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**Traditional Tlingit Law & Governance
and Contemporary Sealaska Corporate Governance:
4 Core Values and a Jurisprudence of Transformation**

Micah S. McNeil¹

I. INTRODUCTION

This paper will give historical insight into the Tlingit Nation's governance and showcase how their government has changed over time. This paper will then talk about the unique form of governance adapted through the Sealaska Corporation and its various associate organizations. The Tlingit governmental structure was clan-based throughout its history but has evolved to a regional corporate and tribal government structure because of the Alaska Native Claims Settlement Act (ANCSA). Fundamental to Tlingit law and governance is holding to core values while embracing a jurisprudence of change and transformation. Though, I focus on the four core values of the Tlingit, *Wooch.Yax* (Balance) is foundational to understanding Tlingit law and governance and remains a key core value at the Sealaska Corporation in the contemporary era.

II. OVERVIEW: A ROADMAP FOR OUR JOURNEY

First, I will discuss the traditional Tlingit law and governance at the time of first contact with Europeans. I will then discuss the transitional period between the traditional tribal law and governance of the Tlingit Nation to the birth of the Sealaska Corporation through the Alaska Native Claims Settlement Act (ANCSA). Sealaska is an Alaska Native Regional Corporation comprising the Tlingit, Haida, and Tsimshian Nations. Next, I will give an overview of the

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contemporary governance of the Sealaska Corporation. I will then discuss how the Tlingit people are still applying Tlingit law, and values through the Sealaska Corporation. I will do so by reviewing the four core Tlingit values of *Haa Aani* (Our Land), *Haa Latseen* (Our Strength & Leadership), *Haa Shuká* (Past, Present, and Future Generations), and *Wooch.Yax* (Balance) and how the Sealaska Corporation incorporates them today. I will also compare the Tlingit clan governance structure with the current Sealaska corporate governance model and discuss the similarities and differences between the two. Finally, there are some issues that Sealaska and the Tlingit need to resolve, for which I will offer practical solutions.

Historically, the Tlingit form of governance was centralized in the clan. Yet, the large number of clans in the various Tlingit regions – otherwise known as *kwaans* - created a decentralized form of governance in the aggregate. Today the governance of the Tlingit has transitioned to a regional form of governance through Sealaska and the Central Council of the Tlingit and Haida Indian Tribes of Alaska (CCTHITA). However, similar to the ancient clan structure, the Tlingit also maintain a decentralized form of governance through Sealaska, the various Native village and urban corporations, as well as the organizations Sealaska is associated with.

III. HISTORIC TLINGIT LAW AND GOVERNANCE

A. Traditional Tlingit Spiritual Beliefs: Yéil

To understand Tlingit law and governance, it is important to recognize the traditional spiritual beliefs of the Tlingit. The Tlingit historically believed in a Supreme Being named Yéil.² Yéil was embodied in Raven, inferred to be Creator. Yéil created everything in the world and could also do anything.³ According to the Tlingit, Yéil existed before He was born and dwells in a place called *Naasshagiyéil*, which is in the interior of America.⁴ Yéil loves people but sometimes gets angry with them.⁵ However, Yéil has a Son who often intervenes with His Father on behalf of the people and delivers them from His Father's anger.⁶ The Son of Yéil also gives provision for the people.⁷

Traditionally, Yéil's words and deeds were the dogmas of the Tlingit's rules of life and faith. The Tlingit would say, "Just as Yéil lived and acted, so do we."⁸ One could infer from this statement that traditional Tlingit law originated

² ANDREW HOPE III, RAVEN'S BONES 1-25 (1982).

³ *Id.* at 25.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

in a supernatural source and was born in part out of their relationship with the Creator. This is similar to the Cherokee, who did not distinguish between their religious and natural laws, as they believed their laws were divine and came from a divine source.⁹

The statement “Just as Yéil lived and acted, so do we” could indicate that performance law has played an important role in Tlingit law and governance, both historically and contemporarily.¹⁰ Performance law is a common form of jurisprudence among indigenous people. Performance law blends the oral tradition with ceremonies and is dynamic in nature.¹¹ Performance law also expresses meaning through actions and processes.¹²

Among the Tlingit, this performance law can be observed at ceremonial potlatches through the oratory of elders, Tlingit song and dance performances, and the tremendous amount of giving that takes place at these events. Through these ceremonial potlatches, history, law, and values are transmitted from generation to generation. Performance law, in a contemporary sense, can also be observed at the Sealaska Corporation through its investments in organizations and programs that promote the culture of the Tlingit, Haida, and Tsimshian. Finally, this performance law is also manifest through Sealaska’s investments in programs that seek its shareholders’ social and economic well-being.

i. Tlingit Raven Story and a Jurisprudence of Transformation

In terms of Yéil, there appears to have been two characters called Raven.¹³ One was a Supreme Being, and the other was considered a Trickster. It is unclear if these were the same Being manifested in different forms that served different functions, but they exhibited different character qualities.

In the Tlingit story of “Raven and the Box of Light,” Yéil manifested as Trickster.¹⁴ In the story, the world was cloaked in darkness because an old chief held the light in a clan house.¹⁵ Raven transformed Himself into a hemlock needle in the stream.¹⁶ The old chief’s daughter drank the water containing the hemlock

⁹ RENNARD STRICKLAND, *FIRE AND THE SPIRITS: CHEROKEE LAW FROM CLAN TO COURT* 10-11 (1975).

¹⁰ See JAMES YOUNGBLOOD HENDERSON, *FIRST NATIONS JURISPRUDENCE AND ABORIGINAL RIGHTS* 167-70 (2006).

¹¹ *Id.* at 167-69.

¹² *Id.* at 169-70.

¹³ Tlingit Raven, Indians.org, <http://indians.org/articles/tlingit-raven.html> [https://perma.cc/DZ3L-MPPA].

¹⁴ Miranda Belarde-Lewis, There are many versions of the Tlingit ‘Raven’ story, but its truth and hopeful message are universal, Seattle Times (May 5, 2023).

<https://www.seattletimes.com/pacific-nw-magazine/there-are-many-versions-of-the-tlingit-raven-story-but-its-truth-and-hopeful-message-are-universal/> [https://perma.cc/ZYJ6-CU6C].

¹⁵ *Id.*

¹⁶ *Id.*

needle and was impregnated.¹⁷ She gave birth to Raven as a boy.¹⁸ In the story, the chief would not deny his grandson anything, and Raven asked to play with the chief's boxes.¹⁹ Initially, the chief refused, but Raven screamed until his grandfather relented.²⁰ Raven opened the box, and the stars flew into the sky.²¹ This same interaction with the grandfather happened again, and Raven opened another box, and the moon floated out of the box into the sky.²² Eventually, Raven grew tired of being a boy and transformed back into a Raven. When everyone was asleep, he opened the final box, and it released the Sun into the sky. Through this story, Raven transformed the world from darkness to light.²³

This story is similar to other tribal stories of transformation, which blend the core values of the people with jurisprudence of transformation.²⁴ In many cases, this jurisprudential philosophy of transformation is taught through the story of Trickster.²⁵ Trickster stories, in many cases, have an element of surprise, convey the contradictions and tensions of life, and express the value of change and transformation.²⁶ Trickster stories are similar to an asterisk in the oral tradition, as they encourage a person to step out of the box, innovate, and break taboos in order to, like Raven, release the light out of one's box for the benefit of the world. Like the Tlingit story of "Raven and the Box of Light," Tlingit law and governance reflect a journey of honoring timeless laws and values while embracing change and transformation.²⁷

B. Dualism: *Wooch.Yax*

Underlying Tlingit Law is a spiritual philosophy of dualism.²⁸ This Tlingit principle of dualism is called *Wooch.Yax*, which means "Balance."²⁹ *Wooch.Yax* includes the concepts of social and spiritual balance, as well as reciprocity and respect.³⁰ Historically, this was similar to other tribal legal traditions of harmony and balance that underlie the laws and values of other Tribes throughout the

¹⁷ Alaska Native Knowledge Network, *Raven Steals The Sun, Stars And Moon*, <http://www.ankn.uaf.edu/npe/culturalatlases/yupiaq/marshall/raven/RavenStealsSunStarsMoon.html> [https://perma.cc/B4S9-LNDE].

¹⁸ *Id.*

¹⁹ Singletary, *supra* note 14.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Henderson, *supra* note 10, at 161-63.

²⁵ *Id.* at 161.

²⁶ *Id.* at 162.

²⁷ *Id.*

²⁸ Rosita Faith Worl, Tlingit At.oow: Tangible and Intangible Property 34 (May 1998) (Ph.D. dissertation, Harvard University) (on file with author).

²⁹ Sealaska Heritage, *Unit 4, Clans and Moieties*, https://www.sealaskaheritage.org/sites/default/files/Unit%204_3.pdf [https://perma.cc/XW3Z-XQXV].

³⁰ Worl, *supra* note 28, at 83-84.

world.³¹ The principles of dualism, harmony, and balance are also similar to Anasazi jurisprudence which focused on harmony and balance with the ecosystem, nature, and spiritual forces.³² The Tlingit were also historically animistic and believed that all creation had a spirit called *yéik*.³³ The Tlingit believed it was necessary to live in harmony and balance with each other, the natural world, and the supernatural world.³⁴

This dualistic belief in harmony and balance created a binary social and governmental structure for the Tlingit Tribe.³⁵ The traditional Tlingit social structure was, and still is, comprised of two moieties.³⁶ These two moieties are divided between the Eagle and Raven moieties.³⁷ Historically it is believed that the Eagle people migrated from the interior of Canada³⁸ and the Raven people migrated from the south to Southeast Alaska before becoming one people.³⁹ In this dualistic structure, clans are organized under both the Eagle and Raven moieties.⁴⁰ Generally, under the Eagle moieties, inland animal crests represent the clans, for instance, the Bear or the Wolf clans.⁴¹ However, this is not mutually exclusive, as the Killer whale clan is organized under the Eagle moiety.⁴² Under the Raven moiety, the clans are generally offshore and sea-based mammals, such as the Coho Salmon clan or the Sockeye Salmon clan.⁴³ The association with different animal crests was generally based on pre-contact mythic time and supernatural encounters with animals, recorded in the Tlingit's oral tradition.⁴⁴

C. Marriage between Binary Moieties

Under this dualistic moiety structure, Tlingit law proscribed that a person could not marry within their clan or marry within their moiety.⁴⁵ A person could only marry someone in another clan that was part of the opposite moiety.⁴⁶ For

³¹ See, e.g., John W. Ragsdale Jr., *Anasazi Jurisprudence*, 22 Am. Indian L. Rev. 393, 417 (1998) (noting “the jurisprudence of the Anasazi . . . was in chosen service to rhythm, balance, and unity within the natural and human communities”).

³² *Id.*

³³ Hope III, *supra* note 1, at 1.

³⁴ WALTER R. ECHO-HAWK, IN THE COURTS OF THE CONQUEROR 359-60 (2010).

³⁵ Worl, *supra* note 28, at 83-84.

³⁶ *Id.* at 39.

³⁷ *Id.* at 33.

³⁸ *Id.* at 134-44.

³⁹ *Id.* at 128.

⁴⁰ NORA MARKS DAUENHAUR, RICHARD DAUENHAUR, HAA KUSTEEYÍ, OUR CULTURE 6 (Nora Dauenhaur & Richard Dauenhaur 1994).

⁴¹ Worl, *supra* note 28, at 130.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 41.

⁴⁵ ANKN, *Tlingit Indians of Southeastern Alaska*,

<http://www.ankn.uaf.edu/iks/subsistence/tlingit/appendixa.htm#:~:text=A%20person%20could%20not%20marry,other%20of%20these%20marriage%20groups> [https://perma.cc/83CB-N3P5].

⁴⁶ Worl, *supra* note 28, at 37.

instance, a person from the Coho salmon clan is part of the Raven moiety.⁴⁷ They could only marry a person from a clan that was part of the Eagle moiety.⁴⁸ An example might be a member of the Coho Salmon clan marrying a Killer whale clan member, who is a part of the opposite moiety, the Eagle moiety. This would also work the opposite way regarding a Killer whale clan member under the Eagle Moiety marrying a person in a clan under the Raven moiety.

Descendancy in Tlingit society was historically matrilineal.⁴⁹ The children were born into their mothers' moiety, clan and house group.⁵⁰ For instance, if the mother was from the Raven moiety and was part of the Coho Salmon clan, then the child would be born into the same Raven moiety, Coho Salmon clan and house group.⁵¹ The children would have equal ownership rights of their clan's property throughout their life with other clan members but also had a special relationship with their fathers' clan where they were a "Child" of the Father's clan.⁵² For instance, if their father was from the Killer Whale clan, they were called a "Child of the Killer Whale Clan."⁵³ They were not members of the opposite moiety or their father's clan, but they had a special status of being a "child" of their father's clan.⁵⁴ This was similar to a life-estate within the father's clan, where they had "use rights" to their father's clan property throughout their life.⁵⁵ However, like a life-estate, the use rights to their father's clan property would not be passed down to their children.⁵⁶ In contemporary times the identification with a clan is still very strong among Tlingit people, and the structure of the two moieties of Raven and Eagle remains intact.⁵⁷ Also, the matrilineal structure of being born into one's mother's clan is still intact.⁵⁸ The Tlingit law of marrying another person on the opposite moiety is not as strictly enforced or observed. However, there is an underlying awareness of the law of marrying a person in the opposite moiety and the need to practice this tradition.⁵⁹ In particular, there have been cases in contemporary times where a person was disqualified from being a clan leader because they married within their moiety.⁶⁰

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Sealaska Heritage, *Unit 7, Clans and Moieties*, https://www.sealaskaheritage.org/sites/default/files/Unit%207_2.pdf [https://perma.cc/28UX-P3K4].

⁵⁰ Worl, *supra* note 28, at 37.

⁵¹ *Id.* at 41, 46.

⁵² *Id.* at 54.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 56.

⁵⁶ *Id.*

⁵⁷ Central Council Tlingit & Haida Indian Tribes of Alaska, *Our History* <http://www.ccthita.org/about/history/index.html> [https://perma.cc/KTL5-S4HK].

⁵⁸ *Id.*

⁵⁹ Sealaska Heritage Q & A, *Q & A with Rosita Worl*, <https://www.sealaskaheritage.org/node/634> [https://perma.cc/WZ88-7RBF] (last visited Dec. 16, 2020, 6:54 PM).

⁶⁰ *Id.*

D. Haa Aaní: Our Land

Historically, the Tlingit owned almost all of Southeast Alaska exclusively.⁶¹ The Court of Claims in *Tlingit and Haida v US*, recognized the Tlingit's possession of the lands, water, and trade routes that compromised almost all of Southeast Alaska, and included trade routes into the interior of Canada.⁶² The Tlingit called this land *Haa Aaní*, which means "our land."⁶³ Haa Aaní was not just a geographical designation but represented a spiritual philosophy.⁶⁴ The philosophy of Haa Aaní recognized not only that Southeast Alaska was the homeland of the Tlingit, but that all creation had a spirit and it was necessary to be good stewards of the land in honor of past, current, and future generations.⁶⁵ Haa Aaní included the philosophy of using the land productively and not wasting the resources of the land.⁶⁶ As a result, Haa Aaní promoted stewardship of the land for future generations while encouraging industry and the productive use of the land, waters, and seas.⁶⁷

i. Kwaans: Geographical Regions

At the time of European contact, Haa Aaní was divided into 17 different tribal subdivisions called *kwaans*.⁶⁸ The kwaans were not governing structures but represented regions of the Tlingit where villages and clans were located.⁶⁹ Each kwaan covered a region of Southeast Alaska and was composed of resident clans that owned the land and waters of the area.⁷⁰ The kwaan was generally composed of at least two clans in a village that shared a reciprocal relationship, similar to a marriage.⁷¹ This reciprocal relationship between the two clans from opposite moieties included reciprocity in ceremonial potlatches.⁷² Also, through paired house groups of clans from opposing moieties, it provided the economic benefit of access to shared land and resources for both clans.⁷³ The reciprocal relationship between the two clans was a form of *Wooch.Yax* and had an underlying value of sharing and generosity between the clans. It also multiplied access to land and resources for each clan.

