Part 151
Written Comments Summary Report

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I. Introduction

The Department of the Interior (Department) sought public comment on proposed rules to update its regulations at 25 CFR Part 151 (Land Acquisitions). The proposed rule incorporates feedback and comments from tribal governments and other entities, explains how comments were addressed, and why the Department made certain changes reflected in the proposed rule. The Department published its proposed rule on December 06, 2022, requested public comments by March 1, 2023, and noticed three tribal consultation sessions held in January 2023.

The first tribal consultation was held in person on January 13, 2023, at the Bureau of Land Management Training Center in Phoenix, Arizona. The next two tribal consultations were conducted virtually on Zoom. They occurred on January 19, 2023, and January 30, 2023. Following the consultation sessions, written comments were accepted until March 1, 2023.

II. Background - 25 CFR Part 151

Congress granted the Assistant Secretary of Indian Affairs the authority to "have management of all Indian affairs and of all matters arising out of Indian relations." 25 U.S.C. 2. Congress further empowered the Secretary of the Interior, through Section 5 of the Indian Reorganization Act, to acquire, at her discretion, any interests in land, within or without existing reservations, including trust or otherwise restricted allotments to provide land for tribal governments and individual Indians. 25 U.S.C. § 5108.

This proposed rule updates the Department's 25 CFR Part 151 regulations which govern how the Bureau of Indian Affairs (BIA) responds to, considers, and processes applications from tribal governments and individual Indians to acquire land in trust status for their benefit. The BIA has acquired over a million acres of land into trust for tribes and individual Indians since the passage of the IRA in 1934. BIA, *Land Acquisitions*, 87 Fed. Reg. 74334, 74335 (Dec. 5, 2022). The proposed regulations are intended to be less burdensome and more cost-efficient for applicants. In addition, the Department aims to improve the land acquisition process because of the many benefits it affords tribal governments and their citizens, such as heightened regulatory jurisdiction over the lands, exemptions from state and local taxation, and restoration of tribal homelands.

The proposed regulations affirm that the Secretary of the Interior's (Secretary) policy is to take land into trust for many reasons supporting tribal and Indian welfare. This statement clarifies that the Department's policy is to actively implement its land into trust authority under the IRA. Through this rulemaking, the Department seeks to improve timelines by establishing a 120-day decision deadline once the BIA receives a complete application package. The proposed regulations also incorporate the Department's process for determining whether a tribe was "under federal jurisdiction" in 1934, as required by *Carcieri v. Salazar,* 555 U.S. 379 (2009). The rulemaking streamlines the process for considering each type of land acquisition, on-reservation, contiguous,

off-reservation, and the newly articulated initial reservation acquisition. Each acquisition includes certain presumptions intended to improve efficiency based on BIA's longstanding practices. Several other changes to the regulations seek to solve problems and remove obstacles for tribes and individual Indians engaged in the BIA's land acquisition process.

III. General Impressions

Individual Part 151 comments were separated and categorized after the closing of the comment period on March 1, 2023. Some comments were submitted or received after the submission deadline but were included with a notation in the Part 151 Final Written Comments Spreadsheet. Over 95 different entities commented on Part 151, including tribal, state, and local governments, industry organizations, and individual citizens. In total, the submissions were separated into 650 individual comments. Generally, around 81 comments were exclusively supportive, 114 were not supportive, and 455 were neutral or provided general support along with constructive criticism.

Indian Tribes

In general, tribes who commented were supportive of the proposed Part 151 regulations. However, many tribes included constructive criticism. Commenting tribes appreciated the Department's inclusion of community benefits and presumptions for approval, the Department's efforts to reduce burdensome requirements, the new tiered categories of acquisitions, and the establishment of timelines.

While tribes were generally supportive, they did express concerns over certain provisions. For example, some tribes expressed concern about presumptions outside of an applicant tribe's aboriginal territory and sought to include tribes' ability to comment on proposed acquisitions alongside state and local governments. Other tribes advocated for more flexibility around land descriptions.

State and Local Government

State and local governments who commented were opposed to the regulations on multiple fronts, including questioning the authority of the Department to implement portions of the regulations under the Administrative Procedures Act, caselaw, and principles of federalism. State and local governments were particularly concerned with the presumptions afforded tribal applicants and the removal of certain provisions, including the analysis of tribal benefits and state and local government concerns related to the distance from a tribe's reservation or trust land, requiring that tribes demonstrate the need for additional land, and requiring that tribes supply business plans for review. They also opposed a perceived lessened role for state and local governments, such as eliminating the consideration of jurisdiction problems or potential conflicts over land use and the removal of solicitations for state and local governments to comment on on-reservation acquisitions, for instance. State and local governments also provided detailed suggestions for how the Department should notify state and local governments.

IV. Summary of Comments Received

The written comments addressed the proposed changes to Part 151. As mentioned above, tribal comments were generally supportive and non-tribal comments were generally opposed to the rulemaking. Supportive comments appreciated the clarity in the process, the efforts to reduce burdensome requirements, and the presumptions in favor of certain acquisitions. Comments opposing the rule perceived certain changes as lessening state and local comments' effect on acquisitions and reducing opportunities for those governmental entities to collaborate with tribes on future acquisitions.

A summary of the public comments is below. For an exhaustive list of all comments, please see the Final Written Comments Spreadsheet for Part 151.

