



THE SUQUAMISH TRIBE

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

Re: Opposition to Proposed Rulemaking on 25 C.F.R. § 151

Acting Assistant Secretary Tahsuda,

I write today to express the Suquamish Indian Tribe's ("Tribe") strong opposition to the Department of the Interior's ("Department") proposed rulemaking on its fee-to-trust regulations found at 25 C.F.R. § 151 ("Part 151"). The Department's proposal will make acquiring trust lands more difficult for tribal nations. For this reason, Indian Country has spoken with a firm and resounding voice in opposition to the proposal.

The Suquamish Indian Tribe resides on the 7,000-acre Port Madison Indian Reservation located on the shores of Puget Sound directly across from Seattle, Washington. We have 1,200 enrolled tribal citizens, about half of whom reside on the reservation. The Tribe is the successor of the Suquamish and Duwamish people that signed the Treaty of Point Elliott in 1855, which created our reservation. That treaty was signed by Chief Seattle, who is buried at Suquamish.

Our reservation, like many reservations, was allotted. In 1904, the Tribe held just 36 acres, but we have struggled and fought to reacquire and place almost 1,300 acres back into trust. Overall, 50% of the reservation is now held in trust, either by the Tribe or tribal citizens.

There have been two constant obstacles to reacquiring our reservation lands. The first is finding available lands for sale on the reservation and the second is lack of funds to repurchase those lands. After the Port Madison Indian Reservation was allotted, most of the land fell into non-Indian ownership leaving it with a diverse mix of tribal and non-tribal peoples. The Tribe cannot, nor do we want to, force non-Indians off reservation lands. This means that the Tribe must wait for lands to become available on reservation before they can be acquired. The only other option for the Tribe is to look off-reservation for the land that we need.

The Suquamish Tribe's opposition to this proposal is not unique in Indian Country. I attended the Department's listening session on January 25, 2018 at the Affiliated Tribes of Northwest

Indians' conference in Portland, Oregon to voice the Tribe's concern. Throughout the session I listened to my fellow tribal leaders all voice opposition to this proposal. In addition, the National Congress of American Indians, whose board I serve on, passed a resolution "strongly oppos[ing] the proposed revisions to 25 C.F.R. Part 151 and ask[ing] that the Department immediately withdraw and cease any efforts to amend the land into trust regulations." NCAI Resolution No. MKE-17-059 (2017).

The Tribe is hesitant to respond to the questions posed in the Department's consultation letter because they appear to be results-driven and mirror many of the themes from the Department's now "abandoned" discussion draft released in October 2017. I'm afraid that this proposal is reminiscent of the days of old when the federal government would legislate and govern at tribal nations rather than listening to tribal nations, which flies in the face of Executive Order No. 13175: Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000). However, the Tribe is committed to the government-to-government relationship and will respond to the Department's questions.

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

When Congress passed the Indian Reorganization Act ("IRA") in 1934 it was meant to be a repudiation of decades of failed federal Indian policy. *See Hodel v. Irving*, 481 U.S. 704, 707 (1987). The Department's objective in administering its duty pursuant to the IRA should be to help tribal nations restore their land base. The Department should strive to tear down barriers to trust acquisitions not construct them.

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

The Tribe objects to how this question is constructed, especially considering question number 3. The question appears to be structured to elicit a response that would prioritize on-reservation acquisitions in any changes that the Department seeks to make to the Part 151 regulations. The Part 151 regulations already expedite on-reservation applications. *See* 25 C.F.R. § 151.10. Further, the underlying basis for the question ignores the fact that in many instances tribal nations are forced to look off-reservation for lands because there are no available lands on the reservation.

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

Congress did not discriminate against off-reservation acquisitions when it passed the IRA. Congress very clearly provided the Department with the statutory authority to acquire "any interest in lands...within or *without* existing Indian reservations." 25 U.S.C. § 465 (emphasis added). The current Part 151 regulations provide effective guidance on when an off-reservation trust application should be approved or denied. The Department should not impose new barriers to off-reservation trust acquisitions because it would be outside of Congress' directive in the IRA.

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

The current Part 151 regulations provide effective criteria for when an application should be approved or disapproved. The Tribe opposes any changes to the current criteria, especially if the criteria would construct new barriers to acquisitions.

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?

The Department should not distinguish between economic or non-economic applications because the IRA does not. This would impose a new and arbitrary distinction of land use priorities on tribal nations. Federal courts have already rejected the notion that tribal nations must show a financial need to acquire lands, i.e. economic development. *See City of Sault Ste. Marie v. Andrus*, 532 F. Supp. 157, 162 (D.D.C. 1980); *City of Tacoma v. Andrus*, 457 F. Supp. 342 (D.D.C. 1978). Prioritizing non-economic development applications would create the inverse situation where tribal nations would be punished for pursuing applications for economic development purposes. The IRA makes no distinction between economic and non-economic acquisitions and neither should the Department.