⁶¹ *Tlingit & Haida Indians of Alaska v. United States*, 177 F. Supp. 452, 457 (Ct. Cl. 1959) (hereinafter "Tlingit & Haida I").

⁶² *Id.* at 456.

⁶³ Sealaska Heritage, *Heritage Forward*, , <https://www.sealaskaheritage.org/about> [<https://perma.cc/CM6Z-5C59>] (last visited Aug. 31, 2022, 5:46 PM).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See *Tlingit & Haida I*, *supra* note 61, at 456.

⁶⁷ *Id.*, at 457.

⁶⁸ Worl, *supra* note 28, at 51-52.

⁶⁹ *Id.*

⁷⁰ *Id.* at 52.

⁷¹ *Id.* at 39, 52.

⁷² *Id.* at 38, 52.

⁷³ *Id.* at 39, 52.

This relationship with the opposing clan is still in force, especially through ceremonial potlatches, which always involve the two opposite clans from the Raven and Eagle moieties.⁷⁴ The Tlingit word for potlatch is *Ku.éex*, which is translated as “invitation to a ceremony.”⁷⁵ The potlatch is central to the culture of the Tlingit. Though a potlatch can serve different purposes, the Tlingit in contemporary times emphasize the memorial aspect of the ceremony. In a potlatch, if a member of a clan dies, the opposing clan will pay for the funeral expenses of the deceased clan member.⁷⁶ The potlatch has an element of wills and trust law as the opposite clan will pay for the funeral expenses, like a life insurance policy. For instance, if a Coho salmon clan member passes away, the Killer whale clan will pay the funeral costs.⁷⁷ Then the Coho salmon clan will repay the Killer Whale clan through the potlatch.⁷⁸ The potlatch is therefore a repayment of the clan debt. It includes the memorialization of the deceased clan member, the release of grief, and the giving of gifts to the opposing clan.⁷⁹ The giving in these potlatches can be extravagant and includes the giving of money and gifts between both clans. The underlying reason for the potlatch is the value of *Wooch.Yax*: to restore spiritual and social balance after losing a clan member and restore the opposing clan for paying for the funeral expenses. It is a powerful expression of *Wooch.Yax* and there is a sense of extravagant generosity, family, and a unique sense of community, identity, and spirituality that comes with the experience. The potlatch is, in some respects, an embodiment of the value of *Wooch.Yax* and could be described as an invitation to a ceremony to restore harmony and balance.

Because of this reciprocal relationship with the opposing clan, a Tlingit’s experience with their culture in terms of the potlatch is generally centered around their own clan and the opposite clan.⁸⁰ For example, a person who is a Coho Salmon will primarily experience the potlatch with the opposing clan, which could be the Killer whale clan. A Tlingit can grow up in Southeast Alaska, and their core ceremonial and cultural experience with potlatch will primarily be with their own clan and their father’s opposing clan. This does not mean they are not invited to other potlatches or involved in different Tlingit events, but like ancient times, Tlingits still live within somewhat of a virtual kwaan, where the potlatch is concerned, as their primary experience of the potlatch will be with their own clan

⁷⁴ *Id.* at 37-38.

⁷⁵ Sealaska Heritage, *Unit 8, Ku.éex (Ceremonies)*, https://www.sealaskaheritage.org/sites/default/files/Unit%208_3.pdf [https://perma.cc/A9KL-TTD5] (last visited Mar. 5, 2022, 2:29 PM).

⁷⁶ Robert D. Baker, Charles W. Smythe and Henry C. Dethloff, *A New Frontier: Managing the National Forests in Alaska, 1970-1995*, 10 (1995) (unpublished draft manuscript) <https://docs.house.gov/meetings/ii/ii24/20130516/100839/hhrg-113-ii24-wstate-mallottb-20130516.pdf> [https://perma.cc/R4KH-22TZ].

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Worl, *supra* note 28, at 38-39.

and their father's clan. Therefore, in a ceremonial and cultural sense, the principle of *Wooch.Yax* is still very much in force.

Historically, the kwaans were associated with one or more principal villages and were usually along the shoreline of Southeast Alaska.⁸¹ The kwaan included both the permanent village of the clans as well as their hunting and fishing territories.⁸² The members of the Tlingit clans generally had two homes during the year within the kwaan region. During summer, all community members would migrate to smaller villages, which were generally hunting and fishing camps owned by the clans.⁸³ The Tlingit lived a fairly structured life between their winter homes, then migrating to their hunting and village camps during the summer and returning to the shoreline villages for the winter.⁸⁴ The hunting and fishing territories were similar to farmers going to harvest.⁸⁵ The Tlingit would harvest from their clan-owned fishing camps and bring the fish and game back to the village for the winter.⁸⁶ Because of the abundance of natural resources, including great supplies of fish, wild game, and berries, the Tlingit as a whole generally enjoyed a surplus, which led to an advanced tribal culture and material abundance.⁸⁷

Many of the Tlingit were also exceptional traders who traded within their own tribe, with the Athabaskan in the interior⁸⁸ and traveled as far south to Mexico using their cedar canoes to travel long distances.⁸⁹ This was also a form of *Wooch.Yax* as it reflected the philosophy of the interrelationship between the Tlingit, as well as other tribes, nations, and other institutions. In this case, *Wooch.Yax* was expressed through the interrelationship of commerce with other tribal nations.

ii. Clans: The Traditional Core Social Unit

Within the kwaan, as noted earlier, the clans historically owned the lands and waters in the area.⁹⁰ Traditionally, the clan was the core of the social unit.⁹¹ The clans' property rights were communally based rather than individually based.⁹² In other words, the clan owned the property rather than the individual.⁹³

⁸¹ Baker, Smythe and Dethloff, *supra* note 76, at 9.

⁸² WALTER R. GOLDSCHMIDT & THEODORE H. HAAS, HAA AANI, OUR LAND 17 (1998).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 18.

⁸⁷ Worl, *supra* note 28, at 30.

⁸⁸ Baker, Smythe and Dethloff, *supra* note 76, at 10.

⁸⁹ Central Council Tlingit & Haida Indian Tribes of Alaska Our History, *supra* note 57.

⁹⁰ Baker, Smythe and Dethloff, *supra* note 76, at 10.

⁹¹ Worl, *supra* note 28, at 41.

⁹² *Id.* at 7.

⁹³ *See id.* at 59.

The clan conducted subsistence activities and ceremonies.⁹⁴ The clan also owned the intangible and tangible property of the clan into perpetuity.⁹⁵ The Tlingit word for this property right of the clan is *at.oow*, which means “an owned or purchased object.”⁹⁶ The intangible property rights included songs, stores, names, and crests.⁹⁷ These were essentially intellectual property rights.⁹⁸ The tangible property rights included land, physical structures, warriors’ armor and weaponry, fishing grounds, salmon streams, hunting territories, as well as utilitarian objects, equipment, and slaves.⁹⁹ This clan system of ownership was so pervasive, that, in essence, every part of Southeast Alaska was marked as owned by one of the clans.¹⁰⁰ This was unless the land was barren and then it was used as a marker to define the limits of land ownership.¹⁰¹ However, if there was a stream not owned by a clan, it was considered open for public use by those who needed it.¹⁰²

The individual members owned the tangible and intangible property equally and in common with other clan members.¹⁰³ The basis of this property right was membership in the clan.¹⁰⁴ The clan member could not sell clan property without the clan’s consent.¹⁰⁵ Clan ownership of the intangible and tangible property rights was in perpetuity¹⁰⁶, and new members born into the clan through their mother had equal rights to the clan’s property.¹⁰⁷ The clan ownership could be described as communal fee simple title¹⁰⁸ as it went into perpetuity, with new

⁹⁴ Rosita Kaaháni Worl, Ph.D., Sealaska Heritage Inst., Presented to Culturally Responsive Education Conference (Aug. 2, 2018).

⁹⁵ Worl, *supra* note 28, at 3.

⁹⁶ Marriman Expedition Retraced, *Rosita Worl – Introduction to the Tlingit Culture and Repatriation*, <https://www.pbs.org/harriman/explog/lectures/worl.html> [<https://perma.cc/4HZ5-J298>] (last visited Aug. 31, 2022, 5:50 PM).

⁹⁷ Worl, *supra* note 28, at 3.

⁹⁸ *Id.* at 4.

⁹⁹ *Id.* at 3.

¹⁰⁰ *Tlingit & Haida I*, *supra* note 61, at 457.

¹⁰¹ *Id.* at 458.

¹⁰² Goldschmidt & Haas, *supra* note 82, at 15.

¹⁰³ Worl, *supra* note 28, at 232.

¹⁰⁴ *Id.* at 231.

¹⁰⁵ *Id.* at 232.

¹⁰⁶ *Perpetuity Law and Legal Definition*, USLEGAL.COM, <https://definitions.uslegal.com/p/perpetuity> [<https://perma.cc/P4K2-4HCW>] (last visited Mar. 5, 2022, 3:04 PM). Perpetuity is a legal term meaning forever or something that is perpetual or unending.

¹⁰⁷ Worl, *supra* note 28, at 231.

¹⁰⁸ Jim Kimmons & Hannah Hottenstein, *What Is Fee Simple Ownership?*, THE BALANCE, <https://www.thebalancesmb.com/fee-simple-ownership-in-real-estate-2866601> [<https://perma.cc/5PE6-MJZL>] (last visited Mar. 5, 2022, 3:04 PM). Fee simple title, in an Anglo-American legal sense, is the absolute ownership of land of potentially infinite duration. It can be transferred to another through a sale, will, or gift. It is the most common form of title to homeownership in America. Worl, *supra* note 28, at 9. The Tlingit had a similar concept of title to property and land. However, it was communally based and required the consent of the clan to sell the land or property. The legal title of the land or property by the clan was exclusive and was considered to be of infinite duration unless extinguished with the permission of the clan.

members being born into the clan. In fact, the names of individual clan members were owned by the clan as a form of *at.oow*, and were passed down from generation to generation.¹⁰⁹ It was believed the clan was immortal, with the same individuals existing in the clan through the passing on of the name.¹¹⁰ The names could be described as being somewhat of an office or title, as it represented the embodiment of that person in the clan.¹¹¹

iii. House Groups

The Tlingit also had house groups similar to subsidiaries.¹¹² The house groups were basically extended family units that lived in the historic Tlingit houses with formal names that represented their house.¹¹³ The house members were a socio-economic unit but were still members of the clan and moiety they were part of.¹¹⁴ Though the clans are still very strong in Southeast Alaska, generally, the traditional Tlingit house family structure has been replaced by the nuclear family.¹¹⁵ However, an undercurrent of the house group is still very prevalent among the Tlingit people today, expressed through one's association with a particular extended family. It might be said in a practical sense that though there are still recognized house affiliations, it has been supplemented by a family's last name, representing a large extended family one is a part of.¹¹⁶

IV. TLINGIT GOVERNANCE STRUCTURE

A. Decentralized Governance

In terms of the historic Tlingit form of governance, it was largely a decentralized form of governance.¹¹⁷ For instance, though the Tlingit clans were organized under the two Eagle and Raven moieties, they did not have leaders over moieties.¹¹⁸ In other words, no universal leader of the Raven or Eagle moiety existed.¹¹⁹ Instead, the leadership among the Tlingit was found with the clan leaders and house leaders.¹²⁰ The name for a clan leader was *shaadei hani*, which is translated as "leader".¹²¹ The house leader was *hits'aati*, which meant "keeper

¹⁰⁹ Worl, *supra* note 28, at 41-42.

¹¹⁰ *Id.* at 41, 43.

¹¹¹ *See Id.* at 42.

¹¹² *Id.* at 46.

¹¹³ *Id.* at 46-47.

¹¹⁴ Sealaska Heritage Q & A, *supra* note 59.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Worl, *supra* note 28, at 31.

¹¹⁸ *Id.* at 39.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 57.

¹²¹ *Id.* at 58.

of the house”.¹²² The leader of each clan held the property in trust for the members.¹²³ The clan leader served a fiduciary role and protected the property of the clan for the benefit of the clan.¹²⁴ The clan leaders enjoyed a special status within their clan, but they did not have the authority to dispose of communally held property without the consent of the clan.¹²⁵

Though there were no universal leaders over the Raven or Eagle Moieties, one clan leader from each moiety was recognized as the community leader in the village.¹²⁶ These two leaders were generally senior clan leaders and were top leaders in community-wide actions.¹²⁷ These initiatives could be for either peaceful or war activities.¹²⁸ As a result, each village had two leaders.¹²⁹

B. Clan Leadership Training

The clan leader went through rigorous training, usually through his maternal uncle, who raised him.¹³⁰ This concept of leadership training by the Tlingit is called *Haa Latseen*, which is leadership training and the “way of the warrior”.¹³¹ The clan leader was expected to be “exemplary” in the various spheres of Tlingit life and was expected to exercise leadership in the political, ceremonial, and economic aspects of the clan’s life.¹³² Some of the responsibilities of the clan also included being a spokesman in “ceremonial activities and political actions”.¹³³ The clan leader, in consultation with the council, would also decide when salmon streams could be used by other clans, as well as hold memorial feasts where the clan’s crests and ceremonial property could be displayed.¹³⁴ Clan leaders at times served as lead warriors called *x’eigaa kaa*.¹³⁵ The clan leader would also often trade on behalf of the tribe.¹³⁶

C. Council Assembly

The process of governmental decisions was made traditionally through council assembly.¹³⁷ The house leaders would meet to discuss issues and then agree upon a course of action.¹³⁸ The house leaders would then convene at a

¹²² DAVID S. CASE & DAVID A. VOLUCK, *ALASKA NATIVES AND AMERICAN LAWS* 160 (3rd ed., 2012).

¹²³ Worl, *supra* note 27, at 58-59.

¹²⁴ *Id.* at 63.

¹²⁵ Rosita Kaaháni Worl, *supra* note 94.

¹²⁶ Goldschmidt & Haas, *supra* note 81, at 11.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Worl, *supra* note 28, at 60.

¹³¹ Sealaska Heritage, *supra* note 63.

¹³² Worl, *supra* note 28, at 60.

¹³³ Baker, Smythe and Dethloff, *supra* note 75, at 10.

¹³⁴ *Id.*

¹³⁵ Worl, *supra* note 28, at 63.

¹³⁶ Baker, Smythe and Dethloff, *supra* note 75, at 10.

¹³⁷ Sealaska Heritage Q & A, *supra* note 58.

¹³⁸ *Id.*

council assembly, in which every adult male of the local clan would have an equal right to express an opinion.¹³⁹ This meeting also included women of high status and older women. In the clan meeting, the senior ranking clan leader would preside over the clan council meeting.¹⁴⁰ The clan used majority rule to make decisions, where the decisions made by the house leaders were generally adopted.¹⁴¹

At the clan level, the governmental decision making was centralized within the individual clans.¹⁴² However, as there were 17 distinct kwaan's with many clans within each kwaan, the governance model as an aggregate was decentralized with most of the clans' governmental decisions dispersed throughout Southeast Alaska. Sometimes the clans would unite for war in temporary federations, but generally, the governance was done through the clans.¹⁴³

There are studies that suggest the Tlingits were beginning to centralize at the time of contact, at the kwaan level.¹⁴⁴ This was because population growth and clans were beginning to be established in more than one village.¹⁴⁵ Also, through extending "use rights" to non-clan members, the non-clan members were beginning to have access to property outside their clan.¹⁴⁶ As a result villages were beginning to emerge as a socio-economic force.¹⁴⁷ There is a theory that the Tlingit were on a path toward consolidation, which may have led to a more centralized form of governance among the Tlingit in the contemporary era.¹⁴⁸

V. TRANSITION TO ANCSA

A. The Alaska Native Brotherhood (ANB)

Before reviewing Tlingit governance and law at the Sealaska Corporation, I will discuss the role Tlingits played in the Alaska Native Claims Settlement Act (ANCSA), which eventually led to the creation of the Sealaska Corporation. This transition to settling the land claims in Alaska also reveals a steady shift in the governance of the Tlingit that would later manifest at Sealaska.

The Tlingit, Haida, and Tsimshian were instrumental in the land claims for Alaska Natives through the Alaska Native Brotherhood (ANB) and later the

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Thomas F. Thornton, *From Clan to Kwaan to Corporation: The Continuing Complex Evolution of Tlingit Political Organization*, 17(2) WICAZO SA REVIEW 175 (2002).

