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SENATE ENERGY & NATURAL RESOURCES COMMITTEE
SUBCOMMITTEE ON PUBLIC LANDS & FORESTS

FIELD HEARING; ANCHORAGE, ALASKA
ON
S. 1466, ALASKA LAND TRANSFER ACCELERATION ACT OF 2003
S. 1421, ALASKA NATIVE ALLOTMENT SUBDIVISION ACT
S. 1354, CAPE FOX LAND ENTITLEMENT ACT OF 2003
AUGUST 6, 2003

Senator Murkowski, I appreciate the opportunity to appear before you today to present the views of the Department of the Interior on S. 1466, the Alaska Land Transfer Acceleration Act of 2003; S. 1421, the Alaska Native Allotment Subdivision Act; and S. 1354, the Cape Fox Land Entitlement Act of 2003. The Department of the Interior supports the intent all three of these bills. We would like to work with Committee to make certain technical amendments designed to clarify and strengthen the bills.

S. 1466, Alaska Land Transfer Acceleration Act of 2003

Background

The Bureau of Land Management (BLM) is the Department of the Interior's designated land survey and title transfer agent. The BLM in Alaska manages the largest land conveyance program in the United States – one that requires the survey and conveyance of nearly 150 million acres of Alaska's 365 million-acre land base.

Consistent with the requirements of applicable Alaska land transfer laws, including the Native Allotment Act of 1906, the Alaska Native Claims Settlement Act (ANCSA), and the Alaska Statehood Act, for the past 30 years, the BLM in Alaska has worked diligently to implement this massive program. However, the pace of land conveyances has been slow for a variety of reasons. The original framework contained in these statutes and in the implementing regulations provided appropriate direction and guidance for the BLM to begin these large land transfer efforts, but current laws and regulations do not provide the necessary tools for the BLM to complete the transfers efficiently and promptly. The laws themselves have been amended, superceded, and re-interpreted by judicial review many times. Each time this has occurred, the BLM has been required to reassess, review, and re-sort land title claims to make certain that the BLM's actions with respect to all land claims and interests are appropriate, consistent with the interpretation of the applicable laws, and legally defensible.

Last fall, Secretary Norton, Bureau of Land Management (BLM) Director Clarke, along with other Departmental and Bureau officials, met with representatives of several Alaska Native corporations. During those meetings, Alaska Natives expressed urgent concerns about the pace of the legislatively-mandated land transfers. The Alaska congressional delegation and officials of the State of Alaska have raised similar concerns and have expressed an interest in accelerating the land conveyances so they are completed by 2009.

The Department of the Interior recognizes these long-standing concerns and shares an interest in completing the land transfers in an expeditious manner. The completion of all Alaska land entitlements and the establishment of land ownership boundaries are essential to the proper management of lands and resources in Alaska.

“Allotments” Background – Native Allotment Act of 1906 / Alaska Native Veterans Allotment Act of 1998

In order to fully understand the status of Alaska land transfers, it is necessary to understand the interconnected nature of the underlying transfer legislation, the complexity and range of issues involved in the BLM’s Alaska land conveyance program, and related terminology.

Land “allotments” are land conveyances from the Federal Government to qualified individual applicants as authorized by law. The Native Allotment Act of 1906 authorized individual Indians, Aleuts, and Eskimos in Alaska to acquire an allotment consisting of one or more parcels of land not to exceed a total of 160 acres. Alaska Natives filed approximately 10,000 allotment applications for almost 16,000 parcels of land statewide under this Act before its repeal in 1971.

The Alaska Native Veterans Allotment Act of 1998 (Veterans Allotment Act) provided certain Alaska Native Vietnam-era veterans, who missed applying for an allotment due to military service, the opportunity to apply under the terms of the 1906 Native Allotment Act as it existed before its repeal. There were 743 applications filed for approximately 992 parcels under the Veterans Allotment Act, before the application deadline closed on January 31, 2002.

