

The SHOSHONE-BANNOCK TRIBES

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June 29, 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

The Honorable Ryan Zinke, Secretary
United States Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

RE: PROPOSED LAND INTO TRUST REGULATIONS

On behalf of the Shoshone-Bannock Tribes (Tribes), I offer the following comments because we have significant concerns regarding the proposed changes to 25 CFR 151, the Land Into Trust regulations. The most pressing issue is the potential weakening of the federal trust responsibility by the United States, and impacts to tribal sovereignty and economic self-determination of tribes.

The Fort Hall Indian Reservation was established in 1867 by President Johnson and was affirmed as our permanent home in the July 3, 1868 Treaty. In the interests of recovering our traditional homelands, the Tribes have a long history of land acquisition on and off the Fort Hall Reservation for a variety of purposes, including natural resource restoration, fish and wildlife conservation, water rights storage, economic development and specific historical locations identified in the July 3, 1868 Fort Bridger Treaty, and all other treaties and agreements between the United States and the Tribes'. The proposed regulations would offer additional barriers to Tribal lands going into trust status, and would also open unnecessary opportunities for non-Indian opponents to frustrate tribal efforts.

The Tribes strongly disagree with the proposed procedures for tribal consultation proposed in the "Dear Tribal Leader" letter received from the US Department of Interior's Acting Assistant Secretary John Tahsuda. As you are well aware, the federal obligation to consult

with Indian tribes is not a discretionary action and as we have continually emphasized with the Trump Administration, it is a federal obligation to take seriously. The United States of America has a special relationship with tribes created through a series of treaty agreements, statutory and case law. This special relationship has created a trust responsibility in favor of the Indian tribes. The trust relationship recognized by the U.S. Supreme Court decisions places a duty of loyalty upon the United States which is deemed a fiduciary duty. Any changes in how federal regulations address federal trust assets, that includes tribal trust lands, and individual allotted lands, must be brought to tribes in a truly collaborative manner. The Department of Interior has failed to do that with this consultation proposal.

The proposed schedule and locations of DOI official consultation reflects this misunderstanding of the federal consultation obligation to the Tribes. The proposed dates and locations for “formal consultation sessions” imposes the burden onto tribal leaders to pay the bill and travel hundreds of miles to “consultation sessions.”

The federal Indian policy of the Indian Reorganization Act (IRA) of 1934, was promulgated to support the promotion and development of a strong tribal government, and to support tribal economies. Section 5 of IRA, 25 U.S.C. §5108. It specifies the Secretary of Interior has the discretion to acquire any interest in lands, water rights, or surface rights to lands, on or off-reservation, for the purpose of providing lands for Indians. Section 5 is explicitly clear that this duty is to continue to support tribes for the purposes of self-determination and economic development.

As a federal decision-maker, the BIA is required to follow the National Environmental Policy Act (NEPA) which provides a transparent process for evaluating a federal action to determine environmental impacts. It also has a robust process for public engagement for public stakeholders.

The Shoshone-Bannocks Tribes have been a strong advocate for working with other partners to protect fish and wildlife resources by working with state and federal land managers to mitigate for the impacts of dam construction throughout the Snake River system. Additionally, the Tribes have been working with the Bureau of Indian Affairs to purchase private lands to provide adequate water storage for Tribal water rights off reservation at Greys Lake National Wildlife Refuge. We also have purchased lands off-reservation to provide access to tribally-significant rivers and streams, or to facilitate the exercise of off-reservation treaty rights by Tribal members. Future plans have been tentatively identified to purchase or transfer additional lands off-reservation for economic purposes or to correct lands stolen from the Tribes during and after the treaty era. The majority of these lands identified above are not in trust status at this time, but it would be beneficial to have a reasonably simple process for returning these lands into trust status. It would avert the Tribes from an economic burden to pay local taxes to neighboring local and state governments.

The proposed regulations are creating unnecessary burdens upon the Tribes by bifurcating the process for gaming and non-gaming purposes, and adding a new non-NEPA process, to address the needs and concerns of non-Indians. It also creates a new criteria and analysis based on distance from the current reservation boundaries, and would include non-Indian economic benefits for non-gaming land acquisitions. Section 151.11 (a) (2) (vii). Clearly, looking out for the wants of non-Indians *is not* in accordance with the intent of the IRA. It is reminiscent of the previous argument of earlier unsuccessful proposed policy changes based on commutability of tribal employees and distance from current reservation. It is clear these recent proposals are to advocate for state, local entities, and individuals who do not support tribal efforts to address land inequalities, or economic development for tribes.

This proposed process would also elevate state and local governments input to an even higher level than before, by forcing consideration of their concerns that would contribute to the initial decision-making by BIA, and to determine whether to proceed forward to a NEPA analysis. NEPA analysis requires a full consideration of all natural, cultural resources, economic, social impacts, environmental justice issues, for both direct, indirect and cumulative impacts. It also requires full public participation and disclosure. This proposed two-step method creates an unnecessary and duplicative process.