¹⁴⁴ Worl, *supra* note 28, at 53.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

Alaska Federation of Natives (AFN).¹⁴⁹ This tradition of *Haa Latseen* – leadership – was very strong among the Tlingit, who not only initiated civil rights for Alaska Native to vote but spearheaded the land claims for Alaska Natives.¹⁵⁰ The move towards land claims was driven by the Tlingit concept of *Haa Aani* – “Our Land”. Historically, the land claims movement was inaugurated by Peter Simpson, a Tsimshian from Canada and a devout Christian.¹⁵¹ He served a prophetic role for the Tlingit people and was considered the “father of the land claims” in Alaska, along with William Paul, a Tlingit lawyer.¹⁵² There is a legendary conversation between Peter Simpson and William Paul, in which Peter Simpson asked William Paul whose land Alaska belonged to.¹⁵³ William Paul thought about it for a moment. Then he replied: “We do.” Peter Simpson replied: “Then fight for it!”¹⁵⁴ These words of Peter Simpson to William Paul represented the beginning of the land claims movement in Alaska.¹⁵⁵

One of the key organizations that started the Alaska Native land claims movement was the Alaska Native Brotherhood (ANB), founded in 1912.¹⁵⁶ William Paul, Peter Simpson, and others were the foundational members of ANB.¹⁵⁷ It was primarily composed of Tlingit Christians.¹⁵⁸ However, membership in the organization was organized around *kwaans* or villages.¹⁵⁹ This suggested a shift to more of a regional form of governance.¹⁶⁰ ANB pressed aggressively for “voting rights, desegregation, and social services, as well as advancing the first Tlingit and Haida land claims in Alaska.”¹⁶¹ In continuation of the mandate of *Haa Aani*, in 1955, William Paul brought a land claims suit for compensation from Congress for lumber taken from the Tee-Hit Ton.¹⁶² The Tee-Hit Ton were a Tlingit clan whose homeland was in the Tongass Forest.¹⁶³ The Tee-Hit Ton claimed “full proprietary ownership” based on aboriginal title.¹⁶⁴

¹⁴⁹ Thornton, *supra* note 143, at 181.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Sitka Maritime Heritage Society, *New: Sitka Maritime History for Walking Tour*. (last visited Aug. 31, 2022, 5:56 PM), <http://www.sitkamaritime.org/maritime-history.html>.

¹⁵³ Dave Kiffer, *Canadian Tsimshian Was A Leader For Alaska Native Rights Peter Simpson Also Owned Alaska's First Native Business*, http://www.sitnews.us/Kiffer/PeterSimpson/021810_peter_simpson.html [<https://perma.cc/C9ZX-9LXU>] (last visited Aug. 31, 2022, 6:56 PM).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Thornton, *supra* note 143, at 181.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Alaska Native Brotherhood, Alaska Native Sisterhood Grand Camp, *ANB/ANS Grand Camp*, <https://www.anbangc.org/about-us/history/> [<https://perma.cc/DG9R-BALS>] (last visited Dec. 16, 2020, 5:58 PM).

¹⁶² Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 75 S. Ct. 313, 99 L. Ed. 314 (1955).

¹⁶³ *Id.* at 314.

¹⁶⁴ *Id.* at 316.

This aboriginal title was based on the clan ownership of the land by the Tee-Hit Ton.¹⁶⁵ In one of the worst Supreme Court decisions in Federal Indian law history, the Supreme Court ruled against the Tee-Hit Ton, denying them compensation for a taking under the 5th Amendment.¹⁶⁶ However, the decision laid the groundwork for the Alaska Native Claims Settlement Act (ANCSA), as it was the first time the Supreme Court implicitly recognized aboriginal title in Alaska.¹⁶⁷

B. IRA Transition in Alaska

With the passage of the Indian Reorganization Act (IRA) in 1934, the IRA governments eventually extended to Alaska.¹⁶⁸ During this period, Tlingit kwaans were formed into IRA village governments.¹⁶⁹ However, this was a temporary governmental structure for the holding of land¹⁷⁰ and as a primary focal point of tribal governance. The land IRA governments previously held was, in most cases, transferred over to either Alaska Native village or regional corporations at the passage of ANCSA in 1971.¹⁷¹

In 1935, Congress authorized the Tlingit and Haida to form a lawsuit to obtain compensation for extinguishing aboriginal title land in the Tongass Forest.¹⁷² The Department of the Interior supervised the creation of a separate entity to manage the suit, and the Central Council of Tlingit and Haida Indian (CCTHITA) came into existence.¹⁷³ CCTHITA was composed of a delegation from the Tlingit IRA kwaan (village) governments and the Haida.¹⁷⁴ A

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 323.

¹⁶⁷ PETER M. METCALFE, *THE SWORD AND THE SHIELD, THE DEFENSE OF ALASKA ABORIGINAL CLAIMS BY THE ALASKA NATIVE BROTHERHOOD* 15 (2010), available at <http://www.ankn.uaf.edu/ANCR/Southeast/Chronology/LR%20Final%20Sword%20and%20Shield.pdf>.

¹⁶⁸ Thornton, *supra* note 143, at 181.

¹⁶⁹ *Id.* at 182.

¹⁷⁰ Perkins Coie, Biden Administration Authorizes Trust Lands for Alaska Tribes, Proposes Changes To Streamline Trust Regulations, (last visited March 9, 2023 10:00 PM), <https://www.perkinscoie.com/en/news-insights/biden-administration-authorizes-trust-lands-for-alaska-tribes-proposes-changes-to-streamline-trust-regulations.html>. In 2022, the Department of Interior (DOI) announced that it could acquire land into trust for Alaska's federally recognized tribes. The DOI in particular approved a land into trust acquisition for the Central Council of Tlingit and Haida Indian Tribes. This was a result of a Solicitor's opinion, M-37076, which opined that Alaska statehood and the Alaska Native Claims Settlement Act did not extinguish the Secretary of Interiors right to acquire land into trust for tribal governments in Alaska under Section 5 of the IRA. This could lead to many IRA and tribal governments in Alaska acquiring fee land into trust, to re-establish tribal homelands under the trust relationship with the Federal government.

¹⁷¹ Federal Indian Law for Alaska Tribes, *Alaska Native Claims Settlement Act (ANCSA) 1971*, (last visited Aug. 31, 2022, 6:00 AM),

https://www.uaf.edu/tribal/112/unit_3/alaskanativeclaimssettlementactanca1971.php.

¹⁷² Thornton, *supra* note 143, at 183.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

comparative tribal governance model might be the 8 Northern Pueblos¹⁷⁵, though in this case, it was a delegation from the IRA villages of the Tlingit and Haida.¹⁷⁶ The lawsuit ended up being *Tlingit and Haida Indians of Alaska v. United States*¹⁷⁷, in which the Tlingit and Haida eventually settled with the Court of Claims in 1968.¹⁷⁸ This settlement was for a taking of the Tongass Forest, Glacier Bay National Park, and the extinguishment of fishing rights.¹⁷⁹ I will discuss this case further in the paper in terms of its impact this settlement had on the land claims of the Tlingit and Haida through ANCSA. However, an important by-product of this case was that CCTHITA continued as a Tribal government and eventually was Federally recognized.¹⁸⁰ CCTHITA remains a regional Tribal Government with delegates from the various villages throughout Southeast Alaska¹⁸¹ and has extended its delegation to include representatives from Washington State.¹⁸²

C. Alaska Federation of Natives

In 1966, the Alaska Federation of Natives (AFN) was formed for the purpose of land claims for Alaska Natives, which continued the fight of ANB and William Paul.¹⁸³ The AFN earned an initial victory when the Secretary of Interior Stuart Udall executed a land freeze on Native lands until the Alaska Native land claims were settled.¹⁸⁴ This forced a resolution by the State of Alaska, Alaska Native people, and the Federal government for aboriginal land claims before any further land selections could take place in the state of Alaska.¹⁸⁵

The discovery of oil at Prudhoe Bay was the eventual turning point for the passage of the Alaska Native Claims Settlement Act, as the Trans-Alaska Pipeline System (TAPS) would need to cross over land that various Alaska Native groups claimed.¹⁸⁶ This land freeze put the building of the TAPS and oil exploration on

¹⁷⁵ Eight Northern Indian Council, Inc., *About*, <https://www.enipc.org/about> [<https://perma.cc/3VVH-ZUSG>] (last visited March 19, 2022, 4:53 PM).

¹⁷⁶ Thornton, *supra* note 143, at 183.

¹⁷⁷ *Tlingit and Haida Indians of Alaska v. United States*, 389 F.2d 778 (Ct. Cl. 1968) [hereinafter “Tlingit & Haida II”].

¹⁷⁸ Thornton, *supra* note 143, at 183.

¹⁷⁹ *Id.* at 177, 191.

¹⁸⁰ *Id.* at 183-184.

¹⁸¹ Central Council Tlingit & Haida Indian Tribes of Alaska, *Delegates*, <http://www.ccthita.org/government/delegates/list/index.html> [<https://perma.cc/9VJE-B9WW>] (last visited Aug. 31, 2022, 6:03 PM).

¹⁸² *Id.*

¹⁸³ ANCSA Regional Association, *About the Alaska Native Claims Settlement Act*, <https://ancsaregional.com/about-ancsa> [<https://perma.cc/M3KL-8JL5>] (last visited Aug. 31, 2022, 6:03 PM).

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

hold.¹⁸⁷ This brought strong public pressure to settle land claims in Alaska.¹⁸⁸ After intense negotiations among the Alaska Federation of Natives (AFN) delegates, various Alaska Native groups, and state and federal government representatives, Congress finally passed Alaska Native land claims legislation in 1971.¹⁸⁹

VI. ANCSA AND THE BIRTH OF SEALASKA

With the passage of the Alaska Native Claims Settlement Act (ANCSA) in 1971, Alaska Natives received 44 million acres of land.¹⁹⁰ Alaska Natives, through this legislation ceded 321 million acres, representing 90% of the state and which the federal government and state governments appropriated.¹⁹¹ In compensation for this land cession, Alaska Natives received 926 million dollars, representing around \$3 an acre.¹⁹²

A. ANCSA: A Unique Innovation

ANCSA was unique as instead of creating a reservation system for Alaska Natives, it established 12 Native Regional corporations and over 200 village corporations¹⁹³ to manage the funds received and land to meet the “real economic and social needs” of Native shareholders.¹⁹⁴ These corporations were based on the region the Alaska Natives came from, which included the Tlingit, Haida, Tsimshian, Inuit, Athabaskans, and Aleut in their various regions throughout Alaska.¹⁹⁵ Most Natives are enrolled in both their regional corporations and either a village or urban corporation.¹⁹⁶ Based on the ANCSA, generally a Native will have 100 shares of stock in their Regional Corporation and 100 shares in their village or urban corporation.¹⁹⁷

B. Sealaska Regional Corporation

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ THOMAS R. BERGER, VILLAGE JOURNEY 24 (1985).

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ ANCSA Regional Association, *supra* note 183.

¹⁹⁴ Cultural Survival, *ANCSA, An Act of Self-Determination: Harnessing Business Endeavors to Achieve Alaska Native Goals*,

<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/ancsa-act-self-determination-harnessing-business-endeavors> [<https://perma.cc/RRV6-98JF>] (last visited Aug. 31, 2022, 6:58 PM).

¹⁹⁵ ANCSA Regional Association, *supra* note 183.

¹⁹⁶ Berger, *supra* note 190, at 24.

¹⁹⁷ *Id.*

Sealaska Corporation is one of the regional corporations established by ANCSA.¹⁹⁸ Its shareholders are members of the Tlingit, Haida, and Tsimshian Nations.¹⁹⁹ It has around 22,000 shareholders and is the largest Regional Corporation in Alaska.²⁰⁰ Sealaska is located in Juneau, Alaska.²⁰¹ Though the largest Native Regional Corporation in terms of shareholders, it has the least amount of land of the regional Corporations.²⁰² Sealaska owns 362,000 acres of surface estate and 560,000 acres of subsurface estate.²⁰³ This represents 1.6% of the original land base of the Tlingit nation.²⁰⁴ This is also a small portion compared to 44 million acres settled with Alaska Natives.

C. Sealaska & Section 14(h) of ANCSA

The reason for this disparity is that under section 12 of ANCSA, each regional Corporation, except Sealaska, received land in proportion to its number of shareholders residing in the region of the Corporation or to the relative size of the area to which the Regional Corporation had aboriginal land claims.²⁰⁵ Sealaska instead received its land under section 14(h) of ANCSA, a separate section of ANCSA from the other Corporations.²⁰⁶ As a result, Sealaska did not receive land in proportion to the number of shareholders or in proportion to its aboriginal land claims.²⁰⁷

The reason for this, as referenced earlier, was the decision in *Tlingit and Haida Indians of Alaska v US*.²⁰⁸ Pursuant to the case, the Tlingit and Haida received compensation through the Court of Claims for the taking of 17 million acres in the Tongass National Force and 3.3 million acres in the Glacier Bay National Park.²⁰⁹ The 1968 settlement provided by the Court of Claims did not compensate the Tlingit and Haida for 2,628,207 acres of land subject to aboriginal

¹⁹⁸ We Are Sealaska, *With inspiration from our ancestors, we serve communities, shareholders, and future generations*, <https://www.sealaska.com/about> [<https://perma.cc/D93Y-5CZD>] (last visited Aug. 31, 2022, 6:59 PM).

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Sealaska, *Contact Us*, <https://www.sealaska.com/about/contact> [<https://perma.cc/FS3M-HTQ6>] (last visited Aug. 31, 2022, 6:59 PM).

²⁰² *Committee on Natural Resources Subcommittee on Indian and Alaska Native Affairs United States House of Representatives Legislative Hearing on H.R. 740 and H.R. 1306*, 113th Cong. 3 (2013) [(hereinafter “Sealaska Testimony on H.R. 740 and H.R. 1306”) (statement by Byron Mallott, Direct of Sealaska Corporation), <https://docs.house.gov/meetings/ii/ii24/20130516/100839/hrg-113-ii24-wstate-mallottb-20130516.pdf> [<https://perma.cc/5KXH-XW5V>].

²⁰³ We Are Sealaska, *supra* note 198.

²⁰⁴ *Id.*

²⁰⁵ *Sealaska Testimony on H.R. 740 and H.R. 1306*, at 2.

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 3.

²⁰⁸ *Tlingit & Haida II*, *supra* note 177, at 778.

²⁰⁹ *Sealaska Testimony on H.R. 740 and H.R. 1306*, at 3.

title.²¹⁰ The Court of Claims also determined the value of the lost Indian fishing rights at \$8,388,315²¹¹ but did not compensate for those rights.²¹² The actual compensation of \$7,546,053 that the Tlingit and Haida Tribe received was a fraction of the fair market value of the Tongass National Forest and Glacier Bay National Park.²¹³ The settlement of the taking of both the Tongass National Forest and the Glacier Bay National Park, both part of the aboriginal homeland of the Tlingit Nation, worked out to just .43 cents per acre.²¹⁴

Therefore, as a result of the previous settlement in *Tlingit and Haida Indians of Alaska v. United States* in 1968, Sealaska received its land through section 14(h) of ANCSA instead of section 12.²¹⁵ Southeast Alaska Natives represented 20% of the Native population in Alaska in 1971 but ended with receiving a small portion of their land returned through ANCSA.²¹⁶ As a result, the Tlingit and Haida people who led the fight for Native Land claims lost most of their land.²¹⁷

D. Sealaska Corporate Form

The land Sealaska now owns is in Southeast Alaska. This is the traditional homeland of the Tlingit, Haida, and Tsimshian people.²¹⁸ Like other regional corporations, Sealaska has surface and subsurface rights to the land.²¹⁹ The land is held in fee simple status²²⁰ and does not require the Secretary of the Interior's approval or an Act of Congress to sell the land, which is unique among Native American Nations in the US.²²¹ The various Southeast Village Corporations received surface rights to the land.²²² However, the Regional Corporations, including Sealaska, have subsurface rights to the Village Corporations' land.²²³

²¹⁰ *Id.*

²¹¹ *Tlingit & Haida II*, *supra* note 177, at 791.

