



# SQUAXIN ISLAND TRIBE

February 20, 2018

The Honorable John Tahsuda  
Acting Assistant Secretary of Indian Affairs  
US Department of the Interior  
1849 C Street NW  
Washington DC 20240

RE: December 7, 2017 Letter with respect to Potential Fee-to-Trust Regulation Revisions

Dear Acting Assistant Secretary Tahsuda:

Please accept the following comments provided on behalf of the Squaxin Island Tribe.

The Squaxin Island Tribe is known as the people of the water. The Tribe is made up of the descendants of the original inhabitants of the seven inlets of the Southern Puget Sound. Under the 1854 Treaty of Medicine Creek, in which the Tribe ceded a vast area of land encompassing the Cascade Mountains near modern day Packwood through the Southern Puget Sound, the only land reserved for the Tribe was the Island of Klah-Che-Min, now known as Squaxin Island. Although the Island is of great cultural and spiritual importance to the Squaxin Island people, it lacks potable water and is unsuitable for habitation. Over a period of many, many years, the Squaxin Island Tribe has relied on the fee-to-trust process to develop a base of trust land on the Olympic Peninsula where it can provide homes, employment, and services for at least some of its membership.

This effort continues and the Tribe has ongoing, recurring needs for additional land. The wait list for housing is perennially long and the Tribe has a need for more property suitable for housing. The treaty fishery that provides a livelihood for much of the Tribe's membership occurs throughout the ceded area, and the Tribe needs to acquire off-reservation property for the purposes of shellfish cultivation, treaty access, habitat restoration, and more. Further, the Tribe's location in rural Mason County is not always well-suited for economic development and the Tribe's government obligations extend to a membership that is scattered throughout Western Washington and beyond, meaning off-reservation acquisitions are necessary to provide and fund essential government services and create employment.

Specific responses to the questions posed in the December letter follow below.

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

*The Department should strive to take land into trust for the benefit of Indian people, work to accomplish fulfillment of its trust responsibility to tribes, and promote tribal self-determination.*

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

*The Department moves more quickly than it does with "off-reservation" applications, but not quickly enough.*

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

*The Department should approve an off-reservation trust application if doing so will benefit Indian people; it should disapprove the application if doing so will not.*

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

*The Department should consider whether the acquisition will benefit Indian people and any additional factors that can be specifically identified within the Indian Reorganization Act or other applicable legislation.*

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)?

*All "economic development" initiated by tribes benefits Indian people whether in the form of employment or revenues that fund essential government services such as infrastructure, health care, and housing. No distinction should be made.*

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

*The Tribe strenuously objects to any such distinction being made in Part 151. The gaming criteria are set forth in IGRA and Part 292. Any additional hurdles in Part 151 can only add delay without providing new efficiency.*

c. Whether the application involves no change in use?

*If no change in use is contemplated, NEPA review should be simplified, but the criteria for acquisition should be the same: will the acquisition will benefit Indian people?*

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

*When land is owned in trust, a tribal government has the greatest ability to act as a government when making use of the property for the benefit of its citizens. A tribal government is significantly hindered in its operation of government affairs, and those activities that support government operations, on lands owned in fee due to concerns of state and local government taxation and attempted regulation.*

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

*The BIA should afford applicants a measure of flexibility consistent with its trust responsibility to address late arising issues.*

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 federal government and the BIA in particular owe a trust obligation to Indians. BIA officials have stated that the BIA has an obligation to "listen to" local governments and to take into account the effects of a trust acquisition on local governments. The Tribe does not expect the BIA to turn its back on information provided by local governments. However, absolutely nothing in the IRA requires the BIA to provide particular deference to local government needs and the BIA does not owe a trust responsibility to state and local governments. The needs of Indian people should be paramount in any consideration of a fee-to-trust application.*

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?

*The Tribe strongly opposes the treatment of MOU proposed in the draft revisions. MOU that are signed are of benefit to both parties, presumably. But the regulations should not afford local governments a*

*veto power through refusal to negotiate, or suggest that fee-to-trust applications cannot be processed quickly when no agreement can be found.*

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

*Given the concerns expressed by this Tribe and others, the Tribe requests the Agency abandon this rulemaking proposal in its entirety, and move forward with the procedural recommendations made in the November 30, 2017 letter from NCAI before taking any additional steps.*

Because the issues were not addressed by the questions posed in the December letter, the Tribe notes additionally its specific opposition to the following:

1. The “two-step process”, proposed in the draft revisions. The Tribe can identify no benefit to Indian people or governments resulting from the draft changes and no legal obligation that compels them. The Tribe is aware of comments from the BIA suggesting that a two-step process will delay or avoid duplication of expenses with respect to environmental review and other consulting work. However, it is the Tribe’s belief that a two-step process will only politicize the process and create excuses for additional delay. The BIA should instead focus its efforts on adequately staffing the application process and processing applications in a timely fashion.

2. The criterion requiring an analysis whether the Tribal government can effectively exercise its governmental and regulatory powers at the proposed site. As above, the Tribe can identify no benefit to Indian people or governments from this provision and no legal obligation that compels the Tribe to provide such an analysis. Additionally, self-determination supports that the tribe itself is in the best position to determine what the most effective uses of its resources and powers are. The BIA should have no part in this tribal decision.

3. The criterion requiring an identification of the unemployment rate on the reservation, and an analysis of the effect on the unemployment rate by the operation of the gaming project. In its enactment of IGRA, Congress found that the purpose of tribal gaming activities on tribal lands is to generate revenue to support and operate the tribal government. 25 U.S.C. § 2701(1). While employment is an appreciated by-product of gaming enterprises, the purpose of the enterprise, to generate revenue for government operations, should be paramount.

4. The thirty-day Stay. Under *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S.Ct. 2199, the proposed thirty-day stay has no legal or procedural significance and only causes unnecessary delays. The Department should seek to take property into trust when the application is approved.

Finally, the Tribe questions why the Department would advance changes over near universal tribal opposition prior to the confirmation of an Assistant Secretary of Indian Affairs. The Tribe respectfully requests the Department withdraw the proposal in its entirety and proceed with those steps identified by NCAI in its November 30, 2017 letter. Please direct any questions regarding these comments to Ray Peters, Tribal Liaison at [rpeters@squaxin.us](mailto:rpeters@squaxin.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Cooper", with a long horizontal flourish extending to the right.

Arnold Cooper, Chairman