THE ASSOCIATE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

JUL 2 4 2017

The Honorable Aaron A. Payment
Tribal Chairperson, Sault Ste. Marie Tribe
of Chippewa Indians
523 Ashmun Street
Sault Ste. Marie, Michigan 49783

Dear Chairperson Payment:

This letter follows the letter from Ms. Ann Marie Bledsoe Downes, then-Deputy Assistant Secretary – Policy and Economic Development (DAS-PED), dated January 19, 2017 (DAS-PED Letter). The DAS-PED Letter informed the Sault Ste. Marie Tribe of Chippewa Indians (Tribe) that its two applications for "mandatory" land-into-trust acquisitions could not be approved at that time[1] because "the applications lack sufficient evidence to demonstrate that acquisition of the parcels would 'consolidat[e] or enhance' tribal lands, as required by MILCSA [Michigan Indian Land Claims Settlement Act]."[2] The applications assert that the subject parcels have been or will be purchased with funds from the Tribe's Self-Sufficiency Fund, established pursuant to MILCSA.[3] The applications further assert that the purchases would effect a "consolidation or enhancement of tribal lands," and, therefore, would be subject to mandatory land-into-trust acquisition by the Department of the Interior (Department) in accordance with MILCSA.

I regret to inform you that I must deny the Tribe's request that the United States take into trust, as "mandatory" trust acquisitions, the tracts designated by the Tribe as the "Corner Parcel" and the "Showcase Parcel" in Lansing, and the "Sibley Parcel" in Huron Charter Township (collectively, "Parcels"). In the 6 months since the DAS-PED Letter, the Tribe has submitted no new evidence to demonstrate that acquisition of the Parcels would effect a consolidation or enhancement of tribal lands.[4] After review of the matter, I conclude that the applications fail to demonstrate that acquisition of the Parcels would effect the consolidation or enhancement of tribal lands necessary to trigger MILCSA's mandatory trust provisions.

---

[1] One, titled *Submission for Mandatory Fee-to-Trust Acquisition Pursuant to the Michigan Indian Land Claims Settlement Act – The "Corner Parcel" and The "Showcase Parcel"*, sought mandatory land-into-trust of two parcels in Lansing, Ingraham County, Michigan (Lansing Application). The second, titled *Submission for Mandatory Fee-to-Trust Acquisition Pursuant to the Michigan Indian Land Claims Settlement Act –The "Sibley Parcel"*, sought mandatory land-into-trust of a parcel in Huron Charter Township, Wayne County, Michigan (Sibley Application) (together, Applications). The Applications were submitted June 10, 2014, to the Bureau of Indian Affairs ("BIA"), Midwest Region (Region).

[2] DAS-PED Letter at 1-2 (alteration in original).

[3] Pub. L. 105-143, 111 Stat. 2652 (Dec. 15, 1997).

[4] Subsequently, on April 18, 2017, I met with the Tribe's legal counsel, concerning the DAS-PED Letter. I also met with you on June 14, 2017, to discuss the Tribe's applications. In the meetings, the Tribe did not provide any additional evidence in response to the DAS-PED letter. At our meeting on April 18, 2017, the Tribe's legal counsel acknowledged they did not believe the Tribe could provide such evidence.

The DAS-PED Letter described MILCSA's background and statutory scheme,[5] as well as the applications and briefing by both the Tribe and the opposing tribes.[6] I do not revisit those here. In addition, the DAS-PED Letter articulated why MILCSA does constitute mandatory authority for taking land into trust if certain conditions are met.[7] Finally, the DAS-PED Letter explained why the Department cannot accept certain arguments made by the Tribe, including the following: that acquiring the Parcels would effect a "consolidation" of tribal lands;[8] that acquiring the Parcels would satisfy MILCSA section 108(c)(4) because revenue from gaming on the Parcels would be used "for educational, social welfare, health, cultural, or charitable purposes which benefit members of the" Tribe ("social welfare purposes");[9] and that "enhancement" should be construed to include the acquisition of land in areas with a "substantial nexus" to the Tribe and its members.[10] None of these findings require further explication or explanation.

I will, however, further explain why the applications have failed to demonstrate that acquisition of the Parcels would effect an "enhancement" of tribal lands as that term is used in MILCSA.

The Applications Fail to Demonstrate an "Enhancement" of Tribal Lands

To satisfy the mandatory trust acquisition requirements of the MILCSA, the Tribe must demonstrate two distinct things: 1) that the lands were "acquired using amounts from interest or other income of the Self-Sufficiency Fund" in accordance with section 108(f); and 2) that the expenditures from the Self-Sufficiency Fund were in accordance with one or more of the limitations provided in section 108(c), including "for consolidation or enhancement of tribal lands." The Tribe's primary argument that it meets the requirements for mandatory acquisition under MILCSA is that acquisition of each of the Parcels, which it intends ultimately to use for gaming purposes,[11] would constitute "enhancement" of tribal lands.