²¹² *Sealaska Testimony on H.R. 740 and H.R. 1306*, at 3.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ Sealaska, *With inspiration from our ancestors, we serve communities, shareholders, and future generations*, <https://www.sealaska.com/about> [<https://perma.cc/3BPF-TNQQ>] (last visited Dec. 16, 2020, 6:59 PM).

²¹⁹ ANCSA Regional Association, *supra* note 183.

²²⁰ TANA FITZPATRICK, CONG. RESEARCH SERV., ALASKA NATIVE LAND AND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT (ANCSA): OVERVIEW AND SELECTED ISSUES FOR CONGRESS (2021), <https://sgp.fas.org/crs/misc/R46997.pdf> [<https://perma.cc/Z2DY-NR9F>]. The land held by Alaska Native Corporations (ANC) is in fee simple title, which means it is freely alienable or transferable. The land is privately held by ANCs. This is unlike tribal land in the lower 48, where the land is held in trust by the Federal Government.

²²¹ JUDITH V. ROYHSTER, MICHAEL C. BLUMM, ELIZABETH ANN KROUK WARNER, NATIVE AMERICAN NATURAL RESOURCE LAW 112 (4th ed. 2018).

²²² ANCSA Regional Association, *supra* note 183.

²²³ *Id.*

As part of the ANCSA settlement Section 7(i), the 12 regional Corporations must share 70% of their subsurface revenues with the other 12 Regional Corporations.²²⁴ However, the Regional Corporation is one of the 12 regional corporations included in the sharing of 70% of the revenues.²²⁵ This can amount to the Regional Corporation keeping around 51% of its revenues.²²⁶

After 70% of the subsurface revenues are shared between the 12 Regional corporations, as part of Section 7(j) of ANCSA, the Regional Corporations share 50% of their subsurface revenues with the Village Corporations.²²⁷ As a result, though the Village Corporations do not have rights to their subsurface land, they get a certain percentage of the revenues back through Section 7(j) of ANCSA.²²⁸

According to ANCSA, Sealaska and the other Regional Corporations were required to be established as for-profit corporations.²²⁹ The Village Corporations were allowed to choose a for-profit or non-profit corporate model.²³⁰ However, all the Village and Urban Corporations chose to be for-profit corporations.²³¹ The ANCSA Regional Corporations, including Sealaska, were incorporated as for-profit Corporations under Alaska State Law.²³² However, the Regional corporations are not under the jurisdiction of the State of Alaska but under the jurisdiction of Congress.²³³ Any type of authority the State of Alaska may have relative to ANCSA Regional Corporations is delegated by Congress. Still, Congress holds the ultimate jurisdiction over ANCSA Corporations, including plenary power.²³⁴ ANCSA Corporations also do not have the same relationship with the Secretary of Interior as other Federally-recognized Tribes in the US, where the Secretary of Interior has to be consulted in terms of making business decisions.²³⁵ ANCSA corporations are largely autonomous from the Secretary of Interior when making business decisions regarding the direction of the Corporation.²³⁶ This is because the Congressional policy focus of ANCSA was Native self-determination over Alaska's tribal lands.²³⁷ Historically Alaska

²²⁴ *Id.*

²²⁵ Telephone Interview with Chris McNeil, Jr., Former CEO, Sealaska Corporation, in Santa Fe, NM (Oct. 17, 2020) (transcript on file with author).

²²⁶ *Id.*

²²⁷ ANCSA Regional Association, *supra* note 183.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ Linda O. Smiddy, *Responding To Professor Janda- The U.S. Experience: The Alaska Native Claims Settlement Act (ANCSA) Regional Corporation As a Form of Social Enterprise*, 30 VERMONT LAW REVIEW 824 (2012).

²³¹ *Id.* at 828.

²³² *Id.* at 827.

²³³ *Yellen v. Confederated Tribes of the Chehalis Reservation*, 141 S. Ct. 2442 (2021).

²³⁴ *Id.*

²³⁵ Royhster, Blumm, & Warner, *supra* note 221, at 112.

²³⁶ *Id.*

²³⁷ Royhster, Blumm, & Warner, *supra* note 221, at 114.

Natives leading up to the lands claims largely rejected the Reservation model as they wanted full control of their lands and destiny.²³⁸ This resulted from the negative experience they had with BIA agents during the IRA period, which they viewed as overly paternalistic.²³⁹ This would later have repercussions in *Alaska v Native Village of Venetie*, where the Supreme Court held that Alaska Natives are not recognized as “Indian Country”²⁴⁰ due to a lack of federal supervision.²⁴¹ The Supreme Court made this ruling despite ANCSA Corporations still being under Congressional jurisdiction²⁴² being subject to plenary power and there being no express language²⁴³ that Congress extinguished Indian Country in ANCSA.²⁴⁴

E. Sealaska: A Unique Hybrid Corporation

Though ANCSA Corporations are for-profit corporations, they are unique as they were created to “address the real economic and social needs” of Alaska Natives.²⁴⁵ Along with addressing its shareholders’ social and economic needs, Sealaska also seeks to promote the culture of the Tlingit, Haida, and Tsimshian people.²⁴⁶ This is represented through its mission to “strengthen people, culture,

²³⁸ Worl, *supra* note 28, at 275.

²³⁹ *Id.*

²⁴⁰ 18 U.S. Code § 1151. Indian Country includes all lands within Indian reservations, dependent Indian communities, and Indian allotments. For land to be considered Indian Country, the Federal government must set aside Indian land for use by Indians and the land must be under Federal supervision. Alaska Native corporations and villages are excluded from this statute because of a lack of federal supervision and control. This would seem to contradict the contemporary federal policy of Native self-determination and the end of paternalism, while maintaining the trust relationship with federal government. This policy of “self-determination without termination” was inaugurated by the Nixon administration in 1970 and has remained the dominant federal Indian policy in the contemporary era. If Alaska Native corporations and village governments were incorporated into 18 U.S. Code § 1151 it would then expand Indian Country to include tribes, like ANCSA Corporations and villages, who though not under federal supervision are under congressional jurisdiction. Like the Indian Self-Determination and Education Assistance Act of 1975, which promotes self-determination without termination, this would harmonize the concept of Indian Country with the contemporary policy of Native self-determination and the end of paternalism, while maintaining the trust relationship with the Federal government.

²⁴¹ Royhster, Blumm, & Warner, note 219, at 112.

²⁴² *Id.* at 113.

²⁴³ Harvard Law Review, *Herrera v Wyoming*, (last visited March 9, 2023, 8:19 PM), <https://harvardlawreview.org/2019/11/herrera-v-wyoming/> [<https://perma.cc/4LX7-JU2G>]. A statutory construction of federal Indian law is that for an Indian treaty or statute to be abrogated it requires clear and unambiguous Congressional intent. Not only was there no clear and unambiguous Congressional intent in ANCSA that Congress intended to extinguish Indian Country in ANCSA, but there was a lack of explicit language that Congress intended to do so in ANCSA.

²⁴⁴ Kristen A. Carpenter, *Interpreting Indian Country in State of Alaska v. Native Village of Venetie*, 35, 101 TULSA L.J. 79 (1999). *available at* <https://scholar.law.colorado.edu/faculty-articles/607> [<https://perma.cc/B48E-5UR3>].

²⁴⁵ Smiddy, *supra* note 230, at 830.

²⁴⁶ Sealaska Heritage, *supra* note 63.

and homelands” of the Native shareholders.²⁴⁷ It also is manifested through performance law through the creation of the Sealaska Heritage Institute by Sealaska.²⁴⁸ The Heritage Institute is a non-profit corporation founded in 1980 to promulgate the Tlingit, Haida, and Tsimshian culture and is primarily funded through Sealaska.²⁴⁹ Since its inception, Sealaska has invested \$20.1 million in cash and in-kind service in the Sealaska Heritage Institute.²⁵⁰ Sealaska also, in 2012, took the additional step of identifying four core traditional Tlingit values and incorporating them as a guiding force managing their corporation.²⁵¹ These values include: *Haa Aaní* (Our Land), *Haa Latseen* (Our Strength & Leadership), *Haa Shuká* (Past, Present, and Future Generations), and *Wooch.Yax* (Balance).²⁵²

The Corporate form of Sealaska is essentially a hybrid Corporation that was established not only to be a for-profit corporation, but for the social and economic needs of its Native shareholders.²⁵³ Sealaska’s mission is also to strengthen the culture and homelands of its Native Shareholders.²⁵⁴ Sealaska, along with other ANCSA Corporations, is also a unique hybrid corporation as it owns much of the aboriginal lands of its people for its management and development and is responsible for protecting the aboriginal land base.²⁵⁵ The most comparable hybrid corporation is the Makivik Corporation in Northern Canada, which the Inuit established to administer the lands and compensation they received under the 1975 James Bay and Northern Quebec Agreement.²⁵⁶ This agreement settled the Inuit land claims in Quebec.²⁵⁷ The difference with the Makivik Corporation is that it is a non-profit corporation with for-profit subsidiaries.²⁵⁸ However, similarly, it is a hybrid Native corporation created to not only own and operate large businesses that create jobs but also improve the social and economic conditions of the Inuit people and preserve the culture of the Inuit.²⁵⁹

²⁴⁷ Sealaska Shareholders, *Because We Cherish You*, (last visited Aug. 31, 2022, 6:59 PM), <https://www.sealaska.com/shareholders/because-we-cherish-you> [https://perma.cc/N2D5-K6N2].

²⁴⁸ Sealaska Heritage, *supra* note 63.

²⁴⁹ *Id.*

²⁵⁰ Philanthropy Northwest, *Guided by Native Values: An Interview with Anthony Mallott, Sealaska CEO*, (last visited Aug. 31, 2022, 6:41 PM), <https://philanthropy.org/news/guided-native-values-interview-anthony-mallott-sealaska-ceo> [https://perma.cc/L437-7SHZ].

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ Smiddy, *supra* note 230, at 824.

²⁵⁴ Sealaska Shareholders, *supra* note 247.

²⁵⁵ ANCSA Regional Association, *2013 Economic Impact Report*, (last visited Aug. 31, 2022), <https://ancsaregional.com/wp-content/uploads/2019/09/2013-ANCSA-Economic-Impact-Report.pdf> [https://perma.cc/78S3-APHN].

²⁵⁶ Makivik Corporation, *Our Mandate*, (last visited Aug. 31, 2022, 10:30 PM), <https://www.makivik.org/> [https://perma.cc/6JYZ-CPWW].

²⁵⁷ *Id.*

²⁵⁸ Smiddy, *supra* note 230, at 823-824.

²⁵⁹ Makivik Corporation, *Our Mandate*, (last visited Aug. 31, 2022, 10:30 PM), <https://www.makivik.org/> [https://perma.cc/6JYZ-CPWW].

VII. SEALASKA CORPORATE GOVERNANCE

A. Board of Directors

In terms of the Governance of Sealaska Corporation, like many corporations, the Board of Directors manages the Corporation.²⁶⁰ Under its bylaws, the Board of Directors is composed of 13 Board members.²⁶¹ Under ANCSA, each Board member must be a Sealaska Shareholder, and therefore must be Southeast Alaska Native.²⁶² The Board has the fiduciary role of managing the corporation and making business decisions.²⁶³ The Board also hires and monitors the Corporate officers, in particular making the final decision of hiring the CEO of Sealaska.²⁶⁴ Each Board member serves a 3-year term and is elected by the Sealaska Shareholders.²⁶⁵ Sealaska Board members are elected at the Sealaska Annual Meeting.²⁶⁶ This election is a straddled approach as not all Board members are elected simultaneously but based on which Board members are up for election at the end of their 3-year terms.²⁶⁷

Based on the Sealaska by-laws, the Board elects the various Sealaska Corporate officers, which include the Chief Executive Officer (CEO), the Chief Operating Officer (COO), General Counsel, Chief Financial Officer (CFO), Secretary, Treasurer, and Vice-Presidents.²⁶⁸ However, in a practical sense, though the Board selects the CEO, the CEO generally hires the other corporate officers, and the Board elects to approve the CEO's decision.²⁶⁹

B. Corporate Officers

Like most corporations, Sealaska Corporate Officers run the day-to-day operations of the Corporation.²⁷⁰ Unlike the Sealaska Board, the Corporate officers do not have to be Sealaska shareholders, nor do they have to be Alaska Natives.²⁷¹ However, since 1982 Sealaska has consistently had Native CEOs who are shareholders of the Corporation.²⁷² Generally, the CEO and the officers will

²⁶⁰ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-121, REGIONAL ALASKA NATIVE CORPORATIONS: STATUS 40 YEARS AFTER ESTABLISHMENT, AND FUTURE CONSIDERATIONS 12 (2012). (hereinafter "GAO"), available at <https://www.gao.gov/assets/660/650857.pdf> [<https://perma.cc/9N4W-DBWV>].

²⁶¹ BY LAWS OF SEALASKA CORP., Article III, 3.1.(2019) (hereinafter "Sealaska Bylaws").

²⁶² *Id.* at 3.3, p. 9

²⁶³ *GAO*, at 12.

²⁶⁴ Sealaska Bylaws, *supra* note 261, Bylaw 4.1, at 23.

²⁶⁵ *GAO*, at 22.

²⁶⁶ *Id.*

²⁶⁷ *Id.* at 23.

²⁶⁸ Sealaska Bylaws, *supra* note 261, Bylaw 4.1, at 23.

²⁶⁹ *Id.* 4.2, at 24.

²⁷⁰ Telephone Interview with Chris McNeil, Jr, *supra* note 225.

²⁷¹ Sealaska Bylaws, *supra* note 261, Bylaw 4.2, at 24.

²⁷² Funding Universe, *Sealaska Corporation History*, (last visited Aug. 31, 2022, 2:00 AM), <http://www.fundinguniverse.com/company-histories/sealaska-corporation-history/> [<https://perma.cc/VFL6-428W>].

develop the corporation's strategic plan and a multi-year operating plan, including a budget.²⁷³ As part of this hybrid corporate structure, the strategic plan not only includes means to increase the profit of the corporation and maximize shareholder value, but includes the social and economic well-being of the Shareholder, scholarships, education, elder benefits, and the promotion of the Southeast Native culture, generally through investing in these areas.²⁷⁴ The strategic plan and operating plan are presented to the Board of Directors, who either approve it, reject it, or amend it.²⁷⁵

The CEO is the principal executive of the Corporation.²⁷⁶ However, based on the by-laws, all elected officers serve at the pleasure of the Board of Directors. They may be removed by the Board when it judges to be in the corporation's best interest.²⁷⁷ By the same token, all the staff officers are appointed by the CEO and may be removed by the CEO if it is also determined to be in the best interests of the Corporation.²⁷⁸

C. Shareholders

Like other corporations, the Native shareholders serve a limited role in the day-to-day governance of Sealaska.²⁷⁹ However, the shareholder's role in the corporation cannot be underestimated. Shareholders are the collective owners of the corporation, who own the aboriginal land in fee simple.²⁸⁰ They are analogous somewhat to clan members traditionally, though their contribution is more indirect unless they are Sealaska employees.²⁸¹ When ANCSA first established the Regional Corporations, it had a provision that the Shareholders could alienate or sell their stock in 1991.²⁸² If this had taken place and the shareholders sold their shares, the corporation could have been liquidated. As a result the title to the land held by the corporation could have been potentially extinguished.²⁸³ This was because the land is held in fee title by Sealaska without being held in trust by the Federal government.²⁸⁴ Therefore, it does not require the permission of the federal government to extinguish the aboriginal land owned by the Corporation.²⁸⁵

²⁷³ Telephone Interview with Chris McNeil, Jr, *supra* note 225.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ Sealaska Bylaws, *supra* note 261, Bylaw 4.4, at 25.

²⁷⁷ *Id.* 4.3, at 25.

²⁷⁸ *Id.*

²⁷⁹ *GAO*, at 12.