1. *Section 151.1 What is the purpose of this part?*

- Many tribes see this as a necessary revision because "the fee-to-trust regulations normally do not apply to transactions in these categories because of the legal framework governing them." They suggest that numbering this section may improve comprehension– like so: "This part does not cover: 1) acquisition of land by individual Indians and tribes in fee simple even though such land may, by operation of law, be held in restricted status following acquisition; 2) acquisition of land mandated by Congress or a Federal court; 3) acquisition of land in trust status by inheritance or escheat; or 4) transfers of land into restricted fee status unless required by Federal law."

- One tribe noted that the regulations do not set out the procedures in a comprehensive manner. The tribe suggested that this section reference all applicable procedures, letting applicants know exactly what will be applied and when.

- One tribe suggested that consideration should be given to the term's "trust" and "restricted" for clarity and suggested the following revision:

  "This part sets forth the authorities, policies, and procedures governing the acquisition of land by the United States in trust status for individual Indians and tribes. This part does not cover the acquisition of land by individual Indians and tribes in fee simple status even though such land may, by operation of law, be held in restricted status following the acquisition; acquisition of land mandated by Congress or a Federal court; acquisition of land in trust OR RESTRICTED status by inheritance or escheat; or transfers of land into restricted fee status unless required by Federal law."

- One commenter suggested that this section include a baseline process for fee-to-trust, including a provision stating that acquisitions mandated by Congress or a Federal Order pursuant to an Act of Congress be exempt.

- One tribe noted a concern that the proposed regulations may unintentionally advantage some tribes at the expense of others. The tribe suggested an addition to this section clarifying that neither the definitions and terminology in the Part 151 regulations nor the findings and decisions made in the applications of the Part 151 regulations are intended to be binding for purposes of other decision-making processes conducted under other authorities, including, without limitation, 25 U.S.C. § 2719 and 25 C.F.R. Part 292.

- One tribe suggested that this section specify that the Secretary's land acquisition should apply to mandatory and discretionary acquisitions to the extent that it does not conflict with Federal legislation resolving land claims.

2. *Section 151.2 How are key terms defined?*

Interested Party

- Many tribes who commented had issues with the definition of "interested party," what "legally protected interests" means, and what showing such a party must make about the extent to which those interests will be "affected" by a decision. There was also general concern about how narrow this term should be defined; some tribes called the term overly broad, another cautioned against interpreting "interested party" too narrowly concerning tribal parties with a legally protected interest in the proposed acquisition area.

- Some commenting tribes suggested that the Department clarify that an interested party must show its legally protected interests would be *adversely affected* by a decision.

- Several tribes suggested merging the definition of "interested party" in proposed section 151.2 with 25 C.F.R. Part 2. One tribe included a detailed description of how the language from Part 2 could be incorporated into the Part 151 regulations (see Part 151 Final Written Comments Spreadsheet for full comment).

- One tribe recommended the following definition for "interested party": "any person, organization or other entity who can establish a legal, factual or property interest in a determination and who requests in writing to the decision maker an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific application or action. In addition to showing a legal interest, an interested party needs to demonstrate an individualized right or interest - some interest distinct from any other members of the public that they have been adversely affected in a concrete and particularized way."

- Another tribe said that appellants that do not or would not, due to the decision, exercise jurisdiction over or have the right to use the property subject to appeal, should lack standing to bring an appeal. The tribe also asserted that status as a government does not confer standing to bring such an appeal and that an appellant's basis for appeal should

not be purely economic.

- Some tribes expressed concern that the proposed language opens the possibility that if that group of neighbors opposes and appeals a final decision on a fee-to-trust application, the acceptance of their appeal may give them the perception that they have a legally protected interest.

    - They further recommended that the definition track the language used in section 151.13, that an "interested party" must have "made themselves known, in writing, to the official, prior to a decision being made."

Contiguous

- Several commenting tribes proposed the addition of "navigable rivers" to the definition of "contiguous" as follows: "Contiguous means two parcels of land having a common boundary notwithstanding the existence of non-navigable waters or navigable rivers or a public road or right-of-way and includes parcels that touch at a point." One tribe suggested adding the following phrase: "Contiguous shall include two parcels of land separated by navigable water if the navigable water is subject to the tribe's treaty or other fishing rights and each parcel is accessible by water."

- One tribe requested more clarity on what constitutes a "public road" for this definition. The tribe also suggested that the Department address whether there is a distinction between "contiguous" and "adjacent."

- Another tribe urged the Department to clarify that land accepted into trust as "contiguous" pursuant to 25 C.F.R. § 151.10 is "contiguous" for gaming purposes under 25 C.F.R. § 292.2.

- Other tribes also requested clarification on whether the definition should include two *or more* parcels of land and whether parcels with common corners or those separated only by a road or right of way are included.

Initial Acquisitions

- While some tribes supported the definition of "Initial Acquisitions," others pointed out that where land has been acquired or held in trust, but for various reasons, the United States no longer holds land in trust for a tribe, it is not technically an initial acquisition.

Individual Indian

- One tribe pointed out a possible error in the definition of "Individual Indian," noting that it requires that an individual be both (1) a descendent of an enrolled tribal member and (2) personally have lived on a reservation in 1934. Under this definition, only a

person above the age of 88 (the youngest possible age to have been alive in 1934) would be eligible. The tribe suggested the following revision to proposed section 151.2(c)(2): "any person who is a descendent of an enrolled tribal member who, on June 1, 1934, was physically residing on an Indian reservation."

