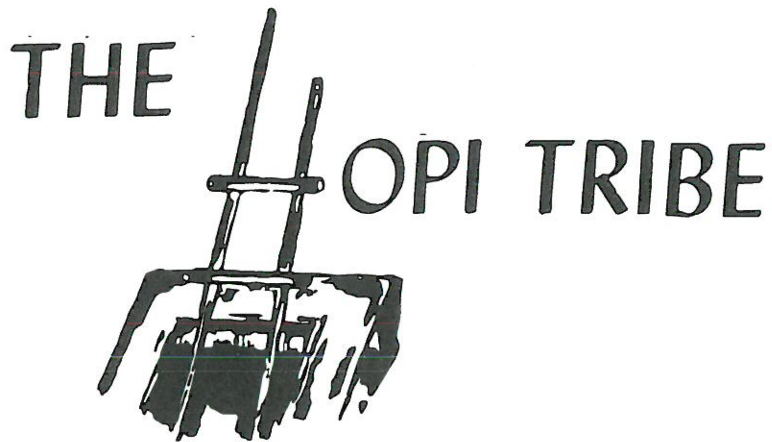


Timothy Nuvangyaoma
CHAIRMAN

Clark Tenakhongva
VICE-CHAIRMAN

June 26, 2018

Mr. John Tahsuda
Acting Assistant Secretary—Indian Affairs
U.S. Department of the Interior
1849 C Street, NW
Washington D.C. 20240

Re: Comments in Opposition to Proposed Changes to 25 C.F.R. § 151

Dear Acting Assistant Secretary Tahsuda,

On behalf of the Hopi Indian Tribe ("Tribe"), I am writing to state our concern about the Department of the Interior's ("Department") proposed rulemaking on 25 C.F.R.§ 151. I would like to begin by expressing our appreciation for the opportunity to provide comments as well as for Acting Assistant Secretary Tahsuda traveling to Arizona to consult with tribal leaders regarding the proposed rulemaking. However, Indian Country did not ask for the Department to make changes to the fee-to-trust process and the Tribe opposes any efforts to create new obstacles.

The Hopi Tribe resides on a 2,500 square mile reservation located in north eastern Arizona. Our reservation is unique in that it is landlocked and completely surrounded by the Navajo Nation's reservation. Therefore, it is absolutely essential for our Tribe to look off-reservation for lands for economic development, housing, and other needs because the only land that is adjacent to our reservation is the Navajo Reservation. This situation makes the fee-to-trust process very important to the Tribe.

The Indian Reorganization Act

The Indian Reorganization Act (IRA) and the Part 151 regulations are working for Indian Country and helping tribal nations to rebuild their homelands. The IRA's language and the powers it granted to the Secretary are broad. Acquisitions under the IRA are not limited to on-reservation lands or the reacquisition of allotted lands. Further, the IRA did not make distinctions between on-reservation and off-reservation lands. As a result, the Department should not impose undue burdens on off-reservation acquisitions through this rulemaking.

Concerns with Last Fall's Discussion Draft Rule

When the Department begins changing its regulations and processes, it is always better to listen to tribal leaders before undertaking such an effort. For that reason, we were pleased that the Department listened to Indian Country and subsequently withdrew the discussion draft and abandoned that rulemaking process. Nevertheless, I feel compelled to share some of the Hopi Tribe's concerns with the proposal.

The discussion draft created a two-step review process to address state and local governments' concerns. The current Part 151 regulations already take into account the local governments' views, and the proposed two-step process would only complicate the fee-to-trust process and place new hurdles in the way of tribal nations reacquiring lands. The proposal also contained a requirement that the applicant tribal nation enter into an MOU with the local governments, and if it did not, it was required to explain why. The current regulations do not require MOUs. MOUs may be best practices, but they are not always possible to achieve. The Hopi Tribe has a great relationship with our local neighbors but not all tribal nations are that fortunate. The MOU requirement could tip the scales in favor of local communities and provide them with more leverage to extract concessions from tribal nations. Worse, the MOU could even be seen as providing local communities with a pocket veto on fee-to-trust acquisitions.

Ways to Improve the Fee-to-Trust Process

As the Department searches for ways to improve the fee-to-trust process, the most obvious issue that needs to be addressed is where the decision-making process occurs. In April 2017, the Department moved decision-making authority for non-gaming off-reservation fee-to-trust applications from the regional offices to the Central Office. This creates a logjam at the Central Office because it does not have the resources or expertise to process so many applications from diverse regions. The regional offices have the local expertise, institutional knowledge, and resources to effectively and efficiently handle these applications. The Department should return decisional authority to regional offices for non-gaming off-reservation applications.

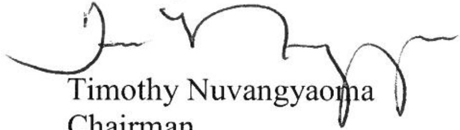
Another improvement that the Department could immediately initiate is abandoning the 30-day self-stay policy for fee-to-trust acquisitions. The *Patchak* decision made clear that the Quiet Title Act does not protect fee-to-trust applications from legal challenges. Therefore, the 30-day self-stay is no longer necessary and land should be placed immediately into trust upon approval of the application. The 30-day self-stay prolongs the fee-to-trust process and allows legal challenges, even frivolous challenges, to prevent land from going into trust. This causes tribal nations to deal with added expenses and uncertainty.

Conclusion

I would also like to express the Tribe's concern that the Department is pursuing this critical rulemaking that will have a major impact on tribal nations without a Senate-confirmed political appointee at the helm. The Senate has yet to confirm an Assistant Secretary-Indian Affairs, which is an important aspect of the checks and balances built into the United States Constitution. The Department's current consultation efforts would be better served if Senate-confirmed political appointees were leading this effort.

In closing, I acknowledge that there are always areas where the process can be improved, but I am skeptical that this rulemaking will result in net improvements. While the Hopi Tribe is always open to discussing ways to improve the fee-to-trust process, we must oppose any efforts to create new obstacles.

Sincerely,



Timothy Nuvangyaoma
Chairman
Hopi Indian Tribe

cc: The Honorable Tom O'Halleran, United States House of Representatives