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April 17, 2020

The Honorable David L. Bernhardt  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

The Honorable Steven Mnuchin  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

**Re: To Ensure that the Coronavirus Relief Fund is Disbursed to Tribal Governments and Demanding the Recusal of Assistant Secretary for Indian Affairs Tara Sweeney**

Dear Secretary Mnuchin and Secretary Bernhardt:

I write on behalf of the California Tribal Chairpersons' Association ("CTCA") to write to urge that the U.S. Department of the Treasury ("Treasury") exercise its authority under Title V, Section 5001 ("Title V") of the recently passed Coronavirus Aid, Relief, and Economic Security ("CARES") Act, to ensure that the Coronavirus Relief Fund ("CRF") is disbursed to bona fide Tribal governments and not Alaska regional or village corporations.

***I. Ensure Disbursements from the CRF go to Bona Fide Tribal Governments, as Congress Intended***

As noted in numerous letters from tribal governments and intertribal regional organizations, this issue is paramount to realizing the intent of Congress in passing the CARES Act, and in ensuring consistency with the Constitution and federal law. Title V, Section 5001 of the CARES Act amended the Social Security Act to add a new Title VI, Section 601, establishing the CRF. Congress' establishment of the CRF appropriates "\$8,000,000,000 . . . for making payments to Tribal governments." "Tribal government" is defined at Section 601(g) as "the recognized governing body of an Indian Tribe."

The CTCA has expressed great concern as to the federal government's purported interpretation of the breadth and scope of what is a "recognized governing body," as it pertains to Tribal governments under the CARES Act. We acknowledge that the

definition of “Indian Tribe” in the Indian Self-Determination and Education Assistance Act (“ISDEAA”), 25 U.S.C. § 5304(e), includes “Alaska Native regional or village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act [(“ANCSA)],” and that “Indian Tribe” also appears in the more narrow definition of “Tribal Government” in Title V. However, we disagree that the two terms are interchangeable for the following reasons.

In understanding Congress’ intent, it is important to note that “[w]here Congress includes particular language in one section of the statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”<sup>1</sup> In other words, if the more expansive definition of “Indian Tribe” were intended to require that Treasury disburse Title V allocations to all entities included in the definition of “Indian tribe” within ISDEAA, Congress would have referenced that defined term throughout Title V. Instead Congress referenced “Indian Tribe” once, and only with respect to participatory status in the required consultation to determine the amounts to allocate to “Tribal governments.” Moreover, there would be no need for the additional definition of “Tribal government” if Congress intended for “Tribal Government” to have the same meaning as “Indian Tribe.”

As noted above, “Tribal government” is defined in Title V as “the recognized governing body of an Indian Tribe.”<sup>2</sup> Because the definition of “Indian Tribe”, as defined in ISDEAA, “means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to [ANCSA]”, a plain reading of “Tribal government” would apply only to the “recognized governing bod[ies]” of such entities within the definition of “Indian Tribe.” Congress cannot have intended this definition to also mean that a corporate board of a state-chartered corporation also qualifies as a “recognized governing body” of an “Indian Tribe” for two reasons. First, and as stated above – there would be no need for an alternative definition if the two terms, “Indian Tribe” and “Tribal government”, effectively meant the same thing. Second, and more importantly, each reference to “Tribal government” throughout Title V appears beside and in the same context as other political governing entities that exercise varying degrees of inherent sovereignty: “States,” and other “units of local government”, including “the District of Columbia, the

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<sup>1</sup> *CBS Inc. v. Primetime 24 J.V.*, 245 F.3d 1217, 1225 (11th Cir. 2001) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)).

<sup>2</sup> CARES Act, § 601(g)(5).

Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.”<sup>3</sup>

As such, Treasury should limit its application only to those entities with recognized governing bodies, made up of elected or appointed tribal leaders, which are commensurate with other units of local government, and on par with States and Foreign Nations under the U.S. Constitution<sup>4</sup>—*i.e.*, “Indian tribes” under the Constitution, or “Tribal governments.” We suggest referring to the Federally Recognized Indian Tribe List Act, Pub. L. 103-454 (108 Stat. 4791, 4792), and its most recent publication of such tribal governing entities,<sup>5</sup> for an easily accessible list of qualifying “Tribal governments” (the “List of Federally Recognized Indian Tribes”). Notably, Alaska regional and village corporations do not have recognized governing bodies, since they are corporate entities incorporated under Alaska state law, and are therefore, absent from the List of Federally Recognized Indian Tribes.

