

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS COMMENTS ON POTENTIAL REVISIONS
TO THE TRUST ACQUISITION REGULATIONS AT 25 C.F.R. PART 151

DUE DATE: JUNE 30, 2018

The United Keetoowah Band of Cherokee Indians in Oklahoma, one of three Federally recognized Cherokee Tribes, submit the following comments in response to the Department of the Interior's (Department) December 6, 2017 Dear Tribal Leader Letter (DTLL) proposing a broader discussion on the direction of updates to Part 151.

In general, we oppose any changes that would:

- increase burden on applicants, including the increase of time it takes to process an application;
- authorize increased deference to state and local governments during the application process;
- invite challenges to a final determination;
- diminish the Secretary's authority or responsibility to take land into trust for Indians; or
- otherwise frustrate the land into trust process.

10 QUESTIONS & ANSWERS

The most recent DTLL includes 10 questions for tribal comment. The questions are broad and intended to solicit suggestions and thoughts from across Indian Country on the Department's fee-to-trust process, in particular the Department's off-reservation acquisition process. We now address each of those 10 questions.

1. WHAT SHOULD THE OBJECTIVE OF THE LAND INTO TRUST PROGRAM BE? WHAT SHOULD THE DEPARTMENT BE WORKING TO ACCOMPLISH?

THE OBJECTIVE OF THE LAND INTO TRUST PROGRAM SHOULD BE TO PUT AS MUCH TRIBAL AND INDIVIDUAL INDIAN LAND INTO TRUST AS POSSIBLE, WITH CONSOLIDATION OF TRIBAL LANDS DURING THE DAWES COMMISSION ERA 2/3'RDS OF TRIBAL LAND WAS TAKEN FROM TRIBES. AS YOU KNOW THE KEETOOWAH REFUSED TO VOTE FOR OR BE A PART OF THE LAND ALLOTMENTS, MANY WERE JAILED AND DETAINED, JAILED UNTIL THEY SIGNED THE DAWES COMMISSION PAPER WORK, THE OLD SETTLER/WESTERN CHEROKEE TREATY'S OF 1817 AND 1828 WERE PROMISED 7 MILLION ACRES OF LAND TO MOVE TO INDIAN TERRITORY (OKLAHOMA) TODAY WE HAVE NO LAND IN TRUST, AND BECAUSE A TRIBAL JURISDICTION ISSUE WITH CHEROKEE NATION OF OKLAHOMA WE HAVE AN BURDEN OF PROVING WHO WE ARE AND AS A SUCCESSOR IN INTEREST TO THE HISTORIC CHEROKEE NATION MUST DEFEND OUR LAND IN TRUST APPLICATION IN COURT.

KEETOOWAH COMMENT CONT.

THE DEPARTMENT SHOULD BE WORKING TO STREAM LINE THE PROCESS, REMOVING YEARS FROM THE PROCESS, IN ADDITION, PROJECTS THAT WERE STARTED YEARS AGO HAVE DOUBLED AND TRIPLED IN COST TODAY THE APPLICATION PROCESS NEEDS TO BE SHORTER. REMOVING OBSTACLES AND BARRIERS, FOR EXAMPLE LAND IN TRUST ON HISTORICAL/ANCESTRAL LAND SHOULD NOT BE SUBJECT NEPA RULES OR REVIEW.

2. HOW EFFECTIVELY DOES THE DEPARTMENT ADDRESS ON-RESERVATION LAND-INTO-TRUST APPLICATIONS?

SUFFICIENT, FOR RESERVATION LANDS, HOWEVER, LANDS THAT TRIBES HAVE AN INTEREST IN, HISTORICAL AND ANCESTRAL LANDS SHOULD BE TREATED THE SAME AS ON RESERVATION LANDS. IN ONE OF OUR APPLICATION FOR LAND IN TRUST, OUR TRACK OF LAND WAS JUST OUTSIDE THE 25 MILE RADIUS, JUST ACROSS THE RIVER ABOUT A MILE, THE OLD SETTLERS/WESTER CHEROKEE SETTLED IN ARKANSAS THEN IN 1828 MOVED TO INDIAN TERRITORY, JUST ACROSS THE ARKANSAS RIVER AND WERE DENIED TRUST STATUS DUE TO THE REGIONAL OFFICE UNABLE TO PROVIDE FUNDS, JURISDICTIONAL ISSUES WITH CNO AND WERE A MILE OUTSIDE OF OUR OKLAHOMA RESERVATION.

