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## How Alaska Native Corporations Can Better Support Alaska Native Villages

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# HOW ALASKA NATIVE CORPORATIONS CAN BETTER SUPPORT ALASKA NATIVE VILLAGES

*By E. Barrett Ristroph<sup>1</sup>*

## Table of Contents

|      |   |    |
|------|---|----|
| I.   | Introduction.....   | 2  |
| II.  | Origin and Nature of Alaska Native Corporations .....   | 3  |
|      | a. Corporate Governance .....   | 4  |
|      | b. Economic Revenue for Tribes vs. Corporations .....   | 5  |
|      | c. Disparities Among Corporations .....   | 10 |
| III. | Role of Alaska Native Corporations and Others in Supporting Alaska Native Villages .....        | 11 |
|      | a. ANCs and Their Foundations .....   | 12 |
|      | b. Alaska Native Regional Non-Profit Organizations.....   | 15 |
|      | c. Economic Development Corporations .....  | 15 |
|      | d. Federal, State, and Municipal Entities .....   | 16 |
| IV.  | Examples of Lower 48 Native Corporations Supporting Tribes and Communities .....                | 17 |
| V.   | Arguments and Recommendations for Greater Alaska Native Corporation Support for Villages .....  | 18 |
|      | a. Challenges Associated with Individual Dividends .....  | 19 |
|      | b. New Problems and Declining State Revenue .....   | 20 |
|      | c. Covid-19 CARES Act.....  | 21 |
|      | d. Opportunities Under Existing Law for Greater Investment in Villages .....                    | 22 |
|      | i. Expanding on Scholarships.....   | 23 |
|      | ii. Investing in Village Infrastructure .....   | 23 |
|      | iii. Land Transfers .....   | 24 |
|      | iv. Endowments.....   | 25 |
|      | e. Potential for Changing Laws to Improve ANC Corporate Social Responsibility to Villages ..... | 26 |
|      | i. State Corporation Law Changes .....  | 26 |
|      | ii. Federal Law Changes.....  | 26 |
|      | iii. Potential for Casinos .....  | 28 |
| VI.  | Conclusion .....  | 29 |

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## ABSTRACT

Since their formation in 1971 through the Alaska Native Claims Settlement Act, Alaska Native Corporations (ANCs) have operated largely under a mission to build economic revenue for distribution to their shareholders, who are generally Alaska Native tribal members. While larger ANCs have formed foundations that provide scholarships to shareholders, ANCs generally do not have missions or entities associated with developing community infrastructure or promoting social programs in Alaska Native Villages, which are the communities of federally recognized Alaskan tribes. Until recently, the infrastructural and institutional needs of Alaska Native Villages have largely been met through State of Alaska funding, with support for housing, health, and roads from the federal government. In the current era of low oil prices, however, the State of Alaska has little funding to support villages with basic needs, let alone forthcoming and growing needs such as climate change adaptation. This article considers whether and how ANCs could fill infrastructural and institutional funding gaps for villages and provides examples of Native Corporations that take on this role in the many other American states. Further, this article offers ideas for how ANCs can better support villages and Alaska Native culture while providing for corporate revenues.

## I. INTRODUCTION

Alaska Native Villages are federally recognized tribes located in Arctic and sub-Arctic village sites that are often distant from urban centers.<sup>2</sup> Village residents continue to practice subsistence-based lifeways to meet their nutritional and cultural needs in a manner that is distinct from the lifeways of their urban relatives.<sup>3</sup> At the same time, village residents have fully embraced all that the modern Western world has to offer.<sup>4</sup> They have adapted their lifeways to incorporate technological improvements and adjust to laws and institutions that curtail their ability to hunt.<sup>5</sup> While villages were once mobile and self-governing, their stationary existence is now intertwined with a patchwork quilt of laws and institutions that can help or hinder village lifeways.<sup>6</sup> Many of these institutions—state and federal agencies and municipal governments—

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<sup>2</sup> See generally Elizaveta Barrett Ristroph, *Addressing Climate Change Vulnerability in Alaska Native Villages Through Indigenous Community Knowledge*, 9 SOCIO. STUDY 1, 1-5 (2019) (describing the geographic factors that hinder ANV adaptation).

<sup>3</sup> See generally Patricia Cochran et al., *Indigenous Frameworks for Observing and Responding to Climate Change in Alaska*, 120 CLIMATIC CHANGE 557, 557-67 (2013) (describing the significance of traditional ANV lifeways); Philip A. Loring et al., *Ways to Help and Ways to Hinder: Governance for Effective Adaptation to an Uncertain Climate*, 64 ARCTIC 73, 73-88 (2011) (describing village lifeways and challenges).

<sup>4</sup> See Ristroph, *supra* note 2, at 9-11.

<sup>5</sup> E.B. Ristroph, *Subsistence in Alaska Native Villages: Adapting in the Face of Climate Change and Government Regulations*, Ch. 5 in *Adapt And Be Adept*, by Terry Anderson (Ed.) Stanford University (2021).

<sup>6</sup> See generally, E. Barrett Ristroph, *Still Melting: How Climate Change and Subsistence Laws Constrain Alaska Native Village Adaptation*, 30 UNIV. COLO. NAT. RES., ENERGY, & ENV'T L. REV. 245, 245-86 (2019) (describing how current state and federal hunting and fishing laws conflict with traditional adaptation strategies ); E. Barrett Ristroph, *Fulfilling Climate Justice and Government Obligations to Alaska Native Villages: What Is the Government*

are familiar to most United States residents. Others are unique to Alaska, including tribal non-profit organizations that provide health services, economic development corporations involved in fisheries, and Alaska Native Corporations (ANCs).<sup>7</sup>

This article focuses on the latter entity and its relationship to tribal villages, suggesting ways for corporations to better support village infrastructure and programs. Part II explains the aboriginal title settlement in Alaska that led to the creation of ANCs. Upon creation, ANC goals were not fully aligned with those of the tribes, and over time, the misalignment has increased.<sup>8</sup> Part III outlines the primary entities that have supported tribal villages over the last five decades, noting that ANC support is primarily in the form of individual shareholder dividends. While some ANCs have foundations, these foundations are mostly oriented around individual scholarships that tend to lead to jobs outside of villages.<sup>9</sup> Part IV provides contrasting examples of Lower Forty-Eight tribal foundations that provide for a broader range of village services. Finally, Part V identifies recent existential threats to villages and provides suggestions for corporations to better support villages, as well as possible policy changes.

The article is based on desk research that I have done over the last fourteen years, a specific search of the State of Alaska database on corporations,<sup>10</sup> and information that Alaska Native tribal members have informally shared with me during the course of my work with tribal entities from 2016 to the time of this writing.

## II. ORIGIN AND NATURE OF ALASKA NATIVE CORPORATIONS

In 1968, a game-changing discovery was made in Arctic Alaska: copious amounts of oil, enough to be commercially viable.<sup>11</sup> The rush to develop the oil lands began. But there was one problem: indigenous peoples still held aboriginal title to large swaths of the land needed to construct a pipeline from Arctic Alaska to a more temperate port in southern Alaska.<sup>12</sup> Congress took the initiative to address this problem. Deciding that the system of Indian Reservations in the Lower Forty-Eight had been a failure,<sup>13</sup> Congress enacted a new

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*Role?* 43 WM. & MARY ENV'T L. & POL'Y REV. 501, 501-39 (2019) (outlining the key laws and institutions that affect climate change adaptation for ANVs).

<sup>7</sup> See *infra* Part III.

<sup>8</sup> See *infra* Part II.

<sup>9</sup> See *infra* Part V(A).

<sup>10</sup> ALASKA DEP'T COM. DATABASE, <https://www.commerce.alaska.gov/cbp/main/search/entities> (last visited Nov. 20, 2021).

<sup>11</sup> U.S. DEP'T ENERGY, <https://www.energy.gov/management/march-13-1968-oil-discovered-alaskas-north-slope> (last visited Dec. 12, 2021).

<sup>12</sup> *About the Alaska Native Claims Settlement Act*, ANCSA REG'L ASSOC., <https://ancsaregional.com/about-ancsa/> (last visited Nov. 16, 2021).

<sup>13</sup> See 43 U.S.C. §§ 1601(b), 1603, 1618(a); COHEN'S HANDBOOK OF FEDERAL INDIAN LAW §4.07(3)(b)(ii)(C) (Neil Jessup Newton ed., 2017).

experiment in capitalism: the Alaska Native Claims Settlement Act (ANCSA).<sup>14</sup> Passed in 1971, the Act purported to extinguish all Alaska Native land claims and aboriginal title-based hunting and fishing rights.<sup>15</sup> In place of reservations and treaties, ANCSA established regional and village ANCs, distributed almost one billion dollars among them, and granted them the right to select land, collectively, forty-four million acres.<sup>16</sup> Unlike Lower Forty-Eight tribal corporations, ANCs are not required to promote the welfare of tribes or tribal communities, though they may choose to do so.<sup>17</sup>

Shares in the corporations were issued to each Native person in each Alaska Native Village.<sup>18</sup> ANCSA allowed ANCs to choose whether Native Alaska individuals born after the date of enactment (1971) would be shareholders eligible for corporation benefits.<sup>19</sup> Some corporations have amended their articles of incorporation to allow descendants of original shareholders to become new shareholders.<sup>20</sup> The benefit to such an amendment is that there is a closer correlation between those who are tribal members and those who are shareholders. This avoids the disparity where an older tribal member gets a large dividend, while a younger one who has not inherited shares gets nothing. The downside is that the new, younger shareholders are increasingly residing in urban areas or outside of Alaska,<sup>21</sup> such that they may be less vested in traditional lands and in the fate of village residents who continue to subsist on these lands.

#### A. Corporate Governance

The purpose of ANCSA was not to promote the wellbeing of tribes, but that of corporations.<sup>22</sup> ANCSA effectively bifurcated corporations and traditional lands from tribal governance. Alaska Native Villages, as tribes, are completely separate entities from ANCs.

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<sup>14</sup> See 43 U.S.C. §§ 1601-1629. The Indian Law and Order Commission characterizes ANCSA as “the last gasp of Federal Termination Policy.” A ROADMAP FOR MAKING NATIVE AMERICA SAFER - REPORT TO THE PRESIDENT AND CONGRESS OF THE UNITED STATES: INDIAN LAW AND ORDER COMMISSION, <http://www.aisc.ucla.edu/iloc/report/> (2015).

<sup>15</sup> See 43 U.S.C. § 1603.

<sup>16</sup> See 43 U.S.C. §§ 1605-1607, 1611. There are thirteen regional corporations, including the twelve endowed with land and an inactive thirteenth corporation that was established for Alaska Natives living outside of Alaska at the time of the settlement. There are currently 210 village corporations which can be found at <https://dcra-cdo-dcced.opendata.arcgis.com/datasets/native-village-corporations/data>.

<sup>17</sup> Compare the mandate to provide for tribal welfare in the Indian Gaming Act, 25 U.S.C. §§2702, 2710(b)(2)(B)(ii), with the desire for a hasty settlement in the purpose of ANCSA, 43 U.S.C. § 1601.

<sup>18</sup> See 43 U.S.C. § 1602(c) (defining a village as a settlement composed of 25 or more individuals. Elsewhere, the term “Alaska Native Village” refers to a federally recognized tribe in Alaska as well as the physical settlement of the village).

<sup>19</sup> 43 U.S.C. § 1606 (g)(1)(b)(i)(I).

<sup>20</sup> See Stephen Colt, *Alaska Natives and the “New Harpoon”*: Economic Performance of the ANCSA Regional Corporations, 25 J. LAND RES. & ENV'T L. 155, 170 (2005).

<sup>21</sup> Ristroph, *supra* note 2, at 6; Lawrence C. Hamilton et al., *Climigration? Population and Climate Change in Arctic Alaska*, 38 POPULATION & ENV'T 115, 133 (2016); David Driscoll et al., *Assessing the Influence of Health on Rural Outmigration in Alaska*, 69 INT'L J. CIRCUMPOLAR HEALTH 528, (2010); Marie E. Lowe, *Contemporary Rural-Urban Migration in Alaska*, 8 ALASKA J. ANTHROPOLOGY 75, 76 (2010).

<sup>22</sup> 43 U.S.C. §§ 1606(d), 1606(r), 1607(a).

Tribal governments have no control over ANCs whatsoever. While ANCs are generally regulated by the State of Alaska, state and federal oversight for ANCs' financial reporting is limited.<sup>23</sup> ANCs are exempt from certain federal financial disclosure regulations, meaning that they are not held to the same financial reporting standards as publicly traded corporations.<sup>24</sup> As such, there is extremely limited public information regarding ANC funding, debt, and leverage ratios.<sup>25</sup> Despite concerns raised by those outside of ANCs regarding corporate management,<sup>26</sup> there have been few shareholder derivative suits to hold directors accountable.<sup>27</sup>

Each ANC is run by elected boards of directors, which may consist of nine to twenty-three members for regional corporations,<sup>28</sup> and as few as five for village corporations.<sup>29</sup> Each ANC has its own governance structure in terms of board elections, representation, and shareholder involvement.<sup>30</sup> For example, some ANCs require a certain number of board members to come from the villages or areas they serve, while others do not.<sup>31</sup> In nearly all situations, however, tribal members' control over ANCs is limited to voting their shares (if they are shareholders) on resolutions and for board members who share their views.<sup>32</sup>

## B. Economic Revenue for Tribes vs. Corporations

The legal separation between tribes and ANCs leaves Alaska Native Villages with little to no land or economic base. As a result of ANCSA, tribes lack not only land, but also jurisdiction over any lands they may own.<sup>33</sup> The vast majority of Alaska tribes lack their own revenue base, leaving Alaska Native Villages entirely dependent on outside sources for

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<sup>23</sup> GOV'T ACCOUNTABILITY OFF., GAO-13-121, REGIONAL ALASKA NATIVE CORPORATIONS: STATUS 40 YEARS AFTER ESTABLISHMENT, AND FUTURE CONSIDERATIONS (2012) [hereinafter *GAO 13-121*].

