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JAN 28 2019

DCN: IA 00007893
Executive Secretariat - Indian Affairs (ESIA)

December 12, 2018

Ms. Tara Sweeney
Assistant Secretary of Indian Affairs
Bureau of Indian Affairs
Department of Interior
1849 C Street, N.W.
Washington, DC 20240

SUBJ: Lands into Trust in Alaska

Dear Assistant Secretary Sweeney,

Arctic Slope Regional Corporation (ASRC) thanks you for your review of the federal government's authority and process regarding Lands into Trust in Alaska—as well as your proactive consultation with Alaska Native Corporations and tribes on this important topic. ASRC appreciated the opportunity to attend the Alaska Native Claims Settlement Act (ANCSA) consultation October 17th to discuss the Department's decision to eliminate the "Alaska Exemption" from 25 CFR § 151.1 and how the process of adopting tribal lands into trust could be applied in Alaska. We thank you in advance for considering our comments.

ASRC agrees with the decision to eliminate the "Alaska Exemption" and concurs with the Department's ability to take Alaska Native tribal lands into trust. This process can only be initiated at the request of the tribe and is designed to "advance economic development, promote the health and welfare of tribal communities, and help protect tribal culture and traditional ways of life" (79 FR 84 at 24649). We agree with the 2014 rulemaking that the Secretary's trust authority does not interfere with the provisions under ANCSA, the Federal Land Policy Management Act (FLPMA) or the Alaska National Interest Lands Conservation Act (ANILCA). Further, ASRC also recognizes that the Secretary's action to take tribal lands into trusts, when requested by the tribe, may lead to a greater degree of self-governance and tribal self-determination, and may empower tribal governments with respect to taxes, zoning, and regulations. ASRC supports greater tribal governance and self-determination for our shareholders, whom are also tribal members, and for the advancements of Alaska Native tribes; however, we feel the current process as described by BIA could be improved to better suit the unique nature of indigenous lands in Alaska.

As you are profoundly aware, indigenous land ownership in Alaska is fitted together like a mosaic across the different regions and state. The makeup of indigenous land is unique in Alaska, these complexities must be accounted for in the Department's Lands into Trust process. To this end, ASRC recommends the following changes which we feel will make this policy more inclusive of the Alaska's complex indigenous land ownership and better applicable to Alaska Native tribes who may request their lands be converted into trust. ASRC suggests BIA amend their regulation to:

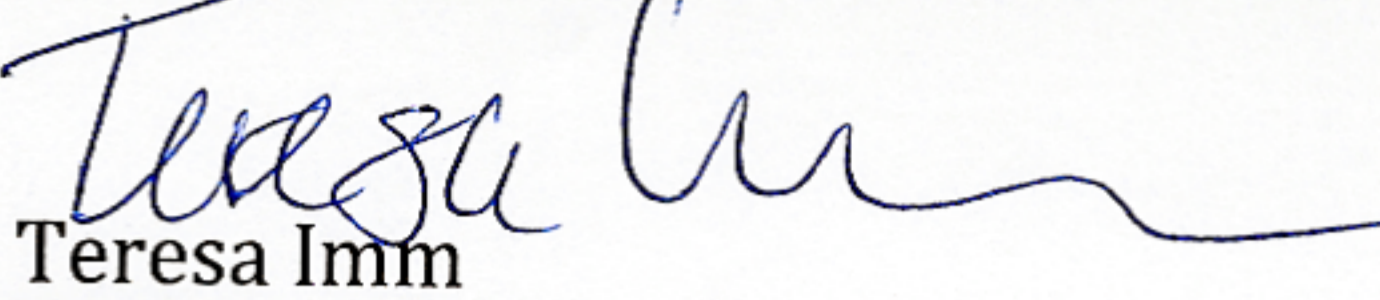
- Clearly distinguish tribal-owned land and ANCSA-owned land within the policy; only land owned by an Alaska Native tribe can be converted into a trust, at the request of the tribe.
- Clarify the process with respect to instances of split estate, which are common in Alaska. It should be noted that the subsurface owner has sovereignty in instances of split estate. Typically, the mineral owner of indigenous lands is the regional Alaska Native Corporation (ANC). BIA should clearly state that BIA will not infringe on Native Corporations' ability to manage, utilize, or develop their land and lands converted into trust will not impact their ability to do so, either by additional regulatory burdens or other mechanisms.
- Amend the "on-reservation" and "off-reservation" language to include other tribal lands. The "reservation" nomenclature is not used to describe indigenous lands in Alaska like it is in the contiguous states; there is only one reservation in Alaska, the vast majority of the tribal owned land is not within this reservation.
- If a tribe requests their land be taken into trust, DOI should provide notice to the regional and village ANC, conduct consultation with affected ANCs, and provide the opportunity for ANCs to comment.
- BIA should include additional criteria in their regulation for evaluating tribal request, such as: (1) potential impacts of taking land into trust on adjacent private land-owners and local municipal governments, (2) in instances of split estate, the consent of all owners in the estate, and (3) a summary of all potential benefits the tribe may incur from converting the land into trust.
- BIA should consider a provision on how tribes can convert their contaminated lands into trust. As ASRC understands, there is not currently a method for the Department to accept contaminated lands into trust, despite the likelihood that the federal government either conveyed the contaminated lands to the tribe in the first place, or was the responsible party in contaminating the lands. We highlight this issue to you as it is one that directly affects our region from the past contamination as a result of the U.S. Military's Defense Early Warning Sites and the U.S Navy's oil and gas exploration efforts.
- Evaluate potential impacts of converting lands into trust on ANCSA Section 7(i) revenue sharing provision. Under ANCSA, Alaska Native regional corporations are required to distribute 70% of net revenues from their mineral development to the other regional native corporations and village corporations. Through this provision of ANCSA, ASRC has shared over \$1 billion with the other regional native corporations. BIA should consider potential impacts to converting lands into trust. For instance, under ANCSA, timber is considered a resource to be shared and may require special consideration by BIA on how they would consider this obligation in their trust process.

