



Pokégnek Bodéwadmik · Pokagon Band of Potawatomi
Tribal Council

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June 25, 2018

Attn: Fee-To-Trust Consultation
Office of Regulatory Affairs & Collaborative Action
Office of the Assistant Secretary - Bureau of Indian Affairs
1849 C Street NW
Mail Stop 4660-MIB
Washington, DC 20240

RE: Draft Revisions 25 C.F.R. Part 151, Fee-to-Trust Regulations

To Whom It May Concern:

I am writing on behalf of the Pokagon Band of Potawatomi Indians ("Pokagon Band") to comment on the Department of the Interior's ("DOI") draft revisions ("Revisions") to 25 C.F.R. Part 151, specifically sections 151.11 and 151.12 (the "Regulations").

1. Introduction.

By letter dated October 4, 2017, DOI sought comments on the Revisions by December 15, 2017. By letter dated December 6, 2017, DOI extended the opportunity to comment on the Revisions until February 28, 2018. By letter dated February 15, 2018, DOI extended the deadline to comment on the Revisions to June 30, 2018. In addition to comments on the Revisions, the DOI requested input on ten specific questions. The Pokagon Band's comments and input are provided below.

2. Brief History of the Pokagon Band

To better understand the Pokagon Band's perspective on trust land acquisitions, it is important to recognize the history of the Pokagon Band and its dealings with the United States. Prior to the formation of the United States, the Potawatomi Tribe, of which the Pokagon Band is a constituent part, occupied the mid-west, including Wisconsin, southern Michigan, northern Indiana and northern Illinois.

The United States government has had continuous dealings with the recognized political leaders of the Pokagon Band from 1795 until the present. The Potawatomi villages in the St. Joseph River Valley were united behind the leadership of Leopold Pokagon in negotiation of the 1833 Treaty of Chicago (the "Treaty"). As a result of the Treaty, a majority of the Potawatomi were removed from Michigan and Indiana. However, the Pokagon Band remained in Michigan and Indiana following the Treaty.

A proud, compassionate people committed to strengthening our sovereign nation.
A progressive community focused on culture and the most innovative opportunities for all of our citizens.

Although avoiding removal from their ancestral homeland, the Pokagon Band was landless and had few of the resources needed for its support. The Pokagon Band struggled with the enormous changes of learning and adapting to farming and small-town commerce, after its traditional subsistence economy and culture of hunting and fishing were no longer sustainable. Throughout this time, although the Pokagon Band remained landless, it continued to maintain a tribal government.

During the nineteenth and twentieth centuries, the federal government never acquired land for the Pokagon Band and neglected its government-to-government relationship with the Pokagon Band. The federal government did not reaffirm its government-to-government relationship with the Pokagon Band until the enactment of the Pokagon Restoration Act under P.L. 103-232, September 21, 1994, 108 Stat. 2152, codified at 25 U.S.C. § 1300j et seq. It wasn't until 2006 that DOI acquired land in trust for the Pokagon Band.

3. Comments on the Revisions

The Pokagon Band opposes the Revisions.

The Pokagon Band believes that the Regulations should be revised in a manner that seeks to achieve the goals of the Self-Determination Era by advancing tribal self-governance and self-determination. The Regulations should remove burdens to the placement of land in trust by Indian tribes and should seek to remediate the catastrophic harms to tribalism and Indian life caused by the ill-conceived Allotment Era and the Termination Era, which eliminated the geographic foundation for tribal autonomy. The Regulations should also seek to fulfill the DOI trust responsibility to the applicants.