Further, in examining legislation, “we must presume that the legislation intends that its pronouncements will operate fairly, reasonably and equitably.”<sup>6</sup> Alaska Native villages, as included in the List of Federally Recognized Indian Tribes, are the appropriate “Tribal governments” for purposes of disbursing amounts under the CRF. Title V of the CARES Act on its face clearly pertains to sovereign political bodies (States, local governments, and Tribal governments) and not corporate entities established under state law. Any other interpretation would be unreasonable and would operate unfairly and inequitably. We note that the inclusion of corporations in the ISDEAA definition of “Indian Tribes” has never conferred upon such corporate entities a government status, but only confers on them limited contracting authority to carry out certain programs and services on behalf of Native people. Alaska Native villages are tribal governments; and state-chartered Alaska Native corporations (“ANCs”) are not.<sup>7</sup> The State of Alaska acknowledges that Alaska Native villages are the bona fide tribal governing entities within their jurisdiction, and that the

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<sup>3</sup> See generally CARES Act § 601(a).

<sup>4</sup> U.S. CONST. art. I, § 8, cl. 3.

<sup>5</sup> Bureau of Indian Affairs, *Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 85 Fed. Reg. 5462, 5467 (Jan. 30, 2020).

<sup>6</sup> Crawford, Earl. “Statutory Construction: Interpretation of Laws,” Thomas Law Book Co. 455 (1940).

<sup>7</sup> See, e.g., Letter from Chief Michael Williams, Sr., Akiak Native Community, to David Bernhardt, Secretary of the Interior, and Steven Mnuchin, Secretary of the Treasury Department (Apr. 15, 2020).

ANCSA did not divest them of their sovereign authority as Tribal governments.<sup>8</sup> Finally, the Federal Government clarified this exact understanding in the Federally Recognized Tribe List Act of 1994 (“1994 List Act”),<sup>9</sup> which does not include ANCs but does include Alaska Native villages.<sup>10</sup>

Also, Alaska regional and village corporations do not have tribal citizens, but instead have shareholders—most of which are tribal citizens of their own Tribal governments where they are enrolled. If Treasury interprets Alaska regional and village corporations as eligible for CRF disbursements intended for Tribal governments, many Alaska Native tribal citizens will be counted for CRF disbursement purposes as shareholders of their respective Alaska regional or village corporation and as tribal citizens of their tribal governments. There are 13 Regional ANCs and over 200 Village ANCs. Alaska Natives who are 49 years old or older typically have shares in both a regional corporation and a village corporation. Many younger Alaska Natives have shares by bequest or transfer. While we take no issue with any American Indian or Alaska Native individual receiving the utmost benefits from the federal government, where there is a limited CRF resource, such benefits should be disbursed in as fair a manner as possible, and the system for determining disbursements should not be prone to counting individuals multiple times. For these reasons, we strongly urge Treasury to follow the law, as enacted, and disburse the CRF to only Tribal governments, as recognized under the U.S. Constitution.

However, if Treasury does find any degree of ambiguity—no matter how slight—the federal Indian law canons of construction dictate that “statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.”<sup>11</sup> This bedrock principle of federal Indian law is rooted in the federal government’s trust responsibility to sovereign tribal governments, and extends to statutes, treaties, agreements, and executive orders.<sup>12</sup>

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<sup>8</sup> See *John v. Baker*, 982 P.2d 738 (Alaska 1999); see also *McCrary v. Ivanof Bay Vill.*, 265 P.3d 337, 342 (Alaska 2011) (Alaska Native village was federally recognized Indian tribe); *Healy Lake Vill. v. Mt. McKinley Bank*, 322 P.3d 866, 867 (Alaska 2014); *State v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, 371 P.3d 255, 259 (Alaska 2016); *Simmonds v. Parks*, 329 P.3d 995, 999 (Alaska 2014).

