



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUL 02 2018

Dear CEO:

I invite you to participate in a consultation on the legal authority and process for the Secretary of the Interior (Secretary) to take land into trust in Alaska. I am enclosing a list of questions to help guide our discussion. This list is certainly not exhaustive and is intended to serve only as the starting point for discussion.

In accordance with President Trump's direction to conduct a review of new and pending regulations and agency statements of general applicability,¹ the Department is reviewing M-Opinion 37043 (Sol. Op. M-37043). The Solicitor of the Department issued Sol. Op. M-37043 on January 13, 2017, to assess the Secretary's authority to take land into trust in Alaska under the Indian Reorganization Act (IRA)² in light of the Alaska Native Claims Settlement Act (ANCSA)³ and the Supreme Court's decision in *Carcieri v. Salazar*.⁴ On June 20, the Department determined it was necessary to withdraw Sol. Op. M-37043 pending further review and consultation because the M-Opinion fails to fully discuss the possible implications of legislation enacted after ANCSA upon the Secretary's authority to take land into trust in Alaska. Such legislation includes the Federal Land Policy and Management Act of 1976 (FLPMA),⁵ the Alaska National Interest Lands Conservation Act (ANILCA),⁶ the 1988 amendments to ANCSA,⁷ and 1994 amendments to the IRA.⁸

We are interested in your thoughts on the Secretary's exercise of his authority to take land into trust in Alaska and on the issues left unresolved by Sol. Op. M-37043. Consultations will be held with both federally recognized tribes in Alaska and the Alaska Native Corporations, as required by law.⁹ Additionally, we will hold a public meeting, which will be open to anyone else who may wish to participate in this process.

¹ Memorandum for the Heads of Executive Departments and Agencies; Regulatory Freeze Pending Review, 82 Fed. Reg. 8,346 (Jan. 24, 2017) (citing Exec. Order No. 12,866, § 3(e) (1993); Exec. Order No. 13,422, § 3(g) (2007)).

² Pub. L. No. 73-383, 48 Stat. 984 (1934).

³ Pub. L. No. 92-203, 85 Stat. 688 (1971) ("ANCSA").

⁴ *Carcieri v. Salazar*, 555 U.S. 379 (2009).

⁵ Pub. L. No. 94-579, 90 Stat. 2744 (1976) ("FLPMA").

⁶ Pub. L. No. 96-487, 94 Stat. 2371 (1980) ("ANILCA").

⁷ Pub. L. No. 100-241, 101 Stat. 1788 (1988).

⁸ Pub. L. No. 103-263, § 5(b), 108 Stat. 707, 709 (1994).

⁹ Pub. L. No. 108-199, Div. H. § 161, 118 Stat. 3, 452 (2004) as amended by Pub. L. No. 108-447, Div. H., Title V. § 518, 118 Stat. 2809, 3267 (2004).

The schedule for the consultations and public meeting is as follows:

| Event | Date | Time (AKDT) | Location |
|---------------------|------------------------------|-----------------------|--|
| Listening Session | Thursday, July 26, 2018 | 1:00 p.m. - 3:00 p.m. | Fairbanks, AK |
| Public Meeting | Wednesday, August 1, 2018 | 1:00 p.m. - 3:00 p.m. | Juneau, AK |
| Tribal Consultation | Friday, August 3, 2018 | 1:00 p.m. - 3:00 p.m. | Ketchikan, AK |
| ANC Consultation | Wednesday, October 17, 2018 | 1:00 p.m. - 3:00 p.m. | Anchorage, AK |
| Tribal Consultation | Sunday, October 21, 2018 | 1:00 p.m. - 3:00 p.m. | Anchorage, AK |
| Tribal Consultation | Wednesday, December 5, 2018 | 1:00 p.m. - 3:00 p.m. | Bethel, AK |
| Tribal Consultation | Friday, December 7, 2018 | 1:00 a.m. - 3:00 p.m. | Kotzebue, AK |
| Tribal Consultation | Wednesday, December 12, 2018 | 1:00 p.m. - 3:00 p.m. | Tel: 877-716-4291 Passcode: 6919058 |

If you plan to attend any of the above sessions, please let us know in advance by sending an RSVP to consultation@bia.gov. Also, please regularly check the Bureau of Indian Affairs' website at www.bia.gov/as-ia/consultations for additional information regarding venue locations and any changes to the above schedule.

I hope that you are able to attend one of the above consultation sessions and I look forward to the upcoming dialogue on the Secretary's implementation of the IRA's land-into-trust provision in Alaska. If you would like to provide written input, please email your comments to consultation@bia.gov by midnight Eastern Standard Time on December 20, 2018.

If you have any questions or would like any additional information on this effort, please feel free to contact Mr. Tyler Fish, Counselor to the Assistant Secretary – Indian Affairs, at (202) 208-7163.

Sincerely,



John Tahsuda
Principal Deputy Assistant Secretary – Indian Affairs
Exercising the Authority of the Assistant Secretary –
Indian Affairs

QUESTIONS FOR CONSIDERATION

Authority to Take Land Into Trust in Alaska under the Indian Reorganization Act (IRA)

1. How do you view the impact, if any, of the Alaska Native Claims Settlement Act, the Federal Land Policy and Management Act of 1976, and the Alaska National Interest Lands Conservation Act on the Secretary's ability to take land-in-trust in Alaska?
2. What impact, if any, do the 1994 amendments to the Indian Reorganization Act have on the Secretary's ability to promulgate rules specific to federally recognized tribes in Alaska?
3. Should Congressional intent or legislative history play a role in determining whether the Secretary should accept land into trust in Alaska?

Process for Taking Land Into Trust in Alaska

4. Is 25 CFR 151 (Part 151), Land Acquisitions, an appropriate process for tribes in Alaska to request the Department take land-in-trust?
5. Are there challenges specific to tribes in Alaska that make the requirements of Part 151 particularly challenging to satisfy?
6. If the Department were to promulgate regulations governing land-into-trust acquisitions specific to federally recognized tribes in Alaska, how might those regulations differ from Part 151?