



July 12, 2017

Secretary Ryan Zinke  
Assistant Secretary- Indian Affairs Michael Black  
Bureau of Indian Affairs  
U.S. Department of the Interior  
1849 C Street, NW  
via email: [consultation@bia.gov](mailto:consultation@bia.gov)

Dear Secretary Zinke and Assistant Secretary Black:

**Re: Comments from the Port Gamble S'Klallam Tribe on Executive Order 13871  
– Reorganization of the Executive Branch**

The Port Gamble S'Klallam Tribe submits these comments in response to the Department's solicitation for input on President Trump's Executive Order 13871 to reorganize the Executive Branch of the U.S. Government issued on May 16, 2017. We appreciate the opportunity to submit these comments prior to implementation of the Executive Order, and we look forward to additional dialogue and opportunity for input on this project through government-to-government consultation.

***Reorganization can be healthy if it is done right***

As noted during the discussion regarding restructuring the Department of the Interior (the "Department") and the Bureau of Indian Affairs ("BIA"), the current structures were formed over one hundred years ago. These structures were put into place during a different time – a time when there were very different issues confronting Indian Country. It is true that reorganization and review is needed to address the issues facing Indian Country today. Reorganization can be healthy and a good thing if it is done right. But our concern is that reorganization is just another name for downsizing and reducing the BIA – cutting a budget that is already grossly underfunded and reducing services that play such an essential role to our community.

To build trust and to produce the results intended, the process needs to be transparent, and must involve government-to-government consultation not only at the beginning of the process but also throughout the reorganization. We appreciate that the BIA has come to us to get our views before you have crafted a policy, as oftentimes tribes are put in the position of commenting on already-drafted policy after the decisions are made. As we have seen, such a process is counterproductive, since we then have to work to ensure that needed changes are

included in these policies after the fact. It is more prudent for tribes to be at the forefront of any reorganization of the BIA and not at the end.

To date, one of the only plans we have heard is Secretary Zinke's desire to move BIA resources to field offices and reduce the size of BIA's DC and Denver offices. While we support making decisions at closer levels and giving tribes greater control over decisions, we also feel that the BIA needs to ensure that local offices are given the authority to make decisions. If final decision-making authority still resides in an inadequately-staffed central office, the result will be bottlenecks and delays, the exact opposite of the Administration's intent in reorganizing. The tribes and the Department should work together to identify the types of decision-making authority that should be delegated to the local offices. This kind of collaborative, government-to-government approach can help to ensure any reorganization is truly beneficial to all parties involved.

### ***No Diminishment of Trust Responsibility***

The federal government has a trust responsibility to the Port Gamble S'Klallam Tribe and all other Indian Nations, which originates from the treaties, the U.S. Constitution, and the unique government-to-government relationship between tribes and the United States. This responsibility runs across all agencies, and agencies need to coordinate with each other to fulfill this responsibility. Our position is that fulfilling the trust responsibility requires obtaining our express and informed consent any time the federal government is undertaking a project that impacts our communities.

Federal departments and agencies under the Executive Branch play an essential role in fulfilling the federal government's trust responsibility to Indian tribes, pueblos, and communities by ensuring that American Indian and Native Alaskans have access to critical programs and services based on their political status as members of sovereign tribal nations involved in a government-to-government relationship with the United States. While programs serving Indian Country exist across the federal government, the Department of the Interior is perhaps most closely associated with the federal trust responsibility because of its close historical and contemporary ties to tribal nations.

Of particular concern regarding the federal government's trust responsibility is the responsibility of the Department and the BIA to take land into trust for Indian tribes. The land-into-trust responsibility originates from one of the more egregious policy failures in our Nation's history: the failed attempt to assimilate Native people by seizing collectively held tribal land and allotting such lands to individuals. While Congress soon realized the failure of what is now known as the "Allotment Era" and ended it with the Indian Reorganization Act ("IRA"), massive damage had already been done. Tribal governments lost meaningful management of large portions of their aboriginal homelands. It was to remedy this harm that Congress empowered the Department to help rebuild tribal homelands by taking land into trust through the IRA.

