



## THE TULALIP TRIBES

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The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, and Skykomish tribes and other tribes and band signatory to the Treaty of Point Elliott

June 30, 2018

Department of the Interior  
[Consultation@bia.gov](mailto:Consultation@bia.gov)

### **Re: Tulalip Tribes Comments on Potential Revisions to 25 C.F.R Part 151 – Fee-to-Trust Acquisition Regulations**

The Tulalip Tribes, the successors in interest to the Snohomish, Snoqualmie, and Skykomish tribes and other tribes and bands signatory to the Treaty of Point Elliot of 1855, respectfully reiterates its strong opposition to proposed revisions to 25 C.F.R. Part 151 (Part 151) fee-to-trust regulations and asks that the Department cease regulatory review of these regulations. If the Department continues to move forward, we ask that the Assistant Secretary of Indian Affairs Tara Sweeney participate in this process through meaningful consultation with Indian tribes. It is critical that the Department understand the unique challenges faced by different regions and tribes to improve and help streamline the current fee-to-trust process.

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

Restoration of tribal lands is *the* objective of the land-into-trust program. When Congress gave the Department the authority to put land into trust for Indian tribes, the sole objective was restoration of tribal lands. At that time, there were no restrictions on the purpose of this authority; the authority was to simply ensure that Indian tribes would be able to restore lost lands and increase tribal self-sufficiency. Throughout the years and through various administrations, the land-into-trust process has become a time-consuming and resource intensive process for tribes and is at odds with the original intent of the Department's authority under this process. Accordingly, the Department should be working toward improving the process at the regional level by providing additional resources and guidance that will allow the regional offices to process applications more efficiently.

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

The Tulalip Tribes is satisfied with how the Northwest regional office processes on-reservation fee-to-trust applications. Regional offices are best positioned to process land-into-trust applications because they have a better understanding of the unique challenges of the tribes in their region. The National Environmental Policy Act (NEPA) process however continues to be extremely time-consuming, cumbersome, and expensive for tribes. The Department should categorically exclude all on-reservation applications from NEPA. Also, if an environmental review under NEPA has already occurred for a parcel of land such as under the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act, or otherwise under Title II of the Indian Trust Asset Reform Act (ITARA), it should be able to use its Department-approved environmental review process in lieu of federal environmental review for on-reservation trust applications as well. Having tribes repeat the NEPA process for the same parcel of land is duplicative and unnecessary and frustrates the process.

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

Current regulations state that land should be acquired in trust where: (a) there is statutory authority to do so; and (b) if off-reservation, where either the tribe owns an interest in the land; or the Secretary determines the land acquisition is “necessary to facilitate tribal self-determination, economic development, or Indian housing.” 25 C.F.R. § 151.3 (a)(2)-(3). Applications that fall under this category should be fast tracked through the process.

The Tulalip Tribes reservation consists of approximately 22,000 acres. At one time Tulalip owned less than 5000 acres due to federal allotment laws and policies. Over time, while Tulalip has reacquired a portion of these lost lands, the Tulalip Indian reservation is a checkerboard reservation with the most desirable land owned by non-Indians. Accordingly, Tulalip has limited areas on the reservation where it can develop and build because of lost land and flood and wetland areas. To overcome this challenge, Tulalip has purchased various parcels of land off the reservation but within 20 miles of the Tulalip Indian reservation borders and within its ancestral homelands. The goal is to use these lands for community projects, housing, or economic projects to generate revenues to provide essential services for tribal members. So long as there are no environmental issues and no encumbrances on the land that might defeat title, these parcels should be fast-tracked through the process.

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

The Departments should continue to use the current criteria for processing fee-to-trust applications. While the process is admittedly time-consuming and burdensome, the Tulalip Tribes is comfortable with the current process. If the Department insists on moving forward with revisions to the fee-to-trust process, the Department should consider the unique circumstances facing tribes’ and geographical challenges. Again, the Tulalip Tribes has limited areas on the reservation available for economic development and placing land-into-trust off-reservation is critical for tribal self-sufficiency.

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

- 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)?*
- b. *Whether the application is for gaming purposes as distinguished from other (non-gaming) economic development?*
- c. *Whether the application involves no change in use?*

The original intent of Congress in giving the Department the authority to take land-into-trust was to increase tribal self-determination by restoring lost homelands. There is no basis for the Department to apply different criteria or procedures based on use. Indian tribes as sovereigns are best positioned to make decisions on how to best use the land. Requiring tribes to justify use under the Department’s proposed revisions is not consistent with congressional intent and undermines tribal self-governance. Under 25 USC Part 151, there should be no prohibiting factors in taking land into trust for tribes aside from environmental and title concerns.

