

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

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A People of Vision

A Confederation of the Salish,
Pend d' Oreille
and Kootenai Tribes

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COMMENTS ON THE DEPARTMENT OF INTERIOR'S
POTENTIAL REVISIONS TO THE INDIAN TRUST LAND ACQUISITION
REGULATIONS IN 25 C.F.R. § 151
February 13, 2018

The Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Indian Reservation are comprised of three tribes: the Bitterroot Salish, the Upper Pend d'Oreille, and the Ksanka Kootenai. Ancestors of the three tribes lived in the territory now known as western Montana, parts of Idaho, British Columbia, and Wyoming. The CSKT aboriginal territory exceeded 20 million acres at the time of the signing of the Hellgate Treaty with Washington Territory Governor Isaac Stevens on July 16, 1855. From the signing of the Treaty until present day, the CSKT call the 1.317 million acre Flathead Indian Reservation its home.

Over the past 100 plus years with the passage of the Flathead Allotment Act and its Amendments (similar to the Dawes Act), the opening of the Reservation to homesteading, and various other federal actions, the CSKT land and resource base within and outside the exterior boundaries of the Reservation has been severely injured and diminished. Prior to the passage of the Indian Reorganization Act in 1934, CSKT ownership of land within the Flathead Indian Reservation was around 30%. Since then the Tribes have consistently been trying to buy back lands within their own Reservation. Due to the perseverance and vision of the CSKT leadership throughout the decades, the Tribes now own over 60% of lands within the exterior boundaries of the Flathead Indian Reservation. Placing CSKT lands into trust status has been a time consuming but worthwhile endeavor for tribal self-determination.

At the NCAI Annual Convention this past October in Milwaukee, the CSKT spoke in opposition to the proposed changes to the fee to trust regulations during a listening session conducted by Principal Deputy Assistant Secretary of Indian Affairs, John Tahsuda. The CSKT stand by its testimony from this past October and oppose changes to the fee to trust regulations that place more hurdles for tribes to overcome to restore their homelands to trust ownership. Below are the CSKT responses to questions in the December 6, 2017 Dear Tribal Leader letter signed by Principal Deputy Assistant Secretary of Indian Affairs Tahsuda:

Consultation Questions and CSKT responses:

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

The objective should be to outlay a consistent, efficient process fully supporting the efforts of tribes to restore their homelands on Reservation and culturally significant areas within their aboriginal territories. Many tribes such as the CSKT were affected by the Dawes Act or similar legislation that opened their reservations to non-Indian homesteading.

The Department should be working to fulfill its trust responsibilities to tribes by supporting tribal restoration of their homelands through the fee to trust process, especially on Reservation, but also culturally significant areas off Reservation.

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

For the CSKT, the BIA Flathead Agency Superintendent, through delegation of the BIA Northwest Regional Office, as well as the BIA Northwest Regional Director, is very effective in addressing on-Reservation land into trust applications. CSKT staff work diligently with the BIA to ensure compliance of the regulations required in completing the process.

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

An application should always be considered. The determination to disapprove an application at the beginning should only be based on the merit of not meeting the required components of the regulations. The regulations clearly identify the reasons tribes have for placing land into trust. As long as the reasons meet the criteria, the process should be allowed to continue. When done correctly, any concerns are properly mitigated or removed throughout the process (outlined in Preliminary Opinion of Title). Thus, there should be NO reason to deny an application at the beginning of the process.

For the CSKT, it is crucial for the Department to approve trust applications for culturally sensitive areas off-Reservation within our Tribes aboriginal territory. The CSKT believe off-Reservation culturally important areas and off-Reservation natural resources are deserving of protection.

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

The criteria should be no different than the criteria required for on-Reservation land. The need and use of the land need to be legitimate, and as stated earlier, concerns are addressed and mitigated throughout the process.

The CSKT believe the criteria already in place is more than adequate for off-Reservation trust acquisitions. As is, it takes a number of years for an application to get final Department approval no matter if the parcel is on or off-Reservation.

5. Should different criteria and/or procedures be used in processing off-reservation applications based:
 - 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)?

The criteria should be consistent, regardless of economic vs. non-economic. Any concerns should be mitigated throughout the process. Nonetheless, it would be of great assistance to tribes if the criteria could be more flexible and less time consuming for off-Reservation applications that are for non-economic purposes.

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

As stated above, the criteria should be consistent. Additional criteria for gaming purpose applications already exists.

- c. Whether the application involves no change in use?

It would be of great assistance to tribes if the criteria could be more flexible and less time consuming for off-Reservation applications where no change in use is intended. All CSKT off-Reservation applications thus far have had no change in use.

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

The advantages of operating land in trust status is it gives tribes to the ability to manage and protect their lands with less regulatory burdens and would be less harmful to tribal self-determination.

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

No, there are many opportunities for review and comment throughout the fee to trust process. As long as all concerns have been properly addressed or mitigated, the process should be final.

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

Their concerns should be recognized as real concerns but also be recognized as being jurisdictions within Reservation boundaries. All concerns raised should be addressed by tribes and the process should be allowed to continue. Many applications are going to be labeled a burden by local governments so some discretion should also be given to the concerns, especially when tribes can demonstrate their contributions to the jurisdiction in question. The public comment period is important and should not be dismissed, but it should also not be an end-all to the process if tribes can show mitigation of the raised concerns.

In addition, If an application is accepted by the BIA, local jurisdictions have the opportunity to appeal to the applicable BIA Region. Further appeals can also be made to the Interior Board of Indian Appeals and eventually through the federal court system.

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?

The key to completing a fee to trust application is the ability to address and or mitigate the concerns raised throughout the process. Whether the mitigation is in the form of an MOU or some other agreement, that is up to each tribe, state, or local government to decide. An MOU should not be reflected on the application as part of the process. The tool to mitigate concerns should be left up to the tribes to determine what solution is best for them.

The CSKT have yet to make any off-Reservation application for economic development projects. Nonetheless, improved government to government relationships are beneficial to all, with or without MOUs.

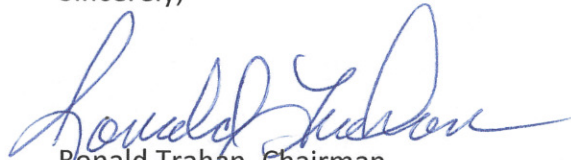
10. What recommendations would you make to streamline/improve the land-into-trust program?

The fee to trust process needs to be consistent and efficient. The process is supposed to allow tribes the ability to restore their homelands, but in recent years has been evolving to slow the progress many tribes have overcome to place land into trust status.

The process is also very time consuming and costly for tribes. The same is true for individual tribal members going through the process. Streamlining applications where no change in use is intended would be beneficial to tribes and their members.

Thank you for giving our Tribes the opportunity to provide input on the draft revisions concerning the fee to trust regulations. Please feel free to contact CSKT Tribal Attorney, Daniel J. Decker or CSKT Tribal Lands Department Head, Carolee Wenderoth if you have any questions. Both can be reached by phone at (406) 675-2700, or via email at Daniel.Decker@cskt.org and Carolee.Wenderoth@cskt.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald Trahan".

Ronald Trahan, Chairman

Confederated Salish and Kootenai Tribes