



## HAVASUPAI TRIBAL COUNCIL

P.O. Box 10 • Supai, Arizona 86435  
(928) 448-2731 • Fax (928) 448-2551

February 28, 2018

Attn: Fee-to-Trust Consultation  
Office of Regulatory Affairs & Collaborative Action  
Office of the Assistant Secretary- Indian Affairs  
1849 C Street NW, Mail Stop 4660-MIB  
Washington, DC 20240

Transmitted electronically to: [consultation@bia.gov](mailto:consultation@bia.gov)

Re: Comments of the Havasupai Tribe Regarding Revisions to Trust Acquisition Regulations at 25 CFR § 151.11 and §151.12

Dear Mr. Tahsuda:

As Chairwoman of the Havasupai Tribe, I am pleased to submit the Tribe's comments regarding the Consultation Draft of the Revisions to Trust Acquisition Regulations at 25 CFR § 151.11 and §151.12.

First, I would like to state that it is troubling that such a large policy change is being promoted by the Bureau of Indian Affairs in the absence of an appointed Assistant Secretary-Indian Affairs. The Tribe requests that this process be postponed at least until that position is filled with an individual who has been vetted by tribes and confirmed by Congress. As the recent debacle surrounding the appointment of the President's pick to lead the Indian Health Service shows, tribes should play a role in selecting someone we know and trust, with a proven track record of Indian Country accomplishments. This is a prerequisite to amending a regulation that would have such far-reaching effects across all tribes.

Second, consultation with tribes should have begun before the amendment to the regulation was even drafted, not peddled to us at listening sessions as a nearly finished product. Had tribal consultation occurred in this way, the draft would certainly look different and would have been closer to something that tribes could reach consensus on and support. This is what happened when the Obama administration considered eliminating the 30-day waiting period contained in § 151.12(c)(2)(iii), which tribes advocated for and supported.

In this case, the proposed regulation change does not appear to do anything that tribes have asked for. In fact, it reinstates the 30-day waiting period that we worked so hard to remove. The draft regulation would make it more difficult and costly for tribes to place lands into trust. It would, among other things, put newly acquired trust lands in a state of limbo, in which courts could reverse trust acquisitions for up to six years under the Administrative Procedures Act.



This caters to the interests of Non-Indians who oppose our efforts to reclaim portions of our ancestral homelands, and begs the question, "Whose trustee are you?"

The current administration has often touted its efforts to eliminate and simplify regulations. Why then, when it comes to Native Americans are our regulations actually growing and becoming more onerous? The Consultation Draft submitted to tribal leaders is significantly longer than the current versions of 25 CFR 151.11-12, and includes creating a separate submission stream for proposed gaming parcels and a two-stage process of submissions. Native Americans and tribes are already the most federally-regulated demographic in the United States. As this administration should appreciate, we need less regulations, not more.

Tribes need to be able to grow our land bases to provide homes and business opportunities for our members. Tribes all across the nation are investing their precious and limited resources to buy properties within their aboriginal homelands. They do this, overwhelmingly, not for gaming, but to reclaim part of what was taken from them. Land is sacred and represents a link to the Creator, a connection to our ancestors, and opportunity for our youth.

The Havasupai Tribe has been waiting over two years now for action on our application to acquire a 162-acre parcel of land named Bucklar Ranch for recreational and cultural purposes. That site is near one of the Tribe's most sacred places, Red Butte. No gaming on this parcel is contemplated, nor would be allowed under the Indian Gaming Regulatory Act. The inaction on our application is frustrating and confusing. For two years following our submittal, we did not receive any communication from Interior, until Carletta Tilousi, a Tribal Councilmember, raised the issue with you personally during a recent listening session in Phoenix.

In general, the fee-to-trust regulation should be amended to make the process quicker and easier for Tribes to acquire lands into trust, especially when those lands are within their ancestral homelands and are near sacred sites, as Bucklar Ranch is. The current draft regulation is the opposite of what we need.

The draft regulation seeks to inject local non-Indian communities into the process, especially where gaming is concerned, requiring Memoranda of Understanding ("MOU") between tribes and local governments. The Indian Gaming Regulatory Act already contains provisions to address such concerns, and that is the proper place for them, not in 25 CFR § 151. Tribes do often enter into MOU's with local municipalities, when appropriate, for provision of emergency services on non-contiguous fee parcels. But artificially forcing parties into agreements in the Code of Federal Regulations is both inappropriate and unnecessary.

As to your specific questions:

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

The Tribe believes that all trust acquisition applications should be approved, so long as they have accurately submitted complete applications. Issues about whether acquired parcels can be used for gaming, which seems to be the primary concern of Interior in



promulgating these new regulations, can and should be addressed under the Indian Gaming Regulatory Act and its related regulations.

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

Interior should verify that the applicant tribe owns the land in fee, clear of any liens, and if the land is within the tribe's ancestral homeland, that should be the extent of the inquiry. If, however, the lands seeking to be acquired are outside of the tribe's homelands, then it may be proper to inquire into the purpose of the acquisition.

**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?** Not if the parcel is within the Tribe's ancestral homelands.
- b. **Whether the application is for gaming purposes as distinguished from other (non-gaming) economic development?** No. Whether tribes may engage in gaming on trust lands, once acquired, is within the purview of IGRA and should not be a criteria in Interior's decision to acquire lands into trust.
- c. **Whether the application involves not change in use?** Again, no, so long as it is within the tribe's ancestral homelands.
- d. **Should pending applications be subject to new revisions if/when they are finalized?** No, as this penalizes tribes for the Bureau's failure to process applications in a timely manner. Section 151.11 of the Consultation Draft provides, at sub-section (c)(1)(iii) that applications not containing all of the information required by paragraph (a) will be denied. Because the new regulation, if implemented, requires new information under paragraph (a), this would result in automatic denial of all pending applications submitted before the change, costing tribes additional money and delaying our applications further. It is unfair to change the rules of the game in the fourth quarter, which is exactly what making the regulations retroactive would do.

The Havasupai Tribe looks forward to participating in further consultation with the Bureau of the Interior regarding needed changes to the fee-to-trust regulations after the appointment of an Assistant Secretary-Indian Affairs. At that time, tribes can work together with the United States, as our trustee, to create a regulation that addresses legitimate concerns that we as tribes have, rather than one that caters to the interests of non-Indians and unfairly increases the regulatory burden on tribes.

Sincerely,



Havasupai Tribe

Muriel Coochwyetewa, Chairwoman

Cc. Tribal Councilmembers  
Matt McReynolds, General Counsel  
Maria Dadgar, ITCA  
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