

# OFFICE OF THE SOLICITOR – ALASKA REGION

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BIA PROVIDERS CONFERENCE NOVEMBER 2017

# TODAY'S PROGRAM

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- Questions via e-mail
- Questions during conference
- Questions from the participants

# CAN AN INDIVIDUAL PUT LAND INTO TRUST STATUS IN ALASKA?

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- The Department will evaluate any application by an individual on a case-by case basis.
- The land-into-trust regulations at 25 C.F.R. Part 151 impose different and additional requirements on individual trust applications.
- The regulations limit acquisitions for individuals to situations where the land is located within or adjacent to the boundaries of an Indian reservation or the land is already in trust or restricted status.
- Off-reservation applications, where land is not already in trust or restricted status, are not permitted.

# WILL BIA ACCEPT AN APPLICATION FROM A TRIBE TO MANAGE PROPERTY AS RESIDENTIAL LOTS FOR ITS TRIBAL MEMBERS?

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- An application must provide the reason to take property into trust. (tribal self-determination, economic development, or Indian housing) 25 C.F.R. 151.3(a)(3).
- If the Secretary of the Interior approves the application, the property will be in trust for the benefit of the tribe.
- The tribe may manage the property for tribal housing.
- The property will stay in trust status and tribal members will not take legal ownership of the property but could own the improvements.

# IS TRUST PROPERTY MANAGED THE SAME AS RESTRICTED PROPERTY?

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- BIA generally must approve any agreements that grant an interest in trust or restricted property to a third party.
- Property may be taken out of restricted status when approved by the Secretary or his delegate.



# WHAT IS THE DIFFERENCE BETWEEN TRUST AND RESTRICTED PROPERTY?

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- Trust property is held in trust by the United States for the benefit of an individual Indian or tribe. The property cannot be alienated without an act of Congress.
- Restricted property's title is held by an individual Indian or a tribe and can only be alienated or encumbered by the owner with approval of the Secretary of the Interior.
- Restricted property may become fee simple property (no restrictions) if the Secretary of the Interior, or his delegate, approves a sale to a non-native or if an Alaska Native requests the restrictions removed.

# MAY AN ALASKA NATIVE LANDOWNER SELL HIS/HER TOWN SITE LOT TO ANYONE?

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- If the Secretary of Interior, or his delegate approves a request to sell a town site lot, it could be sold to a non-native.
- Right of first refusal by tribe, tribal members, etc.

# TRIBAL CONSOLIDATION AREAS

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- Indian Land Consolidation Act, 25 U.S.C. §§ 2201-2221.
- 25 U.S.C. § 2203 - Adoption of land consolidation plan with approval of Secretary - any tribe, with the approval of the Secretary, may adopt a land consolidation plan providing for the sale or exchange of any tribal lands or interest in lands for the purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating its tribal landholdings.
- 25 U.S.C. § 2203 - Makes this act inapplicable to land located in Alaska.



# DOI CONSIDERING REVISIONS TO FEE-TO-TRUST REGULATIONS

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- October 2017-Dear Tribal Leader letter to consider revisions to 25 C.F.R. 151.11 & 151.12.
- Proposed revisions: two-phased Secretarial review; distinguishing gaming vs. non-gaming acquisitions, revising application requirements; reinstating the 30-day delay following a decision to take land into trust.
- Listening session at National Congress of American Indian October 16 and three consultation sessions (Seattle, Sacramento, & Phoenix).
- Early November, delay process for revisions (consultation sessions and comment deadline).

# IS THERE A TIME FRAME AFTER THE COMMENT PERIOD IN FEE-TO-TRUST APPLICATION?

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- Step 8 is “Comments to Notice of Application (NOA). See <https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/ots/pdf/idc1-031387.pdf>
- BIA will provide a copy of all information/comments from NOA to the applicant for their written response. Under the regulations, an applicant is given a reasonable amount of time to respond, usually 30 days.
- Step 8 can be taken concurrently with steps 5 (prepare preliminary title opinion), 7 (environmental compliance review), & 9 (clearance of preliminary title opinion objections).
- For off-reservation discretionary trust acquisitions, an applicant may request the Secretary to issue a decision without responding to any comments. The BIA would proceed with step 10 (prepare analysis and Notice of Decision).

# WHAT IS THE DEFINITION OF AN HISTORIC CEMETERY UNDER ANCSA?

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- 43 U.S.C. 1613 - Conveyance of lands. (h) The Secretary is authorized to withdraw and convey 2 million acres of *unreserved and unappropriated public lands located outside the areas withdrawn by sections 1610 [public lands] and 1615 [native villages]* of this title, and follows: (1) (A) The Secretary may withdraw and convey to the appropriate Regional Corporation fee title to existing cemetery sites and historical places.

# “WHEREABOUTS UNKNOWN” UNDER THE *COBELL* LITIGATION

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- January 25, 2017 - The US District Court for the District of Columbia set November 27, 2017, as the final deadline for any class member or heir of a class member to provide documentation so that payment can be made. See <http://www.indiantrust.com/docs/order%201.25.17.pdf>
- Any fund remaining after distribution shall be transferred to the Indian Education Scholarship Fund, as provided in the settlement agreement. See <http://cobellscholar.org>
- Contacting the class member attorneys

# STATUS OF PROBATE CODES IN ALASKA

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- The American Indian Probate Reform Act (AIPRA) of 2004 was enacted on October 27, 2004.
- AIPRA amends the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land, and for other purposes.
- This Act affects your ownership rights in trust or restricted land, unless the land is located in Alaska.



# IS THE BUY BACK PROGRAM AVAILABLE IN ALASKA?

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- The Land Buy-Back Program for Tribal Nations, under the Cobell Settlement, requires the program to operate in accordance with the Indian Land Consolidation Act (ILCA). See 25 U.S.C. 2201.
- The language in ILCA specifically excludes lands located in Alaska. See 25 U.S.C. 2219.
- The fractional interests located in Alaska are not eligible to be included in the Buy Back program under the Cobell Settlement.
- Consolidated interests in fractionated land is immediately restored to tribal trust ownership to benefit the reservation community and tribal members.
- <https://www.doi.gov/buybackprogram/faq>

# DEEDS THAT DO NOT INCLUDE THE SPECIAL LEGISLATION AS AUTHORITY FOR POINT HOPE

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- Property conveyed to the Village and Regional Corporation may have been subject of a valid Alaska Native allotment application under the Act of May 17, 1906. This is the original authority.
- Alaska Land Status Technical Corrections Act of 1992, Section 13 (Point Hope Townsite) allowed reconveyance of interests in specific, individual lots from the Village and Regional Corporations to the Secretary. In turn, the Secretary would transfer each lot to individuals identified by the Village Corporation. The individual could receive a restricted deed or an unrestricted deed, if certain criteria was met.
- While it would be preferable to have both acts cited on the gift deed, the Alaska Native Allotment Act is sufficient authority to convey the property.

# QUESTIONS?

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- If you have any questions after you leave the Providers Conference, please contact Realty staff, who might be able to answer your question. If not, the Realty staff may refer the question to the Office of the Solicitor.