

Southeast Alaska Conservation Council

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STATEMENT OF THE SOUTHEAST ALASKA CONSERVATION COUNCIL

REGARDING H.R. 3560, THE SOUTHEAST ALASKA NATIVE LAND ENTITLEMENT FINALIZATION ACT

BEFORE THE COMMITTEE ON NATURAL RESOURCES U.S. HOUSE OF REPRESENTATIVES IN WASHINGTON D.C. ON NOVEMBER 14, 2007

The Southeast Alaska Conservation Council (SEACC) submits the following statement regarding H.R. 3560, the Southeast Alaska Native Land Entitlement Finalization Act. SEACC respectfully requests that this written statement and accompanying material be entered into the official record of this Committee hearing.

Founded in 1970, SEACC is a grassroots coalition of 15 volunteer, non-profit conservation groups made up of local citizens in 13 Southeast Alaska communities that stretch from Craig on Prince of Wales Island north to Yakutat. Our individual members include commercial and sport fishermen, Alaska Natives, tourism and recreation business owners, small-scale high value-added wood product manufacturers, hunters and guides, and Southeast Alaskans from all walks of life. SEACC is dedicated to preserving the integrity of Southeast Alaska's unsurpassed natural environment while providing for balanced, sustainable uses of our region's resources.

Congressman Don Young, along with several distinguished colleagues, introduced H.R. 3560 on September 18, 2007. We respect the efforts of Congressman Young to stand up for the interests of Alaska Natives throughout his tenure in the U.S. House of Representatives. Like Congressman Young and H.R. 3560's other cosponsors, SEACC supports completing the conveyance of Sealaska Corporation's land entitlement under the Alaska Native Claims Settlement Act (ANCSA). Nonetheless, we have serious reservations about the changes in federal law proposed in H.R. 3560 and oppose the bill as introduced. We remain committed, however, to maintaining open lines of communication with Sealaska Corporation and the bill's sponsors to finalize the conveyance of Sealaska Corporation's outstanding statutory land entitlement. Consequently, we offer the Committee these preliminary comments for your consideration as you begin your review of this legislative proposal.

ALASKA SOCIETY OF AMERICAN FOREST DWELLERS, Point Baker • CHICHAGOF CONSERVATION COUNCIL, Tenakee • FRIENDS OF BERNERS BAY, Juneau • FRIENDS OF
GLACIER BAY, Gustavus • JUNEAU AUDUBON SOCIETY • LOWER CHATHAM CONSERVATION SOCIETY, Port Alexander •
LYNN CANAL CONSERVATION, Haines • NARROWS CONSERVATION COALITION, Petersburg • LISIANSKI INLET RESOURCE COUNCIL, Pelican •
PRINCE OF WALES CONSERVATION LEAGUE, Craig • SITKA CONSERVATION SOCIETY • TAKU CONSERVATION SOCIETY, Juneau • WRANGELL RESOURCE COUNCIL
• YAKUTAT RESOURCE CONSERVATION COUNCIL

H.R. 3560's Proposed Findings and Purpose Tell Only Part of the Story.

The findings contained in section 2 of H.R. 3560 are drafted to imply that Congress treated Sealaska Corporation unfairly, unjustly, and inequitably from other regional Native corporations in Alaska. *See also* 153 Congressional Record E1913 (Sept. 18, 2007)(Congressman Young's introductory statement that "[t]his legislation will redress the inequitable treatment of the Native Regional Corporation for Southeast Alaska—Sealaska Corporation . . ."). We respectfully disagree and believe the bill's proposed findings and purpose tell only part of the story.

We recognize that the Native shareholders of Sealaska Corporation have long histories and traditions in Southeast Alaska. We further recognize the important benefits to Natives from owning lands important for customary and traditional (subsistence) uses and the significant cultural, economic, and social effects from development of village and regional Native corporation lands.

In ANCSA, Congress converted the communal, aboriginal claims of Alaska Natives into individual private property represented by shares of stock in over 200 Native regional, village, urban, and group corporations. *See Case and Voluck, Alaska Natives and American Laws, 2d ed* at 157 (2004). To accomplish this, Congress awarded approximately \$1 billion dollars and 44,000,000 acres of federal land in Alaska to the village and regional Native corporations.