Marketable Title

- Multiple commenting tribes expressed support for the new proposed definition of "marketable title". One tribe pointed out a possible grammatical mistake in the definition of marketable title: "to cover" as it appears to disagree with the preceding clause. They recommended substituting "to cover" with "that covers" instead.

- One tribe requested that "marketable title" be clarified as including all easements and rights of way of record, including any shared maintenance and other agreements that are part of those interests of record.

Preliminary Title Opinion

- One tribe commented that preliminary title opinions ("PTO") should be defined as non-privileged communications by the solicitor regarding the existing title status. Because proposed section 151.8 requires a PTO as part of a complete application, the tribe said it would not make sense to include privileged material. The lack of clarity in the current regulations causes unnecessary delays.

Tribal Homelands

- Some tribes requested a definition of "Tribal Homelands," as the term is used throughout the regulations. In particular, tribes noted that specific criteria to establish Tribal Homelands would help avoid confusion or conflict in instances where tribes have overlapping historical territories.

Indian Reservations

- Some tribes would like clarification on whether "The Secretary will consider all historic Oklahoma Reservations consistent with McGirt" is intended to include all Oklahoma tribes or just the Five Tribes.

- One tribe suggested that the principles of McGirt are broadly applicable. Therefore, the regulations' language should apply in Oklahoma and to any place where historic reservations have yet to be reaffirmed. The tribe offered the following recommended definition:

> "[U]nless another definition is required by federal law authorizing a particular trust acquisition, reservation means:

> 1) That area of land set aside for the use and occupancy of an Indian tribe(s) by treaty, statute, executive order, or Secretarial proclamation or order, including both formal and informal reservations as well as dependent Indian communities, allotments, and restricted fee lands;
> 2) That area of land over which a tribe is recognized by the United States as having governmental jurisdiction; or
> 3) That area of land constituting the former reservation of a tribe as defined by the Secretary, including:
> a. In Oklahoma, where there has been no final determination affirming the tribe's reservation; or
> b. Elsewhere, where there has been a final determination the tribe's reservation has been diminished or disestablished."

Other:

- One tribe recommended the addition of the following definition for "Adjacent" property to section 151.2:

> Adjacent means two parcels of land connected by natural, social, cultural, or economic ties, though they are not contiguous, as determined by any of the following factors:(1) the physical distance between parcels, (2) the ease of travel between parcels. (3) the parcels sharing the same natural characteristics or supporting the natural functions of each other, (4) the cultural connection between the parcels, or (5) the parcels being part of a larger economic plan or strategy.

- Many tribes expressed support for inclusion of definitions for the terms "Fee Interest," "Fractionated Tract," "Secretary," "Restricted Land," "Trust Land or Land in Trust Status," and "Tribe."

3. Section 151.3 What is the Secretary's land acquisition policy?

- Many commenting tribes expressed support for the land acquisition policy. One tribe also encouraged the Department to apply subsection (b) as broadly as possible.

- One tribe referred to the land acquisition policy as "inappropriately limited and does not describe the policy articulated by the Indian Reorganization Act (IRA)", codified at 25 U.S.C. § 5108. Consequently, the tribe recommended that the proposed rule use Section 5 of the IRA as the authority for the policy.

- A few tribes commented that the land acquisition policy should include language like the following: "When the Secretary determines that the acquisition of the land will further tribal interests by . . . advancing environmental justice for Tribal communities that have been disproportionately impacted by climate change, pollution, dumping of industrial waste, and other environmentally destructive practices, by helping them to secure safe and usable land." Another commenter suggested that the policy is an exercise of the Secretary's fiduciary obligation and should therefore be informed by the Department's desire to address the devastating effects of the federal government's treaty, allotment, and termination periods and policies, as well as decisions beyond a tribe's control that threaten the safety of current tribal land.

- Several tribes noted the importance of including explicit language stating that the land acquisition policy is intended to "protect sacred sites and tribal cultural resources, establish or maintain conservation areas, *burial grounds or cemeteries,* consolidate land ownership to strengthen tribal governance over reservation lands and reduce checkerboarding, protect treaty or subsistence rights, and facilitate tribal self-determination, economic development or Indian housing." It was further noted that many tribes are seeking new acquisitions to bury ancestors being repatriated or excavated from their resting places due to development outside of tribal lands.

- One tribe proposed adding the phrase "increasing a tribe's resilience to climate change" as another reason for the Secretary to approve an acquisition.

- Several tribes recommended section 151.3(b)(3) be revised to read, in pertinent part: "...if the acquisition will further tribal interests by establishing a land base or protecting tribal homelands, protecting sacred sites or cultural resources and practices, establishing or maintaining conservation or environmental mitigation areas, consolidating land ownership, acquiring land lost through allotment, reducing checkerboarding, protecting *rights secured by treaty, Executive Order, or other federal or subsistence rights*, or facilitating self-determination, economic development, or Indian housing." The reasoning for this is based on the fact that many tribes have federally secured rights that are not treaty rights. These same tribes also suggested making this change to all sections where this language appears: 151.9(b), 151.10(b), 151.11(b), and 151.12(b).

- Some non-tribal entities asserted that the Secretary was applying a blanket policy, stating "the Department appears to draw little or no differentiation between vastly different types of potential trust acquisitions, including those with considerably different land uses, which invariably result in dramatically different impacts to communities."