This responsibility is of great importance to us because the diminished land base has created major challenges for the Port Gamble S'Klallam Tribe, and this impacts our sovereignty and self-determination. The lack of a cohesive land base makes it difficult to protect and access

sacred and cultural sites and creates jurisdictional challenges that ties up land within our boundaries, making it difficult to pursue economic development and complete much needed infrastructure projects. We strongly urge that any reorganization plan recognize the great importance of taking land into trust and incorporate a process that improves and streamlines the process, including quicker action from the BIA on land-into-trust applications. Resources and authority should be targeted to the local level for this task. Further, local offices—with boots on the ground—should have decision-making authority to take land into trust.

### ***Consultation***

The listening sessions and written comments that you are taking into consideration before drafting a policy are appreciated, but not sufficient. Longstanding policy and Executive Orders across several Administrations (Republican and Democrat alike) underscore the government's commitment to true government-to-government consultation with tribes. Any proposed reorganization must involve the same kind of consultation.

We support the adoption of measures that will streamline Interior services and enable the Department to better fulfill its treaty and trust responsibilities. However, increased efficiency should not come at the price of lost programs or the further marginalization of smaller tribal nations. To ensure that these interests are protected, the Department through the BIA should convene a Tribal Reorganization Workgroup as soon as possible to review agency programs serving Native populations. The Workgroup could then work jointly with BIA officials to identify programs that are not reaching their full potential and propose informed solutions for moving forward. Such an approach would be respectful of our tribal sovereignty. It would also further the federal government's duty to consult with tribal nations on federal policies or actions that may impact their communities. The result of the Workgroup's cooperative efforts would be a more cohesive, detailed set of recommendations for Department leadership to consider during the reorganization process.

We recommend the creation of a Tribal Reorganization Workgroup to analyze and present an informed set of recommendations on ways to improve the effectiveness and accountability of Interior programs serving our communities. The Workgroup should include Tribal Leaders that represent each geographic region of the United States, as well as small and larger tribes and direct service and self-governance tribes.

### ***Indian Trust Asset Reform Act***

A good place to begin looking at for a potential reorganization of the BIA is the Indian Trust Asset Reform Act, Pub. L. 114-178. This act was passed in 2016 and was an attempt to allow tribes to move to a system focused on tribal self-determination and economic opportunities. The Act would allow tribes to have greater control and decision making and furthers tribal self-governance. The passage of the Act was a true milestone for Indian Country and started the process towards modernizing the trust relationship between the federal government and tribes.

Unfortunately, many provisions of the Act have yet to be implemented. The Act nonetheless leaves a good roadmap of potential changes that can be made with reorganization. One of the greatest priorities for a reorganization can be found in the Act's establishment of an Under Secretary for Indian Affairs who would report directly to the Secretary. The Under Secretary would supervise and coordinate activities and policies of the BIA with activities and policies of non-BIA agencies and bureaus within the Department of Interior.

The Under Secretary was intended to ensure that other parts of the Department cannot implement policies that negatively affect tribes and beneficiaries without Indian Affairs knowing about it early as possible. Any reorganization of the Department needs to confront the fact that Indian Affairs is an essential component of the Department. In one hundred years much has happened (it was not long ago that Indian Affairs was transferred from the War Department, for example) and reorganization needs to recognize and integrate Indian Affairs within the workings of the whole Department. The Port Gamble S'Klallam Tribe strongly recommends the establishment of an Under Secretary for Indian Affairs.

***BIA might not be broken—it just needs to be funded***

While BIA is often made the scapegoat of problems facing Indian Country—and some of it may be true—we must also look at the resources it has to work with. Any plans for reorganization should recognize the fact that the BIA may not be broken but rather is just chronically underfunded. The BIA has an enormous responsibility to meet the needs of 567 Indian Nations, and there is strong consensus that Congress has not allocated enough resources to meet these needs. This situation creates a constant struggle pitting tribes against each other fighting for shrinking federal dollars.