Just like the other regional Native corporations, Sealaska Corporation's per capita share of lands under section 14(h)(8), 43 U.S.C. § 1613(h)(8), came from unselected lands withdrawn by Congress for that purpose. In Southeast Alaska, those lands were withdrawn from the Tongass National Forest around 10 qualifying Southeast Alaska Native villages. Sealaska Corporation received the right to more lands (a total of 354,389.33 acres) pursuant to section 14(h) than any of the other regional Native corporations, because Sealaska Corporation had more shareholders than any other region. *See* 70 Fed.Reg. 77179-180 (Dec. 29, 2005)(notice of decision allocating additional acreage to Native regional corporations in Alaska). In addition, just like other regional corporations, Congress granted Sealaska Corporation the subsurface (or mineral) estate in lands selected by qualifying Southeast Alaska village corporations. 43 U.S.C.A. § 1613(f).

Sealaska also benefited from a couple of significant advantages not enjoyed by the other regional corporations. First, although Alaska is rich in natural resources, those resources are not evenly distributed across all regions of the state. Fortunately for Sealaska Corporation, the southeast region has massive stands of old-growth forest in the world's greatest remaining temperate rainforest. Sealaska Corporation received over 220,000 acres of mature forest land, pursuant to section 14(h)(8) of ANCSA, from lands withdrawn from the Tongass National Forest. Sealaska Corporation's 14(h)(8) land selections have made it one of the largest private timber-owners in the State of Alaska.¹

¹ *See* ANCSA 1985 Study at III-54.

Second, in addition to the wealth in land resources that Sealaska Corporation conveyed under ANCSA, it received more money--\$93 million dollars—than any other regional corporation because it had more shareholders.

Since 1979, Sealaska Corporation has clearcut over 3.5 billion board feet of timber from its land and exported the vast majority of it out of state as raw, unprocessed logs.² Thus, although Sealaska Corporation received less than one percent (1%) of all the lands conveyed to village and regional corporations under ANCSA, it shared more than \$300,000,000 in revenues with the other Native corporations in Alaska. *See* H.R. 3560, § 2(a)(8). To help put Sealaska Corporation's success in relative terms, the \$300,000,000 is 42% of all the money contributed by all 13 regional native corporations under an ANCSA revenue sharing agreement.

H.R. 3560 Appears to Conflict with the Process Adopted in the Alaska Land Transfer Acceleration Act, Pub. Law 108-452, for Finalizing Regional Corporation Land Entitlements.

In 2004, Congress enacted a law to facilitate completion of the transfer of lands in Alaska pursuant to ANCSA, the Alaska Statehood Act, and other laws. *See* Alaska Lands Transfer Acceleration Act (ALTAA), Pub. Law 108-452, 118 STAT. 3575 (Dec. 10, 2004). Two provisions of this important law appear to conflict with the conveyances proposed in H.R. 3560 to finalize Sealaska Corporation's land entitlement under Section 14(h) of ANCSA.

Section 3(b)(2) of H.R. 3560 authorizes the conveyance of no more than 2,400 acres of 54 sacred, cultural, traditional, or historic sites from within existing withdrawal areas and another 198 sites outside the existing withdrawal areas. Yet, Section 204 of ALTAA, 118 STAT. 2584, froze the cemetery and historical place program under section 14(h)(1) of ANCSA to pending applications for sites eligible for conveyance. No information is provided in H.R. 3560 as to whether Sealaska Corporation had previously filed timely applications with BLM for the nearly 200 sites identified in Attachment B to H.R. 3560. It is also unclear whether BLM determined that the applications for the proposed sites were valid and eligible for conveyance to Sealaska Corporation, or the content of any comments from the Forest Service or National Park Service to BLM on the applications.

