

U.S. DEPARTMENT OF THE INTERIOR
TRIBAL CONSULTATION
ALASKA FEE-TO-TRUST

TRANSCRIPT OF PROCEEDINGS

Yupiit Piciryarait Cultural Center
University of Alaska-Fairbanks, Kuskokwim Campus
420 Chief Eddie Hoffman Highway
Bethel, Alaska 99559

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v.2 (typos corrected)

1 U.S. DEPARTMENT OF THE INTERIOR

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3 OFFICE OF THE ASSISTANT SECRETARY – INDIAN AFFAIRS:

4 John Tahsuda, III, Principal Deputy Assistant Secretary for Indian Affairs

5 Elizabeth K. Appel, Office of Regulatory Affairs & Collaborative Action

6
7 BUREAU OF INDIAN AFFAIRS:

8 Gene Peltola, Regional Director – Alaska

9
10 OFFICE OF THE SOLICITOR – DIVISION OF INDIAN AFFAIRS:

11 Matthew Kelly, Attorney-Advisor

12
13 TRIBAL REPRESENTATIVES SPEAKING

14
15 Peter Moore, Traditional Chief, Association of Village Council Presidents

16 Raymond Watson, Chairperson, Association of Village Council Presidents

17 Charlie R. Charlie, Tuntutuliak Traditional Council

18 James Paul, Association of Village Council Presidents

19 Henry Hunter, Association of Village Council Presidents

20 Joy Anderson, Association of Village Council Presidents

21 Vivian Korthuis, Association of Village Council Presidents

22
23 (The session opened at approximately 2:30 p.m.)

24 **PDAS TAHSUDA:** Now we're ready. So thank you for hanging around for the

25 second discussion. Uh, we'll open up this consultation, specifically the topic for this

26 one is the Secretary's authority to take land into trust in Alaska for tribal entities.

27 Let me just repeat again for the record, we will do a transcript of this. Um, and uh,

28 so we don't have a court reporter we'll be recording it, so it would be a great

29 assistance to us if you could speak into the mic. If you want to stay seated we can

30 bring the mic to you or you can come up and speak. But if you could give us your

31 name and the tribe or village that you are representing so that we can have that as

32 part of the record. That would be great. And again if you have additional written

33 comments or something written, that you would like to give us, we are happy to

1 take it and if you can leave it with Ms. Appel who is keeping the record for us or feel
2 free to leave it up here if you like. So as we get started again I wanted to note a
3 couple of things about this consultation and the topic of it. This one in specific we
4 are looking for -- or we have some legal direction but it's also impacted obviously by
5 policy decisions. But we need to consider the legal sufficiency of the decisions that
6 we could take under the IRA on fee-to-trust. Uh, so specifically there was an M-
7 Opinion issued in January of 2017 regarding fee-to-trust in Alaska. I'm hoping to
8 get your thoughts and comments in addition to the significant legal issues there are
9 some policy issues that underlie that. And again, we have the Solicitor here with us
10 to answer any particular legal issues and there are a lot. There's an overlay of
11 several statutes, laws that have been enacted over decades that sometimes seem to
12 be conflicting and we are working our way through those now. And this is part of
13 what we hope to have in hand for guidance. But again on the policy side, I think it's
14 important for us to have as part of our record, the application of the potential for
15 land into trust in Alaska. What are the positives? What are the negatives? I'd like to
16 hear if possible your views on all sides of that. As we prepare moving forward, as I
17 stated earlier, we're looking to have not just a positive decision on your behalf but
18 one that is legally sound on both policy and legal basis. So that we can be prepared
19 to defend those decisions on your behalf. So I will again, there's a significant legal
20 overlay here I am going to ask Matt, on behalf of the Solicitor's office to offer a
21 couple of comments as well.

1 **MATTHEW KELLY:** One of the things I wanted to reiterate based on some of the
2 other earlier consultations, is that the notice to tribal leaders that went out
3 explained what the issues were, what the questions were, on which the
4 Department... Sure, can you hear me now? One of the things I took away from some
5 of the prior consultations we've conducted here on the issue on fee-to-trust was that
6 there was a concern for why this is being done. And as the letter explained that
7 went out to tribal leaders, there were the M-Opinion which was issued in January
8 of 2017 which provided the Department's interpretation of the Alaska IRA and the
9 Secretary's authority to take land into trust for Alaska Native groups, did not
10 adequately explain certain legal issues, uh, it was felt. And was withdrawn as part
11 of a broader routine process by the new administration of reviewing certain
12 guidances and regulations that are issued within a certain timeframe at the very
13 end of the preceding administration which is not usual when administrations turn
14 over. The letter that went out to Tribal Leaders expressed what the concerns were
15 and what particularly legal issues and implications they sought input on. The input
16 that you can submit on those legal questions as they're laid out in the letter is really
17 important. It will provide an opportunity for the policy makers to consider them.
18 Um, if they are not submitted then they may fall by the wayside. They may be
19 ignored. It's not to say that everyone in DC will cover all aspects of the questions
20 presented. That's where your input can be very important. So I just wanted to say
21 we are here because we really want to hear from you. And in particular, we want to
22 hear from you on the issues that have been raised. To ensure that we are

1 considering the issues from all angles or as many as possible. Thank you.

2 **PDAS TAHSUDA:** So at this time, I'll open it up to the floor. If you have any
3 comments specific to land into trust.