Instead of spending extensive resources moving around BIA staff and responsibilities, it may be wise for the BIA to focus on examining its various funding allocations based on tribes' needs and why those needs exist. A good place to begin would be to review NCAI's consensus-based tribal priorities over the past four presidential administrations and consider the proposed policy and legal priorities that have not yet been implemented.

***Disproportionate Impact of Reorganization on Indian Tribes***

Because of the unique status of tribal nations within our federalist system, we rely on the federal government for support through direct government-to-government funding, services, agency programs, and cooperative partnership opportunities. We are concerned that Executive Order 13781 could be used to cut or diminish essential government services under the guise of reorganization. The comprehensive restructuring of executive federal agencies—such as Interior, HHS, and HUD, among others—without specific consideration or carve-outs for Indian programs will necessarily and disproportionately affect the health, safety, and welfare of our people, lands, and natural resources.

We are also alarmed by recent reports that Secretary Zinke is considering eliminating 4,000 positions from the Department of Interior. Assuming that the alleged cuts would be evenly distributed across the Department, the BIA—which employs approximately 8,000 personnel—

would suffer the loss of 462 positions, which translates into a 5.8% reduction in its overall workforce. Such a loss would drastically impair its ability to fulfill its mission to “enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes, and Alaska Natives.” Further reductions in BIA resources when it has already been chronically underfunded for decades is simply unacceptable.

We urge the Department to exempt the BIA from any proposed reductions in the Interior workforce. We also strongly recommend that any programs housed in executive federal agencies serving the complex needs of Indian Country be appropriately protected during the restructuring process to ensure that the federal government continues to fulfill its treaty and trust obligations to tribal nations.

Tribes have been providing the BIA with specific ideas to streamline and improve. The BIA needs to focus in on one area at a time and then work with Tribal Leaders on targeted outcomes rather than just implementing across-the-board reductions in staff and services.

### ***Expansion of Self-Governance within the Interior***

Reorganization could provide a meaningful opportunity to expand tribal self-governance within the Department of the Interior. Public Law 93-638 compacting and contracting enables tribal nations to assume responsibility for the administration of certain federal functions within their communities. This transfer of authority generally reduces agency inefficiencies and maximizes the use of resources at the local level. As Tribal Leaders, we have a deep understanding of our peoples’ pressing needs, as well as their immense potential to succeed if given the appropriate level of resources and support. Self-governance provides us with the flexibility to meet these unique needs while advancing our self-determination.

We, therefore, urge the Department to consider expanding the list of Interior programs that are eligible for self-governance compacting and contracting. Authorizing such an expansion would not impose additional financial or personnel requirements on the Department. Instead, it would strengthen the ability of Tribal Nations to meet their communities’ needs through a streamlined and accountable approach.

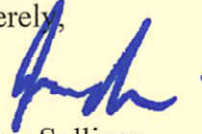
It is critical to note that the expansion of tribal self-governance should not translate into reduced programming for direct services tribes. Nor should it result in the reduction of services provided through the Office of Self-Governance (OSG), which operates under the Office of the Assistant Secretary – Indian Affairs. Support for tribal self-determination necessarily correlates with support for OSG as it advocates for and implements tribal self-governance statutes and policies across the federal government.

### ***Conclusion***

Time and again, tribes have either been altogether excluded from decision-making that has a direct impact on our communities, or we have participated only to have our concerns noted and dismissed. This failure to meaningfully consult with tribes has resulted in major threats to our culture, lands, and way of life. It is from this history that much of the concern and

apprehension has come from with the recent discussions regarding reorganization. The Port Gamble S'Klallam Tribe appreciates the early consultation that you have engaged in on reorganization thus far. However, as you move forward with your consideration to reorganize the BIA, you must provide tribes with details of any plans and continue to consult with us and Indian Country throughout your process. It is only through meaningful consultation and buy-in of Indian Country that a reorganization of the Department and the BIA can succeed. We also underscore that the Department and the BIA must adhere to the strict and high standards of the federal trust responsibility in any and all decisions and action steps that will affect us.

Sincerely,



Jeromy Sullivan  
Chairman