<sup>24</sup> See 43 U.S.C. § 1625.

<sup>25</sup> An extensive internet search yielded no information on ANC debts and leverage ratios. None of the ten ANC representatives I reached out to for more information provided it.

<sup>26</sup> See, e.g., Michael Grabell, *Rampant Fraud, Self-Dealing Alleged in Alaska Native Corporation*, PROPUBLICA (Dec. 15, 2010, 2:59 P.M.), <https://www.propublica.org/article/rampant-fraud-self-dealing-alleged-in-alaska-native-corporation>.

<sup>27</sup> The suits that have taken place are often disputes as to whether one group of shareholders is getting more dividends than another. E.g., *Sierra v. Goldbelt*, 25 P.3d 697 (Alaska 2001); *Broad v. Sealaska Corp.*, 85 F.3d 422 (9th Cir. 1996); *Bodkin v. Cook Inlet Region, Inc.*, 182 P.3d 1072 (Alaska 2008); *Hanson v. Kake Tribal Corp.*, 939 P.2d 1320 (Alaska 1997).

<sup>28</sup> See *GAO 13-121*, *supra* note 23, at 22-24.

<sup>29</sup> E.g., *Leadership*, LEISNOI, INC., <https://leisnoi.com/about/leadership/> (last visited Dec. 13, 2021).

<sup>30</sup> See *GAO 13-121*, *supra* note 23, at 16.

<sup>31</sup> See, e.g., *Doyon Ltd. Articles of Incorporation* (1972) Art. XI(B) (setting formula for percentage of directors that must come from the Doyon region of Alaska based on the number of shareholders located there, which is now only 20%); compare with *Kuukpik Corporation Resinstated Articles of Incorporation* (2019) Art. VII (no particular residency requirements, but current directors all reside in the village, see *Kuukpik Board*, <https://www.kuukpik.com/corporation/board/>)

<sup>32</sup> See Eric C. Chaffee, *Business Organizations and Tribal Self-Determination: A Critical Reexamination of the Alaska Native Claims Settlement Act*, 25 ALASKA L. REV. 107, 126 (2008).

<sup>33</sup> See 43 U.S.C. § 1603.

funding.<sup>34</sup> Outside of Metlakatla Reservation in southeast Alaska, there is nothing akin to reservations in the Lower Forty-Eight contiguous states.<sup>35</sup> There are no Indian casinos in Alaska.<sup>36</sup> Until recently, Alaska Native Villages did not even have the option of putting land into trust such that it could be treated like a reservation.<sup>37</sup> The regulation prohibiting land into trust was repealed just prior to the Trump Administration, which put a freeze on any new applications for land into trust.<sup>38</sup> With the Biden Administration, the option may now be open to tribes, although after ANCSA, few own land that they could put into trust.

While ANCSA left tribes without their own economic base, ANCs were expected to be self-sustaining.<sup>39</sup> ANCSA required that regional ANCs be for-profit entities under the laws of Alaska,<sup>40</sup> although they may express other purposes in their Articles of Incorporation.<sup>41</sup> Village ANCs were allowed to incorporate as nonprofit institutions,<sup>42</sup> but all chose to operate for profit.<sup>43</sup>

ANCs hold nearly ten percent of all Alaska's lands in fee simple, while the federal and state governments own most of the rest of Alaska.<sup>44</sup> ANC land is exempt from property taxes until it is developed.<sup>45</sup> Despite these advantages, under the Small Business Act Section 8(a), all Alaska Native Corporations and their subsidiaries, regardless of their size or wealth, are

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<sup>34</sup> Stephen Cornell, et al., *Achieving Alaska Native Self-Governance, Toward Implementation of the Alaska Natives Commission Report*, 36, <http://ankn.uaf.edu/curriculum/AFN/selfgov.pdf> (last visited Dec. 15, 2021); Central Council of the Tlingit & Haida Indians of Alaska, *Southeast Alaska Tribal Comprehensive Economic Development Strategy* (2018) 8, <https://lawsdocbox.com/Immigration/88555617-Southeast-alaska-tribal-comprehensive-economic-development-strategy.html>.

<sup>35</sup> *Alaska v. Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520, 524, 118 S. Ct. 948, 140 L.Ed.2d 30 (1998).

<sup>36</sup> The Indian Gaming Act of 1986 provides a revenue source for many tribes in the contiguous states. See the discussion on casinos *infra*, Section IV. However, the Act requires casinos to be constructed on trust or restricted land, 25 U.S.C. §§2703, 2710, of which there is very little in Alaska after ANCSA. Also, the State of Alaska generally does not allow casino gambling. Alaska Stat. 11.66.200.

<sup>37</sup> The previous regulation referring to land into trust, 25 C.F.R. § 151.1. indicated that, "These regulations do not cover the acquisition of land in trust status in the State of Alaska, except acquisitions for the Metlakatla Indian Community of the Annette Island Reserve or it[s] members"). The D.C. District Court struck down this portion of the regulation, *Akiachak Native Cmty. v. Jewell*, 995 F. Supp. 2d 1 (D.D.C. 2013), and the D.C. Appeals Court dismissed the case. *Akiachak Native Cmty., v. United States Dep't of Interior*, 827 F.3d 100 (D.C. Cir. 2016).

<sup>38</sup> Withdrawal of Solicitor Opinion M-37043, "Authority to Acquire Land into Trust in Alaska" Pending Review, Op. Sol. Interior No. M-37053, at 3 (June 29, 2018)

<sup>39</sup> See 43 U.S.C. § 1601(b) ("the settlement should be accomplished rapidly . . . without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska").

<sup>40</sup> See 43 U.S.C. § 1606(d).

<sup>41</sup> See *GOA 13-121*, *supra* note 23.

<sup>42</sup> See 43 U.S.C. § 1607.

<sup>43</sup> See Ben Summit, *The Alaska Native Claims Settlement Act (ANCSA): Friend or Foe in the Struggle to Recover Alaska Native Heritage*, 14 T.M. COOLEY L. REV. 607, 616 (1997).

<sup>44</sup> See 43 U.S.C. §§ 1611, 1613, 1618.

<sup>45</sup> 43 U.S.C. 1621(f), Alaska Stat. 43.98.015.

considered economically disadvantaged.<sup>46</sup> Thus, ANCs automatically have preference with federal government contracting, while tribes must demonstrate actual economic disadvantage.<sup>47</sup> Further, ANCs and other Native entities have particular contracting advantages that non-Native entities lack.<sup>48</sup>

### C. *Potential Clashes between Corporations and Tribes*

Corporate objectives are not always the same as those of the tribes.<sup>49</sup> A key source of income for most of the successful ANCs has been the development of nonrenewable natural resources on their land<sup>50</sup>—land that Alaska Native Village residents have traditionally relied on for subsistence hunting, fishing, and trapping.<sup>51</sup> Even the most responsible development has impacted subsistence habitat in Alaska to some degree.<sup>52</sup> Land management decisions are

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<sup>46</sup> See P.L. 102-415, §10, 106 Stat. 2115 (Oct. 14, 1992); 43 U.S.C. §1626(e) (“(1) For all purposes of Federal law, a Native Corporation shall be considered to be a corporation owned and controlled by Natives and a minority and economically disadvantaged business enterprise if the Settlement Common Stock of the corporation and other stock of the corporation held by holders of Settlement Common Stock and by Natives and descendants of Natives, represents a majority of both the total equity of the corporation and the total voting power of the corporation for the purposes of electing directors. (2) For all purposes of Federal law, direct and indirect subsidiary corporations, joint ventures, and partnerships of a Native Corporation qualifying pursuant to paragraph (1) shall be considered to be entities owned and controlled by Natives and a minority and economically disadvantaged business enterprise if the shares of stock or other units of ownership interest in any such entity held by such Native Corporation and by the holders of its Settlement Common Stock represent a majority of both—(A)the total equity of the subsidiary corporation, joint venture, or partnership; and (B)the total voting power of the subsidiary corporation, joint venture, or partnership for the purpose of electing directors, the general partner, or principal officers.”)

<sup>47</sup> The Small Business Act permits participants in its Section 8(a) preferential program to be owned by “an economically disadvantaged Indian Tribe (or a wholly owned business entity of such Tribe.” 15 U.S.C. 637(a)(4)(A)(i)(II). The term Indian Tribe includes any Alaska Native village or regional corporation. 15 U.S.C. 637(a)(13). Pursuant to the Alaska Native Claims Settlement Act, a concern which is majority owned by an Alaska Native Corporation is deemed to be both owned and controlled by Alaska Natives and an economically disadvantaged business. As such, Alaska Native Corporations do not have to establish that they are “economically disadvantaged.” Tribes are not afforded the same presumption. See Small Business Administration, Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations, 76 Fed. Reg. 8233 (Feb. 11, 2011).

<sup>48</sup> These include the ability to confer 8(a) program eligibility upon firms on multiple occasions and for an indefinite period, 5 15 U.S.C. §636(j)(11)(B)-(C); no limits on the number of firms they may own that operate in the same “primary” industry as the ANC, 13 C.F.R. §124.109(c)(3)(ii); the ability to own multiple firms that earn less than 50% of their revenue in the same “secondary” industries as the ANC, 13 C.F.R. §124.109(c)(3)(ii); and eligibility to receive additional sole-source awards even after they have received a combined total of competitive and sole-source 8(a) contracts in excess of the dollar amount set forth in 13 C.F.R. 124.519(a).

<sup>49</sup> See E.B. Ristroph, *Alaska Tribes’ Melting Subsistence Rights*, 1 ARIZ. J. ENV’L L & POL’Y 47, 78 (2010); Benedict Kingsbury, *First Amendment Liberalism as Global Legal Architecture: Ascriptive Groups and the Problems of the Liberal NGO Model of International Civil Society*, 3 CHI J. INT’L L. 183, 190 (2002) (discussing the tensions created when aboriginal groups adopt or are forced to reorganize as corporations).

<sup>50</sup> See Colt, *supra* note 20, at 164 (“In this ‘resource-limited’ world, the only ways for a Native group to prosper are either to discover and develop new resource extraction projects on their own lands or to usurp profits from existing markets by stealing market share from some other firm.”).

<sup>51</sup> See generally *id.* (describing the traditional economy).

<sup>52</sup> See generally, Stephen R. Braund, *Impacts and Benefits of Oil and Gas Development to Barrow, Nuiqsut, Wainwright, and Atkasuk Harvesters* (2009) <http://www.north-slope.org/assets/images/uploads/Braund%20NSB%20Oil%20and%20Gas%20Impacts%20July%202009.pdf>



made by corporate officers and directors who are not necessarily village residents. In some cases, ANCs favor development of natural resources on corporate land, while village residents and tribal leaders oppose it.<sup>53</sup>

Regional corporations have created subsidiaries expressly for economic development purposes, adding another layer between tribal members and control of corporate activities.<sup>54</sup> Unlike many parent ANCs that refer to culture and social wellbeing in their articles of incorporation<sup>55</sup> and websites,<sup>56</sup> these subsidiaries generally have nothing to do with the

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(referring to displacement of caribou and bowhead, loss of fish and wildlife); *Broken Promises, The Reality of Oil Development in America's Arctic* (2d. Ed.), The Wilderness Society (2009) (describing oil spills and damage from from seismic surveys undertaken in the early 1980s in the Arctic National Wildlife Refuge, which remained visible 25 years later); Elizaveta Barrett Ristroph & Martin Robards, *Preparing for the Aftermath of Drilling on Arctic Lands*, 8 LSU J. OF ENERGY L. & RES. 55, 195(2019) (referring to damage to the landscape from oil development that will take years, possibly centuries, to fully remediate).

<sup>53</sup> One example is that of NANA Corporation, which owns the land on which Tech Resources' Red Dog Mine is located and receives 25% of all profits from the mine's operation. See *Our View: Red Dog, Take Two, Zinc Mine Needs New Pit—and Vigilant Oversight*, ANCHORAGE DAILY NEWS (Nov. 14, 2009) <http://www.adn.com/2009/11/14/1013389/our-view-red-dog-take-two.html>. In 2009, Tech Resources settled with residents of Kivalina (one of the region's villages) regarding claims that Red Dog Mine had contaminated Kivalina's drinking water supplies. See *id.* In February 2010, Kivalina and Point Hope tribal councils and environmental groups appealed the reissuance of Red Dog's water discharge permits. See Elizabeth Bluemink, *Alaska's Red Dog Mine Faces Uncertainty on Permit Appeal*, ANCHORAGE DAILY NEWS (Feb. 18, 2010) <http://www.adn.com/2010/02/17/1144100/states-red-dog-mine-faces-uncertainty.html>. The appeals divided the community. At least nine organizations in the area passed resolutions in support of new permits to allow Red Dog's expansion, including the Northwest Arctic Borough, and tribal governments in Noorvik, Kiana, Kotzebue and Deering. See *id.*

<sup>54</sup> For example, go to *Search Corporation Database*, STATE OF ALASKA, <https://www.commerce.alaska.gov/cbp/main/search/entities> (last visited Nov. 21, 2021), and type in the name of any of the twelve regional corporations, e.g., Doyon Ltd. You will find dozens of subsidiaries including Doyon Contracting Services, LLC, Doyon Development Corporation, and Doyon Government Contracting, Inc.