The BLM’s total allotment workload remaining to be processed consists of 3,256 parcels – including 2,491 parcels filed under the 1906 Act and 765 parcels filed under the 1998 Act. Each of these individual remaining parcels must be separately adjudicated based on its unique facts and, if valid, surveyed and conveyed. Furthermore, of these remaining 3,256 parcels, approximately 1,100 parcels are on lands no longer owned by the United States. On these 1,100 parcels, the BLM is required by law to investigate and attempt to recover title to each parcel in order to convey the lands to the individual Native applicant.

“Entitlements” Background – Pre-Statehood Grants / Alaska Statehood Act of 1958

Land acreage “entitlements” are specified amounts of land that are designated by law for conveyance to the State of Alaska or to qualified Native entities. In order to receive its land acreage entitlement, a qualified entity or the State must file land “selection” applications that identify the specific lands to be conveyed to meet the authorized entitlement.

Pre-Statehood grants and the Alaska Statehood Act of 1958 entitle the State of Alaska to 104.5 million acres. Of this total acreage to be conveyed, the BLM has taken final adjudicative action on, surveyed, and patented over 41 million acres. Final adjudication and title transfer have taken place on an additional 48 million acres, but final survey and patent work remains to be completed on this acreage. The remaining 15.5 million acres to be conveyed have not been prioritized for conveyance by the State, and thus conveyance work on this acreage has not yet begun. Over 4,400 applications must still be addressed and approximately 3,000 townships (an area roughly the size of the State of Colorado) must be surveyed before the State’s entitlements can be completed by issuance of final patents.

“Entitlements” Background – Alaska Native Claims Settlement Act of 1971 (ANCSA)

The Alaska Native Claims Settlement Act of 1971 (ANCSA) and its amendments were enacted to settle aboriginal land claims in Alaska. ANCSA established 12 regional corporations and over 200 village corporations to receive approximately 45.6 million acres of land. This is the largest aboriginal land claim settlement in the history of the United States. Of these 45.6 million acres to be conveyed under ANCSA, the BLM has issued final patents on over 18 million acres. Final adjudication and title transfer have taken place on an additional 19 million acres, but final survey and patent work remains to be completed on this acreage. The BLM is unable to adjudicate, survey and convey the remaining 8.6 million acres because many Native corporations have significantly more acres selected than remain in their entitlements, and the corporations must identify which selections will be used to meet their remaining entitlements.

Impediments to Completing Conveyances (Allotments & Entitlements)

The BLM is responsible for adjudicating land claims, conducting and finalizing Cadastral land surveys, and transferring legal land title. The land transfer work is complicated, both operationally, due to remote locations and extreme weather conditions, and administratively, due to complex case law and processes for transferring lands from Federal ownership to other ownerships.

The vast majority of the 3,256 remaining Native allotment claims must be finalized before the ANCSA corporations and the State can receive their full entitlements authorized under law. This is primarily because most lands claimed as allotments are also selected by at least one ANCSA corporation and may also be selected (or "top-filed") by the State of Alaska. In order to determine whether these lands are available for conveyance as part of the State's or an ANCSA corporation's entitlement, and to avoid creating isolated tracts of Federal land, there must first be final resolution of the allotment claims.

The adjudication of the 3,256 Native allotments is arduous and time-consuming for a variety of reasons, including evolving case law and complex land status. In addition, statutory deadlines imposed in subsequently enacted legislation also can have the effect of delaying work on existing priorities and previously-made land transfer commitments. The filing of reconstructed applications, requests for reinstatement of closed cases, the reopening of closed cases, changes in land description, and the recovery of title also cause lengthy delays in completion of the Native allotment program. Finally, delays in the scheduling of due process hearings, the need to await the outcome of prolonged administrative appeal procedures, and litigation in the Federal court system can add years to the process. All of these issues unduly complicate completion of the remaining 3,256 Native allotments claims.

