



December 6, 2019

Bureau of Land Management
Attn: Erica Reed, Deputy State Director
222 West 7th Ave., Stop #13
Anchorage, AK 99513

Re: Cook Inlet Region, Inc. Comments to the Draft Provisions Concerning Alaska Native Vietnam Era Veterans Land Allotments

Dear Ms. Reed:

The following comments are submitted on behalf of Cook Inlet Region, Inc. (CIRI), an Alaska Native Regional Corporation formed under the Alaska Native Claims Settlement Act of 1971 (ANCSA) to benefit Alaska Native people with ties to the Cook Inlet region. CIRI is the largest private landowner in Southcentral Alaska, with more than 1.3 million acres of subsurface estate and large surface estates shared between CIRI and the seven ANCSA village corporations in the Cook Inlet region.

In response to the release of Version 4 of the General Provisions of the Alaska Native Vietnam Era Veterans Land Allotments regulations (Version 4) and consultations on the same subject conducted by the Bureau of Land Management (BLM) in Fairbanks on October 16, 2019, and in Anchorage on December 2, 2019, CIRI submits the following comments.

First, CIRI respectfully requests that all comments provided at the Fairbanks consultation, the Anchorage consultation or any other consultation opportunities, including those comments provided by Heidi Hansen or Greg Razo representing CIRI, be considered part of the official record for this undertaking. BLM recorded the comments at the consultations but also asked that all comments be submitted in writing. This letter is in addition to and supplements the previous comments offered by CIRI.

Receipt Date:

The "Receipt date," as defined in Section XXXX.02(f) and further described in Section XXXX.04-11, should include incomplete applications. Further, at the Fairbanks consultation, many found it untenable that the BLM might not consider an application received for purposes of application deadlines and receipt by the effective date if said application simply contained a technical error. CIRI appreciates BLM suggested at the Fairbanks consultation that this issue could be remedied, but no such remedy is included in Version 4. Technical errors have led to failure to convey through other allotment programs. Simply put, the individuals applying for allotments in some

instances do not have the technical savvy to satisfy myriad bureaucratic loopholes and requirements.

Additionally, if an application is submitted within the five year window but BLM is unable to promptly adjudicate it,¹ it would be unfair to render an application incomplete and therefore not "received" within the application timeframe. Accordingly, it is incumbent on the BLM to make the application process as user-friendly and accessible as possible to the applicants. It is CIRI's position that rejecting allotment applications for administrative purposes and curable errors (e.g., typographical errors, misstatement of legal descriptions or otherwise), rather than for eligibility purposes, would be a failure to Alaska Native veterans who have waited far too long to receive their just due and would expressly defeat the purpose of the law.

Further, with respect to a selection being made in conflict with another eligible veteran's selection, if an applicant must make a new selection elsewhere as a result of a conflict, the applicant's priority should reflect the original date of application. The fact that someone else selected the same lands prior to the applicant should not disadvantage the applicant further per subparagraph (b)(1) of Section XXXX.05-2. This is especially important given the limited lands currently identified as available, and what appears to be the BLM's intention to rely upon internet-based mapping technology to reflect land status. Those applicants without reliable internet access or computer savvy will likely rely upon intermediaries to present them with paper maps to make their selection. Those applicants will be disadvantaged by being unable to view maps as they are updated and will continue to be disadvantaged as they attempt to select an alternative parcel if their initial request is not given priority.

Lastly, CIRI urges the BLM to consider an application complete even if the applicant is unable to secure a relinquishment from the State or a Native corporation prior to the conclusion of the effective date. Given that the BLM has yet to fulfill all ANCSA corporations' entitlements, it is not fair or reasonable to penalize individual allottees.

Confirmations

BLM should consider establishing a mechanism for applicants to receive an express statement, signed by a BLM employee and timely sent, confirming receipt of applications and notifying applicants whether the applications are deemed complete. This would avoid situations wherein applicants are either unaware that their applications were not received or unaware that their applications were deemed incomplete, and it would provide time for necessary corrective measures to be taken.

¹ There is no required timeline for BLM to adjudicate or get back to an applicant, so for all intents and purposes, BLM could simply suspend work on applications with errors and not notify the applicants, thereby rendering such applicants ineligible. If such non-action were to occur, it would be unacceptable.

Delivery

At various places throughout the draft regulations², BLM is required to issue, mail or send notices, decisions and other items to applicants. To avoid confusion and ensure receipt, BLM should: 1) update the regulations to specify that items provided by BLM will be mailed to the address provided on the application; and 2) add a section to the regulations advising applicants of the process to change the address on file. Absent guidelines setting forth a clear and easily administered process, much of the information to be provided risks not being delivered to applicants.

Response Time

While CIRI appreciates BLM's flexibility in back and forth situations with applications, 60 days is an insufficient turnaround time for an individual to respond to BLM in the instance of an individual receiving a notice of conflict or unavailability of lands or in the instance of a typographical error.³ In fact, given the subsistence lifestyle—and in some cases snowbird lifestyle—of many Alaska Native individuals, CIRI requests that BLM consider extending response times to 180 or 365 days, particularly given that, in some circumstances, individuals may require the assistance of an attorney or other professional to ascertain a new legal description to provide to BLM.

