PALA BAND OF MISSION INDIANS

PMB 50, 35008 Pala Temecula Road
Pala, CA 92059
Phone 760-891-3500 | Fax 760-891-3587

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Via email to: *consultation@bia.gov*

John Tahsuda, Principal Department Assistant Secretary — Indian Affairs
United States Department of the Interior
Office of the Secretary
Washington, DC 20240

Dear Principal Deputy Assistant Secretary Tahsuda:

On behalf of the Pala Band of Mission Indians, I submit the below in response to the Department of the Interior, Office of the Secretary's ("Department") letter of December 6, 2007 in which the Department seeks responses to questions in relation to potential revisions to the land-into-trust process at 25 C.F.R. Part 151. Each of the Departments specific questions are addressed in turn below.[1]

A. The Pala Band of Mission Indians

The Pala Band of Mission Indians is located in northern San Diego County, and occupies the Pala Indian Reservation ("Reservation"). The Reservation was established for the Tribe's exclusive use and benefit in 1875, and is home to the majority of our over 900 citizens.

The Reservation as it stands today consists of approximately 12,273 acres of trust and non-trust land. While the Reservation could be considered large as compared to many of our fellow California tribes, it is nevertheless insufficient to support the housing and economic development needs of our large and growing Tribal member population. In fact, large portions

[1] On October 4, 2017, the Department sought comment on specific, draft revisions to 25 C.F.R. Part 151, and sought responses to a series of questions (similar to those presented in the December 6, 2017 letter). In the December 6 letter, the Department changed course, stating that "a broader discussion about the direction of updates to Part 151" was appropriate — rather than seeking comments on the Department's draft revisions to Part 151 — in light of initial comments received from tribal government in response to the October 4 letter. Accordingly, and based on the understanding that the Department has withdrawn its draft revisions to Part 151, the Tribe comments only on the questions posed by the Department as requested in the December 6 letter.

of the Reservation consist of steep slopes that are generally inaccessible and are not suitable for development or any use other than vacant, open space. And though the Tribe has worked, and continues to work to restore all on-reservation lands to trust status, large tracts within the Reservation boundary continue to be held in non-Tribal ownership.

Relying on the land-into-trust process that was developed by the Department more than thirty (30) years ago, the Tribe has worked to develop a comprehensive plan for the return of the entire Reservation to Tribal trust ownership, and for the expansion of our trust lands in order to support our population, provide for our people, and in furtherance of our self-governance. This plan consists of a systematic effort to purchase lands within and contiguous to the Reservation and within our ancestral territory. And we put these lands to good use: Nearly all of the developable lands presently in Tribal ownership are used for Tribal-member housing, Tribal government or economic development purposes.

Though tribes throughout the nation should have the opportunity to restore their ancestral homelands as an exercise of their sovereignty, there are unfortunately several obstacles preventing tribes from doing so. These obstacles include the availability and price of additional land (which, in California, is particularly challenging), the oftentimes onerous land-into-trust process (as discussed in further detail below), and significant and sometimes unfounded opposition by state and local governments. In light of these obstacles, the Tribe has had to face the unfortunate reality that land restoration efforts require a great deal of time and resources, and extremely careful planning to ensure that such efforts align with the Tribe's governmental goals and the overall needs of our Tribal-member population. In that regard it bears noting that, while we have a successful and growing gaming enterprise, the Tribe is acutely aware of the need to diversify our economic development portfolio to ensure the continued vitality of our Tribal community. It is with this awareness that the Tribe has developed our land restoration plans: Each and every proposed and approved land-into-trust application of the Tribe has been undertaken based on the present and future needs of our Tribal community, and has directly furthered the Congressionally-designated purposes of the Indian Reorganization Act ("IRA").

B. Request For Formal Consultation In Accordance With Bureau of Indian Affairs' Consultation Policy

Consistent with the request of the California Fee-to-Trust Consortium Tribes of January 26, 2018, the Tribe requests that the Department provide clarity with regard to the December 6, 2017 letter in light of the Bureau of Indian Affairs' Government-to-Government Consultation Policy of December 13, 2000, pursuant to Executive Order 13175 ("Consultation Policy"). Specifically, the Tribe asks that the Department clarify whether the December 6, 2017 letter and consultation process in which the Department has engaged with regard to part 151 is intended to correspond with the pre-scoping process outlined in the Consultation Policy. If so, please

explain whether and how the Department has engaged in an analysis of the strengths and weaknesses of the current land-into-trust process, and when the Department intends to submit informational packets to tribal leaders setting forth this analysis. If the Department's current process is not intended to comply with the pre-scoping process of the Consultation Policy, the Tribe requests that the Department provide tribal leaders with a detailed explanation of how you intend to proceed with this process moving forward, and how that plan is consistent with the Consultation Policy.

