

# STATE OF ALASKA

## CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

SEAN PARNELL, Governor

3700 AIRPORT WAY  
FAIRBANKS, ALASKA 99709

PHONE: (907) 374-3737  
FAX: (907) 451-2751

June 15, 2010

Senator Lisa Murkowski  
709 Hart Senate Building  
Washington, D.C. 20510

Dear Senator Murkowski:

The Citizens' Advisory Commission on Federal Areas is providing the following comments on S. 881, the Southeast Alaska Native Land Entitlement Finalization Act and the proposed recommendations for revisions prepared by the Senate Energy and Natural Resources Committee staff. These comments reflect our discussions with representatives from Sealaska, members of the public and interest groups providing testimony at Commission meetings. We have also discussed provisions of the bill with staff from the Alaska Department of Fish and Game and the Department of Natural Resources. We would particularly like to thank McKie Campbell for participating in our June 3, 2010 meeting to present the proposed staff recommendations and answer questions about S. 881.

Sealaska Corporation is a significant economic force in Southeast Alaska, providing 490 direct and indirect employment opportunities, with a \$21 million payroll and \$45 million in total expenditures in 2008. Restrictions on Sealaska's ability to select lands under the Alaska Native Claims Settlement Act (ANCSA) of 1971 likely will constrain the future economic growth of the corporation. The Commission supports Sealaska Corporation's efforts to complete its land selections and entitlements with lands that can continue to provide economic opportunities for Sealaska and the region, **provided the entitlements are completed in a way that respects the rights of all Alaskans.**

Given the difficulties faced by the U.S. Forest Service in its efforts to offer an adequate and reliable timber base, a timber supply from State and private lands in Southeast Alaska are necessary for the future survival of the timber industry. It is important that Sealaska be allowed to select timber acreage that can help that industry remain viable regionally as the entire industry evolves nationally. However, it is important that those selections will allow the Forest Service to meet the objectives of the Tongass Land Management Plan.

### **Native Futures Sites**

As you are aware, the proposed Native Future Sites have generated substantial controversy throughout Southeastern Alaska. Many communities are troubled about the possible transfer of areas of public lands that are important to local residents for many uses into private ownership. Sealaska has demonstrated a willingness to address concerns by amending the list of proposed futures sites so that these areas remain available for general public use. The Commission is providing no comments on individual sites as we are not sufficiently familiar with local uses or specific concerns for any site. We encourage you to consider additional revisions if necessary to keep traditional areas in public ownership and available for local community uses.

Detailed maps of the proposed futures sites need to be completed and presented to the public at the earliest possible date. To this point, only a small scale regional map showing the general location of the proposed sites has been available. While most of the proposed sites are not particularly large in size, the topography of Southeastern Alaska means that public use of and access to adjacent public lands can be affected by the location of even a small site. In addition, development of these sites either as tourism, ecotourism or renewable energy sites can affect public use of adjacent federal or state lands beyond a relatively small footprint. It is essential that their locations be as clearly delineated as possible and made known to the public before final decisions are made.

Without having actual survey data and a legal description of these sites available to share with individuals and companies currently engaged in tour and guiding operations there is no way to tell if these selections will displace current operators. Due to the limited amount of safe haul-out sites in southeast Alaska these sites have the potential of limiting the public to access public lands via Sealaska permitted operations.

Although we understand that mooring sites on salt water would not be affected by this bill it is unclear what impacts may occur when and what the federal courts decide in the *Alaska v. Salazar* appeal regarding headland to headland Federal Reserve Water Rights and access for subsistence uses or closures to non-subsistence uses to protect subsistence uses.

### **Access**

The ability of the public to have continued access across any proposed futures site is critical. This Commission has heard more concerns on the issue than any other. **Amendment #1** to Section 4(d) of S. 881 would make the futures sites subject to Section 17(b) of ANCSA.

The revision (subparagraph C) would also give Sealaska the right to:

“reasonably regulate access across such land to ensure public safety, to protect cultural or scientific resources, to provide environmental protection, or to prohibit activities incompatible with the use and enjoyment of the land by Sealaska, subject to the condition that Sealaska shall post on any applicable property, in accordance with State law, notices of any such condition.”