The processing of ANCSA entitlements also can be delayed for reasons other than Native allotment applications. Alaska Native Corporations are State-chartered corporations. They are valid legal entities only when they comply with the laws of the State of Alaska. Some Native corporations have been dissolved for failure to comply with State law. New conveyances cannot be made to a corporation if it ceases to exist and is dissolved. Additionally, while many Native corporations have applied for significant amounts of land in excess of their official entitlement acreage, there are also instances where village corporations have not made adequate selections to meet their entitlements. Section 1410 of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980 provides a means by which additional lands can be made available to solve the under-selection problem, but the Section 1410 withdrawal and selection process can be cumbersome and time-consuming.

Completion of State entitlements is complicated by ANCSA over-selections and Federal mining claims. Unrestricted over-selections by ANCSA corporations mean that the State will have to wait for ANCSA corporations to receive final entitlement acreage before the State knows what lands will be available for conveyance to it. Lands encumbered by properly filed and maintained Federal mining claims also complicate the process and are not available for final conveyance to the State. The surrounding land can be transferred to the State, but excluded mining claims then constitute individual, isolated enclaves of Federal lands which are difficult to manage and, under current law, must be segregated by costly exclusion surveys before issuance of a patent to the State.

Expediting the Alaska Land Transfer Program

Over the years, the BLM has extensively analyzed the land transfer program in order to streamline processes and expedite conveyances. In 1999, the BLM, working in partnership with its customers and stakeholders (including Native entities and the State of Alaska), developed a strategic plan that would result in completion of the remaining land transfer work by 2020. The BLM is implementing this strategic plan, and, under current law, the Bureau anticipates completion of the land conveyances by 2020.

Congress, through the Conference Report on the Department of the Interior's FY 2003 appropriation (House Report 108-10, February 12, 2003), directed the BLM to develop a plan to complete the Alaska

land transfer program by 2009. In order to comply with this direction, BLM officials have met with staff from the Alaska Congressional delegation, Native entities, environmental groups, industry, the State, and other bureaus and offices within the Department, as well as the Forest Service, to discuss innovative ideas and to get feedback on the land transfer process. S. 1466 was introduced as a legislative solution on July 25, 2003, to eliminate the unintended delays in the conveyance process.

In BLM's opinion, S. 1466 will eliminate many of the delays that currently exist in the adjudication and conveyance of Native allotments, State and ANCSA entitlements. It also provides flexibility in negotiating final entitlements. The following summarizes some of the major provisions of the bill.

Title I - State Conveyances

S. 1466 enables the BLM to accelerate conveyances to the State of Alaska, reduces costs associated with processing State conveyances, and simplifies the BLM's land management responsibilities by addressing statutory and regulatory minimum acreage requirements. The bill allows the State to obtain title to improved properties of significant value to local communities in which the United States retained a reversionary interest. It also allows the State to receive title to areas that are currently withdrawn from State selection due to their identification of having hydroelectric potential, while still maintaining the Federal Government's right of re-entry under the Federal Power Act.

The bill also facilitates completion of the University of Alaska's 456-acre remaining entitlement under current law (the Act of January 21, 1929) by increasing the pool of land from which the University can make its final selections. The 1929 Act limited University selections to lands already surveyed. S. 1466 allows the University to use its remaining entitlement to select the reversionary interests in lands it owns and, with the consent of the current landowner, the reversionary interest in lands owned by others under the Recreation and Public Purposes Act (R&PP).

When lands were conveyed to various entities under the R&PP Act, the Federal government retained minerals as well a reversionary interest in the property. These lands were applied for under the R&PP Act because of their suitability for development purposes or community use. The BLM must continually monitor these small properties to assure that the owners are in compliance with the original terms of the conveyance. If there is a violation of the original use, the BLM must take the necessary steps to assert that an event triggering reversion has occurred and then plan for the subsequent use or disposition of the property when it comes back into Federal ownership. As these lands have already been surveyed, one logical use for the reverted property would be to fulfill the University's 1929 entitlement. By allowing the University to select reversionary interests, the BLM is freed from current monitoring costs and responsibilities. Under this proposal, the University will be required to expend one acre of remaining entitlement for each acre of reversionary interest received. Another option extended to the University under this bill is the ability to select unsurveyed, public domain lands with the concurrence of the Secretary. These changes will substantially increase the pool of lands from which the University has to choose, are consistent with the intent of the 1929 Act to provide lands which are capable of generating revenues, and are expected to lead to final resolution of this seven-decade old entitlement.

