

**DEPARTMENT OF THE INTERIOR****Office of the Secretary**

[DD-7000-DO1]

**Notice of Request for Comments on Lifting the Bar to Statutory Approval of Alaska Native Allotment Applications Under Section 905 of Alaska National Interest Lands Conservation Act (ANILCA) Following the Withdrawal of Protests****AGENCY:** Office of the Secretary, Interior.**ACTION:** Request for comments on proposed Secretarial decision.

**SUMMARY:** This Notice is published in accordance with the authority of the Secretary of the Interior to review a determination of the Interior Board of Land Appeals (IBLA) or any employee of the Department and to render a final decision. Two Alaska Natives have requested the Secretary to review IBLA decisions concerning their allotment applications under the Alaska Native Allotment Act. While awaiting a legal opinion from the Solicitor, the Secretary herein requests comments on the implications of granting the portion of the petition that would regard allotment applications as approved under § 905 of ANILCA if protests against such applications have been withdrawn.

**DATES:** Submit comments by April 15, 1997. The Office of the Secretary may, but need not, consider comments received or postmarked after this date in preparing the final decision.

**ADDRESSES:** If you wish to comment, you may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW, Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240. You may also transit comments electronically, via the Internet to WOCComment@wo.blm.gov. Please include "Attn: Secretarial Decision", your name and address in your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452-5030.

You will be able to review comments at Bureau of Land Management's Regulatory Affairs Group office, Room 401, 1620 L Street, NW, Washington, DC, during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

If you wish to withhold your name or street address, except for the city or town, from public review or disclosure under the Freedom of Information Act,

you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Sandra J. Ashton, Office of the Solicitor, (202) 208-6526.

**SUPPLEMENTARY INFORMATION:** Under 43 CFR § 4.5(a), the Secretary of the Interior may take jurisdiction at any stage of a matter before the IBLA or an employee of the Department and render a final decision in the matter reviewed. By petition dated March 27, 1996, Edward N. O'Leary requested that the Secretary take jurisdiction concerning his allotment application filed under the Alaska Native Allotment Act, 34 Stat. 197, repealed by the Alaska Native Claims Settlement Act (ANCSA), 85 Stat. 688 (1971).

In the same petition, another allotment applicant requested that the Secretary review the denial of his application based on application of the "statutory life" regulation of the Bureau of Land Management (BLM). This request is not being addressed in this Notice but is being considered separately.

Section 905 of the ANILCA, 43 U.S.C. § 1634, sets forth a statutory approval of pending applications for Alaska Native allotments, if certain conditions are met, unless a timely and sufficient protest was filed. In the *O'Leary* case, 132 IBLA 337 (1995), the IBLA ruled that the BLM was required to adjudicate an allotment application even though a protest to the allotment application had been withdrawn. The petition asserts that the IBLA incorrectly interpreted § 905 in reaching this result. The petitioner believes that allotment applications qualify for automatic approval under § 905 if and when a protest which prevented such approval is withdrawn.

The Secretary is favorably disposed to granting that portion of the petition which would have § 905 approval vest upon withdrawal of protests to allotment applications. This action would require the Secretary to overrule the IBLA interpretation of § 905, which is that allotment applications must be adjudicated if a sufficient protest was filed even though the protest was subsequently withdrawn.

If the Secretary takes this action, the withdrawal of a protest against an allotment application will have the

effect of regarding that application as approved under § 905.

This result would arguably fulfill the purposes for which § 905 was enacted: to expedite the approval of allotment applications and to fulfill the commitments of the 1971 ANCSA where no countervailing interests requiring full adjudication were presented.

The Secretary has requested that the Solicitor review § 905 of ANILCA, ANCSA, relevant regulations and caselaw, and the IBLA decisions, specifically including the decision that first articulates IBLA's holding, *Steven Northway*, 96 IBLA 301 (1987), in order to determine the authority of the Secretary to pursue this course of action and to evaluate the effects of lifting the bar to § 905 approval of Alaska Native Allotment Applications.

While the Solicitor conducts his review, interested persons and organizations may submit their legal and factual arguments on the authority of the Secretary to pursue this course of action and on the effects of applying § 905 this way. Although comments on any possible or potential effects will be welcomed, comments are encouraged concerning the effect that this application of § 905 would have on public access across allotments that would be approved under this course of action. Specific comments also are requested on whether a Secretarial decision along these lines should be applied to all open Native allotment applications, regardless of the stage of the application, or whether it should be limited to applications that have not been processed beyond a certain stage; for example, on which no contest proceeding has been held.

Dated: February 7, 1997.

Bob Armstrong,

*Assistant Secretary of the Interior.*

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**Bureau of Land Management**

[ES-930-07-1320-01-241A]

**Alabama: Request for Public Comment on Fair Market Value, Maximum Economic Recovery and the Environmental Assessment; Coal Lease Application ALES 47886****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of public hearing and comment period.

**SUMMARY:** The Bureau of Land Management requests public comments on the input concerning the