As the California Fee-to-Trust Consortium tribes aptly noted, the Department has failed to provide tribal leaders with any information regarding the need for an overhaul of the land-into-trust process, what internal analyses regarding the efficacy of the process were conducted, how the questions posed by the Department were developed, or why the Department has decided to address the land-into-trust process altogether. Though the Department has sought tribal input through written comments and by way of comments at consultation sessions, the absence of any sort of background information or analyses from the Department, coupled with the expedited nature of consultations on this issue strongly suggests that the Department is fast-tracking this process in order to achieve a predetermined outcome that ignores the comments and concerns raised by tribal governments.

C. Response to Department's Questions

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

Overall, the Department has an obligation to prioritize acquiring land in trust for Indian tribes across the nation, and to do so in a way that treats all tribes equally, and is neither unduly burdensome nor restrictive. In carrying out this obligation, the Department's objective should, and indeed must be consistent with the clear purposes of the Indian Reorganization Act ("IRA"). The Department should not adopt any changes to the current land-into-trust process that would diminish a tribe's ability to acquire land in trust, nor should it impose any new standard for denial of land-into-trust applications where such applications meet the goals of the IRA, especially where the land in question lies squarely within a tribe's ancestral territory.

The IRA is broad legislation aimed at halting and reversing tribal land loss and the decline in economic, cultural, governments, and social well-being of Indian tribes that resulted from the United States' disastrous policies of allotment, termination and sale of tribal trust lands. *See, e.g., Confederated Tribes of Grand Ronde Community of Oregon v. Jewel*, 75 F.Supp.3d 387, 392 (D.D.C. 20014), *aff'd*, 830 F.3d 552, 556 (D.C. Cir. 2016), *cert. denied*, No. 16-572, 2017 WL 1199528 (U.S. Ape. 3, 2017) (*citing Morton v. Mancari*, 417 U.S. 535, 542 (1974)) ("The overriding purpose of [the IRA] was to establish machinery whereby Indian tribes would

be able to assume a greater degree of self-government, both politically and economically."); *Michigan Gambling Opposition v. Kempthorne*, 525 F.3d 23, 31 (D.C. Cir. 2008) (under the IRA, "the Secretary is to exercise his powers in order to further economic development and self-governance among the Tribes."). The IRA is designed to benefit all tribes and provides the Department with clear framework for the restoration of tribal lands. It neither favors certain tribal interests over others, nor does it distinguish between land-into-trust acquisition occurring within or without existing reservation boundaries. Overall, the land acquisition provisions of the IRA are intended and designed to facilitate the timely acquisition of trust lands to promote tribal self-determination and self-sufficiency. *See* 78 Congress. Rec. 11727-11728 (June 15, 1934) ("[T]he land was theirs under titles guaranteed by treaties and law; and when the government of the United States set up a land policy which, in effect, became a form of legalized misappropriation of the Indian estate, the government became morally responsible for the damage that has resulted to the Indians from its faithless guardianship…[The IRA is intended] to build up Indian land holdings until there is sufficient land for all Indians who will beneficially use it.").

To the extent that the Department aims to treat the trust acquisition of off-reservation lands markedly differently than on-reservation lands or make off-reservation acquisitions more difficult, such an objective would be inconsistent with the goals of the IRA. The same is true with regard to distinctions between based on the reasons underlying a proposed trust land acquisition. The IRA simply does not impose the artificial distinctions between land acquired on- or off-reservation, or acquired for economic development as opposed to other purposes, that the Department apparently seeks to impose in overhauling the land-into-trust process.

Further, the Department's approach with regard to potential overhaul of the land-into-trust process ignores the fact that many federal programs designed to assist Indian tribes are tied to trust and reservation lands — without an adequate land base, tribes are also hindered from benefitting from other federal programs designed to help tribes improve their political, economic, cultural and social well-being. This approach is both inconsistent with the goals of the IRA, as well as the Department's trust obligation to Indian tribes generally.