<sup>55</sup> See, e.g., Arctic Slope Regional Corporation, Restated Articles of Incorporation at Art. III(3) (Filed Mar. 9, 1990 with the State of Alaska Department of Commerce) (including as its purposes "To engage in all activities, whether economic, cultural, social or charitable to, protect and preserve the well-being of the Natives enrolled in tile Arctic Slope Region . . ."); Ukpeagvik Iñupiat Corporation, Amended and Restated Articles of Incorporation at Art. III(3) (Filed May 1, 2006 with the State of Alaska Department of Commerce) (including as a purpose: "To engage in all activities, whether economic, cultural, social, or charitable, to protect and preserve the well-being of the Natives residents of the Native village of Barrow, and to engage in and conduct any and all lawful activity necessary or convenient in furtherance therof."); AHTNA, Inc., Articles of Incorporation of AHTNA, Inc. art. 3(C) (Filed June 23, 1972 with the State of Alaska Department of Commerce) (describing the company's purpose as "[t]o promote the economic, social, cultural and personal well-being of all Natives" in the region); NANA Regional Corp., Amended and Restated Articles of Incorporation of NANA Regional Corp., art. III(b) (2003), (describing its purpose as "[t]o promote the economic, social and personal well-being of the Natives of the northwest region of Alaska" and to engage in any lawful business).

<sup>56</sup> See, e.g., *About*, ARCTIC SLOPE REGIONAL CORPORATION, <https://www.asrc.com/about/> (last visited Nov. 21, 2021) ("Arctic Slope Regional Corporation's mission is to actively manage our businesses, our lands and resources, our investments and our relationships to enhance Iñupiaq cultural and economic freedom – with continuity, responsibility and integrity."); *About*, BERING STRAITS NATIVE CORPORATION, <https://beringstraits.com/about/> (last visited Nov. 21, 2021) ("Our mission is to improve the quality of life of our people through economic development while protecting our land and preserving our culture and heritage."); *About*, BRISTOL BAY NATIVE CORPORATION, <https://www.bbnc.net/our-corporation/about/values-goals/> (last visited Nov. 21, 2021) ("Our Mission: Enriching our

protection of village lifeways.<sup>57</sup> Some shareholders may be surprised by the kinds of work subsidiary corporations are doing.<sup>58</sup> Likewise, while some parent companies make efforts to hire their shareholders,<sup>59</sup> subsidiaries of Native Corporations tend to have few shareholder employees.<sup>60</sup> Over time, more corporations have moved their headquarters to Anchorage, where nearly all Alaska-based subsidiaries are headquartered, putting physical distance between those who depend on traditional lands for subsistence lifeways, and those who make decisions about these lands.<sup>61</sup> Even for village corporations headquartered within the villages, there can be political clashes if the village and corporation feel that they must compete for control over limited resources.<sup>62</sup> Further, the need to coordinate between a separate tribe and corporation can slow down community projects.<sup>63</sup>

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Native way of life.”); *Who we Are*, CHUGACH ALASKA CORPORATION, <https://www.chugach.com/about-us/who-we-are/> (last visited Nov. 21, 2021) (“Our Mission: Committed to profitability, celebration of our heritage and ownership of our lands.”); *Our CIRI*, CIRI, <https://www.ciri.com/our-corporation/mission-vision-and-values/> (last visited Nov. 21, 2021) (“The mission of CIRI is to promote the economic and social well-being and Alaska Native heritage of our shareholders, now and into the future, through prudent stewardship of the company’s resources, while furthering self-sufficiency among CIRI shareholders and their families.”); *Who We Are*, DOYON LIMITED, <https://www.doyon.com> (last visited Nov. 21, 2021) (“At Doyon, our mission is to continually enhance our position as a financially strong Native corporation in order to promote the economic and social well-being of our shareholders and future shareholders, to strengthen our Native way of life, and to protect and enhance our land and resources.”); *About Us*, DOYON LIMITED, <https://www.doyon.com/about/> (last visited Dec. 1, 2021) (“Doyon values its relationship to the Place of our people: to our land, our culture, our way of life.”); *Mission and Values*, NANA, <https://www.nana.com/about-us/mission-values/> (last visited Nov. 21, 2021) (“Our traditional values are the foundation of NANA.”); *Our Vision*, AHTNA, <https://www.ahtna.com/> (last visited Nov. 21, 2021) (“Our culture unites us; our land sustains us; our people are prosperous.”).

<sup>57</sup> See, e.g., UMIAQ, LLC (formerly UIC Oilfield Services, LLC) Articles of Organization (filed Aug. 15, 2006 with the State of Alaska Department of Commerce) available at <https://www.commerce.alaska.gov/cbp/main/search/entities>.

<sup>58</sup> See, e.g. René Kladzyk, *The strange business of Alaska Native corporations and ICE immigrant detention*, EL PASO MATTERS (Jan. 26, 2021) <https://elpasomatters.org/2021/01/26/the-strange-business-of-alaska-native-corporations-and-ice-immigrant-detention/> (shareholders of Bering Straits Native Corporation expressed surprise that a subsidiary, Global Precision Systems, is the contractor that staffs El Paso Service Processing Center--an Immigration and Customs Enforcement facility that had one of the largest COVID-19 outbreak among detainees in the nation).

<sup>59</sup> GAO 13-121, *supra* note 23 at 46 (as of 2010, the percentage of regional corporation employees that are shareholders ranged from 35 to 95%).

<sup>60</sup> *Id.* (as of 2010, the percentage of regional corporation subsidiary employees that are shareholders ranged from 1 to 11%).

<sup>61</sup> For example, Arctic Slope Regional Corporation and Utqiagvik Inupiat Corporation were previously headquartered on the North Slope, where their lands are located. These companies and many of their subsidiaries now have their principal offices in Anchorage. See *About*, ARCTIC SLOPE REGIONAL CORPORATION, <https://www.asrc.com/about/> (last visited Nov. 21, 2021) (searching for Arctic Slope Regional Corporation). . See also, THOMAS R. BERGER, VILLAGE JOURNEY: THE REPORT OF THE ALASKA NATIVE REVIEW COMMISSION 42 (1985) (“[C]orporate executives in the urban centers may be estranged from their shareholders in the villages.”); Monroe E. Price, *A Moment in History: The Alaska Native Claims Settlement Act*, 8 UCLA ALASKA L. REV. 89, 95 (1979) (“The corporate executives will be those who are willing to forego subsistence activities, to place a higher priority on board meetings than on salmon fishing, and to spend time talking to lawyers and financiers and bankers rather than the people of the villages.”).

<sup>62</sup> F. Stuart Chapin & Patricia Cochran, *Community Partnership for Self Reliance and Sustainability, Final Report to Communities from the Alaska Native Science Commission and the University of Alaska Fairbanks* (2014) (white paper on file with author); Cornell, et al., *supra* note 34 at 76.

<sup>63</sup> Cornell et al., *supra* note 34 at 36.

#### D. Disparities Among Corporations

It was clear at the time of ANCSA that some ANCs, namely those in the oil-rich parts of Alaska, would profit more than others.<sup>64</sup> ANCSA sought to address this disparity through Section 7(i),<sup>65</sup> which provided that seventy percent of all revenues received by each regional ANC from the timber resources and subsurface estates would be distributed evenly among the twelve land-holding regional ANCs, and Section 7(j),<sup>66</sup> which required at least fifty percent of the revenues received under Section 7(i) to be redistributed among the village ANCs.<sup>67\*</sup> Over time, the scope of sharing has been rolled back, first to avoid sharing net operating losses,<sup>68</sup> and then to exclude revenue sharing related to sand, gravel, and rock.<sup>69</sup> A number of Alaska lawyers have made successful careers out of defending regional ANC's decisions to avoid revenue-sharing under 7(i).<sup>70</sup>

Even with 7(i) and 7(j), disparities have remained among ANCs. Cumulative per capita dividends from 1974 through 1999 varied from \$50 to more than \$34,000.<sup>71</sup> A number of poorer performing ANCs were dissolved or went bankrupt, and many suffered substantial losses.<sup>72</sup> During the first twenty years of operation—from 1973 to 1993—ANCs collectively lost about \$380 million, or more than eighty percent of their original cash endowment, in direct business operations.<sup>73</sup>

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<sup>64</sup> *Chugach Natives, Inc. v. Doyon, Ltd.*, 588 F.2d 723, 732 (9th Cir. 1978).

<sup>65</sup> 43 U.S.C. § 1606(i).

<sup>66</sup> 43 U.S.C. § 1606(j).

<sup>67</sup> *Id.*

<sup>68</sup> An Act to amend the Alaska Native Claims Settlement Act, and for other purposes, sec. 109, on § 7(i), 109 Stat. 353, 357 (1995).

<sup>69</sup> See ANCSA Land Bank Protection Act of 1998, sec. 8, § 7(i), 112 Stat. 3129, 3134 (1998).

<sup>70</sup> GAO 13-121, *supra* note 23,; Gary C. Anders, *Social and Economic Consequences of Federal Indian Policy: A Case Study of the Alaska Natives*, 37 ECON. DEV. & CULTURAL CHANGE 285, 291 (1989). Examples of cases include *Doyon, Ltd. v. Bristol Bay Native Corp.*, 569 F.2d 491 (9th Cir. 1978); *Aleut Corp. v. Arctic Slope Reg'l Corp.*, Civ. No. A75-53 (D. Alaska 1975); *Doyon, Ltd. v. NANA Reg'l. Corp.* No. 1531-74 (D.D.C. 1974).

<sup>71</sup> See Kathryn A. Black et al., *When Worlds Collide: Alaska Native Corporations and the Bankruptcy Code*, 6 ALASKA L. REV. 73, 80-81 (1989). This includes the “thirteenth” regional corporation, a landless corporation formed to accommodate Alaska Natives who no longer lived in Alaska at the time of ANCSA. See *About, ARCTIC SLOPE REGIONAL CORPORATION*, <https://www.asrc.com/about/> (last visited Nov. 21, 2021) (searching for [Thirteenth Regional Corporation Certificate of Dissolution](#)).

<sup>72</sup> See Chaffee, *supra* note 32, at 142-43 (describing the burden of complying with corporate laws: “Lawyers and corporate consultants have been major beneficiaries of an Act that was supposed to help Alaska Natives”); Jack F. Williams, *Integrating American Indian Law into the Commercial Law and Bankruptcy Curriculum*, 37 TULSA L. REV. 557, 567 (2001) (reporting that some Alaska Native corporations have experienced “severe financial difficulty” and have had to seek protection by declaring bankruptcy); See Kathryn A. Black et al., *When Worlds Collide: Alaska Native Corporations and the Bankruptcy Code*, 6 ALASKA L. REV. 73-131(1989). This includes the “thirteenth” regional corporation, a landless corporation formed to accommodate Alaska Natives who no longer lived in Alaska at the time of ANCSA. See *About, ARCTIC SLOPE REGIONAL CORPORATION*, <https://www.asrc.com/about/> (last visited Nov. 21, 2021) (searching for [Thirteenth Regional Corporation Certificate of Dissolution](#)).

<sup>73</sup> Colt, *supra* note 20, at 155.

Today, the Native corporations in Alaska's mineral-rich areas continue to outshine the others.<sup>74</sup> The Arctic Slope Regional Corporation emerges as the highest grossing corporation in Alaska (Native or otherwise)<sup>75</sup> year after year,<sup>76</sup> with dividends of \$7000 per shareholder with 100 shares in 2019.<sup>77</sup> A shareholder from Kuukpik Corporation, a village corporation in the heart of an oil field on the North Slope, informed me that he received \$24,000 in his December 4, 2020 dividend check. Meanwhile, shareholders of K'oytl'ots'ina, a conglomeration of four village corporations in Alaska's interior, received approximately \$2000 each in 2020.<sup>78</sup>

### III. ROLE OF ALASKA NATIVE CORPORATIONS AND OTHERS IN SUPPORTING ALASKA NATIVE VILLAGES

Prior to colonization, Alaska's Native communities were largely self-sustaining. The communities were able to freely relocate and shift food production to correspond to available species.<sup>79</sup> School attendance laws and missionaries herded tribes into permanent villages.<sup>80</sup> Permanent settlements have faced many challenges, as they are often flood prone<sup>81</sup> and limit the ability to access game.<sup>82</sup> No longer able to move freely or manage resources needed for sustenance, village residents have become dependent on Western goods and services that are

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<sup>74</sup> 2020 Top 49ers, ALASKA BUSINESS, <https://www.akbizmag.com/the-2020-top-49ers/> (last visited Nov. 21, 2021); Joaquin Estus,

*Alaska Native Corporations Dominate List of State's Top Businesses* (Oct. 4, 2020), <https://indiancountrytoday.com/news/alaska-native-corporations-dominate-list-of-states-top-businesses>.