This appears to be a significant departure from existing policy for the management of 17(b) easements. 17(b) easements allow the public to cross private ANCSA corporation land to access public lands. Uses of the private lands adjacent to the easement are not allowed. These

easements are reserved and managed by the federal government and not by the ANCSA corporation. We support inclusion of language making all conveyed lands subject to 17(b) easements, but suggest deletion of this proposed paragraph (C).

Proposed Subparagraph D states: “public access across such lands will not be unreasonably restricted or impaired.” The term “unreasonably restricted or impaired” should be defined.

Background information for recommended **Amendment #2** states that language confirming that 17(b) easements cannot be vacated is not necessary “since 17(b) easements go with the land and can’t be vacated.” This statement is not correct. Regulations at 43 CFR 2650.4-7(a)(13) provide the authority for the Bureau of Land Management to vacate or terminate an easement. The BLM website contains the following information on the process for vacating 17(b) easements:

**Can 17(b) easements be terminated?**

Yes, but only the BLM can terminate a 17(b) easement, using the following process. When the BLM or the easement manager determines that an easement is no longer necessary, the BLM must provide public notice that the easement is proposed for termination and request comments from the public. After reviewing the comments and determining the easement is no longer required, the BLM issues an appealable decision terminating the easement. The BLM terminates the public easement when the decision is final by issuing a release of interest.

We recommend that language be included to confirm that a 17(b) easement reserved across a futures sites cannot be vacated.

**Amendment #3 –**

We recommend additional language to the proposed revision to Section 4(a) **Timeline for Conveyance** to read as follows:

“The Secretary of the Interior (referred to in this Act as the ‘Secretary’) shall work with Sealaska **and the State of Alaska** to develop a mutually agreeable schedule to complete the conveyance of lands to Sealaska.....”

In testimony on S. 881 given in 2009 and again in 2010 on the companion bill, H.R. 2099, the BLM stated that the proposed schedule for conveying lands to Sealaska under this bill could affect the conveyance process for statehood selections and impact other native corporation selections. What the BLM failed to point out is that it has proposed a reduction of \$13 million for the Alaska Conveyance Program in its FY 2011 budget. We suggest that this might be a larger factor in any delay that might result from requiring the agency to meet a slightly accelerated timeline for conveyance of Sealaska’s selections. While Section 7 of S. 881 authorizes appropriations, we suggest inclusion of intent language that would prevent BLM from diverting funds from the Alaska Conveyance Program which will affect completion of all conveyances, including those to the State and other ANCSA corporations.

**Amendment #4 –**

We recommend a change to this proposed amendment to read:

ELIGIBILITY OF PROPERTIES AS SITES WITH SACRED, CULTURAL,  
TRADITIONAL, OR HISTORIC SIGNIFICANCE. –

Any application for the conveyance of a site with sacred, cultural, traditional, or historic significant under section 3(b)(2) of this Act **shall** be evaluated in accordance with the criteria and procedures applicable to lands selected under Sec. 14(h)(1) of ANCSA set forth in the regulations promulgated by the Secretary as of the date of the enactment of this Act. **Delete:** *[To the extent that such criteria and procedures conflict with any provision of this Act, the provision of this Act shall control.]*

The final sentence in the recommended revision should be deleted, as it would appear to defeat the intent of requiring a site to meet the criteria necessary to qualify as a sacred, cultural, traditional or historic site. It is also not clear how a site would be classified if the criteria were not met and the selected site was conveyed. We believe that it is important that the original intent of ANCSA be met when selecting a Section 14(h)(1) site.

