Proposal would Clarify Regulations so that Tribes in Alaska can Petition Interior Department to Restore Tribal Lands in the Same Way as Tribes in the Lower 48; Proposed Rule Consistent with Recent Court Rulings

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WASHINGTON, D.C. – 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 Washburn today announced that the Interior Department is seeking public comment on a proposed rule that would allow the Secretary of the Interior to consider petitions from Alaska Native tribes to take land into trust.

Currently, Alaska Native tribes do not have the ability to restore their tribal lands in the way that American Indian tribes located in contiguous United States do. Lands acquired are held in trust for the benefit of the tribe, allowing for agriculture, energy, infrastructure, health and housing projects to move forward and strengthening tribal economies.

"Acquiring land in trust is one of the most important functions that the Department of the Interior undertakes on behalf of tribes," Assistant Secretary Washburn said. "Restoring tribal lands to trust status is essential to ensure cultural preservation, self-determination and self-governance and to advance the social and economic development of tribal communities. Yet for 228 federally recognized tribes in Alaska, the opportunity to request that land be taken into trust under the Department's regulations is not available. We look forward to tribal consultations and public comments on this proposed rule."

The pertinent regulations are at 25 Code of Federal Regulations (CFR), Part 15, entitled Land Acquisitions, which provides the regulatory framework within which the Secretary of the Interior must consider tribal requests and exercise her discretion to take land into trust. The exclusion of Alaska in Part 151 results from an interpretation of the Alaska Native Claims Settlement Act (ANCSA) adopted by the Department in 1980. The proposed rule now available for tribal and public comment would amend Part 151 to explicitly include Alaska.

This proposal is driven by several recent developments. Two recent independent blue ribbon panels of experts, including the Congressionally-created Indian Law and Order Commission and the Secretarial Commission on Indian Trust Administration and Reform, recommended that the prohibition on land into trust in Alaska be removed.

In addition, in a recent legal action brought by an Alaska Native and four Alaska tribes, the U.S. District Court in Washington, D.C. ruled that the Secretary of the Interior has statutory authority to take land into trust for Alaska tribes. See Akiachak Native Cmty. v. Salazar, 935 F. Supp. 2d 195 (D.D.C. 2013).

This ruling was consistent with the views expressed by the United States in this litigation. The rule proposed today would open the land-into-trust process, set out in 25 CFR 151, not just to the tribal parties to the Akiachak litigation but to all Alaska tribes.

Tribal trust lands are a result of The Indian Reorganization Act of 1934 (IRA), which was enacted to remedy the devastating loss to Indians of over 90 million acres (two-thirds of the total) of their lands between the General Allotment Act of 1887 and the IRA of 1934. It authorizes the Interior Secretary to hold land for Indian Tribes and individual Indians in trust, thereby securing these lands for housing, schools, economic development, and other beneficial tribal purposes. It also allows the tribe to benefit from the housing and other federal programs which can only be used on land which has been placed in trust.

The U.S. Government, which has taken land into trust for federally-recognized tribes since the 1934 IRA, 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 200,000 acres of American Indian land into trust since 2009 and the Cobell Trust Litigation Settlement has funded a $1.9 billion Land Buy Back Program that is purchasing from willing sellers tracts of land with highly fractionated ownership interests and holding these consolidated parcels in trust for the beneficial use of Tribal communities.

The Department will host a series of consultation sessions with tribal representatives on the proposal to amend Part 151, beginning at the National Congress of American Indians (NCAI) Mid-Year Conference, June 8-11, 2014, in Anchorage, Alaska. The time and location for this consultation session as well as information on other sessions Interior plans to host during the NCAI Mid-Year Conference will be announced in the near future.

Prior to consultation sessions, tribal representatives can review this proposed rule, as can the general public, online at: http://www.bia.gov/WhoWeAre/AS-IA/Consultation/index.htm. The Department also welcomes written comments from the public and tribal members, via email at consultation@bia.gov, or via mail to Mr. Kevin Washburn, Assistant Secretary – Indian Affairs, 1849 C Street NW, MS 7328-MIB, Washington, D.C. 20240.