ASRC highlights these concerns to you in the spirit of collaboration in order to enhance the Department's process to best fit the needs of Alaska Natives and address the concerns of our shareholders, who are also tribal members. ASRC has attached a white paper to this letter which summarizes some of the concerns and potential benefits on this topic and has been shared with some of our communities. Further, ASRC supports comments made by Bristol Bay Native Corporation on this topic, we have attached these to this letter for your convenience. ASRC encourages the Bureau to include our recommendations in their review of this process, and look for other ways this tool can be used to benefit tribal organizations, should they chose to utilize it.

ASRC looks forward to continued consultation on this matter, as well as other ways in which we can work together to empower our Alaska Native shareholders. Please do not hesitate to contact me if you have any questions.

Sincerely,

ARCTIC SLOPE REGIONAL CORPORATION



Teresa Imm

Executive VP – Regional & Resource Development

Attachment: White Paper on Lands into Trust in Alaska
BBNC Letter on Lands into Trust in Alaska, October 24, 2018.

Cc: ANCSA CEO Group

About Arctic Slope Regional Corporation

Arctic Slope Regional Corporation is an Alaska Native Regional Corporation created at the direction of Congress under the terms of the Alaska Native Claims Settlement Act of 1971 (ANCSA). ANCSA directs ASRC and other ANCSA corporations to use the North Slope's natural resources to benefit the Iñupiat people financially and culturally. Consistent with this legislation, ASRC is a for-profit business that is committed to providing sound returns to our shareholders and to preserving our Iñupiat way of life, culture, and traditions. ASRC has a shareholder base of approximately 13,000 Iñupiat.

Lands into Trust in Alaska

History & Background

The intent to put Indian Lands in trust is to facilitate tribal land restoration and economic development, insulate tribes from state and local jurisdiction and taxation, and protect land with cultural and historical significance. Alaska was exempt from participating in land-to-trust process in 1978 when the Interior Solicitor issued an opinion that this process would interfere with Congress' intent in ANCSA and would therefore abuse the Secretary of Interior's discretion. In 1980, this exemption was finalized in DOI's regulations. It wasn't until 2001 that the Solicitor's Opinion was struck down for flawed reasoning, but the regulations remained in place. Then in 2013 a Federal court struck down the "Alaska Exemption" because it discriminated against Alaska Native Tribes in relation to the United States trust responsibility to American Indians. DOI produced a final rule in 2014 which removed the Alaska Exemption.

The response to DOI's 2014 Rule was varied. Generally, Alaska Tribes have overwhelmingly supported DOI's 2014 rule, the State of Alaska opposed the revocation of the exemption, and Alaska Native Corporations raised concerns with how the process would interact with ANCSA. Tribal lands are only applicable to transfer into trust; this does not include ANCSA land but reservations, dependent Indian communities, Native allotments, and land owned by the Alaska Native tribe. In Alaska, Tribes have sovereignty but no territorial reach because of their minimal land ownership. Within DOI's rule, only federally recognized tribes can apply to have land taken into trust, any Alaska Native Corporation land must first be conveyed to the tribe prior to requesting it be converted into trust.

