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March 1, 2013

Mr. Wes Keller, Chairman,
Mr. Stan Leaphart, Executive Director
Citizen's Advisory Commission on Federal Areas
3700 Airport Way
Fairbanks, Alaska 99709

Dear Mr. Keller:

First, let me apologize for my lengthy delay in responding to your November 4, 2011 letter expressing concerns about the Southeast Alaska Native Land Entitlement Finalization and Jobs Act—the so-called Sealaska lands bill. Given the talks that have been underway over the past 18 months over the terms of the bill with the U.S. Forest Service and Senate majority staff among others, it has been difficult to know how to respond to your many points until talks over compromise provisions in the bill were largely concluded or until it was time to reintroduce the bill at the start of the 113th Congress. While we almost reached agreement on a compromise bill last fall, there still were a couple of outstanding issues – issues still facing the new bill that I have now introduced

Secondly, I thank you for your detailed comments on the Senate bill. I understand fully how difficult it was for your members to follow the moving target of provisions in the bill. Attached is a press release on the terms of a significantly revised bill that provides considerable detail on the changes that I am making in the 2013 version of the bill and also a draft of the revised language. I am hopeful that this bill can come up for a hearing early in 2013 and pass the Senate relatively early in the year.

But I do feel that I need to respond to several of your comments in your past letter.

Concerning your concern over data so you could "objectively" assess "conflicting claims about whether the original withdrawal areas contained sufficient timber to sustain Sealaska's timber program" let me say that under the 1976 amendment that allowed Sealaska to select lands only within conveyance boxes surrounding 10 Native villages in the region, there were 327,000 acres, containing 112,000 acres of old-growth timber. But 60,944 of those acres were placed in Old-Growth Habitat Preserves by the Forest Service, and 277,000 of those acres are located in the Inventoried Roadless area that would cause problems for Sealaska to be able to connect roads on their private lands to the existing road network.

More specifically the assessments we worked with during development of the bill showed that Sealaska likely could have readily harvested only 4.5 million board feet of timber from the more than 100,000 acres of prioritized selections they filed on lands inside the selection areas in summer 2008. That is because the bulk of their timber, 230 million board feet from 32,000 acres, came from the Yakutat withdrawal area that specifically because of a 1976 amendment required the Governor's consent before the lands in the Situk River corridor could be transferred. Another 38 million board

feet from 4,600 acres were located largely near Hydaburg and Klukwan and involved selections at Essowah Lake on the west side of Dall Island – an area very important to commercial fishermen – and at Eek Lake south of Hydaburg, an area that is even more important for the commercial and subsistence sockeye fishery. Another 40 million board feet were available from 19,500 acres in the Craig area, but all of that timber was in the Craig municipal watershed. Sealaska also selected 2,500 acres at Hoonah that contains 30 million board feet, but was in areas involving important scenic viewsheds for the tour industry and important subsistence hunting areas. Sealaska also had selected 3,100 acres containing 9 million board feet of timber near Kake, but that timber was of questionable economic viability. For that reason I felt it essential for the benefit of the fishing and tourism industries, and also for Sealaska shareholders, that the corporation be moved to less environmentally sensitive lands.

I certainly appreciate your commission's concerns that the bill not hinder the Department of Agriculture's efforts to implement its Southeast Alaska Transition Strategy to a second-growth timber industry – even though I find that strategy deeply flawed. I believe the current bill fully addresses all Forest Service concerns with its ability to have sufficient young-growth timber, second-growth timber older than 40 years in age, to meet the needs of mills in Southeast. At the time of your review of the bill, of the 428,972 acres of second-growth in the forest, Sealaska would have been allowed to select a maximum of 28,576 acres of second growth – 7 percent – and Sealaska would have been allowed to select just 13,266 acres of older (40+ years) second growth that the Forest Service deems "suitable" for harvest under its 2008 Tongass Land Management Plan. So at the time of your letter, the bill would have withdrawn at most 9% of the suitable second-growth timber from Forest Service control, leaving it with 91% to implement its transition strategy. This new bill withdraws far less than 25,000 acres, less than 7% of the suitable second-growth timber lands.

I fully feel that is sufficient timber to protect all existing mills, especially since the Viking mill at Klawock needs old-growth timber for its economic viability and the Sealaska bill "left" at least 30,000 more acres of old-growth in the woods than would have been the case if its selections had been allowed inside the selection boxes. With the recent revisions in the bill that removes more than 4,000 acres of predominately old-growth from northern Koscuisko Island, nearly 7,000 thousand acres of older (40+ age) second growth from southern Koscuisko, and previous changes that left all of northern Prince of Wales Island and the tracts at Red Bay, Buster Creek and Lab Bay in Forest Service control, there should be little concern about the Forest Service's ability to meet local mill needs – provided that the reinstated inventoried roadless rule of the Obama Administration does not excessively damage sale opportunities of old-growth tracts.