4 **PETER MOORE:** Hi, good afternoon gentlemen. I have come late this afternoon
5 because part of the weather and the flight [inaudible] on the way. I am the
6 traditional Chief of YK Delta. I have been up – or I looked over the facts, looked at
7 the paper here little bit about the tribes. Ever since I have been a young fellow
8 when they brought this up I was only 2 years old. So I didn't know and I didn't want
9 to talk about [inaudible]. But anyway my community, at the time, the late 1940's,
10 they were trying to get a school for our community. They have been asking the IRA
11 tribes and they been denying my elders to take the school up in the [inaudible]. So
12 my elders got together, the council get together and start speaking to each other
13 and told everybody we can start it. It could be started. We need the young people to
14 get their education. We're gonna get together and we're gonna collect a few dollars
15 to get about \$5-\$6-\$7 for gasoline for to use to go out and get draft, draft work.
16 Draft work and that's to build a building. Build it up enough to get to be a one
17 classroom. And after we build this thing, the tribe says after we are done building
18 it, we can ask for a one-school teacher to start our community. So we did it, we get
19 one-two teachers to start the youngsters in town. I didn't get that education myself.
20 I'm not a good English speaker. But anyway I can speak a few things, but these
21 young people... I took my little education to St. Mary's Akulurak and they started
22 that themselves with no pay. Everyone worked together to build a home and start

1 up a school. About five-six years later when I become a -- 1953 I joined the
2 traditional council member. So they elected me and instructed me to get another
3 BIA school. [Inaudible] he had an 8th grade education, here let him write a letter to
4 get the education going. So we had to keep writing letters to the BIA's all over, in all
5 of DC, and anywhere where we can get another school for our community. So we got
6 two classes finally in 1957. They built in 1957, two classrooms. BIA. We still were a
7 traditional government tribe. We were still in tribe and we were working under
8 tribe until they asked us if we could get the state -- to have Alaska become a state in
9 '59. So we did get them to bring the other state government council in there in the
10 city. So, to get a second classroom at that time, we had to get more classrooms.
11 Everybody was moving into [inaudible] and there was no more room for classrooms.
12 And we had to ask for more classrooms. I started moving and I started doing work.
13 Then we started asking for high school classrooms in the area. In the community all
14 over we had to get that in, we had to bring ourselves, to have our people to get
15 education. I was helping building the high school and there was a carpenter, a
16 couple carpenters [inaudible] working construction for 42 years and -- I was
17 carpenter foreman for two schools [inaudible]. Everybody today has a more
18 educated, a lot of them are graduating nowadays. And it was hard work. Our people
19 had to work themselves to where they were speaking a lot about [Native word]. For
20 the elderly when walk in to the quiet lounge, I can hear them talking about [Native
21 word] making jewelry or home-schooled themselves without pay. Children were to
22 just have books and to ask why, why can't the other people do that? So instead of

1 asking money. So anyway let's go back further, later than today's date. When the
2 Natives were to get some kind of money going up for the Native people, the white
3 people they look at that and try to break that thing up right away... like take the
4 dividend. The dividend was growing up pretty fast and the last Governor was just
5 sitting there cut the half out and using it in the city instead of giving it to the
6 Native people because they are getting money. Seems like they were jealous of us.
7 Jealous of Natives to get some kind of money or get their own business going. That's
8 the way I look at it. Not to [inaudible]. I learned a lot of things from the elders.
9 Elder folks taught me to how to be a human being. How to take care of people. How
10 to read the people to make [inaudible] caring. What kind of president to we have
11 today? There's time when I look, I watch TV on CNN. From the time he was
12 campaigning to become president. I found out two days ago that the president had
13 told his attorney to lie, to lie, to lie, to lie. And now he's dancing to fight it. Now
14 that's the wrong thing for a human being to do. And our elders told us don't ever
15 hide anything when you're growing up. Everybody will know if you're lying or if you
16 are doing something wrong, something dirty, things that you do behind other
17 people. Even if you hide, they'll know. They'll find out. That's the way the President
18 is look like today. Looking at him cheat, I can look back what the elders were saying
19 now they seeing how he is. But the president is hiding everything behind. And
20 paying. But he's a rich President. If we had a non-rich President, we'd have a better
21 day instead of cutting our tribes out too, for the grants. Our grants are down
22 because of that President, he's trying to get... I shouldn't call him this President, it's

1 President Wall. Call him President Wall. They nicknamed him President Wall on a
2 count of the wall he is trying to build up. So that [inaudible]. I think it, wouldn't
3 talk too much about it, but [inaudible]. But thank you.

4 **PDAS TAHSUDA:** Thank you.