- One tribe commented that language should be added to make clear that even though an acquisition may be authorized under federal law there may nevertheless be other Federal

law or binding agreements (e.g., tribal-state compacts) that prohibit the Secretary from acquiring land into trust. Authority.

- One Tribe commented that lands acquired within a tribe's reservation or tribal consolidation area should be deemed to be reservation land without further action. This would avoid any question of whether an on-reservation acquisition requires a Reservation Proclamation.

4. *Section 151.4 How will the Secretary determine that statutory authority exists to acquire land in trust status?*

- Numerous tribes expressed appreciation for the Department's clarity in how it will ensure that its statutory authority is met to acquire land into trust status. Here, one supportive commenter suggested that the Department elaborate on or provide a non-exhaustive list of "other forms of evidence." Another commenter suggested that the Department include "Evidence of determinations by appropriate federal officials that a tribe or tribal members were eligible for benefits under the IRA." One tribe expressed support for proposed section 151.4(a)(4), which gives no legal force or effect to past disavowals of a government-to-government relationship by executive officials. Another tribe suggested that evidence of treaty negotiations, non-ratified treaties, and termination legislation should all be considered conclusive rather than presumptive evidence.

- One tribal community requested that the Department publish a list of Tribes that met these thresholds so that future applicants on that list could reference that publication. Another commenter suggested that the rules clarify that proposed section 151.4(c) applies to all tribes with favorable "under federal jurisdiction" determinations and not just those "eligible under § 5 of the IRA." A tribe suggested that the Department clarify that past unfavorable "under federal jurisdiction" determinations receive no precedential effect, and that the Department will review such applicants' future applications under this newly articulated standard.

- A tribe requested clarification that proposed section 151.4 "incorporates existing case law" and the tests described have been "repeatedly upheld by the federal courts" and suggested language to further clarify how the Indian Reorganization Act and related laws are treated under this section.

- Several tribes believe that the current language in section 151.4, as it relates to the acquisitions of trust lands owned in fee by an Indian, was replaced without providing additional details or clarity for these types of acquisitions. Therefore, they suggested that the text from the existing section 151.4 be maintained and further clarified in the new proposed section to account for this issue.

- A commenting Town suggested that the presumption that tribes acknowledged through Part 83 were "under federal jurisdiction" in 1934 should be eliminated, or a process should be established where this rebuttable presumption may be challenged. Others believe this provision is "arbitrary and capricious" and should be withdrawn, noting that federal acknowledgment materials reviewed under Part 83 could show instead that the tribe was under state jurisdiction in 1934.

- One tribe provided suggested edits on how treaty negotiations should be treated under these regulations and proposed that section 151.4(2)(i) be moved to section 151.4(2) "as conclusive evidence of federal jurisdiction." The tribe applauded the elevated treatment of "[c]ontinuing existence of treaty rights . . ." from presumptive evidence to conclusive evidence.

- One non-tribal commenter urged the rule to be limited to within reservation boundaries and, where outside those boundaries, to require consistency with enumerated policies. This commenter requested: examples of evidence in the regulations that would indicate federal jurisdiction did not exist in 1934; and the elimination of any reference to "climate change" acquisitions.

- *Comment*: Alaska tribes requesting specific language exempting them from the under federal jurisdiction analysis. We agree with the comment but do not think including the language is necessary.

- One Tribe requested that the Department further clarify what types of legislation are included in legislation enacted "after 1934 making the IRA applicable to the tribe" within the meaning of section 151.4(b).

- Some Tribes questioned whether the under federal jurisdiction analysis provided for in 151.4 would be applied to a mandatory acquisition.

5. *Section 151.5 May the Secretary acquire land in trust status by exchange?*

- One commenter expressed concurrence with the proposed changes.

- One tribe commented that this section 151.5 appears to only contemplate a situation where a fee land-owning party and an individual Indian or tribe might exchange lands with each other. However, the tribe noted that another important instance involving an exchange of lands occurs when the small reservations of some tribes, including the commenting Nation, are bounded by and contiguous to other federal lands, such as National Forests and Bureau of Land Management lands. For the Nation to add lands to their Reservation and provide an adequate homeland for their People, they must acquire federal lands through a land

exchange with a federal agency. Consequently, the tribe requested that the following language be added to proposed section 151.5: "The Secretary may acquire land in trust status on behalf of an individual Indian or tribe by exchange under this part if authorized by Federal law and within the terms of this part. The Secretary may directly acquire land to be conveyed to an individual Indian or tribe pursuant to a federal land exchange upon the individual Indian or tribe authorizing the direct transfer of title from the federal agency involved in the land exchange to the United States in trust for the individual Indian or tribe. the disposal aspects of an exchange are governed by part 152 of this title, as applicable."

6. *Section 151.6 May the Secretary approve acquisition of a fractional interest?*

- While one tribe commented that they have no problem with the proposed changes, another objected to the revisions in proposed section 151.6. While the objecting tribe appreciated the Department's replacement of the term "buyer" with "applicant" (which they believe better reflects the nature of such acquisitions), they expressed concerned that the Department has taken no action to expand opportunities for the acquisition of a fractional interest through the discretionary process. The tribe believes that both federal law and the general supporting principle of self-determination favor the idea that tribal governments should be free to purchase fractional interests in their members' restricted Indian land over time and have such land taken into trust. Accordingly, they recommend revising proposed section 151.6 to use "including, but not limited to" language prior to the list of circumstances under which the Secretary may approve a fractional interest, signaling that the regulatory list is not exhaustive. In the alternative, they also recommended supplementing this section with additional categories that may extend opportunities for such acquisitions to tribal governments that may be otherwise excluded under the current scheme.

