

Committee on Natural Resources

Oversight Hearing on “Department of Interior’s Recently Released Guidance
on Taking Land into Trust for Indian Tribes and Its Ramifications”

Wednesday, February 27, 2008 – 11:00 AM

Testimony of the Honorable David Burnett
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INTRODUCTION

Good morning Chairman Rahall, Ranking Member Young and members of the Committee:

My name is David Burnett. I am the Chairman of the Confederated Tribes of the Chehalis Reservation (Tribe), a small tribe in Southwestern Washington State. I am honored to have the opportunity to provide my Tribe’s views on the Department of Interior’s recently released guidance on off-reservation fee-to-trust applications.

As the Committee is aware, the Department’s new guidance makes significant changes to the manner in which it considers off-reservation fee-to-trust applications. My testimony today will focus on my Tribe’s protracted but ultimately successful effort to persuade the Department to acquire a parcel of off-reservation land into trust for non-gaming economic development purposes. Based on our experience, I will also provide our views on the guidance.

BACKGROUND ON THE TRIBE

The Reservation location historically was inhabited by our ancestors at the confluence of the Chehalis River and the Black River. In 1864, after the Chehalis people and other tribes refused to go to a single reservation, the United States, by Executive Order, confirmed the Chehalis choice and set aside our Reservation.

The Chehalis Reservation is a beautiful Reservation, but it is in an economically depressed area of the State of Washington. Before the Tribe built a casino on trust land on the Reservation, tribal member unemployment exceeded 60%. Much of the Reservation is in a flood plain and floods most years.

The Tribe's casino has been very successful, but the Tribe has known all along that, to continue our economic progress in an age of declining federal assistance and where there is a land base insufficient to provide tax support for government programs, there must be economic diversity. Economic development is the vehicle Tribes have used to obtain the resources to meet the needs of their Tribal Members in circumstances where it is impossible to generate tax revenue.

Since becoming Chairman in 2002, I have worked to diversify the economic development of the Tribe. I do not want to be recognized as a "gaming tribe", but rather a tribe that has taken advantage of the opportunities and developed businesses to help it achieve economic independence.

THE TRIBE'S EXPERIENCE WITH THE DEPARTMENT'S FEE-TO-TRUST PROCESS

In 1999, Thurston County, Washington came to the Tribe and asked the Tribe to consider moving its casino or some other economic development project to Grand Mound near Interstate 5 at Exit 88. They needed help to jump start the economy of South Thurston County. The County had built a sewer and water plant that had virtually no hook ups and was costing the County \$400,000 in losses a year. It was presumed that "an anchor" development would create growth and generate revenue to stop the losses incurred by the County.

With the County's assistance, the Tribe identified a parcel of land approximately seven miles from the Reservation and held two public meetings in February and May 2002, to discuss moving its casino. There was support from the County and the non-Indian community and the Tribe began to collect the information required under the fee-to-trust check list. However, when discussing the matter with the BIA in March and April, 2003, it became very clear that an off-reservation casino project associated with a fee-to-trust application would not be approved by the BIA even with substantial community and local governmental support.

The Tribe accepted this limitation and prepared a fee-to-trust application that would have provided for general economic development on the site. In the past, the Tribe had actually had such an application approved by the BIA. However, by June 2004, the BIA told us that applications for general economic development would no longer be accepted. The Tribe was told that it would have to have a specific project and a business plan before its application would be considered complete.

Fortunately for the Tribe, we found a project and a non-Indian partner for the creation of a Great Wolf Lodge, an indoor waterpark, hotel and conference center. Without the waterpark project, get the land into trust, the Tribe would have had to create a project to satisfy the BIA. The Tribe would not have been able to maintain the flexibility of choice, but would have had to find a specific project to satisfy the United States rather than make considered, economic decision as a sovereign.

With the project decided, the Tribe again began to prepare its fee-to-trust application and gather support. The Tribe was able to secure the support of:

- Thurston Economic Development Council
- Local Chambers of Commerce
- Thurston County, Washington
- Local Cities
- Sheriff of Thurston County
- Members of the Washington State Legislature
- The Governor's office
- The Tribe's congressional delegation

The other critical piece of support for the Tribe came from the Portland Regional Office. The Portland Regional Office worked with the Tribe on its application and then reviewed it in an expedited fashion. Because it was an off-reservation fee-to-trust application, the Portland Regional Office was then required to send the application back to the Central Office in Washington DC.

