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Alaska Native Lands and the Alaska Native Claims Settlement Act (ANCSA): Overview and Selected Issues for Congress

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SUMMARY

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Alaska Native Lands and the Alaska Native Claims Settlement Act (ANCSA): Overview and Selected Issues for Congress

At the time of its passage in 1971, the Alaska Native Claims Settlement Act (ANCSA; P.L. 92-203) was the largest land claims settlement in U.S. history. ANCSA extinguished claims by Alaska Natives to over 360 million acres of land and settled their claims to the aboriginal lands on which they lived for generations. Under provisions of the settlement, Alaska Natives received approximately 45 million acres, the majority of which were divided among more than 200 village corporations and 12 regional corporations established by the legislation. ANCSA also established a 13th regional corporation, composed of Alaska Natives who were nonpermanent residents of Alaska, which did not receive land under the settlement. The 12 regional corporations, together with the 13th regional corporation, shared in a settlement payment of approximately $962.5 million.

Prior to ANCSA's passage, the aboriginal land claims had been unresolved for the more than 100 years since the United States purchased Alaska from Russia in 1867. Various federal actions over this time, such as executive orders and acts of Congress, noted Alaska Natives' use and occupancy of the land, but the aboriginal land claim remained uncertain. The influence of oil companies in the area and the statehood of Alaska were among the factors that prompted the resolution of Alaska Natives' land claims through ANCSA.

ANCSA sought to create a land entitlement system different from the reservation system for the tribes in the lower 48 states. For instance, ANCSA created village and regional corporations, sometimes generally referred to as *Alaska Native corporations* (ANCs), not only to receive land under the settlement but also to aid in the disbursement of the settlement payment and boost the Alaskan economy. Unlike tribal governments, ANCs are business entities organized under the laws of Alaska. Once an ANC receives title to land under ANCSA, the land is considered private property, a key difference between ANC lands and tribal lands in the lower 48 states.

ANCSA contained several provisions addressing land entitlements for village and regional corporations. Such provisions included withdrawing federal public lands from appropriation and creating a complex system for the selection of lands. ANCSA also addressed the status of various land holdings from prior legislative and executive actions. For example, ANCSA repealed prior acts of Congress authorizing individual Alaska Natives to hold up to 160 acres of land and terminated all Indian reservations in Alaska, except one—the Annette Island Reserve of the Metlakatla Indian Community. In addition, ANCSA authorized land exchanges between ANCs, the federal government, and the State of Alaska.

Through its land entitlement structure, ANCSA created *split estates*—estates where one entity owns the surface estate and another owns all or part of the subsurface estate. For example, under ANCSA, village corporations primarily obtained fee title to lands' surface estates, whereas regional corporations obtained fee title to the subsurface estates of these same lands. In other instances, ANCSA created estates split between the federal government and ANCs. For instance, ANCSA provided village corporations the option to choose lands from within certain federal public lands, such as national wildlife refuges and national forests. ANCSA's creation of split estates generated land and natural resource management considerations for ANCs and the federal government.

The federal government has various ANCSA-related lands programs. The Department of the Interior's (DOI's) Bureau of Land Management has several programs related to the selection, withdrawal, and conveyance of lands to ANCs. DOI's Bureau of Indian Affairs (BIA) also has programs to provide technical assistance for allottee applications seeking a native allotment and certifications of title to regional corporations' claims to historical places and cemeteries under ANCSA.

Due to the complexities of the land settlement and entitlement structure created under ANCSA, lands-related issues in Alaska may pose considerations for Congress. Congress may, for example, consider in legislation how to approach ANC lands and tribal lands in the lower 48 states, consider in legislation ANCSA's complex land management framework, dispose of remaining lands withdrawn under ANCSA, and consider potential implications of creating new Alaska Native village corporations.

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Introduction

On December 18, 1971, President Nixon signed into law the Alaska Native Claims Settlement Act (ANCSA)—the largest land claims settlement in U.S. history at the time.[1] ANCSA extinguished claims by Alaska Natives to over 360 million acres of land and settled their claim to the aboriginal lands on which they lived for generations.[2] Under provisions of the settlement, Alaska Natives received approximately 45 million acres, the majority of which were divided among over 200 village corporations and 12 regional corporations established by ANCSA. The 12 regional corporations, together with a 13th regional corporation composed of Alaska Natives who were nonpermanent residents of Alaska, shared in a settlement payment of approximately $962.5 million (or a value of $185.7 million in constant 2021 dollars, adjusted for inflation).[3]

This report provides an overview of selected events leading up to the passage of ANCSA, beginning with the United States' purchase of Alaska from the Russian Empire in 1867. It discusses the unresolved land claims from Alaska Natives addressed by ANCSA, as well as other social and political factors that led to the law's passage.

The report also provides a general overview of ANCSA's provisions. For instance, ANCSA sought to create a land entitlement system different from the reservation system for tribes in the lower 48 states.[4] ANCSA created Alaska Native corporations (ANCs) in the form of village and regional corporations. Unlike tribal governments, ANCs are business entities organized under the laws of Alaska. ANCSA created ANCs to aid in settlement payment disbursement and to boost the Alaskan economy.

Primarily, this report focuses on ANCSA's land entitlement structure.[5] ANCSA included several provisions addressing village and regional corporations' land entitlements. Such provisions included withdrawing federal public lands from appropriation and creating a complex system for the selection of lands. ANCSA also addressed the status of various land holdings from prior legislative and executive actions. For example, ANCSA repealed prior acts of Congress authorizing individual Alaska Natives to hold up to 160 acres of land and terminated all Indian reservations in Alaska, except for one—the Annette Island Reserve of the Metlakatla Indian Community. In addition, ANCSA authorized land exchanges between ANCs, the federal government, and the State of Alaska.

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[1] Alaska Native Claims Settlement Act (ANCSA), P.L. 92-203, 85 Stat. 688, 43 U.S.C. §§1601 et seq., as amended; U.S. Department of the Interior (DOI), Federal Subsistence Management Program, "ANCSA," at https://www.doi.gov/subsistence/faq/ancsa.

[2] Nell Jessup Newton, ed., *Cohen's Handbook of Federal Indian Law*, 2012 ed. (Albuquerque, NM: LexisNexis, 2017), §4.07[3][b][ii][B] (hereinafter, Newton, *Cohen's Handbook*).

[3] Constant dollars were adjusted to estimated FY2021 dollars using the GDP Chained Price Index from the White House Office of Management and Budget, Table 10.1, "Gross Domestic Product and Deflators Used in the Historical Tables—1940-2026" in *Historical Tables*, at https://www.whitehouse.gov/omb/historical-tables/.

[4] 43 U.S.C. §1601. For more information on tribal land statuses in the lower 48 states, including federal Indian reservations, see CRS Report R46647, *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress*, by Tana Fitzpatrick.

[5] In addition to ANCSA, this report discusses other federal laws, including the Alaska National Interest Lands Conservation Act (ANILCA; P.L. 96-487) and the Alaska Native Allotment Act (Act of May 17, 1906, 34 Stat. 197), among others. This report discusses such laws because ANCSA addresses them directly or because these laws affect Alaska Native corporation (ANC) land holdings in some way. Further, due to the report's focus on ANCSA's land provisions, it does not discuss in detail hunting and fishing rights, subsistence uses, or other natural resources issues in Alaska. Last, this report does not provide in-depth details or analysis of any specific ANC's land holdings.

Through its land entitlement structure, ANCSA created *split estates*—estates where one entity owns the surface estate and another owns all or part of the subsurface estate.[6] Under ANCSA, village corporations primarily obtained fee title to the surface estate of lands, whereas the regional corporations obtained fee title to the subsurface estate of these same lands. In some instances, ANCSA also created split estates between the federal government and ANCs.

In addition, this report provides a brief overview of the federal government's ANCSA-related lands programs. The Department of the Interior's (DOI's) Bureau of Land Management (BLM) has several programs related to the selection, withdrawal, and conveyance of lands to ANCs. Further, DOI's Bureau of Indian Affairs (BIA) has programs related to providing technical assistance for allottee applications seeking a native allotment.

Due to the complexities of the land settlement and entitlement structure under ANCSA, lands-related issues in Alaska may pose considerations for Congress. Issues for Congress may include (1) defining tribal lands to include ANC lands and tribal lands in the lower 48 states in legislation, (2) considering ANCSA's complex land management framework in legislation, (3) opening up withdrawn lands to settlement, and (4) creating new Alaska Native village corporations.