3. UNDER WHAT CIRCUMSTANCES SHOULD THE DEPARTMENT APPROVE OR DISAPPROVE AN OFF-RESERVATION TRUST APPLICATION?

WHEN AN TRIBE PURCHASES LAND IN THEIR HISTORICAL/ANCESTRAL TERRITORY THE APPLICATION FOR TRUST SHOULD BE FAST TRACKED, WHEN AN TRIBE HAS AN INTEREST IN LAND OFF THE RESERVATION LAND IT SHOULD FAST TRACKED.

4. WHAT CRITERIA SHOULD THE DEPARTMENT CONSIDER WHEN APPROVING OR DISAPPROVING AN OFF-RESERVATION TRUST APPLICATION?

THE DEPARTMENT SHOULD USE THE SAME PROCEDURES FOR CONSISTENCY PURPOSES. THE EXISTING POLICY HAS BEEN IN PLACE FOR SOME TIME, TRIBES AND REGIONAL OFFICES ARE COMFORTABLE USING THEM. THE PROCESS SHOULD HAVE A TURNAROUND OF 45 DAYS.

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 healthcare, or Tribal housing)?
- b.

Keetoowah Comments cont.

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

The application should be the same, less time consuming, have a turnaround of 45 days unless the tribe agrees to an 45 day extension. Either of reasons for land in trust on reservation or off reservation should be dealt with in expedited fashion.

6. WHAT ARE THE ADVANTAGES/DISADVANTAGE OF OPERATING ON LAND THAT IS IN TRUST VERSUS LAND THAT IS OWNED IN FEE?

ONE ADVANTAGE IS THE ABILITY TO OPERATE A CASINO ON TRUST LAND

7. SHOULD PENDING APPLICATIONS BE SUBJECT TO NEW REVISIONS IF/WHEN THEY ARE FINALIZED?

TRIBES SHOULD BE GIVEN THE OPPORTUNITY TO CHOOSE FOR THEMSELVES WHICH PROCESS TO USE, IN THE EVENT THE NEW REGULATIONS ARE LESS CONSTRAINED IN ALL LIKELY HOOD THEY WOULD USE THE LESSER OF THE TWO.

8. HOW SHOULD THE DEPARTMENT RECOGNIZE AND BALANCE THE CONCERNS OF STATE AND LOCAL JURISDICTIONS? WHAT WEIGHT SHOULD THE DEPARTMENT GIVE TO PUBLIC COMMENTS?

THE CURRENT REGULATIONS ADEQUATELY ADDRESS THIS REQUIREMENT BY REQUIRING THE DEPARTMENT TO ENGAGE WITH STATE AND LOCAL GOVERNMENTS TO SOLICIT COMMENTS ON A TRUST APPLICATION POTENTIAL IMPACT ON RESPECTIVE REGULATION JURISDICTION, REAL PROPERTY TAXES AND SPECIAL ASSESSMENTS. ALLOWING ADDITIONAL COMMENT ONLY LINGERS THE APPLICATION 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?

KEETOOWAH COMMENT CONT.

WITH REGARD TO THE IGRA THERE IS A APPROVAL REQUIREMENT AS THE STATE GOVERNMENT MUST GIVE IT'S CONSENT, THE MOU WOULD BE ANOTHER POTENTIAL INSTRUMENT TO BE USED TO VETO LAND TRUST ACQUISITIONS.

10. WHAT RECOMMENDATIONS WOULD YOU MAKE TO STREAMLINE/IMPROVE THE LAND-INTO-TRUST PROGRAM?

The land in trust program must streamline the process, project associated with land in trust approvals took years for approval enlarging the development cost to the extent the project wasn't feasible due to costs. Land in trust approvals turnaround should be within 180 days.

In closing, I thank you for the opportunity to submit these comments on behalf of the United Keetoowah Band of Cherokee Indians tribal members and tribal government. In the event the department continues with this broad venture it is our hope, the Department continues with it's EO directive of consultation with tribes before it pushes forward. It is evident there is a need for technical assistance in land acquisitions and developing a land base for future generations, economic development and services afforded to tribal members. Thank you again for your consideration and please feel free to contact me, Joe Bunch, Chief of the United Keetoowah Band of Cherokee Indians in Oklahoma, at 918-871-2800 or Jbunchd@ukb-nsn.gov.