7. *Section 151.7 Is tribal consent required for nonmember acquisitions?*

- One tribe commented that they have no concerns with the proposed changes to proposed section 151.7.

8. *Section 151.8 What documentation is included in a trust acquisition package?*

- The majority of comments expressed overwhelming support for the new 120-day time frame for decision, although many commenting tribes also suggested that the regulations include a provision that an application will be deemed approved if the Secretary fails to meet this deadline or allow tribes recourse if a decision is not given within this time frame.

- A few tribes commented that the changes to proposed section 151.8(a)(5) impose no deadline on the Interior Department to prepare a Preliminary Title Opinion to render the

application "complete", which subsequently they assert makes the 120-day decision timeframe illusory. To address this, they suggested that the proposed regulations be changed to permit a tribe to prepare the Preliminary Title Opinion and require the Office of the Solicitor to review and approve it within 30 days of receipt from the tribe.

- Several tribes also noted that the proposed changes to section 151.8(a)(4) impose no deadline on the Department to conduct a public review process under the National Environmental Policy Act (NEPA) and issue a final Environmental Assessment (EA) or an Environmental Impact Statement (EIS) document to render an application "complete." They suggested that where no categorical exclusion is issued, the proposed regulation should be changed to require the Department to name the applicant tribe as a cooperating agency in a NEPA public review process; begin that process no later than 30 days after the Department receives a specific request from the tribe; and conclude any EA process within six months and any EIS process within 12 months.

- One tribe suggested that the Department consider adding additional clarification to the proposed regulations concerning the applicant's required contribution to the Secretary's environmental review under proposed section 151.8(a)(4).

- One tribe requested that the Department make clear that "many of the application requirements may be carried out simultaneously and need not proceed in sequential order as they are listed in the proposed rule."

- Several tribes noted that under proposed section 151.8(a)(3)(i), there is a requirement for a tribe to "include a statement of the estate to be acquired," but that this is not also mentioned for metes and bounds and survey descriptions.

- One tribe noted that requests for additional information under proposed section 151.8(a)(8) that delay the acceptance of an application as complete may greatly extend the timeline. The Tribe suggests that proposed section151.8(a)(8) should be adjusted to read as follows:

  > Any additional information or action reasonably requested by the Secretary in writing if warranted by unique and unusual circumstances in the specific application.

  - The tribe also suggested that the Department maintain metrics following the final adoption of the proposed Rule, showing the entire timeline from original submission to approval (or denial) and examining whether significant delays occur before acceptance.

- Many tribes requested that the "consent provision" be clarified to state that it does not apply to tribes with shared jurisdictions.

- A tribal consortium requested more flexibility in environmental issues and suggested that tribes be given the option to assume liability for environmental issues that remain on land being taken into trust.

- Some commenting tribes noted concerns over fee-to-trust acquisitions for gaming, suggesting that such applications be denied when gaming on the land in question would be prohibited by IGRA.

9. *Section 151.9 How will the Secretary evaluate a request involving land within the boundaries of an Indian reservation?*

   The majority of commenting tribes expressed their general support for the revisions to proposed section 151.9. Other tribes provided specific support for the proposed change to remove the required showing of "need for additional land" by tribal applicants, as well as the removal of an explicit solicitation for comments from state and local governments. One tribe also expressed appreciation for including "economic development and Indian housing" and "self-determination" as factors to be given weight in the evaluation and decision-making process.

   - Several tribes suggested that the Department remove "any requirement to show the BIA has the capacity to carry out its responsibilities if the land was placed in trust" (proposed section 151.9(a)(4)). Another tribe expressed similar concerns with proposed section 151.9(a)(4).

   - One tribe commented that the Department "should clarify that what is intended to be presumed in favor of the tribe is that the tribe meets one of the needs listed at 151.9(b) *and* that the effects on a state or local government's 'regulatory jurisdiction, real property taxes, and special assessments' will be minimal; arguably then, the burden shifts to those opposing the acquisition to either prove that the acquisition does not meet one of the criteria listed at 151.9(b) or that the acquisition would adversely impact state or local governments."

   - One tribe believes the policies afforded great weight under proposed section 151.9(b) may unduly limit the needs and uses for which tribes may acquire land under the IRA. The Tribe suggests adding the following to the IRA's purpose: "for the purpose of providing land for the Indians," along with the prior listing of "housing" and "economic development" needs. The Tribe also suggests a rewording of the "no change in use" category.

- One tribe strongly suggested that proposed section 151.9(a)(3) be removed entirely, asserting that it second-guesses the tribal applicant's self-governance decisions and is not necessary under NEPA. Another tribe suggested that it is unclear what must be submitted to comply with proposed section 151.9(a)(3) - specifically concerning NEPA compliance implications referenced in the "Summary of Changes" in the Federal Register. Several tribes also suggested edits to proposed section 151.9(b) that account for tribes with rights tied to executive orders or other federal laws.