<sup>9</sup> Federally Recognized Tribe List Act of 1994, Pub. L. 103-454 (108 Stat. 4791, 4792) (1994).

<sup>10</sup> See, e.g., Bureau of Indian Affairs, *Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 85 Fed. Reg. 5462, 5467 (Jan. 30, 2020).

<sup>11</sup> *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766-67 (1985).

<sup>12</sup> COHEN’S HANDBOOK OF FEDERAL INDIAN LAW § 2.02[1] – § 2.02[2], at 126–27 (Nell Jessup Newton ed., 2012).

As noted in Felix Cohen’s Handbook of Federal Indian Law:

The Trust relationship is rooted in Chief Justice Marshall’s opinion in *Cherokee Nation v. Georgia*, in which the Court declared the tribe to be a “domestic dependent nation,” a term demonstrating that tribes are not simply minority ethnic groups, but are sovereigns possessing a government-to-government relationship with the United States.<sup>13</sup>

Alaska regional and village corporations established pursuant to ANCSA do not possess such a government-to-government relationship with the United States. For these reasons, we urge Treasury to listen to tribal leaders and draw a distinction between the terms “Indian Tribe” and “Tribal government” as described above and as intended by Congress.

## ***II. Treasury’s Trust Responsibility***

Next, the CTCA feels obligated to communicate to Secretary Mnuchin the gravity of this decision. This is not a one-off decision that Treasury can make with minimal unintended consequences. Any indication that Congress has recognized Alaska Native Corporations’ “boards of directors” as akin to tribal political governing bodies completely misrepresents the breadth and meaning of tribal governance. This is categorically incorrect and diminishes the stature of federally recognized tribal governments. If this legally unsupported assertion is taken as true by Treasury or any other body of the federal government, it potentially results in a course-changing decision that could have dangerous implications for federal Indian law, as it could irreparably affect how the United States treats and views sovereign tribal governments. The interpretation that state-chartered corporations are akin to or on par with inherent sovereign tribal governments risks diluting—severely—what it means to be an Indian tribe under federal law. Right now, the statutory authority for this monumental decision lies in Treasury’s jurisdiction. Interior has failed to protect tribal interests and has failed to properly communicate the legal nuances and issues to Treasury. We apologize that Treasury is in this tenuous situation, but we must implore you to make the right decision, and to not make a decision that could alter the relationship this Nation has with tribal governments—a relationship that spans several centuries.

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<sup>13</sup> *Id.*

***III. Demand that Assistant Secretary for Indian Affairs Tara Sweeney Recuse Herself from All Actions and Decision-Making Related to Alaska Native Corporations***

Further, the undersigned organizations hereby demand Assistant Secretary Tara Sweeney recuse herself from all actions and decision-making related to ANCs. Assistant Secretary Sweeney is charged with upholding the treaty and trust obligations to American Indian and Alaska Native tribal governments, as a prominent representative of the Department of the Interior. The Department and her office are responsible for decision-making and other actions that could put federal obligations to tribal governments at odds with the interests of state-chartered, for-profit corporations owned by Alaska Native shareholders, including her former employer. Consistent with her oath to protect and preserve the public trust and uphold the United States' treaty and trust obligations to tribal governments, we demand that Assistant Secretary Sweeney recuse herself from any decision-making process regarding the CRF or related to ANCs.

***IV. Conclusion***

In conclusion, the CTCA is prepared to fight tooth and nail, and seek every remedy available, for what we understand to be the proper interpretation of the law. Our ancestors that came before us would not have it any other way. In the future, we collectively would support separate relief for ANCs and other tribally-chartered entities, but the CRF is not the vehicle for such relief. We fully recognize and understand the unique role ANCs play in Alaska, but we must stand strong to protect and preserve what it means to be an Indian tribe under the Constitution, and therefore, a "Tribal government" under Title V of the CARES Act. We thank you for your time and consideration of this critical issue for Indian Country, and please feel free to reach out to us with any further questions or thoughts.

Thank you for your thoughtful consideration.

Sincerely,



Bo Mazzetti, Chairman  
California Tribal Chairpersons' Association