



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ECWS-10-002

TITLE: Calling on the Secretary of the Department of the Interior to Immediately End the Department's Land-into-Trust Moratorium and Support Economic Recovery and Reinvestment by Promptly Issuing Final Decisions on Pending Tribal Trust Applications

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians ("NCAI") was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, sovereign Indian tribes share a unique trust relationship with the United States of America, which is embodied in the Constitution of the United States, numerous court opinions, statutes, executive orders, and federal agency policies; and

WHEREAS, as a direct result of various federal policies designed to break up tribal governments and Indian land bases and relocate tribes to economically unproductive reservation lands, Indian land holdings in the United States fell from 138 million acres in 1887 to 48 million acres in 1934, a loss that crippled tribes' ability to provide employment and economic opportunities; and

WHEREAS, these nineteenth century policies were repudiated and replaced by the land-into-trust acquisition provisions of the Indian Reorganization Act of 1934 (25 U.S.C. § 465) and other land acquisition authorities which authorize the Secretary of the Interior to acquire lands in trust for the benefit of Indian tribes, thereby providing for the acquisition of land bases that are essential to meet the needs tribal governments, including economic development; and

WHEREAS, despite the Department of the Interior's trust obligation to support tribal economic development, the most significant obstacle that tribes face in launching already-planned economic development projects and creating tens of thousands of new jobs is the fact that the Secretary of the Interior has imposed a moratorium on tribal trust acquisitions which are located outside of reservation boundaries, involve Indian gaming, or involve tribes that were not recognized in 1934; and

WHEREAS, the Department also has failed to make decisions on land-into-trust applications even for on-reservation, non-gaming applications that, in some cases, have remained pending for more than a decade, and the Department has failed to rule on others

even after determining that an application meets all requirements for acquisition or despite favorable recommendations from Bureau of Indian Affairs regional offices; and

WHEREAS, the Department's failure to make final decisions on a broad range of tribal land-into-trust acquisitions, in reality, constitutes a moratorium on the trust obligation to take such lands into trust for the benefit of Indian tribes across the United States ("DOI Trust Moratorium"); and

WHEREAS, although the Department of the Interior has not formally announced or acknowledged its Moratorium, in 2009 the current administration failed to issue even a single Federal Register notice of a final fee-to-trust final decision (in contrast to ten such notices published in the last year of the Bush Administration); and

WHEREAS, as part of the DOI Trust Moratorium, the Department likewise has ceased moving forward with its compliance with the National Environmental Policy Act ("NEPA"), refusing to publish final environmental impact statements and other NEPA documents relating to Moratorium-affected land-into-trust acquisitions; and

WHEREAS, the DOI Trust Moratorium violates the Department of the Interior's duty as a trustee to carry out the trust acquisition provisions of the Indian Reorganization Act of 1934 and numerous other federal laws and settlements authorizing or directing the Secretary of the Interior to take land into trust for the tribes' benefit; and

WHEREAS, the Department has misused the National Environmental Policy Act ("NEPA") by withholding publication of completed environmental impact statements and otherwise using NEPA requirements to delay final action on land-into-trust acquisitions and thereby continue its Moratorium; and

WHEREAS, the DOI Trust Moratorium is directly contrary to the formal position of NCAI member-tribes, which have called upon the Assistant Secretary for Indian Affairs to take specific, concrete steps to reduce the chronic backlog in trust land acquisitions (NCAI Resolution #PHX-08-008); and

WHEREAS, the DOI Trust Moratorium violates Executive Order 13175 and President Obama's Executive Memorandum of November 5, 2009, which direct the Department of the Interior and other federal agencies to consult with tribes in formulating policies or taking actions that "have substantial direct effects on one or more Indian tribes" or "on the relationship between the Federal Government and Indian tribes" (Executive Order 13175, Section 1(a)) as the Department has *conducted no consultation whatsoever* with tribes regarding the imposition, scope, or duration of the DOI Trust Moratorium; and

WHEREAS, the DOI Trust Moratorium undermines the federal government's express commitment to support the right to tribal self-government and self-determination ((Executive Order 13175, Section 2(c)); and

WHEREAS, by its enactment of the American Recovery and Reinvestment Act of 2009 (“ARRA”) and other measures, the federal government has shown its commitment to responding to the national recession and resulting high unemployment rates by creating new jobs, spurring economic activity, and investing in long-term economic growth (ARRA, Pub. L. 111-5, Section 3(a)); and

WHEREAS, tribes across the United States are prepared to actively support national economic recovery by investing billions of dollars in new developments on lands for which trust applications remain pending at the Department of the Interior; and

WHEREAS, a review of publicly-available NEPA documentation relating to just a portion of the acquisitions caught up in the DOI Trust Moratorium reveals that tribal projects and investments planned for lands caught up in the Moratorium would generate a minimum of 47,359 jobs if the land were to be taken into trust – jobs that risk being lost because of the DOI Trust Moratorium; and

WHEREAS, the actual number of jobs that could be generated by all tribal projects that have been blocked by the DOI Trust Moratorium is significantly higher; and

WHEREAS, Indian tribes are vital partners in the United States’ effort to combat high unemployment rates and spur economic recovery, and the DOI Trust Moratorium directly conflicts with the federal policy of actively supporting investment in new construction and jobs as a catalyst for recovering from the deep and pervasive recession the entire nation now faces; and

WHEREAS, the DOI Trust Moratorium violates the Department’s duty to Indian tribes and individual tribal citizens, as well as the federal government’s obligation to support a thriving economic environment for the benefit of United States citizens as a whole.

NOW, THEREFORE, BE IT RESOLVED that NCAI calls upon the Secretary of the Department of the Interior to immediately end the DOI Trust Moratorium, to process land-into-trust applications in good faith and in an expeditious manner, and to support economic recovery and reinvestment by promptly issuing final decisions on pending tribal land-into-trust acquisitions.

CERTIFICATION

The foregoing resolution was adopted by the Executive Committee at the 2010 Executive Council Winter Session of the National Congress of American Indians, held in Washington, D.C. on February 28, 2010, with a quorum present.

President

ATTEST:

Recording Secretary