- Several counties, towns, and states expressed opposition to proposed section 151.9, specifically expressing concern over how notice is afforded to states and local governments. Collectively, they asserted that: (1) it is not clear what will be included in the notice, (2) whether the notice is merely a courtesy, given the presumption to acquire on-reservation lands, or whether they will be given an opportunity to comment; and (3) whether the new presumptions for acquiring land, when coupled with the removal of the consideration of jurisdictional problems, potential conflicts of land use, the removal of considering the effects on a state and local government's regulatory jurisdiction, real property taxes, and special assessments, and the expressed needs of tribal applicants for additional land, are lawful. One commenter also suggested that the term "state and local governments *with regulatory jurisdiction over the land to be acquired*" could result in a lack of any notice where jurisdiction is complicated or debatable, because the Department makes its own interpretation on that question.

- Several tribes commented that the Department should clarify in the preamble or the final rule that "state and local governments only have regulatory jurisdiction over on-reservation fee land *owned by non-Indians*". One tribe also urged the Department to not allow state and local comments on their own overcome "a decision to approve a trust acquisition."

10. *Section 151.10 How will the Secretary evaluate a request involving land contiguous to the boundaries of an Indian reservation?*

- The majority of commenting tribes expressed general support for the proposed changes to section 151.10. Specifically, they expressed appreciation for the new presumption in favor of acquisition. They also expressed support for retaining the 30-day comment period with those comments being provided to tribes for rebuttal, and that states and local governments are limited to commenting only on impacts to their regulatory jurisdiction, real property taxes, and special assessments. One tribe also expressed appreciation for the inclusion of "economic development and Indian housing" and "self-determination" in the proposed changes to section 151.10(b).

- One tribe suggested that "great weight" should be afforded contiguous acquisitions "within the original boundary of the tribal applicant's reservation." Another tribe suggested the

Department should give greater weight to the presumptions in proposed sections 151.10(c) and 151.10(d) when evaluating state and local comments for impacts to their regulatory jurisdiction, real property taxes, and special assessments. A tribe also suggested that the Department should clarify that state and local comments alone are insufficient to "overcome a decision to approve a trust acquisition". This same tribe also suggested technical edits to harmonize proposed section 151.10(b) with the proposed changes to section 151.3(b)(3). Another tribe stated that the Department should not even solicit state and local government comments which is they assert is consistent with the process described for on-reservation acquisitions.

- One tribe suggested that when the Department receives and reviews state and local government comments, it should be both mindful and give great weight to the fact that the local tribe and the Department "are already providing services to the contiguous parcel". .
- One tribe opposed the proposed changes to section 151.10(a)(3), stating that allowing the Secretary to evaluate the purposes for which a tribe will use its own land within its own reservation is inconsistent with self-determination policy. Additionally, the same tribe opposed proposed section 151.10(a)(4), stating that it is "outdated and perpetuates a callous and abusive federal policy discarded decades ago because of its moral bankruptcy". Another tribe submitted comments seeking a specific tax exemption under the regulations to address a longstanding fee-to-trust issue they have been dealing with. Another tribe requested a timeframe for when BIA must provide the tribal applicant a copy of any comments received from state or local governments (suggesting a 10-day window to provide such copies to the tribal applicant). Another tribe requested that affected tribes be included in the notice for comment sent to state and local governments.

- One tribe suggested a new category of "adjacent" lands be added to the "Contiguous" acquisition analysis to account for that category of lands that are currently "off-reservation" lands, but that should be afforded greater weight as lands that are "closely connected or intrinsically linked to lands held in trust" for the applicant tribe. Another tribe suggested that the Department clarify that "contiguous" acquisitions are also "contiguous" for gaming purposes under 25 CFR 292.2 (the tribe offered draft edits for consideration). Several tribes also suggested edits to proposed section 151.10(b) that account for tribes with rights tied to executive orders or other federal laws.

- One tribe commented that while it welcomed a presumption in favor of approval for requests for acquisition of land within and contiguous to reservation boundaries, the proposed presumption in sections 151.9 and 151.10 should be further clarified as they believe it is not clear which of the criteria in these sections an applicant tribe would no longer need to affirmatively prove, and what an opposing party would need to produce or persuade to overcome the presumption. The tribe consequently proposed the follow

change to proposed section 151.10: "When reviewing a tribe's request for land within the boundaries of an Indian reservation, the Secretary presumes that the acquisition will be ~~approved~~ further the tribal interests described above in subsection (b), and adverse impacts to local governments' regulatory jurisdiction, real property taxes, and special assessments will be minimal, therefore the application should be approved (Proposed changes in strikeout and italics.)."

- Several counties, towns, and states who commented are opposed the proposed changes in section 151.10 and expressed concern about whether the new presumptions for acquiring land, when coupled with the removal of the consideration of jurisdictional problems, potential conflicts of land use, and the expressed needs of tribal applicants for additional land, are lawful. They also expressed concerns about the 30-day comment period being too short of a time period to meaningfully comment on acquisitions, as well as the need for criteria defining how notice will be provided to state and local governments. Separately, several of these commenters noted that state and local comments are not afforded "great weight" and assert that they should be. Additionally, a State Attorney General proposed language for section 151.10(d) that prescribes a process for providing notice to state and local governments and what that notice should include.

- One state commented that they believed the "presumption that contiguous lands be approved" is unclear, i.e., there is "no description of the weight of the presumption." The State also noted that it is unclear whether the presumption is rebuttable and - if so - how is it rebutted?

