



Soboba Band of Luiseño Indians

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EXECUTIVE OFFICES OF TRIBAL COUNCIL

The Soboba Band of Indians (Tribe or Soboba) submits 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. These comments supplement my remarks presented at the consultation held in Sacramento on January 16, 2018 and which are attached for your consideration.

In general, Soboba is opposed to changes in Part 151 and believes that any necessary improvements to the efficacy of 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. Just as I testified, other Tribes also acknowledged the lack of efficiency in the process, especially the long processing time and uneven results nation-wide, but tribes were not aware of requests from Indian country for any changes to the regulations.

The most recent DTLL includes 10 questions designed to solicit 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 objectives 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 or land consolidation. Acquisition of land within our ancestral homeland is a high priority for Soboba because as we seek to provide for our members, acquisition of additional land will increase the opportunity for economic development and for housing.

Internally, the Department should work to prioritize 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. As noted in my testimony, the Tribe's most recent fee to trust acquisition took twelve years to process.

Often times, when tribes discuss trust acquisitions, they find that different BIA Regions and Solicitors Offices will have inconsistent approaches to the regulations and NEPA requirements for instance. The Department should strive for more uniformity and should 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?

While the Department's on-reservation trust acquisition process appropriately handles on-reservation acquisitions and acquisition of contiguous lands in the same manner, Soboba encourages the Department to extend this consideration to ancestral and traditional homelands. These acquisitions should be considered in the same manner as applications for on-reservation lands. Like other tribes in California, Soboba has been particularly devastated by past federal land policies that displaced them from their ancestral homelands in favor of non-Indian settlement. While these decisions cannot be reversed, and tribes made whole, the fee-to-trust process functions as an important method for redressing these failings.

The 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 comments at Question 10 below.) Also, where a 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 as well.

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 with respect to off-reservation acquisitions. This would rightfully favor 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?

When a tribe purchases lands in their ancestral territory, the application for trust acquisition should be fast tracked for approval. This is consistent with the current regulations, as discussed above, which 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."

Rather than contemplating any changes to the regulations, 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?

Soboba sees no reason to change Part 151 in this or any other regard. There is no indication that any additional changes to this regulatory scheme would improve the efficiency of the approval process. The Department should continue to use the same criteria for consistency purposes.

As noted above, the historical circumstances of tribes in California warrant that weight be given to whether the off-reservation acquisition is within the ancestral territory of that tribe. Soboba's acquisitions have been within its ancestral territory. Such applications should be fast tracked in recognition of the need of California tribes to increase their land base and, whenever possible, restore their ancestral territory to trust status for the well-being of their members, an exercise of tribal sovereignty which should be fully supported by the Department's trust responsibility.

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?

Soboba finds that these subjects are all addressed by the NEPA requirements imposed upon acquisition applications. 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 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 Tribe 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 within 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?

No. Soboba has pending applications painstakingly prepared in compliance with the current regulatory scheme and would object to any requirement to revise to comply with future revisions.

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 and 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 Soboba 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 *Carciari* M-opinion. While the M-opinion adds an additional layer of review for certain applications, it is a necessary tool in light of the *Carciari* opinion and is a good example of how the Department can actively engage with tribes to fulfill the trust responsibility.

The Department should not reinstate the 30-day stay period between when a decision is made to acquire land in trust and when the Department actually acquires the land in trust.

Soboba 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 and where the change in land use is minimal and is 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 an exclusion would offer savings of time and money on NEPA related studies.

In conclusion, Soboba opposes changes to the Part 151 regulatory process and requests that the Department recognize that the consultation process shows that tribes do not see a need for any regulatory changes but would appreciate increased resources to streamline the application review and approval process.

Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Scott Cozart". The signature is written in a cursive, flowing style.

Scott Cozart
Chairman