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On behalf of the Colusa Indian Community Council of Cachil Dehe Band of Wintun Indians, we 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 most respects, the CICC is opposed to changes in Part 151 and believes that any necessary improvements to the process can be achieved by increasing the resources available to the Interior staff responsible for processing requests, and by clarifications to the BIA's Fee to Trust Handbook. The impetus for changing Part 151 is unclear given that at the consultations, tribes opposed any fundamental changes. As testimony at the Sacramento consultation on January 16, 2018 indicated, Tribal leaders acknowledged the lack of efficiency in the process, especially the long processing time and uneven results nationwide, but tribes were not aware of requests from Indian country for any changes to the regulations.

The most recent "Dear Tribal Leader Letter" includes 10 questions designed to elicit tribal comments on issues related to the Part 151 process. Our comments follow.

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

The objective of the Part 151 program should be to facilitate the goals of the requesting tribes in acquiring land for the purposes deemed important by the leadership of the requesting tribe. Generally, these purposes are economic development and/or land consolidation. Internally, the Department should work to expedite processing of fee-to-trust applications by providing the necessary resources and tools to the Regions, working directly with tribal applicants, and providing proper training in trust land title review to the Solicitor's Office where needed.

For example, BIA Regional and Regional Solicitors' Offices have taken inconsistent approaches to the regulations and NEPA requirements. The Department should strive for more uniformity and also look to the Regions that process trust acquisitions most efficiently to help develop guidance and training.

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

The Department's on-reservation trust acquisition process appropriately handles on-reservation acquisitions and acquisition of contiguous lands in the same manner, a policy which supports the on-reservation tribal economic development.

Review under the National Environmental Policy Act (NEPA) is perhaps one of the most costly and time-consuming facets of on-reservation acquisitions, and the Department should explore ways to streamline this process, including categorical exclusions if possible. (See response to Question 10 below.) Also, where the Tribe is already approving its own leases 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.

Further, there should be an automatic presumption favoring acquisition of on-reservation lands, rather than a tribe needing to prove a need and purpose for the land, as is required for off-reservation acquisitions. This would rightfully enhance tribal civil regulatory jurisdiction and help streamline on-reservation acquisitions.

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

The 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).

In addition, if the applicant tribe presents a well-supported economic development plan that details how revenue generated from that plan will help supplement dwindling federal resources, the Department should act expeditiously to approve such acquisitions even if the distance of the acquisition is far from the tribe's reservation or homelands. However, it is not necessary that the Department amend its regulations to include more detailed requirements for tribal economic development plans. Instead, the BIA's Fee to Trust Handbook could be amended to provide sufficient guidance to the BIA Regions to address this suggestion.

Further, it goes without saying that where the Tribe and the state and local governments collectively support the acquisition, it should be fast-tracked for approval.

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

We support the reinstatement of the thirty-day waiting period that would begin to run after the later of the expiration of the time to file an administrative appeal from a decision to take land into trust for gaming, or a decision on an administrative appeal from a decision to take land

into trust for gaming, and we suggest reinstatement of the previous DOI policy that if a court challenge is filed within the 30-day waiting period, DOI will stay accepting land into trust for gaming pending issuance of a final and unappealable judgment in the court challenge. It is not prudent to accept land into trust while a judicial challenge to that decision is pending, given that there are no statutory procedures for reversing that process, and given that a Tribe's financial obligations to a would-be gaming developer may be triggered by the acceptance of land into trust, leaving the Tribe financially vulnerable if the decision to accept land into trust for gaming ultimately is overturned.

In administering the process which permits tribes to transfer off-reservation land from fee status to trust status, DOI must not violate the trust responsibility it owes to all tribes, and in particular must consider the impact that the decision to transfer land into trust status may have on other tribes in the area of the land to be acquired. Such determinations cannot and should not be made in a vacuum, considering only factors relevant to the requesting tribe. In particular, transfer of non-contiguous off-reservation lands into trust for gaming purposes should include the impact that an acquisition for gaming purposes would have on the governments of other tribes whose existing gaming facilities draw patrons from the same market areas to be targeted by a casino on newly-acquired land. While no tribe may have an exclusive right to a particular market area, neither should DOI intentionally disrupt existing tribal economies and governments by approving an off-Reservation acquisition specifically intended to allow a tribe that has no historic connection to the lands to be acquired to cannibalize the market on which other tribal governments depend. In our experience, that is precisely what DOI's current regulations have allowed to occur in northern and central California, where Tribes identified as likely to be impacted by the acquisition were not consulted, just because they are barely outside the current arbitrary 25-mile radius for mandatory consultation.