Any changes to the land-into-trust process should: focus on streamlining the process for the benefit of Indian tribes; ensuring uniformity and consistency in carrying out the Department's land restoration obligations under the IRA; making adequate resources available for processing of land-into-trust applications; and, overall, reducing red tape.

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

While the Department's current process for the acquisition of on-reservation lands is sufficient, there are ways in which the process could be improved consistent with the goals of the IRA. As a preliminary matter, the continued treatment of contiguous lands as on-reservation acquisitions is critical: The Department should continue to implement the broad and generally accepted standards for contiguity that recognize any lands adjacent to existing trust lands — or separated by easements or rights-of-way — as contiguous, and treat such lands as "on-reservation" for purposes of the land-into-trust process.

The Department should also explore ways to streamline the review process required under the National Environmental Policy Act ("NEPA") for on-reservation acquisitions. The Tribe reiterates here the comments recently submitted in response to the Department's March 6, 2018 notice entitled "Updates to Bureau of Indian Affairs Categorical Exclusions Under the National Environmental Policy Act." *See* Letter from Robert Smith, Chairman, Pala Band of Mission Indians to BJ Howerton, Branch Chief, Bureau of Indian Affairs Branch of Environmental and Cultural Resources Management (May 1, 2018).

Further, the Department should implement an automatic presumption favoring the acquisition of on-reservation lands — rather than requiring a tribe to establish need and purpose for the proposed acquisition — so as to further facilitate the restoration of prior reservation lands. Such acquisitions often have little to no effect on state, local or non-tribal interests. A presumption in favor of on-reservation acquisition would rightfully favor Tribal civil regulatory jurisdiction within reservation boundaries, helping to eliminate conflicts between tribes and local governments concerning the regulation of on-reservation lands.

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

Existing regulations already provide adequate guidance on whether and when the Department may approve or disapprove an off-reservation trust application. The Department should not impose any additional burdens with regard to off-reservation acquisitions. To the contrary, the Department should streamline off-reservation acquisitions involving lands squarely within a tribe's ancestral territory. Many tribes, like the Pala Band, were forcibly removed from their ancestral and traditional homelands; those lands should be eligible to return to trust status without the imposition of additional burdens based on current reservation boundaries. Streamlining the process for acquiring off-reservation ancestral lands in trust is not only consistent with the goals of the IRA, but also with the Department's current regulations. *See* 25 C.F.R. § 151.3(a)(2)-(3). Such streamlining could be accomplished through adoption of

appropriate Departmental policy (*e.g.*, Fee-to-Trust Handbook) without upsetting the current regulatory structure.

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

Again, existing regulations already provide adequate guidance on whether and when the Department may approve or disapprove an off-reservation trust application. The Department should preserve the current regulatory scheme set forth in 25 C.F.R. § 151.11 to determine whether to approve or disapprove off-reservation applications. The current regulations have been honed over nearly three decades and, as a result, now provide a functional and knowable framework on which reasonable decisions regarding off-reservation acquisitions can be made. Fundamental changes to the regulations would only serve to penalize tribes which have engaged in responsible planning efforts to restore portions of their aboriginal lands.

Rather than imposing entirely new criteria for off-reservation applications, the Department should focus on streamlining the existing process and reducing regulatory burdens on tribes, as noted in response to question 3 above. In considering off-reservation acquisition proposals, it is important for the Department to be mindful of the unique historical circumstances of the applicant tribe. For instance, the fact of that our ancestors were forcibly removed for our ancestral homelands — some 40 miles from the current Reservation boundaries — should be an important consideration when evaluating any proposed land-into-trust application that focuses on restoration of our aboriginal territory. These types of proposed acquisitions should not receive additional scrutiny simply because they are now located off-reservation; instead, they should receive less scrutiny when being evaluated by the Department.

Another example: although the Tribe has a rather large reservation by California standards, much of our Reservation lands are unsuitable for development (due to steep terrain and other factors) and, as a result, are permanently relegated to use as vacant, open space. The limitations on development of current Reservation lands has forced the Tribe to adopt a land acquisition policy that not only focuses on restoring lands within the Reservation boundaries, but also on acquiring lands within our ancestral territory which may or may not be contiguous to the Reservation. Our current on-Reservation lands are insufficient to meet the growing needs of our Tribal government and member population, and the Tribe's ability to restore an adequate land base should not be hindered by the unfortunate reality that availability of additional on-Reservation and contiguous lands is severely limited. As noted above, any proposed improvements to the off-reservation acquisition criteria can be made as a matter of Departmental policy, without the need for regulatory changes.

