

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

June 11, 2024

The Honorable Deb Haaland
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Haaland:

In recent months, the House Committee on Natural Resources (Committee) has heard from several Indian tribes and representatives of communities that would be affected by proposed fee-to-trust applications for gaming projects currently under review by the Department of the Interior (Department). There are shared concerns about moving forward with these proposed gaming projects. It is important that the Department fully analyze the projects' impacts on existing developments, including other tribally-owned enterprises, and community resources before issuing final agency determinations. Anything less would be detrimental and could result in prolonged litigation that does a disservice to all the parties involved.

The Committee has oversight responsibility regarding the Department's fee-to-trust process. To aid the Committee in its oversight efforts, we ask the Department to promptly respond to the Committee's questions and requests for information so the Committee may conduct prompt and comprehensive oversight with the best available information.

The Committee understands that several pending fee-to-trust applications seek approval under the restored lands exception allowed under Section 20 of the Indian Gaming Regulatory Act (IGRA). As you are aware, IGRA provides the legal framework within which federally recognized Indian tribes conduct gaming on tribal lands. With several exceptions, IGRA prohibits gaming on lands acquired in trust by the Secretary of the Interior after October 17, 1988.

In 2008, the Department promulgated regulations for applying IGRA's exceptions to fee-to-trust applications for gaming projects, including creating the restored lands exception. The Committee believes that the Department must consistently apply the regulations for all Indian tribes. Recently, stakeholders have raised concerns that the Department has a seemingly inconsistent history of applying the restored lands exception for certain fee-to-trust applications for new casino projects. In some instances, requests to extend comment periods for various projects have been denied despite repeated requests and significant stakeholder concerns. In other instances, the Department has extended comment periods that have prolonged project review for several years.

The Committee strongly encourages the Department to be consistent and transparent on the administrative record with affected stakeholders and tribes in the Department's application of IGRA exemptions. The Department should take particular care to provide a consistent process by which affected Indian tribes and local communities may participate in the review of proposed fee-to-trust applications and gaming projects.

It is the Committee's view that the Department's interpretation and application of the restored lands exception is inconsistent. Projects under consideration have previously been reviewed and denied by the Department for failing to comply with relevant regulations and statutes, raising questions about whether the Department is applying the law to all tribes equally.

Concerns have been expressed that the Department's decisions regarding fee-to-trust applications for new casino projects are not justified by the law, lack adequate and meaningful consultation with states, tribes, and affected communities, and may be driven by political rather than legal considerations. The Department must base decisions on the considerations prescribed by the law and the information gained through robust consultation. Making decisions on any other basis compromises the integrity of the review process and raises concerns about the effectiveness and sincerity of the Department's consultations with affected tribes and communities.

Finally, the Committee understands that tribes have raised concerns over potential off-reservation gaming projects that could be facilitated by the new 25 CFR 151 regulations finalized by the Department on December 12, 2023. Several members of Congress have raised concerns with the Department regarding these regulations.¹ The Committee seeks greater transparency regarding the effects of these recently finalized regulations on fee-to-trust applications for gaming projects.

¹ See House Committee on Natural Resources, Subcommittee on Indian and Insular Affairs hearing "Examining the President's FY 2024 Budget Request for the Bureau of Indian Affairs and Office of Insular Affairs," May 25, 2023, <https://youtu.be/Kik6NAspb3M> at 39:43.

The Committee asks that you respond promptly to the questions and requests for information contained in this letter, in furtherance of its efforts to conduct prompt and comprehensive oversight. The Committee asks that you provide written answers to the following questions to the Subcommittee on Indians and Insular Affairs by June 28, 2024:

1. Please provide a current list of pending fee-to-trust applications for gaming projects with the exception(s), along with the applicable exceptions being considered or applied to each of them.
2. What is the Department's interpretation of the restored lands exception in IGRA regarding Indian tribes operating an existing casino?
3. What policies has the Department adopted to guide its consideration of fee-to-trust applications involving the restored lands exception in IGRA?
4. What policies, processes, and procedures does the Department have in place to resolve conflicts between Indian tribes with operating gaming establishments and the communities that may be impacted by new casino projects that could be approved under IGRA exceptions that do not require community input?
5. Has the Department reevaluated how the restored lands exception should apply to fee-to-trust applications for gaming since regulations were promulgated in 2008? If so, when did the Department conduct the reevaluation? Did that reevaluation result in changes to the Department's review process? If so, what were those changes?
6. Has the Department granted extensions of the comment periods when requested by tribes and communities to provide comment on pending fee-to-trust applications that may be subject to a restored lands exemption? If so, please provide a list of the extensions granted.
7. What is the Department's interpretation of "significant historic connection," and how is it interpreted in areas of shared historical territories? How is "significant historic connection" interpreted in areas with no aboriginal connection but with a 19th and 20th-century tribal presence?
8. Has the Department seen an increase in fee-to-trust applications for gaming projects since the issuance of the final rule for land into trust, which went into effect on January 11, 2024?

Following the submission of the Department's written responses, the Committee requests that the Department arrange a briefing with Committee staff to discuss the responses.

Tribal gaming has been a force for economic development in Indian country across the nation. It is our hope that by working together to ensure consistent application of laws and regulations to all federally recognized tribes, we can preserve the opportunity for continued economic development for tribal communities.

Please contact the Majority staff for the Subcommittee on Indian and Insular Affairs at (202) 225-2761 or Jocelyn.Broman@mail.house.gov with any questions and to submit your response. Under House Rule X, the Committee on Natural Resources has "general oversight" of any matter relating to its jurisdiction over Indian Affairs. Thank you for your cooperation.

Sincerely,



Bruce Westerman
Chairman
Committee on Natural Resources

c.c.: The Hon. Bryan Newland, Assistant Secretary for Indian Affairs