



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted electronically

August 16, 2017

The Honorable Ryan Zinke
Secretary
United States Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

Dear Secretary Zinke,

On behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to express our deep concern with the Department of the Interior's (DOI) July 20th notice of its intent to issue a Notice of Proposed Rulemaking (NPRM) to change the process for off-reservation trust land acquisition and reinstate the 30-day waiting period for all parcels to be put into trust. This NPRM, which would have significant impacts on the land-into-trust-process, has not been subject to any Tribal consultation, in violation of DOI's own Tribal consultation policy. We urge you to immediately withdraw the NPRM and instead consult with Tribal Nations prior to the formulation of any new rule.

USET SPF is a non-profit, inter-tribal organization representing 26 federally recognized Tribal Nations from Texas across to Florida and up to Maine¹. USET SPF is dedicated to enhancing the development of federally recognized Tribal Nations, to improving the capabilities of Tribal governments, and assisting USET SPF Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people. This includes advocating for the full exercise of inherent Tribal sovereignty.

Withdraw the Proposed Rule

USET SPF Tribal Nations, along with Tribal Nations and organizations across the country, request in the strongest possible terms that the Notice entitled, "Off-Reservation Trust Acquisitions and Action on Trust Acquisition Requests (RIN: 1076-AF36)," be withdrawn. According to the DOI's own Tribal consultation policy, "beginning at the Initial Planning Stage, see Section VII, Part E, Subsection 1, a Bureau or Office will consult with Indian Tribes on a Departmental Action with Tribal Implications." Section VII, Part E, Subsection 1 states, "each Bureau or Office will consult with Indian Tribes as early as possible when

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

considering a Departmental Action with Tribal Implications.” The Policy notes that the Initial Planning Stage occurs prior to the Proposal Development Stage. However, it appears that DOI has already developed the NPRM without any Tribal consultation.

In our May 30th letter to you regarding initial USET SPF priorities, we stated regarding land-into-trust, “we would like to be involved in any discussions you have before decisions are made and minds are set.” With this in mind, we are particularly disappointed to see the issuance of the Notice without the guidance of Tribal Nations.

Importance of Trust Land

As a core trust responsibility, and as a matter of justice arising out of the massive land transfer effected to the United States by Tribal Nations under conditions of duress, DOI has, for nearly 85 years, restored Tribal lands through trust acquisitions. These acquisitions enable Tribal Nations to build schools, health clinics, hospitals, housing, and provide other essential services to Tribal citizens. Moreover, because the trust responsibility is so deeply underfunded, many Tribal Nations depend on the economic development conducted on these lands in order to fund essential government services. DOI has approved trust acquisitions for approximately 5 million acres of former Tribal homelands, far short of the more than 100 million acres lost through Federal policies of removal, allotment, and assimilation.

While USET SPF member Tribal Nations ultimately seek full jurisdiction and management over our homelands, we recognize the critical importance of the restoration of our land bases through the land-into-trust process. We further recognize that the federal government, and not any other unit of government, has a trust responsibility and obligation to Tribal Nations in the establishment and management of trust lands. This includes an obligation to ensure the process to acquire trust lands remains robust and consistent with the goal of land-base restoration.

USET SPF strongly opposes any effort to diminish, whether intentionally or unintentionally, Tribal Nation reservations and trust lands, to provide for state management of any Tribal ancestral homelands currently managed by the federal government, or to otherwise undermine the DOI land-into-trust process. This includes regulatory or statutory changes that would create barriers to the restoration of Tribal homelands. We urge DOI through extensive and meaningful consultation, to work hand-in-hand with Tribal Nations to determine what changes, if any, are appropriate for the land-into-trust process.

Meaningful Tribal Consultation as an Extension of the Trust Responsibility

Pursuant to Executive Order 13175, DOI’s Tribal Consultation Policy, and numerous other statutes, executive orders, and court cases, the federal government has an obligation to consult with Tribal Nations in the formulation of federal Indian policy. As our federal partner in this unique government-to-government relationship, it is incumbent upon all branches of the U.S. government to ensure Tribal Nations have meaningful input into federal actions with Tribal implications. Meaningful consultation includes engaging with Tribal Nations at the very beginning of any planning, assessment, or review processes on a nation-to-nation basis and positively acting upon Tribal guidance and input. This is a core function of the trust responsibility.

USET SPF recognizes that there have been many failures in Tribal consultation over the years. We urge you to learn from the mistakes of past Administrations and as Chair of the White House Council on Native American Affairs, work to reform the Tribal consultation process, as conducted by DOI and agencies across the federal government.

Consultation must include Tribal *consent* for actions that significantly impact or threaten Tribal interests. This point should be strengthened in the law, and not just in regulations. Indeed, the relationship between the United States and Tribal Nations began as one of mutual consent to treaty terms and other agreements, even if the Tribal Nations were under duress. That mutual consent principle should continue, though of course applied this time in an honorable fashion. In the short term, we must move beyond the requirement for Tribal consultation via Executive Order to a strengthened model achieved via statute. In the long term, we must return to the achievement of Tribal Nation consent for federal action in recognition of sovereign equality.

Conclusion

Please honor your obligation to consult with Tribal Nations and withdraw the Notice entitled, “Off-Reservation Trust Acquisitions and Action on Trust Acquisition Requests.” The restoration of Tribal homelands is a critical function of the DOI and the Department must work in partnership with Tribal Nations to determine what changes, if any, should be made to the land-into-trust process. We look forward to the opportunity to work with you to ensure that this obligation is more fully realized.

Should you have questions or require additional information please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at (202) 624-3550 or by email at lmalerba@usetinc.org.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director

CC: James Cason, Associate Deputy Secretary
Michael Black, Acting Assistant Secretary—Indian Affairs
Benjamin Keel, Executive Director, White House Council on Native American Affairs