<sup>75</sup> Arctic Slope Regional Corporation (ASRC's) strong financial performance enabled the company to declare dividends totaling more than \$1 billion through 2017. By the year 2000, ASRC had achieved the goal of earning \$1 billion in revenues and reached the \$2 billion milestone in 2008. In 2015, that number exceeded \$2.5 billion and a whopping \$3.4 billion in 2018. *See, Background*, RESOURCE DEVELOPMENT COUNCIL, <https://www.akrdc.org/alaska-native-corporations> (last visited Dec. 13, 2021)

<sup>76</sup> Top 49ers, ALASKA BUSINESS, <https://www.akbizmag.com/lists/top-49ers/> (last visited Nov. 20, 2021).

<sup>77</sup> Casey Grove, ASRC, *Alaska's Largest Private Employer, Cuts Jobs After Coronavirus Causes Oil Price Collapse*, KTOO, <https://www.ktoo.org/2020/04/07/asrc-alaskas-largest-private-employer-cuts-jobs-after-coronavirus-causes-oil-price-collapse/> (April 7, 2020).

<sup>78</sup> Based on personal information. *See also* Jennifer LaFleur and Michael Grabell, *Villages Testify to Disparity in Benefits Alaska Native Corporations Provide*, PROPUBLICA (Mar. 17, 2011, 8:55 A.M.), <https://www.propublica.org/article/villages-testify-to-disparity-in-benefits-alaska-native-corporations> (describing dividends ranging from \$225 a year to \$65,000)

<sup>79</sup> K. L Pratt, J. C Stevenson, & P.M. Everson, *Demographic Adversities and Indigenous Resilience in Western Alaska*. 37 ÉTUDES/INUIT/STUDIES 35, 37-38 (2013).

<sup>80</sup> Robin Bronen, *Climate-Induced Displacement of Alaska Native Communities* (Jan. 30, 2013), <https://www.brookings.edu/research/climate-induced-displacement-of-alaska-native-communities/>; Orville H Huntington and Annette Watson, *Interdisciplinarity, Native Resilience, and How the Riddles Can Teach Wildlife Law in an Era of Rapid Climate Change*, 26 WICAZO SA R. 49, 52 (2012).

<sup>81</sup> Bronen, *supra* note 80; Elizabeth Marino, *The Long History of Environmental Migration: Assessing Vulnerability Construction and Obstacles to Successful Relocation in Shishmaref, Alaska*, 22 GLOBAL ENV'L CHANGE 374, 375 (2012).

<sup>82</sup> Gary P. Kofinas, et al, *Resilience of Athabaskan Subsistence Systems to Interior Alaska's Changing Climate*, 40 CAN. J. FOREST RSCH. 1347, 1350 (2010).

hard to produce locally—especially fossil fuels.<sup>83</sup> Village residents have limited opportunities for earning wages needed to buy these goods.<sup>84</sup> Excluding the oil-rich North Slope, rural Alaska has some of the lowest household incomes in America and the highest costs of fuel and other commercial goods (e.g., \$7–12 per gallon for fuel).<sup>85</sup> As such, village residents and the tribes associated with these communities have come to depend on support from external entities in order to continue their existence.<sup>86</sup> This section outlines the primary entities involved in this support in addition to ANCs.

#### A. ANCs and Their Foundations

The bulk of ANC assistance comes in the form of annual dividends to shareholders, although some also provide cash assistance for funerals.<sup>87</sup> Larger ANCs have created state-chartered, non-profit foundations to provide for other kinds of benefits to shareholders.<sup>88</sup> My search of the Alaska Department of Commerce database<sup>89</sup> revealed approximately forty-six such foundations directly associated with ANCs.<sup>90</sup> This is certainly an undercount, since my search was limited to companies with the word “foundation” or “fund” in the corporation name, and because not all foundations may be registered as stand-alone companies with the Department of Commerce. All twelve regional land-holding ANCs have foundations, while

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<sup>83</sup> Marino, *supra* note 80, at 377 .

<sup>84</sup> F. Stuart Chapin III, et al., *Alaska*, pp. 514–36 in *Climate Change Impacts In The United States: The Third National Climate Assessment*, J. M. Melillo, Terese (T.C.) Richmond, And G. W. Yohe (Eds.), U.S. Global Change Research Program (2014) <https://www.nrc.gov/docs/ML1412/ML14129A233.pdf>; Thomas R. Berger, *A Long And Terrible Shadow* (1991) 37.

<sup>85</sup> Cochran et al., *supra* note 3.

<sup>86</sup> Ristroph 2019, *supra* note 13; Driscoll et al., *supra* note 21; Kim Murphy, *Can Alaska Afford its Frontier?* <https://www.ktoo.org/2020/04/07/asrc-alaskas-largest-private-employer-cuts-jobs-after-coronavirus-causes-oil-price-collapse/> LA TIMES (Aug. 10, 2009) <https://www.latimes.com/archives/la-xpm-2009-aug-10-na-alaska-airport10-story.html>; Lisa Rein, *U.S. Postal Service Losing Tens of Millions Annually Subsidizing Shipments to Alaska* WA. POST (June 28, 2014), [https://www.washingtonpost.com/politics/us-postal-service-losing-tens-of-millions-annually-subsidizing-shipments-to-alaska/2014/06/28/3d007fd6-e51a-11e3-afc6-a1dd9407abcf\\_story.html](https://www.washingtonpost.com/politics/us-postal-service-losing-tens-of-millions-annually-subsidizing-shipments-to-alaska/2014/06/28/3d007fd6-e51a-11e3-afc6-a1dd9407abcf_story.html); GOV'T ACCOUNTABILITY OFF., GAO-05-719, RECENT FEDERAL ASSISTANCE EXCEEDED \$3 BILLION, WITH MOST PROVIDED TO REGIONAL NONPROFITS (2005).

<sup>87</sup> See *GAO 13-121*, *supra* note 23 at 41–42; see e.g., *About Us*, YAK-TAT KWAAN, <https://www.yak-tatkwaan.com/about> (last visited Nov. 20, 2021); *Shareholder Forms*, SHANSEET INC., <https://www.shanseet.com/forms/> (last visited Nov. 20, 2021).

<sup>88</sup> Some corporations provide directly for educational scholarships, although most who provide for scholarships do so through foundations. An example of a corporation providing directly for scholarships is e.g., St. Mary's Native Corporation (corporation for the Native Village of St. Mary's). See scholarship application form, [https://06b51e7e-fe84-4cc3-8a7d-c34c41b74e2b.filesusr.com/ugd/803389\\_af87ced088d642b4972c2940802cbfde.pdf](https://06b51e7e-fe84-4cc3-8a7d-c34c41b74e2b.filesusr.com/ugd/803389_af87ced088d642b4972c2940802cbfde.pdf).

<sup>89</sup> ALASKA DEPARTMENT OF COMMERCE DATABASE, *supra* note 10.

<sup>90</sup> By “directly associated,” I mean that the for-profit corporation established the foundation or there is substantial overlap in leadership. The for-profit corporation is not necessarily providing all of the funding to the foundation, but may be the primary contributor. For example, the Bristol Bay Native Corporation Education Foundation and its predecessor entity awarded over \$4.7 million in scholarships between 1986 and 2018, with Bristol Bay Native Corporation contributing \$2.5 million through May 2018. *BBNC Education Foundation*, BRISTOL BAY NATIVE CORPORATION, <https://www.bbnc.net/for-shareholders/bbnc-education-foundation/> (last visited Nov. 20, 2021).



only a fraction of the villages have one.<sup>91</sup>

Based on my survey of foundation websites, the main mandate is usually to provide individual scholarships for higher education rather than providing for infrastructure or general community needs.<sup>92</sup> Likewise, many foundation websites offer leadership training to young people.<sup>93</sup> While this is extremely valuable to individual shareholders, those who receive these benefits tend to be urban Natives rather than village residents,<sup>94</sup> perhaps because of the difficulties of applying.<sup>95</sup> Relatively few village residents will ever attend, let alone graduate, a four-year college.<sup>96</sup> Many village residents that do complete a degree with the help of a scholarship will not return to their home village afterward, as they will seek a job in an urban setting where they can use their degree.<sup>97</sup> While some scholarships provide for vocational

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<sup>91</sup> There are currently 174 village corporations, compared to the 229 federally recognized tribes in Alaska and the 205 villages originally eligible to form corporations. See ANCSA Sec. 11, 43 U.S.C. § 1610; *About Us*, ALASKA NATIVE VILLAGE CORPORATION ASSOCIATION, <https://anvca.biz/about-us> (last visited Nov. 20, 2021). Some dissolved, while a number of village corporations merged together to form new, larger village corporations, or, in the case of NANA and Ahtna region corporations, merged with their regional corporations. In the Alaska Department of Commerce registry as of Jan. 2021, I counted 19 village corporation foundations in good standing and 11 that were dissolved or out of compliance.

<sup>92</sup> For example, Paluwik Heritage Foundation's mission is "to improve employment and other community concerns in Port Graham, Alaska" but the only resource on its website is a scholarship application. See *Overview*, PALUWIK HERITAGE FOUNDATION, <http://portgrahamcorp.com/our-companies/paluwik-heritage-foundation/> (last visited Nov. 20, 2021). The website for Cook Inlet Regional, Inc. (the regional corporation for the urban Anchorage area) indicates that since the establishment of its foundation in 1982, it has contributed more than \$31.8 million in scholarships but only \$3.4 million "through TCF's Education and Heritage Project Grant Program toward non-profit organization projects that further the goals of The CIRI Foundation." *About*, THE CIRI FOUND., <http://thecirifoundation.org/about/> (last visited Nov. 20, 2021).

<sup>93</sup> E.g., *Leadership*, THE ALEUT FOUND., <http://www.thealeutfoundation.org/leadership/leadership-development/> (last visited Nov. 20, 2021). *Doyon Leadership Training*, DOYON FOUND. (Aug. 21, 2019) <https://doyonfoundation.com/2019/08/doyon-leadership-training-2/>.

<sup>94</sup> This statement is based on anecdotal evidence and my own familiarity with scholarship recipients. Also, I searched the Internet for announcement of regional corporation scholarship recipients. Other than ASRC scholarships based in Utqiagvik (the rural hub community of the North Slope), many shareholders are based in urban areas. See, e.g., *Announcements*, ARCTIC EDUC. FOUND., <https://www.arcticed.com/> (last visited Nov. 20, 2021); Sealaska Heritage Institute (@SHInstitute), FACEBOOK (July 2, 2019), <https://www.facebook.com/SHInstitute/posts/scholarship-spotlightcongratulations-to-sealaska-scholarship-recipient-heather-c/2829691897104689/>; *Scholarship Recipient Connects Back to her Alaska Native Roots From Southern California*, SEALASKA, <https://www.sealaska.com/shareholders/scholarship-recipient-connects-back-to-her-alaska-native-roots-from-southern-california/> (last visited 20, 2021); Doyon Foundation, *Large Group Gathers to Celebrate Scholarship Recipients*, DOYON FOUND. (Oct. 4, 2019) <https://www.doyon.com/large-group-gathers-to-celebrate-scholarship-recipients/>; *Walter Charley Memorial Scholarship Recipients Highlight: Providing Compassion And Care During COVID-19*, AHTNA, <https://www.ahtna.com/kanas/walter-charley-memorial-scholarship-recipients-highlight-providing-compassion-and-care-during-covid-19/> (last visited Nov. 20, 2021).

<sup>95</sup> See, e.g., the requirements for a scholarship from Doyon Foundation, including an essay, high grade point average, and letters of recommendation. *About Doyon Foundation*, DOYON FOUND., <https://www.doyonfoundation.com/static/facts.aspx> (last visited Nov. 20, 2021).

<sup>96</sup> Scott Goldsmith et al., STATUS OF ALASKA NATIVES REP. 10 (2004) [https://iseralaska.org/static/legacy\\_publication\\_links/aknativestatussch6.pdf](https://iseralaska.org/static/legacy_publication_links/aknativestatussch6.pdf).

<sup>97</sup> See *AFN Report on the Status of Alaska Natives: A Call for Action*, ALASKA FED'N OF NATIVES, (Jan. 1989),

training, which could be a valuable skillset in a village, most scholarships are designated for higher education than vocational training.<sup>98</sup>

Some foundation missions have references to promoting culture,<sup>99</sup> but this may not be the kind of support that promotes village well-being. For example, Sealaska Heritage, Inc. specifically sponsors cultural events, but these are located in the urban setting of Juneau rather than in tribal villages or camps.<sup>100</sup> Cook Inlet Regional Inc.'s foundation, CIRI Foundation, provides grants for projects that promote Alaska Native Culture, but the maximum grant for an entire tribal village, \$6000,<sup>101</sup> is no more than that for an annual scholarship for one shareholder.<sup>102</sup>

The Arctic Slope Regional Corporation, with its outsized success in the for-profit world, is also an outlier in terms of philanthropy. Between 2012 and 2016 alone, the company and its subsidiaries and foundations donated more than \$25.6 million in grants to cultural, educational, health, and other organizations in the North Slope (Arctic region) and statewide.<sup>103</sup> Still, many of the beneficiaries of this largess are not the villages on the North Slope, but rather the Alaska Native Heritage Center in Anchorage and the University of Alaska-Anchorage.<sup>104</sup> One positive step for village support that the corporation has taken was to establish the Arctic Slope Community Foundation in 2009, with the goal of providing strategic development and financial management of community-supported endowments.<sup>105</sup> The Arctic Slope Community Foundation awards grants for arts and culture, education, health and human services, and the preservation of the Iñupiaq language and culture.<sup>106</sup>

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[http://www.alaskool.org/native\\_ed/research\\_reports/call\\_for\\_action/callforaction.html](http://www.alaskool.org/native_ed/research_reports/call_for_action/callforaction.html). This report issued 30 years ago states that most young Native adults who receive college degrees will have to move from their villages to locations where jobs exist. The same is true today.