²⁸⁰ Sealaska, *Sealaska, Nesi Alliance Creates Global, Sustainable Seafood Leader*, (last visited Aug. 31, 2022, 7:05 PM), [https://www.sealaska.com/businesses/sealaska-nesi-alliance-creates-global-sustainable-seafood-leader/#:~:text=October%2030%2C%202020%20\(Juneau%2C,supplier%20of%20fresh%20and%20frozen\[https://perma.cc/3DU3-Y259\]](https://www.sealaska.com/businesses/sealaska-nesi-alliance-creates-global-sustainable-seafood-leader/#:~:text=October%2030%2C%202020%20(Juneau%2C,supplier%20of%20fresh%20and%20frozen[https://perma.cc/3DU3-Y259]).

²⁸¹ Royhster, Blumm, & Warner, *supra* note 221, at 112.

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.*

However, in 1992 an amendment was passed by ANCSA, which made the stock inalienable.²⁸⁶ This is a limited form of putting the 'corporation's land in trust, though not under the Federal government.²⁸⁷ Most Tribes in the US have a split title with the Federal government, where the Federal government is the ultimate owner of the land and the Tribes have a right of occupancy.²⁸⁸ In this Federal-Indian trust relationship, aboriginal land cannot be sold to anyone but the Federal government who can then extinguish the land.²⁸⁹ Generally, for a tribe to sell its land it requires an act of Congress.²⁹⁰ However, with Sealaska, the land is not held in trust by the Federal government.²⁹¹ By making the shareholder's stock inalienable, this is an internal mechanism to hold the land in trust by the corporation from being sold by the shareholders and thus protect the land from being extinguished. This is likely not the ultimate solution to protect the land from extinguishment, but an internal mechanism for the protection of the land by making the stock inalienable.

Through the 100 shares, the shareholders also receive dividends, generally on a quarterly basis.²⁹² This dividend is approved by the Board of Directors for distribution.²⁹³ The dividend generally comes out of a combination of the Sealaska Permanent Fund and out of the operations of the corporation.²⁹⁴ The Sealaska Permanent Fund was established which is a blend of stocks and investments which the dividend can be derived from.²⁹⁵

In 2022, Sealaska also established a Sealaska Settlement Trust, which is an ANCSA Settlement Trust, to make distributions to its shareholders and descendants.²⁹⁶ As a result of changes to the tax code brought about by the Tax Cuts and Jobs Act of 2017, the Sealaska Settlement Trust now provides significant tax savings for both Sealaska and its shareholders. These tax savings are realized when distributions are passed through the settlement trust, rather than

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Johnson v. M'Intosh*, 21 U.S. 543, 574 (1823).

²⁸⁹ Royhster, Blumm, & Warner, *supra* note 221, at 160.

²⁹⁰ 25 C.F.R. 152.22(b).

²⁹¹ Royhster, Blumm, & Warner, *supra* note 221, at 112.

²⁹² Sealaska, *Sealaska Announces Spring 2020 Shareholder Distribution and changes to 2020 Community and Annual Meeting*

Schedules, <https://www.sealaska.com/shareholders/sealaska-announces-spring-2020-shareholder-distribution/#:~:text=All%20Sealaska%20shareholders%20will%20receive,Young%20Shareholder%20Permanent%20Fund> [<https://perma.cc/R4SW-TYHV>], (last visited Dec. 16, 2020, 7:05 PM).

²⁹³ *Id.*

²⁹⁴ Welcome to MySealaska, *How a Distribution is Calculated*,

<https://mysealaska.com/FAQs/Distribution> [<https://perma.cc/BM8Z-5S8S>] (last visited Aug. 31, 2022, 7:05 PM).

²⁹⁵ *Id.*

²⁹⁶ Sealaska, *Sealaska Settlement Trust*

FAQ, <https://www.sealaska.com/shareholders/sealaska-settlement-trust-faqs/> [<https://perma.cc/6ZHC-2A4H>], (last visited March 9, 2023, 5:44 AM).

paid directly to shareholders from Sealaska.²⁹⁷ Sealaska is now able to make pre-tax, rather than after-tax contributions to the Settlement Trust and shareholders, whose dividends were previously subject to a federal income tax, now receive their distributions tax-free.²⁹⁸

The shareholder also has the power to vote for the Board of Directors at the annual meetings.²⁹⁹ Shareholders can vote for either a Board-nominated candidate or an independent candidate for the board.³⁰⁰ The shareholder can also initiate and vote for resolutions for the corporation.³⁰¹ The voting for the Board of Directors and resolutions are voted by the Shareholders at the annual meetings.³⁰² This voting is done either in person or by proxy.³⁰³

Through ANCSA, initially, only Natives born before the Act took effect in 1971 could receive shareholder stocks in the corporation. ANCSA was amended to give Alaska Natives Corporations the option to include shareholders born after 1971.³⁰⁴ Sealaska was one of the few Alaska Native Corporations to amend its by-laws to include new shareholders born after 1971.³⁰⁵ As a result, these new shareholders were issued shares in the corporation.³⁰⁶ This was voted on and approved by the shareholders.³⁰⁷ It expanded the number of Native shareholders in the corporation.³⁰⁸ This is significant for the continuation of the corporation,

²⁹⁷ Duke Law, *The 2017 Tax Act and Settlement Trusts*, <https://alr.law.duke.edu/article/the-2017-tax-act-and-settlement-trusts-edwards-vol35-iss1/> [https://perma.cc/V3A4-YLX4] (last visited March 9, 2023, 6:18 AM). Under ANCSA, Alaska Native Corporations can establish settlement trusts which are separate legal entities from the Corporation. Since their inception through an ANCSA amendment in 1987, ANCSA settlement trusts were used sparingly by ANCSA corporations, because of hurdles presented by the Internal Revenue code. However, these hurdles were largely removed by tax code changes brought about by the 2017 Tax Act. Through the 2017 Tax Act, ANCSA corporations now pay a 10% tax on ordinary income for contributions made to the settlement trust and shareholders pay no taxes on their distributions. The settlement trusts were created by ANCSA “to promote the health, education, and welfare of its beneficiaries, and preserve the heritage and culture” of Alaska Native shareholders. As a result, many ANCSA corporations have settlement trusts that include elder, scholarship and distribution programs for their shareholder beneficiaries. Settlement trusts can be either pass through entities or established as endowments. The settlement trusts are not subject to the rule against perpetuities and can therefore potentially continue into perpetuity.

²⁹⁸ *Id.*

²⁹⁹ Sealaska Bylaws, *supra* note 261, Bylaw 3.2, at 8.

³⁰⁰ *Id.* 3.3.1, at 8.

³⁰¹ *Id.* 2.13.4, at 5.

³⁰² *Id.* 2.1, at 1.

³⁰³ *Id.* 2.9, at 4.

³⁰⁴ *Id.* at 190.

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

which according to its Articles of Incorporation is designed to go into perpetuity.³⁰⁹

D. Subsidiaries & Core Businesses

The Sealaska governance structure also includes various subsidiaries that Sealaska owns throughout not only Alaska, but also throughout the US.³¹⁰ The subsidiaries in certain cases have Sealaska shareholders as the CEOs.³¹¹ These subsidiaries include areas such as Timber corporations, digital transformation, seafood, environmental services, and manufacturing of synthetic and plastics.³¹² Sealaska serves as the parent corporation of these subsidiaries.³¹³

As part of its core business, Sealaska also has strategic business partners.³¹⁴ These business partners are in the areas of sustainable foods, environmental services, drilling, and natural resource management.³¹⁵

Sealaska also has business interests that include government contracting through Sealaska's government services group.³¹⁶ These government contracts largely come as a result of Native preference through section 8(a) of the Small Business Act.³¹⁷ This Native preference Amendment has been a key amendment for the survival of Alaska Native Corporations and for their success.³¹⁸

E. Sealaska Partnerships: Kwaan Governance

Sealaska also has partnership relationships with Alaska Native organizations such as Sealaska Heritage Foundation, CCTHITA, Spruce Roots Inc., ANB, Alaska Federation of Natives (AFN), and Sustainable Southeast

³⁰⁹ SEALASKA CORP., RESTATED ARTICLES OF INCORPORATION OF SEALASKA CORP, art. II (2003), available at <https://www.commerce.alaska.gov/cbp/main/search/entities> [<https://perma.cc/3WQP-KFHE>].

³¹⁰ SEALASKA CORP., ANNUAL REPORT 2011 62 (2011), available at https://issuu.com/sealaska/docs/sealaska_annual_report_2011 [<https://perma.cc/B4D6-69SV>].

³¹¹ *Id.*

³¹² *Id.*

³¹³ Dun & Brandstreet, *Sealaska Corporation*, https://www.dnb.com/business-directory/company-profiles/sealaska_corporation.a2552c18fb170141dc464d0390d9ad47.html (last visited Aug. 31, 2022, 7:06 PM).

³¹⁴ Sealaska, *Investments Guided By Our Values*, <https://www.sealaska.com/businesses> [<https://perma.cc/RQD7-5CYS>] (last visited Aug. 31, 2022, 7:06 PM).

³¹⁵ *Id.*

³¹⁶ Welcome to MySealaska, *Sealaska Awarded Multiple Federal Construction Contracts*, <https://mysealaska.com/news/item/businesses/sealaska-awarded-multiple-federal-construction-contracts> [<https://perma.cc/8XEE-ULKC>] (last visited Dec. 16, 2020, 7:08 PM).

³¹⁷ EveryCRSReport, *Contracting Programs for Alaska Native Corporations: Historical Development and Legal Authorities*, [https://www.everycrsreport.com/reports/R40855.html#:~:text=Section%208\(a\)%20generally%20authorizes,Community%20Development%20Corporations%20\(CDCs\)](https://www.everycrsreport.com/reports/R40855.html#:~:text=Section%208(a)%20generally%20authorizes,Community%20Development%20Corporations%20(CDCs)) [<https://perma.cc/S75G-G3CE>] (last visited Aug. 31, 2022, 7:13 PM).

³¹⁸ *Id.*

Partnership (SSP).³¹⁹ In particular, as CCTHITA is a regional Tribal Government³²⁰ and Sealaska is a regional Corporation, it could be argued that governance for the Tlingit, Haida and Tsimshian people has in part centralized at the Kwaan regional level.³²¹ Also, through the other related organizations that Sealaska is partnered with, it is another means of participation in the governance for the Tlingit, Haida and Tsimshian people. Though these organizations are not connected with Sealaska in a formalized governance model, they are a form of governance and means of participation for tribal members, both at the Kwaan regional level and through partnering organizations.

As stated earlier, Sealaska shares its revenues through section 7(j) with the Village and Urban corporations.³²² However, these Village and Urban corporations are largely autonomous from Sealaska in their governance.³²³ They also represent a form of governance that Tlingit, Haida and Tsimshian people can participate in as shareholders.

VIII. INCORPORATING TLINGIT VALUES IN SEALASKA

A. Four Core Values

In terms of the continuation of Tlingit values at Sealaska, in 2012 the Council of Elders from the Sealaska Heritage Institute willed Sealaska four core values that will be the core values of Sealaska business operations.³²⁴ These values were already expressed in different forms and actions by Sealaska before these Tlingit Core values were officially recognized to be integrated into the Corporate form, but they are now officially acknowledged as the core values for the corporation going forward. A number of these values were referenced earlier in this paper. The Four Key Values that were passed down from the Council of Elders to Sealaska are:

**Haa Aaní: Our Land: Honoring & Utilizing our Land (Haida: Íitl’
Tlagáa; Tsimshian: Na Laxyuubm)**

Our ancestors, who have lived in this land for more than 10,000 years, taught us that everything has a Spirit. When we utilize our resources, we must acknowledge the Spirits of the Land, Sea and Air and tell them the benefits that their use will bring to our People. Our ancestors protected the ownership of our land for their children and grandchildren just as we must do for future generations.

³¹⁹ SEALASKA CORP., ANNUAL REPORT 2019 11 (2019), available at https://issuu.com/sealaskacorp/docs/sealaska_2010_ar_narrative [<https://perma.cc/A3EB-9PPC>].

³²⁰ Thornton, *supra* note 143, at 183.

³²¹ Worl, *supra* note 28, at 78.

³²² Case & Voluck, *supra* note 122, at 176.

³²³ Telephone Interview with Chris McNeil, Jr, *supra* note 225.

³²⁴ Philanthropy Northwest, *supra* note 250.

**Haa Latseení: Our Strength: Strength of Body, Mind, and Spirit
(Haida: Íitl' Dagwiigáay; Tsimshian: Na Gatlleedm)**

The “way of the Warriors” path to achieve physical and inner strength. Young men and women are taught through this value to protect and care for their families and clans. They are to seek truth and knowledge and to adapt to changing times while maintaining the integrity of the ancient values of the Tribe.

Haa Shuka: Past, Present and Future Generations – Honoring our Ancestors and Future Generations. (Haida: Íitl' Kuníisii; Tsimshian: Na Lagigyetgm)

We maintain strong bonds with our ancestors whom we honor through our lives and in our ceremonies. We also have responsibilities to our future generations, and we must ensure that we protect our land and culture for our children and grandchildren and those who will follow them.

Wooch Yáx: Balance: Social and Spiritual Balance (Haida: Gu dlúu; Tsimshian: Ama Mackshm)

Wooch Yáx must be maintained to ensure social and spiritual harmony lest ill will goes wandering and causes harm. Wooch Yáx governs: Interrelationship between the Eagle and Ravens clans. Interrelationship between the Tlingit and others, including other tribes, nations and institutions. Wooch Yáx requires that our People and our organizations conduct business with Yán gaa doonéekw or “Dignity,” realizing that everything has its rightful place and that all action and business must be done with integrity.³²⁵

Sealaska has modified these core values somewhat for the corporate context, but the spirit of the values remains intact. Sealaska calls them “values in action”. They are to be embedded in Sealaska's governance and operating culture. The Sealaska also adapted these four values in its Code of Ethics. I include the Sealaska version of the four core values that are now in the Sealaska code of ethics. I also include commentary by current Sealaska CEO Anthony Mallott, after each value:

“**Haa Aaní** (Our Land) leads us to strive for sustainable communities and a sustainable relationship with our lands.”³²⁶

According to the current Sealaska CEO Anthony Mallott, *Haa Aaní* is very important because the main impetus of ANCSA was retaining ownership of

³²⁵ Sealaska Heritage, *supra* note 63.

³²⁶ Sealaska Code of Ethics, *For Employees, Officers and Directors of Sealaska Corporation, Affiliates and Subsidiaries*, <https://www.sealaska.com/wp-content/uploads/Sealaska-Code-of-Ethics.pdf> [https://perma.cc/M46E-8LKE], (last visited Dec. 16, 2020, 7:48 PM).

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traditional homelands.³²⁷ The focus for Sealaska in this regard is the stewardship, sustainability of the land, and the promotion of aboriginal land restoration for Sealaska and the Southeast Alaska Native village corporation and tribes.³²⁸

“Wooch.Yax | (Balance, Reciprocity and Respect) guides us to a high value.”³²⁹

According to CEO Anthony Mallott, *Wooch.Yax* represents the balance Sealaska expects to create within all relationships, including Sealaska’s relationships with its natural resources.³³⁰ The companies, relationships and projects need to provide value. This is the main measure of balance, “in proportion to the time and capital invested in the endeavor.”³³¹ *Wooch.Yax* also represents the type of relationship Sealaska wants to build with its employees.³³² According to CEO Mallott, Sealaska must reflect how strongly it values its employees “by recognizing their efforts and creating a culture where employee voices are listened to and where they see their efforts leading to progress.”³³³

“Haa Shuká (Our Past, Present and Future) inspires us to learn from our past.”³³⁴

According to CEO Mallott, in the Native corporate context, *Haa Shuká* culturally describes the connection the Tlingit, Haida, and Tsimshian have with their ancestors and the responsibility to carry the Native culture, values and strength forward to the future generations.³³⁵ In the spirit of *Haa Shuká*, Sealaska looks “to its history by understanding the assets it was given and what strengths it has.”³³⁶ Sealaska also looks to its history to determine “what values it needs and wants to carry forward, what challenges Sealaska faces, and make decisions to benefit current and future generations of shareholders.”³³⁷ *Haa Shuká* speaks to sustainability and is a powerful value to Sealaska “given the 10,000-year history the Tlingit have with their homelands”.³³⁸

“Haa Latseen: (Our Strength, Leadership) drives us to be responsible for continuous improvement and accountable to the people who rely on us.”³³⁹

³²⁷ Philanthropy Northwest, *supra* note 250.