Section 205 of ALTAA, 118 STAT. 3585, amended Section 14(h)(8) of ANCSA to quantify the final acreage of lands to be distributed to the Regional Corporations under Section 14(h). This provision directed the Secretary of Interior to allocate to a Regional Corporation "as soon as practicable" its share of 200,000 acres "from land withdrawn under [section 14(h)(8)]." Now, three years later, Sealaska is asking Congress to reopen ANCSA to authorize selection of lands that were not withdrawn for that purpose. Why was the issue about whether it was appropriate for Sealaska to select its remaining

² *See* Sealaska Timber Corporation website at: http://www.sealaskatimber.com/About_STC.htm# and Sealaska News and Information website at: http://www.sealaska.com/aboutus_news_2003.htm (announcing receipt of the Governor's Exporter of the Year award).

entitlement outside of the existing ANCSA withdrawals on the Tongass National Forest addressed during Congressional deliberations over ALTAA?

The Proposed Out-of-Withdrawal Selections for Economic Development Lands Target a Disproportionate Amount of the Most Ecologically Productive Lands in Southeast Alaska and Prince of Wales Island.

Pursuant to section 14(h)(8) of ANCSA, the U.S. Bureau of Land Management (BLM) has allocated about 310,000 acres for conveyance to Sealaska Corporation from lands withdrawn by Congress in 1971 from the Tongass National Forest. At this time, approximately 292,000 acres of this land entitlement have been conveyed to Sealaska.³ Sealaska Corporation remaining entitlement under Section 14(h)(8) of ANCSA totals nearly 66,000 acres of land. 70 Fed.Reg. 77179-180 (Dec. 29, 2005). This figure includes the approximately 22,000 acres remaining unconveyed from BLM's earlier allocation, as well as Sealaska Corporation per capita share of an additional 200,000 acres from the 2 million acre pool of lands established by section 14(h) of ANCSA. BLM determined this

Under federal regulations, the regulatory deadline for Sealaska Corporation's applications for land selection under Section 14(h) occurred prior to BLM final allocation of available lands. *See* 43 C.F.R. § 2652.3 (BLM extended this deadline from December 18, 1975 to September 18, 1978). To protect itself against potential loss of selection opportunities, Sealaska applied for more land than it would probably receive: about 171,000 acres from the lands withdrawn by Congress in ANCSA. *See supra*, note 2. By making excessive overselections, Sealaska gained extra time to evaluate the relative economic potential of various tracts and then reprioritize their selections accordingly.⁴ These 171,000 acres of overselections are included within the 327,000 acres of unselected but encumbered federal lands withdrawn from the Tongass National Forest by Congress for selections by village and regional corporations in Southeast Alaska.

