To improve processes in the Department of the Interior, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2015

Mr. BARRASSO introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To improve processes in the Department of the Interior, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Interior Improvement Act”.

SEC. 2. DEFINITIONS.

(a) In General.—The first sentence of section 19 of the Act of June 18, 1934 (commonly known as the “Indian Reorganization Act”) (25 U.S.C. 479), is amended—
(1) by striking “The term” and inserting “Effective beginning on June 18, 1934, the term”; and
(2) by striking “any recognized Indian tribe now under Federal jurisdiction” and inserting “any federally recognized Indian tribe”.

(b) RETROACTIVE PROTECTION.—To the extent a trust acquisition by the Secretary of the Interior pursuant to the Act of June 18, 1934 (commonly known as the “Indian Reorganization Act”) (25 U.S.C. 461 et seq.), is subjected to a challenge based on whether an Indian tribe was federally recognized or under Federal jurisdiction on June 18, 1934, that acquisition is ratified and confirmed.

SEC. 3. LAND ACQUISITION APPLICATIONS.

The Act of June 18, 1934 (commonly known as the “Indian Reorganization Act”), is amended by inserting after section 5 (25 U.S.C. 465) the following:

“SEC. 5A. LAND ACQUISITION APPLICATIONS.

“(a) DEFINITIONS.—In this section:

“(1) APPLICANT.—The term ‘applicant’ means an Indian tribe or individual Indian (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) who submits an application under subsection (b).

“(2) APPLICATION.—The term ‘application’ means an application submitted to the Department
by an Indian tribe or individual Indian under subsection (b).

“(3) CONTIGUOUS.—The term ‘contiguous’—

“(A) means 2 parcels of land having a common boundary, notwithstanding the existence of non-navigable waters or a public road or right-of-way; and

“(B) includes parcels that touch at a point.

“(4) CONTIGUOUS JURISDICTION.—The term ‘contiguous jurisdiction’ means any county, county equivalent, or Indian tribe with authority and control over the land contiguous to the land under consideration in an application.

“(5) COUNTY AND COUNTY EQUIVALENT.—The terms ‘county’ and ‘county equivalent’ mean the largest territorial division for local government within a State with the authority to enter into enforceable cooperative agreements with Indian tribes or individual Indians, as appropriate.

“(6) DEPARTMENT.—The term ‘Department’ means the Department of the Interior.

“(7) ECONOMIC IMPACT.—The term ‘economic impact’ means any anticipated costs associated with the development of or activity on the land under consideration in an application, including associated...
costs to a contiguous jurisdiction for utilities, public works, public safety, roads, maintenance, and other public service costs.

“(8) **FINAL DECISION.**—The term ‘final decision’ means a decision that is final for the Department, as determined or defined by the Secretary.

“(9) **INDIAN TRIBE.**—The term ‘Indian tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

“(10) **SECRETARY.**—The term ‘Secretary’ means the Secretary of the Interior.

“(b) **APPLICATIONS.**—

“(1) **IN GENERAL.**—An Indian tribe or individual Indian seeking to have off-reservation fee or restricted land taken into trust for the benefit of that Indian tribe or individual Indian shall submit an application to the Secretary at such time, in such manner, and containing such information as this section and the Secretary require.

“(2) **REQUIREMENTS.**—The Secretary may approve complete applications described in paragraph (1) on a discretionary basis, subject to the condition that the application includes—
“(A) a written request for approval of a trust acquisition by the United States for the benefit of the applicant;

“(B) the legal name of the applicant, including, in the case of an applicant that is an Indian tribe, the tribal name of the applicant as the name appears in the list of recognized Indian tribes published by the Secretary in the Federal Register pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1);

“(C) a legal description of the land to be acquired;

“(D) a description of the need for the proposed acquisition of the property;

“(E) a description of the purpose for which the property is to be used;

“(F) a legal instrument to verify current ownership, such as a deed;

“(G) statutory authority for the proposed acquisition of the property;

“(H) a business plan for management of the land to be acquired, if the application is for business purposes;
“(I) the location of the land to be acquired relative to State and reservation boundaries; and

“(J) a copy of any cooperative agreement between the applicant and a contiguous jurisdiction.