Deceased Veterans

CIRI expects one of the most challenging implementation aspects of the Dingell Act will be executing an allotment transfer to the heir(s) of a qualified veteran. In that regard, the definition of "personal representative" should be crafted as broadly as possible. One reason for this is that there are likely many estates that did not go through probate and are therefore without a personal representative. Because of this, the legal challenges to individual heirs trying to access their benefactor's estate will be significant. Thus, CIRI suggests that BLM seek financial resources not only to execute this program within BLM, but also to transmit funding directly to Alaska Legal Services Corporation (ALSC) for the express purpose of assisting Alaska Native heirs attempting to execute a Native allotment on a veteran's behalf. ALSC has 12 offices in Alaska, with attorneys and paralegals offering free services for civil legal issues, including the provision of assisting veterans with their critical legal needs. ALSC also participates in numerous free community events and legal clinics held specifically for veterans, including co-hosting a monthly clinic at the Veterans Affairs office in Anchorage.

Moreover, it is unclear how a Certificate of Allotment will be issued if there are multiple heirs, devisees and/or assigns per subparagraph (a) of Section XXXX.03-3 or Section XXXX.05-6. The draft regulations call for one Certificate of Allotment to "... be issued in the name of the heirs, devisees, and/or assigned of the deceased

² Sections XXXX.03-3(a) and (b); XXXX.04-1(c); XXX.04-3; XXXX.04-10 (two instances); XXXX.05-1(d) and e(2), e(h) and e(i); XXXX.05-2(b) and (c); XXXX.05-3(a) and (c); and XXXX.05-6(a).

³ The insufficiency of 60 days comment pertains to Sections XXXX.04-1; XXXX.04-10; XXXX.05-1(e); XXXX.05-2; and XXXX.05-3.

Eligible Individual," instead of calling for the issuance of separate certificates for each individual owning a beneficial interest. If heirs received differing percentages of the deceased's estate, will they not, in turn, receive those same percentages of the eligible veterans' allotment, and will they not be apprised of their ownership interests? CIRI recommends that BLM execute allotments as faithfully as it can relative to veterans' estates, including issuing separate certificates to accurately reflect the ownership interests of each beneficiary.

Further, veterans and their personal representatives should not be required to get an appointment from "an appropriate Alaska State court," for many reasons. First, the act also allows for an individual to act on behalf of a deceased veteran's estate "if a registrar has qualified" them;⁴ no restriction is made on whether the registrar must be the Alaska Court System. Many eligible veterans and heirs likely live outside of Alaska, rendering it cumbersome to file for an appointment as a personal representative in an Alaskan court. Additionally, what does it mean to be an "appropriate" court? Can a representative not be appointed within any court of competent jurisdiction, including a [recognized] tribal court? If BLM is unable to allow other courts to provide the appointment of personal representatives, CIRI requests that BLM: 1) provide clear instructions to applicants on how to navigate the Alaska Court System remotely; and 2) provide funding to the Alaska Court System to address the additional administrative workload associated with appointing personal representatives for this limited purpose.

Lastly, with respect to deceased eligible veterans, CIRI requests that BLM consider making publicly available a list of known deceased eligible veterans so that Alaska Native corporations and communities can help identify and locate heirs at their discretion. The regulations should also address more specifically how the BLM will provide notice to possible heirs and how heirs can verify that their ancestor is, in fact, an eligible individual in order to proceed with the application process.

Accessibility

Not all Alaskans have access to the internet or an ability to print a map per the draft instructions under subparagraph (a) in Section XXXX.04-4. As such, CIRI asks that BLM provide both a physical and mailing address for BLM where applicants may request that a map of a general area be mailed to them in order that they may provide a drawing of their selections. Further, in *all* cases throughout the regulations where BLM requires or references website accessibility, it is important that BLM also provide a direct phone number so applicants can speak with an appropriate BLM employee if they have difficulty with their applications or do not have access to the internet.

⁴ 43 U.S.C. § 1629 g-1(a)(2)(B).

Fee Simple Status

Section XXXX.05-6 states that BLM will issue a certificate of allotment to convey the land. It is currently CIRI's understanding that BLM is considering transferring the allotments as unrestricted fee simple. CIRI strongly objects to that treatment and believes the allotments afforded under the Dingle Act should instead be afforded the same rights and restrictions as those of previous allotment acts. Transferring the land as unrestricted fee simple risks lands being quickly transferred out of Native hands through taxation and other means. As an example, a U.S. Department of Interior publication⁵ discussing the Dawes Act states in part that, under that act, allotments were to be held in trust by the United States for the beneficial Native American owner for a specified period of time, "after which the federal government would remove the trust status and issue the allottee fee simple title to the land. Once out of trust, however, the land became subject to state and local taxation, the costs of which led thousands of acres of Native American land to pass out of Native American hands once the trust status was lifted." It would be a travesty for such losses to occur in connection with Vietnam veteran allotments.

