



# The Minnesota Chippewa Tribe

February 20, 2018

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Attn: Fee-to-Trust Consultation  
Office of Regulatory Affairs & Collaborative Action  
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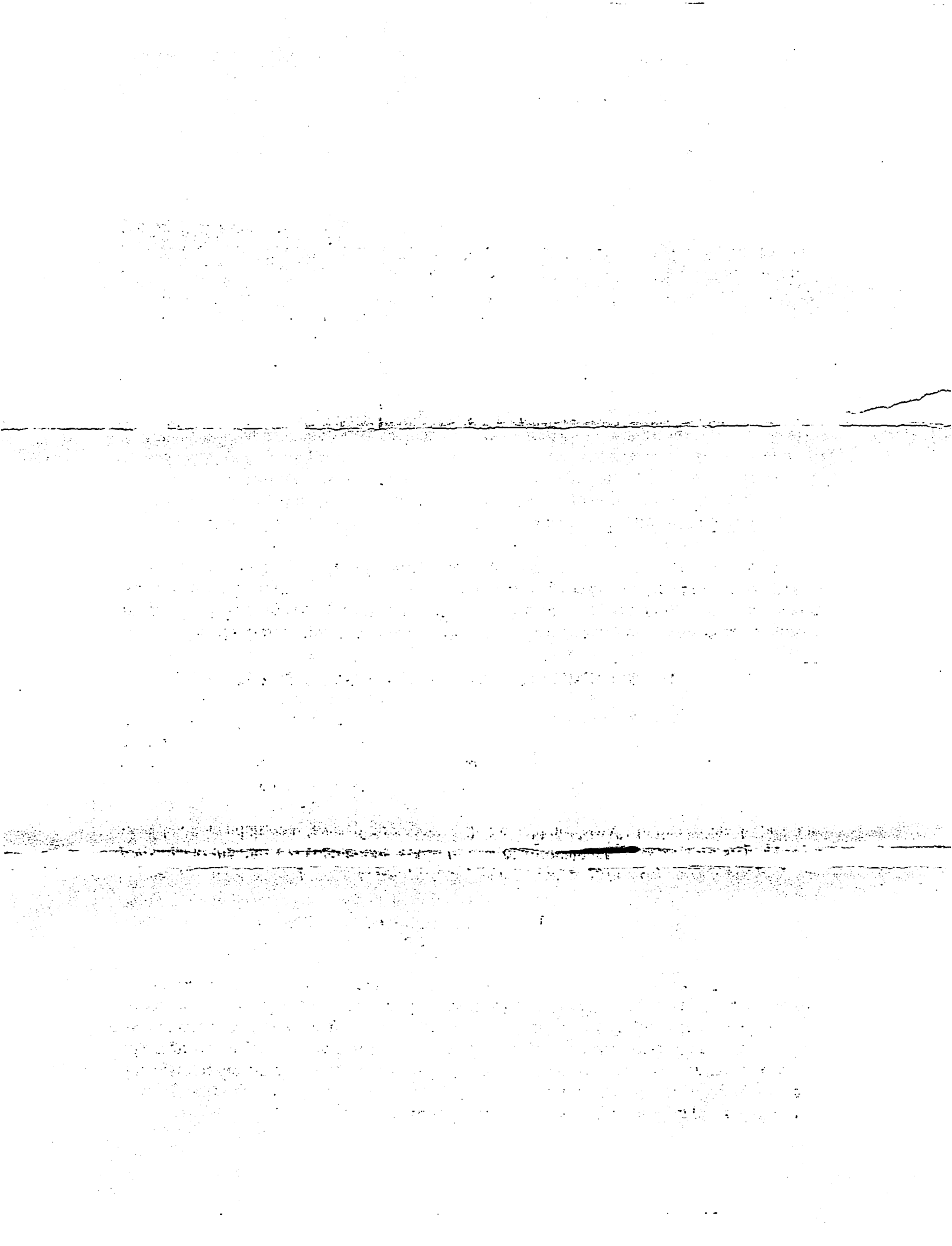
VIA EMAIL

**Re: *Written Comments on the Consultation Draft of Revisions to Trust Acquisition Regulations at 25 C.F.R. § 151.11 & § 151.12***

On behalf of the Minnesota Chippewa Tribe, I submit these written comments related to the Consultation Draft of Revisions to Trust Acquisition Regulations at 25 C.F.R. §§ 151.11 and 151.12 (“Consultation Draft”). The Minnesota Chippewa Tribe is a federally recognized Indian tribe that is comprised of the following six Bands: Bois Forte; Fond du Lac; Grand Portage; Leech Lake; Mille Lacs; and White Earth. The United States has government-to-government relationships with the Minnesota Chippewa Tribe and each of the six Bands. These comments focus on general topics related to the Consultation Draft. The Bands of the Minnesota Chippewa Tribe will be submitting substantive commentary as well.

