



National Congress of American Indians

NCAI News

NCAI Update – September 6, 2001

(Broadcast #378)

Land to Trust Regulations – Comments Due Wednesday Sept. 12: NCAI is urging Indian Nations to submit comments to the Department of Interior on the issue of land to trust by September 12. On August 13, the Department of Interior issued a “Notice of proposed withdrawal of final rule; request for comments,” (66 Fed. Reg. 42474, 8/13/01). The Aug. 13 notice signals the intent of the Department to withdraw the final rule on Acquisition of Land in Trust which was published on January 16, and raises serious concerns that a rewrite of the regulation would be intended to give more influence to state and local government concerns in the land to trust process. NCAI has supported the final rule, as a balanced approach to the issue that protects the ability of tribes to acquire land in trust. Please see NCAI’s earlier broadcasts on this topic, from Aug. 13 and Aug. 31, for a copy of the notice and further information. The volume of comments is a key indicator of public and tribal interest on this topic. It is very important that the Secretary knows that her policy on taking land into trust is a critical issue for Indian Nations.

The most compelling arguments for taking land into trust come from the histories of land loss and need for land recovery that are unique to each tribe. Therefore, we would strongly encourage each tribe to submit comments that discuss its particular land loss history and need for land recovery. We have also attached a short draft letter. We would suggest that letters may contain a brief explanation of the history of the tribe’s loss of land during allotment, termination or other key periods, and how that loss of land affected the welfare, culture and economy of the tribe, along with an explanation of the tribe’s needs to recover land in trust.

Comments must be sent to: Terry Virden, Director
Office of Trust Responsibilities
Mail Stop 4513–MIB
1849 C Street, NW

Washington, DC 20240

FAX: 202-219-1255

or e-mail to:

For more information please contact NCAI at 202-466-7767.

DRAFT LETTER

The Honorable Gale A. Norton, Secretary of Interior
attn: Terry Virden
MS 4513-MIB
1849 C Street, NW
Washington, DC 20240

RE: Comments on Final Regulations on Acquisition of Title to Land in Trust

Dear Secretary Norton:

I write on behalf of _____ to urge you not to withdraw the final rule entitled “Acquisition of Title to Land in Trust” that was published in the Federal Register on January 16, 2001. We support the position of the National Congress of American Indians that the final rule should become effective

The issue of land into trust has been given full and fair consideration by the Department in a process that has been ongoing for years. The final rule provides a fair process that will result in the Department receiving all of the relevant information and allow for decisionmaking under meaningful standards. The final rule also carries out the purposes of the Indian Reorganization Act by recognizing the critical role that land restoration must play in the fostering tribal self-sufficiency. The Secretary has nothing to fear from this rule because the ultimate decision remains with the Secretary. There needs to be certainty regarding the procedures and standards for taking land into trust, and any further delay would unfairly continue to postpone tribal efforts to restore their lands.

The August 13 notice requests comments on four issues. We do not believe that any of these issue provide a sufficient reason for withdrawing the final rule. First, while land for individual housing is a priority, it is not a greater priority than many other purposes for land. In addition, the five acre limitation would make this a very small benefit. Second, the final rule already requires extensive land use information for off-reservation acquisitions, and any additional information the Department may want is not specified. Third, the standards in the final rule are fair in that they require the applicant to show the benefits of the acquisition and any opponents to

show any harm. We are very concerned about the suggestion that a tribe would have to show “no demonstrable harm.” This would put the tribe in the position of attempting to prove a negative, and it may be impossible to meet this standard. We do not believe that this is what the Secretary intends to do. Finally, while we support a fair process and the use of technology to make the review process more efficient, we do not believe that the rule must be withdrawn to accomplish this goal. Any necessary adjustments could be made after the Department gains experience with the rule through a simple technical amendment during the implementation process.

We respectfully urge you to make the final regulations on trust land acquisitions effective as soon as possible. Thank you for your consideration of this matter of great importance to us, and to Indian tribes nationwide.

Sincerely,