



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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June 29, 2018

Sent via Electronic mail to: consultation@bia.gov

Mr. John Tahsuda III
Principal Deputy Assistant Secretary
Department of the Interior
Bureau of Indian Affairs
1849 C Street N.W.
Washington, DC 20240

Re: Nez Perce Tribe Comments regarding proposed Revision of Fee to Trust Regulations,
25 C.F.R. Part 151

Dear Principal Deputy Assistant Secretary Tahsuda:

The Nez Perce Tribe (Tribe) provides the following comments and answers to the Department of Interior Bureau of Indian Affairs' (Department) draft revisions to the trust acquisition regulations at 25 C.F.R. Part 151 and questions related to this issue. Overall, the Tribe opposes changes that increase the burden on applicants, increase state or local government involvement in the application process, or expose a tribe to litigation risks from a final decision on an application.

The Tribe also supports the comments and recommendations on the proposed changes that are being submitted by the National Congress of American Indians (NCAI) that question the need for any changes to the regulations, moving forward with revisions without review by the newly confirmed Assistant Secretary of Indian Affairs Tara Sweeney, and the supposition that the regulations need to be made more defensible to litigation. As NCAI documents in its comments, trust land acquisition is designed to address the impacts of allotment of Indian reservations and to rebuild tribal land base, tribal governments, and tribal economies. Trust acquisition regulations should reflect and support these priorities.

10 QUESTIONS AND ANSWERS

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

The Tribe believes the objective of the land-into-trust program should be to assist and accommodate tribal efforts to consolidate and secure its sovereign territory to further its goal of self-determination. The Department can facilitate this process by providing uniformity and consistency in implementation of the regulations and by providing adequate guidance and training to staff so that assistance with navigating the process, which can be complicated and difficult, can be offered to tribes.

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

The Tribe's experience with the process is that it takes a tremendous amount of time and tribal resources to work with the Department and assistance with the process is lacking. Efficiency could be improved by maintaining regional and local control over the process and by ensuring Tribes have the necessary technical assistance for the process. The Tribe does not believe efficiency would be improved by adding additional federal requirements to the existing process.

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

The Tribe believes the current regulatory criteria for off-reservation trust acquisition should be followed. Also, acquisitions within a tribe's ancestral territory should be given weight as these lands are integral to a tribe's history and culture which makes them important components of economic development and self-determination for a tribe.

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

The nature of this question illustrates some of the problems with the current administration and implementation of the land-into-trust process. If a tribe complies with the law and regulations, the Department should approve the application. However, the fact is that tribes are uncertain whether an application will be approved even if the regulations are closely followed because of vague criteria, such as distance from the reservation and employment created with an application, that are applied in ways that are not clear and concise. In

addition, interests outside of the government-to-government relationship are giving too much latitude and consideration in the process. The Department should approve a trust application that promotes tribal self-determination and self-sufficiency.

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. To assume or categorize an application in this manner assumes that tribal government buildings, tribal health care and tribal housing are “non-economic development” uses. This assumption is not necessarily accurate and perpetuates an artificial demarcation between government and commercial use of land and tribal activities that is adverse to tribes. All tribal governmental activities, commercial and non-commercial, serve the same purpose of working to meet the needs of the public.

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

As stated above, all tribal activities are designed to effectuate the purpose of providing for tribal citizens. To inquire about a tribe’s use of the land, once acquired, is intrusive, paternalistic, and assumes that some uses are different or better/worse for a tribe or the area.

c. Whether the application involves no change in use?

All criteria of applications should be designed to efficiently assist a tribe in completing the process.

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

Although the Tribe does not see the relevance of this question regarding a tribe’s decision to pursue a trust application, the Tribe sees certain advantages to having land in trust. Those include prohibiting state intrusion into tribal affairs and help in clarifying jurisdictional issues. Tribal land development and governance should not be interfered with by state regulations and requirements.

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

The Tribe believes the Department should process applications as they come in and not wait for additional criteria to be applied. All applications currently in possession of the Department should be processed under the current regulations and not delayed.

8. How should the Department recognize and balance the concerns of state and local jurisdictions? What weight should the Department give to public comments?

Federal law does not require the Department to balance concerns of state and local jurisdictions. Analysis of tribal applications under the law should focus on the trust relationship between the United States and the tribe. Allowing state and local interests to interfere with or supplant tribal priorities to take land into trust runs counter to the objectives of the statute. Tribes are cognizant of the needs of the communities where their land is located and understand the impacts and benefits trust applications will have. However, concerns of a state or local government should not be allowed to interfere or halt an application. Although public comments can be considered they should not be given equal or more weight than that of the tribe making the application.

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?

Although a tribe could choose to enter into an MOU, it should not be a requirement or a significant part of the process. Local politics are too dynamic, unpredictable, and diverse across the country for it to be a reliable metric for an application. Tribes will enter into agreements if they do assist in economic development but the relation to these intergovernmental efforts and a trust application are not significantly enough connected to merit consideration in an application.

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

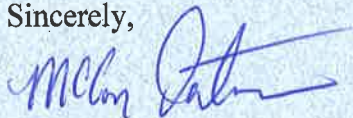
The Tribe recommends the Department better adhere to the deadlines for review and approval of applications and provide better technical assistance to tribes to help coordinate completion of the process in a timely and organized manner. In addition, decision-making authority should be returned to the regional offices.

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The Tribe also supports NCAI's recommendations for streamlining the NEPA process through the addition of certain Categorical Exclusions for applications that are for conservation purposes or that are consistent with existing land use in the surrounding area and also not reinstating the 30-day stay period when a decision is made to acquire land in trust.

Thank you for the opportunity to provide comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shannon F. Wheeler".

for Shannon F. Wheeler
Chairman