Historical Background: Unresolved Aboriginal Claims in Alaska

Prior to the passage of ANCSA in 1971, aboriginal title claims in Alaska had been unresolved during the more than 100 years since the United States purchased Alaska from the Russian Empire in 1867.[7] This section provides a chronology of selected events addressing or impacting aboriginal property holdings in Alaska before ANCSA's passage.

Chronology of Selected Events Prior to the Passage of ANCSA[8]

Prior to the passage of ANCSA, the federal government considered how to handle its management of federal public lands in Alaska, selection of lands by the State of Alaska, and aboriginal claims by Alaska Natives. The following selected events occurred between 1867 and the 1971 passage of ANCSA.

- In **1867**, the federal government purchased Alaska from the Russian Empire in the Treaty of Cession.[9] Article III of the treaty contained provisions addressing Alaska Natives and their lands. Specifically, the treaty admitted "inhabitants of the ceded territory" as citizens of the United States and maintained their "free

[6] DOI, Bureau of Land Management (BLM), "Leasing and Development of Split Estate," at https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/split-estate.

[7] *Aboriginal title*, sometimes referred to as *aboriginal Indian title* or *original Indian title*, refers to lands that tribes claim by "virtue of its possession" and "exercise of sovereignty" rather than lands claimed by patent or formal conveyance. See Newton, *Cohen's Handbook*, §15.04[2]. For more discussion on aboriginal title and Alaska Natives, see David S. Case and David A. Voluck, *Alaska Natives and American Laws*, 2nd ed. (Fairbanks, AK: University of Alaska Press, 2002), pp. 35-63. Hereinafter referred to as Case and Voluck, *Alaska Natives*.

[8] For more information on the history of events involving Alaska Natives leading up to the passage of ANCSA, see Case and Voluck, *Alaska Natives*.

[9] 15 Stat. 539.

enjoyment of their liberty, *property*, and religion."[10] The treaty did not otherwise discuss aboriginal property holdings.

- In **1884**, the Alaska Organic Act provided a civil government for Alaska and created the District of Alaska.[11] The Organic Act was the first congressional legislation to protect Alaska Natives in their use and occupation of lands. The Organic Act declared that "the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress."[12]
- From the **late 1800s to the early 1900s**, Congress passed other laws containing clauses that protected native use and occupancy of land in Alaska. For instance, in 1900, Congress passed a law that made further provision for civil government in Alaska. The act included a provision that provided for "Indians" or missionaries conducting schools or missions not to be "disturbed in the possession of any lands now actually in their use or occupation."[13] Other laws recognizing Alaska Native use and occupancy of lands include the Act of March 3, 1891 (repealing timber culture laws) and the Act of May 14, 1898 (extending the homestead laws to Alaska).[14]
- In **1905**, the District Court of Alaska decided *U.S. v. Berrigan*, a case involving trespass upon lands occupied by Alaska Natives.[15] The court held that the United States has a duty to protect the property rights of Alaska Natives. In particular, the court held that only Congress has the "right to dispose of lands" reserved for occupancy by Alaska Natives.[16]
- In **1906**, the Alaska Native Allotment Act (ANAA) authorized the Secretary of the Interior to convey up to 160 acres of non-mineral land to individual Alaska Natives who were head of household.[17] In 1956, Congress amended the ANAA to provide that land with "coal, oil, or gas deposits" could be allotted to Alaska Natives.[18] Alaska Natives were required to prove "substantially continuous use and occupancy of that land for a period of five years."[19]
- In **1936**, Congress passed the Act of May 1, 1936, which extended the Indian Reorganization Act of 1934 to Alaska Natives.[20] The act provided authority to the

[10] 15 Stat. 539, Art. III (emphasis added). Article III also excluded "uncivilized tribes" from U.S. citizenship, but such tribes remained subject to U.S. laws and regulations.

[11] Alaska Organic Act, 23 Stat. 24.

[12] 23 Stat. 24, §8.

[13] Act of June 6, 1900, ch. 786, §27, 31 Stat. 330.

[14] Act of March 3, 1891, 26 Stat. 1095; Act of May 14, 1898, 30 Stat. 409.

[15] U.S. v. Berrigan, 2 Alaska 442 (D. Alaska 1905).

[16] Ibid at 450. The District Court of Alaska specifically rejected the holding in Sutter v. Heckman, 1 Alaska 188 (D. Alaska 1901), aff'd, 119 F. 83 (9th Cir. 1902), which held that Alaska Natives have the power to convey rights to lands reserved to them under the Act of June 6, 1900.

[17] Act of May 17, 1906, 34 Stat. 197.

[18] Act of August 2, 1956, §1(c), 70 Stat. 954.

[19] Act of August 2, 1956, §3, 70 Stat. 954.

[20] Passage of the Indian Reorganization Act in 1934, 48 Stat. 984 (also known as the Wheeler-Howard Act), laid the foundation for a new federal Indian policy by ending the division of reservation lands into private allotments. Although certain sections of the Indian Reorganization Act applied to Alaska, the Act of May 1, 1936, extended several

Secretary of the Interior to create Indian reservations in Alaska (sometimes referred to as *Native reserves*); specifically, the act authorized the Secretary to designate certain areas within Alaska as Indian reservations that had been reserved for the use and occupancy of "Indians or Eskimos."[21] The Secretary of the Interior approved seven reserves under this authority.[22] Prior to the enactment of the 1936 law, other reserves had been created in Alaska under other authorities.[23]

- In **1948**, Congress passed the Act of February 26, 1948, which extended the Native Townsite Act to grant individual title to Alaska Natives.[24] The Native Townsite Act, as amended, allowed Alaska Natives to obtain title to lots they were occupying in townsites surveyed pursuant to the Act of March 3, 1891.[25]
- In **1955**, the Supreme Court decided *Tee-Hit-Ton Indians v. U.S.*, a case involving a group of Alaska Natives asserting a Fifth Amendment claim against the United States for the taking of timber.[26] The Court held that neither the Alaska Organic Act nor the Act of June 6, 1900, granted permanent rights to Alaska Natives in lands they occupied in Alaska. Rather, the Court determined the acts preserved aboriginal Indian title for later congressional or judicial disposition.[27]
- In **1958**, Congress passed the Alaska Statehood Act, which authorized the transfer of up to approximately 105 million acres of federal public lands to the State of Alaska.[28] However, Alaska Natives initially protested the state's selection of federal lands, and, in 1969, DOI froze land selections until Native land claims were settled.[29] The newly created State of Alaska, seeking to grow its economy and land base, pressed the federal government to resolve aboriginal land claims.[30] Further, due to the discovery of oil in Alaska, oil companies also sought the resolution of aboriginal claims.[31]

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provisions to Alaska.

[21] Act of May 1, 1936, §2, 49 Stat. 1250. The 1936 act authorized the designation of Indian reservations in Alaska in land areas reserved for use and occupancy by "Indians or Eskimos" under Section 8 of the Act of May 17, 1884 (23 Stat. 26); Section 14 or Section 15 of the Act of March 3, 1891 (26 Stat. 1101); by executive order; or on public lands that were "actually occupied by Indians or Eskimos." Ibid, §2.

[22] Newton, *Cohen's Handbook*, §4.07[3][b][iii].

[23] For more information on the creation of Indian reservations in Alaska prior to the passage of the Act of May 1, 1936 (49 Stat. 1250), see Newton, *Cohen's Handbook*, §4.07[3][b][iii].

[24] Act of May, 25, 1926, 44 Stat. 629; as amended by the Act of February 26, 1948, 62 Stat. 35.

[25] Act of March 3, 1891, 26 Stat. 1099.

[26] Tee-Hit-Ton Indians v. U.S., 348 U.S. 272 (1955).

[27] Ibid, pp. 278-279; see also Newton, *Cohen's Handbook*, §4.07[3][b].

[28] Alaska Statehood Act, P.L. 85-508. The Statehood Act and land selections by the State of Alaska are not discussed in detail in this report. For more information on state land entitlement under the Statehood Act, see DOI, BLM, "State Entitlements," at https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/land_transfer/state-entitlements.

[29] DOI, BLM, "Public Land Order 4582," 34 *Federal Register* 1025, January 17, 1969; Newton, *Cohen's Handbook*, §4.07[3][b].

[30] Robert T. Anderson, "Sovereignty and Subsistence: Native Self-Government and Rights to Hunt, Fish, and Gather After ANCSA," *Alaska Law Review*, vol. 33, no. 2, (2016), p. 202.

[31] Newton, *Cohen's Handbook*, §4.07[3][b].

- In **1971**, Congress passed ANCSA to address aboriginal land claims by Alaska Natives.