Finally, to the extent that the Department is concerned about the relationship between the current criteria for off-reservation trust acquisitions and the concerns of state and local communities, we note that existing regulations already provide a process for those communities to voice their concerns (even though nothing in the IRA so requires). Pursuant to 25 C.F.R. §151.11(b), as the distance between the tribe's current reservation and the proposed trust land increases, the Department already gives greater weight to the concerns identified by local communities. Further, §151.11(d) provides that upon receipt of a tribe's application, the Department must notify state and local governments with regulatory jurisdiction over the proposed trust land, and the state and local governments have 30 days in which to provide written comments regarding the proposed acquisition.[2] These requirements provide a reasonable and fair mechanism to address the concerns of state and local communities, pursuant to the IRA, particularly in light of additional notice and comment requirements that may be required under NEPA.

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)?*

No. The existing regulations already require that tribes seeking to acquire off-reservation lands in trust for business purposes provide a business plan that specifies the anticipated economic benefits associated with the proposed use. 25 C.F.R. § 151.11(c). This standard is sufficient for the Department's consideration of off-reservation applications and whether the acquisition would be consistent with the goals of the IRA.

Nothing in the IRA justifies distinguishing between economic development and non-economic development purposes. The IRA was enacted to provide support for tribal governments, tribal economic development, and tribal self-determination, and the Department's implementation of the land-into-trust process must be consistent with those goals. Imposing any additional requirements for off-reservation acquisitions that are based on proposed use would be antithetical to the purposes of the IRA.

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[2] It bears noting that, as a practical matter, state and local governments are often afforded more than the requisite 30 days in which to comment on proposed acquisitions — both on- and off-reservation — and that this comment period is in addition to any comments periods required under NEPA.

Furthermore, land that will be used for economic development purposes is already subject to additional requirements related to that development, chief among them being: NEPA and its implementing regulations; section 20 of the Indian Gaming Regulatory Act (25 U.S.C. § 2719) ("IGRA") and its implementing regulations (25 C.F.R. Part 292); the Department's leasing regulations at 25 C.F.R. Part 162; and, the Department's regulations concerning contracts that encumber Indian lands (25 U.S.C. § 87 and 25 C.F.R. Part 84). Imposing additional regulatory hurdles as part of the land-into-trust process would be unnecessary, duplicative, contrary to the Congressionally-stated purposes of the IRA, and inconsistent with the Department's stated approach to working with tribes — *i.e.,* respecting tribal sovereignty and allowing tribes to use their lands without the government "getting in the way." *See* Letter from James Cason, Acting Deputy Secretary of Interior to Jacqueline Pata, Executive Director, NCAI (May 5, 2017); Remarks of James Cason at NCAI, Mid-Year Conference, The Federal Trust Responsibility to Tribal Lands and Recourses (June 13, 2017).

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

No. There is no legal or policy reason to differentiate between proposed acquisitions for gaming and non-gaming purposes for purposes of the land-into-trust decision-making process. Such considerations are adequately addressed by the IGRA and NEPA. In IGRA, Congress set out clear rules explaining when newly acquired land can be used for gaming purposes. Those rules are further explained in the Department's IGRA regulations. Imposing a distinction between gaming and non-gaming uses as part of the land-into-trust process would be inconsistent with section 2719(c) of the IGRA, which expressly provides that "Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust."

Similarly, NEPA and its implementing regulations establish a clear, well-established process for identifying, evaluating, and disclosing the potential environmental consequences of — and alternatives to — proposed gaming projects. The environmental and socio-economic consequences of such projects are properly addressed as part of the NEPA process. There is no sound statutory or policy basis for the Department to promulgate duplicative (or worse, inconsistent) requirements as part of this land-into-trust rulemaking.

c. Whether the application involves no change in use?

No. Existing regulatory requirements, both under the land-into-trust process and NEPA, already take land use issues into account. The Department has already determined that land-into-trust acquisitions involving no change in land use qualify for a Categorical Exclusion from NEPA absent extraordinary circumstances. The Tribe reiterates here the comments recently submitted in response to the Department's March 6, 2018 notice entitled "Updates to Bureau of

Indian Affairs Categorical Exclusions Under the National Environmental Policy Act." *See* Letter from Robert Smith, Chairman, Pala Band of Mission Indians to BJ Howerton, Branch Chief, Bureau of Indian Affairs Branch of Environmental and Cultural Resources Management (May 1, 2018).