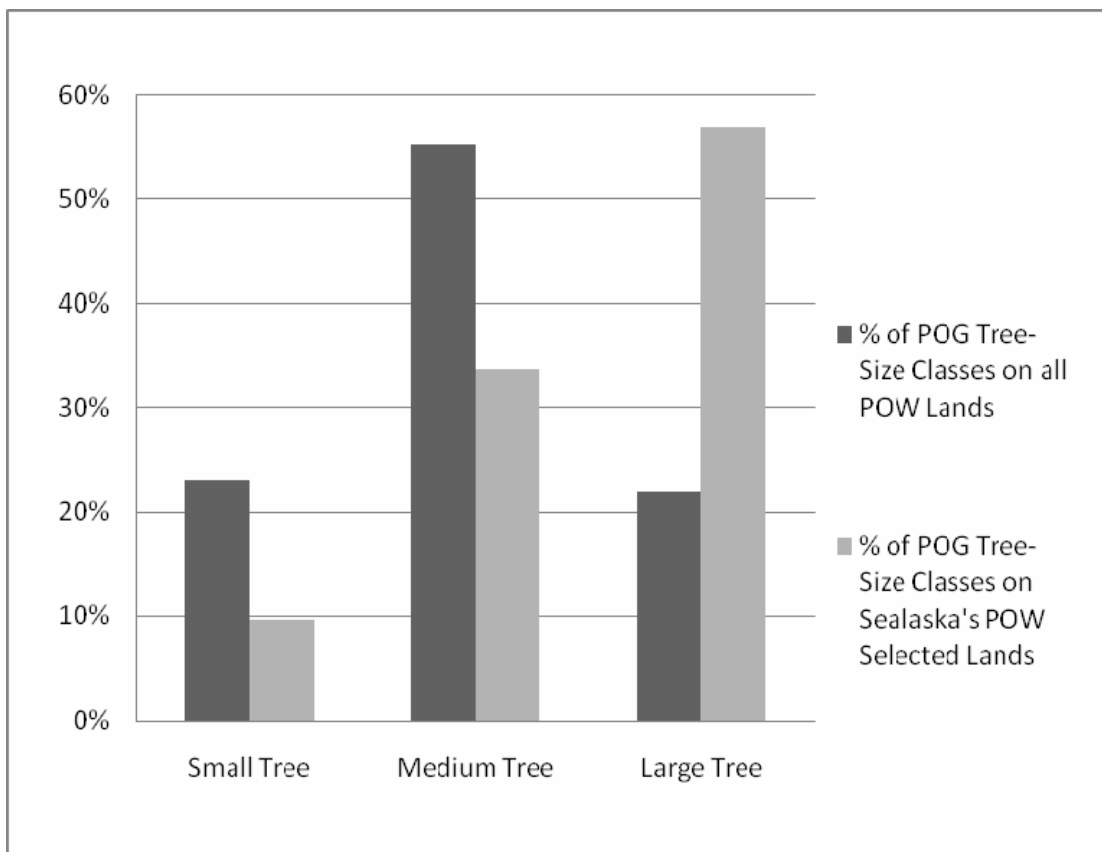
As noted above, notwithstanding the difficulties in applying the formulas specified in ANCSA for determining withdrawal areas in Southeast Alaska (primarily the steep geography of coastal Alaska), in general the valuable commercial forest land available for selection by Sealaska Corporation allowed this corporation to obtain substantial income from these lands. Section 2(a)(9) of H.R. 3560 asserts that "[a]s a result of its small land entitlement" time is "critical" for Sealaska Corporation to complete its remaining land entitlement "under the Act." Yet, despite making previous overselections of lands with the areas withdrawn by Congress, it is not clear that Sealaska Corporation actually informed BLM which selections it wished to prioritize. Now, about 3 decades after overselecting available lands, Sealaska Corporation wishes to change the formula enacted by Congress and seeks different lands than previously approved by Congress.

³ 2007 USDA, Forest Service. Draft Environmental Impact Statement for Tongass Land Management Plan Amendment, EIS Appendix C at C-6.

⁴ *See* ANCSA 1985 Study at III-50.

A comparison of the lands Sealaska Corporation wishes to obtain under Section 3(b)(1) of H.R. 3560, and the 327,000 acres remaining available for the corporation to select the balance of its entitlement, is instructive. Nearly one-third of the 327,000 acres are muskeg or nonforested lands. While 85 percent of these lands are currently unroaded, they do not represent intact forested watersheds. Instead they are the generally those portions of selected watersheds above 800 feet in elevation, with the lower, more productive portions of the watershed already heavily cut by Sealaska Corporation. Only 9 percent of these lands are classified as big tree forests (stands of productive old growth (POG) with more than 30,000 board feet per acre). On the other hand, well over half of the lands within the pool of about 50,000 acres of out-of-withdrawal selections sought by Sealaska for intensive timber development are inventoried as big tree forests. These lands include some with the highest biological values represented by salmon, deer, black bears, large-tree old growth, marbled murrelets, and estuaries on the Tongass.⁵

The chart below, created using existing Forest Service data for Prince of Wales Island, shows that H.R. 3560 would authorize conveyance of over half of the remaining large tree POG on Prince of Wales Island to Sealaska Corporation.



⁵ Schoen, John and Erin Dovichin, eds. 2007. The coastal forests and mountain ecoregion of southeastern Alaska and the Tongass National Forest. Audubon Alaska and The Nature Conservancy, 715 L Street, Anchorage, Alaska. This complete report is available online at: <http://conserveonline.org/workspaces/akcfm>

The communities of Port Protection, Point Baker, and Edna Bay have strenuously objected to conveyance of any of the proposed “economic development” parcels on North Prince of Wales and Kosciusko Islands. These lands are important for subsistence and commercial uses for these communities. The community of Hydaburg has long fought to safeguard proposed “economic development” lands, which include Keete/Nutkwa and Kassa Inlets and Mabel Bay. These lands were designated as part of the Nutkwa Wilderness in the 1989 House-passed version of the Tongass Timber Reform Act but left out of the final compromise legislation in 1990. Hydaburg and SEACC have consistently advocated for long-term protection for these lands ever since.