<sup>98</sup> For example, Koniag Education Foundation provides a maximum of \$2500 for vocational training for an individual, while there are numerous renewable scholarship opportunities for those in higher education. See *Scholarships*, KONIAG EDUC. FOUND., <https://koniageducation.org/find-scholarships/#:~:text=Basic%20Requirements%3A&text=Part%2Dtime%20undergraduate%20students%20must,M> ay%2031%20of%20application%20year (last visited Nov. 20, 2021). The CIRI Foundation is an exception, providing similar amounts for higher education and vocational training. *Vocational Training Grants*, THE CIRI FOUND., <http://thecirifoundation.org/vocational-training/> (last visited Nov. 20, 2021); *Scholarships*, THE CIRI FOUND., <http://thecirifoundation.org/scholarships/> (last visited Nov. 20, 2021).

<sup>99</sup> See, e.g., KAKE TRIBAL HERITAGE FOUND., <https://www.kaketribalcorporation.com/kake-tribal-heritage-foundation/> (last visited Nov. 20, 2021) (“Kake Tribal Heritage seeks to enhance and enrich the Tlingit culture and the education of our youth.”).

<sup>100</sup> SEALASKA HERITAGE, INC., <https://www.sealaskaheritage.org/> (last visited Nov. 20, 2021).

<sup>101</sup> *Heritage Project Grant Program 2021 Guidelines and Application*, THE CIRI FOUND., <http://thecirifoundation.org/wp-content/uploads/2021/01/2021-Heritage-Project-Grant-Application.pdf> (last visited Nov. 20, 2021).

<sup>102</sup> *Scholarships*, THE CIRI FOUND., <http://thecirifoundation.org/scholarships/> (last visited Nov. 20, 2021).

<sup>103</sup> *Philanthropy*, ARCTIC SLOPE REG'L CORP., <https://www.ascr.com/philanthropy/> (last visited Nov. 20, 2021).

<sup>104</sup> *Id.*

<sup>105</sup> *About Us*, ARCTIC SLOPE CMTY. FOUND., <https://www.arcticslopecommunity.org/our-story> (last visited Nov. 20, 2021).

<sup>106</sup> *Id.*

### B. Alaska Native Regional Non-profit Organizations

Alaska Native regional non-profit organizations, many of which were in existence prior to ANCSA, provide social services and health care for Alaska Native peoples.<sup>107</sup> While ANCs are entitled to be treated as tribes under laws including the Indian Self-Determination Act,<sup>108</sup> the regional non-profits do not have this status.<sup>109</sup> The main source of funding for these non-profit entities is Bureau of Indian Affairs and Indian Health Service dollars designated for tribes, who receive the funding indirectly through programs.<sup>110</sup> Programs include physical and behavioral health care, sponsorship of cultural events, Alaska Native language preservation efforts, and the protection of sites important to subsistence.<sup>111</sup>

### C. Economic Development Corporations

As in other states, throughout Alaska, a number of non-profit economic development corporations have been enacted to promote economic well-being for communities.<sup>112</sup> What is unique to Alaska is the Community Development Quota Program,<sup>113</sup> which allocates a percentage of Aleutian and Bering Sea commercial fishing rights to six economic development corporations.<sup>114</sup> The Program was established in 1992 to alleviate poverty and provide economic and social benefits for village residents.<sup>115</sup> Each development corporation is a partnership between a large commercial for-profit enterprise and a group of rural communities in the Aleutians or within fifty miles of the Bering Sea.<sup>116</sup> ANCs have no involvement in these development corporations. All of the participating communities are Alaska Native Villages, though the Act does not require fisheries participants to be Native.<sup>117</sup> The program has resulted

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<sup>107</sup> 43 U.S.C. § 1606 (containing a list of 12 regional non-profits); *About Us*, MANIILAQ ASS'N, <https://www.maniilaq.org/about-us/> (last visited Nov. 20, 2021); *History*, ARTIC SLOPE NATIVE ASS'N, <https://arcticslope.org/about/history/> (last visited Nov. 20, 2021).

<sup>108</sup> 25 U.S.C.S. § 450b(e) 43 U.S.C.S. § 1602(g)

<sup>109</sup> *Cook Inlet Native Association v. Bowen*, 810 F.2d 1471 (9<sup>th</sup> Cir. 1987).

<sup>110</sup> Under the Indian Self-Determination and Education Act, regional non-profits can receive federal money to provide programs that had traditionally been provided by the Bureau of Indian Affairs for tribes. 25 U.S.C. §§ 5381, 5384, 5385.

<sup>111</sup> *See, e.g., Services*, TANANA CHIEFS CONFERENCE, <https://www.tananachiefs.org/services/> (detailing all of the services provided by this regional non-profit to ANVs in Interior Alaska).

<sup>112</sup> Examples include the Kodiak Economic Development Corporation established by the City of Kodiak in 2020 or the now dissolved St. Lawrence Island Economic Development Corporation established in 2000.

<sup>113</sup> Magnuson Stevens Act § 305, 16 U.S.C. §1855 (i).

<sup>114</sup> These include the Aleutian Pribilof Island Community Development Association, Bristol Bay Economic Development Corporation, Central Bering Sea Fishermen's Association, Coastal Villages Region Fund, Norton Sound Economic Development Corporation, Yukon Delta Fisheries Development Association. *See Community Development Quota (QCD) Program*, NAT'L OCEANIC & ATMOSPHERIC ADMIN., <https://www.fisheries.noaa.gov/15laska/sustainable-fisheries/community-development-quota-cdq-program> (last visited Dec. 10, 2021).

<sup>115</sup> 16 U.S.C. §1855 (i)(1)(A)(iii).

<sup>116</sup> *Id.*

<sup>117</sup> 16 U.S.C. §1855 (i)(1)(D).



in economic and nutritional benefits for the participating villages, even though some may benefit more than others.<sup>118</sup>

An example of a CDQ corporation is the Norton Sound Economic Development Corporation (NSEDC) representing fifteen member communities and more than 8,700 people in the Bering Strait region of northwestern Alaska.<sup>119</sup> NSEDC's mission is to maintain a balance between investing directly in offshore fisheries and supporting local economic development for residents.<sup>120</sup> Programs have ranged from providing infrastructure to commercial fishermen to a \$3.76 million for a water and sewer fund.<sup>121</sup>

#### D. Federal, State, and Municipal Entities

Federal, state, and county-level (“borough”) entities have traditionally funded the bulk of the built infrastructure in Alaska Native Villages. The state takes primary responsibility for village schools,<sup>122</sup> airports,<sup>123</sup> and some utilities.<sup>124</sup> Villages have been able to use limited funds designated for tribes by the federal Bureau of Indian Affairs for community roads<sup>125</sup> and work through regional housing authorities to get funding for one or two houses each year.<sup>126</sup> The Indian Health Service, the Environmental Protection Agency, and other federal agencies provide tribes limited funding for water and sewer infrastructure,<sup>127</sup> but many homes

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<sup>118</sup> See Liz Ruskin, *Should a Community's Population be a Factor to Set Fish Quotas in Western Alaska?* ALASKA PUB. MEDIA (July 3, 2018) <https://www.ktoo.org/2018/07/03/should-a-communitys-population-be-a-factor-to-set-fish-quotas-in-western-alaska/>.

<sup>119</sup> *About Us*, NORTON SOUNDS ECONOMIC DEVELOPMENT CORPORATION, <https://www.nsedc.com/about-us/>.

<sup>120</sup> *Id.*

<sup>121</sup> Community Benefits, NORTON SOUNDS ECON. DEV. CORP., <https://www.nsedc.com/programs/community-benefits/> (last visited Dec. 15, 2021).

<sup>122</sup> Dayna Jean DeFeo, et al., *Research Summary, How Much Does Alaska Spend on K-12 Education?* ISER Publication No. 2019-4, [https://pubs.iseralaska.org/media/d0a6aae7-cb09-4bdc-bb13-6f992a6494b2/2019\\_09\\_30-EdCostSummary.pdf](https://pubs.iseralaska.org/media/d0a6aae7-cb09-4bdc-bb13-6f992a6494b2/2019_09_30-EdCostSummary.pdf) (citing *Hootch v. Alaska* 536 P.2d 793 (Alaska 1975), *Kasayulie v. Alaska*, Case No. 3AN-97-3782 (Alaska Super. Ct. Sep. 1, 1999), *Moore v. Alaska* Case No. 3AN-04-9756 (Alaska Super. Ct. 2004)).

<sup>123</sup> *About Alaska DOT&PF*, STATE OF ALASKA, <http://dot.alaska.gov/comm/about.shtml> (last visited Dec. 12, 2021).

<sup>124</sup> Many villages have limited water, sewer, and internet, and electricity is obtained through burning diesel. The State of Alaska's Power Cost Equalization program subsidizes the electricity prices for these high-cost utilities. *Alaska Energy Authority*, STATE OF ALASKA, <http://www.akenergyauthority.org/What-We-Do/Power-Cost-Equalization>.

<sup>125</sup> 23 U.S.C. § 201, *et. seq.* 25 C.F.R. Part 170.

<sup>126</sup> There are two main sets of tribal housing grants: the Indian Housing Block Grant (IHBG) (25 U.S.C. 4101 *et seq.*) and the Indian Community Development Block Grant (ICDBG) (42 U.S.C. 5301 *et seq.*). Alaska Native Villages are generally not eligible to apply directly for these grants; rather they must go through a regional housing authority that applies for and manages the grant. 42 U.S.C. §5301 *et seq.*; 24 C.F.R. part 1003.

<sup>127</sup> See GOV'T ACCOUNTABILITY OFF., GAO-18-309, DRINKING WATER AND WASTEWATER INFRASTRUCTURE, OPPORTUNITIES EXIST TO ENHANCE FEDERAL AGENCY NEEDS ASSESSMENT AND COORDINATION ON TRIBAL PROJECTS (2018); Streamlining Preconstruction Paperwork Workgroup, *Overview of Tribal Water Infrastructure Funding Application Processes and Recommended Paperwork Streamlining Opportunities* (2011), [azon.com/gp/search/ref=sr\\_adv\\_m\\_digital/?search-alias=digital-music&unfiltered=1&field-keywords=&field-author=&field-title=&field-label=&field-browse=&sort=price&Adv-Srch-MP3-Submit.x=30&Adv-Srch-MP3-Submit.y=13](https://www.amazon.com/gp/search/ref=sr_adv_m_digital/?search-alias=digital-music&unfiltered=1&field-keywords=&field-author=&field-title=&field-label=&field-browse=&sort=price&Adv-Srch-MP3-Submit.x=30&Adv-Srch-MP3-Submit.y=13). Funding is also available through the Alaska Department of Environmental Conservation's Safe Water Program, <https://dec.alaska.gov/water/village-safe-water/>.

in rural Alaska still lack running water.<sup>128</sup> Some villages have incorporated cities that are able to get funding for some infrastructure, namely utilities and municipal buildings through state grants.<sup>129</sup> In the mineral resource-rich areas where boroughs exist, these municipal entities fund a great deal of infrastructure, including roads, hospitals, and community well-being programs.<sup>130</sup>

As the climate has changed in recent decades and villages have grappled with increased flooding and erosion, federal agencies including the U.S. Army Corps of Engineers, the Federal Emergency Management Agency, and the Department of Housing and Urban Development have provided for disaster relief and hazard mitigation infrastructure.<sup>131</sup> In response to COVID-19, the Bureau of Indian Affairs and the U.S. Treasury have provided large relief packages (well over \$1 million per tribe in many cases).<sup>132</sup>

#### IV. EXAMPLES OF LOWER 48 NATIVE CORPORATIONS SUPPORTING TRIBES AND COMMUNITIES

Tribal communities in the Lower 48 are certainly not immune from the poverty and lack of infrastructure that Alaska Native Villages experience.<sup>133</sup> There is, however, a different legal landscape in the Lower 48 that can enable some tribes to directly support themselves through the development of their tribal lands<sup>134</sup> and casinos.<sup>135</sup> This activity provides an essential source of revenue for tribes, which generally have limited ability to collect tax revenue on their lands.<sup>136</sup>

Unlike ANCSA, which focuses on the well-being of corporations, the Indian Gaming Act specifically provides for casino revenues to promote tribal self-government and

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<sup>128</sup> See, e.g. Laura Palen Eichelberger, *Living in Utility Scarcity: Energy and Water Insecurity in Northwest Alaska*, 100 AM. J. PUB. HEALTH 1010, (2010); Ristroph 2019, *supra* note 13 (Addressing Climate Vulnerability); Driscoll et al., *supra* note 21.

<sup>129</sup> See *Grants and Funding*, STATE OF ALASKA, <https://www.commerce.alaska.gov/web/dcra/GrantsSection.aspx> (last visited Dec. 15, 2021); *Grants Administration*, STATE OF ALASKA, <https://www.commerce.alaska.gov/web/dcra/grantssection/communitydevelopmentblockgrants.aspx> (last visited Dec. 15, 2021).

