Statement of
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U.S. Department of the Interior
Before the
Committee on Natural Resources
U.S. House of Representatives
on
H.R. 2445, Alexander Creek Village Recognition Act
H.R. 3350, Alaska Native Veterans Land Allotment Equity Act
H.R. 3560, Southeast Alaska Native Land Entitlement Finalization Act
and
H.R. 3351, Native American Challenge Demonstration Project Act

November 14, 2007

Mr. Chairman and Members of the Committee, thank you for inviting me to provide the Department of the Interior's (Department's) views on H.R. 2445, the Alexander Creek Village Recognition Act; H.R. 3350, the Alaska Native Veterans Land Allotment Equity Act; and H.R. 3560, the Southeast Alaska Native Land Entitlement Finalization Act. You have also asked the Department to provide its views on H.R. 3351, the Native American Challenge Demonstration Project Act of 2007. As this legislation would establish a new program within the Department of Commerce, the Department defers to Commerce as to its position on the legislation and administration of the program. At your request, however, we are providing a brief overview on economic development in Indian Country. My statement will begin with the three Alaska bills.

H.R.2445, ALEXANDER CREEK VILLAGE RECOGNITION ACT

As discussed in more detail below, we understand the continuing desire of Alexander Creek, Inc., to be recognized as a Native village. However, this legislation would effectively overturn the long-standing settlement, codified in statute, which resolved the eligibility of Alexander Creek,

and would throw into question the finalization of land entitlement claims in southcentral Alaska. For these reasons, the Department opposes enactment of H.R. 2445.

Background

Congress enacted the Alaska Native Claims Settlement Act (ANCSA) in 1971 to resolve aboriginal land claims in Alaska. Through ANCSA, Native claims in Alaska were extinguished in exchange for 44 million acres of land and $962.5 million in compensation. ANCSA established specific entitlements for allocating this settlement among Native-owned regional corporations, Native villages and Native groups. Native villages (required to have a Native population of 25 or more, as determined by a 1970 census) received greater entitlements than Native groups. Native villages were entitled to a minimum of 69,120 acres from the public domain. In contrast, communities determined to have fewer than 25 Natives could be certified as Native groups and were entitled to a maximum of 7,680 acres.

ANCSA listed nearly 200 Native villages and directed the Secretary of the Interior to determine if additional Native communities qualified as villages. Alexander Creek was not listed as a village in ANCSA. It applied for eligibility as an unlisted village but its application was contested by the State of Alaska, the Mantanuska-Susitna Borough and other parties.

Thus began a long period of litigation over Alexander Creek's eligibility as a Native village that was ultimately resolved in a Stipulated Agreement in 1979 and codified in Section 1432 of the Alaska National Interest Lands Conservation Act (ANILCA). In signing this Stipulated Agreement, Alexander Creek withdrew its application to be recognized as a village, accepted certification as a Native group, and agreed that the lands conveyed under the 1979 Agreement

"constitute a full and final settlement" of its land entitlement under ANCSA. The Department has fulfilled its responsibilities to Alexander Creek under the agreement.

H.R. 2445

H.R. 2445 would legislatively designate the Alexander Creek Native group as a Native village under the provisions of the Alaska Native Claims Settlement Act (ANCSA). The bill would entitle Alexander Creek to the appraised current fair market value of approximately 61,440 acres it had provisionally selected in the early 1970s, pending the outcome of its original application to be recognized as a Native village. The appraised value of these lands would determine the amount of a Treasury account to be established for Alexander Creek, which would use the account to acquire lands in Alaska offered at public sale. The bill also directs the Secretary to seek a land exchange with the State of Alaska or the Matanuska-Susitna Borough to acquire surface estate lands for Alexander Creek near its home area. The bill provides a mechanism for reducing the value of the Alexander Creek account for lands acquired for Alexander Creek through an exchange.

H.R. 2445 would overturn the settlement agreement accepted by Alexander Creek in 1979 and codified in ANILCA. The resolution of Alexander Creek's status as a Native group in ANILCA allowed the land entitlement process throughout southcentral Alaska's Cook Inlet region to proceed. The process is now in a late stage of implementation. Changing the status of Alexander Creek could undercut the basis on which village and regional entitlements are addressed, fundamentally disrupting this lengthy and complex land entitlement process. H.R. 2445 would establish a troubling precedent. We therefore oppose the legislation.