The Tribe's fee-to-trust application for the waterpark project arrived in Washington, DC where:

- a) there were over 2000 non-gaming fee-to-trust applications from tribes languishing and
- b) the Committee which that considers applications had not met for over two years, and
- c) we could not even determine who was on such committee.

The Tribe was fortunate in getting the interest and support of James Cason, who was then the Associate Deputy Secretary of the Interior, and Arch Wells, then the Acting Director for Trust Services of the BIA. In order to move through the process, the Tribe sent a delegation to Washington, DC 11 times in 12 months to meet with the BIA, the Washington State Congressional delegation, and Mr. Cason. The Tribe also hired outside professionals to keep its interests uppermost in the attention of the BIA. These efforts cost the Tribe thousands of dollars, but represented the possibility of future jobs and economic diversification.

In July, 2006, the United States took the Tribe's land into trust for the Great Wolf Lodge project. This was after the combined efforts of the Tribe and its staff, its local government supporters, the Governor's office of the State of Washington, its Congressional delegation supporters, the support of the Portland Regional Office, and the

Tribe's own efforts. At one point before approving the Tribe's application, the Department suggested the idea of a self-managed trust. The Tribe would retain regulatory jurisdiction over the land, and have primary management responsibility, and the Department would be absolved of any potential liability. This was a unique idea that the Tribe, as a sovereign liked, because we believed we could manage the land better than the BIA. This was never implemented because of concerns from the BIA Solicitor's Office.

We began the fee-to-trust process in 2001, and completed it in 2006. The process is arduous and subjective. We were reminded at each junction that this is a discretionary process, and that the Secretary was under no obligation to make any kind of decision, let alone a definite yes or no. There is no need to make the process more difficult.

RECOMMENDATIONS ON THE RECENTLY RELEASED GUIDANCE

At the outset, it is important to note that while the guidance is intended to assist evaluating off-reservation land into trust "for gaming purposes"; the memorandum is much broader and applies to all off-reservation fee-to-trust applications, including projects like ours. Our views and recommendations are shaped by our experience with this process.

The recently released guidance erodes the sovereignty of tribes. I can understand the concern that some have expressed about allowing tribes to acquire off reservation lands into trust for the sole purpose of gaming. However, reservations in remote locations without natural resources are not conducive to economic development. Economic development requires population and transportation to survive and thrive.

Take the Chehalis Tribe as an example. Our project is seven miles from the Reservation, but out of the flood plain. It is adjacent to the freeway and within one-half mile of an interchange. How far away from the Reservation would our project have to be before the BIA would not approve our fee-to-trust application under the newly released guidelines? Will the determining factor be whether the BIA likes the project? Whether it provides a certain number of jobs to non-Indians and / or Tribal members? Whether the Tribe is involved in industries or an economic sector the BIA approves of? What will be the rules so that a tribe can make a valid, sovereign decision for its economic future?

The idea of commutability is not universally applicable, and the standard should remain relative to historic ties to usual and accustomed areas of living. The idea that the BIA is trying to make sure that the reservation lifestyle and communities are protected is paternalistic and is offensive to me. What this policy means to me is that there are non-Indian people who have no problem with Indians being successful as long as they are not too successful. When they start getting off the reservation, we begin round them up and keep them on the Reservation. All of this flies in the face of self-determination.

If this type of policy were applied in the context of education, then perhaps scholarships should be denied for Indian students. After all, there are few institutions of higher learning located in Indian Country, and the students must leave the reservation to pursue an education. Then, when they have completed their education, there are few opportunities to maximize their education on the reservation, so they leave the reservation to pursue their careers. Does all this mean we should stop educating Indians?

Tribes have worked hard for generations to maintain their identity and independence, and it is they who will have the best interests of their tribal members at heart when making these decisions. The BIA should not be involved in making decisions about the impact of a business on the quality of life for a particular tribe.

To improve the process, there should be an assumption the land will be taken into trust, unless there is a valid reason not to do so. Then if there are valid reasons not to take the land into trust, that would be the decision point for decline or request for additional information.

Further, there should be some specific timelines and milestones identified in the process. It is difficult for a Tribe such as the Chehalis who are working to develop a specific project with a partner like Great Wolf Lodge, a publicly traded company, to maintain any kind of momentum and interest when it is unclear of when certain events will take place.

The regulations need to reflect the reality in Indian Country and not the prejudices of either our neighbors or BIA officials. Sovereignty requires the ability to make choices regardless whether others like that choice. The guidelines should not subject tribes to arbitrary standards of distance that are not related to valid economic decisions.

This concludes my testimony. At this time I would be happy to answer any questions that members of the Committee may have.