Your letter discusses your concerns that the Sealaska bill threatens the Forest Service's conservation strategy and thus risks new suits over enforcement of the Endangered Species Act involving the Queen Charlotte Goshawk and the Alexander Archipelago Wolf. That was certainly a major concern of mine because such suits could enjoin timber sales and place Alaskan timber jobs at risk. But at the time you were reviewing the bill, the bill placed far fewer Old Growth Habitat LUDs at risk than would have been placed in jeopardy, should Sealaska have been forced to select from inside the selection boxes. Under the original S 730, the economic development selections would have impacted 10,548 acres of Old Growth Habitat, but Sealaska would have impacted 34,983 acres of such habitat by staying with their original selections. Looking only at the Old Growth Reserves, Sealaska by last Congresses' bill would have impacted 17,875 acres of the reserves, while it would have impacted 63,484 acres by taking lands among their original selections in the selection areas.

This new bill, which reduces the impact on Old–Growth Reserves on Tuxekan Island, at Polk Inlet, and especially on Koscuisko Island should further lessen that suit risk.

The risk also has been met by the creation of the new conservation areas. I fully understand your concern with the creation of any new Land Unit Designation II lands in the Tongass. Given that the Tongass Timber Reform Act in 1990 created 721,000 acres of LUD IIs, on top of the 5.7 million acres of formal wilderness created by the Alaska National Interest Lands Conservation Act in 1980 and TTRA, I fully share your concerns about the creation of any more. But I would mention in defense of this bill that the conservation areas have little impact on the effective timber base since much of the acreage so designated is already off limits to timber activities because the land lies in karst special plan protection areas or in other TLMP plan protection areas, such as the Sarkar Lakes and Honker Divide areas. The bill does provide some additional fishery and environmental protections, but does so without establishing any new preservation precedents or in any way violating the state's protections contained in ANILCA against the creation of new wilderness areas in our state. I admittedly would have preferred not to create any such new areas, but it became absolutely clear in talks with the Senate majority and the Obama Administration that it would not entertain the possibility of allowing passage of a Sealaska bill without the creation of some greater amount of conservation lands. Please note that when the bill was introduced in 2008, the Southeast Alaska Conservation Council was seeking the creation of several million acres of new protected areas in the region, a coalition of fishermen at least 1.8 million acres of new lands for salmon protection and the Tongass Futures Roundtable proposed to establish about 5.7 million acres of new protected lands in return for creation of a state forest. Audubon is currently pushing a Tongass 77 plan that would protect all of 77 drainages, involving 1.8 million acres of new land setasides. I would argue that creation of conservation areas – a total of 152,000 acres, but that only impacts about 50,000 acres of the nearly 10 million-acre timber base -- is worth the price to maintain 40 percent of the state's existing timber industry. And in conversations with the Forest Service they have said informally that the bill most likely as now structured will not require a major plan revision, but only a more modest modification of the Tongass Land Management Plan – a process currently underway as part of the required five-year update of the forest plan.

Concerning your access concerns, the latest bill totally eliminates the concept of new "Future" sites, now called small parcel sites, making all economic development lands subject to the requirement that all such lands are totally open for non-commercial recreational hunting and fishing. That contrasts with Sealaska's ability to close/post all lands it would have selected inside the selection boxes, preventing any public use of the lands. On balance I believe this bill is vastly preferable to Alaska's outdoor community than would have been the status quo. And I strongly disagree with your concern that Sealaska will ultimately end commercial guiding and outfitter permits on its lands after the requirement expires that Sealaska honor all existing permits and grant one 10-year renewal. First, that ignores that such commercial guiding operations would automatically expire on all of the lands Sealaska selected inside the selection boxes immediately upon conveyance. Secondly, it ignores the profit motive for Sealaska to renew such permits on its timber lands to avoid the cost of competing against established guides, many of whom hold state master guide licenses. The provision would not have been accepted by the Alaska Hunting and Guides Association if it had not been considered a fair and favorable outcome by the guiding community overall.

The revised bill, which contains a legislative conveyance process, will speed conveyances to help keep Sealaska in the timber business. Since Sealaska currently supports more than 40 percent of the region's timber industry, without Sealaska's business for logging companies, road builders,

transportation and logistic firms it seems unlikely that the economies of scale would have been sufficient for the rest of the industry to avoid collapse.