H.R. 3350, Alaska Native Veterans Land Allotment Equity Act

H.R. 3350 raises a number of serious policy, management, and technical concerns, and it would give rise to new issues of fairness with respect to other Alaska Natives and other Vietnam veterans. For these reasons, and because H.R. 3350 would authorize a disruptive expansion of the Native Allotment program in Alaska, the Department opposes this legislation.

Background

The Native Allotment Act of 1906, as amended, gave the Secretary of the Interior authority to convey up to 160 acres of non-mineral land to individual Alaska Natives. Altogether about 10,000 Alaska Natives filed allotment applications for more than 16,000 parcels. Over 80 percent of the applications were filed with the BLM following an extensive outreach and assistance program carried out from 1969 through 1971.

The 1906 Allotment Act was repealed with the enactment of the Alaska Native Claims Settlement Act (ANCSA) in 1971, but with a savings provision for individual allotment claims then pending before the Department. Certain Alaska Native veterans of the Vietnam War may have missed an opportunity to apply for an allotment because they were serving in the armed forces immediately prior to the 1971 repeal of the Allotment Act and enactment of ANCSA. In 1998, the Alaska Native Vietnam Veterans Allotment Act was enacted to redress any unfairness that may have resulted.

The Department supports the principle of equitable treatment of Alaska Native Vietnam veterans, and the BLM has made every effort at fairness in implementing the 1998 Act. The deadline for Alaska Native Vietnam veterans to file an application for an allotment was January 31, 2002. The

BLM received applications from 740 individuals claiming a total of 1,010 parcels by that deadline, and has taken action on these applications. Of the original 1,010 parcels claimed, 708 (about 70 percent) have been rejected either because the applicant was not eligible for an allotment under the terms of the 1998 Act or the land claimed was not available for conveyance under the terms of the Act. Nine (9) certificates of allotment have been issued, and 90 parcels have been approved for conveyance.

The processing of the remaining 203 parcels requires more information from the applicant before BLM will know whether the applicant has met the requirements of the 1998 Act. In many cases, despite repeated requests from the BLM, supporting documentation is still needed from the applicants. In cases where additional information could result in approval of the allotment, BLM makes every effort to obtain that information before taking adverse action on the claim.

H.R. 3350

H.R. 3350 would allow any Alaska Native Vietnam-era (August 5, 1964, through May 7, 1975) veteran who has not yet received a Native allotment to select up to 2 parcels of land totaling no more than 160 acres. If the veteran is deceased or dies before filing an application, an heir may apply for an allotment on the veteran's behalf.

The legislation would repeal the BLM's regulations that implemented the 1998 Act and require the Secretary to publish new regulations within one year. Native veterans would have three years after the Secretary issues final regulations to file their applications. Native veteran applicants could choose any vacant Federal land in the State of Alaska located outside of the TransAlaska Pipeline corridor.

The Department testified in great detail on nearly identical legislation (H.R. 3148) in the 107th Congress. As noted above, while H.R. 3350 aims for fairness, it raises a number of serious policy, management, and technical concerns, and it would give rise to new issues of fairness with respect to other Alaska Natives and other Vietnam veterans. H.R. 3350 goes far beyond the original 'missed opportunity' rationale and has the appearance of creating a bonus program that awards land for military service only to certain veterans. Provisions of the legislation appear to create inequities between Alaska Native Vietnam veterans and Natives who did not serve in the military by allowing veterans to choose land that was not available to other allotment applicants. The deadlines for approval and conveyances give applicants under H.R. 3350 preferential treatment not afforded to other Alaska Natives. The bill authorizes compensatory acreage for Native corporations that voluntarily give up land for Native veteran allotments but not for the State of Alaska.

We oppose H.R. 3350 because it authorizes new allotment claims 36 years after repeal of the 1906 Native Allotment Act. The legislation negates important compromises reached in the passage of the 1998 Act, throws out years of adjudication under that Act, and disrupts settled land use arrangements under ANCSA and ANILCA. It undermines the goals of the Alaska Land Transfer Acceleration Act to finalize land entitlements under ANCSA, the Statehood Act, and existing 1906 allotment applications, and even unconveyed Native veteran claims. Finally, it would create additional trust assets and also raises the possibility of Constitutional challenge as to whether it may be an impermissible preference. Finally, the legislation undermines the processing of pending Alaska Native Veteran applications that are nearing issuance of certificate of allotments

H.R. 3560, Southeast Alaska Native Land Entitlement Finalization Act

The Department supports the goal of completing ANCSA entitlements as soon as possible so that Alaska Native corporations may have the full economic benefit of their intended land base. This includes the entitlements due to Sealaska Corporation (Sealaska). However, we do not support H.R. 3560 for the reasons detailed below,, including the undesirable precedents it may establish as well as its potential impact on our ability to complete ANCSA entitlements, not only in Southeast Alaska but across the entire state.

