



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 20 2024

The Honorable Harriet M. Hageman
Chair
Subcommittee on Indian and Insular Affairs
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Chair Hageman:

Enclosed are responses to questions for the record submitted to the Department of the Interior's witness, Kathryn Isom-Clause, Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs, following her June 26, 2024, appearance before your Subcommittee at a legislative hearing on H.R. 1208 and H.R. 6180. These responses were prepared by the Bureau of Indian Affairs.

Thank you for the opportunity to respond to you on these matters.

Sincerely,

Pamela Barkin
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Teresa Leger Fernández
Ranking Member

Questions for the Record
House Committee on Natural Resources
Subcommittee on Indian and Insular Affairs
Legislative Hearing on H.R. 1208 and H.R. 6180
June 26, 2024

Questions from Chairman Westerman

Question 1: Has the Department of the Interior denied a land into trust application in the past five years?

Response: Yes, the Department of the Interior (Department) has denied land into trust applications.

a. If so, which tribe(s) were denied?

Response: Scotts Valley Band of Pomo Indians (CA), Coquille Indian Tribe (OR), Cayuga Nation of New York (NY), Ewiiapaayp Band of Kumeyaay (CA), Buena Vista Rancheria (CA). The Department also denied two applications from individuals.

b. If so, for what reason?

Response: The Scotts Valley application was disapproved because of gaming ineligibility. The Coquille disapproval cited local governmental opposition, potential conflicts of land use and jurisdictional problems along with distance from the Tribe's other trust land as the basis for the disapproval. The Cayuga decision cited to the Tribal council's use of Tribal Police to reclaim a Tribally owned fee property from a Tribal faction, local governmental opposition, and jurisdictional conflicts between the Tribe and local governments as the basis for the denial. Ewiiapaayp Band of Kumeyaay and Buena Vista Rancheria were both denied for lack of proposed use justification (both denied by then Assistant Secretary for Indian Affairs Tara Sweeney).

The Department denied two individual applications due to environmental liabilities that could not be addressed and the applicants' inability to produce evidence that they met the definition of Indian as defined by 25 U.S.C. 2201(2).

Question 2: Has the Department not issued a positive Carcieri determination in response to any fee to trust application or any other requests submitted by a tribe?

Response: No. Typically, if the Department cannot verify that a Tribe was under federal jurisdiction, the Bureau of Indian Affairs (BIA) will request the Tribe withdraw the application and submit additional information.

a. If so, for which tribe(s)?

Response: Not Applicable

b. Has the Secretary ever waived the 25 CFR Part 151 regulations pursuant to 25 CFR 1.2?

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Response: We are unaware of the Department waiving the regulations at 25 CFR Part 151 pursuant to 25 CFR 1.2.

- c. If so, for which tribe(s) and when has the Secretary waived the 25 CFR Part 151 regulations for a fee to trust application?**

Response: Not Applicable

Question 3: Has the Department been able to act more quickly on land-into-trust applications since the Department finalized 25 CFR Part 151 regulations in December 2023?

Response: Yes, the Department has been able to act more quickly on applications post-rulemaking.

- a. If yes, please provide the average number of days it takes the Department to review land-to-trust applications pre- and post- rulemaking.**

Response: The average number of days for the Department to review and issue a decision was 457 days for those applications received during the five years *pre-rulemaking*.

The Department completed its review and issued decisions on seven applications received *post-rulemaking*, which took an average of 87 days. Some of these acquisitions do end up having appeals filed with the Interior Board of Indian Appeals (IBIA), which can lengthen processing times for completion.

- b. Additionally, please provide the longest length of time it took for a single application to go through the process pre- and post- rulemaking.**

Response: The longest length of time it took for the Department to review and issue a decision on a single application received during the five years *pre-rulemaking* was five years (1,946 days). The longest length of time it took for the Department to review and issue a decision on a single application from those received *post-rulemaking* was five months (154 days). Some of these acquisitions do end up having appeals filed with IBIA, which can lengthen processing times for completion.

Question 4: Prior to the Department finalizing the new 25 CFR Part 151 regulations, several tribes requested a requirement that the Department consult with nearby tribes when an applicant tribe is seeking the acquisition of trust lands in another tribe's ancestral territory. This request was not implemented.

- a. Considering the importance this Administration has placed on consultation with tribes, why did the Department not include this level of consultation?**

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Response: The Department carefully considered all comments received in the rulemaking process. Determining the location and extent of a Tribe’s aboriginal lands often requires a lengthy review of applicable law and fact. Such a review would be inconsistent with the intent to streamline the fee-to-trust process. However, the Department will notify those local governments who currently have jurisdiction over the land. The Department may also provide notice to Tribes who are potentially impacted by another Tribe’s application to acquire trust lands.

