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CITIZEN POTAWATOMI NATION

June 27, 2018

John Tahsuda, Principal Deputy Assistant Secretary
Indian Affairs
Department of the Interior
1849 C Street, N.W.
MS-4660-MIB
Washington, D.C. 20240

RE: Proposed changes for off reservation land-into-trust process

Dear Mr. Tahsuda,

The Citizen Potawatomi Nation submits the following response to the questions in your December 6, 2017 letter.

1. **What should the objective of the land-into-trust program be? What should the Dept. be working to accomplish?** The land-into-trust program should exist to facilitate the expeditious conversion of lands held in other-than-trust status by Tribes or individual Indians into trust status, under the authority provided to the Secretary of the Interior as identified in Section 5 of the Indian Reorganization Act.
2. **How effectively does the Department address on-reservation land-into-trust applications?** The Department does not handle all land-into-trust applications in a uniform manner, so it is difficult to speak to the overall effectiveness of the on-reservation program. Regional variations create differing experiences between Tribes, which may result in greatly expedited or delayed applications. Only after many years of investment of both time and financial resources was CPN able to develop an efficient method for processing on-reservation trust applications.
3. **Under what circumstances should the Dept. approve or disapprove an off-reservation trust application?** Off-reservation trust applications do not currently make up a significant portion of the total of trust applications, and off-reservation trust applications are rarely controversial. The Secretary is already empowered to approve and deny trust land applications and an accompanying process exists, so additional regulation to further inform the process for these applications is unnecessary and contradictory to the President's stated aim of reducing regulation. With that in mind, in

cases where the current requirements of the regulations concerning off-reservation trust applications can be met, they should be approved.

4. **What criteria should the Department consider when approving or disapproving an off-reservation trust application?** The Department should consider only those criteria established in the current regulations at 151.11, last amended in 1995. Any additional criteria, especially those that require or weight historical connection to land, or an abstract ability to govern after the granting of trust status, are plainly unable to be objectively measured and should not be included.
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)?** When an off-reservation application is submitted for economic development, tribes should provide a “plan which specifies the anticipated economic benefits” as currently required in 151.11(c), but should not be subject to any new or altered eligibility or “scoring” criteria, or additional procedures.
 - b. **Whether the application is for gaming purposes as distinguished from other non-gaming economic development?** All applications for economic development should be reviewed under the same criteria, whether or not the economic activity includes gaming. IGRA already provides adequate regulation governing the establishment of gaming, and its language clearly states that the Act does not diminish the responsibility or ability of the Secretary to take lands into trust. (25 USC 2719(c))
 - c. **Whether the application involves no change in use?** In cases where there is no change in use, applications that are otherwise complete and accurate should be expedited, after allowing adequate time for state and local governments to respond under the requirements at 151.11(c).
6. **What are the advantages/disadvantages of operating on land that is in trust versus land that is owned in fee?** There are many advantages to operating on land that is in trust. For many tribes, trust lands become the basis of long-term enterprise development, allowing for Tribal businesses and outside investors to benefit from both long-term stability and advantageous tax structures. Taxes collected on trust land remain with the Tribe and can be efficiently distributed to the areas of greatest need. Investment in trust land also preserves wealth for future generations of tribal citizens by creating an asset that is not easily sold, misused or destroyed.
7. **Should pending applications be subject to new revisions if/when they are finalized?** Pending applications should be subject to the regulations in effect at the time of application.
8. **How should the Dept. recognize and balance the concerns of state and local jurisdictions? What weight should the Dept. give to public comments?** The Department of the Interior has a primary trust responsibility to Indian Tribes, not to state and local jurisdictions. Recognition of non-tribal concerns is achieved through the existing written comment period for impacts on regulatory jurisdiction, real property

taxes, and special assessments. When Tribes acquire trust land, especially for economic development, they bring increased investment and jobs, or an increased customer base for existing businesses when acquisitions are for tribal housing or offices. There is always a net positive for state and local governments when working with Tribes; unless the non-tribal entity can show objective harm and provide a reasonable, lawful remedy that does not harm the tribal party or endanger the application, public comments should be given minimal weight. The land-into-trust process exists to allow tribes to rebuild a land base, even when it must be done over the objection of non-tribal landowners or governments.

9. **Do 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?** CPN does not currently have any MOUs in place with state or local governments regarding land-into-trust. However, the Nation does not believe that the existence of an executed MOU should be a requirement for off-reservation trust applications. The added requirement of a pre-existing MOU would potentially contradict the Secretary's responsibility to contact state and local governments for written comment on the impacts of the application within 30 days, and shift (at least) the burden of that data collection and impact discussion to the tribe. While it is always desired, there is no requirement for collegial cooperation between tribes and state and local governments in the land-into-trust process, nor should one be added. This gives an unfair advantage in the trust application process to those tribes who already have good neighbors. Non-tribal governments should not have any empowerment to cause a denial of trust applications.
10. **What recommendations would you make to streamline/improve the land-into-trust program?** With independent input and collaboration from tribes as well as BIA staff from each region on any changes, the land-into-trust program should follow a unified process for review and approval across all regions that works to move parcels into trust status at a predictable and reasonable rate. A system of mandatory deadlines for both tribal and federal partners in the process should be designed to ensure that no application drags on for an unreasonable amount of time.

Thank you for the opportunity to comment on this matter. Please feel free to contact Jeremy Arnette (jarnette@potawatomi.org), Analyst, Office of Self-Governance 405-271-3121 if you have any questions about this response.

Sincerely,



John A. Barrett
Tribal Chairman