

LEGAL SERVICES

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MEMORANDUM

February 24, 2026

SUBJECT: Loans to Metlakatla under AS 16.10.500 - 16.10.560
(HB 253; Work Order No. 34-LS0821N)

TO: Representative Jeremy Bynum
Attn: Trevor Shaw

FROM: Alpheus Bullard 
Legislative Counsel

HB 253 authorizes the Department of Commerce, Community, and Economic Development (department) to make low-cost loans under the Fisheries Enhancement Loan Program (AS 16.10.500 - 16.10.560) (program) to a federally recognized tribal organization that operates a fish hatchery on an Indian reservation or under the terms of a federal permit. You shared a concern expressed by the department that a loan to a Metlakatla tribal organization might be difficult to collateralize due to the tribe's sovereign immunity, recognized under 25 U.S.C. 5123 (former 25 U.S.C. sec. 476).

The commissioner of the department of commerce, community, and economic development (commissioner) has the authority to ensure that a loan to a tribal entity is secured. AS 16.10.520(c) requires all loans to "be secured by collateral satisfactory to the commissioner." AS 16.10.510(4) authorizes the commissioner to adopt regulations necessary to carry out the provisions of the program. Adopting regulations that require loans made under the program to be secured by some collateral, surety, or other guarantee would likely be interpreted by a court as "necessary to carry out the provisions of AS 16.10.500 - 16.10.560."

Accordingly, if the department has concerns whether a loan to a tribal organization under the program can be collateralized, the commissioner may adopt a regulation requiring, as a condition for receipt of a loan under the program, that a tribal organization waive any sovereign immunity that it enjoys so that the department may enforce the terms under which the loan is made.¹ An example is provided by the state's unincorporated

¹ Note that, as you pointed out, sec. 4 of the "Corporate Charter of the Metlakatla Indian Community" provides the corporation the power to sue and be sued. *Parker Drilling Co. v. Metlakatla Indian Cmty.*, 451 F. Supp. 1127, 1136 (D. Alaska 1978). "Sue and be sued clauses have long been considered waivers of sovereign immunity by the United States." *Id.* (citing *FHA v. Burr*, 309 U.S. 242 (1940)).

Representative Jeremy Bynum

February 24, 2026

Page 2

community capital project matching grant program.² Under this program, a Native village council "may not draw money from an unincorporated community's individual grant account unless the council waives immunity from suit for claims arising out of activities of the council related to the draw."³

If you have questions, do not hesitate to contact me.

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² AS 37.06.020.

³ AS 37.06.020(g).