of the enrolled Natives was born after April 1, 1970, and was, therefore, ineligible, (2) four enrolled Natives were not known by the residents to have inhabited Pauloff Harbor at any time, and (3) four Natives claiming residence at Pauloff Harbor were enrolled to other villages and, therefore, could not be considered residents of Pauloff Harbor.

The Board also determined 13 Natives enrolled to Pauloff Harbor did not use the village for a period of time during 1970. There was testimony of use by other Natives who were not enrolled to Pauloff Harbor who could not be considered as part of the 13 needed to demonstrate use of Pauloff Harbor during 1970.

Uyak

The parties at the hearing stipulated that the village or site had an identifiable physical location (e.g., it is shown on maps). The Board, however, determined that the evidence presented at the hearing was sufficient to show that Uyak did not have a physical location evidenced by occupancy consistent with the Natives' own cultural patterns and lifestyle. Testimony tended to show a historical pattern of nonoccupancy. The Appeal Board determined that there were not 25 or more Native residents of the village on April 1, 1970.

- - - -

We believe that considerable information relating to village eligibility was brought out through the appeal hearings and Appeal Board decisions. The question of physical existence of villages, for example, appeared to be adequately resolved through the appeal process. Considerably more information than had been available to BIA on the number of Native residents and the use and occupancy of
villages during 1970 was made available through the appeal process for the Secretary's consideration in making the final determinations of village eligibility.

Of course, for villages which were not appealed, no information other than that developed by BIA was considered in determining their eligibility.

Twenty-eight appeals on unlisted villages were initially made to the Appeal Board. One of these appeals was not allowed by the Appeal Board because the deadline for filing appeals had passed. Another seven appeals were dropped by the appellant before the administrative law judges held hearings. The following table summarizes information relating to the appeals.

<table>
<thead>
<tr>
<th>Number BIA determined</th>
<th>Eligible</th>
<th>Ineligible</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>BIA determinations appealed</td>
<td>23</td>
<td>5</td>
<td>28</td>
</tr>
<tr>
<td>Appeals not accepted by Board</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Total appeals to have been considered</td>
<td>22</td>
<td>5</td>
<td>27</td>
</tr>
<tr>
<td>Appeals dropped</td>
<td>5</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Remaining appeals decided by Appeal Board</td>
<td>17</td>
<td>3</td>
<td>20</td>
</tr>
</tbody>
</table>

As of September 1, 1974, the Appeal Board had not reached a decision on any of the 20 remaining appeals.

CONCLUSION

The Juneau Area Office followed the procedures for enrolling Natives and determining village eligibility. However, these procedures did not provide for any independent verification of the data furnished by the individual Natives. The data was used to determine whether (1) the Natives qualified as residents of the villages in which they wished to enroll and (2) the Natives used and occupied the village site during 1970.
The Native organizations (regional corporations) which BIA contracted with to help Natives prepare their enrollment applications had a possible conflict of interest because they could obtain a greater share of the benefits provided by the act depending on where Natives were enrolled. The Department of the Interior said there was no evidence that any real advantage was taken of this possibility.

In cases where BIA's decisions on village eligibility were appealed to the Appeal Board, considerably more information than was available to BIA was made available by witnesses during the hearing process. It appears that the Appeal Board adequately considered the information presented to it in making its determinations of village eligibility.

We have obtained comments on the facts in the report from BIA and such comments are included where appropriate.

We do not plan to distribute this report further unless you agree or publicly announce its contents.

Sincerely yours,

[Signature]

Comptroller General
of the United States
## APPENDIX I

### VILLAGES INCLUDED IN GAO REVIEW

<table>
<thead>
<tr>
<th>Villages listed in the act</th>
<th>Located near and with land selection rights from</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afognak</td>
<td>Chugach National Forest</td>
</tr>
<tr>
<td>Kaguyak</td>
<td>Kodiak National Wildlife Refuge</td>
</tr>
<tr>
<td>Kasaan</td>
<td>Tongass National Forest</td>
</tr>
<tr>
<td>Pauloff Harbor</td>
<td>Izembek National Wildlife Refuge</td>
</tr>
<tr>
<td>Salamatoff</td>
<td>Kenai National Moose Range</td>
</tr>
<tr>
<td>Uyak</td>
<td>Kodiak National Wildlife Refuge</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Villages not listed in the act</th>
<th>Located near and with land selection rights from</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anton Larsen Bay</td>
<td>Kodiak National Wildlife Refuge</td>
</tr>
<tr>
<td>Bells Flats</td>
<td>Kodiak National Wildlife Refuge</td>
</tr>
<tr>
<td>Eyak</td>
<td>Chugach National Forest</td>
</tr>
<tr>
<td>Litnik</td>
<td>Chugach National Forest and Kodiak National Wildlife Refuge</td>
</tr>
<tr>
<td>Point Possession</td>
<td>Kenai National Moose Range</td>
</tr>
<tr>
<td>Port William</td>
<td>Chugach National Forest</td>
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</tbody>
</table>
REPORT TO THE SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT, COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

The Native Enrollment and Village Eligibility Provisions Of The Alaska Native Claims Settlement Act

Bureau of Indian Affairs
Department of the Interior

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

DEC.13,1974
sonnel administration consisting of direction and administration of the personal program; employment, placement, and separation; job evaluation and classification; employee relations and services; wage administration; and processing, recording, and reporting.

