

## **TRIBAL CONSULTATIONS – LAND INTO TRUST PROGRAM**

### ***I. General Talking Point Suggestions***

- Focus on why land recovery is important to your tribe. Off-reservation acquisitions are vital to tribes for a variety of reasons. Tell your story, bring your maps.
  - From 1887, when the General Allotment Act was enacted, to 1934, when the Indian Reorganization Act was enacted, tribal land holdings diminished from 138,000,000 acres to just 48,000,000; 20,000,000 acres of which is now desert or semidesert lands.
- Any attempt to require Tribes to address state & local interests, including the completion of an MOU and/or other agreements with state and local governments, should be opposed. Restoring tribal lands is a federal responsibility. Be specific and explain why it may be difficult to reach agreements with the local government in your area.
- Any attempt to conflate gaming concerns with the broader land-into-trust process should be strongly opposed.
  - Gaming on lands acquired after 1988 occurs only in limited circumstances (*see* 25 U.S.C. § 2719), and the Department’s regulations at 25 C.F.R. Part 292 govern those narrow instances.
  - These limited exceptions cannot affect broad land acquisition policies for all tribes. It is bad policy and it is prohibited by law. *See* 25 U.S.C. § 2719(c) (stating “Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust.”).
- Policies should be developed by and with a confirmed Assistant Secretary-Indian Affairs & with the benefit of an appointed Deputy Solicitor-Indian Affairs
  - To do otherwise arguably skirts the Senate’s authority to advise and consent on the President’s appointments and the policies they create

### ***II. Issues with the Department’s Proposed Revisions from October 2017***

- The proposed revisions are contrary to the goals of the Trump Administration to decrease federal regulations, and would:
  - Create a 2-step review process for all off-reservation acquisitions;
  - Include enhanced requirements to address state and local governmental interests;

- Create two categories of off-reservation acquisitions: gaming & non-gaming, as prohibited by the Indian Gaming Regulatory Act, at 25 U.S.C. § 2719(c); and
  - Reinstate DOI's 30 day "self-stay" policy, increasing the likelihood of frivolous challenges and increasing costs and delays generally for tribes seeking acquisitions.
- The two-step process is a faster way to deny applications before the tribe can provide justification.
    - The 2-step review would effectively act as a land use approval stage within the land into trust program, effectively allowing the federal government to withhold land acquisitions until the tribe proposes a use the federal government approves;
    - Would also increase attorneys and experts costs by adding another layer of potential administrative appeals; and
    - Would reduce NEPA's environmental review and the assessment of whether any hazardous substances are located on the land to secondary considerations, *after* DOI decides whether it to approve the Tribe's proposed land use.
- The proposed consultation schedule was completely inadequate.
    - It only proposed three consultations, in Phoenix, Seattle and Sacramento, which would all occur within less than one month. For a topic as important and broad reaching as this one, tribes recommended no less than 90 days for the necessary consultation.