The out-of-withdrawal selections targeted by Sealaska contain an extensive amount of extraordinary karst lands, including significant cave resources protected under the Federal Cave Resources Protection Act, on North Prince of Wales, Kosciusko, and Tuxekan Islands. Not only are these lands extremely productive, they are also important from paleontological, cultural, and geological/biological perspectives. For example, eleven (11) years ago, the Forest Service discovered human remains in On Your Knees cave on North Prince of Wales Island. DNA testing determined that these human remains were 10,300 years old. *See* Forest Service returns ancient human remains to Tlingit tribes, Juneau Empire (Oct. 21, 2007).⁶

Finally, H.R. 3560 gives away far more than just acres of land. It also gives away valuable expensive infrastructure in the form of Forest Service roads funded by U.S. tax payers.

Proposed Conveyance of Sacred, Cultural, Traditional, or Historic Sites in Conservation System Units.

Section 3(b)(2) of H.R. 3560 authorizes Sealaska Corporation to select as much as 3,600 acres of lands that qualify as sacred, cultural, traditional, or historic sites across the Tongass. Based on our review of the map accompanying the bill, multiple sites are located within Glacier Bay National Park and Klondike Gold Rush National Historical Park near Skagway. Other sites are located in areas designated as Wilderness and Legislated LUD II's on the Tongass, including the Admiralty Island National Monument Kootznoowoo Wilderness, South Baranof Wilderness, Tebenkof Bay Wilderness, Kuiu Wilderness, and South Prince of Wales Wilderness. Other sites are located in lands designated as Legislated LUD II areas by Congress in the 1990 Tongass Timber Reform Law to protect their wildland character, including the Berners Bay, Upper Hoonah Sound, and Nutkwa. No explanation is provided regarding why the conservation protections afforded by these designations are insufficient to safeguard the secrecy, solitude, and integrity of these sites. In addition, while Section 14(h) of ANCSA permitted selection of cultural and historical sites outside of the ANCSA withdrawal areas, such selections were limited to those public lands “unreserved and unappropriated.” Clearly, lands designated by Congress as Wilderness, National Park and Legislated LUD II qualify as reserved and appropriated public lands. We therefore

⁶ This story can be found on the web at http://www.juneauempire.com/stories/102107/loc_20071021021.shtml.

see no need to amend ANCSA to allow for selection, and potential development of, these sites.

We are also concerned with the lack of direction in the proposed bill regarding Sealaska Corporation's consultation with affected clans/tribes concerning management/development of these sites. In addition, development activities on sacred, cultural, and historic sites are subject to consultation with the State of Alaska Historic Preservation Office. The technical amendment to the National Historic Preservation Act in section 5(c) of H.R. 3560 would classify these sites as "tribal" and therefore remove any requirement to consult with the State Historic Preservation Office.

Another significant concern we have with H.R. 3560 is the proposed termination of existing restrictive covenants on cultural or historic sites already conveyed to Sealaska Corporation in section 4(g). Section 4(h) would impose a covenant prohibiting any commercial timber harvest, but prohibit imposition of any other restrictive covenant. Current federal regulations, 43 C.F.R. §§ 2653.5(a) & 2653.11, require sites that qualify and are conveyed for cemetery sites or historical places contain a covenant prohibiting mining or mineral activities of any type and "use which is incompatible with or in derogation of the values of the area as a cemetery site or historical place." We don't understand why such reservations are inconsistent with Sealaska Corporation's objectives for these sites.

Finally, section 3(b)(A)(ii) would also convey lands 25 feet in width, together with one-acre sites at each terminus, for three (3) identified "Traditional and Customary Trade and Migration Routes." Initially, we have some concerns about how these routes will affect management of adjacent national forest lands, such as the Yakutat Forelands Legislated LUD II area, and public access and use of these and adjacent public lands.

Proposed Conveyance of Identified Native Enterprise Sites Could Cause Dramatic Changes in Land Use Patterns and Spark Controversy.