The Revisions fail to achieve those goals. Instead, the Revisions:

- a. Impose additional burdens or obligations on the applicant. For example, the Revisions would require an applicant to either provide intergovernmental agreements or explain why these agreements do not exist. Indian tribes should be able to determine if and when such agreements are desired.
- b. Impose delays on the acquisition of trust land. The Regulations currently provide that following an approval to take land in trust, the Assistant Secretary shall “immediately acquire the land in trust”. The Revisions propose a 30-day delay. Land should immediately be placed in trust upon approval to permit the applicant the immediate benefit of trust land, including during any legal proceedings challenging the decision. Additionally, as noted above, requiring an applicant to negotiate an intergovernmental agreement provides an unnecessary delay in the application process.
- c. Provide additional power and leverage to state and local governments in the trust application process. The Regulations currently provide an opportunity for the state or local governments to comment as to potential impacts on jurisdiction, real property taxes and special assessments, and the Secretary is required to consider jurisdictional problems and potential conflicts of land use which may arise. As noted above, the

Revisions would require an applicant to either provide intergovernmental agreements or explain why these agreements do not exist. Such a requirement places unnecessary power and leverage in the state and local governments over the trust application process, to the detriment of the Indian tribe.

4. Input on the Questions.

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

As stated above, the objectives of the land-into-trust program should include: (i) to achieve the goals of the Self-Determination Era by advancing tribal self-governance and self-determination, (ii) to remove burdens to the placement of land in trust by Indian tribes, (iii) to restore Indian tribes from the catastrophic harms arising from the Allotment Era and the Termination Era, and (iv) Assist DOI in fulfilling its trust responsibility.

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

For an Indian tribe, such as the Pokagon Band, to exercise its sovereignty to the fullest extent, it is critical that it have trust land, which is considered "Indian country" under federal law. In general: (i) tribal power is at its strongest within Indian country; (ii) Indian country forms the geographic barrier to assertions of state jurisdiction; and (iii) Indian tribes are subject to non-discriminatory state laws when operating outside of Indian country. Accordingly, for the Pokagon Band, trust land acquisitions are critical to fulfill the objectives of the Self-Determination Era.

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

Pending applications should not be subject to additional burdens that may be imposed as a result of any changes to the Regulations. However, to the extent any changes to the Regulations are less burdensome, pending applications should obtain the benefit of such reduced burden.

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

To the extent the state and local jurisdictions and the public provide concerns or comments regarding any trust application, the DOI should be mindful of the remedial objectives of the land-into-trust program and what it seeks to accomplish. History teaches us that for far too long, the United States sought to address and

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accomplish the concerns of the state and local governments and the concerns of the non-Indian public, resulting in disastrous consequences to Indian tribes and Indian people. To the extent DOI seeks to consider the concerns of state and local governments and the non-Indian public, such concerns should not outweigh those of the applicant who seeks to have land placed into trust. The DOI has a trust responsibility to the applicant. Additionally, to the extent an Indian tribe is seeking to have land placed into trust: (i) the Indian tribe, not the state, owns the land, the state isn't losing title to land if the application is approved; and (ii) if the application is approved, the state and local governments are relieved, either fully or partially, of certain burdens regarding the provision of certain services to such land.

- e. Question 9. Do Memoranda of Understanding ("MOU"s) 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?

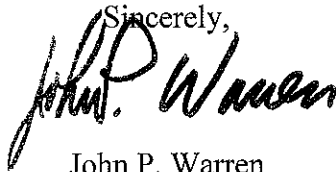
As explained above, whether an Indian tribe should enter into an MOU with a state or local government should be left to the Indian tribe to determine. Requiring, as part of the trust application process, that an Indian tribe enter into an MOU or explain why it has not entered into an MOU, not only delays the trust application process, but also undermines the remedial nature of trust land acquisitions by providing leverage to state or local governments to the detriment of the Indian tribe in negotiating such agreements.

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

Improvements should focus on making the land into-trust process faster and less burdensome for applicants. These improves include: (i) additional categorical exclusions to reduce the burden on applicants and the DOI with National Environmental Policy Act compliance, (ii) improvements on the title review and response process, and (iii) processing the application at the local and regional level and not the central office.

Thank you in advance for consideration of the Pokagon Band's comments.

Sincerely,



John P. Warren
Tribal Council Chairman
Pokagon Band of Potawatomi Indians