<sup>130</sup> An example is the North Slope Borough, which funds a great deal of infrastructure and social programs. See, e.g., *North Slope Borough Health and Social Services Department*, NORTH SLOPE BOROUGH, <http://www.north-slope.org/departments/health-social-services> (last visited Dec. 15, 2021).

<sup>131</sup> See Elizaveta Barrett Ristroph, *Strategies for Planned Community Relocation: A Case Study of Newtok Village, Alaska*, 11 J. ENV'T'L STUD. & SCIS. 329, 331 <https://doi.org/10.1007/s13412-021-00711-3>(2021).

<sup>132</sup> See 42 U.S.C. § 801.

<sup>133</sup> See Jill Fleury DeVoe, Kristen E. Darling-Churchill, Thomas D. Snyder, *Statistical Trends in the Education of American Indians and Alaska Natives*, National Center for Education Statistics (2008) [https://www.air.org/sites/default/files/downloads/report/2008084\\_0.pdf](https://www.air.org/sites/default/files/downloads/report/2008084_0.pdf); Native American Aid, *Living Conditions*, [http://www.nativepartnership.org/site/PageServer?pagename=naa\\_livingconditions](http://www.nativepartnership.org/site/PageServer?pagename=naa_livingconditions) (last visited Mar. 12, 2021).

<sup>134</sup> See 25 U.S.C. §§ 396a, 2102; 25 C.F.R. Parts 211, 225.

<sup>135</sup> Indian Gaming Act of 1986, 25 U.S.C. Ch. 29.

<sup>136</sup> Adam Creppelle, *Taxes, Theft, and Indian Tribes: Seeking an Equitable Solution to State Taxation of Indian Country Commerce*, 122 W. VA. L. REV. 999, 1010-1011 (2020).

community economic development.<sup>137</sup> Net revenues from gaming generally may not be used for purposes other than funding tribal government operations or programs; providing for the general welfare of the tribe and its members; promoting tribal economic development; donating to charitable organizations; or helping fund operations of local government agencies.

The charitable giving of many Lower 48 tribal foundations dwarfs that of Alaska Native Corporations (other than Arctic Slope Regional Corporation), and much of it goes to community entities for infrastructure and social needs (as opposed to individual scholarships).<sup>138</sup> An example is the Spirit Mountain Community Fund launched by the Confederated Tribes of Grand Ronde, which distributes grants to non-profit organizations in 11 counties, government agencies in Polk and Yamhill Counties, and the 9 federally recognized Tribes in Oregon.<sup>139</sup> All grant funds come directly from Spirit Mountain Casino profits, as required in the tribe's gaming compact with the State of Oregon.<sup>140</sup> Between 1997 and 2020, it gave out \$83,597,806 in grants.<sup>141</sup>

Another example is Ho-Chunk, Inc., the economic development corporation owned by the Winnebago Tribe of Nebraska. The corporation funds tribal operations and contributes to the larger tribal community: between 2000 and 2014, Ho-Chunk, Inc. contributed more than \$53 million to public schools, fire departments, athletic teams, and other community recipients.<sup>142</sup> In 2019, Ho-Chunk, Inc. and its partners began work on a 40-acre expansion to double the amount of tribal housing.<sup>143</sup>

## V. ARGUMENTS AND RECOMMENDATIONS FOR GREATER ALASKA NATIVE CORPORATION SUPPORT FOR VILLAGES

Current levels of foundation funds (in Alaska and elsewhere in the United States) do not come close to addressing the level of need for Alaska Native Villages and other Native American communities. And the amount of money given to Native American groups is

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<sup>137</sup> 25 U.S.C. §§2702, 2710(b)(2)(B)(ii).

<sup>138</sup> See THE WILD HORSE FOUND., <http://www.thewildhorsefoundation.com/> (last visited Mar. 12, 2021); FOREST CNTY POTAWATOMI FOUND., <https://www.fcpotawatomi.com/government/foundation/> (last visited Mar. 12, 2021); COW CREEK UMPQUA INDIAN FOUND., <https://www.cowcreekfoundation.org/> (last visited Mar. 12, 2021); HELP FOR THE HELPERS, [http://www.coquilletribe.org/?page\\_id=2489about.htm](http://www.coquilletribe.org/?page_id=2489about.htm) (last visited Mar. 12, 2021); *Donations and Giving*, SHAKOPEE MDEWAKANTON SIOUX CMTY, <https://shakopeedakota.org/charitable-giving/donations-grants-scott-county/> (last visited Mar. 12, 2021).

<sup>139</sup> *About Us*, SPIRIT MOUNTAIN CMTY FUND, <https://www.thecommunityfund.com/about-us> (last visited Dec. 15, 2021).

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Economic Impact*, HO-CHUNK, INC., [https://hochunkinc.com/impact\\_winnebago.php](https://hochunkinc.com/impact_winnebago.php) (last visited Dec. 15, 2021).

<sup>143</sup> *Annual Report*, HO-CHUNK, INC., <https://hochunkinc.com/annual-report-2019/2019-Ho-Chunk-Annual-Report-web.pdf> (last visited Dec. 15, 2021).

disproportionately less than that given to non-Native groups.<sup>144</sup> Some have called on ANCs to do more to support Alaska Native Villages, especially as they face declining state revenues and challenges like climate change.<sup>145</sup> The standard response of ANCs is that they are “for profit,” as required by their charters, not charities.<sup>146</sup>

Charity aside, there is a need for investing in Alaska Native Villages in a way that will bring long-term benefits. This section discusses reasons why ANC should provide greater support for Alaska Native Villages and provides examples of what ANC could achieve.

#### A. *Challenges Associated with Individual Dividends*

Several regional ANCs pay out as much as half of their net income as dividends to shareholders.<sup>147</sup> Relatively few studies have systematically examined the effect of dividends on human health and community well-being, and those that exist have mixed results.<sup>148</sup> There are as many arguments in favor and against dividends.<sup>149</sup> Dividends can certainly ease the cost of living in remote communities where daily expenses are high. Village residents can use dividends to fund their subsistence practices and other necessities.<sup>150</sup> But investing in infrastructure and programs that boost community well-being and provide local jobs could potentially benefit communities more than individual dividends and scholarships. Simply giving out scholarships to people who are likely to leave the village (if they were even from the village originally) will not ensure that communities can get running water and keep the water running. Rather, these scholarships may support the outward migration occurring across Alaska Native Villages.<sup>151</sup>

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<sup>144</sup> *Candid*, INVESTING IN NATIVE CMTYSS (2019) <https://nativephilanthropy.candid.org/reports/investing-in-native-communities-philanthropic-funding-for-native-american-communities-and-causes/14> (last visited Dec. 15, 2021) (Over a 15-year period, from 2002 to 2016, large U.S. foundations gave an average of 0.4 percent of total funding to Native American communities and causes, while the American Indian and Alaska Native population (including those of more than one race) represented 2 percent of the total U.S. population in 2016).

<sup>145</sup> See Morgan Howard, *Dividends Do Not Define Success for Alaska Native Corporations*, ALASKA DISPATCH (June 29, 2016) <https://www.adn.com/commentary/article/dividends-do-not-define-success-alaska-native-corporations/2014/10/24/> (arguing for more group-oriented benefits as opposed to just individual shareholder benefits). E.B. Ristroph, *When Climate Takes a Village: Legal Pathways Toward the Relocation of Alaska Native Villages*, 7 CLIMATE L. 259, 259-289 (2017).

<sup>146</sup> See, e.g., *Tales of Atlantis*, THE ECONOMIST (Sep. 3 2015), <https://www.economist.com/united-states/2015/09/03/tales-of-atlantis> (“They aren’t charities,” explains Julie Kitka, president of the Alaska Federation of Natives.’).

<sup>147</sup> GAO 2012, *supra* note 23, at 39.

<sup>148</sup> See Marcia Gibson, Wendy Hearty, and Peter Craig, *The public health effects of interventions similar to basic income: a scoping review*, LANCET PUB. HEALTH 5(3): e165–e176 (2020); Stephen R. Kodish, *Impacts of Casinos on Key Pathways to Health: Qualitative Findings from American Indian Gaming Communities in California*, 16 BMC PUB. HEALTH 621, 622 (2016).

<sup>149</sup> Adam Crepelle, *The Tribal Per Capita Payment Conundrum: Governance, Culture, and Incentives*, 56 GONZ. L. REV. 483 (2021).

<sup>150</sup> Robert J. Wolfe, *Local Traditions and Subsistence: A Synopsis from Twenty-Five Years of Research by the State of Alaska*, ALASKA DEP’T FISH & GAME DIV. SUBSISTENCE, 51 (2004) <https://www.adfg.alaska.gov/techpap/tp284Twentyfiveyears.pdf>.

<sup>151</sup> Hamilton, et al., *supra* note 21; Ristroph 2019, *supra* note 21; Driscoll, et al, *supra* note 21; Lowe, *supra* note 21.

## B. New Problems and Declining State Revenue

There are several reasons why villages are likely to need more support and investment in the coming years. The first concerns are declining state revenues relating to the declining price of oil. Oil prices are naturally cyclical, but the general direction has been down with hydraulic fracturing opportunities in the Lower 48, increasing domestic oil production.<sup>152</sup> There is less incentive to invest in oil in remote places like the North Slope that are more difficult to access.<sup>153</sup> Since the State of Alaska's primary investment and business sector has been oil and gas, the decline in prices has led to a decline in revenue.<sup>154</sup> The state has thus far opted not to implement a state income tax or get rid of the permanent fund dividend that every Alaska resident receives annually for living in Alaska.<sup>155</sup> Instead, it has cut the budget, including programs that directly benefit villages, such as electricity subsidies.<sup>156</sup> In the wake of COVID-19, the State governor has opted to increase dividend amounts and reduce other state expenditures.<sup>157</sup> A second reason villages may need more support relates to climate change, damaging village infrastructure and subsistence patterns.<sup>158</sup> As discussed in Section 3, settlements that were once mobile now have permanent, Western-style infrastructure that cannot easily be moved back from eroding shorelines.<sup>159</sup> Infrastructure is also succumbing to the pressures of thawing permafrost.<sup>160</sup> A number of villages will likely need to relocate their entire settlement, and some are already in the process of doing so.<sup>161</sup> They will need land and other forms of investment to enable relocation.

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<sup>152</sup> Mike Lee and Heather Richards, *Raise taxes or bet on oil rally? Alaska at a crossroads*, E&E NEWS (Dec. 10, 2019) <https://www.eenews.net/stories/1061769573/>; Eric de Place and Zane Gustafson, *Alaska Finances: A Cautionary Tale*, SIGHTLINE INSTITUTE, (July 22, 2020) <https://www.sightline.org/2020/07/22/alaska-finances-a-cautionary-tale/>.

<sup>153</sup> Yereth Rosen, *'An Abrupt Wake-Up Call': Alaska Peers into a Future Without Oil*, IN THESE TIMES (June 18, 2020) <https://inthesetimes.com/article/alaska-end-of-oil-industry-dependence-covid-19-north-slope-inupiat-dilemma>.

<sup>154</sup> *Id.*

<sup>155</sup> ALASKA DEPARTMENT OF REVENUE, PERMANENT FUND DIVISION, <https://pfd.alaska.gov/>.

<sup>156</sup> James Brooks, *A decision by the governor, and legislators' inaction, may spike the cost of electricity in rural Alaska*, ANCHORAGE DAILEY NEWS (July 14, 2019) <https://www.adn.com/politics/alaska-legislature/2019/07/13/governors-decision-to-redefine-state-funds-may-dim-the-lights-of-rural-communities/>; Derrill Holly, *Budget Crisis in Alaska Could Mean Skyrocketing Bills for Electric Co-op Members*, NRECA (July 26, 2019) <https://www.electric.coop/budget-crisis-in-alaska-could-mean-skyrocketing-bills-for-electric-co-op-members>.

<sup>157</sup> Nathaniel Herz, *New proposal from Gov. Dunleavy would put PFD in Constitution, along with rural electricity fund*, ALASKA PUBLIC MEDIA (May 12, 2021) <https://www.alaskapublic.org/2021/05/12/new-proposal-from-gov-dunleavy-would-put-pfd-in-constitution-along-with-rural-electricity-fund/>.

<sup>158</sup> Chapin et al, *supra* note 84.

<sup>159</sup> Ristroph 2019, *supra* note.

<sup>160</sup> A.M. Melvin, et al., *Climate change damages to Alaska public infrastructure and the economics of proactive adaptation*, PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES 114; E122–E131 (2017) ; Jan Hjort et al, *Degrading permafrost puts Arctic infrastructure at risk by mid-century*, NATURE COMMUNICATIONS 9: 5147 (2018).

<sup>161</sup> Ristroph 2017, *supra* note 145.