³²⁸ *Id.*

³²⁹ Sealaska Code of Ethics, *supra* note 327.

³³⁰ Philanthropy Northwest *supra* note 250.

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ Sealaska Code of Ethics, *supra* note 327, at 3.

³³⁵ Philanthropy Northwest, *supra* note 250.

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ Sealaska Code of Ethics, *supra* note 327, at 3.

According to CEO Mallott, *Haa Latseen* in the Sealaska corporation context is a value that indicates the discipline Sealaska needs to utilize its strengths and the responsibility to train and provide leadership so Sealaska can achieve its mission of “strengthening our people, culture, and homelands.”³⁴⁰ In addition, *Haa Latseen* leads Sealaska to invest its assets in areas where it can use its strength and “competitive advantages for the optimal future benefit of our tribal member shareholders.”³⁴¹

B. Incorporating Core Tlingit Values into the Code of Ethics

The four core values have been incorporated into the Sealaska code of ethics for its employees, management, Sealaska Board of Directors, and the contractors, controlled subsidiaries, consultants, and other persons authorized to act on Sealaska's behalf.³⁴² Failure to adhere to the code can lead to disciplinary action by the corporation.³⁴³ The use of the code is also included as part of the oath of office as Board members.³⁴⁴

The four core values are in the initial CEO statement of the code of ethics as broad visionary values for the Corporation.³⁴⁵ The four core values are not used as sub-headings to the various areas of the code of ethics, but the ethics are largely derived from the four core values and Tlingit values in general.³⁴⁶ The Native corporation wrote the code of ethics and emphasizes *Wooch.Yax* principles of fairness, accountability, making ethical decisions, and a respectful workplace.³⁴⁷ Sections of the code are very practical and cover such topics as environmental, health and safety rules, and substance abuse policies.³⁴⁸ However, other parts of the Sealaska Code of Ethics are unique to Sealaska. An example of this is the “Doing the Right Thing For Our Shareholders” section.³⁴⁹ It recognizes the corporation's hybrid nature, stating that the code, while reflecting the “ordinary legal relationship” between officers, directors, and shareholders, also recognizes the relationship between Sealaska employees, officers, directors, and shareholders born out of ANCSA.³⁵⁰ It also acknowledges the unique relationship Sealaska has with shareholders based on the shareholders collective ownership of Sealaska.³⁵¹ “Doing the Right Thing For Shareholders” focuses on the unique

³⁴⁰ Philanthropy Northwest, *supra* note 250.

³⁴¹ *Id.*

³⁴² Sealaska Code of Ethics, *supra* note 327, at 4.

³⁴³ *Id.*

³⁴⁴ *Id.* at 29. The oath of office by the Board members includes upholding the Sealaska code of ethics, along with being accountable to the by-laws of the Sealaska, fiduciary duties of the State of Alaska, and laws of the state of Alaska.

³⁴⁵ *Id.* at 3.

³⁴⁶ *Id.* at 8.

³⁴⁷ *Id.*

³⁴⁸ *Id.* at 9.

³⁴⁹ *Id.* at 13.

³⁵⁰ *Id.*

³⁵¹ *Id.*

relationship and transaction between Sealaska and other Native corporations, including Native corporations and shareholder businesses, and states that these relationships should reflect fairness and integrity.³⁵² The Sealaska Board of Directors adopted this code of ethics as an amendment. This is a form of incorporating Tlingit values into the day-to-day business operation of Sealaska and is a form of performance law of Native values and principles.³⁵³

IX. APPLICATION OF FOUR CORE VALUES AT SEALASKA

Sealaska's articulation and application of the four core values follows largely a combination of performance law through corporate investment in programs and businesses that reflect Tlingit, Haida, and Tsimshian values and corporate decisions and actions that align with Tribal values. Applying the four core values pre-dated the official incorporation of these values. This performance law of the four values has been revealed through both intentional acts by Sealaska to align with traditional Tlingit values and certain seemingly inadvertent confluence of forces through Congressional enactments that have overlapped with Tlingit law and culture in terms of the structure of the Corporation. I include several examples that show the use of the four values in a significant manner at Sealaska, both before Sealaska officially incorporated the four values and since the values became part of Sealaska corporate policy.

A. Haa Aaní: Our Land at Sealaska

i. Public Law 113-291

Public Law 113-291³⁵⁴ transferred 70,075 acres of land from the Tongass Forest back to the Sealaska Corporation.³⁵⁵ This was a result of much lobbying and negotiation done by Sealaska over many years.³⁵⁶ This land was provided in section 14(h)(8) of ANCSA but had not been transferred to Sealaska yet since the passing of ANCSA in 1971.³⁵⁷ Sealaska met much resistance from various groups in Alaska, particularly environmental groups, but eventually, Sealaska prevailed in 2014 with the transfer of the land back to Sealaska.³⁵⁸ Sixty-nine thousand five

³⁵² *Id.*

³⁵³ *Id.* at 25.

³⁵⁴ National Defense Authorization Act For Fiscal Year 2015, Pub. L. No. 113–291, § 3002, 128 Stat. 3292, 3720–3732 (2014), *available at* <https://www.govinfo.gov/content/pkg/PLAW-113publ291/pdf/PLAW-113publ291.pdf> [<https://perma.cc/8LKR-MR7T>].

³⁵⁵ USDA Forest, *Sealaska Land Entitlement Finalization*, <https://www.fs.usda.gov/detail/r10/home/?cid=STELPRD3824925> [<https://perma.cc/657M-YQSC>] (last visited Dec. 16, 2020, 7:16 PM).

³⁵⁶ *Sealaska Testimony on H.R. 740 and H.R. 1306*, at 1.

³⁵⁷ *Id.*

³⁵⁸ Stories in the News, *Legislation Finalizing Sealaska Land Claims Advances in U.S. Senate*, http://www.sitnews.us/0613News/061913/061913_sealaska.html [<https://perma.cc/N9FN-TRST>] (last visited Aug. 31, 2022, 7:30 PM).

hundred eighty-five acres went to Sealaska as a “Sealaska Selection,” and 490 acres were for cemetery and historical sites of the Tlingit.³⁵⁹ The land is located in the Tongass National Forest, which was part of the aboriginal homeland of the Tlingit nation.³⁶⁰ As mentioned earlier, it had previously been taken by the United States government through the creation of the Tongass National Forest.³⁶¹ The Act represented through a Congressional Act both the Tlingit core values of *Haa Aani* (Our Land) because of the restoration of the aboriginal land to Sealaska and the Tlingit people. The passing of the act also represented *Wooch.Yax* (balance and reciprocity) because of the bipartisan Congressional support for this legislation to pass.³⁶²

ii. Sealaska’s Carbon Sequestration Program

Sealaska has set aside over half of its forested lands to create a carbon bank.³⁶³ Through this program, greenhouse gas emitters in California can now buy carbon offset credits based on Sealaska’s carbon bank that is stored in the trees of Sealaska’s land.³⁶⁴ As a result, Sealaska will benefit from revenues through the program without logging on the land, and it will help preserve the rainforest.³⁶⁵ This represents *Haa Aani* in terms of the stewardship by Sealaska for the sustainability of the land as well as *Haa Shuká* by maintaining the land for future generations.

B. Haa Shuká: Past, Present and Future Generations

i. Sealaska Heritage Institute

Sealaska founded the Sealaska Heritage Institute in response to Tlingit elder’s concern about the continuation of the Tlingit, Haida, and Tsimshian cultures.³⁶⁶ As noted earlier, the Heritage Institute was founded as a non-profit corporation in 1980 to promulgate the Tlingit, Haida, and Tsimshian cultures.³⁶⁷ Sealaska has consistently been a part of funding the Heritage Institute throughout its history.³⁶⁸ The Heritage Institute organizes the Annual Celebration, which brings together the Tlingit, Haida, and Tsimshian in a celebration of dances and

³⁵⁹ National Defense Authorization Act For Fiscal Year 2015, *supra* note 255, at 3720.

³⁶⁰ *Sealaska Testimony on H.R. 740 and H.R. 1306*, at 2.

³⁶¹ *Id.*

³⁶² Stories in the News, *supra* note 359.

³⁶³ Sealaska, *Year End Financial Update*, <https://www.sealaska.com/businesses/2018-year-end-financial-update> [<https://perma.cc/5554-JESU>] (last visited Dec. 16, 2020, 7:45 PM),

³⁶⁴ KTOO, *Sealaska Corporation announces multi million dollar deal to keep trees in the ground*, <https://www.ktoo.org/2018/04/09/sealaska-corporation-announces-multi-million-dollar-deal-to-keep-trees-in-the-ground> [<https://perma.cc/P7KL-AB35>] (last visited Dec. 16, 2020, 7:45 PM)

³⁶⁵ *Id.*

³⁶⁶ Sealaska Heritage, *supra* note 63.

³⁶⁷ *Id.*

³⁶⁸ Philanthropy Northwest, *supra* note 250.

songs and honoring the culture in Juneau, AK.³⁶⁹ It also does extensive scholarly studies of the Tlingit, Haida, and Tsimshian cultures and has a program to restore the Tlingit language.³⁷⁰ It also recently established the Walter Soboleff Heritage Center, which will exhibit the creation of Tlingit, Haida, and Tsimshian art, have lecture series and has a Heritage store.³⁷¹ This is a form of *Haa Shuká*, as the Heritage Institute was established to learn and understand the Tlingit, Haida, and Tsimshian cultures, as well as the continuation and development of these cultures into the future generations. It is also a form of performance law by Sealaska, in terms of investing in the Sealaska Heritage Institute to promote and continue the culture.

ii. Incorporation of New Shareholders

As noted earlier, Sealaska was one of the few Regional Corporations to amend its by-laws to include new shareholders born after 1971.³⁷² Some shareholders expressed initial resistance based on their concern that incorporating new shareholders would dilute the stock.³⁷³ This was a tension between financial concerns and the Tlingit values in terms of the future of the people and Sealaska.³⁷⁴ However, eventually, the amendment prevailed and was voted in by the shareholders.³⁷⁵ As a result, these new shareholders were issued shares in the corporation and expanded the number of Native shareholders.³⁷⁶ These shares are life-estate stocks that continue for their lifetime and cannot be gifted or inherited, which is dissimilar from the original shareholder stocks for those born before Dec. 18, 1971.³⁷⁷ However, it includes all the benefits for the stockholder during their lifetime as other shareholders and is an opportunity for shareholders born after December 18, 1971, to have 100 shares of stock in Sealaska.³⁷⁸ This is a form of *Haa Shuká*, which honors the ancestors while looking ahead to future generations. This is significant for the continuation of the corporation as part of the Articles of Incorporation for Sealaska is for the Corporation to go on into perpetuity.³⁷⁹ It is also an example of the challenges of adhering to Native values in the face of contemporary issues and pressures.

C. Wooch.Yax: Balance and Reciprocity

³⁶⁹ Sealaska Heritage, *supra* note 63.

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² Case & Voluck, *supra* note 122, at 190.

³⁷³ Alaska Journal of Commerce, *Sealaska mulls granting stock to younger descendants*, <https://www.alaskajournal.com/community/2004-07-12/sealaska-mulls-granting-stock-younger-descendants> [<https://perma.cc/Z2AD-2CPM>] (last visited Dec.16, 2020, 7:30 PM).

³⁷⁴ *Id.*

³⁷⁵ Case & Voluck, *supra* note 122, at 190.

³⁷⁶ *Id.*

³⁷⁷ Welcome to MySealaska, *Life Estate Enrollment*, <https://mysealaska.com/Services/Enrollment> [<https://perma.cc/NK5E-6C6F>](last visited Dec.16, 2020, 7:48 PM).

³⁷⁸ *Id.*

³⁷⁹ Sealaska Corp., Restated Articles of Incorporation, *supra* note 301.

i. ANCSA section 7(i) & 7(j)

Sealaska and the other regional corporations share 70% of their subsurface revenues with the other 12 Regional Corporations through ANCSA settlement section 7(i).³⁸⁰ This is a form *Wooch.Yax*, as it is somewhat like a modern commercial potlatch between the various corporations, where the Regional Corporations reciprocate with one another by sharing 70% of the subsurface revenues between the Corporations. Though ANCSA requires the participation of Regional Corporations, it is an intersection between a Congressional enactment and the Tlingit value of *Wooch.Yax*.

Through Section 7(j) of ANCSA, the Regional Corporations share 50% of their subsurface revenues with the Village Corporations.³⁸¹ This is also a form of *Wooch.Yax*, as though the Village Corporation does not have access to the subsurface lands, it still received revenues through Section 7(j) of ANCSA.

ii. Relationship with Business Partners and other Entities

Sealaska has many relationships with other organizations, both profit and non-profit, Native and non-Native. These relationships include director strategic core business partnerships with such businesses as Orca Bay Foods, New England Seafood International, Greg Drilling, a national leader in geotechnical drilling and water remediation, and Sealaska Government and Commercial services.³⁸² Sealaska also has relationships with non-profit organizations, such as the CCTHITA and Sealaska Heritage Institute, that promote the rights and culture of Native People throughout Southeast Alaska and Alaska.³⁸³

These relationships included Sealaska's internal relationship in terms of seeking to encourage dialogue between Sealaska and its shareholders.³⁸⁴ These relationships are a form of *Wooch.Yax*, in terms of promoting reciprocal and respectful relationships with their partners and shareholders.

Sealaska has been going through a process of balancing its for-profit model with sustainable industries and the stewardship of its lands.³⁸⁵ This is a Tlingit value, as it balances binary concepts for a particular purpose. An example of this is Sealaska's Carbon Sequestration Program, established for the long-term sustenance of Sealaska lands while being a for-profit venture. Other areas where *Wooch.Yax* is at work is Sealaska's business model of working with companies

³⁸⁰ Royhster, Blumm, & Warner, *supra* note 219, at 117.

³⁸¹ *Id.*

³⁸² Sealaska, *Investing Guided By Our Values*, <https://www.sealaska.com/businesses> [https://perma.cc/EBT4-J4YS] (last visited Dec. 16, 2020, 7:45 PM).

³⁸³ Sealaska Annual Report 2019, *supra* note 311, at 11.

³⁸⁴ Sealaska, *Shareholders Receive Update on Sealaska's Business Success At 2018 Community Meeting*,

<https://www.sealaska.com/shareholders/shareholders-receive-update-on-sealaska-business-success-2018-community-meetings/> [https://perma.cc/J626-H322] (last visited Aug. 31, 2022, 7:52 PM).

³⁸⁵ KTOO, *supra* note 365.

that promote sustainable food and renewable energy while being for-profit.³⁸⁶ Jim Collins refers to this as the “Genius of the AND,” where companies that have achieved long-term greatness incorporate two seemingly irreconcilable concepts. For instance, a company will incorporate enduring values AND innovation. This form of *Wooch. Yax is* at work—and is a form of the principle of the “Genius of the And.” It is also likened to many Raven Trickster stories that merge enduring values with a jurisprudence of transformation, innovation and new paths.

D. Haa Latseen: Our Strength

i. Small Business Administration 8(a) program amendment

The Former Sealaska CEO, Chris McNeil Jr., was instrumental in passing an amendment to the Small Business Administration 8(a) program to give Alaska Native Corporations and Native Tribes preference in contracting.³⁸⁷ This was not only vital for the survival of ANCSA Corporations but has led to a flood of Native Corporations using this vehicle for governmental contracts and has increased revenues and profits.³⁸⁸ This was the case with Sealaska and many other Alaska Native Corporations. This was a form of *Haa Latseen* (leadership) that extended beyond Sealaska to other Native corporations, Tribes, and Tribes throughout the US.

ii. Scholarship Programs

Sealaska has awarded hundreds of full-time and part-time merit-based scholarships to its community's future leaders every year. Sealaska has awarded approximately 11,000 scholarships totaling \$16.4 million.³⁸⁹ The scholarships are for the development and education of Tlingit, Haida, and Tsimshian shareholders and promoting future leaders at Sealaska.³⁹⁰ Sealaska also has Shareholder Preference for employment within Sealaska and its various subsidiaries, governmental partners, and business partners.³⁹¹ This is to promote economic opportunities for Sealaska shareholders. There is still a need to hire more Native shareholders in the corporation,³⁹² especially in executive positions. Still, Sealaska's scholarships are a form of seeking to develop Native shareholders. Also, through Native preference, Sealaska aims to provide shareholders economic opportunities. These are a small sample of the Four values in action. Sealaska has

³⁸⁶ Sealaska, *Going Global with Ocean Health*, (last visited Aug. 31, 2022, 8:05 PM), https://issuu.com/sealaskacorp/docs/sealaska_2010_ar_narrative. <https://www.sealaska.com/businesses/new-england-seafoods/>

³⁸⁷ Case & Voluck, *supra* note 122, at 190.