I reiterate that as a trustee for the tribes the BIA must not sacrifice their duties to tribes and to individual Indians, and defer to non-Indians and off reservation interests. Compelling tribes to engage in local negotiations with state and local municipalities ignores the trust responsibilities.

The proposed process creates several new barriers and expands the sphere of input into the decision-making process which can make it difficult to complete a land acquisition. It slows down the process for Tribal governments which already have a thick barrier of red tape to overcome in any land acquisition process, or to turn it into trust lands.

In the recent DTLL, the BIA asked tribes to answer specific questions:

1. The Tribes believe that the objective of the Land Into Trust Program should be to facilitate a process to provide a vehicle for tribes to consolidate on-reservation land parcels in a reasonable amount of time, preferably within one fiscal year. For off-reservation proposals, the process should be similar, that complies with existing federal laws. The BIA should ensure that sufficient BIA human resources are available to accomplish their duty to protect tribes as per the federal trust obligation.
2. Working with the BIA Fort Hall Agency has been challenging for the Tribes for our on-reservation land-into-trust applications. The BIA staff shortage, their lack of training for fee-to-trust conveyances, inadequate communication process between the BIA and the Tribes – have all resulted in unnecessary delays and financial burden to the Tribes.
3. For off-reservation trust applications, the BIA should prioritize Tribal input as the primary driver for all off-reservation trust applications. As long as the proposing tribe

follows the current laws and regulations, the rigorous regulations and procedures are already sufficient and acceptable. In the event of BIA disapproval for an off-reservation trust application, that decision must identify corrective measures and solutions to ensure future approval for tribes.

4. The BIA's criteria in current fee-to-trust regulations is adequate and additional requirements will only burden the Tribes with increase financial burdens and delay.

5. The regulations require all applications provide rationale and documentation to support the request, regardless of whether the application is for economic, gaming, historic or natural resource related reasons. The Tribes are concerned that the added procedural burdens of gaming proposals are contrary to the free-market economy to encourage growth and industry, and creates the perception of anti-Indian economic development and growth.

When an application for a land parcel located off-reservation and is intended for conservation purposes that require no change in use, the Tribes request that it be treated similar to an on-reservation acquisition.

6. The Tribes are confused as to why the BIA is asking about the advantages or disadvantages of operating on trust land or fee lands. The Tribes can assert its tribal sovereignty with less regulatory burdens and interference from the state or outside local governments. If it is for the purposes of gaming, it is the ability to engage in gaming operations and to ensure for our economic well-being.

7. Once an application is received by the BIA, then all applicable regulations and criteria should carry through the evaluation and decision making process. Constantly changing the criteria only sets up the tribes for continued delay and increased costs.

8. The current process under 25 CFR 151.10, provides the opportunity for state, local municipalities and stakeholders to offer public input for a federal decision by a federal agency. Impacts relating directly with the removal of that land from the tax rolls and any jurisdictional problems or conflicts are addressed under 25 CFR 151.10(e) and (f).

9. Memorandums of Agreements or other cooperative agreements are useful tools between governmental entities, but it should not be a prerequisite for a federal land-into-trust approval process. It is a common refrain in Indian Country that often our most difficult relations are with the local governments closest to our reservations, so sometimes the past conflicts may interfere with objectively good projects.

10. Recommendations that we offer are:

- a) Allow the tribes to develop their own process for taking land into trust with a concurrence from the local BIA representative within 180 days. This would allow the tribes to become the primary vehicle for managing the status of lands within their own reservation.


b. Land into trust applications off-reservation for non-gaming, non-economic development activities where the land use practices don't change or are for *bona fide* conservation purposes should be treated exactly the same as an on-reservation application. These would be managed by the tribes exclusively and concurred by the BIA within 180 days.

c. Land into trust applications for off-reservation non-gaming, economic development activities where land use practices remain consistent with local zoning or planning documents should be handled by the local BIA office. The local office would conduct facilitated meetings and forward a recommendation to the regional BIA office who would be authorized to make a determination within one year or less from the date of the application submittal.

The Tribes recognize the need to participate in the tribal input process for these proposed changes but I appeal to the Trump Administration to faithfully follow the tribal consultation process and to truly engage in sincere dialogue with the tribes. Tribes have contributed significant economic resources to local, regional and even national economies and it is appropriate that the United States engage in meaningful consultation.

The Tribes request that the proposed regulations not be approved because that approval would likely cause harm to the Tribes and create yet another obstacle to overcome for an already disadvantaged Tribes. The Shoshone-Bannock Tribes respectfully request your help to ensure that the federal government upholds their trust and treaty responsibilities to Indian Country and the Shoshone-Bannock Tribes. For questions regarding these comments, please contact Yvette Tuell, SBT Policy Analyst at ytuell@sbtibes.com.

Respectfully,



Nathan Small, Chairman
Fort Hall Business Council
Shoshone-Bannock Tribes

CC:

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