A third reason relates to the fact that villages exist in an increasingly globalized world. Corporations benefit from this globalization in terms of increased opportunities, and villages benefit from increased access to goods (if they can afford them). But Alaska Native villages, like all communities, are now less self-reliant and more susceptible to negative effects from distant events.<sup>162</sup> COVID-19 is a primary example of an incident that began on a different continent and led to serious impacts in villages, particularly as it limited travel and access goods and services.<sup>163</sup> Corporations had varying reactions in terms of assisting villages. Some regional corporations simply issued their regular dividends early.<sup>164</sup> Sealaska Regional Corporation allocated \$1.28 million to tribes and other organizations serving their shareholders for food and utility assistance.<sup>165</sup> Donations to needy entities from other regional corporations ranged from \$50,000 to \$250,000.<sup>166</sup>

### C. COVID-19 Cares Act

One bright spot of the COVID-19 pandemic for tribes is that it led to major federal spending in the form of the 2020 CARES Act, which set aside \$453 million from the Bureau of Indian Affairs<sup>167</sup> and \$8 billion directly from the U.S. Treasury for tribes<sup>168</sup>, and the 2021 American Rescue Plan Act, which established a \$20 billion tribal relief fund.<sup>169</sup> In addition, funding became available through other agencies such as the Department of Housing and Urban Development for village infrastructure.<sup>170</sup> A number of Alaska tribes have taken advantage of the funding to construct COVID isolation units (which may house vulnerable village residents in the future), provide for patrol officers (which village that have no public safety officers whatsoever need desperately), and invest in water, sewer, and Internet infrastructure.

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<sup>162</sup> Ristroph 2019, *supra* note 145.

<sup>163</sup> Leah Campbell, *Native Alaskan Villages, Once Devastated by Spanish Flu, Are Taking Action Against Covid-19*, DIRECT RELIEF (May 6, 2020) <https://www.directrelief.org/2020/05/native-alaskan-villages-once-devastated-by-spanish-flu-are-taking-action-against-covid-19/>.

<sup>164</sup> Meghan Sullivan, *Following the Coronavirus Relief Funds in Alaska*, Indian Country Today (Sep. 27, 2021), <https://www.indianz.com/News/2021/09/27/indian-country-today-alaska-native-corporations-finally-receive-covid-19-funds/>

<sup>165</sup> Sealaska, *Sealaska Deploys \$1.28 Million For Covid-19 Relief* (July 23, 2020) <https://www.sealaska.com/businesses/sealaska-deploys-1-28-million-for-covid-19-relief/>.

<sup>166</sup> ANCSA Regional Association, *supra* note 164.

<sup>167</sup> Congressional Research Service, *The CARES Act: Implications for Tribes* (2020) <https://crsreports.congress.gov/product/pdf/IF/IF11500>.

<sup>168</sup> 42 U.S.C. § 801.

<sup>169</sup> Pub. L. No. 116–20, Subtitle M, Sec. 9901 (2021).

<sup>170</sup> *CARES Act Provides \$3 Billion in Housing and Urban Development Grants for State and Local Government*, GOVWIN (June 11, 2020) <https://iq.govwin.com/neo/marketAnalysis/view/CARES-Act-Provides-3-Billion-in-Housing-and-Urban-Development-Grants-for-State-and-Local-Government/4098?researchTypeId=1&researchMarket=>.



Controversy emerged regarding whether ANCs should be considered “tribes” eligible for Treasury funding under the CARES Act.<sup>171</sup> Lower 48 tribes resented the idea of tribal funding going to state-chartered, for-profit entities with limited accountability and no specific responsibility for tribal wellbeing. Several tribes sued the Treasury Secretary to prevent payments to ANCs. The U.S. Supreme Court held that ANCs must receive payments based on their inclusion in the Indian Self-Determination Act definition of “tribe.”<sup>172</sup>

The reversal means that Alaska Natives get a greater allocation compared to tribal members in the Lower 48. ANCs now face a responsibility previously reserved to governing entities—how to spend COVID funds in a just and legal manner. While both the CARES Act and the Rescue Act do allow government entities to provide household assistance, individual dividends are not allowed.<sup>173</sup> The Rescue Act does clearly provide for investment in community water, sewer, and internet infrastructure, which many Alaska Native Villages badly need. Thus far, many ANCs have used CARES money to assist individual shareholders rather than make meaningful investments in public infrastructure.<sup>174</sup>

#### *D. Opportunities under Existing Law for Greater Investment in Villages*

ANCs cannot be expected to completely revise their business model and mission in order to ensure the continued existence of villages. Those that are still in business 50 years after the ANCSA experiment are likely to continue their current business practices. Still, there is nothing to stop ANCs from embracing principles of corporate social responsibility<sup>175</sup> that is increasingly becoming more mainstream throughout North America and Europe.<sup>176</sup>

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<sup>171</sup> 42 U. S. C. §801(g)(1), (5)

<sup>172</sup> *Yellen v. Confederated Tribes of the Chehalis Reservation*, 141 U.S. 2434, 2452(2021).

<sup>173</sup> U.S. Treasury, Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions as of June 24, 2021 <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf> Q. 2.5, 2.6, 2.17; U.S. Treasury, Coronavirus Relief Fund Frequently Asked Questions Updated as of October 19, 2021, Q. 23.

<sup>174</sup> See, e.g., NANA Inc., NANA Cares FAQs, <https://www.nana.com/cares-act-faq/>; Calista Corporation, *Calista Mails CARES Act Financial Assistance Information to Shareholders Online Application Period Set to Begin Early October* (Sep. 24, 2021) <https://www.calistacorp.com/news/calista-outreach-on-cares-act-financial-assistance/>. Applicants self-certify their COVID-related costs and attest to having not been reimbursed already by ANVs.

<sup>175</sup> Corporate social responsibility embodies standards that socially conscious investors use to consider investing in a company. The standards consider how the company’s actions affect the environment; how it manages relationships with employees, suppliers, customers, and communities; and management in terms of executive pay, internal controls, and shareholder rights. Ariel Courage, *Environmental, Social, and Governance (ESG) Criteria*, INVESTOPEDIA (Mar 5, 2021) <https://www.investopedia.com/terms/e/environmental-social-and-governance-esg-criteria.asp>. See also Deborah Nason, *Impact Investing, Here’s how companies factor in environmental, social and corporate governance concerns*, CNBC (Dec. 29 2020) <https://www.cnbc.com/2020/12/29/how-firms-factor-in-environmental-social-and-corporate-governance.html>.

<sup>176</sup> See, e.g., Akdoğu S. Kahraman, *The Link Between CSR and Sustainable Development in a Global Economy*. In: IDOWU S. VERTIGANS S. (ED), CORPORATE SOCIAL RESPONSIBILITY (2017) [https://doi.org/10.1007/978-3-319-35083-7\\_13](https://doi.org/10.1007/978-3-319-35083-7_13). Although no ANC website uses the term “corporate social responsibility,” many of the ANCs refer to cultural preservation and social well-being as corporate goals. See websites, *supra* note 56.

## 1. Expanding on Scholarships

ANCs educational support could be broadened from individual college scholarships to provide more funding for vocational education that will be useful for village jobs and to better support community colleges or remote campus locations in villages.<sup>177</sup> Similar to some student loan forgiveness programs,<sup>178</sup> there could be a requirement that scholarship recipients work in or for a village during summer before graduation or for a time after graduation. Such work could take the form of a program where graduates mentor students and youth in the villages.

## 2. Investing in Village Infrastructure

ANCs could invest more in village infrastructure and economies, especially now that they have COVID funds.<sup>179</sup> A good example of a pre-COVID investment is Arctic Slope Regional Corporation's Tundra Tours, Inc., based in the village of Utqiagvik, which operates a hotel and tour program that generates local jobs and revenue.<sup>180</sup>

Now that the Supreme Court has essentially conferred tribal status on ANCs for purposes of receiving tribal funds,<sup>181</sup> ANCs may be able to this status to apply for a range of grants and loans for infrastructure development in villages. The corporations could then own the infrastructure and charge appropriate user fees. A number of grant and loan programs already clearly consider ANCs as eligible to apply for assistance under these programs. An example of an opportunity is the Indian Loan Guarantee and Insurance Program,<sup>182</sup> which provides guarantees for lenders to ANCs, tribes, and other majority Native-owned businesses. Loans may be used for various purposes, including operating capital, equipment purchases, acquisition and refinancing, building construction, and lines of credit.<sup>183</sup> Another example is the Tribal Energy Loan Guarantee Program, which can guarantee up to \$2 billion in loans to support economic opportunities to tribes through energy development projects and activities.<sup>184</sup> It is important to

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<sup>177</sup> Gallup, *Alumni of Tribal Colleges and Universities Better Their Communities* (2019) <https://www.gallup.com/education/265871/tribal-college-university-alumni-outcomes.aspx>; Lisa Demer, *Fresh group graduates from rural Alaska college program that teaches as it heals*, ANCHORAGE DAILY NEWS (May 31, 2016), <https://www.adn.com/education/article/fresh-group-graduates-rural-alaska-college-program-teaches-it-heals/2016/05/03/> (describing benefits of local/tribal colleges).

<sup>178</sup> Federal Student Aid, Teacher Loan Forgiveness, <https://studentaid.gov/manage-loans/forgiveness-cancellation/teacher> (last visited Mar. 12, 2021).

<sup>179</sup> *See, e.g.* Doyon Ltd. Articles of Incorporation (1972) Art. VII(C) (allowing the regional corporation to pay certain organizational expenses of villages).

<sup>180</sup> ASRC, OTHER OPERATIONS, <https://www.asrc.com/operations/other-operations/> (last visited Nov 20, 2021).

<sup>181</sup> Confederated Tribes of the Chehalis Reservation, *supra* note 172.

<sup>182</sup> Indian Financing Act of 1974, 25 U.S.C. Ch. 17 Pub. L. No. 93–262, §1, Apr. 12, 1974, 88 Stat. 77.

<sup>183</sup> U.S. Department of Interior, Office of Indian Economic Development, *What is the Indian Loan Guarantee and Insurance Program (ILGP)* <https://www.bia.gov/service/loans/ilgp/what-indian-loan-guarantee-and-insurance-program-ilgp> (last visited July 5, 2021).

<sup>184</sup> DEPT. OF ENERGY, TRIBAL ENERGY LOAN GUARANTEE PROGRAM <https://www.energy.gov/lpo/tribal-energy-loan-guarantee-program> (last visited July 5, 2021).



note that, legally speaking, Alaska's tribes have nearly all of the business, grant, and loan opportunities available to ANCs. Further, tribes have the ability to incorporate their own corporations under the Indian Reorganization Act Section 17,<sup>185</sup> State of Alaska law,<sup>186</sup> or tribal laws.<sup>187</sup> But the limited human resources and capacity of Alaska's tribes, particularly those based in tiny, remote villages, significantly hinder their ability to participate in such opportunities. ANCs can and should take advantage of these opportunities and share the benefits with tribes. Further, ANCs could provide webinars or calls to help ANVs understand the opportunities available to them and potentially partner with ANCs on these opportunities.

In addition to serving as direct grant and loan applicants, ANCs could profit by providing grant-writing and administering services to tribes applying for infrastructure funding. Alaska is full of consultants who profit from cutting the red tape of the byzantine federal grant system. Yet many of these consultants are non-Native, such that tribes are paying large amounts of money to consulting entities that may not have a long-term interest in village sustainability. ANCs could provide consulting services to help tribes get federal funding for village construction and wellness programs.

### 3. Land Transfers

Native Corporations could consider granting tribes land needed for infrastructure and community purposes. Such a transaction could be done in fee simple, or land could be conveyed to an ANCSA settlement trust<sup>188</sup> for this purpose.<sup>189</sup> The 2017 Tax Act permits Alaska Native Corporations to claim a significant tax deduction for transfers to a settlement trust.<sup>190</sup> If land is conveyed in fee simple, a tribe would have the ability to petition the Bureau of Indian Affairs to hold the property in trust.<sup>191</sup> This status is roughly equivalent to that of the Lower 48 Indian reservations.<sup>192</sup> Land transfer would be particularly useful for tribal villages in need of relocation due to climate change. Trust status is not ideal for economic development, given the need to obtain BIA approval prior to most kinds of development activity, challenges to taxation,<sup>193</sup> and the confusing and constraining laws that govern tribal businesses.<sup>194</sup> But trust status could allow tribes to assert somewhat more control than the current situation in which land sovereignty is not

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<sup>185</sup> 25 U.S.C. § 5112.

<sup>186</sup> ALASKA STAT. §§ 10.06.005 – 10.06.995 (2012).

<sup>187</sup> Cohen's Handbook of Federal Indian Law §8.06 (2012 edition).

<sup>188</sup> See 43 U.S.C. §1629e.

<sup>189</sup> See 43 U.S.C. §1629e(b)(1).

<sup>190</sup> Pub. L. No. 115-97, §13821, 131 Stat. 2054 (2017) 26 U.S.C. §13821. 139G.

<sup>191</sup> 25 C.F.R. § 151.1.

<sup>192</sup> 25 C.F.R. § 1.4.

<sup>193</sup> See 25 C.F.R. Part 162; Crepelle 2020, *supra* note 136.