The Indian Reorganization Act (the “IRA”) represented a significant shift in federal Indian policy by “establish[ing] machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically.” *Morton v. Mancari*, 417 U.S. 535, 542 (1972). In passing the IRA, Congress realized that tribal self-government relied heavily upon tribal land bases. As such, the express purpose of the Act was “to conserve and develop Indian lands and resources.” The IRA addressed the conservation and development of tribal lands on two fronts. First, the IRA brought an end to the federal allotment process. Second, the IRA promoted development of tribal lands through the fee-to-trust process embodied in Section 5 of the Act.

Section 5 of the IRA authorized the Secretary of the Interior to acquire land in trust for Indian tribes and individual Indians. Federal allotment and other destructive federal policies left Indian tribes impoverished after 90 million acres of tribal lands were taken from them. Only about 8 percent of the 90 million acres has been reacquired by tribes to date.



The federal government has a trust obligation to the Minnesota Chippewa Tribe and its Bands as a result of treaty making. Section 5 of the IRA imposes a fiduciary duty upon the Secretary of the Interior, as trustee for Indian tribes, to take land into trust for tribes. The Part 151 regulations govern a critical aspect of the federal government's obligation as trustee. The regulations dictate how the government acquires land in trust for the benefit of tribal governments. The changes to the Part 151 regulations represent a significant departure from current practices and would further complicate the already cumbersome fee-to-trust process.

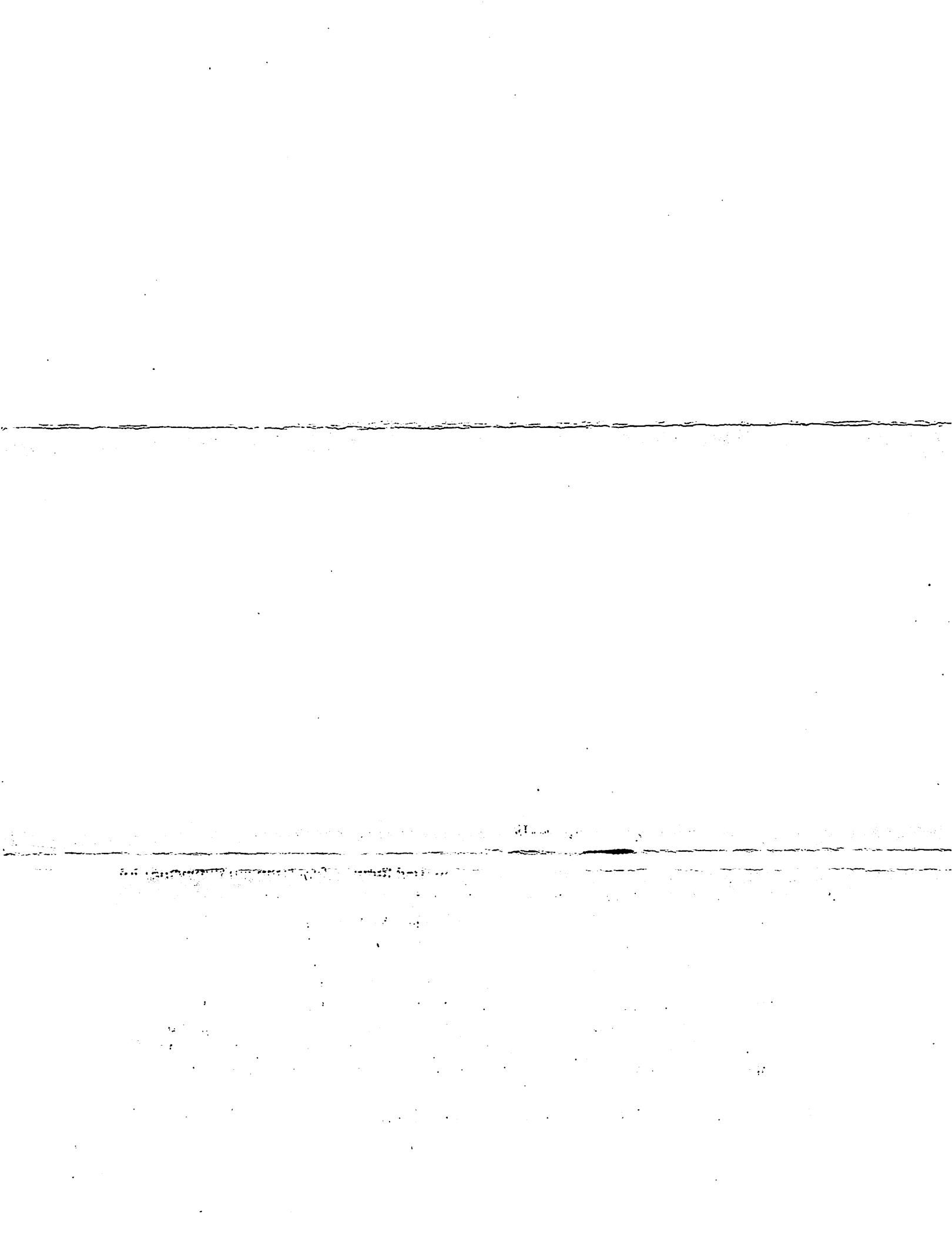
## **I. THE CONSULTATION DRAFT ADDS A LEVEL OF BUREAUCRACY TO AN ALREADY CUMBERSOME PROCESS**

