



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

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### RECOMMENDATION MEMO

Environmental Assessment, DOI-BLM-AK-0000-2021-0005-EA  
Native Vietnam-Era Veterans Land Allotment Program

#### Introduction

In February 2021, the Department identified certain legal and procedural defects in Public Land Order (PLO) Nos. 7899, 7900, 7901, 7902, and 7903, signed in January 2021, which would have revoked withdrawals made under 17(d)(1) of the Alaska Native Claims Settlement Act (ANCSA) and opened approximately 27.8 million acres of BLM-administered lands to the public land laws, including both the mining laws, and, as relevant here, selection under the Native Vietnam-Era Veterans Land Allotment Program authorized by the Dingell Act. The Department deferred opening those lands while it corrected those legal and procedural defects.

The Bureau of Land Management (BLM) then prioritized preparation of an Environmental Assessment (EA) to address those errors and to properly evaluate the environmental consequences of potentially opening some or all of the 27.8 million acres of BLM-administered lands for allotment selection by eligible Alaska Native Vietnam-era veterans under the Dingell Act. BLM prioritized evaluating the consequences of opening the lands to allotment selection because of the Congressionally-imposed 5-year application window during which eligible veterans could apply for allotments. The BLM's Native Vietnam-Era Veterans Land Allotment Program EA (DOI-BLM-AK-0000-2021-0005-EA) analyzed three action alternatives and a No Action Alternative. Additionally, the BLM prepared a Finding of No Significant Impact (FONSI). The EA and signed FONSI were published on April 21, 2022. The EA and signed FONSI are incorporated by reference into this Memorandum.

#### Recommendation

I recommend selection of Alternative C, as described in Section 2.3 of the Allotment Program EA, which would open approximately 27 million acres of land to allotment selection under the Alaska Native Allotment Program. Lands opened to allotment selection under Alternative C would not include lands within a quarter mile of important cultural resource sites, including lands applied for by regional corporations pursuant to ANCSA section 14(h)(1) and known cultural resources that the BLM identified as needing protection (EA, Section 3.7).<sup>1</sup> Similarly, Alternative C would not open lands for allotment selection within a minimum of 500 feet of the Iditarod National Historic Trail (EA, Section 2.2.1).<sup>2</sup> Finally, Alternative C would not open areas

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<sup>1</sup> ANCSA section 14(h)(1), codified at 43 U.S.C. 1613(h)(1), allowed regional corporations to apply for "existing cemetery sites and historic places.

<sup>2</sup> During Section 106 consultation, the BLM and SHPO identified the need to protect cultural resource sites within

with top-filings that have been identified as Priority 1 or 2 by the State of Alaska (roughly 840,000 acres).

### **Rationale**

Congress authorized land transfers to individual Alaska Natives under the Act of May 17, 1906 (1906 Act), but repealed this authority with the Alaska Native Claims Settlement Act (ANCSA) in 1972. Prior to the 1906 Act's repeal, eligible individuals would have been able to choose from a much larger and more geographically diverse set of lands than are currently available for selection. Under the Dingell Act, the lands available for allotment selection are limited to the surface estate of BLM-administered lands that are vacant, unappropriated, and unreserved. The mineral estate is not authorized for conveyance under the Dingell Act and would remain in federal ownership. Currently, existing withdrawals restrict area available for allotment selections to approximately 1.2 million acres within three geographic regions of the state which may be far from the applicant's home. In order to provide a more expansive opportunity for allotment selection and to and fulfill our sacred duty to the Alaska Vietnam-era Veteran Natives, the BLM evaluated the opening of approximately 27.8 million acres of BLM-administered lands currently withdrawn pursuant to Section 17(d)(1) of ANCSA.

