

HYDABURG COOPERATIVE ASSOCIATION



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Executive Secretariat - Indian Affairs (ESHA)

July 17, 2018

Via e-mail (consultation@bia.gov) and  
First Class Mail

John Tahsuda  
Principal Deputy Assistant Secretary – Indian Affairs  
U.S. Department of the Interior  
1849 C Street NW Washington, DC  
20240

Re: Comments of Hydaburg Cooperative Association In Support of Fee-To-Trust Transfers in Alaska

Dear Mr. Tahsuda:

On May 1, 2014, the Department of the Interior, Bureau of Indian Affairs, published a proposed rule to delete the provision in 25 C.F.R. § 151.1 that generally excludes lands within the State of Alaska (except for lands of the Metlakatla Indian Community) from the scope of Interior's fee-to-trust regulations in 25 C.F.R. Part 151. *See* 79 Fed. Reg. 24648 (May 1, 2014). The affected provision of 25 C.F.R. § 151.1 was known as the "Alaska Exception." On December 23, 2014, the Department adopted that proposal, effective January 22, 2015. The effect of this rule change was to allow Interior to commence processing applications to take land into trust for Alaska Natives, including tribal governments in Alaska. The Hydaburg Cooperative Association supports that rule change and urges Interior to reaffirm the rule and keep the Alaska Exception out of 25 C.F.R. Part 151. We deeply regret the Deputy Solicitor's June 29, 2018 decision withdrawing an earlier opinion that affirmed the authority to make that rule change.

The Hydaburg Cooperative Association (HCA) is a federally-recognized Indian tribe located on Prince of Wales Island in Alaska. Following the 1936 amendments to the Indian Reorganization Act, the HCA was organized "by a group of Indians having a common bond of occupation in the fish industry." Preamble. Constitution and Bylaws of the Hydaburg Cooperative Association, Alaska (1938). A purpose of the HCA is to promote the welfare of its members "through the development and operation of economics and social enterprises." *Id.* The lack of opportunity to place tribally owned lands into trust directly interferes with the ability of HCA to provide for its members and to achieve its social and economic goals.

The HCA has been directly affected by shifting federal government policies regarding its land base. In 1912, President Taft established a reservation that encompasses the current village of Hydaburg, Alaska and surrounding lands and waters. Executive Order No. 1555, June 19, 1912. Most of the Hydaburg reservation (except a small school reserve) was subsequently revoked by President Coolidge's Executive Order in 1926, with the lands being returned to the Tongass National Forest. Executive Order

No. 4421, April 17, 1926. In 1949, another reservation was set aside at Hydaburg by the Secretary of the Interior's Order Designating Reservation for Indians of Hydaburg, Alaska. 14 Fed. Reg. 7318. Yet, just three years later, in 1952, that order creating the reservation was struck down as procedurally invalid by the United States District Court for the District of Alaska. *United States v. Libby, McNeil & Libby*, 107 F. Supp. 697 (D. Alaska 1952).

Following the passage of ANCSA, the Department of the Interior improperly determined that it lacked authority to take land into trust for Alaska Natives despite the fact that Congress had not ever rescinded that authority. In 2013, Judge Rudolph Contreras of the United States District Court for the District of Columbia determined that ANCSA did not repeal or rescind the Secretary's authority to take land into trust in Alaska, and that the Alaska Exception in 25 C.F.R. § 151.1 was unlawful. *Akiachak Native Community v. Salazar*, 935 F. Supp. 2d 195 (D. D.C. 2013). The HCA agrees with the analysis of Judge Contreras in the *Akiachak* case that the Alaska Exception in 25 C.F.R. § 151.1 is unlawful as it discriminates between the privileges granted to Alaska Natives and those granted to Indians in other states. Since Congress has not ever rescinded or repealed the Secretary's authority to take land into trust in Alaska, there is no lawful basis for the Alaska Exception to remain in effect.

The HCA also agrees with statements made in the 2014 proposed rule regarding the benefits of allowing land to be taken into trust in Alaska. "Placing land into trust secures tribal homelands, which in turn advances economic development, promotes the health and welfare of tribal communities, and helps to protect tribal culture and traditional ways of life." 79 Fed. Reg. 24649. This rule will permit Alaska Natives to take advantage of federal programs that are restricted to trust lands, such as opportunities for business development, housing, and environmental and cultural protection. Taking land into trust will also enhance the government-to-government relationship between the United States and tribal governments in Alaska. There is simply no basis in law or policy to provide these benefits to other tribal governments and Indian persons in the United States, while depriving the benefits to Alaska Natives.

Allowing land to be taken into trust in Alaska will strengthen the sovereign authority and enhance the jurisdiction of tribal governments in Alaska. "Restoring tribal lands to trust status . . . . [provides] a physical space where tribal governments may exercise sovereign powers to provide for their citizens." 79 Fed. Reg. at 24651. Enhancing the sovereign authority and self-sufficiency of tribal governments will not only increase economic opportunities in tribal communities, but it will also make these communities safer. The HCA agrees with the assessment of the bi-partisan Indian Law and Order Commission that allowing for lands to be taken into trust in Alaska will help to increase public safety and accountability, reduce domestic violence, and generally improve the lives of Indian people by creating safer communities.

In response to your specific questions, we add the following:

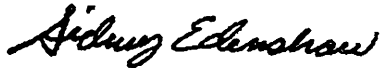
1. ANCSA, FLPMA and ANILCA have no effect on the Secretary's ability to take land into trust. They contain nothing intending to remove that authority.
2. The 1994 amendments to the IRA, codified at 25 U.S.C. 476 (g), do prevent the Interior Department from discriminating against Alaska tribes in trust acquisition matters. The former "Alaska Exception" unlawfully classified federal recognized tribes in Alaska as ineligible to exercise the privilege accorded by law to have land taken into trust.
3. Congressional intent is expressed in law. Legislative history should be used only if the text of the statute is ambiguous. It is not ambiguous here.
4. The Part 151 regulations are an appropriate process for tribes in Alaska to use.
5. Yes, there are challenges to compliance with Part 151. For example, surveying is often incomplete in

Alaska. Additional funding is needed to assist tribes in Alaska.

6. We do not believe that land into trust regulations for Alaska tribes should differ from those applicable to other tribes.

The HCA urges Interior to retain the rule change, and resume processing applications to take land into trust for Alaska Natives. Thank you for your consideration to HCA's comments. We look forward to consulting with you on a government-to-government basis regarding implementation of the fee-to-trust regulations in Alaska.

Sincerely



Sidney Edenshaw  
Tribal President