The fee-to-trust process is complicated, time consuming, and expensive. The proposed revisions to the Part 151 regulations would further complicate the process. Two-step approval would add an additional layer of bureaucracy that would not benefit Indian tribes. In fact, the Consultation Draft's singular aim is to make it easier for the Department of the Interior to reject fee-to-trust applications. The proposed changes were not generated in Indian Country and are clearly not meant to benefit Indian Country. Adding an additional layer of bureaucracy is also contrary to the fundamental mission of the Trump Administration which is to advance economic development and self-determination by eliminating regulation and bureaucracy.

## **II. THE ADDITIONAL APPLICATION ITEMS ARE UNLAWFUL**

The additional application items proposed for discretionary off-reservation acquisitions are unlawful. The regulatory burden placed on off-reservation applications is great but is in no way supported by statutory law. The IRA does not distinguish between on-reservation and off-reservation acquisitions. In fact, no Act of Congress supports treating off-reservation acquisitions different from on-reservation acquisitions. Fee-to-trust requirements based on a parcel's off-reservation status were unlawful when they were promulgated and remain unlawful today. The only practical effect of requiring the additional applications items is to give the Department of the Interior more reasons to deny fee-to-trust applications.

The additional requirements related to off-reservation acquisitions for gaming are also unlawful. Neither the IRA nor the Indian Gaming Regulatory Act ("IGRA") support requiring heightened standards for off-reservation acquisitions for gaming. The IGRA prohibits gaming on lands acquired after 1988 unless the land qualifies under one of the limited exceptions listed in 25 U.S.C. § 2719. 25 U.S.C. § 2719(c) states "[n]othing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust." By enacting this language, Congress made it clear that the gaming eligibility or ineligibility of a parcel should not impact whether such parcel should be taken into trust. The Consultation Draft's incorporation of gaming eligibility into the fee-to-trust process is contrary to the IGRA. The Consultation Draft also creates a new regulatory function for the Secretary of the Interior with regard to Indian gaming that is not supported by law or policy.



### III. REINSTATING THE 30-DAY WAITING PERIOD IS UNNECESSARY

The Consultation Draft would reinstate a thirty-day waiting period to delay successful applications from being taken into trust. The intent of the thirty-day waiting period was to provide individuals with a chance to file administrative appeals. If an appeal was filed, the Department would wait to formally take the property into trust until the appeal was resolved. The Supreme Court's 2012 decision in *Patchak* removed the need for the thirty-day waiting period by holding that certain individuals could challenge fee-to-trust acquisitions by bringing suit under the Administrative Procedure Act ("APA"). This means that individuals can now challenge fee-to-trust acquisitions within the APA's six-year statute of limitations. Reinstating the thirty-day waiting period is unnecessary due to the holding in *Patchak*. There is no legal or policy rationale for reinstating the thirty-day waiting period.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Dupius, Sr.", with a stylized flourish at the end.

Kevin R. Dupius, Sr.  
President