11. *Section 151.11 How will the Secretary evaluate a request involving land outside the boundaries of an Indian reservation?*

- The majority of commenting tribes expressed their general support for the proposed changes to section 151.11. Many expressed support for removing the distance analysis (in current section 151.11(b)). One tribe appreciated the addition of "economic development and Indian housing" and "self-determination," as reflected in the proposed changes to section 151.11(b). Another tribe suggested that the Department give "great weight" to off-reservation acquisitions "within the aboriginal or 'ceded' lands of the tribal applicant." Several tribes suggested that local tribal governments receive notice of a tribe's application and be given an opportunity to provide comments. A tribal consortium suggested that "given Alaska's unique history, land acquisitions within Alaska Native Village Statistical Areas should be treated as 'on-reservation acquisitions' and not off-reservation acquisitions."

- One tribe suggested that the Department clarify that state and local government comments alone are insufficient to "overcome a decision to approve a trust acquisition." They also

suggested technical edits to harmonize proposed section 151.11(b) with the proposed changes to section 151.3(b)(3) and technical edits to harmonize the proposed changes to section 151.11 with sections 151.9(a), 151.10(a), and 151.12(a). Several tribes also expressed support for retaining the 30-day comment period, requiring that those comments be provided to tribal governments for rebuttal, and that states and local governments be limited to commenting only on impacts to their regulatory jurisdiction, real property taxes, and special assessments.

- One tribe requested that a timeframe be included for when BIA must provide a tribal applicant with a copy of any comments received from state or local governments (suggesting a 10-day window). Several tribes suggested edits to proposed section 151.11(b) that account for tribes with rights tied to executive orders or other federal laws.

- Several state, local and tribal governments opposed the removal of the current section 151.11(b), which they assert increases scrutiny the further from a reservation the land is while giving greater weight to state and local government concerns. One tribe proposed the following alternative to proposed section 151.11(c): "The Secretary will consider the community benefits and give the greatest weight to the interests and concerns of tribes with aboriginal ties to the proposed location." One non-tribal commenter suggested a gaming carve-out, which would apply the current section 151.11(b) equivalent to acquisitions where gaming will be conducted. There are concerns from non-tribal entities that tribes can conceivably acquire land across the United States, and these concerns are also expressed as gaming concerns in certain comments.

- Several commenters found the proposed language vague in 151.11 (c) that "in reviewing such comments, the Secretary will consider. the location of the land." A local county stated that "that there are far greater considerations than location to consider, such as the financial impact on local governments, local taxing authorities and local taxpayers as lands are proposed for acquisition as trust lands." One tribe suggested adding a presumption of approval for land located outside of and noncontiguous to an Indian reservation. A county opposed the purported removal of consideration of "jurisdiction problems and potential conflicts of land use" from consideration.

- Several commenting state and local governments oppose the removal of the requirement that tribal applicants submit business plans for review. They also expressed concerns that the 30-day comment period was too short to provide meaningful comments, as well as the need for criteria defining how notice will be provided to state and local governments. Separately, several commenters noted that state and local comments are not afforded "great weight" and asserted that they should be.

- A state attorney general suggested revisions for proposed section 151.11(d) that would prescribe a process for providing notice to state and local governments and what that notice would include.

- A town expressed skepticism regarding the blanket presumption of community benefits for off-reservation acquisitions and noted that it is unclear how this presumption can be rebutted.

- One tribe recommend that tribes with dispersed trust lands be accommodated by adding a provision that if the proposed acquisition is within five miles of a tribe's existing trust land, that the application will be considered a contiguous application.

12. Section 151.12 How will the Secretary evaluate a request involving land for an initial Indian acquisition?

- The majority of commenting tribes expressed general support for the proposed changes to section 151.12. One tribe appreciated the addition of "economic development and Indian housing" and "self-determination," as reflected in the proposed changes to 151.12(b). They also supported the "presumption of community benefits in 151.12." However, some tribes suggested that the Department's presumption of community benefits should only apply where the initial acquisition is within the tribal applicant's "aboriginal territory." Another tribe would like this section expanded beyond an "initial Indian acquisition" to include acquisitions for "a modest or minimal homeland."

- One tribe suggested that the Department clarify that the receipt of state and local comments alone is insufficient to "overcome a decision to approve a trust acquisition." Tribes also expressed support for retaining the 30-day comment period, requiring that those comments be provided to tribes for rebuttal, and that states and local governments be limited to commenting only on impacts to their regulatory jurisdiction, real property taxes, and special assessments.

- Several tribes suggested edits to proposed section 151.12(b) that account for tribes with rights tied to executive orders or other federal laws. One tribe provided edits it believed would better harmonize proposed section 151.12(b) with proposed section 151.3(b)(3).

- Several state and local governments expressed concerns about the 30-day comment period being too short to allow them to provide meaningful comments, as well as the need for criteria defining how notice will be provided to state and local governments. Separately, several commenters noted that state and local comments are not afforded "great weight" and asserted that they should be.

13. Section 151.13 How will the Secretary act on requests?

- One tribe requested that the definition of "interested parties" also match the definition of "interested parties" under federal recognition. They also requested that interested parties be required to obtain a bond and that more judges should be hired to address the purported FTT backlog.

- One tribe expressed concern about the standing requirements for "interested parties," suggesting that purely economic interests should not be sufficient.

