



January 26, 2018

Via email to consultation@bia.gov

John Tahsuda
Principal Deputy Assistant Secretary – Indian Affairs
Office of the Secretary
Washington, DC 20240

Dear Principal Deputy Assistant Secretary Tahsuda:

I submit this letter on behalf of member tribes of the California Fee-to-Trust Consortium in response to the Department's "revised consultation" of January 16, 2018 in Sacramento, California regarding potential revisions to the trust acquisition regulations at 25 C.F.R. Part 151.

I. Background on the Consortium

California Tribes have a unique history of tribal land loss in the United States. Between treaties that promised 8.5 million acres that were never ratified, a land-poor rancheria system that is unique to the state, and a federal termination policy in the 1950s that dismantled California tribes' governments, the Native nations were left with hardly any lands under their authority. Many tribes struggle to regain territory in order to support the basic needs of their citizens — housing, economic development, and essential services such as schools and health care. Frustrated by the federal government's handling of applications to put land into trust, a group of California tribes began working with the Bureau of Indian Affairs in 1998 to streamline the process by which tribes can secure landholdings that are protected by trust status. In 2000, California-based tribes decided to launch a proactive effort to overcome a 20-year land-into-trust deadlock, and the California Fee-to-Trust Consortium was born. Since its inception, the Consortium has helped to move 28,196 acres into trust status. Also, the average processing time has decreased tremendously. The California Fee-to-Trust Consortium has made it possible for the federal government to manage tribal trust applications in a timely and consistent way.

II. Consortium Response to Current Consultation Process

The Consortium submits that the consultation process currently being employed by the Department is inconsistent with the intent and letter of the Bureau of Indian Affairs' Government-to-Government Consultation Policy of December 13, 2000, pursuant to Executive Order 13175. Accordingly, we submit this letter seeking clarity with regard to

the specific purpose of the December 6, 2017 letter in relation to the Consultation Policy. Is this process intended to correspond with the pre-scoping process outlined in the Consultation Policy? If so, has the Department engaged in an analysis of the strengths and weaknesses of the current land-into-trust process, and when does the Department intend to submit informational packets to Tribal Leaders setting forth this analysis? If the current process is not intended to comply with the pre-scoping process outlined in the Consultation Policy, please provide tribal leaders with a detailed explanation of how you intend to proceed.

To date, the Department has failed to submit to Tribal Leaders any helpful information regarding the need to overhaul the land-into-trust process, and does not appear to have engaged in any internal analysis of the efficacy of the current process. Instead, Tribal Leaders have received two unsolicited letters from our trustee – dated October 4, 2017 and December 6, 2017 - that appear to respond to the concerns of third parties and communities, not Indian tribal governments. The scheduling of consultations as set forth in these letters suggests that the Department is fast-tracking this process in order to achieve a predetermined outcome that ignores the comments and concerns raised by tribal governments.

III. Conclusion and Request for Action

As the Department is well aware, issues involving the land-into-trust process are fundamental to the furtherance of self-governance, are national in scope, and as a result demand consultation by the Department at its highest levels. The Consortium respectfully submits that nothing short of full and meaningful consultation through the resurgence of the Tribal Leader Taskforce and negotiated rulemaking process is warranted here. Further, to rectify the inadequacies inherent in the Department's current process, the Department must clearly identify the problem(s) associated with the current land-into-trust process, conduct consultations in all Bureau of Indian Affairs regions, and establish an adequate timeline for consultations that is in line with the critical importance of homelands for all tribes. Also, there should be a confirmed Assistant Secretary – Indian Affairs and Department leadership who are actively and consistently participating in this process. Unless and until this occurs, the Department should refrain from introducing any specific proposed changes to the land-into-trust process.

Sincerely,



Robert Smith, Chairman
California Fee-to-Trust Consortium