Title II – ANCSA Provisions

S. 1466 expedites the land transfer process to ANCSA corporations by giving the BLM the tools to complete ANCSA entitlements. Currently, when an Alaska Native corporation's existence has been terminated under State law, all BLM land transactions with the corporation are suspended. Title II provides a mechanism for BLM to transfer lands by giving terminated corporations two years from the date of enactment to become reestablished. If this does not occur, then the bill directs the BLM to transfer the remaining entitlement to the appropriate Regional Corporation. The bill also establishes deadlines by which Regional corporations must complete assignments of acreages to villages (so-called "12(b) lands"). The legislation also allows village entitlements established by ANCSA (so-called "12(a) lands") and acreage assigned by Regional Corporations to villages to be combined, which will expedite adjudication,

survey, and patent of all village lands. In addition, the bill permits the BLM to “round up” final entitlements to encompass the last whole sections. Thus, under the bill, it will no longer be necessary for BLM to survey down to the last acre, which often requires more than one field survey season to accomplish.

The bill also accelerates the completion of ANCSA conveyances by amending ANCSA (section 14(h)) to allow for the completion of the conveyance of certain cemetery and historical sites, as well as other critical conveyances. Under ANCSA, regional corporations will not know their final acreage entitlements until the BLM has completed the adjudication and survey of nearly 1,800 individual cemetery and historical sites. S. 1466 provides options for the rapid settlement of these regional entitlements, an issue of critical importance to Regional corporations. In establishing an expedited process, we would like to work with the Committee on amending Section 14(h) to ensure that the bill addresses concerns of Alaska Natives regarding potential location errors, waiver of regulations, and related matters.

Title III – Native Allotments

Finalizing Native allotment applications is essential to the completion of the entire land transfer program. Numerous requests for reinstatement of closed Native allotment applications; allegations of lost applications; and amendments of existing applications to change land descriptions have profound impacts on all land conveyances, not just the ongoing adjudication of an individual Native allotment application.

S. 1466 finalizes the list of pending Native allotments and the location of those allotments. It does so by establishing a final deadline after which no applications will be reinstated or reconstructed and no closed applications will be reopened. It also prohibits applicants and heirs from initiating any further amendments, thus fixing the location of the claim. Without some means of finalizing the list of allotment applications and locations, it will be extremely difficult for the BLM to complete the land transfers, the State and ANCSA landowners will have no certainty that their title is secure, and selection patterns surrounding allotment applications will be difficult to finalize and patent.

The bill also addresses instances where allotment claims are for lands no longer in Federal ownership. S. 1466 expedites recovery of title from both the State and ANCSA corporations by streamlining the current procedures. It permits ANCSA corporations to negotiate with the allotment applicant in order to provide substitute lands to the claimant for lands the corporation would prefer not to reconvey. The State has had this authority for over 10 years (P.L. 102-415, Oct. 14, 1992). Under the bill, a deed also can be tendered to the United States for reconveyance to an applicant, without requiring the BLM to do additional field examinations to meet Department of Justice rules for land acquisition.

Title IV – Deadlines

In order to complete the land transfers by 2009, the bill establishes sequential deadlines for the prioritizing of selections. The bill staggers the deadlines and allows six months between them for Native Village Corporations, Native Regional Corporations, and, the State of Alaska, in that order. These six-month periods allow the entities that are next in line to know the final boundaries of the preceding entity.

Title V – Hearings & Appeals

S. 1466 directs the Secretary to establish a hearings and appeals process to issue final Department of the Interior decisions for all disputed land transfer decisions issued in the State, and authorizes the hiring of new staff to facilitate this work. While the Department is already acting to expedite decisions on all business before the Office of Hearings and Appeals, and in particular to quickly address older cases, a process dedicated to resolving Alaska land transfer disputes will facilitate the conduct of hearings and the issuance of decisions.