Regardless of whether a tribe submitting an application includes information about the impacts on other tribal governments, or whether such information is accurate, there should be an affirmative duty on DOI to assess and consider the impact of the transfer of off-reservation fee land into trust for gaming purposes on all tribes whose economies or governments could be affected by the planned transfer. This obligation should include the BIA's independent verification of assumptions made in the requesting tribe's application, first part or second part, regarding such impacts. In our experience, relying on guestimates made by consultants hired by the requesting Tribe are not a reliable source of information.

In considering the scope of DOI's trust obligation to consider the impact of the transfer of off-reservation fee land into trust for gaming purposes, DOI should not limit itself to an arbitrary radius in identifying the tribal governments and economies which may be impacted by the transfer and proposed gaming activity. A limited radius such as twenty five miles may be useful to evaluating impacts to non-tribal governments whose law enforcement, and health and safety agencies, with limited local jurisdiction, may be impacted by new gaming activity on newly acquired trust lands. But any arbitrary radius for consideration of the impacts on other tribal governments and economies is inappropriate because the economics of gaming require consideration of population centers, driving patterns, and marketing strategies that only the actual operators of other gaming facilities can accurately provide. The variability of such factors requires that DOI specifically consider the needs and circumstances of tribes which may be

impacted by the requesting tribe's application by affirmatively reaching out to other tribes in the region of the land to be acquired, rather than imposing on those tribes the potentially costly burden of demonstrating likely impacts in order to qualify for consultation.

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

CICC supports a more streamlined process for on-reservation FTT applications and for off-reservation FTT applications for non-economic development and for non-gaming economic development. Our concerns about the latter are expressed above at Question 4.

The Department is encouraged to address 3(c) by making additions to the categorical exclusions contained in its Land Conveyance and Other Transfers list. (See Comments to Question 10.) The Department should act in support of tribal decisions to expand their non-gaming economic development base by streamlining the review and approval of such acquisitions on and off the reservation especially given the paucity of federal funding for support of tribes.

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

The CICC believes that this question is not relevant to the consideration of how to best increase the efficiency of the fee to trust land acquisition process. Determinations regarding how to engage in particular activities on trust land or on tribally owned fee lands are with the sovereign authority of tribal governments, as are decisions regarding when to request that tribally owned fee lands be taken into trust. Only the latter is within the ambit of the Department's responsibilities under Part 151.

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

Tribes should be able to choose to have their pending applications considered under either the regulations in effect when the application was prepared or under the revised regulations if/when they are drafted and finalized.

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 consideration and approval of tribal trust acquisition applications is a function of the trust responsibility of the Department to tribes. In the regulatory scheme, there is already an opportunity for the public and state and local governments to voice their concerns. As many tribes testified at the Sacramento consultation, local governments wield significant political power over the activities of tribes within their areas, so there is no reason to alter the Part 151 process to permit additional input from such governments.

The current regulatory process allows consideration of local government concerns regarding regulatory jurisdiction, real property taxes and special assessments. The applicable environmental review process also includes notice and comment periods during which their concerns can be aired and considered by the Department.

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?

When CICC enters into MOUs with local government entities, it is as one sovereign to another, and such agreements should neither be required nor encouraged in relationship to the trust acquisition process. No changes to the regulations should be made in regard to giving weight to such agreements in the trust acquisition process. If such agreements are considered as a factor in fast-tracking an acquisition application, such guidance could be included in the Fee to Trust Handbook.

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

In order to decrease the time for consideration and approval of off-reservation acquisitions, the responsibility should be transferred back to the BIA Regions because the realty staff are more familiar with local tribes and their communities.

The Department should refrain from making any changes to the current *Carcieri* M-opinion. While the M-opinion adds an additional layer of review for certain applications, it is a necessary tool in light of the *Carcieri* opinion and is a good example of how the Department can actively engage with tribes to fulfill the trust responsibility.

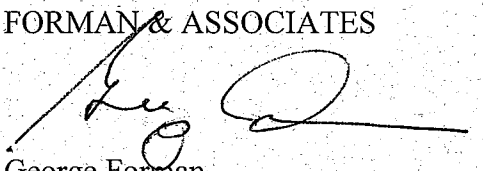
The CICC supports consideration of the addition of categorical exclusions to those already included in the Land Conveyance and Other Transfers CatEx list. These categorical exclusions should include instances where a tribe's intended use is for conservation purposes, where the tribe's proposed use has been approved by local jurisdictions as consistent with surrounding uses, or where the change in land use is minimal and in keeping with historic uses. In addition, on-reservation acquisitions should be covered by a CatEx since all such acquisitions are for land consolidation and a categorical exclusion would offer savings of time and money on NEPA-related studies.

In conclusion, CICC generally opposes changes to the Part 151 regulatory process except as noted above, and requests that the Department recognize that the consultation process shows that tribes do not see a need for significant regulatory changes but would appreciate increased resources to streamline the application review and approval process.

Thank you for this opportunity to comment.

Sincerely,

FORMAN & ASSOCIATES



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