General Overview of ANCSA Provisions

ANCSA settled Alaska Native aboriginal land claims and provided compensation and land entitlements to Alaska Natives.[32] ANCSA created the Alaska Native Fund for compensation payments and deposited $462.5 million into the fund over a period of 11 years.[33] ANSCSA directed that this compensation, combined with approximately $500 million in funding from oil and gas revenues within Alaska, be distributed to ANCs through the Alaska Native Fund, for a total settlement of $962.5 million.[34] Although Congress originally considered a land settlement of approximately 40 million acres, ANCSA provided an estimated 45 million acres to Alaska Natives. (For more information on the total acreage of lands to be conveyed under the ANCSA settlement, see "Summary of Land Allocations Under ANCSA," below.) ANCSA did not expressly provide for the exercise of aboriginal hunting or fishing rights or address Alaska Native tribal governments.[35]

To assist in distributing the settlement, ANCSA created ANCs, consisting of regional and village corporations.[36] ANCSA created 12 Alaska Native regional corporations (sometimes referred to as *regional corporations*), which are for-profit businesses organized under laws of the State of Alaska. ANCSA also authorized the creation of a 13th regional corporation for nonresidents.[37] In addition, ANCSA created Alaska Native village corporations (sometimes referred to as *village corporations*). Village corporations may be for-profit businesses or, unlike regional corporations, nonprofit businesses, organized under laws of the State of Alaska.[38] In addition to the 13 regional corporations, ANCSA created over 200 village corporations.[39] Because ANCs are business entities, they are unlike

Alaska Native Corporations

Alaska Native regional corporations created under the Alaska Native Claims Settlement Act (ANCSA; P.L. 92-203, 85 Stat. 688, 43 U.S.C. §§1601 et seq., as amended) are similar to county governments in the lower 48 states, whereas Alaska Native village corporations resemble municipal governments. However, ANCSA created Alaska Native corporations to operate as business entities rather than governmental entities.

Sources: Alaska Native Claims Settlement Act, P.L. 92-203; 43 U.S.C. §§1601 et seq.; George Cameron Coggins and Robert L. Glicksman, *Public Natural Resources Law*, 2nd ed. (Clark Boardman Callaghan, June 2021), §13:13.

[32] 43 U.S.C. §§1605, 1611.

[33] 43 U.S.C. §1605; Newton, *Cohen's Handbook*, §1.07.

[34] 43 U.S.C. §1608; Newton, *Cohen's Handbook*, §4.07[3][b][ii][B].

[35] Newton, *Cohen's Handbook*, §4.07[3][b][ii][A]. This report focuses on ANCSA's land provisions; thus, detailed information about aboriginal hunting and fishing rights or tribal governments in Alaska is outside the scope of this report. For more information on Alaska Native fishing and hunting rights, see Newton, *Cohen's Handbook*, §4.07[3][c]. In addition, federally recognized tribes in Alaska are mentioned throughout this report; however, tribes and their land holdings are not discussed in detail.

[36] 43 U.S.C. §§1606-1607.

[37] 43 U.S.C. §1606.

[38] 43 U.S.C. §1607.

[39] Newton, *Cohen's Handbook*, §4.07[3][b][ii][B]. For a list of Alaska Native villages and associated corporations within each regional corporation, see Alaska Department of Natural Resources, Division of Mining, Land, and Water, "Corporation Index," at http://dnr.alaska.gov/mlw/trails/17b/corpindex.cfm.

federally recognized tribes, which have government-to-government relationships with the United States.

ANCSA provided a general structure for establishing corporation membership. For example, within two years after ANCSA's passage, individual Alaska Natives could enroll and become shareholders in regional and village corporations based on their residence.[40] ANCSA also provided for the distribution of stock to enrolled members.[41]

Various provisions in ANCSA provided land entitlements to village and regional corporations; these entitlements were determined largely by population.[42] In addition, individuals, former Native reserves, and other groups received some land entitlements under ANCSA.[43] "Summary of Land Allocations Under ANCSA," below, discusses in more detail the land entitlements and allocations provided to ANCs under ANCSA provisions.

ANCSA also created a process for withdrawing and selecting lands for ANCs. The act withdrew, or reserved, certain public lands from appropriation, namely lands in or around the land areas of native villages.[44] *Withdrawn lands* were no longer subject to public laws, such as mining and mineral laws, and were not available for selection by the State of Alaska under the Alaska Statehood Act.[45] ANCSA created a complex statutory structure for ANC land selections that included acreage limitations and computations.[46] For more information on land withdrawals and selections, see "Withdrawals and Selection of Land Entitlements," below.

Upon selection, ANCSA required the federal government to convey the property to the appropriate ANC.[47] BLM is the federal agency responsible for conveyances under ANCSA. (See "Alaska Land Transfer Program," below, for more discussion on the status of conveyances to ANCs.) ANCSA authorized the Secretary of the Interior—or the Secretary of Agriculture, for national forest lands—to administer the withdrawn lands prior to conveyance in accordance with applicable laws and regulations; this administration could include making contracts, issuing leases, and authorizing easements.[48]

Upon conveyance, ANCs own the land in fee simple status and the lands are freely alienable (i.e., available for sale or transfer) by the ANCs.[49] Though conveyed in fee simple, ANCs lands are subject to certain encumbrances, such as federal easements and village corporation conveyances under 14(c) of ANCSA (for more information, see "14(c) Surveys, 17(b) Easements, and D-1 Withdrawals," below). The fee simple structure ANCSA created is unlike the system for tribal

[40] 43 U.S.C. §§1604, 1606.

[41] See, generally, 43 U.S.C. §1606. Because this report focuses on ANCSA's lands provisions, it does not cover stock or shareholder provisions in detail. For more information, see Case and Voluck, *Alaska Natives*, pp. 159-160.

[42] 43 U.S.C. §§1611, 1613.

[43] 43 U.S.C. §§1613(h), 1617(b).

[44] 43 U.S.C. §1610.

[45] 43 U.S.C. §1610.

[46] 43 U.S.C. §1611.

[47] 43 U.S.C. §1613.

[48] 43 C.F.R. §2650.1.

[49] Alaska v. Native Village of Venetie Tribal Government, 522 U.S. 520 (1998). "There is presumably no trust responsibility for [ANCSA] lands." See Case and Voluck, *Alaska Natives*, p. 97. However, some have suggested that "*undeveloped* native corporation lands with many of the same protective attributes as tribal trust lands." See Newton, *Cohen's Handbook*, §4.07[3][b] (emphasis added). For more information on the development of protections of ANC lands under ANCSA, see Case and Voluck, *Alaska Natives*, pp. 179-182.

lands in the lower 48 states, where the federal government owes a federal trust responsibility to administer and manage tribal lands.[50]

Summary of Land Allocations Under ANCSA

Although Congress originally considered a land settlement of approximately 40 million acres, ANCSA ultimately provided for approximately 45 million acres of land to be conveyed to Alaska Natives.[51] ANCs received approximately 38 million acres in total as a land settlement.[52] Former Native reserves and other groups received the remaining acreage, approximately 7 million acres (discussed in more detail below).

Of the 38 million acres set aside for ANCs, up to 22 million surface estate acres were available for selection by village corporations.[53] Village corporations, however, did not require the full 22 million acres to fulfill their land settlement.[54] After villages fulfilled their land selections, ANCSA authorized the reallocation of the remaining acreage among regional corporations based on population;[55] the regional corporations then distributed the land to village corporations "on an equitable basis."[56] Except in limited circumstances, regional corporations received the subsurface estate acreage beneath the surface estate acres selected by or distributed to village corporations.[57]

Land allocations to ANCs depended primarily on population.[58] For example, village populations during the 1970 census largely determined acreage amounts for land entitlements to village corporations.[59] ANCSA also prescribed acreage limitations for each village corporation and acreage computations for regional corporations.[60] Some regions, however, had large land claims but small populations, and these regions would have lost more land in the settlement than others would.[61] To correct this inequity, ANCSA authorized some regional corporations to select from an additional 16 million acres, which the regional corporations would own in full title (i.e., both the

[50] For more information on the federal trust responsibility and the management of tribal lands, see CRS Report R46647, *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress*, by Tana Fitzpatrick.

[51] Case and Voluck, *Alaska Natives*, pp. 161-162.

[52] 43 U.S.C. §§1611(b)-(c).

[53] 43 U.S.C. §1611(b).

[54] Case and Voluck, *Alaska Natives*, p. 162.

