

# ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS

Raymond Watson, Chairperson | Vivian Korthis, CEO | AVCP.org



## Administration

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VIA CERTIFIED MAIL AND E-MAIL (consultation@bia.gov)

November 27, 2018

Tara Mac Lean Sweeney  
Assistant Secretary – Indian Affairs  
Department of the Interior  
1849 C Street, N.W.  
MS-4660-MIB  
Washington, D.C. 20240

RE “Dear Tribal Leader” letter regarding legal authority and process to take land into trust in Alaska

Dear Ms. Sweeney:

The Association of Village Council Presidents (AVCP) is a nonprofit, inter-tribal consortium incorporated by the 56 federally recognized Alaska Native tribes of the Yukon-Kuskokwim Delta to manage self-governance programs pursuant to P.L. 93-638. This summer, AVCP received a “Dear Tribal Leader” letter dated July 2, 2018, stating that the Department of the Interior had withdrawn Solicitor’s Opinion M-37043 on June 20, 2018, pending further review and consultation about the Secretary’s authority to take land into trust under the Alaska amendments to the Indian Reorganization Act (Alaska IRA).

The letter requested consideration of six questions, to be the subject of listening sessions and consultations during the summer and autumn in Alaska. AVCP staff attended the listening session held in Fairbanks on July 26, 2018, and the Alaska Native Corporation consultation held in Anchorage on October 18, 2018. Our organization is aware of the strong initial feedback provided by tribal representatives to the Bureau of Indian Affairs, and of the Bureau’s subsequent clarifications regarding the intent and scope of the July 2 letter.

The status of Alaska land into trust affects all AVCP member tribes. AVCP now responds to the letter based on the information we have received since July 2.

## I. AVCP FINDS THE SECRETARY’S AUTHORITY TO TAKE LAND INTO TRUST IS SETTLED LAW.

AVCP agrees with those who have asserted the Secretary’s legal authority to take land into trust in Alaska is clearly established in the law. This conclusion was previously reached by the U.S. District Court for the District of Columbia in *Akiachak Native Community v. Salazar* and, independently, the Department when promulgating regulations in 2014 to enable the Secretary to carry out statutorily granted authority to acquire land into trust in Alaska.

Akiachak, Akiak, Atakanuk, Andreafski, Aniak, Atmautluak, Bethel, Bill Moore’s St., Chefornak, Chevak, Chuathbaluk, Chutoonawick, Crooked Creek, Eek, Emmonak, Georgetown, Goodnews Bay, Hamilton, Hooper Bay, Lower Kalskag, Upper Kalskag, Kasigluk, Kipnuk, Kongiganak, Kollik, Kwethluk, Kwigillingok, Lime Village, Marshall, Mekoryuk, Min. Village, Napaimute, Napakiak, Napaskiak, Newtok, Nighimute, Nunakauyak, Nunam Iqua, Nunapitchuk, Ohogamiut, Oscarville, Paimiut, Pilot Station, Pitka’s Point, Platinum, Quinhagak, Red Devil, Russian Mission, Scammon Bay, Sleetmute, St. Mary’s, Stony River, Tuluksak, Tunlululiak, Tununak, Umkumiut

RE "Dear Tribal Leader" letter regarding legal authority and process to take land into trust in Alaska  
November 27, 2018



In *Akiachak*, the intervening State of Alaska argued that subsequent legislation, such as the Alaska Native Claims Settlement Act (ANCSA), implicitly repealed the Secretary's land into trust authority in Alaska. The court denied this argument, holding that enactment of neither ANCSA nor the Federal Land Policy and Management Act caused the Secretary to lose authority to take land into trust in Alaska. The court additionally overturned the Department's regulation (the "Alaska Exception") that prohibited the Secretary from taking Alaska land into trust because there was no legal basis for such a prohibition.

The now withdrawn Opinion M-37043 comprehensively addressed the resolution of land into trust in Alaska as a legal question. In support of this conclusion, the Opinion explained how the plain language of the Alaska IRA, subsequent statutes, and legislative history all clearly indicated that Congress' intent was for the Secretary to be able to take land into trust for the benefit of Alaska Native tribes. In sum, the question of whether the Secretary may take land into trust has been definitively answered in the affirmative.

AVCP joins tribal representatives from across Alaska who have requested the Department immediately reinstate Opinion M-37043 in its entirety. AVCP also echoes those tribal voices who have asked the Department to not reopen this painful chapter that many in Alaska believed was behind them.

## II. AVCP FAVORS ALASKA NATIVE TRIBES BEING ABLE TO REQUEST LAND BE PLACED INTO TRUST THROUGH 25 CFR PART 151.

AVCP concludes that it is premature to consider the adequacy of the 25 CFR Part 151 processes to Alaska Native tribes. At this time, only one Alaska Native tribe has succeeded in making and obtaining approval through 25 CFR Part 151. More time and, importantly, more opportunity for Alaska Native tribes to submit requests and receive final determinations by the Bureau are needed.

To this end, the Bureau may prefer to focus on processing all currently pending requests from Alaska Native tribes. Additionally, the Bureau may consider addressing comments from tribal representatives who asked for technical support and funding to complete an application under 25 CFR Part 151.

Once Alaska Native tribes have a meaningful opportunity to use the current land-into-trust process, it would be appropriate for the Bureau to engage tribes about how to collaboratively improve the system.

## III. AVCP ENCOURAGES THE BUREAU TO REVIEW ITS APPROACH TO THIS CONSULTATION.

AVCP notes that the Bureau withdrew Opinion M-37043 on June 29, 2018—three days prior to issuing the Dear Tribal Leader letter on July 2 announcing consultations. Federal law requires that an agency action affecting Alaska Native tribes be subject to tribal consultation *before* the action is taken. Here, the Bureau's



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November 27, 2018



action effectively canceled the tribes' ability to have the Secretary acquire lands into trust. Moreover, it would appear the Bureau acted unilaterally as, to our knowledge, no Alaska Native tribe sought the withdrawal of Opinion M-37043. The Bureau's action has been universally unsupported by Alaska Native tribes during listening sessions and consultations held thus far.

AVCP echoes the concerns raised by tribal representatives that the Bureau's "Dear Leader" letter and consultations largely coincided with the Alaska subsistence season. Most tribal leaders were focused on securing traditional foods for their families and communities before the long winter season. Traditional foods are significantly less abundant in winter, and store-bought foods in rural Alaska are prohibitively expensive.

The arrival of a "Dear Leader" letter, much of it written with legalese, during the subsistence season prompted widespread concern and forced tribal leaders to choose between subsistence and consultation. AVCP suggests some reflection be made about the appropriateness of the methods used here.

In addition to subsistence and the scope of the issue, the consultation on October 18, 2018, was scheduled at the same date and time as the annual AFN-NCAI Tribal Conference. Additionally, the consultation on October 21, 2018, was scheduled on the customary travel date for tribal representatives returning home from AFN or traveling to Washington, D.C., for the NCAI conference. Further, the naming of these consultations as specific to corporations or tribes caused the impression that the consultations were exclusive to such groups. In reality, these events were open to the public.

Thank you for your consideration of our responses to respond to the Bureau's July 2 letter.

Sincerely,

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS

Vivian Korthuis  
Chief Executive Officer

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