The Department’s draft proposal conflates the issues of gaming versus non-gaming economic development projects. IGRA, specifically states “Nothing in this section shall affect or diminish the authority and responsibility

of the Secretary to take land into trust.” 25 USC 2719(c). And 25 USC Part 292 governs off-reservation gaming projects on lands acquired after 1988. We see no reason to address gaming issues in the Part 151 regulations.

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

Land held in trust process provides clear jurisdictional boundaries for Indian tribes and surrounding jurisdictions. Local jurisdiction planning efforts are not always aligned with tribal planning efforts, and local regulations can prevent tribes from developing land in ways that best serve their citizens. Land held in trust status allows tribes to govern and regulate restored tribal lands. This is consistent with the intent of congress which is to restore lands to encourage and support tribal self-determination and strong tribal economics. Any concerns over coordination of services between adjoining jurisdictions are best dealt with through government-to government discussions, rather than through the fee-trust process.

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

No. Indian tribes have already expended significant resources and monies to transfer land into trust under the current regulations.

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

As trustee, the Department has a fiduciary duty to place land into trust for Indian tribes. Local governments have competing interests and are often automatically adversarial to any land being restored to Indian tribes, regardless of the impacts. The Department has no fiduciary responsibility to state and local governments and should not authorize increased deference to state and local governments. The current regulations provide opportunity for state and local jurisdictions as well as their citizens to provide comment and allow for their concerns to be addressed. The current regulations place substantial burdens on tribes to justify the trust land acquisition and already require Interior to actively engage with state and local governments to solicit comments on a trust acquisition’s potential impact on their respective regulatory jurisdiction; real property taxes and special assessments. 25 C.F.R. § 151.11(d). Further, the current regulations allow state and local governments to offer public comments under the NEPA process.

**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?**

Although we are not opposed to inter-governmental agreements, MOU’s should not be required or considered by the Department in the fee-to-trust process. Making MOU’s a part of the fee-trust process puts the tribes at a significant disadvantage as tribes will have minimal if any leverage to negotiate any agreements if the trust process can be derailed unless terms dictated by local governments are accepted. In proposing this requirement in the draft proposal, the assumption is made that relationships exist, or that relationships are good between tribes and outside jurisdictions. This is often not the case. For the Tulalip Tribes, there are on-going disputes regarding taxation on tribal trust land, regulatory authority on land within the Tulalip Indian reservation, comprehensive planning designations over tribal trust lands, and other matters. While there are often attempts to work out these issues with local governments through agreement, these efforts take a great deal of time and often fall short. While Department has clarified that an MOU is not required for an application to move forward, from a practical

standpoint we do not believe that the existence or non-existence of an MOU should be a key focal point impacting the fee-to-trust application.

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

Authority to process these applications should be returned to the regional offices. The regional offices are best equipped to work with Indian tribes and process applications most effectively as the regional directors are familiar with local tribes and have a better understanding of the needs of tribal applicants. Regional offices however need additional resources such as training and additional staff in order to prioritize and process fee-to-trust applications. The Department should also look to regions who process fee-to-trust applications more efficiently, provide training to other regions, and make necessary best practices revisions to the fee-to-trust handbook for other implementation in other regions.

In conclusion, we thank you for the opportunity to hear our concerns and submit these comments. Again, we respectfully urge you cease any efforts to revise the fee-to-trust regulations. If the Department still wishes to move forward with revisions, we ask that the Assistant Secretary of Indian Affairs, Tara Sweeney lead the effort with meaningful and proper consultation. If you have any questions please call 360-716-4444 or email [mzackuse@tulaliptribes-nsn.gov](mailto:mzackuse@tulaliptribes-nsn.gov), or contact Lisa Koop Gunn, Tribal Attorney, at [lkoop@tulaliptribes-nsn.gov](mailto:lkoop@tulaliptribes-nsn.gov) or call 206-683-5667.

Sincerely,



Marie Zackuse, Chairwoman

cc: Tulalip Board of Directors  
Lisa M. Koop Gunn, Tulalip Tribes Attorney