5 **RAY WATSON:** Thank you Chief Ray Watson again. I just wanted to say a few
6 words about what my thoughts are about the trust issues. One of the things that
7 comes to mind and that is always echoed is jurisdiction you know. Because our
8 relatives down south have this tremendous power because they have jurisdiction
9 over land and jurisdiction over its people. You see that with the jurisdiction over
10 people in their tribal courts and their lands. And they have what's really a very
11 good model for sustaining their way of life down there. I see that on their
12 reservations and I'm just wondering, how can we get there? How can we up here,
13 get there? Because I watched their tribal courts in action when I was training as a
14 tribal judge years ago. But they have this in place. You know, we're the same
15 indigenous people as they are down there but yet we're treated way differently as
16 far as the jurisdictional issues. Tribal courts they can be recognized but not so much
17 by the governing powers. And hopefully that culture will change at least there has
18 been a shift during my time. You know I've seen that. I've seen the state
19 government open its doors to things like ICWA and things like the tribal courts in
20 establishing jurisdictional issues. But what I wanted to say was for the Department
21 of the Interior is that it may want to look at forming task force groups to look at the
22 different areas because the same way we governed our people here and the same

1 things we wanted because it wasn't a punitive in our tribal courts. It wasn't
2 punitive at all but is to help that person grow and succeed in life. It may not be the
3 same way as our relatives way up North. You know, we speak a different language.
4 We have a different culture. But there's a different way of living up there to ours.
5 The thing that really binds us is our connection to the land, to the air and to the
6 sea. That's our connection there. That's our bond. That's the bond we should be
7 using in our language. But I think that's, you know, a really good -- I can offer that
8 at this point. Is you might want to develop a task force where you have people to
9 identify that would provide this useful information from the designated areas. From
10 designated tribes and would be another avenue to get the information and to move
11 forward with this trust issue so that everybody can benefit. But you know, it's, right
12 now, the environment is such that under the laws created the for-profits, the for-
13 profits, to make like Ivan was saying, the money makers have that power over the
14 land. And the tribes they have that power over its membership, you see? That's the
15 difference because if the tribes have no power over the land that's the other entities
16 and that's what's making it so confusing for the younger generation. You know my
17 grandchildren, they wouldn't understand. My boy, I had to explain it to about that.
18 So it's a matter of educating the younger generation what they're gonna be
19 challenged with in the future. Your children, what they're going to be challenged.
20 Because the same challenges we face with today are not the same challenges that
21 our parents and or even our grandparents had. They're not. The whole system is
22 changing, evolving so much, my hats off to you John and Matt and Gene. Because

1 it's a tremendous effort to make this happen. I think it should be open, you know,
2 with the land into trust. But give each tribe that opportunity if they choose so, to do
3 it. To do it, to leave that open. And with that, I'll go ahead and allow the next
4 speaker. Are there any questions?

5 **PDAS TAHSUDA:** While I got you there, let me, I really don't have any questions
6 but let me throw this out there and maybe this is something that could be for
7 further discussion. Um, so, um, there's a perception I think that you know, having
8 land into trust in the lower 48, you know, is sort of a "panacea" -- the answer to
9 everything. And uh, I would suggest that it's not. I think, however, there was no
10 other alternative for them really, um, and so that's kind of the status where we are
11 with the law. One of the questions that comes out of it and some tribes in the lower
12 48 are not happy. And I would note that it's similar to, um, and I apologize because
13 I can't remember his name. But a Councilman for the native village of Uintah spoke
14 at one our previous consultations about how they did not want the federal
15 government to own their land. And when you talk about land into trust, the reason
16 it is called land into trust is because the United States owns the land. They own it
17 on your behalf -- but they own it. Um, and so there is some difference there and I
18 think in the minds of some people. I would be curious to know the thoughts that you
19 have and your fellow tribal leaders here on issues like that. Um, you know, what
20 are they benefits so, uh, in the lower 48. You know some of those benefits revolve
21 more importantly even than jurisdiction to have courts, etc., but to bar the state
22 from in taxing the land you know from foreclosing and taking it. Those are probably

1 in some ways the important aspects that the tribes appreciate and for that reason
2 they accept that the United States owns the land for them. Because that does
3 provide a bar against the state from taking the land and from taking their
4 jurisdiction and sovereignty over from them. So that's just a thought, I would
5 appreciate your thoughts on that.

6 **RAY WATSON:** Well my thoughts on it are very simple. Is that the land itself, you
7 know, because we are the United States of America. We are a country. We are a
8 country that is built on, at least in Indian country and up here, we are built on a
9 vision of self-governance, you see. And if you think about it, the self-governance was
10 here, even in territorial times, it was here. Tribes were practicing that self-
11 governance even prior to the first missionary boat coming to this site here and
12 calling this place Bethel and somewhere in Pennsylvania. Even before that, we
13 already had that built in. I mean like I said, it really doesn't matter if it's back into
14 you know, federal hands because at least it will be a step forward for the tribes to
15 practice that self-governance. Which is really the issue here. Is we need the self-
16 governance because the two systems we have right now it seems so convoluted that
17 even public safety is an issue now you see. But the 280 says we'll be protected by
18 the state and it's not happening – it's failed. The other piece is that the tribal
19 courts, the courts here, well you see that the governor he wants to send out the
20 prisoners to save money. The native prisoners from here. So that system is not
21 working you see. So everything is coming together really clearly where we need to
22 look at giving the tribes the opportunity to move forward and to practice that self-

1 governance. And so it's really not an issue on whether it goes back into federal
2 hands or not, because even prior, like I said, even prior to the IRAs, even prior to
3 that, land was already here you see. So that's really not my opinion, it's not really
4 an issue with me. But the issue again is with self-governance and putting that back
5 to the tribes.

6 **PDAS TAHSUDA:** Thank you.