Background

ANCSA established a framework under which Alaska Natives could form private corporations to select and receive title to 44 million acres of public land in Alaska and receive payment of $962.5 million in settlement of their aboriginal claim to land in the State. Sealaska is one of twelve regional corporations formed under ANCSA to receive land benefits. Sealaska has not received title to all of the acres currently allocated to it under Sec. 14(h)(8) of ANCSA and the final allocation of acreage to Sealaska under Sec. 14(h)(8) of ANCSA has not yet been determined.

H.R. 3560

As noted above, we support finalizing entitlements under ANCSA, but H.R. 3560 does not provide a path to finalization of Sealaska's ANCSA entitlement, and it creates new categories of selections not available to other regional corporations. Moreover, because the bill would authorize the selection of a number of individual small parcels, as opposed to larger blocks like the current selections, they will likely take longer and be more costly to process than Sealaska's current selections.

We are also concerned about the deadlines for conveyance included in H.R. 3560. While BLM-Alaska has worked hard to meet immediate specific economic needs of Native corporations when those specific needs are identified, we are concerned that the deadlines do not provide sufficient time to identify third party interests and easements and to complete the other necessary adjudicatory and survey tasks needed to assure that the quality of title issued to Sealaska is not compromised. We believe that any perceived advantage to Sealaska that may come from such deadlines will be outweighed by the hard feelings such preferential treatment could provoke in the Native community outside of Southeast Alaska.

More significantly, however, we note that ANCSA did not allow for selection and conveyance of cultural sites within National Park System (NPS) units in Alaska. This legislation would allow such selections and conveyances. Section 3(b)(2)(A)(i) of H.R. 3560, which identifies sites for selection and conveyance to Sealaska, includes 12 sites located in Glacier Bay National Park and Preserve and one site in Klondike Gold Rush National Historical Park. The legislation also provides for later identification of additional sites with broad cultural associations that could be selected and conveyed from these units, as well as from Sitka National Historical Park. Moreover, the bill provides for the economic development of the conveyed lands and removes the usual protections afforded cultural sites.

This legislation would significantly impact Glacier Bay National Park and Preserve and Klondike Gold Rush National Historical Park by removing valuable cultural and natural sites from NPS ownership and management, transferring them to private ownership, removing national historic protection provisions, and opening them to economic development. H.R. 3560 could also result

in similar impacts to Sitka National Historical Park. For these reasons, we strongly oppose these provisions of H. R. 3560.

As noted above, we support the goal of completing ANCSA entitlements as soon as possible and are working hard to ensure that process comes to a successful conclusion.

H.R. 3551, THE NATIVE AMERICAN CHALLENGE DEMONSTRATION PROJECT ACT OF 2007

As noted above, H.R. 3551 would establish a new program within the Department of Commerce. For this reason, we defer to Commerce as to a position on H.R. 3551 and administration of such a program. At your request, however, we are including an overview on economic development issues in tribal communities. This information updates and supplements testimony provided to the Committee by Dr. Robert Middleton, Director of the Office of Indian Energy and Economic Development, at a September 19, 2007, hearing on Diversifying Native Economies.

The Office of Indian Energy and Economic Development (IEED) works to promote economic development, increase business knowledge in tribal communities, increase jobs and businesses, broaden access to capital investment, and develop Indian energy and mineral resources. To reach performance milestones in Fiscal Year 2008, IEED is guided by recommendations from tribal leaders, who have asked that we concentrate, among other things, on—

- developing a better legal infrastructure in Indian Country;
- providing more funding for community and economic planning;
- continuing to provide training for business and marketplace skills;
- funding financial literacy training at the earliest educational stages; and
- offering strategic advice on setting up and operating businesses.

As noted at the September 19th hearing, last May IEED partnered with NCAI and other federal agencies and organizations to orchestrate the National Native American Economic Policy Summit in Phoenix. Since then, IEED has joined with the National Congress of American Indians (NCAI) to publish the recommendations offered by the Summit's tribal and federal representatives to improve Native American economies. We take these recommendations seriously because we believe that no real progress can be made in building strong Indian economies until tribes themselves identify and undertake to surmount obstacles to economic growth in their communities. Actions that we are taking to address issues raised in these recommendations are discussed below.

