Action Advances Tribal Self-Governance and Tribal Sovereignty

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WASHINGTON, DC – As part of President Obama's commitment to upholding the nation's trust responsibilities to American Indian and Alaska Natives, Assistant Secretary of Indian Affairs Kevin K. Washburn today announced a final rule that will allow the Department of the Interior to accept land into trust for federally recognized Alaska tribes.

Previously, Interior regulations allowed tribal nations in the continental United States to seek to place lands into trust, but did not allow the same for federally recognized Alaska Native tribes. Taking land into trust for a tribal nation makes the land eligible for certain federal programs that further tribal sovereignty and economic development, related to agriculture, energy, infrastructure, health and housing programs. It also clarifies and affirms tribal sovereign powers over the land.

"This marks a major step forward in federal policy in Alaska. Our aim is to make it possible to secure tribal homelands, which in turn advances tribal sovereignty and economic development, promotes the health and welfare of tribal communities, and protects tribal culture and traditional ways of life," said Assistant Secretary Washburn. "Restoring tribal lands to trust status furthers tribal self-governance."

Representatives of Alaska Native tribes have asserted that the denial of a land into trust process in Alaska is unfair and have sought to correct this unfairness, in part, through litigation. The rule issued today not only addresses this litigation, but also responds to recommendations by two independent blue ribbon commissions, the Congressionally-created Indian Law and Order Commission and the Secretarial Commission on Indian Trust Administration and Reform. Today's rule also reflects numerous public comments and feedback obtained from Alaska Native tribes during formal consultation.

The Assistant Secretary's announcement complements recent Congressional action affecting Alaska Native tribes. Earlier this month, Congress amended the Violence Against Women Reauthorization Act of 2013 (VAWA) to allow Alaska tribal courts to prosecute non-Indians who commit domestic violence against Indian spouses and partners. If land is taken into trust pursuant to today's rule, it will support such tribal court jurisdiction authorized by Congress and, ultimately, help Native governments to be better partners with the State of Alaska to address these problems.

Today's rule confirms that the Secretary of the Interior has pre-existing statutory authority to consider applications to take land into trust in Alaska and this authority will now be exercised. Part 151 of the Code of Federal Regulations (CFR), entitled Land Acquisitions, is the regulatory framework within which the Secretary of the Interior, through the Assistant Secretary and the Bureau of Indian Affairs, will consider requests and exercise discretion to take land into trust. The land acquisition regulations are rigorous; whether in Alaska or the lower 48 states, tribes must satisfy extensive regulatory requirements, including possessing clear title to the land, before the Department will approve a trust

application.

Several important questions about the rule arose in the comment period. For example, some were concerned about the effect on subsurface mineral rights if surface lands are taken into trust. Each application will be considered on a case-by-case basis, but taking lands into trust on the surface usually has little impact on mineral rights because surface interests are typically subservient to the subsurface mineral interests, which are dominant. The Department will use its experience managing lands with split estates in the lower 48 states to address any problems that might arise.

Generally, lands are placed into trust pursuant to the Indian Reorganization Act of 1934 (IRA), which was enacted to remedy the devastating loss of tens of millions of acres of tribally owned lands. The IRA authorizes the Interior Secretary to hold land in trust for Indian Tribes and individual Indians, thereby securing these lands for housing, schools, economic development, and other beneficial purposes. Trust land also allows the tribe to benefit from federal housing programs and other federal grant programs which are often available only on land that has been placed in trust. Thus, today's rule has the potential to unlock additional federal financial resources for Alaska Natives.

The U.S. Government currently holds 55 million surface acres and 57 million acres of subsurface minerals estates for American Indians, Indian tribes and Alaska Natives. The Obama Administration has taken more than 280,000 acres of American Indian land into trust since 2009.

The proposed rule was made available for public comment on May 1, 2014. The final rule can be viewed online at: Land in Trust in Alaska

The Assistant Secretary – Indian Affairs oversees the BIA, which is headed by a director who is responsible for managing day-to-day operations through four offices – Indian Services, Justice Services, Trust Services and Field Operations. These offices directly administer or fund tribally based infrastructure, law enforcement, social services, tribal governance, natural and energy resources, and trust management programs for the nation's federally recognized American Indian and Alaska Native tribes and villages through 12 regional offices and 81 agencies.