



The Saginaw Chippewa Indian Tribe Of Michigan

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June 28, 2018

Honorable John Tahsuda
Acting Assistant Secretary – Indian Affairs
1849 C Street, NW
Washington, DC 20240

Sent Via E-mail to consultation@bia.gov

RE: Comments on the Proposal to Revise the Fee to Trust Regulations, 25 C.F.R. Part 151

Dear Acting Assistant Secretary Tahsuda,

I write on behalf of the Saginaw Chippewa Indian Tribe of Michigan Tribal Council to express our views regarding the announced intent of the Department of the Interior to amend the Fee to Trust Regulations, 25 C.F.R. Part 151.

Prior to answering the questions you posed in the December 6, 2017 Tribal Leader Letter regarding fee to trust revisions, I want to express our opposition to the draft changes to 25 C.F.R. Part 151 that were circulated in October 2017. While we are completely opposed to any draft regulatory change developed without proper tribal consultation, we are also opposed to the substantive changes made by the draft, particularly changes that remove the “Patchak Patch” and reinstate the 30-day waiting period on taking land into trust and references that would appear to require mitigation agreements with state and local governments.

In particular, we believe that reinstatement of the 30-day stay on taking land into trust after a positive decision is an invitation for litigation, and creates unnecessary delays for a tribe seeking to take land into trust.

In your Tribal Leader letter dated December 6, 2017, you pose several questions, which we answer in the order they were presented.

1. What should the objective of the land-into-trust program be? What should the Department be working to accomplish?

The objective of the BIA fee to trust program should be to facilitate the reacquisition of land lost by tribes in the most efficient, quickest possible way. In furtherance of this goal, the Department

should be seeking to identify ways to make the fee to trust process faster, cheaper, and easier for tribes.

Instead of adding requirements and making the process more difficult and confusing, we feel it is important for the Department to look for ways to make the process easier, particularly for on-reservation or contiguous land acquisitions.

2. How effectively does the Department address on-reservation land-into-trust applications?

While we believe the process generally works to assist tribes, we feel that improvements can be made to the process to make it easier for tribes to acquire on-reservation and contiguous lands.

In our view, the biggest problem with the process for reviewing all BIA fee to trust applications is that it takes far too long. In addition to requiring time-consuming NEPA reviews, BIA staff take an inexorably long time to review submissions. We do not believe this is capricious on the part of BIA staff, and is partially due to a lack of resources.

But the problem can also be attributed to a lack of time requirements for BIA action on applications. The regulations should be amended to deal with this problem.

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

We believe that applications that seek off-reservation lands should be given more scrutiny than those applications within or contiguous to a Tribe's existing reservation boundaries. Accordingly, we believe that a tribe acquiring off-reservation land should be subject to a more stringent standard, particularly if it is for gaming purposes.

Under the current regulations, there is some recognition that the nearer off-reservation lands are to a tribe's reservation, the less scrutiny the Department is required to make under 25 C.F.R. §151.11. We feel this is appropriate and should be preserved if the Department determines to continue treating on-reservation and off-reservation requests differently.

We are also aware that the Department is concerned with off-reservation gaming acquisitions. We, too, have some concerns about off-reservation gaming but feel those are best addressed in the 25 C.F.R. Part 292 regulations.

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

We believe the Department should develop stricter regulations, such as an aboriginal tie to the land, for taking any land into trust.

5. 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)?**

We believe all applications should be expedited through the BIA process except those applications that seek to take land into trust for off-reservation gaming purposes. We do believe the Department needs to address the issue of off-reservation gaming applications in a meaningful manner. The current regulations actually encourage, rather than limit, off-reservation gaming.

- b. Whether the application is for gaming purposes as distinguished from other (non-gaming) economic development?**

We believe gaming acquisitions are appropriately given a second level of review pursuant to the regulations at 25 C.F.R. Part 292. 25 C.F.R. Part 151 does not need to be amended to address gaming issues. However, we do believe that 25 CFR Part 292 should be amended to require that Tribes seeking off-reservation gaming be mandated to demonstrate in their application an aboriginal tie to the land. Specifically, we believe a Tribe must show, through ratified and un-ratified treaties or court decisions that they have maintained some meaningful jurisdiction over the land they seek to acquire. This will help prevent the insidious practice in Indian Country of Tribes seeking lands far outside their reservation lands just to build casinos. In fact, in many of these cases, the Tribes seek to acquire lands in the treaty lands of other Tribes. That has happened a number of times here in Michigan. The Department needs to end this practice by amending the Part 292 regulations.

- c. Whether the application involves no change in use?**

We believe that the process should be made easier for applications that involve no proposed changed in use of the property, or that are located within, or contiguous to, existing reservation land.

- 6. What are the advantages/disadvantages of operating on land that is in trust versus land that is owned in fee?**

There is one attribute to holding land in trust that we value above all else. That is the ability to determine how the land will be used, to truly call it our own.

Once in trust land is no longer under the control of state and local government, leaving the tribe to decide how the land can best meet its needs, and alleviating the requirement for the tribe pay taxes to the state for services the tribe provides.

Land in trust is also inalienable, and that has both symbolic and practical meaning to us. Given the history of this country, that land in trust may not be taken from us is hugely important.

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

Yes. When it involves off-reservation gaming applications, we believe the current regulations are woefully inadequate to address this problem. We believe that off-reservation gaming applications should be held to the strictest standard possible. In many cases, Tribes seek to acquire lands far from their reservation lands and in the aboriginal lands of other Tribes, creating conflicts among Tribes. Some Tribes also seek to skirt their responsibility under their gaming compacts to conduct off-reservation gaming. In Michigan, most of the gaming compacts include a provision that requires Tribes who seek to conduct off-reservation gaming to have an agreement with the other Tribes before any application can be submitted. In the case of the Little River Band, Sault Ste. Marie Tribe and the Bay Mills Tribe, each has pursued off-reservation gaming in direct violation of their compact obligations.

8. How should the Department recognize and balance the concerns of state and local jurisdictions? What weight should the Department give to public comments?

The Saginaw Chippewa Tribe strives to be a good neighbor, and we have worked cooperatively with the state and the local governments surrounding us to address concerns they may have about our fee to trust acquisitions. We believe this is important and we strive to work with our local governments in good faith.

However, tribes all over the country are fighting to reacquire land that was lost to them through no fault of their own, and deal with state and local governments who are antagonistic to them. Their efforts should not be subject to the whims of these third parties.

We do not believe the Department should give significant weight to the concerns of state and local governments when they acquire land in trust for a tribe.

9. 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?

We believe that cooperative agreements between state and local governments are beneficial to all parties and represent a best practice for governing.

However, when these agreements are required, they often cease to be beneficial to both parties and more often work to the benefit of the non-tribal party, who often feels this gives them extra leverage in negotiation.

For this reason, we do not believe such agreements should ever be required in the fee to trust process.

10. What recommendations would you make to streamline/improve the land-into-trust

program?

As stated above, we believe the requirement of deadlines for BIA review of fee to trust applications would help improve the fee to trust process. We also believe that increased staffing for this area, which is a fundamental service the BIA provides to all tribes, should be increased.

Finally, we believe that requirements for on-reservation and contiguous lands should be easier, but those seeking off-reservation gaming should be held to a much tighter regulatory process than exists under current DOI regulations. We urge the Department to explore ways this could be achieved through the regulatory process.

Should you have any questions regarding these comments, please contact our Counsel, Sean Reed at (989) 775-4032.

Sincerely,



Chief Ronald F Ekdahl
Saginaw Chippewa Indian Tribe