Having now properly evaluated the impacts of opening the lands to selection by Alaska Vietnam-era Veteran Natives, including consultation with regard to effects on historic properties and listed species, I believe that Alternative C would represent the best balance of the competing interests and provide targeted protection to sensitive resources. During the National Historic Preservation Act consultation process, the BLM determined that in order to protect certain cultural and historical sites from potential impacts, lands containing such sites should not be opened to selection under the Native Allotment Program. Likewise, the BLM removed the critical habitat of endangered species from consideration for this decision to ensure that opening the lands would not adversely affect the endangered species or their habitat consistent with the Endangered Species Act.

My recommendation to select Alternative C reflects my belief that certain other lands should also be excluded from the opening. Most importantly, Alternative C would exclude lands covered by top filings identified by the State of Alaska as high priority.<sup>3</sup> As noted above, the Department has identified certain legal and procedural defects in PLO Nos. 7899, 7900, 7901, 7902, and 7903, and has deferred opening the lands affected by those orders due to those legal and procedural defects. The action recommended in this memorandum would open the vast majority of those lands for a particular use – allotment selection by eligible Alaska Native Vietnam-era veterans – while maintaining the status quo as to other uses, including State selection. To avoid unfairly prejudicing the interests of the State of Alaska, I find that it is most equitable to exclude lands covered by the State's highest priority top-filings pending the Department's further review of those PLOs.

For these reasons, I recommend selection of Alternative C, as analyzed in the EA.

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the decision area. These sites would include all ANCSA 14(h)(1) sites that have applications on file with the BLM, the Iditarod National Historic Trail, and those sites identified through the process explained in Section 3.7 as having important cultural resources. If the BLM were to receive an application that overlaps with a protected cultural resource site, it would be denied, and the applicant would have the opportunity to select another site.

<sup>3</sup> As noted in EA Section 2.3, Alternative C excludes only the Priority 1 and 2 top-filings because the State's entitlement under the Statehood Act is likely to be met without considering any lower priority selections.

## **Laws, Authorities, and Land Use Plan Conformance**

The EA and supporting documentation have been prepared consistent with the requirements of various statutes and regulations, including but not limited to:

- Alaska Native Claims Settlement Act (1971)
- Federal Land Policy and Management Act (1976)
- Section 1119 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act (2019)
- Alaska National Interest Lands Conservation Act (1980)
- National Environmental Policy Act (NEPA) (1969)
- Endangered Species Act (ESA) (1973)
- Section 106 of the National Historic Preservation Act (NHPA) (1966, as amended)
- Paleontological Resources Protection Act (PRPA) of 2009
- Bay Proposed RMP/Final EIS (2007) and Approved Record of Decision (ROD) (2008)
- East Alaska Proposed RMP/Final EIS (2006) and Approved ROD (2007)
- Kobuk-Seward Peninsula Proposed RMP/Final EIS (2007) and Approved ROD (2008)
- Ring of Fire Proposed RMP/Final EIS (2006) and Approved ROD (2008)
- Bering Sea-Western Interior Proposed RMP/Final EIS (2020) and Approved ROD (2021)
- Secretary's Order 3373 Evaluating Public Access in Bureau of Land Management (BLM) Public Land Disposals and Exchanges
- Information Bulletin 2020-010 – Implementation of Secretary's Order 3373: Evaluating Public Access in Bureau of Land Management Public Land Disposals and Exchanges
- BLM National Environmental Policy Act Handbook 1790
- Executive Orders 13007 and 13175
- BLM Manual and Handbook 1780, Tribal Relations

## **Public Involvement, Consultation, and Coordination**

### *Public Involvement*

The BLM published a Notice of Intent on July 23, 2021, to prepare an EA to disclose and analyze the environmental effects of opening certain lands for selection by Native Veterans. The BLM solicited input on issues to be analyzed during the 60-day public scoping period from July 23 through September 21, 2021. The BLM received 14 comment submissions. Of these letters, one letter was received from a Federally Recognized Tribe and two letters were received from ANCSA corporations.