7 **CHARLIE R. CHARLIE:** Again, my name is Mr. Charlie from Village of
8 Tuntutuliak and Tuntutuliak Traditional Council. When, I heard about this land in
9 to trust, something came up first hand because in the state of Alaska, we have
10 incorporated vs. unincorporated entities within our villages. And the incorporated
11 are the village corporations and also vs. the unincorporated entities we charter the
12 IRAs or traditional councils. And based on the information that I got, if we decide to
13 get this, I mean, uh, before I get into that -- there was one community in Alaska
14 that got this which is in SE Alaska which is Craig. And it was a little portion of land
15 within that city. And also we have one reservation which is in Metlakatla and also I
16 remember the village of Kipnuk, Alaska which transferred all their property to the
17 tribal council. Based on these informations, uh when I read about this land into
18 trust within Alaska I first read, when I read about it, that it'll be an easy go for our
19 tribes to acquire funding, for any funding that they're lacking of. And right now
20 we're in this state of Alaska, under AVCP region, we have funds that are not met at
21 all. But under this trust according to the federal government, all these funds will be
22 a lot easier to acquire. And there will be more on which we don't have like public

1 safety. We don't have much in that area. And also other stuff that we also need to
2 have to run our own communities and I think if this happens with which, what I
3 just said. I'd like to have more funding if this is a promise, uh, that the Interior is
4 willing to do to our tribes as to become a direct funding source to our tribe. It'll be
5 okay with me. And also right now we have too many agencies that funnel the
6 monies that goes to the tribe and being decreased with that. And I think with this
7 land into trust if the communities will go for it, if they go for it, then I don't know if
8 this is going to be the case. Are we gonna have more easier in acquiring more
9 funding from the federal government? Or is it going to be more tougher to get more
10 funding in with things that we need, for our needs, for our communities? Cause
11 right now we don't have no funding at all whatsoever. I mean all the funding that
12 my village has, we don't have no VPSO's. All we have is tribal police officers. The
13 only funding that they have is like through a village tax and that's like a few cents
14 or a few pennies. And if this is not gonna articulate with the state of Alaska with
15 their funding under their perception. I think this land into trust may do ok, but we
16 don't know how it will happen. How, if we decide to accept this, how it'll help our
17 communities and the other agencies. Because we got like white kids, we got AVCP,
18 we got state of Alaska. We got other state agencies that, uh, may touch on this
19 issue. And if this land into trust is gonna be ok for only to the tribes. I mean that'll
20 be ok. Another question is like if we have a like uh, if we turn over the land that
21 patented to the villages, is that gonna be like -- are we going to have more funding
22 in villages? Like somebody was saying about jurisdiction. Are we gonna have more

1 funding if this inception happens? Those are the questions that I have. If this
2 concept is going to be our reality later on in the future. As far as I know there's
3 promises in this land into trust that when I read about it, that it says that we'll
4 have more funding in other areas. Is that gonna happen or is it just something that
5 is a bait to put this into our people? Thank you.

6 **PDAS TAHSUDA:** Thank you Mr. Charlie. Let me offer this right now. Um, the fee
7 to trust in itself is not really a trigger to funding. That's a different process. And uh
8 so certainly if there were land taken in to trust starting for some of the villages or
9 some of the IRA tribes here that would be a factor to be considered. But it's not like
10 a formula. You don't get land in trust then you get X amount of money. So um and
11 um, the budget process in general for us is very complicated and I don't think there
12 is any other way to say that the budget is there's really never enough for what we
13 would like to do for all the tribes -- all 573. And it's not something that we have any
14 control over, ultimately it's Congress that writes the check and tells us how much
15 money we can spend on various things. And so that's its own very difficult and
16 complicated process. And that's separate from the land into trust. Uh, the only
17 intercept -- well I should say maybe -- the interception to those two does happen
18 whenever the decision is made to take land into trust. We have a number of factors
19 that we are to consider. One of which is will we, the federal government, have the
20 capability to administer our responsibilities to you if we take the land into trust for
21 you. And so it doesn't, it's not always, you know, a factor that will negate the
22 decision to take land into trust but it is one of the factors that we have to consider

1 as well. Did you want to say something?

2 **MATTHEW KELLY:** There is a thing that I would add is that, when land comes
3 into trust then certain land management activities fall under federal law and fall
4 within the responsibility of the Department of the Interior and Bureau of Indian
5 Affairs. To the extent that some of those programs can be contracted by tribes to
6 take over the implementation of it. When funds are available then that could
7 become another means of providing funds to tribes to carry out those functions. But
8 again as it was indicated, that also depends on what appropriations are available
9 each year which is a separate issue.

10 **JAMES PAUL:** James Paul. I'm getting kind of confused. I'm not very familiar
11 with this issue land into trust. But based on what I'm hearing if there is land into
12 trust occurs within a village for an early recognized tribe, will that deed be deeded
13 to the federal government or the tribe?

14 **PDAS TAHSUDA:** Uh, so the deed would be in the name of the United States. The
15 United States would own the property. It would be in trust. So you, the tribe would
16 be the beneficiary of that so the United States has the ultimate responsibility as
17 Matt said earlier to administer certain responsibilities. Some of those, a good
18 portion of those are, devolved to the tribe. But the ultimate ownership resides in the
19 United States. And the tribes, it gets in to a little bit of real estate law, I guess, but
20 the tribes are the beneficial owner. Meaning that the benefits of the ownership of
21 the property will accrue to the tribe but as a legal matter the United States owns
22 the title. That would be recorded on the deed.

1 **JAMES PAUL:** And another question is, uh, does jurisdiction, who has, uh, the
2 federal government or the tribe?

