

Sitka Tribe of Alaska

Tribal Government for Sitka, Alaska



December 12, 2018

Tara Sweeney
Assistant Secretary-Indian Affairs
Department of the Interior
1849 C Street, N.W.
MS-4004-MIB
Washington, D.C. 20240
Sent via email to: consultation@bia.gov

Re: July 2, 2018 Letter Seeking Comment on Alaska Land into Trust

Sitka Tribe of Alaska submits these comments in response to the July 2, 2018 letter sent by the Department of the Interior (DOI) that notified tribes of the withdrawal of Solicitor's Opinion M-37043 so that the Department might examine yet again the question of whether Alaska tribes should be able to place land into trust through the authority of the Indian Reorganization Act (IRA).

Sitka Tribe of Alaska is a federally-recognized tribe in Southeast Alaska that represents over 4,400 citizens. In 1938, Sitka Tribe of Alaska was one of the first tribes in Alaska to be federally recognized after the Indian Reorganization Act was extended to Alaska in 1936. Tlingit clans represented by the Tribe have inhabited lands in the Tribe's traditional territory for more than 10,000 years. The mission of the Tribe is to exercise its sovereign rights and powers to preserve the integrity of Tribal society and improve the lives of individual Tribal citizens, to conserve and retain tribal lands and resources, to establish and carry out justice pursuant to Tlingit Tribal law and custom, and to increase the variety and quality of services provided to Tribal citizens. The federal government should honor its trust responsibilities by allowing the Tribe to place lands into trust, just as other tribes do, in order to further our mission and better the lives of our people.

The Solicitor's Opinion and 2014 Final Rule that DOI seeks to reconsider simply placed Alaska tribes on the same footing as tribes in the lower 48. It allowed Alaska tribes to submit land into trust applications to the DOI under Section 5 of the IRA. The 2017 M-Opinion thoroughly reviewed prior DOI legal opinions as well as legislation such as ANCSA and FLPMA to conclude that DOI had no grounds to exclude Alaska tribes from Section 5 of the IRA to Alaska. In the 2014 Proposed Rule, the DOI itself acknowledged that there are substantial benefits to expanding tribal jurisdiction in Alaska. Fishing resources, water resources and water rights, wildlife and subsistence resources, economic development opportunities—these are some, but not all, of the key concerns of tribes in Alaska. The DOI acknowledged the legitimacy of Alaska tribal concerns regarding the lack of tribal trust land, and corresponding

territorial jurisdiction, within the State. Tribal land tenure—particularly tribal trust land tenure—allows tribes to express their community values on the landscape in planning, codes and laws, and project implementation in ways that truly reflect the millennia of their occupancy and sovereignty.

The 1994 amendments to the IRA make it clear that Congress did not intend to create specific limits that only apply to federally recognized tribes in Alaska. The legislative intent found in the history of those amendments is clear:

“Whatever the method by which recognition was extended, all Indian tribes enjoy the same relationship with the United States and exercise the same inherent authority [the 1994 amendment] is intended to prohibit the Secretary or any other Federal official from distinguishing between Indian tribes or classifying them not only on the basis of the IRA but also on the basis of any other Federal law.”

See 140 CONG. REC. 11,376, 11,377 (May 23, 1994) (statement of Rep. Richardson).

Notably, the court found in *Akiachak Native Community v. Salazar* that the “Alaska exception” disallowing the placement of land into trust in Alaska created two classes of tribes—those that could utilize Section 5 of the IRA to place land into trust, and those in Alaska that could not. The 1994 amendments to the IRA were intended to prevent the DOI from creating such divisions in Indian Country, and the 2014 Final Rule righted that wrong.

The Final Rule simply deleted a provision that excluded trust land acquisitions in the State of Alaska from the scope of the regulations. In 1980, the so-called “Alaska exception” had been inserted into the regulations found in 25 C.F.R. § 151.1 with no notice or opportunity to comment. Up until the 2014 Final Rule, the DOI had treated this “Alaska exception” as an absolute bar on the Department’s authority under the IRA to take lands into trust in Alaska for tribes. With no option to put lands into trust, tribes in Alaska had been left with limited capacity to assert tribal jurisdiction, creating a situation where Alaska tribes had far fewer rights and sovereign power than lower 48 tribes with the capacity to manage and/or place lands in trust. In the lower 48, Indian tribes commonly utilize the land-into-trust process to reconsolidate ancestral homelands; create unique opportunities for federal/tribal housing programs; protect sensitive environmental areas and sacred cultural properties; and otherwise expand tribal jurisdiction consistent with the era of self-determination and self-governance that marks the times in which we now live. For the tribes in our region, land tenure and complicated jurisdictional issues create an even greater need for tribal lands being placed into trust.

Alaska tribes and tribal organizations have long participated in self-governance programs with the United States since those programs’ inception, and seen the strong record and countless positive outcomes resulting from greater implementation of tribal objectives and initiatives at the local level. Sitka Tribe of Alaska urges the Department to abandon this temporary freeze of applicable law for further comments as a waste of time and federal and tribal resources and instead to support the 2014 Final Rule allowing Alaska tribes to apply for the placement of land

into trust, consistent with the tribes' inherent sovereignty as recognized by the IRA and federal Indian law.

Sincerely,



Kathy Hope Erickson
Tribal Council Chairman
Sitka Tribe of Alaska