[55] 43 U.S.C. §1611(b); Case and Voluck, *Alaska Natives*, p. 161. The land reallocations excluded a regional corporation in Southeast Alaska. 43 U.S.C. §1611(b). The Tlingit and Haida Indians of Alaska (Tlingit-Haida) had litigated a case against the United States just prior to the ANCSA settlement. See Tlingit and Haida Indian of Alaska v. U.S., 389 F.2d 778 (1968). In their case, Tlingit-Haida settled with the United States and received a cash settlement of $7.2 million. Case and Voluck, *Alaska Natives*, p. 162. Due to this case, Tlingit-Haida did not participate in the same land allocations as the regional corporations in other parts of Alaska. 43 U.S.C. §§1611(b), 1615(c). ANCSA provided 23,040 acres to each village located in the southeastern Alaska region. 43 U.S.C. §§1615(a)-(c).

[56] 43 U.S.C. §1611(b); Case and Voluck, *Alaska Natives*, p. 161. See also James D. Linxwiler and Joseph Perkins, "A Primer on Alaska Lands, Rocky Mountain Mineral Law Institute," *Mineral Law Institute*, 61 Rocky Mt. Min. L. Inst. 7-1 (2015), pp. 7-24-7-25, at https://www.guessrudd.com/articles/ (discussing how such land conveyances may be strategically important to village corporations based on their potential for certain uses, such as for subsistence or cultural activities). Hereinafter referred to as Linxwiler and Perkins, "Primer on Alaska Lands."

[57] 43 U.S.C. §1611(a).

[58] 43 U.S.C. §§1611, 1613.

[59] 43 U.S.C. §1613.

[60] 43 U.S.C. §1611.

[61] Case and Voluck, *Alaska Natives*, p. 161.

surface and the subsurface estate).[62] This additional 16 million acres, plus the 22 million acres to the village corporations, brought the total acreage ANCs received under the settlement to 38 million acres.

In addition to the 38 million acre settlement, ANCSA provided approximately 7 million acres to former Native reserves and other groups, as follows:

- Approximately 4 million acres went to village corporations that opted to hold full title to their former Native reserves.[63] (For more information, see "Indian Reservations in Alaska.")
- ANCSA authorized up to 2 million unreserved and unappropriated acres to be allocated among various groups for cemeteries, historical sites, and some Native allotments.[64] (For more information on Native allotments, see "Alaska Native Allotments.") After distribution to the various groups, ANCSA authorized the remaining acreage to be allocated among the 12 regional corporations based on population.[65]
- Over 1 million acres went to regional corporations for subsurface selections in lieu of subsurface rights to the Naval Petroleum Reserve Number Four, now referred to as the National Petroleum Reserve-Alaska (NPR-A), and federal wildlife refuges.[66]

Former Native reserves and regional in lieu subsurface selections, along with an overview of other selected ANCSA land-related provisions, are discussed in more detail in the next section.

Overview of Selected ANCSA Land Provisions

ANCSA included numerous other land-related provisions. For example, it created a complex structure for withdrawal and selection of lands by ANCs. Under ANCSA, certain federal public lands, such as lands in the National Park System, were unavailable for withdrawal, whereas other lands were available for selection by village corporations but not by regional corporations.

ANCSA also included provisions addressing prior land laws applicable to Alaska Native individuals and groups. For instance, some land provisions in ANCSA repealed or revised existing laws, such as provisions addressing native allotments and Indian reservations in Alaska. Another provision authorized land exchanges between ANCs, the federal government, and the State of Alaska. This section provides more detail on such provisions.

[62] 43 U.S.C. §1611(c); Case and Voluck, *Alaska Natives*, p. 161. The land allocations excluded a regional corporation in Southeast Alaska. 43 U.S.C. §1615. For more information, see footnote 55.

[63] Linxwiler and Perkins, "Primer on Alaska Lands," p.3. For more information on village corporations opting to receive full title to former Native reserves, see Newton, *Cohen's Handbook*, §4.07[3][b][ii][B].

[64] 43 U.S.C. §1613.

[65] 43 U.S.C. §1613(h)(8); see also Case and Voluck, *Alaska Natives*, p. 161 (stating that these lands were especially valuable if the lands included mature forests, such as the case of Sealaska, the southeast regional corporation).

[66] Case and Voluck, *Alaska Natives*, p. 162.

Withdrawals and Selection of Land Entitlements

As noted above, ANCSA withdrew certain public lands from appropriation, namely lands in or around the land areas of native villages.[67] *Withdrawn lands* were no longer subject to public laws, such as mining and mineral laws, and were not available for selection by the State of Alaska under the Alaska Statehood Act. Such lands, however, were subject to valid existing rights.[68] Once withdrawn, the lands became available for selection by ANCs.

Most unappropriated federal land in Alaska was withdrawn and became available for selection by ANCs.[69] However, National Park System lands and lands reserved for national defense purposes, except the NPR-A,[70] were exempt from being withdrawn for ANCSA purposes.[71] Thus, unless otherwise authorized, no village or regional corporation could select lands within these areas.

Several factors influenced the extent and location of land available for selection by ANCs. For example, ANCSA limited the number of surface acres village corporations could select from the National Wildlife Refuge System, a national forest, or the NPR-A.[72] In addition, ANCSA prohibited regional corporations from selecting the subsurface estates to refuge lands and the NPR-A but authorized regional corporations to select subsurface acres from other withdrawn lands.[73] If a village corporation could not fulfill its land entitlement from withdrawn lands within or near its Native village, the village corporation could choose from withdrawn lands elsewhere.[74]

Village corporations were required to select lands from withdrawn lands within three years of 1971, and regional corporations were required to select lands within four years of 1971.[75] Due to this limited timeframe, ANCs could over-select lands, some choosing up to double or triple their land entitlements.[76] Although the federal government has conveyed most of the lands under the

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[67] 43 U.S.C. §1610.

[68] 43 U.S.C. §§1610. 1613. *Valid existing rights* included individual's rights under the open-to-entry program created by the State of Alaska pursuant to the Alaska Statehood Act prior to ANCSA's passage. For more information, see Seldovia Native Ass'n, Inc. v. Lujan, 904 F.2d 1335 (9th Cir. 1990). Other valid existing rights included "previously issued leases, permits, and rights-of-way." James D. Linxwiler, "The Alaska Native Claims Settlement Act at 35: Delivering on the Promise," *Rocky Mountain Mineral Law Institute*, 2007, pp. 65-66, at https://www.guessrudd.com/wp-content/uploads/sites/1600422/2020/05/The-Alaska-Native-Claims-Settlement-Act-at-35.pdf. Hereinafter referred to as Linxwiler, "ANCSA at 35."

[69] Stephen S. Sorenson, "Split Estates Under the Alaska Native Claims Settlement Act," *Rocky Mountain Mineral Law Institute*, 2005, p. 3, at https://www.rmmlf.org/publications/digital-library/split-estates-under-the-alaska-native-claims-settlement-act. Hereinafter referred to as Sorenson, "Split Estates."

[70] The Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. §§6501 et seq.), and associated regulations, provided for competitive oil and gas leasing in the National Petroleum Reserve in Alaska (NPR-A), subject to certain conditions and restrictions. For more information on the NPR-A, see Linxwiler and Perkins, "Primer on Alaska Lands," p. 7-44.

[71] 43 U.S.C. §1610.

[72] 43 U.S.C. §1610. "The fish and wildlife limits on village and regional conveyances reflect a compromise to protect federal and environmental concerns." Case and Voluck, *Alaska Natives*, p. 159. For more information on selection rights, see Sorenson, "Split Estates," p. 4.

[73] 43 U.S.C. §§1611, 1613. Regional corporations could not select the subsurface estate beneath the NPR-A, because the federal government set aside the subsurface estate for possible petroleum development. See Case and Voluck, *Alaska Natives*, p. 159.

[74] 43 U.S.C. §1610.

[75] 43 U.S.C. §1611.

[76] 43 C.F.R. §§2651.4, 2652.3; Sorenson, "Split Estates," pp. 4-5.

settlement to ANCs, some of the more complex conveyances remain outstanding. For more information, see "Alaska Land Transfer Program," below.