“(3) Final Decision.—After considering an application described in this subsection and in accordance with subsection (e) and any other applicable Federal law or regulation, a final decision to approve or deny the completed application shall be issued.

“(c) Statutory Notice and Comment Requirements.—

“(1) Notice and Comment Requirements for Initial Applications.—

“(A) Notice.—

“(i) In general.—Not later than 30 days after the date on which the Secretary receives an initial application, the Secretary shall make that application, whether complete or incomplete, available to the public on the website of the Department, subject to applicable Federal privacy laws.
“(ii) ADDITIONAL NOTICE REQUIREMENT.—Not later than 30 days after the date on which the Secretary receives an initial application, the Secretary shall provide by certified mail notice of the application to contiguous jurisdictions.

“(B) COMMENT.—Each contiguous jurisdiction notified under subparagraph (A)(ii) shall have not fewer than 30 days, beginning on the date that the contiguous jurisdiction receives the notice, to comment on that initial application.

“(2) NOTICE REQUIREMENT FOR ANY APPLICATION UPDATE, MODIFICATION, OR WITHDRAWAL.—

“(A) IN GENERAL.—If at any time an application is updated, modified, or withdrawn, not later than 5 days after the date on which the Secretary receives notice of that update, modification, or withdrawal, the Secretary shall make that information available to the public on the website of the Department, subject to any applicable Federal privacy laws.

“(B) INCLUSION.—If an application has been updated or modified in any way, the notice described in subparagraph (A) shall include a
description of the changes made and the updated or modified application, whether complete or incomplete, available on the website of the Department, subject to any applicable Federal privacy laws.

“(3) NOTICE AND COMMENT REQUIREMENTS FOR COMPLETED APPLICATIONS.—

“(A) NOTICE.—

“(i) IN GENERAL.—Not later than 30 days after the date on which the Secretary receives a completed application, the Secretary shall make that application available to the public on the website of the Department, subject to any applicable Federal privacy laws.

“(ii) ADDITIONAL NOTICE REQUIREMENTS.—Not later than 30 days after the date on which the Secretary receives a completed application, the Secretary shall provide by certified mail notice of the application to contiguous jurisdictions.

“(iii) PUBLICATION IN FEDERAL REGISTER.—Not later than 5 days after the date on which the Secretary receives a completed application, the Secretary shall
publish in the Federal Register notice of
the completed application.

“(B) COMMENT.—Contiguous jurisdictions
shall have not fewer than 30 days, beginning on
the date on which the contiguous jurisdiction
receives notice under subparagraph (A)(ii), to
comment on that completed application.

“(4) NOTICE OF DECISION.—

“(A) IN GENERAL.—Not later than 5 days
after a final decision to approve or deny an ap-
lication is issued, the Secretary shall issue a
notice of decision and make the notice of deci-
sion available to the public on the website of the
Department.

“(B) PUBLICATION IN FEDERAL REG-
ISTER.—Not later than 5 days after a final de-
cision to approve or deny an application is
issued, the Secretary shall publish in the Fed-
eral Register the notice of decision described in
subparagraph (A).

“(d) ENCOURAGING LOCAL COOPERATION.—

“(1) IN GENERAL.—The Secretary shall encour-
age, but may not require, applicants to enter into co-
operative agreements with contiguous jurisdictions.

“(2) COOPERATIVE AGREEMENTS.—
“(A) IN GENERAL.—The Secretary shall give weight and preference to an application with a cooperative agreement described in paragraph (1).

“(B) TERMS OF AGREEMENT.—A cooperative agreement described in paragraph (1) may include terms relating to mitigation, changes in land use, dispute resolution, fees, and other terms determined by the parties to be appropriate.

“(C) SUBMISSION OF COOPERATIVE AGREEMENT.—

“(i) IN GENERAL.—If an applicant submits to the Secretary a cooperative agreement or multiple cooperative agreements executed between the applicant and contiguous jurisdictions, the Secretary shall issue a final decision to approve or deny a complete application not later than—

“(I) 60 days after the date of completion of the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) described in clause (ii); or
“(II) if that review process is not applicable, 30 days after the date on which a complete application is received by the Secretary.