³⁸⁸ *Id.*

³⁸⁹ Sealaska, *Investing in Education For Our Future*, <https://www.sealaska.com/community/investing-in-education-for-our-future> [https://perma.cc/7DZX-KCN2] (last visited Dec.16, 2020, 7:45 PM).

³⁹⁰ *Id.*

³⁹¹ Welcome to MySealaska, *Careers*, <https://mysealaska.com/Opportunities/Careers> [https://perma.cc/8FMZ-YLWK] (last visited Dec.16, 2020, 7:48 PM).

³⁹² Smiddy, *supra* note 228, at 840.

a history of practicing these four core values before and after they were officially incorporated as corporate policy. Through the codification of the four values as core governing principles, as well as a shift of balancing sustainable industries with its for-profit model, Sealaska will likely have a continued evolution of these principles at work in the corporation.

X. COMPARISON BETWEEN TRADITIONAL TLINGIT GOVERNANCE AND SEALASKA CORPORATE GOVERNANCE

As part of the analysis of the evolution of Tlingit governance and law and its application to Sealaska, I will compare the ancient Tlingit governance and law and the current Sealaska Corporate governance. Scholars have argued that Tlingit law and governance through the clans resembles corporate law.³⁹³ Though Washington Senator Henry “Scoop” Jackson³⁹⁴ was a driving force behind the passage of ANCSA, there has been some debate about where the idea of for-profit ANCSA Corporations came from. Some have posited that the AFN may have initiated a corporate model to transfer lands to ANCSA Corporations.³⁹⁵ Others have suggested that William Paul may have devised the idea of having Regional and village corporations to mirror the Kwaan and clan structure. In this theory, the Regional Corporation represents the Kwaan, and the village corporations represent the various clans. This history is unclear, but it may explain some similarities between the Corporate form and the Tlingit clan structure. The following is a comparison and analysis of the two.

A. Similarities Between Clan Governance Structure & Sealaska Corporate Governance

The traditional clan governance model was a council assembly, where a house leader would meet and then convene at the council assembly, which the senior ranking clan leaders would preside over.³⁹⁶ This is like a corporate Board meeting regarding the interaction between the CEO and the Board of Directors. The CEO and corporate officers resemble senior clan leaders in their leadership duties. However, there are some procedural similarities between the CEO meeting with the Board and House leaders who would convene with senior clan leaders to get their initiatives approved at the council assembly. For example, the Sealaska CEO meets with the Board to present their strategic and operating plan, and the Board either approves it, amends it, or rejects it.³⁹⁷ This is similar to the house

³⁹³ Goldschmidt & Haas, *supra* note 81, at 16.

³⁹⁴ Ted Stevens Foundation, *Ted Stevens and the Alaska Native Claims Settlement Act*, https://tedstevensfoundation.org/ts_and_ancsa [<https://perma.cc/WD4Q-2KKL>] (last visited March 3, 2022, 9:22 PM).

³⁹⁵ Smiddy, *supra* note 230, at 845.

³⁹⁶ Sealaska Heritage Q & A, *supra* note 58.

³⁹⁷ Telephone Interview with Chris McNeil, Jr, *supra* note 225.

leader who would bring their initiatives to the clan assembly to seek approval of their plans by the senior clan leaders. Though the rank and responsibility of the CEO are more analogous to the senior clan leader meeting with other senior clan leaders at the Board meeting, there are procedural similarities with the house leader meeting with the council to seek approval for their plans.

The council assembly meetings were attended by all the adult males of the local clan, who had a right to express their opinion and women of high status and older women.³⁹⁸ The male and female members of the clan might be said to represent Sealaska shareholders. Though shareholders don't attend private Board meetings, they are able to vote for Sealaska Board members,³⁹⁹ initiate resolutions,⁴⁰⁰ as well as run for the Board.⁴⁰¹ Another similarity is that the council decisions were made by majority decision-making.⁴⁰² This is like shareholders voting on board resolutions that require a majority vote.⁴⁰³

Historically, the land was owned at the clan level.⁴⁰⁴ The clan ownership of the land was held in communal fee simple title. Therefore, the land could only be sold with the consent of the entire clan. Similarly Sealaska owns the title to the aboriginal land in fee simple, and the Sealaska Board requires a majority vote by the shareholders to sell the land. This is like the prohibition of clan leaders from selling clan property without the consent of the clan.⁴⁰⁵ Also, historically individual clan members could not sell clan property without the consent of the clan.⁴⁰⁶ This is similar to shareholders not being able to alienate their stock, which would cause the extinguishment of the land.⁴⁰⁷

i. Kwaan Governance and Decentralization

Today's ownership of the land has transferred from the clans over to Sealaska and the village and urban corporations, which has affected the modern governance model of the Tlingit. Sealaska could be argued to represent a Kwaan form of governance, as it is a regional corporation, and the village and urban corporations are like individual clans. In a contemporary sense, Sealaska appears to be a merger between the Kwaan and the clan, to make a regional corporation. Like the Kwaan, Sealaska does not govern the village or urban corporations much.

³⁹⁸ *Id.*

³⁹⁹ Sealaska Bylaws, *supra* note 261, Bylaw 3.2, at 8.

⁴⁰⁰ *Id.* 2.13.4, at 5.

⁴⁰¹ *Id.* 3.3.3, at 9.

⁴⁰² Sealaska Heritage Q & A, *supra* note 56.

⁴⁰³ Sealaska Bylaws, *supra* note 261, Bylaw 2.13.2, at 5.

⁴⁰⁴ Worl, *supra* note 28, at 232.

⁴⁰⁵ Rosita Kaaháni Worl, *supra* note 94.

⁴⁰⁶ Worl, *supra* note 28, at 232.

⁴⁰⁷ Royhster, Blumm, & Warner, *supra* note 221, at 112.

Historically, the governance of the Tribe was centralized with the clans. However, in the aggregate, the large number of clans spread out through the Kwaan geographic regions of Southeast Alaska caused the governance of the Tlingit to be largely decentralized. Like the clan governance structure, Sealaska's corporate decision-making is centralized with the Board of Directors. However, because of the large number of Village and urban corporations throughout Southeast Alaska, as well as such organizations as CCTHITA, Sealaska Heritage Institute, and AFN, there are opportunities for participation in the governance of the Tribe beyond Sealaska. As a result, the contemporary Tlingit governance is decentralized like the ancient clan structure. A distinction from the ancient clan structure is introducing a Kwaan form of governance represented by Sealaska, a regional corporation, and CCTHITA, a regional tribal government. Through Sealaska and CCTHITA the Tlingit have consolidated their governance at the regional Kwaan level. This is also likened to the binary structure of the Eagle and Raven moieties, though in a less formal sense. As a result, the Tlingit have a regional form of governance through Sealaska and CCTHITA, while still maintaining an informal decentralized governance model through the various village and urban corporations and Native organizations that shareholders can participate in.

ii. Clan and Corporate Fiduciary Roles

Historically the Clan leader had a fiduciary role in their clan to steward clan property.⁴⁰⁸ It could be analogized that the Board of Directors represent senior clan leaders, as they have a fiduciary role of good faith and loyalty under the laws of the State, as well as through the Sealaska by-laws and Code of Ethics.⁴⁰⁹ The Board members are similar to senior clan leaders who would preside over the council assemblies. The Sealaska CEO and corporate officers might also be analogized to be senior clan leaders, except they manage the day-to-day operations of Sealaska.

In the ancient clan structure, the clan owned the names as a form of *at.oow*.⁴¹⁰ This is still somewhat the case today in a modern corporate form. The clan members would inherit the names during their lifetime, but the name still belonged to the clan. The clan-owned names carried on from generation to generation and represented an embodiment of the originally named person. Similarly the Board of Directors and various Corporate Officers are titles and offices that carry on after the individual director or officers leaves the corporation.

⁴⁰⁸ Worl, *supra* note 28, at 63-64.

⁴⁰⁹ Sealaska Code of Ethics, *supra* note 327, at 29.

⁴¹⁰ Worl, *supra* note 28, at 41.

This ownership of the names was rooted in the belief that the clan was immortal and was to continue into perpetuity.⁴¹¹ Similarly, according to its articles of incorporation, Sealaska is designed to have a perpetual existence.⁴¹²

iii. For-Profit Model and Stewardship

Through ANCSA, Sealaska was set up as a for-profit corporation. This appears to be consistent with the old clan structure and culture of the Tlingit people as they were highly organized and industrious, and lived on abundant land that produced a surplus for the clans, which represented a profit.⁴¹³ However, because of *Wooch.Yax*, there was also a focus on generosity and distribution through the Potlatches. This did not mean there was universal equality, as there were aristocratic Tlingit called *aanyadi*⁴¹⁴ and clan leaders of special status. Still, the motive was generosity and distribution as a form of exhibiting one's wealth. The dividend is analogous to this as it represents a distribution from the Corporation to the shareholders. This is also analogous to sections 7(i) and 7(j) of ANCSA, where Sealaska shares 70% of its subsurface revenues with the other regional corporations, as well as 7(j) where it shares revenues with the village corporation.

Historically, the Tlingit, through the principle of Haa Aaní, were reverent stewards of the land with a mindset of sustainability while being industrious and seeking to make the most of land, waters, and seas.⁴¹⁵ In a similar manner, Sealaska, though being a for-profit corporation, has begun to focus more of its business portfolio on sustainable enterprises.⁴¹⁶ This is a combination of *Haa Aaní*, our land, and *Haa Shuká* in terms of planning for future generations.

iv. Sealaska Partnerships and Subsidiaries

Sealaska has many business partnerships. This is analogous to the history of Tlingit trading. Ancestrally, the Tlingit were accomplished traders, having extensive trade networks with the other Tribes.⁴¹⁷ In a similar manner, Sealaska now has extensive partnership networks with other businesses, as well as non-profit organizations, representing *Wooch.Yax* through the interrelationship of all things.

Historically, the clan also had subsidiaries, called houses, that generally consisted of an extended family that functioned as a socio-economic unit. Similarly, Sealaska also has subsidiaries in Alaska and throughout the U.S. However, the difference is that Sealaska serves as a parent role to the subsidiary

⁴¹¹ *Id.*

⁴¹² Sealaska Corp., Restated Articles of Incorporation, *supra* note 301.

⁴¹³ *Tlingit & Haida I*, note 60, at 457.

⁴¹⁴ Worl, *supra* note 28, at 57.

⁴¹⁵ *Tlingit & Haida I*, note 60, at 457.

⁴¹⁶ KTOO, *supra* note 356.

⁴¹⁷ Baker, Smythe and Dethloff, *supra* note 75, at 10.

and has certain fiduciary duties to the subsidiary. Also, the house group was composed primarily of Tlingit clan members, whereas the Sealaska subsidiaries do not currently have a high Native shareholder employment rate.⁴¹⁸

v. Children of the Father's Clan Use Rights and Corporate Life-estate Stocks

Along with being members of their own clan, children had a special relationship with their father's clan where they were a "Child" of that clan.⁴¹⁹ Though they were not clan members, they had "use rights" to their father's clan property throughout their life.⁴²⁰ However, like a life-estate, the use rights to their father's clan property ended when they died and were not passed down to their children.⁴²¹ This is similar to the stocks new shareholders who were born after 1971 were issued by Sealaska. The shares are corporate life-estate stocks that continue for the duration of their lifetime but cannot be gifted or inherited by their descendants.⁴²² However, these life-estate stocks include all the benefits of the stocks of the original shareholder born before Dec. 18, 1971.

The stocks issued to new shareholders could be analogized as somewhere between the use rights of the "child of the father's clan" and full clan membership rights. They are like the rights of the children of the father's clan as they are life-estate stocks that cannot be willed to their descendants. However, they are like full clan membership rights as the life-estate stocks include all the benefits of the original shareholders for the duration of the shareholder's life.

B) Differences Between the Clan and Corporation

There are several differences between the Clan and Corporation. Some of these differences are issues that still need to be resolved for the benefit of Sealaska, the Tlingit, as well as ANCSA Regional and Village corporations. The Tlingit believed that if *Wooch.Yax* is not maintained, things are out of balance, and it can cause harm. As noted earlier, the potlatch is for repayment of the debt to the opposing clan. Through this repayment of the debt, *Wooch Yáx* (balance) is restored. The following are issues that are currently out of balance and need to be resolved for *Wooch.Yax* to prevail and balance and harmony in these areas to be restored.

1) Land Issues: Restoration of Haa Aaní

Some of the differences between the Corporation and the clan are the amount of land Sealaska and the village corporations have. Previously the Tlingit owned basically all of Southeast Alaska exclusively and continuously.⁴²³

⁴¹⁸ GAO, at 46.

⁴¹⁹ Worl, *supra* note 28, at 54.

⁴²⁰ *Id.* at 56.

⁴²¹ *Id.*

⁴²² Welcome to MySealaska, *supra* note 369.

⁴²³ *Tlingit & Haida I*, note 60, at 457.

Currently, Sealaska only owns 1.6% of its original land.⁴²⁴ This is an issue that still needs resolution, in terms of the restoration of land for Sealaska and Southeast Alaska Natives.

Since Tlingit and Haida accepted compensation for the taking of the Tongass Forest and the Glacier Bay National Park, it would likely be difficult to restore the title to the land through the judiciary based on this previous claim. Though not to preclude the use of the judiciary, an alternative approach could be an Amendment to ANCSA. The reason for this approach is Congress has jurisdiction over ANCSA Corporations, as well as plenary power. One possibility is to amend ANCSA to move Sealaska out of section 14(h) of ANCSA into Section 12 of ANCSA. Through section 12 of ANCSA, Sealaska could potentially negotiate to establish its land claims in proportion to its number of shareholders or the relative size of its aboriginal land claims, like other ANCSA Corporations. Sealaska would have a strong argument in equity before Congress, as the compensation the Tlingit and Haida received for the taking of 17 million acres in the Tongass National Forest and 3.3 million acres in the Glacier Nation was a fraction of the fair market value of the land at .43 cents an acre.⁴²⁵ Also, the Tlingit and Haida were not compensated for 2,628,207 acres of land subject to aboriginal title nor were they compensated for the lost fishing rights.⁴²⁶ Amending ANCSA to move Sealaska into section 12, could be a means to restore a significant portion of the aboriginal lands for Sealaska and Southeast Alaska Natives.

2) Subsistence Issues: Restoration of At.oow

Historically the clans had complete control over the subsistence rights, which included fishing territories, hunting territories, and the ability to harvest berries exclusively. In a contemporary sense, ANCSA on its face extinguished the subsistence rights of Alaska Natives.⁴²⁷ However, according to the historical record, the Secretary of the Interior was to work with Alaska Natives to establish their subsistence rights, especially at the village level.⁴²⁸ This never happened, but the subsistence rights have been restored somewhat through Alaska National Interest Lands Conservation (ANILCA).⁴²⁹ This still is an issue because of the need to restore subsistence rights for Alaska Natives, including the Tlingit. The reason for this is ANILCA gives “rural” preference, which includes Native and non-Native, rather than “Native” preference.⁴³⁰

⁴²⁴ We Are Sealaska, *supra* note 196.

⁴²⁵ *Sealaska Testimony on H.R. 740 and H.R. 1306*, at 3.

⁴²⁶ *Id.*

⁴²⁷ Royhster, Blumm, & Warner, *supra* note 221, at 116-117.

⁴²⁸ *Id.*

⁴²⁹ *Id.*

⁴³⁰ *Id.*

If a village or Native community is designated as non-rural, it could lose its subsistence rights. This happened in 2006 with the Tlingit Village of Saxman.⁴³¹ It was designated as non-rural by the Federal Subsistence Board, and the village lost its subsistence rights.⁴³² Though the Village of Saxman was restored to rural status in 2016,⁴³³ this example shows the vulnerability of Native Villages losing their subsistence rights under rural preference. A suggested reform would be to change the preference in ANILCA from rural preference to “Native preference”. This would give Natives preference for subsistence rights in the villages.