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

The Tribe does not believe that this question is helpful to the Department's review of the land-into-trust process. Nothing in the IRA requires, or even authorizes the Department to engage in a benefits analysis of trust versus non-trust land. Whether land best serves a tribe's particular purposes in trust or non-trust status is solely a determination for tribal governments. A generally inquiry into the advantages and disadvantage of placing land into trust is neither useful nor appropriate as part of the land-into-trust process.

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

No. In developing our land acquisition plans — and allocating valuable Tribal resources toward our land acquisition efforts — the Tribe has relied on the current regulatory process developed, honed and implemented by the Department over the last three decades. Imposing new rules on existing applications would be entirely inappropriate and unfair. Applicant tribes should be given the option to complete the application process under the regulations as they existed when the application was filed, or to proceed under any newly amended regulations. *See, e.g.*, 25 C.F.R. s. 83.7. The Tribe urges the Department to abandon any proposed regulatory amendments altogether, and instead give tribes the benefit of continued regulatory stability.

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 Department should not engage in any balancing of the concerns of state and local jurisdictions. Nothing in the IRA empowers the Department to "recognize and balance the concerns of the state and local jurisdictions," nor does the IRA contemplate a role for public comments in the land-into-trust process. Rather, under the IRA, "the Secretary is to exercise his powers in order to further economic development and self-governance among the Tribes." *Michigan Gaming Opposition v. Kempthorne*, 525 F.3d 23, 31 (D.C. Cir. 2008). And while the Department may exercise discretion under the IRA, this discretion is limited by the text and purposes of the statute:

> Congress has decided under what circumstances land should be taken into trust and has delegated to the Secretary of the Interior the task of deciding

> when this power should be used...Because Congress has given guidelines to the Secretary regarding when land can be taken in trust, primary responsibility for choosing land to be taken in trust still lies with Congress. *The Secretary is not empowered to act outside the guidelines expressed by Congress.*

Confederated Tribes of Siletz Indians v. U.S., 110 F.3d 688, 698 (9th Cir. 1997) (*emphasis added*).

Further, unlike some other statutes that "direct agencies to act in the 'public interest,'" (*Michigan Gaming Opposition*, 525 F.3d at 31) (internal quotes omitted)), the IRA "authorizes the Secretary to acquire land 'for the purpose of providing land for Indians.'" *Id.*, *quoting* 25 U.S.C s. 5108; *see also South Dakota v. Dept. of the Interior*, 423 F.3d 790, 797 (8th Cir. 2005) ("the purposes evident in the whole of the IRA and its legislative history sufficiently narrow the delegation and guide the Secretary's discretion in deciding when to take land into trust."). Indeed, where Congress has intended that the Department recognize and balance the concerns of state and local governments in carrying out the trust responsibility to Indians, Congress has explicitly so stated. *See, e.g.*, IGRA, 25 U.S.C. § 2719(b)(1)(A) (providing for a determination *both* as to whether gaming "would be in the best interests of the Indian tribes and its members" *and* "would not be detrimental to the surround community," and providing that such determination must be preceded by "consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes.").[3] And Congress has not done so in the IRA: Nowhere does the IRA or its legislative history even hint at a balancing of state and local interests. Instead, "the goals motivating trust acquisitions are 'rehabilitation of the Indian's economic life and development of the initiative destroyed by oppression and paternalism." *Carcieri v. Kempthorne*, 497 F.3d 15, 42 (1st Cir. 2007) (*en banc*), *rev'd on other grounds sub nom. Carceri v. Salazar*, 555 U.S. 379 (2009)), *quoting South Dakota*, 423 F.3d. At 798 (internal quotes and citations omitted).

Despite Congress' clear directives in the IRA, the Department already requires active engagement with state and local governments as part of the land-into-trust process. Specifically, current regulations require that the Department solicit comments on a proposed trust acquisition's potential impact on their respective regulatory jurisdiction, and real property taxes and special assessments. 25 C.F.R. s. 151.11(d). This process is more than sufficient to address pertinent concerns of state and local jurisdictions, particularly in light of the additional participatory opportunities available to state and local jurisdictions under NEPA.

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[3] The Department similarly considers the concerns of state and local jurisdiction and the general public when undertaking federal actions — including many land-into-trust actions — under the NEPA.