Section 3(b)(3) authorizes the conveyance of as much as 5,000 acres of land for "Native enterprise sites" across the Tongass National Forest for economic development purposes other than commercial timber harvest. The definition in H.R. 3560 of these "enterprise sites" is unclear. We are concerned about what activities will or will not be allowed on them, as well as how conveyance of these sites, and accompanying nonexclusive access and use right, will affect public use and access to popular use areas. For example, will this allow for large lodges, upscale marinas, or other industries in areas that are currently wild and remote? Furthermore, these "enterprise sites" have not been fully vetted with Southeast Alaskan communities. Based on our knowledge and experience, they will likely create conflicts with charters, commercial and sport fishing groups, hunting guides, existing tour operators, and residents who use these popular areas for camping, hunting, and fishing. Tourism and tourism related jobs employed nearly 6,000 people in the region in 2005. Many of these businesses are family owned and operated. Sealaska Corporation's "enterprise sites" could have a substantial negative impact on existing locally owned and operated businesses.

While as a general concept enterprise zones are worth discussing further, we believe it is more appropriate to locate such zones within or adjacent to existing Native corporation land. With very few exceptions, the proposed enterprise zones are well known and well-loved by people throughout Southeast Alaska. The proposed enterprise zones are located adjacent to highly popular areas used by local community members for recreational, commercial and subsistence purposes. Conveyance of these lands to Sealaska Corporation could cause dramatic changes in land use patterns and spark controversy. For example, Sitka residents are concerned about proposed sites are already generating controversy including Poison Cove in Peril Straits, Big Bay near Goddard Hot Springs, Kalinin Bay at the north end of Kruzof Island, and Crab Bay in Tenakee Inlet. The community of Edna Bay has expressed opposition to conveyance of any lands at Cape Pole, on Kosciusko Island. The proposed site at Dog Cove near the Naha Legislated LUD II Area is a highly popular area near Ketchikan. The proposed site at Madan Bay is also in a highly used area by residents of Wrangell.

H.R. 3560 Lacks a Meaningful Conservation Component.

When it enacted ANCSA in 1971, Congress included a provision requiring the Secretary of Interior to withdraw from all forms of appropriations up to 80 million acres of unreserved federal lands in Alaska and make recommendations for designating suitable lands as conservation system units. *See* 43 U.S.C.A § 1616(d)(2). Given the significant amendments proposed to ANCSA by H.R. 3560, we believe it appropriate to amend the bill to incorporate a meaningful conservation component. For example, Congress could:

- Expand the Calder/Holbrook Legislated LUD II by including portions of Kosciusko (Trout Creek along South Shipley Bay/VCUs 541, 547, and partial VCU 543) and 4 small pieces along El Capitan Passage on the eastern end of the Calder/Holbrook Legislated LUD II area** (VCUs 5372, 5420, 5490, and partial VCU 5360);
- Expand the Nutkwa Legislated LUD II south of Hydaburg by including Hetta Lake (partial VCU 673.2, 673.1), Hetta Peninsula/Nutkwa Falls (partial VCU 673.2 & 685), Keete, Kassa, & Mabel Bays (VCUs 685, 688, 689);
- Permanently protect a karst island, such as Heceta Island, to safeguard significant karst and cave resources;
- End commercial logging and road building on North Prince of Wales Island except for activities associated with restoring previously logged lands or rehabilitating lost wildlife habitat.

In conclusion, we respectfully request the Natural Resource Committee to carry out a deliberate and careful scrutiny of this complex piece of legislation and resolve our unanswered questions, as well as those posed by others. We further urge the Committee to assure that efforts to finalize Sealaska Corporation's land entitlement under ANCSA does not come at the expense of legitimate concerns of local communities and residents about the effect of such land conveyances on traditional community uses of affected public lands or threaten the integrity of the Tongass National Forest by privatizing public lands across the forest.

Thank you the opportunity to make preliminary comments on this proposed legislation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Buck Lindekugel". The signature is written in a cursive, flowing style with a large initial "B".

Buck Lindekugel,
Conservation Director,
Southeast Alaska Conservation Council