Title VI – Report to Congress

Finally, S. 1466 requires the BLM to report to Congress on the status of conveyances and recommendations for completing the conveyances.

S. 1421, Alaska Native Allotment Subdivision Act

Background

The purpose of the Federal statutory restrictions placed on Alaska Native allotments and restricted Native townsite lots is to protect Alaska Native owners against loss of their lands by taxation, and to provide oversight of any alienation of such lands for the owners' protection. Generally, these lands are administered according to Federal law, particularly as it may relate to the issuance of rights-of-way, easements for utilities, and other public purposes. An unintended consequence of these protections is that when an owner of restricted land attempts to subdivide and sell his property or dedicate certain portions for easements and other public purposes, all in compliance with state or local subdivision platting requirements, it is not clear whether those dedications constitute valid acts under Federal law. This uncertainty has worked to the disadvantage of owners of restricted land who wish to subdivide and develop their property.

The economic advantages of subdivision in compliance with State and local law have led a number of Alaska Native allotment owners over the past two decades to survey their property for subdivision plats, and to submit the surveys to local authorities for approval. These plats typically contained Certificates of Ownership and Dedication, whereby the land owners purported to dedicate to the public land for roads, utility easements, or other public uses. Platting authorities, the public, individual subdivision lot buyers, and the restricted land owners relied on these dedications and the presumption that they were binding and enforceable.

However, in late 2000, the Department of the Interior's Office of the Solicitor recognized that this presumption was not clearly established in law. In response, the Bureau of Indian Affairs and realty service providers authorized under the Indian Self-Determination Act sought to overcome the doubts raised about the validity of past dedications. Their solution relied on the Secretary of the Interior's authority under Federal law to grant rights-of-way and easements identical to those interests dedicated on the face of existing subdivision plats.

This approach, however, has proven to be unsatisfactory. It creates substantial extra work for government and realty service providers. More importantly, the State of Alaska and some affected Boroughs are unwilling to apply for or accept title to such rights-of-way on behalf of the public. These units of government understandably prefer that public rights be established by dedication, rather than direct title transfers, which might saddle the local government with maintenance or tort liability. Without the participation of platting authorities and governments, it is difficult to resolve uncertainties as to the validity of dedications on previously filed and approved subdivision plats. Moreover, it is impossible for Native owners of restricted lands who, in the future, may wish to subdivide their land in accordance with State or local platting requirements, to do so without first terminating the restricted status of their lands.

S. 1421

S. 1421 would authorize Alaska Native owners of restricted allotments, subject to the approval of the Secretary of the Interior, to subdivide their land in accordance with State and local laws governing subdivision plats, and to execute certificates of ownership and dedication with respect to these lands. The bill also would confirm the validity of past dedications that were approved by the Secretary. Ratifying past dedications will benefit all concerned parties, including the buyers and sellers of lots in affected subdivisions, the State and local governments, the Bureau of Indian Affairs, realty service providers under the Indian Self-Determination Act, and the general public. All of these entities have in the past relied upon the legal validity of dedications to the public which appeared on the face of existing plats.

Enactment of S. 1421 would remove an obstacle to pending lot sales and re-sales in existing subdivisions. It would pave the way for other Native owners of restricted lands to create new subdivisions in compliance with State or local platting requirements without forcing them to choose between the financial benefits of compliance with State law and the retention of protections against taxation and creditor's claims inherent in the restricted status of their lands. This feature is clarified by Section 5(b) of S. 1421, which provides that Federal restrictions against taxation and alienation are only lost by compliance with State or local platting requirements as to those specific interests expressly dedicated in the Certificate of Ownership and Dedication.

