



Enriching Our Native Way of Life

October 24, 2018

Tara Sweeney
Assistant Secretary – Indian Affairs
Office of Indian Affairs
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Re: Land into Trust in Alaska

Dear Assistant Secretary Sweeney:

Thank you for coming to Alaska and holding consultation and public meetings regarding the Secretary's authority to take land into trust in Alaska. We appreciate this additional opportunity to provide written comments.

Bristol Bay Native Corporation (BBNC), an Alaska Native regional corporation and the largest private land-owner in the Bristol Bay region, holds title to nearly 3 million acres of subsurface lands and 100,000 acres of surface lands. Because the proposed rule has the potential to impact the title status of lands in Alaska, it is of significant interest to BBNC.

BBNC believes the Secretary of Interior has the legal authority to take land into trust in Alaska on behalf of Alaska Tribes and Alaska Natives. The Department of the Interior thoroughly explained the basis for this authority in announcing the final rule that eliminated the "Alaska exception" from 25 C.F.R. § 151.1 (79 Fed. Reg. 76888 (December 23, 2014)). This rulemaking explains why the Secretary's exercise of any Alaska land into trust authority is not inconsistent with the Alaska Native Claims Settlement Act (ANCSA), and we agree with this rationale.

We also do not believe the exercise of Secretarial authority to take land into trust is precluded by either the Federal Land Policy Management Act (FLPMA) or the Alaska National Interest Lands Conservation Act (ANILCA). FLPMA was enacted to provide guidance for the management of federal lands not dedicated to any specific purpose. FLPMA has little bearing on lands that would be taken into trust, lands that are not public and are dedicated to a specific purpose, to benefit the Tribe or individual for whom the government holds them in trust. ANILCA was enacted to protect conservation and recreational values in Alaska without sacrificing the economic or subsistence interests of rural Alaskans. Nothing in that legislation precludes the exercise of federal authority that advances other interests. The addition of lands into trust in Alaska would advance the political and economic interests of Alaska tribes. This is complimentary to and in no way opposed to the purposes of ANILCA.

BIA originally considered taking lands into trust to "advance[] economic development, promote[] the health and welfare of tribal communities, and help[] protect tribal culture and traditional

ways of life.” (79 Fed. Reg. 84 at 24649) BBNC supports BIA’s commitment to these important objectives and its willingness to afford federally recognized Alaska Tribes the same opportunities as Tribes in the Lower 48 to petition BIA to acquire lands in trust.

BBNC nevertheless has concerns about how taking lands into trust could impact its corporation lands and land interests. ANCSA authorized lands to be patented to Native corporations in fee simple so that the corporations, BBNC included, could decide, without interference, as to how those lands should be developed, managed and protected. The process for taking lands into trust in Alaska should not in any way restrict or limit the property interests of Native corporations and other private land owners.

BBNC provides the following suggestions as to how 25 CFR Part 151 could be amended to better fit application in Alaska:

1. The current regulations differentiate between “on-reservation” and “off-reservation” requests to take land into trust in § 151.10 and § 151.11. This dichotomy is generally not applicable in Alaska. The regulations should add a new provision that specifically addresses requests to take land into trust in Alaska and, at a minimum provides,
 - a. Notice of any request to take land into trust to the relevant Alaska Native regional corporation and all effected village corporations and an opportunity to comment on the requests.
 - b. Provide an opportunity for consultation with the Native corporations given notice of the request.
 - c. Additional (in addition to those listed in § 151.10) criteria for evaluating the requests such as (i) the impact taking land into trust would have on any adjacent private land owners, (ii) where the land is a split-estate, whether there is consent from the owners of the other portions of the split estate, (iii) the impact taking land into trust would have on any local municipal government, (iv) the extent to which taking the land into trust would advance the political and economic interests of the tribe and the local community, and (v) relevant gaps in local and state services that could be improved by the tribal trust land ownership.
2. Much of the potential land in Alaska that could potentially be owned by a tribe is currently owned in split surface and subsurface estates. The regulations need to explain how any decision to take land into trust would work where the requesting tribe has title to less than the full fee estate. Moreover, the regulations need to explicitly state that any decision to take a portion of a split estate into trust will not affect the ownership interests of any other owners of that split estate and such owners will not need any federal approval or input regarding the management or uses of their ownership interests. It is imperative that the regulations, whether the existing Part 151 regulations or any new regulations, not be applied in any manner that would diminish any Native corporation’s ability to manage, use or develop its corporation lands on behalf of its shareholders.
3. In drafting and implementing any revisions to Part 151, BIA should study and clarify how the proposed rule could impact ANCSA’s revenue-sharing provisions. Section 7 requires Alaska Native regional corporations to share 70% of their net resource revenues amongst

the 12 land-based regional corporations and to subsequently redistribute a portion of all the shared revenues with the village corporations and directly with at-large shareholders (those who are not shareholders in any village corporation). Because all Alaska Native corporations and shareholders have a direct financial interest in the subsurface resources of the split estates, they are necessary parties to this rulemaking process and to any subsequent land in trust discussions.

BBNC favors the continued omission of the "Alaska exception" from 25 C.F.R. § 151.1 and believes the Secretary has the authority to take land into trust in Alaska and should do so in appropriate cases. Doing so will promote tribal self-governance, self-sufficiency, economic opportunities, and the health and welfare of Native communities. The Department must nevertheless implement this authority in a way that protects the existing interests of Alaska's Native corporations who are the largest private land owners in the State and are charged with managing, using and preserving their lands for the benefit of their shareholders.

Sincerely,



Daniel L. Cheyette
Vice-President for Lands and Natural Resources

Cc: AFN
ANCSA CEO Group