3 **PDAS TAHSUDA:** So in that case, jurisdiction resides in both the United States
4 and the tribe, uh, concurrently. And so, as a matter of long-standing federal policy
5 including the tribe's right to self-governance. Most of that is devolved to the tribe
6 and the tribe can exercise its sovereign authority over that land. But the United
7 States also has jurisdiction that's why on lands that is held in trust by the United
8 States. Federal criminal law would apply for instance. That's another reason why
9 whenever we take land in to trust or there is another activity that involves a, what
10 they call a significant federal activity. There has to be the environmental, the
11 national environmental policy act provisions applied. We have to apply those to that
12 property. So those are some of the, if you think of it that way, those are some of the
13 negative things potentially that can apply to having the land held in trust. So there
14 are the overlay of the federal and the tribal. Is it a general matter? Maybe Matt
15 could explain a little bit. But I think the underlying notions of federal policy
16 supporting tribal self-governance would say that in most matters, particular
17 matters which deal with local governance, the tribe would be free to exercise its
18 governmental authority. But in sort of this overlay of significant federal policy like
19 federal criminal laws, etc., or other national policies that the United States
20 Congress has decided to apply across all federal lands then sometimes those apply
21 to the lands that are held in trust for the tribe as well.

1 **MATTHEW KELLY:** I think it's incredibly complex, the question of jurisdiction
2 that arises when land is taken into trust and it can depend on a particular estate.
3 For example, Alaska you've got PL 280 so that will still be part of the equation. I
4 think the main, for many people, one of the important takeaways is that when you
5 have land in trust, that's held in trust for a tribe. The tribe can then exercise its
6 sovereignty in a territorial sense. Not just over the person but then over the
7 territory as well. There may be limitations on the scope of that territorial authority
8 but that is in essence what distinguishes tribal ownership of land in trust vs. tribal
9 ownership of ordinary fee lands.

10 **HENRY HUNTER:** Can you describe the advantages and disadvantages of land
11 into trust for a tribe? If they wanted to go for land into trust, what are the
12 advantages? And if they didn't want to go in to land into trust, what are they, one of
13 the things that a lot of the tribes in the lower 48 have probably got land into trust to
14 possibly not be taxed. Up here in Alaska, you know there's Indian country is
15 probably non-existent except for that tribe, in, right around Northway. I can't
16 remember that tribe but they have, that's recognized by the state of Alaska. One of
17 the things in our area, you know we want to protect tribal lands. And lot of the
18 tribal lands here in Alaska, we have very few like here in Bethel. We don't own very
19 much land. If we wanted to go into land into trust and we want to develop that land
20 to get ahead in the economy, if we were already in the land into trust with the
21 government, would we have to have permission from Congress to develop that land?

1 So I guess basically my question is what are the advantages and disadvantages of
2 being into land into trust? And you can explain that.

3 **MATTHEW KELLY:** Because the issue of land in trust goes to tribal sovereignty
4 and territorial sense, the answer as to advantages and disadvantages often will
5 depend on what a particular tribe sees as its plans and its hopes and what goals it
6 would like to achieve. It's a complex question and it's one that has to assessed
7 carefully with attorneys who understand it in the context of the particular tribe.
8 Generally, I know that many tribes in the lower 48 rely on land in trust as a means
9 of protecting the land for future generations because it's going to be held for them
10 by the federal government. In the past there have been some tribes who have owned
11 land in fee and they have lost that land due to state civil regulations, the exercise of
12 tax sales, for example, foreclosure. Typically when land is held in trust, it is
13 immune from those types of proceedings. The IRA was enacted -- when it was
14 enacted in 1934, one of the reasons, the policy reasons behind it was to end the prior
15 policy of allotment. Allotment was part of an era of federal Indian policy in which
16 was believed it was more advantageous for tribes to have no trust land base but
17 rather to give them fee ownership like non-natives. In order to help them integrate
18 economically within American society. That was in the late 1880's. By the 1930's it
19 became clear that really what had happened unintentionally was that many tribes
20 and individual Indians lost their lands entirely because they were no longer
21 protected by the federal government. As a result of which the goal of the allotment
22 policy of empowering individual Indians by allowing them to assimilate and to

1 make, uh, to achieve economic development wasn't being realized. And one way of
2 correcting that was to allow tribes and individual Indians to try and take lands that
3 had been lost and bring it back into trust status. To take advantage of the
4 protections that were offered. And to use those protections which are unique. To
5 then pursue different kinds of economic development and to organize and to
6 reestablish their tribal communities. With land in trust, there may be forms of
7 economic development that you can undertake that maybe one couldn't undertake
8 on regular fee lands within the state of Alaska. The only way to determine that is to
9 sit down with legal counsel and find out what it is you want to do, what laws apply.
10 That's why I say it's kind of a complex question to answer, shortly or briefly for the
11 advantages and disadvantages. But I explained a bit about the history of the IRA to
12 give you a sense of the context of what it was intended to do. And one of the primary
13 purposes was to allow tribes and individuals who had lost lands through an earlier
14 policy which didn't work out. To recover some of those lands in trust status precisely
15 in order to allow them to pursue the kinds of economic development that were
16 available to them.

17 **Unidentified Male:** I'm new to this issue so I'm asking questions. You know
18 there's two governments to this law and IRA. When I looked at the map, BIA map,
19 but is this issue apply only to IRA?