Alaska Native Allotments

In 1906, the ANAA authorized the Secretary of the Interior to convey up to 160 acres of non-mineral land—or land that did not have the potential for mineral development—to individual Alaska Natives.[77] The allotments were inalienable, nontaxable, and in perpetuity.[78] As discussed above, Congress later amended the ANAA to include mineral lands.[79] At the time of ANCSA's passage, DOI had a backlog of approximately 7,000 applications for ANAA allotments.[80]

ANCSA specifically repealed the ANAA but authorized pending applications for Native allotments at the time of ANCSA's passage to proceed.[81] Approved Native allotments were charged against 2 million acres of unreserved and unappropriated lands authorized to be conveyed among various groups for cemeteries, historical sites, and some Native allotments.[82] Although ANCSA authorized the approval of pending applications, due to litigation and what was considered to be burdensome application process, the backlog remained.[83]

Congress subsequently addressed the backlog in legislation. In 1980, Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA).[84] Section 905 of ANILCA statutorily approved thousands of Native allotment applications pending approval on or before December 18, 1971 (i.e., the passage of ANCSA).[85] ANILCA, however, created exceptions to the blanket approval of pending applications. For instance, applications approved under ANILCA were subject to "valid existing rights," the determination of which was a source of litigation.[86] In another example, the lands at issue in the pending applications could be subject to ANC, state, or private protests.[87] Thus, although ANILCA approved many of the pending ANAA allotment applications, a determination of approval or disapproval remained for other pending applications.

In 2004, Congress enacted the Alaska Land Transfer Acceleration Act.[88] Title III of the act addressed pending Native allotment applications that would have been approved under Section 905 of ANILCA.[89] Specifically, BLM estimated the remaining pending allotment applications

[77] Act of May 17, 1906, 34 Stat. 197; Case and Voluck, *Alaska Natives*, p.113.

[78] Act of May 17, 1906, 34 Stat. 197.

[79] Act of Aug. 2, 1956, §1(c), 70 Stat. 954.

[80] Linxwiler, "ANCSA at 35," p. 68.

[81] 43 U.S.C. §1617(a).

[82] 43 U.S.C. §§1613(h), 1617(b).

[83] Linxwiler, "ANCSA at 35," p. 69. For more discussion on the effects of the Alaska National Interest Lands Conservation Act (ANILCA; P.L. 96-487; 16 U.S.C. §§3101 et seq.) on the Alaska Native Allotment Act, see Case and Voluck, *Alaska Natives*, pp. 118-123.

[84] ANILCA, P.L. 96-487; 16 U.S.C. §§3101 et seq.

[85] P.L. 96-487, §905; 43 U.S.C. §1634; Linxwiler, "ANCSA at 35," p. 69.

[86] 43 U.S.C. §1634; Linxwiler, "ANCSA at 35," pp. 69-75.

[87] 43 U.S.C. §1634(a)(5). Up to 180 days after December 2, 1980, ANCs, the State of Alaska, and individuals could file a protest—or objection—with the Secretary of the Interior stating a Native allotment applicant was not entitled to the land described in the applicant's application. If a protest was filed, ANILCA required the Native allotment application to be adjudicated. 43 U.S.C. §1634(a)(5). The filing and adjudication of protests is beyond the scope of this report.

[88] Alaska Land Transfer Acceleration Act, P.L. 108-452.

[89] 43 U.S.C. §1617. For more information on Title III of the Alaska Land Transfer Acceleration Act, see Linxwiler, "ANCSA at 35," pp. 76-77.

totaled 3,256 acres of land. Of that total, approximately 1,100 acres were erroneously conveyed to the State of Alaska or to an ANC and thus no longer belonged to the United States upon the passage of ANILCA in 1980.[90] Thus, the Alaska Land Transfer Acceleration Act sought to remedy the difficulty in recovering title to some of these applications. For example, the act amended ANCSA to correct certain conveyances the federal government made to an ANC or to the state. Such conveyances would have been made to an Alaska Native allottee, had the allotment application described land in federal ownership upon the passage of ANILCA. With the concurrence of an ANC or the state, the act allowed the Secretary of the Interior to issue a certificate of allotment to the Alaska Native allottee.[91] For more information on the status of Native allotment applications, see "Alaska Land Transfer Program."

Indian Reservations in Alaska

Prior to the passage of ANCSA, several tribes in Alaska had established reservations, or land areas set aside by the federal government as permanent homelands for tribes.[92] Reservations in Alaska, sometimes referred to as *Native reserves*, were established under various authorities. The Secretary of the Interior established some Native reserves under the Indian Reorganization Act of 1934, which was extended to Alaska in 1936.[93] Other Native reserves were established by executive order.[94] Between 1891 and 1943, 23 Native reserves were established in Alaska under these authorities.[95]

ANCSA revoked all Native reserves in Alaska, except for the Metlakatla Indian Community of the Annette Island Reserve.[96] (See **Figure 1** for the location of the Annette Island Reserve.) However, unlike other village corporations that could hold title to only the surface estate, ANCSA provided village corporations with former Native reserves the option to hold full title (i.e., title to surface and subsurface estates) to their land.[97] If the village corporation elected full title ownership, the village corporation would forego the other benefits of ANCSA, including options for other land selections and settlement funding.[98] ANCSA required eligible village corporations to make their elections within two years of its passage. As noted above, approximately 4 million acres were conveyed to village corporations that opted to hold full title to their reserves.[99]

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[90] Statement of BLM State Director Henri Bisson, in U.S. Congress, Senate Committee on Energy and Natural Resources, *Hearing on the Alaska Native Allotment Subdivision Act, Cape Fox Entitlement Act, and the Alaska Land Transfer Acceleration Act*, hearings, 108th Cong., 1st sess., August 6, 2003, S.Hrg. 108-163 (Washington, DC: GPO, 2003).

[91] P.L. 108-452, §301.

[92] For general information on federal Indian reservations, see CRS Report R46647, *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress*, by Tana Fitzpatrick.

[93] The Indian Reorganization Act of 1934 of was extended to Alaska under the Act of May 1, 1936, 49 Stat. 1250.

[94] Newton, *Cohen's Handbook*, §4.07[3][b][iii].

[95] DOI, Solicitor's Opinion M-36975, "Governmental Jurisdiction of Alaska Native Villages over Land and Nonmembers," January 11, 1993, at https://www.doi.gov/solicitor/opinions.

[96] 43 U.S.C. §1618; see also Newton, *Cohen's Handbook*, §4.07[3][b][ii][B]. The Annette Island Reserve, created by Congress in 1891, is the only Indian reservation in Alaska.

[97] 43 U.S.C. §1618.

[98] 43 U.S.C. §1618.

[99] Linxwiler, p.3. For more information opting to receive full title to former Native reserves, see Newton, *Cohen's Handbook*, §4.07[3][b][ii][B].

Land Exchanges

In addition to its land entitlement provisions, Section 22(f) of ANCSA authorized certain federal agencies to exchange land with ANCs and the State of Alaska. ANCSA allowed the Secretaries of the Interior, Defense, and Agriculture to authorize land exchanges with ANCs and the state; these exchanges could be conducted to consolidate land or to facilitate development of the land.[100] The exchanges were to be made on the "basis of equal value," and a cash payment could be issued to equalize the land exchange.[101] In 1976, Congress amended ANCSA and expanded the Secretaries' authority to approve land exchanges with any federal agency and for any public purpose.[102] Further, if the parties agreed to a land exchange that was not of "equal value," the appropriate Secretary could approve the land exchange if it were in the public interest.[103]

ANILCA included a similar land exchange provision.[104] Some observers have suggested ANILCA's statute exempts its provision from the general authority under the Federal Land Policy and Management Act of 1976 (providing that the Secretary of the Interior cannot modify or revoke lands withdrawn by Congress).[105]

Despite the provisions in both ANCSA and ANILCA, ANCs generally do not use land exchanges regularly.[106] Such exchanges can be complicated, costly, and time-consuming,[107] and some exchanges have been controversial.[108] Because land exchanges can occur between numerous parties, determining who owns the surface and subsurface tract of land may be difficult. Further, although ANCSA and ANILCA provided federal agencies the authority to permit land exchanges, some observers suggest additional legislation is required to complete land exchanges under these authorities.[109] Despite these challenges, some ANCs have successfully consolidated their land holdings through land exchanges.[110]

[100] P.L. 92-203, §22(f), 43 U.S.C. §1621(f).

[101] P.L. 92-203, §22(f), 43 U.S.C. §1621(f).

[102] P.L. 94-204, §17, 43 U.S.C. §1621(f).

[103] P.L. 94-204, §17, 43 U.S.C. §1621(f).

[104] P.L. 96-487, §1302(h), 16 U.S.C. §3192(h). ANILCA's land exchange provision is similar but not identical to ANCSA's land exchange provision. For instance, ANILCA's statute authorized the Secretaries of the Interior and Agriculture—though not the Secretary of Defense—to authorize land exchanges with ANCs, the State of Alaska, and other federal agencies. 16 U.S.C. §3192(h). An analysis of the differences between the land exchange provisions in ANILCA and ANCSA is beyond the scope of this report.