“(ii) TIMELINE.—Completion of the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) described in clause (i) may refer to—

“(I) the issuance of a categorical exclusion determination in accordance with section 6.204 of title 40, Code of Federal Regulations (or successor regulations);

“(II) an environmental assessment finding of no significant impact in accordance with section 6.206 of title 40, Code of Federal Regulations (or successor regulations); or

“(III) the issuance of a record of decision in accordance with section 6.208 of title 40, Code of Federal Regulations (or successor regulations).

“(iii) EFFECT OF FAILURE TO ISSUE TIMELY FINAL DECISION.—If the Secretary
fails to issue a final decision by the date described in clause (i), the application shall be—

“(I) deemed approved on an automatic basis; and

“(II) treated as a final decision.

“(D) COOPERATIVE AGREEMENT NOT SUBMITTED.—

“(i) IN GENERAL.—If an applicant does not submit to the Secretary a cooperative agreement executed between the applicant and contiguous jurisdictions, the Secretary shall issue a written determination of mitigation by the date that is not later than 30 days after a complete application is received by the Secretary, which shall—

“(I) describe whether any economic impacts on contiguous jurisdictions have been mitigated to the extent practicable; and

“(II) explain the basis of that determination.

“(ii) DETERMINATION OF MITIGATION.—The Secretary shall consider a de-
termination of mitigation in making a final
decision to approve or deny an application,
but that determination shall not halt or
unduly delay the regular processing of an
application.

“(iii) CONSIDERATIONS.—In making a
determination of mitigation described in
clause (i), the Secretary shall take into
consideration—

“(I) the anticipated economic im-
pact of approving an application on
contiguous jurisdictions; and

“(II) whether the absence of a
cooperative agreement is attributable
to the failure of any contiguous juris-
diction to work in good faith to reach
an agreement with the applicant.

“(iv) NOTICE.—The Secretary shall
provide by certified mail a copy of the de-
termination of mitigation described in
clause (i) to the applicant and contiguous
jurisdictions not less than 5 days after a
determination of mitigation is issued.

“(v) GOOD FAITH PROTECTION.—
Failure to submit a cooperative agreement
shall not prejudice an application if the Secretary determines that the failure to submit is attributable to the failure of any contiguous jurisdiction to work in good faith to reach an agreement.

“(3) **Reciprocal notice and comment.**—

The Secretary shall also encourage contiguous jurisdictions to engage in local cooperation through reciprocal notice and comment procedures, particularly with regard to changes in land use.

“(e) **Implementation.**—

“(1) **Consultation.**—Not later than 60 days after the date of enactment of this section, the Secretary shall initiate consultation with Indian tribes regarding the implementation of this section.

“(2) **Summary.**—Not later than 180 days after the date on which the consultation described in paragraph (1) is initiated, the Secretary shall issue a summary of the consultation and the summary shall be published in the Federal Register.

“(3) **Rulemaking.**—Not later than 60 days after the date on which the summary described in paragraph (2) is published in the Federal Register, the Secretary shall, through a rulemaking under section 553 of title 5, United States Code, modify exist-
ing regulations, guidance, rules, and policy statements, as necessary to carry out this section.

“(f) **Judicial Review.—**

“(1) In general.—An applicant or contiguous jurisdiction may seek review of a final decision.

“(2) Administrative review.—An applicant or contiguous jurisdiction may seek review in a United States district court only after exhausting all available administrative remedies.”.

**SEC. 4. Effect.**

(a) **Other Land Determinations.—** Nothing in this Act (or an amendment made by this Act) impacts any other Federal Indian land determination.

(b) **Effect on Other Laws.—** Nothing in this Act (or the amendments made by this Act) affects—

(1) the application or effect of any Federal law other than the Act of June 18, 1934 (25 U.S.C. 461 et seq.); or

(2) any limitation on the authority of the Secretary of the Interior under any Federal law or regulation other than the Act of June 18, 1934 (25 U.S.C. 461 et seq.).

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