I wish to respond to your concerns that this bill establishes a precedent or creates "additional pressure" for the state's other 10 Native corporations to attempt to revisit their selections. First, before I introduced the bill I and my staff spoke with the chief executive officers of the other Alaska Native corporations and all of them assured me that they fully understood the unique circumstances that Sealaska faced because of the terms of the 1971 act, the long-term timber contracts in the region which when paired with the 1968 Tlingit-Haida suit settlement caused the corporation to receive the third smallest land settlement under the act, even though Sealaska with 21.85 percent of the Native population in 1970 could have received nearly 8.4 million acres of the 44 million acres distributed to settle aboriginal land claims. They all assured me they would not seek to use the bill as a precedent to gain additional lands. More importantly, while Sealaska will be gaining nearly 30 percent of its entitlement from the Section 14(h) lands it will be gaining from this bill, since all of the 10 other corporations received the vast majority of their lands from Section 12 provisions of ANCSA, there is little benefit to the other corporations seeking to reopen their selections, even if they could, which legally they can not, given the terms of the 2004 Alaska Land Conveyance Acceleration Act.

The bill also will not result in "high-grading" of timber. Sealaska's conveyances will include only about 20,700 acres of large old-growth trees (Class 6-7 trees) – just 3.8 percent of the forest's 537,451 acres of such trees. Already, 437,000 acres of large old-growth trees (81 percent) are protected in conservation areas.

And let me finally respond to a point recently raised by a member of the commission during a conference call with my staff. I'm told a Commission member raised a concern that public access language in the new S. 340 would, in essence, treat private lands as federal lands for subsistence purposes. The member strongly urged that the land Sealaska receives should not be treated as federal land under section 803 of ANILCA. The comment specifically referenced section 4(e)(1) of the bill.

Nothing in my proposed legislation would treat private lands as federal lands for subsistence purposes. That is to say, I have no intention of creating a federal management overlay with respect to the management of private lands. The previous version of the Sealaska bill (S. 730) stated that economic lands conveyed to Sealaska would be subject to "the right of noncommercial public access for subsistence uses, CONSISTENT WITH title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3111 et seq.), and recreational access without liability to Sealaska." Our intention in using that language was not to require management "under" title VIII of ANILCA, but rather to ensure that public access to the land would be guaranteed for "subsistence" uses as that term, and that term only, is defined under ANILCA.

In re-drafting the Sealaska bill this year, I removed the reference to Title VIII of ANILCA and redrafted the subsistence language to ensure that the only effect of the language is to define the term subsistence for purposes of ensuring continued public access to Sealaska lands. Section 4(e)(1) now states: "Any land conveyed under subsection (a) that is located outside a withdrawal area designated under section 16(a) of the Alaska Native Claims Settlement Act (43 U.S.C. 1615(a)) shall remain open and available to subsistence uses, AS THAT TERM IS DEFINED in section 803 of the Alaska

National Interest Lands Conservation Act (16 U.S.C. 3113), and noncommercial recreational hunting and fishing and other recreational uses by the public under applicable law."

It is clear in my view that this language ensures continued access for subsistence and recreational purposes for the lands to be conveyed to Sealaska pursuant to the legislation. It does not, however, change in any way the regulatory or management regimes applicable to those lands and certainly does not constitute a major precedent change in how Section 803 of ANILCA is implemented in Alaska.

I simply ask that the commission review the revised bill, and make its recommendations in light of the changes made in the bill and the additional information I have attempted to provide. My sole objective has been to craft legislation that is fair to both Sealaska and to all other interest groups in Southeast Alaska. I have attempted to lessen potential legal problems and prevent environmental issues that would have arisen if Sealaska had been forced to attempt commercial activities on their original land selections. I believe there is no policy basis, let alone equitable justification, for suggesting that Alaska Natives in Southeast need to stay totally inside their 1976 selection boxes, certainly not as a result of the lengthy Tlingit and Haida suit settlement process that started in 1935, 10 years before passage of the Alaska Native Civil Rights Act in 1945, and 36 years before the Native claims settlement act's passage. And that is certainly the case after the voiding of the region's long-term timber sale contracts, which so markedly shaped what lands and the quantity of lands that were open for Sealaska selection in the 1970's.

I know that it is impossible to satisfy all competing concerns since every acre of the Tongass is important to someone. But I truly feel this revised bill represents an excellent balance. Clearly Sealaska is getting vastly less than it sought at the start of this process last decade, while the State is getting a vastly better outcome than will result without this legislation. I hope the commission members will review this new information.

Sincerely,

Lisa Murkowski
United States Senator

Enclosures