Concerns

- Mimics reservation structure which is largely viewed as unsuccessful in the Lower 48 because it results in isolation, stifles economic development, obstacles to tribal self-governance, and poor health and crime conditions.
- Potential to shift away from the intent of ANCSA; unclear the role ANCSA lands play and potential conflicts with split estates.
- Alaska Native land ownership is fractured across the State and regions which could introduce jurisdictional issues.
- May impact community benefits from the Regional/village Corporation or regional government.
- Loss of property taxes to regional government.
- May increase federal oversight of Native-owned lands, including approval from BIA on proposal, projects, right of ways, etc.

Potential Benefits

- Tribal lands would be managed by the federal government for the benefit of the tribe, but to a greater degree of self-governance and tribal self-determination.
- Long-term protection and preservation of land, cannot be sold by future generations.
- Quality of life in village generally rests on the success of the Regional/village Corporation and regional government; by putting lands into trust there may be funding from the federal government to address community needs.
- More tribal jurisdiction and governance of community; allows tribe to set up taxes, zoning, regulations, etc.
- Tribal members would control and manage land, not the shareholders of the ANC. This may empower more Alaska Natives depending on if the regional/village corporations are open to "After Births"

Recent Efforts in Alaska

Since DOI removed the Alaska Exemption several Alaska Native tribal entities have applied to put small parcels of land into trust but only one has been approved:

- In January 2017, Craig Tribe put 1 acre into trust which contained tribal facilities, commercial space, and parking.
- Ninilchik Tribe applied to put 2.5 acres into trust which includes land the tribe purchased to build a bus depot.
- Fork Yukon Tribe applied to put 2 acres of connected lots where the tribal government building and cultural center are.
- Haida Indian Tribes of Alaska applied to put 1/5 acre which is currently being used as a parking lot in downtown Juneau.
- Central Council Tlingit also has an application for a small parcel of land.

Steps to Put Lands into Trust

1. A written request identifying the parties and describing the land.
2. A description of the Tribal authority for the trust acquisitions (copy of a resolution, vote, etc).
3. Statutory authority for the acquisition.
4. Explanation of the need of the Tribe for the additional land (tax purposes are typically not adequate).
5. Purposes for which the land will be used: to facilitate tribal self-determination, for economic development, or tribal housing.
6. Impact on the State and its political subdivisions; State and local governments have 30 days to comment on impacts.
7. Jurisdictional problems and potential conflicts of land use; DOI has an obligation to conduct this assessment and consider jurisdictional issues.
8. BIA's ability to discharge additional responsibility resulting from acquisition.
9. Environmental Impact documentation; Tribe can submit their own EA, BIA has NEPA obligations.
10. Title Examination and Draft Deed.
11. Additional Documents for Preparation like an affidavit acknowledging existing right of ways and a statement that the development of minerals will not interfere with the intended use.
12. Location of the land relative to State boundaries.
13. A business plan.



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.

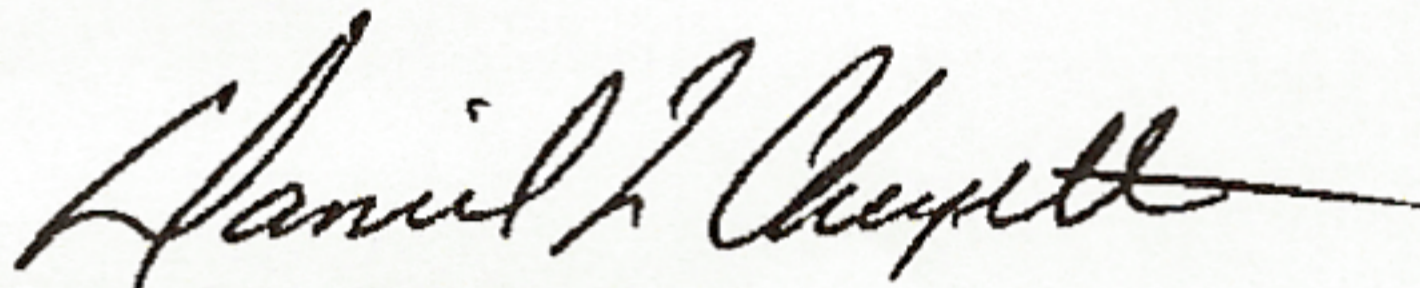
BBNC provides the following suggestions as to how 25 CFR Part 151 could be amended to better fit application in Alaska:

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