20 **PDAS TAHSUDA:** Very good question. I think that is, uh, so for us fundamentally,
21 I want to offer a thought. Then I'll ask if Matt does have a sort of legal perspective
22 on it as well. So, uh, but fundamentally I think that's one of the questions we would

1 like to ask. I think, uh, from my perspective, it's a little bit of an unknown and
2 that's part of the legal analysis that the Solicitors in particular are looking through.
3 Um, but, uh, I think there's also a policy question about when we talk about the
4 benefits and negatives potentially for land into trust. It may be, it's possible as
5 we're going through looking at the Alaska IRA provisions that maybe the land into
6 trust authorities in the IRA were only to apply to Alaska IRA tribes. Or maybe they
7 would apply to all of the traditional, we'll call traditional tribes, for lack of a better
8 term, at the time of the Alaska IRA amendments. So that, if that's the case, then it
9 would apply to all those that were recognized tribes at that time whether they later
10 avail themselves of organizational aspects of the IRA or not. Um, that would be
11 consistent with the interpretation in the lower 48. Generally which is that just
12 because a tribe did not in the immediate years after 1934 organize under the IRA.
13 They were still able to avail themselves of certain aspects of the Act. Like getting
14 land into trust. And so the difficulty for us I think is that there's a lot of legislative
15 history and a lot of background on the original IRA that applied to the lower 48.
16 And even the amendments that apply to tribes in Oklahoma which was its own
17 separate piece of the IRA. We have a lot of background on that. There's far less at
18 least historical background for us, to give us guidance from 1936 for Alaska. So, but
19 I think, you know that's my thought, but Matt take.

20 **MATTHEW KELLY:** And I simply would add to answer your question and to follow
21 up, Mr. Hunter, my response to your question earlier. Is that the IRA applies to all
22 tribes around the country. But in Alaska you have the additional unique situation of

1 a number of subsequent laws that were enacted by Congress that are Alaska-
2 specific. They don't apply to the lower 48. And therefore this sort of calculus, the
3 calculation of what the advantages and disadvantages are in relation to the benefits
4 that the IRA makes available have to be looked at in that context. And that is
5 precisely the kind of insight that the Department is seeking from Alaska Natives
6 tribes. Is, how you think the IRA ought to be interpreted in light of FLPMA,
7 ANILCA, ANCSA. All the citations that are laid out in the Dear Tribal Leader
8 letter. Because we want to ensure that we are considering it from all angles. And
9 you undoubtedly know a great deal more about what the potential implications
10 could be. Because you've had to deal with this and because you're thinking now
11 about what you can do. How it can be used going forward and it's really important
12 for us to hear that from you. So, it's not an easy question. They're not easy questions
13 for us. And we are seeking guidance and input as we go through thinking about
14 them.

15 **RAY WATSON:** Ray Watson again. I just wanted to say that in this region and
16 even in this village, we've had the shareholders have taken a vote on this issue and
17 had passed at least with Calista land into trust. And with AVCP, land into trust.
18 The catalyst behind this was money, saving money, taxes, things like that. It had
19 nothing to do with jurisdiction or things like that. That's the difference with the
20 tribes which I see here today that are represented. Is really, that's, down the road
21 it's an opportunity and none of us know what it's going to look like if it happens.
22 But at least I think for now we should look at giving the opportunity for every tribe

1 after discussion with their tribal membership and voted on. That they should be
2 given that opportunity if they want to go and put their land into trust. Even if it be
3 a little parcel of land. They should be given that opportunity. Right now, like you
4 said, the laws within ANILCA have made it very difficult to proceed. And that's
5 what I wanted to say is that these things are happening even as we speak. There
6 are things in motion in Congress, even with our Legislators. There's things in
7 motion that will effect this whole movement.

8 **PDAS TAHSUDA:** Thank you Mr. Watson I would only add to the great
9 comments, I would only add to that there is at some point we move from positive
10 policy we run up against the wall of our legal authority. And this is where we are
11 trying to find this intersect between the Alaska IRA and the other laws that came
12 later. So, uh, even say we would want to have the policy be that every entity, every
13 tribal entity in Alaska would have the ability to have land taken into trust. There
14 remains the question of whether we would actually would have the authority to do
15 that. I just want to make that clear. Also one of the things that we're trying to work
16 through. I'm sorry Mr. Watson, let me ask this question. You said that Calista took
17 a vote, uh, to seek to have land into trust, is that what you said?

18 **RAY WATSON:** There was the vote for, correct me if I'm wrong, was to put... I'm
19 trying to recall what it was, was it land into trust or was it with something else?
20 Was it trust that was -- I think there was some benefits, monetary benefits down
21 the road. And I think this had to do with taxation, potential taxation with ventures,
22 potential developments that may, could have a significant amount of savings with

1 the corporation. And that's what I'm saying, this, like you said, it's so many
2 different layers of this land into trust issue that even the lawyers are having a hard
3 time taking it apart. So it's, and what we wanted to do is just for us is just to have
4 an open dialogue and I appreciate all of you being here and giving us that open
5 dialogue. Because in every instance, the choices we make today, the generations
6 that's going to follow after us are going to be impacted. Like we were impacted by
7 those who've made the decisions before us. Those laws you talk about. Those were
8 made by people before us but we have to live with them. Again, we may have the
9 opportunity to change them. You see? That's another avenue. Laws are just like
10 that. So, thank you.