The BLM released the EA and unsigned FONSI for public review on March 24, 2022, for a 15-day comment period, and received nine comment letters on the EA and unsigned FONSI. Six

comment letters expressed unconditional support for opening the lands under consideration to allotment selection. Two letters, one received from a non-profit organization and the other from the State of Alaska, expressed concern that the BLM's Purpose and Need was too narrow and that the BLM should have expanded the Purpose and Need to include evaluating revoking the PLOs in full; however, the BLM has considerable discretion to define the purpose and need of a project.

One comment, received from a non-profit organization, requested that the BLM exclude certain Special Recreation Management Areas from allotment selection. This alternative was considered and ultimately dismissed from detailed analysis (EA, Section 2.5). After review and consideration of comments received during the public comment period the BLM added one alternative considered and dismissed from detailed analysis. In addition, the BLM rewrote some text of the EA to provide greater clarity and consistency and corrected typographical errors. These changes to the EA did not substantively change analysis or analytical conclusions.

### *Tribal Coordination*

The BLM first reached out to Alaskan Federally Recognized Tribes and ANCSA corporations in May 2021 to seek input on the preparation of this EA. The BLM sent a letter to Tribes and ANCSA corporations notifying them of four virtual tribal outreach meetings to collect input on opening lands within the Kobuk-Seward, Ring of Fire, Bay, Bering Sea-Western Interior, and East Alaska planning areas to allotment selection. The letters also invited Tribes to engage in government-to-government consultation and ANCSA corporations to engage in ANCSA consultation. The meetings were held via teleconference on May 26 and 27, 2021, and June 14 and 15, 2021.

On December 23, 2021, the BLM sent additional letters to Tribes and ANCSA corporations again inviting these entities to engage in government-to-government consultation or ANCSA consultation on the Proposed Action and initiating consultation under Section 106 of the NHPA. The BLM received several inquiries from Tribes and ANCSA corporations requesting additional information about the project or the Allotment Program, to which the BLM responded with the requested information. The Calista Corporation, an ANCSA corporation, submitted a detailed letter that provided the BLM with input on cultural resource sites within the areas under consideration for opening. Upon request, the BLM engaged in formal ANCSA consultation with the Calista Corporation on February 23, 2022.

The potentially affected Tribes and corporations have been provided an opportunity to participate and to share their views, and the information that the BLM has obtained, through consultation and from other sources, is sufficient to allow the BLM to make an informed decision. In light of the limited potential of the decision to adversely affect Tribal and ANCSA corporation interests; the significant potential of the decision to promote the interests of Tribes, corporations, and their members or shareholders; and the general support expressed for the decision within the Alaska Native community, the consultation that has been completed is sufficient.

### Agency Consultation

The BLM has completed informal consultation on Alternative B, the originally Proposed Action, with USFWS under Section 7(a)(2) of the ESA for the Steller's eider and polar bear on March 14, 2022. The USFWS concurred with the BLM that Alternative B – which would have opened the most land of any of the action alternatives – would not likely adversely affect spectacled and Steller's eider or polar bear (EA, p.50). The alternative that I have recommended opens for allotment selection a subset of the lands that would be opened under Alternative B, and is therefore covered by the conclusions of that consultation.

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act, the BLM completed Essential Fish Habitat (EFH) consultation with the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS). NMFS concurred on March 11, 2022, with BLM's conclusion the adverse effects to the EFH would be minimal. Although the BLM has no further management responsibilities for lands that are conveyed under the Allotment Program, the agency recognizes the importance of sharing information with the new landowner regarding the conservation of sensitive aquatic resources, like salmon habitat. Accordingly, the BLM has committed to providing a brochure to allottees, which discusses the value of riparian areas for salmon (EA, p. 50)

Under section 204(i) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1714(i), the consent of the administering agency is required before the Department may make, modify, or revoke any withdrawal on lands under the administration of any agency outside the Department of the Interior. To the extent that any of the lands embraced within Alternative C are under the administration of another agency, the consent of the administering agency should be obtained before any lands are opened.

*/s/ Thomas Heinlein*

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Thomas Heinlein  
Bureau of Land Management  
Acting State Director, Alaska

*April 21, 2022*

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Date