[105] Linxwiler, "ANCSA at 35," p. 61. Federal Land Policy and Management Act of 1976 (FLPMA), P.L. 94-579, 43 U.S.C. §§1701 et seq. For more information on land exchanges under FLPMA, see CRS Report R41509, *Land Exchanges: Bureau of Land Management (BLM) Process and Issues*, by Carol Hardy Vincent.

[106] Case and Voluck, *Alaska Natives*, p. 165.

[107] Sorenson, "Split Estates," p. 6.

[108] Linxwiler, "ANCSA at 35," pp. 61-63.

[109] Linxwiler and Perkins, "Primer on Alaska Lands," p. 7-28.

[110] Linxwiler, "ANCSA at 35," pp. 61-63.

Figure 1. Alaska Native Lands

Source: Congressional Research Service, using data from the U.S. Census Bureau (Census), U.S. Department of the Interior (DOI), State of Alaska, and ESRI.

Notes: Alaska Native lands, as depicted in this map, include Alaska Native villages (ANVs), Alaska Native regional corporations, and the Annette Island Reserve of the Metlakatla Indian Community. Census describes ANVs as constituting "associations, bands, clans, communities, groups, tribes, or villages" as recognized pursuant to the Alaska Native Claims Settlement Act (ANCSA; P.L. 92-203, §3, 43 U.S.C. §§1601 et seq.). See Census, "Glossary," at https://www.census.gov/programs-surveys/geography/about/glossary.html. ANV locations are based on Census's data for Alaska Native Village Statistical Areas, as well as on data from DOI and the State of Alaska. Alaska Native regional corporation boundaries are established pursuant to ANCSA. Locations of ANVs, Alaska Native regional corporations, and the Annette Island Reserve are approximate. Some ANV locations may not be visible on the map due to size. Federal, state, and other private lands are not shown on the map. The different color shades depicting Alaska Native Regional Corporations are intended to highlight their boundaries and areal extent, but are not intended to imply any other differences.

Management Implications of Split Estates Under ANCSA

Through its land entitlement structure, ANCSA created *split estates*, or estates where one entity owns the surface estate and another owns all or part of the subsurface estate. Most commonly, ANCSA established a split estate wherein village corporations own the surface estate and regional corporations own the subsurface estate. In other scenarios, the federal government may own the surface above a regional corporation's subsurface estate or may own the subsurface estate under a village corporation's surface estate. The creation of the split estates under ANCSA generated land

and natural resource management considerations for ANCs and the federal government, discussed in more detail below.

Village and Regional Corporation Split Estates

ANCSA does not define which rights are included in the surface and subsurface estates conveyed under ANCSA.[111] Generally, title to surface estates for village corporations includes beds and banks of non-navigable waters.[112] It also includes traditional uses of land, such as subsistence hunting, as well as economic use, such as timber harvesting and tourism.[113]

Under ANCSA, regional corporations received rights to all subsurface estates under village corporations' surface estates.[114] Generally, the subsurface estate underneath a village corporation's surface estate is owned by the regional corporation within which the village corporation is located. (See **Figure 1** for the approximate boundaries of each regional corporation.)

The subsurface estate includes mineral rights and sand, rock, and gravel.[115] Where the subsurface estate is owned by a regional corporation and the surface estate is owned by a village corporation, in order to access the subsurface estate, the regional corporation must seek the village corporation's consent "to explore, develop, or remove minerals" under the surface estate.[116] ANCSA provided that regional corporations, however, require the village corporation's consent to access the subsurface estate only if the subsurface estate is within the boundaries of a Native village.[117]

Village Corporation and Federal Government Split Estates

When a village corporation selected lands within a national wildlife refuge, a national forest, or the NPR-A, additional management implications may arise. For example, for surface estate conveyances within a national wildlife refuge, village corporations would be subject to the laws and regulations governing use and development of such refuge.[118] Further, where the federal government owns the subsurface estate beneath a village corporation's (or any nonfederal owner's) surface estate, the federal government may have certain responsibilities to the surface owner in accessing the subsurface estate. For example, the federal government would be responsible for ensuring the nonfederal surface owner is informed of oil and gas development activities prior to such activities taking place.[119]

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[111] For more information on controversies and litigation surrounding what the surface and subsurface estates include, see Case and Voluck, *Alaska Natives*, pp. 162-163.

[112] Sorenson, "Split Estates," p. 5.

[113] Ibid.

[114] 43 U.S.C. §1611(a).

[115] Sorenson, "Split Estates," p. 5.

[116] 43 U.S.C. §1613(f).

[117] 43 U.S.C. §13613(f). In 1989, the 9th Circuit Court of Appeals in Lesnoi, Inc. v. Stratman, 154 F.3d 1062 (9th Cir. 1998) considered what constituted the "boundaries" of the Native village—whether the boundaries included only the occupied village site or all of the lands owned by the Native village. The court held that regional corporations require the village corporation's consent for mining activities by the regional corporation only within the area occupied by the village. See also Case and Voluck, *Alaska Natives*, p. 164.

[118] 43 C.F.R. §2650.4-6.

[119] For more information, see DOI, BLM, *The Gold Book*, at https://www.blm.gov/programs/energy-and-minerals/oil-

Regional Corporation and Federal Government Split Estates

When a village corporation selected surface estate lands within the National Wildlife Refuge System or the NPR-A, ANCSA provided regional corporations the option to select the subsurface estate in an equal acreage from other withdrawn lands within the region, commonly referred to as *in lieu selections*.[120] Under these circumstances, the federal government could be the surface owner above a subsurface estate owned by a regional corporation.

Federal Programs for ANCSA Land Selections, Conveyances, Easements, and Technical Assistance

BLM and BIA each have programs that execute various provisions of ANCSA. BLM, for example, assists with land selection and conveyances to ANCs. Recent legislative developments allow some individual Alaska Native veterans to select lands, which also will require BLM conveyances to the individuals.[121] For its part, BIA has two programs specific to ANCSA's provisions: the Native Allotment program, and a program relating to historical places and cemetery sites. This section provides an overview of these programs.

Phases of the Alaska Land Transfer Program

The Bureau of Land Management's Alaska Land Transfer Program processes remaining applications for an allotment under the Alaska Native Allotment Act (Act of May 17, 1906, 34 Stat. 197), remaining conveyances under the Alaska Native Claims Settlement Act (P.L. 92-203, 85 Stat. 688, 43 U.S.C. §§1601 et seq.), and conveyances pursuant to the Alaska Statehood Act (P.L. 85-508). The program has three distinct phases:

- Preliminary adjudication and application approval
- Cadastral survey
- Conveyance of lands and entitlements

Source: U.S. Department of the Interior (DOI), Bureau of Land Management (BLM), "Alaska Land Transfer Program," at https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/land-transfer. For more information on the program's phases, see U.S. DOI, BLM, *FY2022 Congressional Budget Justification*, pp.V-91-V-92.

Bureau of Land Management's ANCSA-Related Programs

BLM manages the Alaska Land Transfer Program, which includes certain responsibilities to ANCs and individual Alaska Natives.[122] Such responsibilities under the program include conveying lands to individual Alaska Natives under the ANAA; operating the Alaska Native Veteran Program of 2019; and conveying lands to ANCs under ANCSA and the Alaska Land Transfer Acceleration Act of 2004. Pursuant to authorities under ANCSA, BLM also performs surveys, easements, and withdrawals affecting ANCs. These programs are discussed below.

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and-gas/operations-and-production/the-gold-book.

[120] 43 U.S.C. §1611. Five regions received in-lieu selections: Aleut, Arctic Slope, Calista, Cook Inlet, and Koniag. Case and Voluck, *Alaska Natives*, p. 161.

[121] P.L. 116-9; 43 U.S.C. §1629g-1.

[122] DOI, BLM, "Alaska Land Transfer Program," at https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/land-transfer. BLM also manages conveyances to the State of Alaska under the Alaska Statehood Act, which is not discussed in detail in this report. For more information on BLM's work on state land entitlements, see DOI, BLM, "State Entitlements," at https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/land_transfer/state-entitlements.

