



SOUTHERN UTE INDIAN TRIBE

June 26, 2018

SUBMITTED VIA EMAIL TO consultation@bia.gov:

The Honorable John Tahsuda
Acting Assistant Secretary-Indian Affairs
United States Department of the Interior
1849 C Street NW, Mail Stop 4669-MIB
Washington, DC 20240

Re: Comments on Potential Revisions to Land-into-Trust Regulations

Dear, Acting Assistant Secretary Tahsuda:

Thank you for the invitation to engage in dialogue regarding the Bureau's efforts to revise existing regulations governing trust acquisitions, specifically sections 151.11 (Off-Reservation Acquisitions) and 151.12 (Action on Requests). On behalf of the Southern Ute Indian Tribal Council, we appreciate your extending the comment period and consultation process.

In short, the Tribe questions the need for these revisions. As a tribe that continues to deal with the practical consequences of the allotment era, the Southern Ute Indian Tribe has used the land-into-trust process to reacquire parts of the Tribe's homeland that had been transferred out of tribal trust. The process that the Tribe has used is already extensive, expensive, and time consuming. These changes would seem to make it unnecessarily more so without any apparent benefit to tribes.

In the Tribe's experience and history with the land-into-trust process, these changes would potentially unduly burden the Tribe more in future applications. The following are the statistics relating to the Tribe's land-into-trust applications:

- Since 1974, the Tribe purchased 48 parcels. Of those, 18 are currently in trust.
- Of those applications, all 48 were for lands within or contiguous to the existing Reservation.
- One known legal challenge.
- None of them were for gaming.
- The acquisitions were primarily for consolidation, economic development, and agriculture.

- The processing of an application has varied greatly. For one, the process took 15 years. For another, over ten years. Recently, process times have been much quicker.

The Tribe has not had any off-reservation or non-contiguous applications; nor any applications for gaming. Even if it were to have any, the Tribe believes that the existing process is sufficient to analyze all of the issues and concerns.

In the Summary Sheet of the Consultation Draft, the new requirements for tribes are mostly information that tribes already provide. For example, under the Consultation Draft, tribes will be required to provide, among other things, the unemployment rate on the reservation and an analysis of the effect on this rate by operating a gaming facility, the on-reservation benefits from gaming, and the cooperative efforts to mitigate impacts to the local community. The Consultation Draft notes that tribes in practice often already provide this information. This begs the question of needing to impose requirements for something that tribes already do. In addition to adding seemingly unnecessary requirements, the Consultation Draft neglects to recognize that tribes are the experts in this area and are fully capable to garner necessary local support for contentious applications. And to the Tribe's knowledge, no tribes have called for any regulation revisions of this kind.

The following provides responses to the questions posed in the Dear Tribal Leader Letter:

1. Under what circumstances should the Department approve or disapprove an off-reservation trust application?

Recognizing the duty to place land into trust for tribes under the Indian Reorganization Act, the Department should approve off-reservation trust applications where there are no substantial environmental concerns, no significant encumbrances on title, and the application is consistent with the current regulations and the DOJ Title Standards.

2. What criteria should the Department consider when approving or disapproving an off-reservation trust application?

The Department should continue using the current criteria in the existing regulations, but with categorical exclusions to the National Environmental Protection Act process. In so doing, the Department should continue to uphold its' trust responsibility to tribes that the Department does not owe to state and local governments.

3. Should different criteria and/or procedures be used in processing off-reservation applications based on:

- a. **Whether the application is for economic development as distinguished from non-economic development purposes (for example Tribal government buildings, or Tribal health care, or Tribal housing)?**
- b. **Whether the application is for gaming purposes as distinguished from other (non-gaming) economic development?**
- c. **Whether the application involves no change in use?**

Currently, the NEPA process analyzes the land's proposed use and the significant effects to the environment, which facilitates the Department's decision to place the land into trust. Most likely in (c), and anywhere else possible, the Tribe supports streamlining the NEPA process by using categorical exclusions.

4. Should pending applications be subject to new revisions if/when they are finalized?

If these revisions are adopted, they should apply to only future applications submitted after a certain date.

5. Do Memoranda of Understanding (MOUs) and other similar cooperative agreements between tribes and state/local governments help facilitate improved tribal/state/local relationships in off-reservation economic developments? If MOUs help facilitate improved government-to-government relationships, should that be reflected in the off-reservation application process?

MOUs and other cooperative agreements between tribes and state/local governments help facilitate relationships, but these should not be required documents for submitting off-reservation applications. Doing so would unfairly give leverage to local and state governments. As mentioned previously, tribes know if an application would be more successful by having local and state support, whether through MOUs, cooperative agreements, or other arrangements. Tribes must successfully navigate the political relationships with local and state governments on a daily basis. As such, tribes should be free to determine whether to submit what they think necessary to allow for a successful land into trust application and project.

Finally, the Consultation Draft would impose a 30-day wait to have land placed in trust and would delay taking land into trust if a claim were filed challenging the transfer. The Tribe believes that the deferred approach, more consistent with the trust responsibility and duty to take land into trust for tribes, would be for the Department to have the land placed in trust if the regulation requirements are met. A party that

disagrees with that decision can still challenge it, and if that decision is found to be in violation, that decision can be reversed. But not having the land placed in trust after meeting all of the requirements unreasonably burdens tribes, by allowing a party who simply disagrees with the decision to have the land placed in trust file a challenge.

Thank you for this opportunity to share the Tribe's comments related to the land-into-trust process and for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Christine Sage". The signature is written in black ink and is positioned above the printed name and title.

Christine Sage, Chairman
Southern Ute Indian Tribal Council