



THE NAVAJO NATION

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Submitted VIA Email at consultation@bia.gov

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Department of the Interior
Bureau of Indian Affairs
1849 C Street NW.
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RE: Comments on Notice of Proposed Rulemaking Regarding Off-Reservation Trust Acquisitions and Action on Trust Acquisition Requests

This letter serves as comments to the potential revision of the trust acquisition regulations at 25 C.F.R. § 151. This subject is deeply important to the Nation which has and will affect the Nation's ability to govern and provide services to its members.

The Nation has acquired hundreds of thousands of acres of fee lands over the years in Arizona, New Mexico, and Utah that have yet to be placed in trust. The Nation owns approximately 585,052 acres of fee land in Arizona; 327,430 acres of fee land in New Mexico; and 1,825.14 acres of fee land in Utah. The Nation will keep some of this land in fee for use as collateral for loans and future land acquisitions but has applied, or will apply, to have the majority of this land taken into trust.

First and foremost, the goal and objective of the federal government's land-into-trust program is to fulfill the federal government's trust and treaty obligations to regain their land base. From the time when Indian tribes had first contact with non-Indians to today, Indian tribes have lost a huge amount of their land base, mostly due to the federal government's policy and actions. Now, there are many opportunities for Indian tribes to regain their land base. This restoration of aboriginal territory necessarily increases the opportunity for tribal members to live, work and flourish economically, socially, and spiritually. In addition, the Bureau of Indian Affairs website indicates as follows:

Taking land into trust is one of the most important functions the Interior undertakes on behalf of tribes. Acquisition of land in trust is essential to tribal self-determination. Tribes are sovereign governments and trust lands are a primary locus of tribal authority. Indeed, many federal programs and services are available only on reservations or trust lands. The current federal policy of tribal self-determination is built upon the principles Congress set forth in the Indian Reorganization Act and reaffirmed in the Indian Self-Determination and Education Assistance Act.

In light of these principles and obligations, the Department of Interior should give great deference to Indian tribes, above any other outside interests, in placing their land into trust. This deference to Indian tribes should be in place when the Department of Interior solicits comments from state and local jurisdictions.

We are still unclear as to why gaming is a consideration on whether to approve an application for land into trust. There does not appear to be a legal requirement to consider gaming. As such, it makes more sense to remove the question of gaming from the whole process of fee to trust. This would make the process consistent for all land into trust applications rather than separating land that may involve gaming and subjecting them to additional requirements under the fee to trust process.

In regards to the question of why an Indian tribe would prefer to have land in trust rather than fee, there are several considerations. First, under federal law, it is unclear if Indian tribes have full jurisdictional authority over lands they own in fee (see generally *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998)). In *HRI, Inc. v. E.P.A.*, 198 F.3d 1224 (2000), the 10th Circuit applied *Venetie* to Navajo Nation land, acknowledging the unclear jurisdictional authority that results on Navajo Nation lands that are not held in trust in Eastern Navajo (known as Eastern Agency). Limited or unclear jurisdiction makes it difficult for the Nation to use fee parcels for activities that call for regulatory oversight, including economic development. In Eastern Agency in particular, the Nation is limited in our ability to regulate because parcels of trust land are interspersed with allotted land in a checker board mix of fee, state, and federal lands. Land consolidation in Eastern Agency is especially important for the Nation so that we can eliminate the lack of clarity as to what laws apply to specific parcels by transferring as much of that land as possible into trust.

Second, when lands are in fee, there are tax implications for the Nation and its members who reside on those fee parcels. Enrolled tribal members who work for the Nation and reside on trust land are not subject to state income taxes. But members who reside on fee lands are subject to state income tax, even if those lands are owned by the Nation. This is an especially critical issue for our people because the unemployment rate on the Nation consistently approaches or exceeds 50 percent. Many of our families rely on a single income, and that income is also often called upon to assist extended family members when family financial emergencies arise. It is, therefore, vital that we limit our members' tax liability when possible. The Nation itself is also subject to state taxation of its fee lands, which forces the Nation to spend large sums of its limited budget to pay for these taxes while awaiting transfer of the land into trust. The Nation pays annual property taxes of approximately \$87,000 to Arizona and \$139,000 to New Mexico. These funds are diverted from much-needed services to our people or infrastructure for our Nation.

Third, the Bureau of Indian Affairs website also states additional benefits of trust acquisitions as follows:

The benefits to tribes are many. For example, trust acquisitions provide tribes the ability to enhance housing opportunities for their citizens. Trust acquisitions also are necessary for tribes to realize the tremendous energy development capacity

that exists on their lands. Trust acquisitions also allow tribes to grant certain rights-of-way and enter into leases necessary for tribes to negotiate the use and sale of the natural resources. Additionally, trust lands provide the greatest protections for many communities who rely on subsistence hunting and agriculture that are important elements of tribal cultures and life ways.

In order to address the problems associated with the fee-to-trust process, the Nation recommends that the process be streamlined in such a manner that enhances and honors tribal economic development and self-determination. The discretionary fee-to-trust process is far too time consuming, expensive, and complicated to address the economic development needs of the Navajo People. In meeting the NEPA requirements, the Department of Interior should look at either categorically excluding certain acquisitions and/or deferring to the tribal environmental process for those tribes who have an approved environmental process under approved regulations pursuant to the *HEARTH* act or, in regards to the Navajo Nation, the *Navajo Nation Trust Land Leasing Act of 2000*. Nonetheless, in any updates to the law or regulations associated with land into trust, Congress and the federal government should not create additional barriers to accomplishing a fee-to-trust transition. Certain legislation introduced in Congress that proposes to fix the *Carciari* issue contains provisions that add additional barriers to land-into-trust process. The process is already unduly expensive and lengthy. Adding more barriers will only serve a detriment to the Navajo Nation and other Indian Nations.

Sincerely,

THE NAVAJO NATION



Russell Begaye, *President*