Alaska Land Transfer Program

BLM's responsibilities to ANCs under the Alaska Land Transfer Program include processing remaining conveyances to fulfill ANC land entitlements under ANCSA. Although the federal government has conveyed title to many of the land entitlements, some ANCs may still be waiting for land conveyances. BLM indicates that the remaining land requiring conveyance to ANCs comprises some of the more complicated conveyances.[123] The 2004 Alaska Land Transfer Acceleration Act allowed BLM to round up acreages, determine final selection entitlements, and determine previously withdrawn land selections.[124] As of 2019, approximately 1.7 million acres remained to be surveyed and conveyed by BLM to ANCs.[125]

In addition to ANCs, BLM has responsibilities to individual Alaska Natives under the ANAA and the Alaska Native Vietnam-Era Veterans Land Allotment Program of 2019. As mentioned, under the ANAA,[126] several thousand Alaska Native allotment applications were pending BLM approval at the time of ANCSA's passage. Although ANILCA statutorily approved many of these applications, some of the more complex applications remain pending. As of April 2019, BLM had conveyed over 16,000 parcels to individual Alaska Natives and approximately 251 parcels remained to be processed.[127]

Congress also authorized land transfers to Alaska Native veterans under the Alaska Native Vietnam Veterans Allotment Act of 1998.[128] The act allowed Alaska Native veterans to apply for 160-acre tracts. Eligible Alaska Native veterans were those who were unable to apply for an allotment under the ANAA due to active duty prior to the law's repeal in ANCSA. The application period ended in 2002. BLM issued 255 allotments and indicates four applications are pending.[129]

More recently, Congress passed additional legislation authorizing land transfers to individual Alaska Natives under the Alaska Native Vietnam-Era Veterans Land Allotment Program. The program was authorized under the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019.[130] Under this act, Alaska Native Vietnam veterans or their heirs could select allotments of up to 160-acres of federal land. Eligible Alaska Natives are Alaska Native Vietnam veterans who served between August 5, 1964, and December 31, 1971, and did not previously receive an allotment under prior laws. The application period is from December 28, 2020, to December 29, 2025. BLM indicates that approximately 1.6 million acres are currently available for selection and that up to an additional 28 million acres may potentially become available.[131]

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[123] DOI, BLM, "Alaska Native Claims Settlement Act (ANCSA) Conveyances," at https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/land_transfer/ancsa.

[124] P.L. 108-452.

[125] DOI, BLM, *FY2022 Congressional Budget Justification*, p. V-92, at https://www.doi.gov/sites/doi.gov/files/fy2022-blm-budget-justification.pdf.

[126] Act of May 17, 1906, 34 Stat. 197.

[127] DOI, BLM, "Alaska Native Allotment Act Entitlements," at https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/land_transfer/ak-native-allotment-act.

[128] Alaska Native Vietnam Veterans Allotment Act of 1998, P.L. 105-276; 43 U.S.C. §1629g.

[129] DOI, BLM, "Alaska Native Allotment Act Entitlements," at https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/land_transfer/ak-native-allotment-act.

[130] John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019, P.L. 116-9; 43 U.S.C. §1629g-1.

[131] DOI, BLM, "Alaska Native Veteran Program of 2019," at https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/land-transfer/ak-native-allotment-act/alaska-native-vietnam-veterans-land-allotment. If a veteran

14(c) Surveys, 17(b) Easements, and D-1 Withdrawals

Other BLM responsibilities under ANCSA include conducting surveys, reserving easements, and revoking withdrawals. Under Section 14(c) of ANCSA, village corporations are required to convey some of the land they received under ANCSA to individuals.[132] Specifically, ANCSA required village corporations to convey title to Native or non-Native occupants of land occupied as a "primary place of residence, or as a primary place of business, or as a subsistence campsite, or as headquarters for reindeer husbandry."[133] Other Section 14(c) provisions required village corporations to convey lands to nonprofit organizations; municipal corporations established in the Native village; and federal, state, or municipal corporations for "airport sites, airway beacons, and other navigation aids."[134] BLM assists village corporations by surveying the land at issue, sometimes referred to as *14(c) surveys*. BLM also provides legal descriptions and boundaries for village corporations to use in the process of transferring land.[135]

Under Section 17(b) of ANCSA, the United States has authority to reserve easements on land selected by ANCs, sometimes referred to as *17(b) easements*.[136] Such easements are reserved when BLM conveys the land to an ANC.[137] Most easements allow the public to cross lands owned by ANCs to reach public lands and major waterways, such as airports, docks, marine coastlines, and government facilities.[138] BLM is authorized to terminate a 17(b) easement if BLM determines the easement is no longer necessary.[139]

Separate from BLM's authority to withdraw public lands for selection by ANCs, Section 17(d)(1) of ANCSA provided the Secretary of the Interior authority to withdraw unreserved public lands for further study and to reclassify them for various uses in the public interest.[140] Commonly referred to as *d-1 withdrawals*, ANCSA authorized the Secretary of the Interior to withdraw such lands for the protection of the public's interest in these lands.[141] From 1972 to 1975, the Secretary issued a series of public land orders under this authority.[142] Though BLM revoked some of the d-1

were to choose land currently selected by an ANC or by the State of Alaska, BLM would issue a "conditional relinquishment request" of the public land order on behalf of the veteran to the ANC or the State of Alaska. Ibid.

[132] P.L. 92-203, §14(c); 43 U.S.C. §1613(c).

[133] 43 U.S.C. §1613(c)(1).

[134] 43 U.S.C. §1613(c)(2)-(4). ANCSA defines *municipal corporation* as "any general unit of municipal government under the laws of the State of Alaska." 43 U.S.C. §1602. In the 116th Congress, S. 4889 would have removed the requirement that ANCs convey land for municipal purposes. The bill did not become law.

[135] DOI, BLM, "Alaska 14(c) Surveys," at https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/14c_Surveys.

[136] P.L. 92-203, §17(b); 43 U.S.C. §1616(b).

[137] DOI, BLM, "ANCSA 17(b) Easements," at https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/17b_easements. Hereinafter, BLM, "17(b) Easements."

[138] P.L. 92-203, §17(b); 43 U.S.C. §1616(b).

[139] BLM, "17(b) Easements."

[140] P.L. 92-203, §17(d)(1); 43 U.S.C. §1616(d)(1).

[141] P.L. 92-203, §17(d)(1). According to BLM, "The intent was to limit appropriations of the land in order to complete inventories of resources and assessment of values which would allow for orderly development of land use and management objectives for present and future public needs." See DOI, BLM, *Sec. 207 Alaska Land Transfer Acceleration Act, A Review of D-1 Withdrawals*, June 2006, reprint 2019, p. 3, at https://www.blm.gov/sites/blm.gov/files/uploads/BLM_AK_sec207report_final_2019Reprint.pdf. Hereinafter, BLM, *D-1 Withdrawals Review*.

[142] BLM, *D-1 Withdrawals Review*, p. 3.

withdrawals, much of this land remains withdrawn but has yet to be reclassified.[143] BLM reports that revocation cannot take place without land use planning for these lands.[144]

The 2004 Alaska Land Transfer Acceleration Act required BLM to report on the remaining d-1 withdrawals and on whether such withdrawals continued to be necessary.[145] In June 2006, BLM reported that d-1 withdrawals affected approximately 160 million acres of land, including about 57 million acres of BLM-managed land.[146] Since 2018, BLM has revoked four d-1 withdrawals.[147] Revoking d-1 withdrawals opens up the land to mineral development, land sales, and land selection by the State of Alaska and Alaska Native veterans under the Alaska Native Vietnam-Era Veterans Land Allotment Program.[148]

Bureau of Indian Affairs' ANCSA-Related Programs

BIA has two ANCSA-related programs: the ANCSA Historical Places and Cemetery Sites Program and the Native Allotment Program. Under the ANCSA Historical Places and Cemetery Sites Program, the BIA certifies regional corporation claims of title to Native historical sites under Section 14(h)(1) of ANCSA.[149] The program primarily focuses on the land conveyance process, but it also manages an ANCSA museum collection.[150]

Under the Native Allotment Program, BIA provides technical assistance to Native allottees who applied for a Native Allotment pursuant to the ANAA. Some of the services BIA provides include performing field exams with the applicant and BLM staff and conducting probates and notifying heirs of possible inheritance claims.[151]

Policy Considerations

Unlike federally recognized tribes, which have government-to-government relationships with the United States, ANCSA established ANCs as business entities. In addition, in an attempt to move away from the reservation system of the lower 48 states, ANCSA settled aboriginal land claims by conveying lands to ANCs in fee title status, to be held and managed in fee as privately held lands. Although many of these lands have been conveyed to ANCs, some outstanding issues remain. Congressional policy considerations may include legislating on tribal lands and ANC lands; land management challenges due to the complex land structure developed under ANCSA; lifting d-1 withdrawals under ANCSA; and creating new village corporations.

