



December 20, 2018

Via email: consultation@bia.gov

Ms. Tara Sweeney
Assistant Secretary – Indian Affairs
Office of Indian Affairs
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

RE: Legal Authority and Process for Taking Land Into Trust in Alaska

Dear Assistant Secretary Sweeney,

Thank you for your recent efforts to consult with Alaska Native tribes and Alaska Native Corporations (“ANCs”) regarding potential changes to the federal land into trust regulations, 25 C.F.R. Part 151. Chugach Alaska Corporation (“CAC”) supports the ability of Alaska Native tribes to protect the health, safety, and right to self-determination of their tribal citizens by placing land into trust. The Alaska Native Claims Settlement Act (“ANCSA”) created a unique economic, legal, and cultural landscape in Alaska. New regulations must account for that unique landscape.

CAC is the Alaska Native Regional Corporation for the Chugach Region in southcentral Alaska. CAC was established pursuant to ANCSA and represents more than 2,600 Aleut, Eskimo, and Alaska Native shareholders. The Chugach Region currently contains five Village Corporations and five federally-recognized Alaska Native tribes, as well as many communities and Native villages throughout the Prince William Sound and Lower Kenai Peninsula areas.

When Congress enacted ANCSA, it chartered ANCs to advance Alaska Native self-determination and economic security through ownership and development of land. Congress intended the land conveyed to ANCs to be used to satisfy the economic needs and self-determination interests of Alaska Natives. As a result, CAC owns or has valid selection rights to over 927,600 acres of land, including 550,000 acres of subsurface estate, and as envisioned and mandated by ANCSA, manages this land and these resources for the maximum benefit of its shareholders and future generations of shareholders.

ANCSA also created an explicit social mission for ANCs to “promote the health, education, or welfare” of Alaska Natives. Both ANCSA and the absence of trust land in Alaska led to a unique situation where ANCs and other public and private organizations filled niches that tribes in other states might otherwise occupy. For example, Alaska Native Regional Corporations, including CAC, develop mineral resources from their subsurface estates and distribute their profits to Alaska Native shareholders through dividend distributions and to all Alaska Natives through ANCSA sections 7(i) and 7(j). State-chartered non-profit corporations provide social services, including health care and public assistance, to Alaska Natives throughout the state. And state-chartered regional housing authorities flourish, primarily as the result of Indian housing programs that do not require the existence of trust land.

CAC firmly believes that neither ANCSA nor post-ANCSA legislation diminished the Department of the Interior’s (“DOI”) legal authority to take land into trust for Alaska Native tribes. There is a vital need for Alaska Native tribes to address the unique problems affecting rural Alaska, and the ability to place land into trust is one of many tools that should be available to all federally-recognized tribes throughout the United States, including tribes in Alaska. Knowing this, the DOI must also account for Alaska’s unique circumstances by considering the effect trust acquisitions may have on an ANC and its shareholders. Any trust acquisition must begin with a formal consultation between the DOI and an affected ANC to ensure that a trust acquisition does not frustrate ANCSA’s intent that ANCs play a prominent role in advancing Alaska Native self-determination by owning land and developing economic opportunities.

New regulations should consider how to address proposed trust acquisitions that have the potential to frustrate an ANC’s federally-mandated economic development goals. The current regulations permit the DOI to place *any* interest in land into trust.¹ That could lead to significant problems if, for example, the DOI placed an easement into trust on surface estate above a regional ANC’s subsurface estate. In some scenarios, placing land into trust could have serious implications for access and development of underlying subsurface or adjacent or proximate surface estate. Alaska’s complex legal framework of split estates, created intentionally by Congress, make it unique from circumstances in the Lower 48 where the DOI has applied the existing land into trust regulations to split estates without controversy. The DOI should address this concern by requiring consent from affected ANCs where a trust acquisition would interfere with the ANC’s ability to access, manage or develop its property in furtherance of its mission. The DOI should also define and limit the kind of interests in land, and specify for what purposes the DOI will consider placing land into trust in Alaska.

¹ See 25 CFR 151.3(a)(2) and 25 CFR § 151.2(g).

New regulations should also address deficiencies in the existing notice and comment provisions. Currently, the DOI is required to notify only state and local governments about pending trust land acquisitions.² While throughout much of rural Alaska, there are local federally recognized Tribal governments to which notice of a potential trust acquisition can be provided. Given ANC's important roles throughout Alaska, ANCs should be entitled to notice of a pending trust acquisition that may affect or interfere with their roles and their interests.

ANCs must also be permitted to comment on how a potential trust acquisition could affect their property rights and economic interests. What is relevant is the fact that ANCs are engaged in complex economic enterprises throughout the state which could be severely impacted by a trust land acquisition. Given that ANCs have such varied interests in land that may be subject to trust acquisition, the DOI should expand the specifically requested comment topics to include effects on ANC land interests.

Finally, the current regulation's thirty day period to provide written comment is inadequate. The possibility of trust acquisitions in Alaska may rewrite the legal landscape and raise countless questions that require thorough analysis. An ANC must have sufficient time to assess the impact of a potential trust acquisition so that it can determine how it may be affected by that acquisition and whether it should support or oppose it. In order to provide ANCs with a full and fair opportunity to comment on a pending trust acquisition, the DOI should extend the comment period to at least sixty days.

CAC supports the DOI's ongoing efforts to review the land into trust regulations and hopes this consultation period is just the beginning of a collaborative process to draft, promulgate, and implement workable regulations that account for the unique realities affecting land into trust in Alaska.

Thank you for the opportunity to comment.

Sincerely,



Sheri Buretta
Chairman of the Board
Chugach Alaska Corporation

² 25 CFR 151.11(d).