To address this, the BLM should revise Section XXXX.02 to define "allotment" as it has in the past. Drawing from the BLM's definition of "allotment" used in the Act of May 17, 1906⁶, and eliminating the statutory requirements for use and occupancy not present in this Act, "allotment" should be defined as "an allocation to a Native Veteran of land which shall be deemed the *homestead* of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable except as otherwise provided by the Congress."

Though the Act inartfully exempts as eligible individuals those who have "received an allotment" under section 14(h)(5) of the Alaska Native Claims Settlement Act, land conveyances made under (h)(5) were never "allotments"; they were "primary place[s] of residence."⁷ Referral to these fee simple primary places of residence as "allotments" should not forever alter the near-universal understanding and assumption, supported by law, that an "allotment," in contrast to other land, is held in trust by the federal government for the benefit of the allottee.

⁵ See <https://revenuedata.doi.gov/how-it-works/native-american-ownership-governance/>.

⁶ See 43 C.F.R. § 2561.0-5 ("Allotment is an allocation to a Native of land of which he has made substantially continuous use and occupancy for a period of five years and which shall be deemed the *homestead* of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable except as otherwise provided by the Congress.") See also 43 C.F.R. § 2568.30 ("Allotment has the same meaning as in 43 CFR 2561.0-5(b).")(interpreting Alaska Native Veterans Allotment Act of 1998).

⁷ See 43 U.S.C. 1616(h)(5) ("The Secretary may convey to a Native, upon application within two years from the date of enactment of this Act [enacted Dec. 18, 1971], the surface estate is not to exceed 160 acres of land occupied by the Native as a primary place of residence on August 31, 1971."). See also 43 C.F.R. §§ 2653.8-2653.8-3 (referring nowhere to "allotment"; and instead to "primary place of residence" throughout).

Contaminated Lands

In the first sentence of Section XXXX.06-2, the word "or" has been changed to the word "and." It is possible that the various identified databases may contain different information. Therefore, the word "and" is more appropriate.

Changed Land Selections

In Section XXXX.07-1, BLM acknowledges that more land may become available over time and, indeed, during the consultation, BLM specifically noted that with the Central Yukon Resources Management Plan, additional lands may become available. However, in Section XXXX.05-4, BLM also notes that an applicant may not change their land selection except where a conflicting application is received earlier in time. Given that there are so few lands available from which to select, most of which are far away from the ancestral lands of Alaskan's eligible veterans, CIRI requests that BLM consider allowing changed selections if new lands become available and the lands originally selected have not yet been conveyed.

General Comments

For purposes of outreach, CIRI requests that BLM consider highlighting the allotment application period on public radio KNBA 90.3 FM through public service announcements (PSAs) and also requests coverage of the topic on Native Voice One (NV1) and Alaska Public Media. CIRI encourages BLM to allocate resources specifically for such media outreach purposes. For example, NV1 is Koahnic Broadcast Corporation's (KBC) national distribution division. KBC's national programs are carried by more than 300 public radio stations and 50 Native stations in rural communities, with thousands more accessing KBC's NV1 and KNBA web-streams on mobile devices each day to hear how National Native News, Native America Calling and other programs are engaging Native America.

CIRI suggests that notices of allotment award include a reminder regarding the importance of providing for Native allotments in wills. When ANCSA shareholders fail to provide for their ANCSA stock by will, those shares pass by intestate succession, often to multiple heirs with minimal interests. Reducing these situations for ANCSA corporations, through the provision of wills, assisting shareholders in executing wills and continual messaging is a high priority. Given that the Bureau of Indian Affairs no longer assists individuals in the preparation of wills for the Native allotments, CIRI believes it is especially important that BLM take responsibility for providing notice to allottees of the need to provide for their allotments in their wills.

CIRI requests that BLM indicate in its Certificates of Allotment that said lands shall not be encumbered or impeded by any federal designations, including, but not limited to, Wild and Scenic Rivers, Wetlands and/or Areas of Critical Environmental Concern.

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Additionally, CIRI requests that the appropriate Alaska Native Regional Native Corporation be provided timely notice of any allotments that are submitted for federal lands within its region.

CIRI notes that the first sentence of Section XXXX.04-1(b) "submit the application for a substitute application" should instead read "submit the application for a substitute selection."

CIRI requests BLM provide information and clarity regarding the change of the definition of "Allotment" in Section XXXX.02 from the BLM's original draft to Version 4 so that CIRI may provide additional comments on same.

CIRI appreciates the opportunity BLM provided to participate in consultation and for parties to provide written comments. However, it is overly burdensome on individuals and small organizations for BLM to require duplicative submission of electronic documentation of comments otherwise provided at consultation. Thus, CIRI recommends that BLM consider all comments provided at any consultation to be part of the official record in this instance and all other BLM activities that prompt consultation.

In closing, the passage of the Dingell Act is an important recognition that Alaska Native veterans were denied an inalienable right while serving their country honorably. CIRI supports BLM's process and looks forward to continued consultation, as appropriate.

Sincerely,

COOK INLET REGION, INC.



Sophie Minich
President and CEO

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