**Amendment #5 –**

This proposal recommends that Section 4(d) of the Sealaska bill be amended to add a new paragraph (2). We suggest the additional changes:

(2) TRADITIONAL AND CUSTOMARY TRADE AND MIGRATION ROUTES.—The conveyance to Sealaska of land pursuant to paragraph (2)(A)(ii) of section 3(b) that is located outside of a withdrawal area designated under section 16(a) of the Alaska Native Claims Settlement Act (43 U.S.C. 1615(a)) shall be subject to a requirement that Sealaska provide **public** access [*easements*] across such linear conveyances if [*an adjacent landowner*] **the public** has a legal right to use the [*adjacent*] **public** lands and access across the linear conveyance is necessary for the purpose of a legal use.

Two suggestions have been made for the proposed traditional and customary trade and migration routes, referred to in this section as linear conveyances. One suggestion is to grant a non-exclusive easement to Sealaska for these routes. Another suggestion was to establish these routes as historic trails under the authority of the National Trails Act. These options should be considered. Should the linear conveyances be authorized, this amendment to allow public access across the conveyance, without confining that access to easements is acceptable.

**Amendments 6 & 7**

These amendments are not necessary. Our reading of both the National Historic Preservation Act (NHPA) and the Tribal Forest Protection Act (TFPA) of 2004 indicates that under the terms

and definitions contained in those acts, all ANCSA regional and village corporations are eligible for grants or to participate in programs authorized by either statute. In fact, our review of the Annual Reports for the National Park Service Heritage Preservation Services found that Sealaska Corporation has received 4 grants totaling \$178,896 since FY2000. During that same period other ANCSA regional and village corporations have also received grants under NHPA. If ANCSA corporations have difficulties in securing grants under the NHPA, it may be due to overly restrictive policies, criteria or application process imposed by the managing agency. We also suggest that any reference to Indian country, even as a disclaimer, should be deleted from S. 881.

### **Amendment 10**

In addition to the recommended revision to Section 4 (h) of S. 881, a new subparagraph (4) should be included:

(h) **CONDITIONS ON ALASKA NATIVE FUTURES LANDS.**—Each conveyance of land to Sealaska selected under section 3(b)(3) shall be subject only to –

- (1) a covenant prohibiting any commercial timber harvest or mineral development; [and]
- (2) a requirement that Sealaska shall extend for a period of 10 years any existing federal permits for use of such lands by commercial hunting, fishing, and tour guides, provided that such use shall be limited in scope to uses permitted on the date of enactment of this Act and that permitting standards and limitations for use of such lands are consistent with standards and limitations established for the permitted use of the adjoining federal lands;
- [2](3) the restrictive covenants, encumbrances, or easements under sections 14(g) and 17(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(g), 1616(b)... and;
- (4) upon termination of this extension Sealaska and permitted guides as cited in (2) of this paragraph may negotiate and execute an agreement extension.**

### **Fishery Conservation Areas**

The Commission strongly opposes the creation of the proposed Fishery Conservation Areas. Placing 190,094 acres into a new congressionally designated conservation classification which does not allow timber harvest further impacts the timber industry. The 16.74 million acre Tongass National Forest already contains 5,753,548 acres of designated wilderness and 722,482 acres of congressionally designated Land Use Designation (LUD) II lands. Adding this additional acreage would place nearly 40% of the Tongass under wilderness designation or its equivalent.

We have learned in discussions with ADF&G staff that these areas were reviewed thoroughly as part of the Tongass Land Management Plan Revision. There were a number of management decisions made in the plan for these areas, including a fishery monitoring agreement with the State. Designation of these areas would reduce the total area of the Tongass available for timber harvest significantly and further negatively impact the timber industry. These proposed conservation areas should be dropped from further consideration.

The Commission asks that these recommendations be given consideration by your office and the Senate Energy and Natural Resources Committee. We also request that they be included in the formal record for S. 881. We appreciate the hard work by you and your staff to craft a bill that allows Sealaska Corporation to complete its entitlement and at the same time is fair and equitable for the residents of the region and Alaska. Please contact us if we can clarify our comments or provide additional information.

Sincerely,

  
for Rick Schikora  
Chairman

cc: Governor Sean Parnell  
Senator Mark Begich  
Congressman Don Young  
Sealaska Corporation  
Commissioner Tom Irwin  
Commissioner Denby Lloyd