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Via email

September 25, 2013

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RE: 1076-AF18 – Comments on the Proposed modifications to the Federal  
Acknowledgment Regulations (25 C.F.R. Part 83)

Dear Assistant Secretary Washburn:

We are writing to suggest that the Department's revision to the Federal Acknowledgment Regulations include a provision that serves to clarify that groups of Alaska Natives need not petition under Part 83 to obtain federal recognition if they meet the statutory standards set forth in the Alaska Amendment to the Indian Reorganization Act (IRA), 25 U.S.C. § 473a.

Many tribes in Alaska have been recognized pursuant to statutorily authorized administrative recognition under the Alaska amendment to the IRA. Under the Alaska IRA, groups of Alaska Natives may be recognized as tribes, provided they have a "common bond of occupation, or association, or residence within a well-defined neighborhood, community or rural district." This process created the "IRA Councils" that many Alaska Native villages operate under today and continues to enable Alaska Native groups sharing the requisite "common bond" to petition the Secretary of Interior to organize under an IRA constitution and be governed by an IRA Council. Assistant Secretary Larry Echo Hawk explained this aspect of the Alaska IRA in his January 31, 2012 letter to Senator Lisa Murkowski (attached).

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In reviewing the requests of groups of Alaska Natives (not currently recognized) to organize under the Alaska IRA, the Agency may not substitute its judgment for that of Congress by imposing standards utilized in the Department's Federal Acknowledgment Procedures (25 CFR Part 83) where those standards differ from the "common bond" criteria set by the legislative branch. We recommend that the Agency's revised Part 83 rules make clear that the Alaska IRA establishes the process for the recognition of groups of Alaska Natives that meet the "common bond" standard set by Congress.

Thank you for your consideration.

Sincerely,

HOBBS, STRAUS, DEAN & WALKER, LLP

Handwritten signatures of F. Michael Willis and Jennifer P. Hughes. The signature on the left is a cursive signature that appears to be 'F. Michael Willis'. The signature on the right is a cursive signature that appears to be 'Jennifer P. Hughes'.

F. Michael Willis and Jennifer P. Hughes

Attachment



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

JAN 31 2012

Honorable Lisa Murkowski  
United States Senate  
Washington, DC 20510

Dear Senator Murkowski:

Thank you for your letter of June 23, 2011, posing two questions about the recognition process for Alaskan tribal entities. Your letter inquires about the Alaska Amendment to the Indian Reorganization Act, 25 U.S.C. § 473a (IRA), and the Department's acknowledgment regulations, 25 C.F.R. Part 83, as the means by which Alaskan tribal entities are recognized as tribes. I apologize for the delay in responding to your letter.

You note that there are currently 229 Alaska native entities listed in the October 1, 2010 *Federal Register* Notice "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs." The acknowledgment process of Alaska Native tribes and villages has a long and unique history, as described below.

When the tribal entities list was first published in 1982, it was qualified as a "preliminary list." See 47 Fed. Reg. 53,130, 53,133 (Nov. 24, 1982). Efforts to clarify the list were unsuccessful and numerous Alaska Native villages appealed being left off the 1986 list, which resulted in the Department modifying the list significantly in 1988 to include Alaska Native villages and Alaska Native Claims Settlement Act (ANCSA) corporations and other tribal organizations that would not otherwise be considered tribes. See 53 Fed. Reg. 52,829, 52,832 (Dec. 29, 1988).

Unfortunately, the revisions to the list did not resolve the questions related to tribal status of the Native villages and, indeed, may have made them more complicated. As a result, the Solicitor issued a comprehensive opinion on the "Governmental Jurisdiction of Alaska Native Villages Over Land and Nonmembers," M-36975 (Jan. 11, 1993, as supplemented Jan. 19, 1993). In response to the Solicitor's Opinion, the Department published a revised list of tribal entities for Alaska, the preamble to which recounts the significant history of the Alaska portion of the list. See 58 Fed. Reg. 54,364 (Oct. 21, 1993). The authoritativeness of the current list has most recently been confirmed by the Alaska Supreme Court in *McCray v Ivanof Bay Village*, No. S-13972, 2011 Alas. LEXIS 136 (Alaska Dec. 9, 2011).

Turning to your specific question as to the applicability of the IRA to Alaska, the IRA as originally enacted in 1934 applied to Alaska, but had limited effect because of the absence of reservations similar to those in the contiguous 48 states. Recognizing Alaska's unique circumstances, Congress amended the IRA in 1936 to account for those circumstances. For the contiguous 48 states, Section 16 of the IRA, 25 U.S.C. § 476, gave any tribe or tribes residing on one reservation the right to reorganize and adopt a constitution for self-government. Since there were few reservations in Alaska, Congress amended the IRA to provide in part:

that groups of Indians in Alaska not heretofore recognized as bands or tribes, but having a common bond of occupation, or association, or residence within a well-defined neighborhood, community or rural district, *may organize* to adopt constitutions and bylaws and to receive charters of incorporation and federal loans under Sections 16, 17, and 10 of the Act of June 18, 1934 (48 Stat. 984).

*(emphasis added)*

*49 Stat. 1250; 25 U.S.C. § 473a.*

Thus, a group that can establish its existence in 1936 with "a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district" could seek to be organized under the Alaska Amendment of the IRA.

If the Alaska Amendment of the IRA does not apply to the group because the group was not in existence in 1936, there are several alternatives. First, the group could seek special clarifying legislation similar to that passed for the United Keetoowah Band of Cherokee Indians (Act of August 10, 1946; 60 Stat. 976) or the Central Council of the Tlingit and Haida Tribes (Act of Nov. 2, 1994; 108 Stat. 4793). Second, in the alternative, the group could consider forming a "tribal organization" within the meaning of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450b(1), for purposes of managing Federal services and benefits available to Alaska Native people. A third possibility may be the acknowledgment process under the Department's regulations, 25 C.F.R. Part 83. One of the requirements of that process is the need to show a continuous existence as a community from historical times to the present. *See* 25 C.F.R. § 83.7(b).

We hope these comments have been helpful to you in understanding the Department's position. If you have any further questions please do not hesitate to contact us.

Sincerely,



Larry Echo Hawk  
Assistant Secretary-Indian Affairs