11 **CHARLIE R. CHARLIE:** Again, this is Mr. Charlie with Tuntutuliak Tribe. If the
12 IRA or traditional councils don't want to do this, the village corporations too, like to
13 go ahead with this? Because, why I'm saying that is, you know, back then the
14 government was in the process of having some kind of consultation with the village
15 corporations. And they didn't really talk about the IRAs or traditional councils to
16 have consultation, and I was kind of basing that because that had to do with
17 ANCSA and that impact. And that's something that jumped into my mind because I
18 just remembered that portion.

19 **PDAS TAHSUDA:** Um, let me see if I understand your question correctly. I think
20 you're asking if village corporations, ANCSA-organized village corporations will be
21 able to take land into trust. Again, these are issues that we're working through. But
22 my off-the-cuff take on that would be that, no, because those are organized under a

1 specific law – ANCSA – that doesn’t provide for that. And, it would be, I think it
2 would be a little bit of a stretch to say that the prior law, which was intended to
3 [inaudible] traditional villages and IRA tribes involved in that, that that would also
4 apply to the ANCSA entities. So I personally think that would be a bit of a stretch. I
5 don’t know Matt if you have a thought.

6 **MATTHEW KELLY:** Tribes that are eligible for land into trust are those entities
7 that are listed on the list of Tribal entities that’s published each year by the
8 Department of the Interior. So that would be limited to the two hundred and, what
9 is it, sixty-nine, 229 villages, native villages here in Alaska that appear on the list
10 of recognized tribes, the list of 573 recognized tribes. Those are the tribes that
11 would be eligible for land into trust.

12 **RAY WATSON:** I just googled the Calista one, and what it is, is a settlement trust.
13 That means it goes into a trust, whether it be land, whether it be dividends or
14 whatever. But it’s the investments that go into this settlement trust. But that
15 would include the lands, yes, that the entity owns. That would be fine in that
16 definition.

17 **JOY ANDERSON:** Hi, my name is Joy Anderson. I work with AVCP and as Vivien
18 stated, we’ve already submitted written comments in November, but I just wanted
19 to briefly highlight some of the comments these individuals here haven’t had a
20 chance to look at. So, this is related to the Secretary’s legal authority to take land
21 into trust. It’s AVCP’s position that the conclusion reached in *Akiachak v. Salazar*
22 is good law and that is our position on whether or not the Secretary has authority to

1 take land into trust. It was also confirmed by the M-Opinion that was withdrawn
2 earlier last summer. In that case, *Akiachak v. Salazar*, the court expressly rejected
3 the State of Alaska's argument that ANCSA or the Federal Land Policy and
4 Management Act had affected the Secretary's authority to take land into trust and
5 the Alaska Exception was overturned at that time as well, because there was no
6 legal basis found for a prohibition specific to Alaska. So I just wanted to bring those
7 comments up briefly, that it is our position that ANCSA did not affect the authority
8 to take land into trust for Alaskan tribes and that there's no basis to have an
9 Alaska Exception treating Alaska tribes differently from tribes in the Lower 48 on
10 this issue.

11 **PDAS TAHSUDA:** Thank you. I appreciate that. I appreciate the position. I think
12 the only comment that I would offer is that, the new -- anybody, we may like the
13 decision, but I think there was a concern about the precedential value of that
14 decision given the procedural history of it. And in part, what we are hoping to do
15 here is provide a more in-depth look at the law and the policy behind it, behind
16 whether there is any kind of bar, which was previously part of the thought process.
17 And if there's not, what is the specific authority to make sure, again, as I said make
18 sure that we're on solid legal ground so that any decision that we make is
19 defensible. So, there are any number of parties that sue the Department on
20 decisions that it makes all the time and, while we have a pretty good track record,
21 part of that, I think, is a history of the Department trying to be careful in making

1 sure that it's on solid legal ground when it ventures into an area like this in which
2 the law may not be exactly clear. Any other comments?

3 **CHARLIE R. CHARLIE:** When you say a Solicitor, who is that?

4 **PDAS TAHSUDA:** It's his boss [laughter]. You want to explain how the Solicitor's
5 Office works?

6 **MATTHEW KELLY:** So, the Office of the Solicitor, is the attorney for the
7 Secretary of the Interior. Interior is sort of divided in two. You have the branch that
8 takes care of all the responsibilities and has all the policy-makers. And then you
9 have the branch that provides the attorneys for all of those decision-makers, which
10 might be inflation, there might be too many attorneys. The Solicitor is charged with
11 providing advice to the Secretary and to folks in the Secretary's office. And just so
12 you are aware, it's the legal opinion that is binding on all of the employees of the
13 Department, and it can only be changed by the Secretary, the Deputy Secretary, or
14 the Solicitor. And that's why M-Opinion is a very important document, because it
15 binds all of us and all of the non-legal attorneys in the Department to follow it. And
16 that is why this process is incredibly important because while the M-Opinion on
17 Alaska fee-to-trust is withdrawn, it may come back, it may come back as it is, it
18 may come back in a modified form, that is yet to be determined. But, whatever that
19 determination is going to be, it's going to be influenced by whatever comments,
20 arguments, and submissions you provide to us. And so, again, I keep saying this,
21 but I want to emphasize the importance of submitting or providing us with
22 submissions on a range of information that you think is relevant to us, and explain

1 to us why you think it is relevant. This is particularly important in Alaska, because
2 you have many people in Washington, who are not as familiar with Alaska as they
3 are with the Lower 48, and you want to ensure that they are aware of all the
4 subtleties and all of the points and practice on the ground that they may not always
5 be.