<sup>194</sup> See Erik M. Jensen, *Taxation and Doing Business in Indian Country* Faculty Publications 134 (2008), [https://scholarlycommons.law.case.edu/faculty\\_publications/134](https://scholarlycommons.law.case.edu/faculty_publications/134); Terry Anderson and Wendy Purnell, *The Bonds of Colonialism* (Apr. 26, 2019), <https://www.hoover.org/research/bonds-colonialism>.

recognized.<sup>195</sup> A key example of a village that needed and got some relocation assistance from an ANC is Newtok. Newtok Native Corporation’s lawyer worked for an act of Congress to facilitate a land exchange between the corporation and a federal wildlife refuge.<sup>196</sup> Through this transaction, the corporation obtained title to some of the only high ground in the vicinity for the new village site. The corporation then entered into a long-term lease agreement with the tribal council to allow tribal members to live on the land.<sup>197</sup>

#### 4. Endowments

Beyond providing for land transfers into settlement trusts, the 2017 Tax Act facilitates endowments that allow better long-term risk management of assets; better tax efficiency and more diversification than other corporate investments, and the option of using endowment money for a range of village benefits.<sup>198</sup> These endowments are managed by trustees who have clearly defined fiduciary obligations to trust beneficiaries under trust law, rather than the less strict fiduciary standards directors owe shareholders and the corporation under the Alaska Corporations Code.<sup>199</sup>

Snigaroff and Richards recommend that any ANC endowments separate the investment management function from the management of other objectives (e.g., benefits to villages) to avoid degrading the investment function of the endowment.<sup>200</sup> ANCs could accomplish this through a system similar to the Alaska Permanent Fund, where a certain percentage of mineral earnings are placed into the Permanent Fund, and a certain percentage of Fund earnings are put into a dividend for state residents.<sup>201</sup> For example, an ANC could provide for 10% of its annual profits to go into an ANC endowment. The endowment would put 25% of annual endowment earnings into a Village Infrastructure Program, managed by different people than those who manage the endowment.

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<sup>195</sup> See 43 U.S.C. § 1603.

<sup>196</sup> Pub. L. No. 108–129, 117 Stat. 1358 (2003), An Act to authorize the exchange of lands between an Alaska Native Village Corporation and the Department of the Interior, and for other purposes.

<sup>197</sup> Real Property Master Site Control Agreement, Newtok Village Council and Newtok Village Corporation, Bethel Recording District (Apr. 27, 2014). The corporation’s lawyer also established the Newtok Village Relocation Fund in 2015 to accept contributions to the relocation effort, but this corporation was involuntarily dissolved in 2013.

<sup>198</sup> Robert Snigaroff and Craig Richards, *Alaska Native Corporation Endowment Models*, 38 ALASKA LAW REV. 1, 25 (2021).

<sup>199</sup> ALASKA STAT. § 10.06.450(b).

<sup>200</sup> Snigaroff and Craig Richards, *supra* note 198, at 29.

<sup>201</sup> ALASKA CONST. art. IX, § 15; ALASKA STAT. § 37.13.145(b).

## *E. Potential for Changing Laws to Improve ANC Corporate Social Responsibility to Villages*

### 1. State Corporation Law Changes

In 2015, the Alaska House of Representatives considered a bill<sup>202</sup> that would have allowed businesses (not just ANCs) to incorporate as “benefit corporations” of “B Corps,” following the lead of many other states that already have B Corps.<sup>203</sup> The proposed law allowed corporation shareholders to vote on whether to convert their corporation to a B Corp. B Corp directors would have been required to consider social benefits beyond maximizing dividends and shareholder value<sup>204</sup> and report biennially on progress in achieving these benefits.<sup>205</sup> The bill did not become law. If reintroduced, such a bill could pave the way for ANCs to better provide benefits for villages. B Corp directors would have less pressure to issue dividends at the expense of village wellbeing. On the other hand, the administrative costs to convert to B Corps and the additional accountability requirements could be more burdensome than the benefits reaped.<sup>206</sup>

Another possible state legislative change could adjust corporate law to specifically allow corporate directors to consider stakeholders other than shareholders.<sup>207</sup> This could facilitate ANC programs that directly benefit tribal villages rather than just shareholders, without converting to a B Corp.

But arguably, statutory change is not needed for ANCs to pursue social benefits for shareholders and villages. The original version of ANCSA referred to social goals. The 1987 Amendments to ANCSA specifically allowed for disproportionate benefits to “promote the health, education, and welfare” of settlement trust beneficiaries or “preserve the heritage and culture of Natives.”<sup>208</sup> Likewise, Alaska law already gives corporations the power to donate for the public welfare or for charitable, scientific, or educational purposes.<sup>209</sup>

### 2. Federal Law Changes

At the federal level, ANCSA could be changed to require corporations to set aside a certain percentage of their revenue to fund village infrastructure and/or social programs. For

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<sup>202</sup> H.R. 49, 29th Leg., 1st Sess. (Alaska 2015).

<sup>203</sup> *E.g.* PA. STAT. Title 15 Ch. 33.

<sup>204</sup> Alaska H.R. 49, sec. 2 (amending Alaska Stat. § 10.60.010).

<sup>205</sup> *Id.* (amending Alaska Stat. §§ 10.60.030–10.60.500).

<sup>206</sup> Christian G. Vazquez, *A Business Entity By Any Other Name: Corporation, Community And Kinship*, 33 ALASKA LAW REV. 353, 377 (2016).

<sup>207</sup> At least 44 states have such statutes. *E.g.*, Wyo. Stat. § 17-16-830. See Francis J. Aquila, *Considering the Corporate Purpose*, [https://www.sullcrom.com/files/upload/PLJ\\_FebMar20\\_InTheBoardroom.pdf](https://www.sullcrom.com/files/upload/PLJ_FebMar20_InTheBoardroom.pdf).

<sup>208</sup> ANCSA 1987 Amendments, sec. 10, § 39, 101 Stat. 1788, 1805 (1988).

<sup>209</sup> ALASKA STAT. § 10.06.010(13).

example, there could be a statewide fund that all regional corporations contribute to. This concept would not be dramatically different from the existing requirement under ANCSA 7(i) for regional corporations to share a percentage of revenue with other regional corporations, or the requirement under 7(j) to share revenue with village corporations. An ANCSA amendment to 7(i) providing for regional corporations to direct funds to villages within their respective regions could even be more palatable than the current requirement under 7(i) to share revenue with corporations outside the region. But such a village fund would mean less overall revenue for all corporations. Shareholders—particularly those not living in villages—could oppose changes that reduce their dividends.

Another approach would be to change ANCSA to require ANCs to provide specific governmental services to tribal villages beyond scholarships and cash for funerals. This would force ANCs to take a role similar to B Corps, tribal governments, or regional non-profit organizations. For example, corporations could be required to assure the presence of utilities in villages. But such an amendment could be met with great resistance, given the lack of plumbing in numerous villages and the inability of many tribal governments, cities, and regional non-profit organizations to enable plumbing thus far. ANCs might be more willing to put money into a fund for such services rather than be entirely responsible for them. That said, it is possible that village corporations would be willing to take on responsibility for managing utilities such as electricity and community washeterias, where efficient management could allow for profits.

A more radical approach would be to amend ANCSA to allow tribes to merge with corporations and create new entities that would have all of the benefits of reservation-based federally recognized tribes as well as ANCSA corporations (including those associated with Section 8(a)). Such new entities could be given powers similar to Lower 48 tribes in terms of land jurisdiction (rather than having to ask the Bureau of Indian Affairs to take the land into trust, as the current state of the law may permit). This option may not be attractive for large and profitable corporations, but it could work well for a village corporation on good terms with the village tribal government. Since it would be optional, no tribe or corporation would be forced to merge.

Admittedly, this approach contravenes the original intent of ANCSA to rapidly end the reservation system in Alaska without litigation.<sup>210</sup> The State of Alaska, which now enjoys jurisdiction over traditional tribal lands owned by ANCs, would likely resist any such legislation.<sup>211</sup> But arguably, the original purpose of ANCSA is unworkable. It did not end litigation regarding control of tribal lands,<sup>212</sup> and the act has undergone numerous amendments

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<sup>210</sup> 43 U.S.C. § 1601.

<sup>211</sup> In *Akiachak Native Cmty. v. U.S. Dep't of Interior*, 827 F.3d 100 (D.C. Cir. 2016), the State of Alaska fiercely opposed the movement to allow Alaska tribal lands to be taken into trust (out of state jurisdiction).

<sup>212</sup> *See, e.g., Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998); *Akiachak Native Cmty. v. U.S. Dep't of Interior*, 827 F.3d 100 (D.C. Cir. 2016).

since its enactment in 1971.<sup>213</sup> Alaska tribes are increasingly considering how to put the limited amount of land they hold into trust, which could give them land jurisdiction (if only over a small parcel) similar to that of the Lower 48 tribes. An ANCSA amendment allowing ANC-tribal mergers would aid this process and increase efficiency. For example, there would be no duplication of COVID funding benefits in Alaska for merged entities, and village corporations would no longer need to compete with village tribal governments for funding and political influence.

The process of merging would pose a number of complex questions, particularly for mergers other than those involving one village corporation and one tribal village (where there would be a great deal of overlap between tribal membership and shareholders). The merged entity would need to determine membership in the new entity and provide services for shareholders who are descendants of original tribal members but lack the blood quantum for tribal services provided by the Bureau of Indian Affairs and Indian Health Service. But any merger between non-Native companies likewise faces complex questions regarding board membership, share allocation, and classes of shareholders. Further, tribes that allow descendants of the original members to be tribal members regardless of blood quantum<sup>214</sup> already grapple with how to provide for those not eligible for federal services.

A more moderate approach than changing ANCSA could address future Congressional appropriations and grants where ANCs are treated like tribes. Such opportunities could impose a responsibility that funded projects provide social benefits or infrastructure to tribes within the corporation's region.

### 3. Potential for Casinos

As noted above, Alaska Native Villages currently cannot benefit from casinos under the Indian Gaming Law. This is due to both the prohibition of casinos under Alaska law and the prohibition until recent times against Alaska tribal trust lands (upon which Indian casinos are based).<sup>215</sup> If the Alaska prohibition is changed; if tribes are able to acquire land (through purchase from a corporation under existing law or a merger under the above-proposed law); and if these lands gain trust status, then tribes could potentially profit from casinos.<sup>216</sup>

Clearly, there are a lot of “ifs” here. And even if these “ifs” are resolved in favor of tribes, it is still uncertain that casinos based on remote lands would be profitable. That said, a change in the Alaska casino law could benefit ANCs that currently hold land in tourist

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<sup>213</sup> See amendments listed in notes to 43 U.S. Code § 1601

<sup>214</sup> See, e.g., Dot Lake Constitution (2016) Art. 3(2) (all lineal descendent are eligible to be tribal members).

<sup>215</sup> 25 U.S.C. § 2710(b); 25 U.S.C. § 2703(4)(A) (defining Indian lands).

<sup>216</sup> *But see* Native Village of Eklutna v. U.S. Dept. of Interior (D.D.C. 19-02388 2021) (finding that the Native Village of Eklutna did not have authority to start a casino on a tribal member's Native Allotment).

hotspots, such as Doyon, Ltd.'s Kantisha Roadhouse in Denali Park in the interior of Alaska.

## VI. CONCLUSION

The challenges of village life are many, and they are likely to increase as state support for village infrastructure and utilities declines and climate change impacts worsen. Many village residents who can obtain jobs in urban areas will do so, further depleting the human resources in the villages.<sup>217</sup> This shift may benefit ANCs, as their shareholders may lose their attachment to their traditional lands and provide greater support for mineral extraction on these lands. But the villages, and the tribal culture associated with village lifeways, stand to lose.

While numerous entities and agencies have been supporting ANVs, it is not clear that future levels of support will be sufficient. Without a local economic base, tribal villages will cease to exist as physical settlements. Given the importance of villages as cultural refuges for Alaska Natives, their loss would be a loss to the identities of Alaska's indigenous peoples. Yes, Alaska Natives' identities and cultures will persist, but in an urbanized form that is largely devoid of traditional languages, lifeways, and self-governance.

To date, ANCs (particularly those at the regional level and their subsidiaries) have operated in a sphere almost entirely separate from that of tribal villages. ANCs have not taken on a governmental role in which they provide infrastructure or services to villages. Legislation could provide for a new, super entity formed from a tribal-corporate merger with the powers of both a reservation-based tribe and an ANC. Such legislation would implicitly acknowledge the failure of ANCSA to benefit tribal villages, while at the same time allowing individual ANCs to continue business as usual if they chose to do so. But this legislation would face resistance from the State of Alaska, and it is unlikely that there are enough champions in Congress to allow it to pass.

More moderate legislation specifically allowing for or even directing ANCs to provide for village infrastructure and services could enable ANCs to better support village lifeways. But any form of forced "charity" could face resistance by ANCs and Alaskans who do not like the government telling them what to do.<sup>218</sup>

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<sup>217</sup> Ristroph, *supra* note 5; Lowe, *supra* note 21.

<sup>218</sup> See, e.g., Eric Stone, *Alaska's health mandates aren't laws, so enforcement is murky*, KTOO (April 21, 2020), <https://www.ktoo.org/2020/04/21/alaskas-health-mandates-arent-laws-so-enforcement-is-murky/>; Mike Dunleavy, *Don't tell us Alaskans not to drill in the Arctic National Wildlife Refuge*, SEATTLE TIMES (Oct. 4, 2020), <https://www.seattletimes.com/opinion/dont-tell-us-alaskans-not-to-drill-in-the-arctic-national-wildlife-refuge/>; Lee Drutman, *Alaska: Land of Contradictions*, PACIFIC STANDARD (Oct. 2, 2008), <https://psmag.com/politics-and-law/alaska-land-of-contradictions-4209>.

It is more realistic that any charitable ANC actions will be inspired by a growing awareness of corporate social responsibility from the urban Native elites who increasingly control the fate of Alaska Native culture. With this enlightenment, their newfound COVID money, and the existing laws, ANCs could shift their business practices to better provide for community infrastructure, wellness programs, disaster preparedness, meaningful jobs, and training to enable villages to survive.