



NISQUALLY INDIAN TRIBE

Tribal Council

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July 2, 2018

Mr. John Tahsuda
Principal Deputy Assistant Secretary
Department of the Interior
1849 C Street, N.W.
MS-4004-MIB
Washington, D.C. 20002

Re: Opposition to changes to the Part 151 process (25 C.F.R. § 151)

Principal Deputy Assistant Secretary Tahsuda,

On behalf the Nisqually Indian Tribe, I am submitting these comments to the Department of the Interior's ("Department") current consultation on its desire to revise the fee-to-trust regulations found at 25 C.F.R. ¶ 151 ("Part 151"). We are very concerned that this effort may make it more difficult for tribes across the country to acquire desperately needed land in trust status, especially when those lands are off-reservation acquisitions.

The Nisqually Indian Tribe ("Tribe"), or the Squalli-absch, People of the Grass Country/People of the River, resides on the Nisqually Reservation located outside of Olympia, Washington. We have lived in the Puget Sound watershed since time immemorial, long before 1833 when Fort Nisqually was established as the first white settlement on the Puget Sound. The first Nisqually Reservation was established by the Medicine Creek Treaty of December 26, 1854 and was located along the rocky bluffs above McAllister Creek within our original territory but away from the Nisqually River.

The current Nisqually Reservation was initially 1,280 acres in what would become Thurston County, Washington. On January 20, 1856, an executive order enlarged the Reservation to 4,717 acres on both sides of the Nisqually River. Parts of the Reservation were allotted in 1872 into 30 family parcels on either side of the river. In 1917, the U.S. Army moved onto our lands and ordered our families to evacuate the east side of the Reservation and move across the Nisqually River. Pierce County then condemned 3,353 acres of the Nisqually Reservation and transferred it to the Army to expand what would become Joint Base Lewis-McChord. Through this illegal condemnation our Tribe lost 71% of its reservation lands. The Army now uses the land that we lost as a firing range.

The forced taking by the Army forced the entire Tribe on to the remaining one-quarter of reservation. As a result many of our families left the reservation and relocated to be with family at Chehalis, Cowlitz, and Quinault. While we have been able to rebuild and reunite many of our

families who left Nisqually in 1917 we cannot reacquire the land we lost. We have been actively working on reacquiring reservation land but also have to look off-reservation for land acquisitions.

Any changes to the Indian Reorganization Act's ("IRA") implementing regulations could imperil our ability to provide land for future generations of Nisqually and frustrate the purpose of the statute.

In October 2017, the Nisqually Tribal Council traveled to Milwaukee to present our views and share the Tribe's experience with the Department during the National Congress of American Indians ("NCAI") Annual Conference. The Tribe explained its opposition to changes to the Part 151 regulations because the regulations and the process they created has been beneficial to Nisqually. During the same conference the NCAI, the largest inter-tribal organization in the country, passed a resolution stating that it "strongly opposes the proposed revisions to 25 C.F.R. Part 151 and asks that the Department immediately withdraw and cease any efforts to amend the land into trust regulations." MKE-17-059 (2017).

In January we traveled to the Affiliated Tribes of Northwest Indians Winter Convention to participate in the Department's consultation session on its proposal. Again, we expressed our adamant opposition to any changes to the Part 151 regulations. In fact, every tribal leader that was present testified against the Department's effort and asked that it be abandoned. Rarely does Indian Country speak with such a unified voice but the Department's proposal would severely restrict our collective abilities to provide for the next generation.

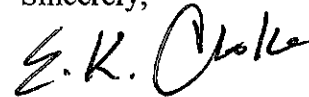
It is clear that the Department's efforts are meant to place further restrictions on off-reservation acquisitions and this is simply unacceptable for the Nisqually Tribe and much of Indian Country. We are actively working to regain ownership of the Nisqually Reservation one interest at a time but it is a long and difficult process. Because seventy percent of our reservation is now occupied by Joint Base Lewis-McChord we have to look off-reservation for land to support our Tribe culturally and economically. For instance, the tribe in 2017 completed an off reservation fee-to-trust for a tribal convenience store located in Frederickson Washington approximately 15 miles from the reservation. This store is now operational and is generating significant revenue for the Tribe. This revenue supports the Tribe's transportation and roads programs, tribal transit services, and support for tribal Elders.

I would also like to point out that "on-reservation" versus "off-reservation" acquisitions are an illusory construct. The Nisqually Tribe has not been confined on the Nisqually Reservation since time immemorial. Our ancestral lands stretch far beyond the boundaries of the land that the United States left us with. Drawing arbitrary legal distinctions when the Tribe acquires "off-reservation" lands is to ignore the history of the Tribe and our cultural and historical connections to the lands surrounding the Reservation. It also ignores Congressional intent and the text of the IRA, which clearly empowers the Secretary of the Interior with the authority to acquire "any interest in lands...within or *without* existing Indian reservations." 25 U.S.C. § 465 (emphasis added).

Finally, the current fee-to-trust regulations already provide off-reservation communities with ample opportunities to participate and give input on the fee-to-trust process and pending applications. The state, local communities, and interested parties are given notice of proposed fee-to-trust acquisitions and have the opportunity to provide comments on the impacts of the proposed acquisition. 25 C.F.R. ¶ 151.11(d). The regulations require the Department to place greater scrutiny on off-reservation applications. As the “distance between the tribe’s reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe’s justification of anticipated benefits from the acquisition” and the Secretary will also give greater weight to the concerns of the state and local community where the land is located. 25 C.F.R. ¶ 151.11(b). The regulations also provide opponents an opportunity to challenge approved fee-to-trust applications. 25 C.F.R. ¶ 151.12(d) (2) (ii).

The Nisqually Tribe hopes that the Department will listen to us and all of Indian Country and abandon this effort. Our homelands are not confined to our reservations and through the Section 151 process we are able to regain lands we lost and that are important. The Department already has the statutory and regulatory tools needed to help Indian Country rebuild our land bases as envisioned by Congress when it enacted the IRA in 1934.

Sincerely,



E.K. Choke, Chairman

cc: The Honorable Patty Murray, United States Senate
The Honorable Maria Cantwell, United States Senate
The Honorable Denny Heck, United States House of Representatives