- One tribe requested that the word "to" be added to the end of subsection (d)(2)(ii).

- Several tribes expressed concern about the definition of an "interested party."

- One tribe and an individual commenter both requested that subsection (d) be removed.

- One tribe requested that digital publication be accepted for notification along with written publication in subsection (d)(2)(ii)(B)(iii).

- One tribal commenter expressed strong supported for the provision in subsection (c)(iii) to immediately acquire land into trust status.

- An association of counties expressed concern that the proposed changes to section 151.13 would limit their ability to fully participate in the comment process.

14. Section 151.14 How will the Secretary review the title?

- One tribe expressed support for the proposed changes to section 151.14.

- One tribe commented that proposed section 151.14, as written, seems to require applicants to submit title evidence only after "the Secretary approves a request for the acquisition of land" and requested further clarification.

- Two tribes requested clarification of the standards for title evidence.

- One tribe requested that preliminary title opinions be shared directly with the applicant tribe. Additionally, the tribe requested an additional change to proposed section 151.14 to prevent continued practices that do not align with accepted real estate best practices. Finally, the tribe requested that qualified tribal officials be permitted to complete the Certifications of Inspection.

- One Tribe suggested a new section regarding indemnification agreements: If a Tribe is willing to accept an encumbrance, liens, or infirmity, the Department will accept the Tribe's judgment and allow the application to proceed, provided (a) the Tribe enters an indemnification agreement in favor of the BIA with respect to the issue, (b) the risk of liability is low or the magnitude of the liability is low, and (c) the Tribe agrees it can use the property for its intended purpose while the encumbrance remains.

- One Tribe suggested that clarification is still needed on what documents of title evidence are sufficient for the acquisition package and whether they are the same as those required if the request for acquisition is approved.

15. Section 151.15 How will the Secretary conduct a review of environmental conditions?

- One county requested that a socio-economic impact report be included as part of the NEPA environmental impact analysis.

- Several tribes expressed support for the proposed changes to section 151.15.

- Several tribes recommended that the Department clarify that Phase I environmental site assessments would not need to be updated except when an evaluation of the pre-acquisition determines environmental conditions exist.

- A tribal consortium requested additional flexibility around environmental issues, specifically requesting that tribes be able to assume liability for environmental issues on lands taken into trust.

- An association of counties and others requested that NEPA analyses be submitted as part of a "complete application."

- One tribe requested various clarifications to proposed section 151.15, including environmental assessments being "end loaded" in the process.

16. Section 151.16 How is a formalization of acceptance and trust status attained?

- One tribe noted that it had no concerns with proposed section 151.16.

- A private individual requested that the entirety of proposed section 151.16 be redone, with clarified timeframes in line with the Administrative Procedures Act.

- One tribe requested that proposed section 151.16(b) require formal notification to the applicable tribe, so the date of official trust status is certain.

- A county requested that the proposed changes to section 151.16 include a final step that all land conveyance documents must be recorded in the county's land records for the conveyance to be officially recognized.

17. *Section 151.17 What effect does this part have on pending requests and final agency decisions already issued?*

- Numerous tribes expressed concern that under proposed section 151.17, tribes who submitted prior to the new rules would not benefit from the 120-day time limit. One tribe also requested that tribes who previously submitted should have a mechanism to benefit from timely processing.

- One tribe expressed concerned that the language in proposed section 151.17(b) is unclear as to whether presently pending matters in the IBIA will need to start over based on new requirements.

- One tribe requested that tribes who have pending applications be afforded a choice between the now-in-place rule and the draft rule, should the draft rule be adopted.

- A state requested that all interested parties be required to consent before tribes with pending applications are able to proceed under the new regulations. The State also requested that a pending application processed under the new regulations be reopened for comment.

18. *Comments On General Issues*

- One tribe suggested that "interested parties", like state and local governments, be afforded notice and an opportunity to comment on acquisitions because the lack of that accommodation for "interested parties" often ensures that they ultimately file a formal appeal of a favorable decision.

- Many counties, states, and local governments expressed opposition to the proposed regulations. They expressed concerns over the BIA's statutory authority to promulgate such regulations, as well as whether the proposed regulations are in compliance with NEPA, the APA, and potential federalism issues.

- Some state and local governments argued that the presumptions unlawfully strip the Secretary of the case-by-case discretion required under the IRA.

- A tribal consortium expressed concern over how the process would work in Alaska, the need to account for the Alaska Native Claims Settlement Act, as well as other unique issues

surrounding land in Alaska. It was also suggested that the expedited timelines in the proposed rule might move too quickly to enable the Department to effectively exercise land into trust authorities in Alaska.

- A former attorney general submitted comments expressing disapproval of the removal of BIA consideration of "jurisdictional problems and potential conflicts of land use". These concerns are rooted in law enforcement jurisdiction issues, which they assert are complicated in Indian country and the proposed changes would affect these issues.

- Many tribes suggested that an electronic filing system would be helpful in providing a streamlined platform for reviewing applications and following where applications are in the process.
- Several comments were received that were not directly responsive to the proposed regulations.

V. Conclusion

Overall, the proposed changes to Part 151 have attracted a high level of tribal support while also raising some concerns from non-tribal entities. The submitted comments inform this general observation. Many commenters submitted red-lined draft language. The two sections that generated the most feedback are the proposed sections 151.2 and 151.8.