In short, the goals of the IRA, rather than the concerns of state and local jurisdiction, must drive the Department's land-into-trust process.

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?*

No. While the Tribe understands and appreciates the value of engaging in government-to-government relations with state and local governments, it strongly opposes any effort to require MOUs or similar cooperative agreements between tribes and such governments as part of the land-into-trust process.

First, whether such MOUs or agreements are necessary or appropriate is a matter for tribes and state/local governments, not the Department, to determine in the first instance. In some situations, such agreements may make good policy. In other situations, they may not. But MOUs must always remain — by definition — the prerogative of their respective governmental signatories.

Second — and perhaps more importantly — a one-size-fits-all approach requiring MOUs or similar agreements as part of the land-into-trust process would be unduly burdensome to tribes, particular tribes located in California. For instance, San Diego County had previously adopted a resolution stating its policy to object to each and every proposed land-into-trust acquisition regardless of location (on- or off-reservation) or proposed use. The California State Association of Counties has adopted a similar policy and, on behalf of counties throughout the state, has been advocating for trust reform that would not only make the process more onerous for California Indian tribes, *but would in fact afford state and local government increased control with regard to present and future uses of trust lands, in direct contravention of the goals and policies underlying the IRA*. *See, e.g.*, California State Association of Counties Proposed Amendments to the *Interior Improvement Act* (S. 1879), available at http://www.counties.org/sites/main/files/file-attachments/csac_amendments_to_s._1879_0.pdf. It bears noting, again, that these objections do not always take into account location or proposed land use, and are not directly or indirectly tied to any real or potential effect on state and local communities resulting from a proposed trust acquisition. Any requirement for, or review criteria regarding the existence of, MOUs or similar agreements between tribes and states and local governments as part of the land-into-trust process could very well result in a veto power by state and local governments with regard to proposed trust acquisitions. This result would plainly be

antithetical to the purposes and goals underlying the IRA, not to mention the Department's trust obligations toward Indian tribes.

In short, and as explained in detail in response to question 8 above, the IRA does not contemplate the participation of state and local governments in the land-into-trust process. It would therefore be both paternalistic and contrary to the plain language and intent of the IRA for the Department to impose such a requirement as part of the land-into-trust process.

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

The Tribe again reiterates that there is no reason to uproot the existing land-into-trust regulatory scheme, which has been honed over the past three decades, and on which the Tribe has relied in developing our comprehensive, long-range trust land restoration plans. However, should the Department implement improvements to the land-into-trust process — which, also as noted above, the Department should do as a matter of policy (*i.e.*, Fee-to-Trust Handbook) rather than regulation — there are several ways in which the process can be improved consistent with the goals of the IRA.

First, the Department should adopt a presumption favoring certain proposed trust land acquisitions. The presumption should include applications involving on-reservation lands, contiguous lands, and off-reservation lands that fall squarely within a tribe's ancestral territory.

Second, the Department should focus on streamlining the often costly and time consuming NEPA process, consistent with the Tribe's comments in response to the March 6, 2018 notice entitled "Updates to Bureau of Indian Affairs Categorical Exclusions Under the National Environmental Policy Act." *See* Letter from Robert Smith, Chairman, Pala Band of Mission Indians to BJ Howerton, Branch Chief, Bureau of Indian Affairs Branch of Environmental and Cultural Resources Management (May 1, 2018).

Third, the Department should ensure that adequate resources are made available for the timely and consistent processing of tribes' land-into-trust applications. In this regard, the Tribe notes that the California Fee-to-Trust Consortium has been particularly helpful in facilitating the land-into-trust process. Still, the Bureau of Indian Affairs Pacific Region remains severely understaffed and lacks sufficient resources to ensure that land-into-trust applications are processed in a timely manner.

Fourth, the Department should rescind the April 2017 Departmental memorandum removing off-reservation acquisition approval authority from the Bureau of Indian Affairs Regional offices and transferring those decisions to Central Office. Local Bureau of Indian

Affairs offices are most familiar with the tribes and local governments within their respective jurisdictions and, as a result, are best suited to conduct the land-into-trust review process.

Finally, any changes to the land-into-trust process must be undertaken in a manner consistent with the Department's trust responsibility and which furthers, not frustrates, the Department's obligations under, and clear objectives of, the IRA.

Sincerely,

Robert Smith
Chairman