Sec. 303. None of the funds provided herein shall be used to pay any recipient of a grant for the conduct of a research project an amount equal to as much as the entire cost of such project.

This Act may be cited as the "Independent Offices Appropriation Act, 1966".

Approved August 16, 1965.

Public Law 89-129

JOINT RESOLUTION

To provide for the development of Ellis Island as a part of the Statue of Liberty National Monument, and for other purposes.

Whereas the President of the United States has by proclamation added Ellis Island to the Statue of Liberty National Monument, and

Whereas the Presidential proclamation prohibits the use of funds appropriated to the Department of the Interior for the development of Ellis Island unless otherwise authorized by Act of Congress: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there are hereby authorized to be appropriated such funds, but not more than $50,000,000, as may be required to develop Ellis Island as a part of the Statue of Liberty National Monument, but not more than $3,000,000 shall be appropriated during the first five years following enactment of this Act.

Approved August 17, 1965.

Public Law 89-130

AN ACT

To amend the Act of June 19, 1935 (49 Stat. 388), as amended, relating to the Tlingit and Haida Indians of Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of June 19, 1935 (49 Stat. 388), is amended by deleting sections 1, 7, and 8 thereof and substituting new sections 1, 7, and 8, to read as follows:

"For the purposes of this Act the Tlingit and Haida Indians of Alaska shall be defined to be all those Indians of Tlingit or Haida blood who reside in the various local communities or areas in the United States or Canada.

"Sec. 7. Upon submission to the Secretary of the Interior by the existing organization known as the Central Council of the Tlingit and Haida Indians of Alaska or by a committee duly appointed by such central council, of rules prescribing the method of election of delegates to the central council which the Secretary finds to be equitable and to be designed to assure, to the extent feasible, fair representation on the central council to persons of Tlingit or Haida blood who reside in the various local communities or areas in the United States or Can-
ada, the Secretary, in his discretion, is authorized to approve such rules. The Central Council of Tlingit and Haida Indians, composed of delegates elected in accordance with such approved rules and their duly elected successors in office, shall be the official Central Council of Tlingit and Haida Indians for purposes of this Act. Any amendments to such rules shall be subject to the approval of the Secretary.

Sec. 8. The amount of the appropriation made to pay any judgment in favor of said Tlingit and Haida Indians of Alaska shall be deposited in the Treasury of the United States to the credit of the Tlingit and Haida Indians of Alaska, and such funds shall bear interest at the rate of 4 per centum per annum. Such funds including the interest thereon shall not be available for advances, except for such amounts as may be necessary to pay attorney fees, expenses of litigation, organizational, operating and administrative expenses of the official Central Council, and expenses of program planning, until after legislation has been enacted that sets forth the purposes for which such funds shall be used. The Council is authorized to prepare plans for the use of said funds, and to exercise such further powers with respect to the advance, expenditure, and distribution of said funds as may be authorized by Congress. In order to facilitate the prompt use and distribution of said funds, the Secretary of the Interior, pursuant to such rules and regulations as he may prescribe, is authorized and directed to prepare a roll of all persons of Tlingit or Haida blood who reside in the various local communities or areas of the United States or Canada on the date of this Act. The costs of preparing such roll incurred subsequent to the appropriation to pay any judgment shall be deducted from such judgment funds. Any part of such funds that may be distributed per capita to persons of Tlingit or Haida blood shall not be subject to Federal or State income taxes."

Sec. 2. As used in the Act of June 19, 1935, as amended by this Act, the terms "Indians of Tlingit or Haida blood who reside in the various local communities or areas in the United States or Canada" and "persons of Tlingit or Haida blood who reside in the various local communities or areas in the United States or Canada" mean only persons of Tlingit or Haida blood residing in a local community or area in the United States or Canada who were legal residents of the Territory of Alaska on June 19, 1935, or prior thereto, or who are descendants of persons of Tlingit or Haida blood who were legal residents of the Territory of Alaska on June 19, 1935, or prior thereto.

Approved August 19, 1965.

Public Law 89-131

To amend the Act of June 23, 1946, relating to the telephone and telegraph service furnished Members of the House of Representatives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That clause (1) of subsection (b) of section 2 of the Act entitled "An Act relating to telephone and telegraph service and clerk hire for Members of the House of Representatives", approved June 23, 1946, as amended (2 U.S.C. 46g), is amended by striking out "five" and inserting in lieu thereof "four".

Sec. 2. The amendment made by the first section of this Act shall take effect as of noon, January 3, 1965.

Approved August 21, 1965.