Creating a Strong Legal Infrastructure

Summit participants made it clear that economic development in Indian Country is not possible without the rule of law embodied in commercial codes that secure collateral and allow the free flow of credit between persons inside and outside the reservation. As a result, IEED has funded preparation and adoption of tribal uniform commercial code sections dealing with secured transactions and development of a curriculum to train tribal uniform commercial code administrators. Later this year, we will be co-sponsoring with the Tulalip Tribes of Washington a conference on how tribes can adopt codes to protect the economic value of their cultural patrimony, including intellectual property such as flora, fauna, and oral traditions.

Planning for Progress

We are also working to advance thinking on comprehensive reservation planning, which allows tribes to make a realistic inventory of their energy, transportation, water, housing, telecommunications and other core infrastructure needs and determine the means for satisfying

those needs while establishing economic autonomy and creating jobs. On October 5-6, 2007 in Tempe, Arizona, we hosted with NCAI, the University of New Mexico, and Arizona State University a tribal community comprehensive planning conference. A white paper from the conference will be available shortly.

IEED has also funded long-term, strategic economic development planning, and has worked to link tribes with advice from some of the most distinguished business schools in the United States. Last year, the Native American Business Development Institute (NABDI) arranged feasibility studies for tribes on potential economic development opportunities ranging from a business park, a security business, a medical supply enterprise, and an upland bird hunting operation, to new uses for a dormant tribal wellness/recreation center, and a greenhouse heated by woody biomass. We expect NABDI to undertake similar studies this fiscal year.

We are also now collecting data for the Labor Force Report, which was previously compiled by the BIA. The report, with an expected release of November 2009, will provide valuable information on employment rates, workforce participation, and economic development on reservations.

Training for Success

We have sponsored the Tuck School of Business at Dartmouth University to train executives of Indian-owned firms in intensive, one-day and three-day workshops which teach Native American business men and women how to develop and improve business management skills; establish and run a business; maintain accounting records; assess performance; create a high-performing business enterprise; and expand existing operations. Participants learn about implementing

company strategy, aligning operations to create customer value, operations strategy, analyzing and refining key business processes, prioritizing process improvements, and effective management techniques.

To penetrate the "digital divide" affecting remote reservations, we have been working with the Native American Chamber of Commerce (NACC), SeniorNet, and IBM to place IBM-donated computer equipment and software and provide high-technology training at various reservation locations, called Achievement Centers. The equipment is being used for employment training, job searches, internet commerce, home-based businesses and many other purposes. The first Achievement Center was dedicated at Blackfeet Nation in September 2006, with others established for the Leech Lake Band of Ojibwe Indians at Cass Lake, Minnesota and the Tigua Tribe at the Ysleta del Sur Pueblo in Socorro, Texas. An Achievement Center for the Houlton Band of Maliseet Indians in Houlton, Maine, should open this spring.

IEED also sponsors workshops to train Native Americans how to form SBA 8(a) businesses and take advantage of federal procurement opportunities, including those made possible by the Buy-Indian Act. Within the Department, IEED has encouraged government charge card purchasers to "buy Indian" and we have set up a data base of qualified Native American vendors to facilitate purchases from Department procurement officers.

IEED has also planned and funded a one-year Entrepreneurial Education Pilot Project in FY 2008 for students at seven reservation high schools. We have partnered with the Bureau of Indian Education and the National Foundation for Teaching Entrepreneurship, which last month trained teachers at each of the pilot schools.

Providing Strategic Advice

In 2008, IEED will distribute a Tribal Business Structure Handbook to all tribes. Developed in partnership with the Tulalip Tribes, this handbook will serve as a primary reference for entrepreneurs contemplating creation of a business enterprise. It will provide the key factors to be considered when structuring a business or project, and is intended to aid tribes in determining whether business formation should occur under tribal, state, or federal law and which structure will work best to protect tribal assets, preserve tribal sovereignty, minimize tax liability, and maximize the use of incentives available for tribal economic development.

CONCLUSION

For the reasons stated above, the Department opposes H.R. 2445, The Alexander Creek Village Recognition Act, and H.R. 3350, the Alaska Native Veterans Land Allotment Equity Act, and does not support H.R. 3560, the Southeast Alaska Native Land Entitlement Finalization Act. We defer to the Department of Commerce for its position on H.R. 3551.

Thank you for the opportunity to present this testimony. I will be glad to answer any questions that you or Members of the Committee may have.