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[143] BLM opened approximately 10 million acres of d-1 withdrawals in the 1980s. BLM, *D-1 Withdrawals Review*, p. 3.

[144] DOI, BLM, "Alaska D-1 Withdrawals," at https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/d-1_withdrawals.

[145] P.L. 108-452, §207; Linxwiler and Perkins, "Primer on Alaska Lands," p. 7-31.

[146] BLM, *D-1 Withdrawals Review*, pp. 3-4.

[147] For more information on the four revoked d-1 withdrawals, see DOI, BLM, "Revoking D-1 Withdrawals," at https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/d-1_withdrawals/revocation.

[148] BLM, *D-1 Withdrawals Review*, p. 4; DOI, BLM, "After Nearly 50 Years Interior to Revoke Public Land Withdrawals in Northwestern Alaska Covering 9.7 Million Acres," at https://www.blm.gov/press-release/after-nearly-50-years-interior-revoke-public-land-withdrawals-northwestern-alaska.

[149] DOI, Bureau of Indian Affairs (BIA), "ANCSA Program," at https://www.bia.gov/regional-offices/alaska/ancsa-program.

[150] DOI, BIA, *FY2022 Congressional Budget Justification*, p. IA-RES-12, at https://www.doi.gov/sites/doi.gov/files/fy2022-bia-budget-justification.pdf. Hereinafter, BIA, *FY2022 CBJ*.

[151] BIA, *FY2022 CBJ*, p. IA-RES-12.

Legislation Including Both Alaska Native Corporation Lands and Tribal Lands

An issue for Congress may be the extent to which Congress intends to include land held in fee simple status by ANCs when considering legislation pertaining to lands held in trust for federally recognized tribes. Once BLM conveys withdrawn land to an ANC, the ANC privately holds that land, which is freely alienable. Further, the federal government does not owe a federal trust responsibility to those lands.[152] By contrast, the federal government is responsible for administering and managing lands on behalf of federally recognized tribes.[153] Further, due to its federal trust responsibility, the federal government has a duty to manage lands held in trust or restricted fee status, including any such lands in Alaska (for example, the Annette Island Reserve of the Metlakatla Indian Community).[154] The federal government does not have the same obligation to lands held privately by ANCs.

Thus, when Congress legislates on broad topics involving lands of tribes and ANCs, a potential consideration could be whether Congress intends to include trust or restricted fee lands, as well as land owned privately by ANCs. Depending on the legislation's purpose, Congress may consider including all lands involving tribes and ANCs, lands involving only tribes, or lands involving only ANCs. Further, Congress may consider whether it intends to include both regional corporations and village corporations, or one or the other. For instance, in the 117th Congress, S. 2369 would define *tribal land* to include regional corporations established under ANCSA Section 7(a) of ANCSA but not village corporations.

If Congress wishes to define tribal lands broadly in legislation but wants to have parts of the law apply to ANCs only, an option could be to exempt ANCs from various parts of the law within the definitions section of the law. For example, the Indian Tribal Energy Development and Self-Determination Act expressly exempts ANCs from eligibility for certain grants and agreements with the Secretary of the Interior that would touch on trust or restricted fee land.[155]

Management Considerations Due to ANCSA's Complex Land Structure

Should Congress pursue legislation, it may consider that several scenarios can exist on various parcels of land in Alaska that may have ANC interests. For instance, a village corporation may own the surface acres on a parcel of land and a regional corporation or the federal government may own the subsurface acreage. In another example, the federal government could own surface acres on a tract of land in which a regional corporation owns the subsurface acres.

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[152] Supra, footnote 49.

[153] As of January 2021, 574 Indian tribes and Alaska Native villages are federally recognized. Over 200 federally recognized tribes are located in Alaska. See BIA, "Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs," 86 *Federal Register* 7554, January 29, 2021, at https://www.govinfo.gov/content/pkg/FR-2021-01-29/pdf/2021- 01606.pdf.

[154] Case and Voluck, *Alaska Natives*, p. 97. Of the Alaska Native land holdings in Alaska, ANCs hold the majority of the land privately, whereas federally recognized tribes in Alaska are mostly landless. See William H. Holey, "Starting from Scratch: Reasserting 'Indian Country' in Alaska by Placing Alaska Native Lands into Trust," *Florida A & M University Law Review* vol. 11, no. 3 (Spring 2016), pp. 333-357.

[155] Indian Tribal Energy Development and Self-Determination Act, 25 U.S.C. §3501.

ANCSA's complex land structure can create land and natural resource management considerations for the federal government, due to the various land ownership patterns through Alaska. Thus, when legislating on land or natural resource issues in Alaska, a challenge for federal lawmakers could be determining the entity—federal, state, ANC, or other—that owns surface and subsurface estates in a particular area, as well as the various obligations and responsibilities of different owners in split estates.

Lifting D-1 Withdrawals

As noted above, BLM has revoked four d-1 withdrawals since 2018. The revocations opened up approximately 11 million acres of land for various uses, such as mining interests.[156] Some suggest the revocations will provide economic development opportunities and help fulfill commitments to the State of Alaska and ANCs in remaining land entitlement selections.[157]

Conversely, some assert that revoking d-1 withdrawals will leave the land without protection and contend that the revocations were completed without due process.[158] In addition, some tribal communities have urged the federal government to conserve watershed areas and landscapes to protect their traditional way of life.[159]

Congress could maintain, increase, or decrease BLM's authority to revoke d-1 withdrawals. Increasing BLM's authority could provide BLM more flexibility in lifting d-1 withdrawals. This increased flexibility may result in such lands becoming available sooner for selection by the state, ANCs, and Alaska Native veterans, as well as by other uses, such as mining interests. Under any option, Congress may consider an examination of the process through which BLM revokes d-1 withdrawals.

Creating New Alaska Native Village Corporations

After ANCSA's passage, there have been a number of bills introduced that would have created or provided the ability for communities to organize into new village corporations. For example, in the 114th, 115th, and 116th Congresses, proposed legislation would have amended ANCSA to allow five Native villages to organize as "urban corporations" and receive approximately 23,040 acres of land.[160] This legislation would have settled land claims for villages that were not included in the initial ANCSA settlement.

Some have suggested the corporate structure as contemplated by ANCSA may not be beneficial to Native villages, citing ANCSA's lack of "cultural, traditional, or subsistence protective

[156] David W. Shaw, "Will the Federal Government Reverse Course, Retain Protections on Intact Alaskan Landscapes?," Pew Charitable Trusts, April 6, 2021, at https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2021/04/will-the-federal-government-reverse-course-retain-protections-on-intact-alaskan-landscapes. Hereinafter referred to as Shaw, "Intact Alaskan Landscapes."

[157] Elwood Brehmer, "BLM Lifts Alaska Land Withdrawals, Opening 1.3 Million Acres," *Anchorage Daily News*, June 28, 2019, at https://www.adn.com/business-economy/2019/06/28/blm-lifts-alaska-land-withdrawals-opening-13-million-acres/.

[158] Shaw, "Intact Alaskan Landscapes"; Natalie Dawson, "Part 1: BLM Lands at Risk," Audubon Alaska's *BirdBlog*, December 23, 2020, at https://ak.audubon.org/news/part-1-blm-lands-risk.

[159] Shaw, "Intact Alaskan Landscapes."

[160] In the 114th Congress: S. 872, H.R. 2386; in the 115th Congress: H.R. 229, S. 1491; in the 116th Congress: H.R. 8751, S. 4891. Other examples include H.R. 4582 in the 116th Congress and H.R. 440 in the 117th Congress (settling the aboriginal land claims of Alexander Creek village). None of the bills became law.

benefits."[161] In addition, because some Native villages are federally recognized tribes, some stakeholders have suggested placing the land into trust for the Native villages to be managed by the federal government.[162]

For legislation that would bring land into trust for federally recognized tribes in Alaska, Congress may consider the cost to the federal government of managing additional acres. In addition, Congress may consider the cost and timeliness of the land-into-trust process.[163] Conversely, if Congress created new ANCs, upon conveyance of lands the ANCs could continue to manage their lands without federal involvement, as initially contemplated by ANCSA.

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[161] Vance A. Sanders, "A Tribal Advocate's Critique of Proposed ANCSA Amendments: Perpetuating a Broken Corporate Assimilationist Policy," *Alaska Law Review*, vol. 33, no. 2 (2016), pp. 308-314, at https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1518&context=alr.

[162] Ibid, pp. 312-313.

[163] CRS Report R46647, *Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress*, by Tana Fitzpatrick.