Another approach could be to amend ANCSA to establish permanent and exclusive Native subsistence rights for the villages. This amendment would outline the villages' subsistence rights and provide hunting and fishing rights. This amendment could include the authority for Villages to lease fishing and hunting rights to non-Natives. This would be like the clan territorial rights of the Tlingit, who, by permission of the clan, would lease hunting and fishing rights to non-clan members.⁴³⁴

3) Reform of the Village Corporation & Sovereignty: 2 Clan Leader Model

Another difference between the clan ownership of the land and the Corporation is a lack of sovereignty and governmental jurisdiction over the land and members by the corporations.⁴³⁵ This is an especially important issue at the village level, where there is a lack of governmental powers by Native Village Corporations and a lack of infrastructure in the village.⁴³⁶ Because of a lack of governmental powers, it makes it difficult for Villages to exercise jurisdiction over their subsistence rights, build infrastructure and establish a judiciary.⁴³⁷ This generally is the traditional role of tribal governments rather than corporations.

One approach for the villages to establish governmental jurisdiction is to put some of the lands into trust with the federal government. Previously Alaska Native tribes were prohibited from putting land into trust. However, in 2014 a

⁴³¹ Native American Rights Fund, *Federal Subsistence Board restores rural community status to Saxman Village*, (last visited Aug. 31, 2022, 12:25 AM), <https://narf.org/3070-2/> [<https://perma.cc/3VHU-DKHC>].

⁴³² *Id.*

⁴³³ *Id.*

⁴³⁴ Goldschmidt & Haas, *supra* note 81, at 12.

⁴³⁵ Philanthropy Northwest, *supra* note 250.

⁴³⁶ Rural Alaska, *Unserviced: Why some Western Alaska villages lack basic sanitation infrastructure*, (last visited Aug. 31, 2022, 10:00 PM), <https://www.adn.com/alaska-news/rural-alaska/2020/05/19/unserviced-why-some-western-alaska-villages-lack-basic-sanitation-infrastructure/> [<https://perma.cc/Q8PK-FPNJ>].

⁴³⁷ Berger, *supra* note 188, at 61.

case temporarily changed this.⁴³⁸ In *Akiachak v. Salazar*, the U.S. District Court for the District of Columbia held that the Secretary of the Interior has the authority to take land into trust for Alaska Natives under Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 465.⁴³⁹ This invalidated a previous regulation - 25 C.F.R. § 151.1 - which prohibited the Secretary of Interior from acquiring land into trust for Alaska Native Tribes.⁴⁴⁰ As a result, Alaska Native tribes could submit a request through the BIA to put land into trust.⁴⁴¹

The benefit of putting land into trust is greater control over subsistence rights and addressing health, welfare, and safety issues by the Tribal government.⁴⁴² It also protects the land from being taxed by the state or local government, which would aid in the economic development of the Villages.⁴⁴³ The disadvantage of this approach is that it subjects the land to greater federal jurisdiction, restricts alienation, and requires BIA approval to lease the land.⁴⁴⁴

This period of Alaska Native tribes putting land into trust was short-lived. In 2017 the Trump administration rescinded this rule and no longer allowed Alaskan Native tribes to put land into trust.⁴⁴⁵ However, in 2019 Congress passed H.R. 375, which amended 25 U.S.C. § 5129 of the Indian Reorganization Act.⁴⁴⁶ Through this amendment, it includes Alaska Natives as an “Indian Tribe” in the statute.⁴⁴⁷ As a result, the Secretary of the Interior would be authorized to put land into trust for Alaska Native tribes.⁴⁴⁸ An overwhelming majority in Congress passed H.R. 375, but it still needs to pass the Senate. If it passes the Senate and is signed into law, it would enable Alaska Native tribes to put land into a trust.⁴⁴⁹ This would allow Village governments to exercise greater jurisdiction of their subsistence rights and protect the land from being taxed by a state or local government.⁴⁵⁰ Also, by amending the statute to include Alaska Natives as an

⁴³⁸ Elizaveta Barrett Ristroph, *Strategies for Strengthening Alaska Native Village Roles in Natural Resource Management*, 4 WILLAMETTE ENVIRONMENTAL LAW JOURNAL 117 (2016).

⁴³⁹ *Id.*

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.* at 118.

⁴⁴² *Id.* at 119.

⁴⁴³ AK Public Media PBS NPR, *Trump administration puts brakes on Indian Country in Alaska*, (last visited Aug. 31, 2022, 7:20 PM), <https://www.alaskapublic.org/2018/07/13/trump-administration-puts-brakes-on-indian-country-in-alaska/> [<https://perma.cc/G28Z-747A>].

⁴⁴⁴ Ristroph, *supra* note 438, at 119.

⁴⁴⁵ AK Public Media PBS NPR, *supra* note 443.

⁴⁴⁶ AK Public Media, *US House bill clears path for Alaska tribes to put land in trust*, (last visited Aug. 31, 2022, 7:23 PM), <https://alaskapublic.org/2019/05/15/us-house-bill-clears-path-for-alaska-tribes-to-put-land-in-trust/> [<https://perma.cc/N73R-EQT2>].

⁴⁴⁷ H.R. 375, 116th Cong. § 1 (2019).

⁴⁴⁸ AK Public Media, *supra* note 446.

⁴⁴⁹ *Id.*

⁴⁵⁰ AK Public Media PBS NPR, *supra* note 443.

“Indian Tribe,” it would recognize Alaska Native trust land as “Indian Country” and partially overturn *Venetie*.⁴⁵¹

Another possibility is for Village Corporations to be reformed to include governmental powers. The historical charter cities in America are a model for this. In the Montgomerie Charter of 1730, New York City was granted an elective structure that included governmental powers.⁴⁵² At the time, New York City was a charter corporation. This conveyance of governmental powers to New York City was distinct from modern municipal law.⁴⁵³ Generally, modern municipal law involves delegating authority from the state to the city. In this case, the quasi-governmental powers conferred on New York City were derived from its corporate, private property.⁴⁵⁴

Based on this conceptual framework, Village Corporations could be reformed to include governmental powers through an amendment to ANCSA. Like the Montgomerie Charter, instead of these governmental powers being delegated authority from a state or federal government, the governmental power would come from either the Village Corporations’ ownership of the surface estate or through inherent tribal sovereignty.⁴⁵⁵ Village Corporations could be organized as chartered corporate municipal city-states. As a result, the village corporation would have corporate and governmental powers.⁴⁵⁶ The Village Corporation would therefore have the continued freedom to make business decisions while also having certain governmental powers. By reforming the village corporation to include governmental powers, the village corporation could potentially have jurisdiction over the village subsistence rights, establish a tribal judiciary where needed, and have governmental powers to develop more infrastructure in the villages.

Another approach would be establishing a chartered municipal government separately from the Village Corporation through an ANCSA amendment. A chartered municipal government would serve the same governmental function as a tribal government but would be separate from the Village Corporation within ANCSA. The chartered municipal government would also be based on tribal sovereignty and have similar governmental powers as IRA Tribal Governments in the U.S.⁴⁵⁷ Like the ANCSA Corporations, the chartered municipal government would not be under the jurisdiction of the State of Alaska but instead would be under Congressional jurisdiction. Structurally, this village

⁴⁵¹ *Id.*

⁴⁵² Martha Hirschfield, *The Alaska Native Claims Settlement Act: Tribal Sovereignty and the Corporate Form*, 101 THE YALE LAW JOURNAL 1346 (1992). available at <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=7426&context=yj> [<https://perma.cc/T6QV-LWVW>].

⁴⁵³ *Id.*

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.* at 1347.

⁴⁵⁶ *Id.* at 1346.

⁴⁵⁷ *Id.*

government could be a chartered municipal government or a unique ANCSA Tribal Government.

Through this amendment, an option could be created within ANCSA for Villages to establish a chartered municipal government, like the IRA governments have the option to establish federally chartered corporations.⁴⁵⁸ This would establish greater jurisdiction over the land, waters, subsistence rights, and village members than is currently available through village corporations. Specific innovations could be built into the amendments that could be customized for effective governance of the villages. For instance, these chartered municipal governments could have a regional component for the judiciary. The village courts system could be established that includes an Alaska Native appellate court network throughout the state of Alaska and certiorari to a federal court. Another innovation could be a more streamlined and expedient method for the chartered municipal government to put the land into trust with the Federal government if they chose to exercise that option.

Having an option for an ANCSA charter municipal government to work with the ANCSA village corporations would be like the ancient Tlingit leadership model of having two senior clan leaders. The two clan leaders would be embodied in the ANCSA chartered municipal government and the village corporation. This could be an avenue to restore the balance of having sovereignty and governmental jurisdiction over the land and members at the village level.

4) Blood Quantum and the Issue of Perpetuity: Honoring Haa Shuká

Another dissimilar area between the Clan and Sealaska is based on ANCSA's requirement that a Native be $\frac{1}{4}$ Alaska Native blood to be a shareholder.⁴⁵⁹ This is not the case with CCTHITA, which uses a lineage model for Tribal members.⁴⁶⁰ Like many tribes, this is problematic as more Natives marry out of the Tribe, and their children would be unable to qualify as shareholders. This could lead to the eventual extinguishment of qualified shareholders based on blood quantum. Historically the clan was designed to continue into perpetuity. Sealaska has this same mandate in its Articles of Incorporation.⁴⁶¹ Sealaska could consider passing an amendment to change the shareholder qualification from $\frac{1}{4}$ Alaska Native blood to proof of lineage. This is what CCTHITA has done for tribal membership. This use of lineage seems more in harmony with Haa Shuká (our future) and would be a means for Tlingit, Haida, and Tsimshian to be Sealaska shareholders into perpetuity.

⁴⁵⁸ 25 C.F.R § 81.2; 81.5(c)

⁴⁵⁹ Sealaska Heritage, *Determination of Alaska Native Status Under the Mammal Protection Act*, (last visited Aug. 31, 2022 9:00 PM), <https://www.sealaskaheritage.org/sites/default/files/MMPAFinalReport.pdf> [https://perma.cc/7HGT-R2T5].

⁴⁶⁰ General Overview, *Frequently Asked Questions*, (last visited Aug. 31, 2022), <http://www.ccthita.org/services/overview/faqs/index.html> [https://perma.cc/D24U-VWEF].

⁴⁶¹ Sealaska Corp., Restated Articles of Incorporation, *supra* note 301.

5) Native Leadership Development and Employment: The Spirit of Haa Latseen

Historically, the Tlingit also had a well-developed Clan leadership training program where the maternal uncles trained their nephews. Also, clan members were fully involved in the economics of the clan. Sealaska has a Native preference and seeks to support Native-owned businesses.⁴⁶² However, though there is Native preference, it still reviews the qualifications of the applicants and is not required to hire shareholders. Like many Regional and village corporations, there has been a transition to hiring more Native shareholders in the corporation.⁴⁶³ However, though the Board of the Sealaska is exclusively Native shareholders and the Sealaska CEOs since 1982 have been solely Native, there appears to be a need to hire more Native shareholders in the Corporations. This includes hiring more Native shareholders in its subsidiaries, contractors, and business partners.

One possibility would be to create a *Haa Latseen Leadership and Employment* program, to funnel Native shareholders into Sealaska and its business partners through Native preference. As part of this process, Sealaska could establish goals to hire a certain number of Native shareholders for corporate executive positions and employees. For example, one long-term goal could be to be the number one employer of Native shareholders among the 12 Regional ANCSA Corporations. This goal would include Sealaska and its subsidiaries, business partners, and executive positions.

As part of the *Haa Latseen* program, Sealaska could implement a Corporate University⁴⁶⁴ within Sealaska for the employees to foster the continued development of their skills and professional advancement. Sealaska could also make available online learning as a benefit for its shareholders. In terms of online learning for shareholders, Sealaska could contract with universities that have online learning and online learning companies to provide a discount for Sealaska shareholders. This could include undergraduate and graduate degrees and continued career development. Having a Corporate University for Sealaska employees and online learning as a benefit for shareholders would supplement the scholarship program Sealaska already has for its shareholders. This would be a form of *Haa Latseen*, as it would help develop its shareholders' leadership strengths and skills to contribute to Sealaska as employees or work outside the corporation.

⁴⁶² Welcome to MySealaska, *Careers* (last visited Dec. 16, 2020, 7:48 PM), <https://mysealaska.com/Opportunities/Careers> [<https://perma.cc/8WTR-GNAE>].

⁴⁶³ Smiddy, *supra* note 230, at 842-43.

⁴⁶⁴ ELM, *The Corporate University Shift: Why Great Companies Invest in Custom Learning*, (last visited Aug. 31, 2022, 2:43 PM), <https://elmllearning.com/the-corporate-university-shift/> [<https://perma.cc/P7GZ-FKW3>]. Some of the benefits of a Corporate University include: 1) control over the content delivery system; 2) setting the tone of leadership development; 3) reinforcing culture; and 4) supporting innovation and development. These benefits appear consistent with Sealaska's unique regional corporate model.

There could also be separate online courses that include the Four Core Values for employees. This would be a method to continue incorporating the Four Core Values into the culture of Sealaska. These Four Core value courses could be separate courses along with mainline professional skill development courses.⁴⁶⁵ The Sealaska Heritage Institute might also consider creating online learning courses of the stories, values, and history of Tlingit, Haida, and Tsimshian nations.

Part of the philosophy of *Haa Latseen* is “continuous improvement.” By having a *Haa Latseen Leadership and Employment* program, it would create employment opportunities for shareholders by Sealaska setting target goals to hire more Native shareholders at Sealaska and its business associates. Also, by providing a Corporate University for employees and making available online learning as a benefit for shareholders, it will help equip shareholders to contribute to the continued improvement and growth of the Sealaska Corporation. This program would also be consistent with ANCSA’s mandate to address the real economic and social needs of Native shareholders.⁴⁶⁶

XI. CONCLUSION

In conclusion, the historic governing structure was centralized at the clan level. However, the clans were spread out over 17 different regional kwaans throughout Southeast Alaska and, in the aggregate, created a decentralized form of government for the Tlingit nation. The modern-day Tlingit governance through Sealaska and CCTHITA has consolidated at the Kwaan Regional level, which is part of the evolution of Tlingit governance in the modern era. However, through Sealaska’s partner organizations and village and urban corporations, Tlingit governance also has a decentralized form of governance. The Tlingit believe in four core governing values which are the *Haa Aani* (Our Land), *Haa Latseen* (Our Strength & Leadership), *Haa Shuká* (Past, Present, and Future Generations), and *Wooch Yáx* (Balance). These values and protocols have officially been embraced and incorporated into the Code of Ethics by Sealaska. However, before this, they were practiced and in operation primarily through performance law.

⁴⁶⁵ In terms of the online courses for shareholders, Sealaska could also partner with universities to develop customized content unique to ANCSA Corporations. For instance, there might be an ANCSA MBA degree for shareholders or a mini-ANCSA MBA or business degree for shareholders that would include mainline business courses, as well as cover issues unique to ANCSA corporations. These customized courses would be courses available as part of the general curriculum of the Corporate University for employees and on-line courses available for shareholders. Sealaska would not necessarily have to create the content but could work with universities to provide guidance for these customized courses. Another form of this would be an MBA with an ANCSA certificate or a Law Degree with a certificate in Indian & Alaska Native Law.

⁴⁶⁶ Smiddy, *supra* note 230, at 830.

Sealaska's corporate governance structures bear several striking parallels to the ancient Tlingit clan structure. However, changes have been brought about by the Alaska Native Claims Settlement Act, including the transference of land from the clans to Sealaska and the Native and Village Corporations. There are also several issues that Sealaska and the Tlingit still need to resolve, in particular, the area of land claims, sovereignty, and subsistence rights.

The Tlingit are a unique people who embrace inviolable principles and laws yet are open to change and transformation. With the help of the Creator, perhaps, solutions to these issues will be the next boxes of light to be opened for the benefit of the Tlingit, Haida, and Tsimshian people and, ultimately, the world.