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May 19, 2022

Proposed Revisions to Indian Trust Land Regulations Limit Third-Party Interests



The Bureau of Indian Affairs has proposed revising the regulations governing the acquisition of land into trust for Indian tribes. The proposed revisions, if adopted, would streamline the fee-to-trust process and eliminate many of the important checks and balances that protect third-party interests, including those of other tribes, state and local governments, and neighboring landowners. Lands acquired in trust are exempt from state and local taxation and regulatory control, including environmental and land use laws. Acquisitions can be controversial when development for gaming or other commercial uses will significantly impact nearby communities.

BIA will conduct tribal consultation sessions through May 23, 2022, with tribal comments due by June 30. Although the public will not be provided a formal opportunity to comment on the preliminary proposed regulations, the public is free to comment informally before June 30.[\[1\]](#)

As currently drafted, the proposed revisions would

- Establish the presumptions that
 - On-reservation acquisitions will be approved;
 - Acquisitions contiguous to a reservation provide community benefits and impose negligible or limited impacts on state and local governments; and
 - Off-reservation acquisitions provide community benefits without regard to the distance of the land from the tribe's reservation or trust lands (deleting the current requirement of greater scrutiny with increasing distance from existing tribal lands).
- Alter how impacts on state and local governments are considered by
 - Eliminating the requirement that the BIA consider state and local jurisdictional impacts for on-reservation acquisitions;
 - Deleting the requirement that the BIA considers "jurisdictional problems and potential conflicts of land use which may arise" for off-reservation and contiguous acquisitions; and
 - Eliminating notice to state and local governments when an acquisition is mandated by federal law.

- Reduce informational requirements on tribes by
 - Deleting the requirement that a tribe identify the need for additional lands and instead requiring the BIA to give great weight to a tribe's general justifications for the proposed acquisition; and
 - Deleting the requirement that a tribe provides a business plan that specifies the anticipated economic benefits of proposed business use for off-reservation acquisitions.
- Codify the analysis BIA uses to determine whether a tribe was under federal jurisdiction in 1934 and therefore eligible for trust land, including describing evidence that BIA will consider conclusive, presumptive, or probative.

These changes would significantly tip the scales against the interests of third parties, including other tribes, state and local governments, and neighboring landowners. Interested parties should submit comments during the consultation period to ensure their views are considered before the BIA finalizes its proposed revisions and publishes the official notice of proposed rulemaking. There will be another opportunity to submit formal comments at the proposed rulemaking stage. However, the BIA will have already determined its basic plan of action by then, and achieving significant changes will be more difficult.

Endnote

[1] Information and materials, including proposed revisions in redline, are available at U.S. Department of the Interior, Bureau of Indian Affairs, [25 CFR Part 151 \(Land Acquisition\)](#) and [25 CFR Part 293 \(Class III Tribal State Gaming Compact Process\)](#).

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