6 **VIVIAN KORTHUIS:** This is Vivian Korthuis. I serve as CEO for AVCP. Before
7 the conclusion of this hearing, I just wanted to thank you individually for flying out
8 to Bethel. We put in a lot of effort to get our Executive Board members here to
9 witness such a hearing. These are very rare in our part of the state. And we really,
10 really wanted to make the opportunity available so that you have information
11 presented to you from our tribes. So I just wanted to make sure we thank you again
12 and thank the Executive Board members for traveling in this weather to Bethel to
13 witness such a hearing. We're really appreciative of the Department of Interior
14 traveling to our region to extend that consultation as far as it can to our tribes. And
15 we appreciate that a great deal. Thank you.

16 **PDAS TAHSUDA:** Thank you very much, Vivian. And so, if that's it, I'll close this
17 out, I just want to say in closing, I really appreciate everything you said, thank you
18 for your comments. I'm glad that we were able to come out here. This was
19 something that we had planned to do actually last year and things like earthquakes
20 kind of got in the way of that and what they call lapse in appropriations, which
21 means there's no funding for us to get on airplanes or do anything active as well. So
22 I'm glad we were able to get out here and do this. It is, very important to us, and

1 Matt alluded to it as well, it's important to us to hear directly from you. Again, I
2 appreciate the effort that all of you made, including the traditional chief, we really
3 appreciate him being here as well and offering his thoughts. And it's – one of the
4 things that I think, this is for me personally, and I think it's very valuable, it's
5 important to my Tribe and my people, and I think it's incredibly important to you,
6 you're a long ways from Washington, DC, as Matt alluded to, people there don't
7 always understand exactly how things operate here. And sometimes there is – even
8 though we may trying to speak English to each other, there's a disconnect in the
9 language that we're speaking. The things that you're trying to express that are
10 important to you don't always translate into the type of legal and regulatory speak
11 that is a part of life in Washington, DC. And so one of the things that I take very
12 seriously, and I hope that I exercise the responsibility effectively is to try to be this
13 bridge between you and DC. And try to understand what you're saying and try to,
14 as faithfully as possible, impart to the people that we work with, report to, and have
15 to give information to in DC, that information as faithfully as I can to impart what
16 things like this mean to you both just in terms of history but also the impacts now.
17 So, um, thank you for your time. I'm really glad that we could make it, and we'll
18 close this session out. With that. So, I know, Buzzy said some of you have additional
19 questions. And I wanted to make some time available to you. We can do that now.
20 We're going to take a short break and come back. Not to be too formal, but we did
21 have specific topics that we needed to cover in these two consultation sessions. I
22 appreciate your patience. For those of you who want to talk about other topics, I'm

1 happy to talk to you now. This will not be a formal consultation, but if you want to
2 have a discussion, a dialogue, I would be happy to talk about anything that you
3 want to talk about. I only ask that we take a short break so we can get a new cup of
4 coffee and maybe visit the facilities. Thank you for your patience and I will come
5 back up in about ten minutes or so and talk some more with you.

6 (End of Transcript).

**United States Department of Interior
Office of the Secretary
Tara Sweeney, Assistant Secretary-Indian Affairs**

**March 5, 2019
Bethel, Alaska**

**Testimony by:
Vivian Korthuis, CEO
Association of Village Council Presidents**

Good afternoon. Thank you for the opportunity to provide testimony.

My name is Vivian Korthuis. I serve as the Chief Executive Officer for the Association of Village Council Presidents (AVCP). AVCP is the Native Regional Non-Profit Tribal Consortium for the 56 Tribes along the Yukon River, Kuskokwim River and the Bering Sea Coast in Western Alaska.

Today, I will provide brief testimony on the Alaska IRA and the Land into Trust in Alaska.

Alaska IRA

AVCP submitted written comments on November 27, 2018 responding to the questions the DOI asked about the Alaska IRA. I will summarize those comments in two points:

1. The Alaska IRA is still relevant.
 - o Alaska Native Tribes who are federally recognized under the IRA, have the same sovereignty and authority as any other federally recognized Tribe; and
 - o Alaska Native groups who want to become federally recognized under the Alaska IRA should have that option.
2. DOI needs to consult the Alaska Native Groups that have had pending requests for several years.

Land into Trust in Alaska

The Secretary of the Interior's legal authority to take land into trust in Alaska is clearly established law. Two of our member Tribes, Akiachak Native Community and Tuluksak Native Community sued the DOI to resolve this issue.

The DOI agreed that it had the authority and obligation to take land into trust for Alaska Tribes as a result of that court decision in the Solicitor's Memorandum Opinion. This opinion was withdrawn last summer, before consultations began. The agency is required to consult with Tribes before taking actions that directly affects them.

Only one Alaska Native Tribe, Craig, has taken land into trust to date. AVCP recommends that DOI focus on processing current applications and providing technical and financial assistance to Alaska Tribes seeking to go through the process. In closing, thank you for travelling to Bethel to consult with Tribes on the Yukon Kuskokwim Delta. Thank you.