The Department recommends amending Section 4(a)(1) of the bill to read, "subdivide the restricted land *for rights-of-way for public access, easements for utility installation, use and maintenance and for other public purposes*, in accordance with the laws of the--" to make this section consistent with the findings in Section 2(a)(b)(c) of the bill. Additionally, the Department recommends adding a new section to the bill authorizing the promulgation of regulations to clarify how S. 1421 would be implemented.

S. 1354, Cape Fox Land Entitlement Act of 2003

Background

Cape Fox Corporation (Cape Fox) is an Alaska Native Village Corporation organized pursuant to ANCSA for the Native Village of Saxman, which is located near Ketchikan. Like the other nine southeast villages recognized for benefits under section 16 of ANCSA, Cape Fox received an entitlement of 23,040 acres. All other ANCSA Village Corporations were restricted from making selections within two miles of the boundary of home rule cities. Cape Fox, however, was uniquely affected by the original terms of ANCSA as it was restricted from making selections within six miles of the boundary of the city of Ketchikan. As a result of the six-mile restriction, the only land within Cape Fox's core township available for conveyance is a 160-acre parcel which the corporation does not want. Under current law, the BLM must transfer this parcel to Cape Fox and charge the acreage to the corporation's ANCSA entitlement.

The requirement for village corporations to take title to all available land within their core township is a basic component of ANCSA, applicable to all village corporations. Another basic component of the original settlement is that conveyances to village corporations will be restricted to lands withdrawn for that purpose under the original terms of ANCSA.

S. 1354

S. 1354 waives an existing statutory requirement that would compel Cape Fox to use a portion of its entitlement under ANCSA for a remote 160-acre mountainous parcel that is of no economic value to the corporation. The bill also directs the BLM to convey to Cape Fox, the surface estate to a 99-acre tract in the Tongass National Forest that was unavailable to the corporation under the original terms of ANCSA; the subsurface estate of this tract is to be transferred to Sealaska Corporation.

Because S.1354 extends benefits to Cape Fox that were not available under the original terms of ANCSA, the Department has carefully considered the merits of this proposal and agrees that the Cape Fox situation is sufficiently unique to warrant the legislative remedy that is provided in S. 1354. However, the Department is concerned about the conveyance deadline in Sec. 4(c) of the bill. If Cape Fox decides to accept title to the lands offered, the BLM must issue conveyance documents within six months of receiving the corporation's selection. Current regulatory requirements for ANCSA conveyances take longer than the six months – typically closer to 12 months – and must include identification of easements to be reserved, issuance of an appealable decision, and public notice of that decision. Unless the legislation specifies otherwise, or the ANCSA conveyance process is changed before then, the 99-acre tract must be conveyed under existing ANCSA regulations. The six month timeframe also could be unnecessarily disruptive to BLM conveyance transactions that are in progress.

The Department of the Interior recommends that Sec. 4(c) of the bill be modified to read as follows: "*TIMING-The Secretary of the Interior shall complete the interim conveyances to Cape Fox and Sealaska under this section as soon as practicable after the Secretary of the Interior receives notice of the Cape Fox selection under subsection (a).*" The Department understands the economic importance of this conveyance to Cape Fox and will transfer title as quickly as possible in concert with other existing land transfer plans and commitments.

Adjustment of Cape Fox's selections and conveyances of land under ANCSA requires adjustment of Sealaska Corporation's (Sealaska) selections and conveyances to avoid the creation of an additional split estate between National Forest System surface lands and Sealaska subsurface lands. Since this adjustment concerns lands administered by the U.S. Department of Agriculture, the Department of the Interior defers to the Secretary of Agriculture on a position on this aspect of S. 1354.

Conclusion

In closing, I would like to reiterate the Department's support for the intent of all three of the bills addressed at today's hearing. If enacted, S. 1466 will go a long way in expediting land transfers and promoting the proper management of all lands and resources in Alaska; S. 1421 will allow Native Alaskans to subdivide their restricted allotment lands with the approval of the Secretary; and S. 1354 addresses circumstances that are unique to Cape Fox and Sealaska. We look forward to working with the Committee on these bills. I will be happy to answer any questions you may have.