

**STATEMENT OF
JAMES CASON, ACTING DEPUTY SECRETARY
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE UNITED STATES HOUSE SUBCOMMITTEE ON INDIAN, INSULAR
AND ALASKA NATIVE AFFAIRS
COMPARING 21ST CENTURY TRUST LAND ACQUISITION WITH THE INTENT OF
THE 73RD CONGRESS IN SECTION 5 OF THE INDIAN REORGANIZATION ACT
JULY 13, 2017**

Chairman LaMalfa, Ranking Member Torres, and Members of the Subcommittee, my name is Jim Cason. I am currently serving as the Acting Deputy Secretary of the Department of the Interior (Department of Interior). Thank you for the opportunity to testify before this Committee on the Department's role in the acquisition of trust lands for federally recognized tribes across the country.

The Indian Reorganization Act (IRA) [48 Stat. 984, 25 U.S.C. § 5108 et seq. (June 18, 1934)] provides the Secretary of the Department of the Interior with the discretion to acquire trust title to land or interests in land for tribes. Congress may also authorize the Secretary to acquire title to particular land and interests in land into trust under statutes other than the IRA.

The Secretary bases the decision to make a trust acquisition on the evaluation of the criteria set forth in Title 25 Code of Federal Regulations (CFR) Part 151, which derive from the Department's interpretation of the IRA and its purposes. With the exception of certain mandatory acquisitions, the decision to acquire title requires approval of the Secretary or his designee.

Fee-to-trust applications involve the acquisition in trust of whole or undivided interests in land held in fee. On-reservation Discretionary Trust Acquisitions are governed by 25 CFR § 151.10, Off-reservation Discretionary Trust Acquisitions are governed by 25 CFR § 151.11, and Mandatory Trust Acquisitions are outlined in Department policy. The Bureau of Indian Affairs (BIA) staff follow procedures outlined in Interior-BIA's "Acquisition of Title to Land Held in Fee or Restricted Fee Status Handbook" to implement the regulations governing Fee-to-Trust transactions.

When the BIA receives a complete Fee-to-Trust application, the BIA Regional Office with jurisdiction over the land issues a "Notice of (Non-Gaming) Land Acquisition Application" to obtain State and Local government comments to the application. Regional offices then follow the Fee-to-Trust Handbook by providing a period of 30 days for collection of comments to the proposed transaction. The BIA forwards all comments to the Applicant, who then has 30 days to provide the BIA a response. However, the Applicant may decline to provide responses to comments and request the Secretary issue a decision.

Review of the Fee-to-Trust applications requires BIA to consider the type of environmental analysis appropriate for the property and its intended use. Applications may receive review under a Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement.

The Department plays a critical role in the fee to trust process as a means to restore and bolster self-determination and sovereignty in Indian country. The benefits to tribes are twofold. First, restoration of tribal land bases reconnects fractionated interests and provides protections for important tribal cultures, traditions, and histories. Second, the connectivity that occurs when land is placed into trust enables tribes to foster economic potential. From energy development to agriculture, trust acquisitions provide tribes the flexibility to negotiate leases, create business opportunities, and identify the best possible means to use and sell available natural resources.

The examples of successful fee to trust acquisitions, particularly on reservation, are extensive. For instance, the Rosebud Sioux Tribe's successfully brought into trust the Mustang Meadows Property, totaling 18,761.60 acres, on October 23, 2002. The land is now used for agricultural and farm pasture purposes and managed by the Tribe's Tribal Land Enterprise. The Reno-Sparks Indian Colony of Nevada (RSIC) was also extremely successful with its on-reservation Fee-to-Trust acquisition for economic development projects. RSIC now has several major car dealerships and a Wal-Mart Superstore on its lands in Reno and Sparks, Nevada. It also has a modern tribal health center on the land to provide services to its members and other urban Indians.

Interior believes the process of trust land acquisition for parcels identified on-reservation is an important and routine matter that results in the reconnection of critical land bases, thereby creating economic drivers for tribes. We note, however, that taking off-reservation lands into trust may pose complications for the Department as well as some members of the public, particularly when the Fee-to-Trust application is for gaming purposes, although the Department receives only a minor percentage of applications for gaming versus other applications.

Overall, land into trust acquisitions are uncontested transfers that often have local support. Off-reservation lands that are acquired through the Fee-to-Trust process have the potential to raise jurisdictional uncertainties in local communities, as well as complicating land-use planning and the provision of services. Moreover, non-Indian communities may experience tax revenue consequences especially if payments in lieu of taxes are not agreed upon. Ultimately, the Department has received comments that taking land located off-reservation into trust can introduce economic and other conditions that can have significant impacts on the immediate and surrounding communities. As a result, the Department's off-reservation trust regulations require particular attention to issues of jurisdiction and taxation.

Taking off-reservation land into trust can be further complicated by the prospect of Indian gaming. This matter, which I worked on during my previous tenure at the Department, continues to complicate and isolate some communities near these facilities. Such acquisitions also raise the possibility that a tribe may initiate gaming operations once the land is held in trust by the federal government, even though that was not in the original plan. If gaming is initiated once the land is held in trust by the federal government, it is regulated by the National Indian Gaming Commission under the Indian Gaming Regulatory Act. Local communities that may have supported land into trust may not support gaming, and this could create an entirely new predicament for them as they would need to engage in a new public input process.

This possibility has prompted questions regarding what role the Department could play in establishing land use restrictions to halt certain lands from being used for gaming. It is our understanding that Interior generally lacks the authority to restrict the use of trust lands as this would be an infringement upon tribal sovereignty and self-government. Therefore, Congress will play a pivotal role in shaping the path the Department takes for approving future gaming decisions.

Considering these challenges, Interior acknowledges the original legislation intended to address land into trust matters does not always meet the twenty-first century challenges we face. Congress, as the trust settlor for all Indian Affairs matters, has the sole authority to evaluate and amend existing statutes, including the Indian Reorganization Act, to determine if the existing Fee-to-Trust statutes need to be constrained or expanded. The Department welcomes the opportunity to work with the Committee to discuss Congress's recommendations for reasonable policies to modernize the broader land into trust process.

This concludes my written statement. Thank you for your time, and I am pleased to answer any questions you may have.