

GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

“Putting Our People First”

Stephen Roe Lewis
Governor



Monica Lynn Antone
Lieutenant Governor

October 26, 2017

Dear Acting Assistant Secretary Tashuda:

Thank you for providing the Gila River Indian Community (the “Community”) with the opportunity to comment on the Advanced Notice of Proposed Rulemaking regarding possible revision of the Licensed Indian Trader Regulations currently found at 25 C.F.R. Part 140 (the “Regulations”). The Community believes the Regulations should be revised to reflect how Reservation economies work in the 21st Century.

The Community attended a listening session with the Department of Interior (the “Department”) during the recent Annual Convention of the National Congress of American Indians (“NCAI”). During the listening session, the Department presented information indicating the Department wants to empower tribes and return economic sovereignty to tribes by assisting them in developing self-sustaining economies. The Department also presented feedback it already received on the Regulations from Indian Country. The feedback suggested the Department give tribes the exclusive ability to tax and regulate trade and commerce on Indian Lands and allow tribes to opt-out of certain federal regulatory oversight on Indian Lands. The Community also attended a break-out session at NCAI where NCAI suggested the Licensed Indian Trader Statutes found at 25 U.S.C. §§ 261-62 permit preemption of state taxes on Indian Lands. The Community agrees with the feedback already received by the Department and believes the Department can and should develop a comprehensive regime of regulations that would preclude state regulations and taxes on Indian Lands. However, the Community is mindful of the body of federal case law that upholds state regulation and taxes on Indian Lands. *See Yavapai-Prescott Indian Tribe v. Scott*, 117 F.3d 1107 (9th Cir. 1997); *Gila River Indian Community v. Waddell*, 91 F.3d 1232 (9th Cir. 1996); and *Salt River Pima-Maricopa Indian Community v. Arizona*, 50 F.3d 734 (9th Cir. 1995). The Community understands that building a comprehensive regime of regulations to preempt state taxation on Indian Lands is a long shot, but we believe it is worth a try.

The Advanced Notice of Proposed Rulemaking requests tribes to include in their comments information on specific economic development projects that were not initiated or approved under existing regulatory requirements but would move forward if new regulations giving tribes greater

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economic flexibility were promulgated. The Community has been relatively successful in developing projects despite the current regulatory requirements. Nevertheless, less oversight by the Department would be immensely helpful with the Community's economic development efforts. The Community believes the Department should initiate a comprehensive review of all regulations affecting economic development on Indian Lands.

In 2015, the Department approved the Community's commercial leasing regulations under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012, 25 U.S.C. §§ 415 et seq., (the "Community Leasing Regulations"). While the approval of the Community Leasing Regulations will make the leasing process faster for leases on Community Trust Land in the future, nearly all of the Community's business leases were approved under and must continue to follow 25 C.F.R. Part 162 (the "BIA Leasing Regulations") because they were approved prior to 2015 or they include allotted land.

It is no secret that the Bureau of Indian Affairs (the "BIA") is not efficient in performing its duties under the BIA Leasing Regulations. Under the BIA Leasing Regulations, the BIA is supposed to approve or deny the lease within sixty (60) days of its receipt of a complete business lease package. 25 C.F.R. § 162.440(b)(2). However, the BIA rarely approves a business lease that quickly. The BIA Leasing Regulations do allow the Community to take "appropriate action" if the lease is not approved or denied within the timeframes set forth, but the appropriate action just puts an additional administrative burden on tribes and does not encourage the BIA to move faster in approving or denying leases. The Community suggests the Department promulgate a general provision in the BIA Leasing Regulations that allows tribes to deem leases and subleases approved if the BIA does not act timely to approve or deny the leases or subleases.

Similarly, the BIA often takes an exceptionally long time to approve environmental reviews required under the BIA Leasing Regulations. Frequently, the Community completes all requirements for a lease under the BIA Leasing Regulations but cannot be issued a lease because the BIA has not approved the environmental review. The Community Leasing Regulations allow the Community to perform its own environmental review for Community Trust Land. The Indian Self Determination and Education Assistance Act of 1975 (25 U.S.C. § 5301 et seq.) already permits tribes who participate in self-governance to assume some Federal responsibilities¹ under the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.), the National Historic Preservation Act (16 U.S.C. §§ 470 et seq.), and related provisions of law and regulations. 25 U.S.C. § 407(b). The Community recommends the Department promulgate regulations that allow tribes perform their own environmental reviews under the BIA Leasing Regulations as well.

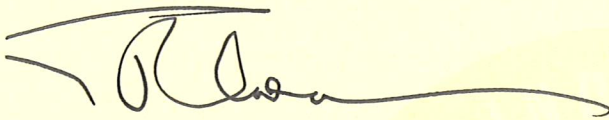
Finally, the BIA does not have the necessary Geographic Information System ("GIS") mapping technology for accurately determining the lands it includes in leases. The imprecision with

¹ 25 U.S.C. § 5389(a).

which the BIA determines what land is included in a lease is an anathema to development. The Community strongly encourages the Department to develop the GIS mapping technology the BIA needs to create legally correct leases.

The Community looks forward to the Department's proposed rulemaking on the Licensed Indian Trader Regulations. The Regulations, like so many other rules, need to be updated to reflect how economies work in the 21st century. Business moves fast nowadays, and the Department's regulations need to move with it. Currently, the Department inhibits Indian tribes from competing in the modern economy. If Secretary Zinke really wants to empower tribes and reduce the regulatory burden, the Department needs to initiate a comprehensive review of all regulations affecting economic development on Indian Lands.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Roe Lewis", with a long horizontal flourish extending to the right.

Stephen Roe Lewis, Governor
Gila River Indian Community

