

# Court ruling could protect Native tribal lands

by Paul Swetzof  
for the Tundra Times

The Alaska Supreme Court, in a 4-1 decision, decided that land belonging to recognized Indian Reorganization Act governments cannot be foreclosed on without the consent of the tribe.

This includes both developed and undeveloped land.

This is an amazing development, considering past opinions of the Alaska courts.

Even more miraculous is that the court finally noticed that the U.S. Supreme Court has long recognized that all ambiguities in federal legislation pertaining to Native Americans should be resolved in favor of Natives.

I'm sure we will continue to remind them of this fact.

The City of Nome went to court to foreclose on property belonging to the Nome Eskimo Community, which is organized under the IRA, for back taxes Nome claimed NEC owed for the years 1981-85.

NEC argued that Section 16 of the IRA prevents taxation without the consent of the government. The court agreed.

Section 16 states in part that, "In

addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers:... to prevent the sale, disposition, lease, or encumbrance of tribal lands, interest in lands, or other tribal assets without the consent of the tribe."

## OPINION

*This is because I believe in Native land, under Native control, for Native people forever.*

This decision will stand unless either the state supreme court agrees to reconsider its decision or the case is accepted by the U.S. Supreme Court.

While possible, it is unlikely that this will happen. Assuming this decision stands, there are significant decisions which every Native village in

Alaska should be thinking about.

If your village is organized under the IRA you should check your constitution. If the constitution states that the tribe has the power to stop any giving or taking away of tribal lands or other property without its consent, or language to this effect, then you have it made. Your tribe's lands cannot be sold, disposed of, leased or encumbered without the consent of the tribe.

If this provision is not in your constitution it would be wise to amend your constitution as quickly as possible to reflect the above referenced powers.

The Bureau of Indian Affairs seems to be in the mood to act on changes to IRA constitutions, so now would be a good time to submit the necessary amendment to your constitution.

If your village or tribe is organized as a traditional government, not an IRA, or is not organized at all, you may wish to seriously consider applying for recognition as an IRA.

Protection of and jurisdiction over tribal lands, it seems to me, are what is important.

Once your village or tribe obtains

recognition as an IRA, and has the land and property provisions referenced above in its constitution, you may wish to acquire as large a land base as possible.

One immediate way to do this of course is for your village — and regional — corporation to transfer all or part of its lands to the IRA in order to forever protect it as Native land. If your IRA can afford to buy lands around your village which is considered vital to your people, this land would also be protected.

This way, lands which are protected in their natural and undeveloped state for customary and traditional hunting, fishing and other purposes, as well as developed land producing income or other advantages, will be protected from loss, including foreclosure by state and state chartered boroughs and municipalities.

These decisions are up to each individual village. However, if anyone wants to know my opinion, it is to organize as an IRA and include the property protection provisions in your constitution. This is because I believe in Native land, under Native control, for Native people forever.