- b. Whether the application is for gaming purposes as distinguished from other economic development?

The Tribe opposes the structure and content of this question because it seeks to conflate the acquisition of trust lands with the gaming eligibility of lands. The IRA governs the acquisition of trust lands while the Indian Gaming Regulatory Act and its regulations determines the gaming-eligibility of all Indian lands. *See* 25 U.S.C. § 2701 & 25 C.F.R. § 292. The question seeks to conflate the two statutory authorizations, the separate regulations, and processes that govern those two activities.

- c. Whether the application involves no change in use?

It would be futile to prioritize “no change in use” applications because the Department cannot restrict the future use of land taken into trust to the activity for which the land was originally taken into trust for (except for gaming activities, which are governed by the Indian Gaming Regulatory Act). “No change in use” is a factor related to whether the acquisition is in compliance with NEPA; including this element in a Part 151 determination is at total odds with the purposes underlying the IRA.

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

The Tribe is confused by the inclusion of this question because it seems odd to include a question about keeping land in fee status in a consultation about placing land into trust status. The Tribe feels that the tax, jurisdictional, and self-determination benefits of trust status far outweigh the benefits of fee ownership. The Supreme Court has recognized that “there is a significant territorial component to” tribal sovereignty and that territory is trust land. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 142 (1982).

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

The Tribe opposes this effort and requests that the Department abandon it. However, if the Department decides to continue down this ill-conceived path, then it should allow pending applications to proceed under the current Part 151 regulations. Tribal nations will have invested resources both in time and money to prepare applications under the current regulations and these applications should be allowed to proceed under those 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.

The Tribe understands that it is beneficial to have harmonious relationships with its neighbors, something that the Suquamish Tribe has worked hard at and achieved a high degree of success. However, we are concerned that changes to the Part 151 regulations that try to “balance” the concerns of tribal and state jurisdictions will come at the expense of tribal nations. The IRA was enacted for the sole benefit of tribal nations and tribal citizens. State and local jurisdictions are already afforded the opportunity to weigh-in on fee-to-trust applications under the current regulations. *See* 25 C.F.R. §151.10(e)-(f) & 151.11(d). The current regulations adequately balance the interests of jurisdictions.

9. Do 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?

The Tribe objects to this question’s structure because it is leading in nature. Of course, MOUs are beneficial when they can be achieved but that does not mean they should be required in the Part 151 regulations. The Tribe objects to any requirement for or preferred treatment to applications that have MOUs because it would tip the currently balanced scale away from tribal nations and to the local communities. Development of inter-governmental cooperative agreements happens over a period of years and, if done correctly, result in agreements that are mutually beneficial completely outside of the fee-to-trust application process. This unnecessary and burdensome requirement has no place in the off-reservation application process where a tribal nation is exercising its self-determination through strategic acquisition of off reservation fee lands.

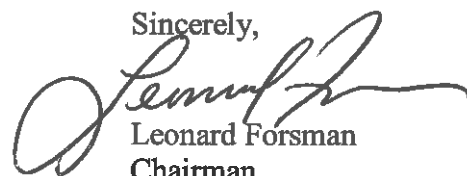
10. What recommendations would you make to streamline/improve the land-into-trust program?

The Tribe's recommendations relate entirely to policy changes outside of this proposed rulemaking and do not require any changes to the current Part 151 regulations.

- i. Reinstate the Patchak Patch – The *Match-E-Be-Nash-She-Wish Band v. Patchak*, 567 U.S. 209 (2012) 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.
- ii. Return Non-Gaming Off-Reservation Applications to the Region – 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 more effectively and efficiently handle these applications. The Department should return decisional authority to regional offices for non-gaming off-reservation applications.
- iii. Increase Staff – The Department should increase staff in regional realty offices to help expedite the processing of fee-to-trust applications.
- iv. Provide Guidance on Timelines – The Department should update its fee-to-trust guidance to provide for firm timelines for processing at each stage of the application. This would help to increase accountability and track an application's progress.

On behalf of the Suquamish Tribe, I appreciate the opportunity to provide these comments. The Tribe opposes the Department's effort because the best federal Indian policy emerges from Indian Country itself. The Department should focus its energy and resources on tackling the many issues that tribal leaders have raised instead of wasting its precious time and resources on this effort.

Sincerely,



Leonard Forsman
Chairman