Question 5: The new 25 CFR Part 151.11 in the regulations governing trust acquisitions located outside and non-contiguous to an existing reservation eliminates the previous requirement that the Secretary increase scrutiny of a trust application as the distance from a tribe’s reservation increases. The reasoning for the elimination explained in the preamble of the regulations was that the Department no longer needed to give greater weight to the concerns of State and local governments now that the Department is going to presume that any land acquisition benefits an applicant tribe.

- a. Can you explain whether any tribes specifically asked for the Department to eliminate this increased or heightened scrutiny for applications as the distance from an existing reservation increases?**

Response: The elimination of increased scrutiny as the distance increases from a Tribe’s reservation was proposed in the Notice of Proposed Rulemaking (NPRM). Tribes expressed their support for this change in response to the NPRM.

- b. If so, can you tell which tribe(s) asked for this requirement to be eliminated?**

Response: Based on the BIA’s long experience processing fee-to-trust applications, it became clear that distance alone was an insufficient measure of whether land should be acquired in trust. Where a Tribe takes off-reservation land into trust, that land nearly always serves an important economic, cultural, self-determination, or sovereignty purpose that supports Tribal welfare. Based on this, the new 25 CFR 151.11 regulations incorporated the distance factor into an overall holistic analysis of the application. The BIA received several comments supporting this change from various Tribes.

Question 6: The new 25 CFR Part 151 regulations governing trust acquisitions located outside and non-contiguous to an existing reservation do not require that the applicant tribe show any ancestral ties to the proposed trust land.

- a. Can you confirm that the new regulations do not require an applicant tribe have any ancestral ties to the proposed trust land?**

Response: First, the Department emphasizes that the Indian Reorganization Act (IRA) does not limit Tribes to trust acquisitions within their “ancestral” lands. Many Tribes have overlapping, shared territories and such a restriction would be difficult to administer. Including restrictions in the 25 CFR Part 151 regulations that would require a demonstration of “ancestral ties” would be

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difficult to administer and against the goals of the IRA. The previous version of the 25 CFR Part 151 regulations did not require ancestral ties nor do the 2023 regulations.

- b. Why does the Department believe that tribes should be able to acquire trust lands that are outside of their ancestral territories?**

Response: The IRA does not limit Tribes to trust acquisitions within their “ancestral” lands. Accordingly, the Department respects Tribal self-government, self-determination, and sovereignty. The Department supports acquisition of land in trust for the many benefits trust land provides to Tribes.

- c. Can you also confirm whether the new regulations allow a tribe to acquire lands outside of the state boundaries in which the tribe is currently located?**

Response: The previous regulations allowed Tribes to acquire lands outside of the state boundaries in which they are currently located, as do the current regulations.

- i. If this is allowed, why does the Department believe that a tribe located in one state should be able to acquire trust lands in another state?**

Response: Some Tribes’ reservations cross multiple state lines. Tribes may wish to acquire lands in trust that are significant to the Tribe but are not located within the State in which they are based, many times due to previous harmful policies of the federal government. Also, Tribes may want to collaborate with other Tribes and bring land into trust under similar circumstances or jointly.

Question 7: Some tribes have reached contacted the committee expressing concern that the new 25 CFR Part 151 regulations fail to include a requirement that the Department consult with nearby tribes when an applicant tribe is seeking to acquire trust lands in another tribe’s ancestral territory. The preamble to the new regulations acknowledges that several tribes made this request to include a consultation requirement with potentially impacted tribes, but the preamble does not give a clear reason as to why the Department failed to include this consultation requirement requested by several tribes.

- a. Given that this Administration seems to constantly talk about how it consults with tribes more than any other Administration, why did the Department not include a consultation requirement with nearby tribes who may be impacted by another tribe’s application to acquire trust lands?**

Response: The Department will notify those local governments who currently have jurisdiction over the land. The Department may provide notice to Tribes who are potentially impacted by another Tribe’s application to acquire trust lands. Given the differences in geography between all Tribal land holdings, it would be difficult to establish a national regulatory standard that defines “local or nearby Tribal governments” in a consistent and equitable manner. Therefore, the

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Department did not require notification in every case.

See, also, the response to Question 4 above.

- b. Under these new regulations, would tribes in Oklahoma be able to obtain trust lands in states like North Carolina, South Carolina, Georgia and Florida, where some of those tribes were originally removed?**

Response: Under the previous regulations and the current regulations, Tribes can apply to acquire trust lands as described in the question. However, the Tribe must meet all of the requirements of the land acquisition regulations.

- c. If so, would the Department be required to notify and consult with federally recognized tribes in those states?**

Response: The Department will notify those local governments who currently have jurisdiction over the land. The Department may provide notice to Tribes who are potentially impacted by another Tribe's application to acquire trust lands.