As explained in the DAS-PED Letter, former Solicitor Hilary Tompkins has defined "enhance" for purposes of MILCSA: "to make greater, as in cost, value, attractiveness, etc.: heighten, intensify; augment."[12] The Department continues to apply that definition here. The Tribe argues that acquisition in trust of the Parcels would "make more valuable…existing tribal lands," both in Michigan's Upper Peninsula, where the Tribe's headquarters and primary landholdings are

---

[5] DAS-PED Letter at 2.
[6] *Id.* at 2-3.
[7] *Id.* at 3.
[8] *Id.* at 3-4 n.25 (parcels must be contiguous to effect a "consolidation," and consolidation of the Tribe's position is not the same as a "consolidation . . . of tribal lands" as required by MILCSA).
[9] *Id.* (expenditures of potential gaming revenue are too uncertain and attenuated to satisfy MILCSA's requirement that Self-Sufficiency Fund interest and income be spent on social welfare purposes).
[10] *Id.* at 5, (proposed "substantial nexus" criterion is not among the MILCSA criteria for mandatory trust acquisition), at 5 n.33 (proposed "substantial nexus" criterion lacks intelligible principles for application).
[11] Lansing Application at 2 n.1; Sibley Application at 1 n.1. The Tribe does not at this time ask for a gaming eligibility determination, and the Tribe's use of the Parcels for gaming is not relevant to the determination of whether the acquisitions qualify for mandatory land-into-trust acquisition by the Department. However, the Tribe argues that the revenue it expects to generate from gaming will enhance tribal lands, an argument I address below.
[12] Letter from Hilary C. Tompkins, Solicitor, U.S. Department of the Interior, to Michael Gross, Associate General Counsel, National Indian Gaming Commission at 13 (Dec. 21, 2010) ("Bay Mills Letter").

located[13] and in the Lower Peninsula, where the Tribe already owns tracts of land near the Parcels.[14]

The Tribe bears the burden of demonstrating that it has met MILCSA's requirements for mandatory land-into-trust acquisitions, and that its acquisition of the Parcels effected an "enhancement" of tribal lands.[15] However, the Tribe has made no such demonstration even after being offered the additional opportunity to do so in the DAS-PED Letter.

With respect to the Parcels in the Lower Peninsula, as explained in the DAS-PED Letter, the Tribe has offered no evidence in support of its argument that the Sibley and Lansing Parcels would "enhance" the values of nearby lands. The Tribe asserts, without providing supporting documentation,[16] that the acquisition of the Parcels will create a "critical mass of tribal lands" on which it can better serve its members living nearby.[17] Even assuming the Tribe's statement is correct, it does not address the value of the underlying land. For example, the Tribe has not offered real estate appraisals or assessments, suggesting that the value of one tract of land would increase as a result of the acquisition of another. The Tribe also argues that acquisition of the Parcels will generate revenue to allow for development of its existing land in the Lower Peninsula, which will "provide employment and tribal services" to its members nearby.[18] Again, the Tribe fails to cite any evidence, and without such evidence we cannot find that the requirements of MILCSA are satisfied.[19]

Furthermore, with respect to the Tribe's argument that its acquisition of the Parcels would enhance its lands in the Upper Peninsula,[20] our analysis is informed by the Bay Mills Letter. In Bay Mills, where the subject parcel was approximately 85 miles from the Bay Mills's existing landholdings,[21] the Solicitor concluded that "[*b*]*ecause* the Vanderbilt site is very far from all

---

[13] *The Sibley and Lansing Parcels Fee-To-Trust Acquisition Submission – Supplemental Information Concerning the Consolidation and Enhancement of Tribal Lands* at 10-11 (Apr. 22, 2015) ("Tribe's Supplement");
[14] *Id.* at 10-11.
[15] Because I conclude, as did the DAS-PED, that the Tribe has failed to demonstrate enhancement, I need not reach two other outstanding questions under MILCSA: 1) the definition of "tribal lands" as Congress used that term in section 108(c)(5) of MILCSA, and 2) whether the Parcels were acquired (or would be acquired) "using amounts from interest or other income of the Self-Sufficiency Fund," as required by section 108(f) of MILCSA.
[16] The conclusory statements offered by the Tribe are not evidence. *See Bancamerica Int'l USA Trust v. Tyfield Imps., Inc.*, 289 F.3d 589, 593 n. 4 (9th Cir. 2002).
[17] Tribe's Supplement at 10-11.
[18] *Id.*
[19] The Tribe correctly notes that the Department has previously linked revenues from gaming operations to "address[ing] the unmet social and economic needs of tribal members on and off the Reservation" and "conserv[ing] and develop[ing] tribal land and resources." *Sault Ste Marie Tribe of Chippewa Indians Responses to Questions Posted by the Department of the Interior* at 2 (Dec. 9, 2016) (citing Letter from Assistant Secretary Washburn to the Honorable Scott Walker, Governor of Wisconsin at 26 (August 23, 2013). Indeed, one of the purposes of the Indian Gaming Regulatory Act is to "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702. However, the example provided by the Tribe addressed the question of whether a gaming establishment was in the best interest of the Indian tribe, not whether, in the absence of any evidence, acquisition of property could be said to "enhance" other parcels so as to trigger mandatory trust acquisition.
[20] *Id.* at 7.
[21] Bay Mills Letter at 4.

other tribal landholdings, it cannot be said to enhance any of them."[22] Here, the distances are even greater – the Tribe's headquarters is approximately 260 miles (287 miles by road) from the Lansing Parcels, and approximately 305 miles (356 miles by road) from the Sibley Parcel.[23] If Bay Mills could not, without supporting evidence of a tangible increase of value, "enhance" land from 85 miles away, then the Tribe cannot do so from more than 200 miles away without such evidence.

Moreover, in arguing that its acquisitions of the Parcels would enhance its Upper Peninsula lands, the Tribe relies on the attenuated reasoning that 1) the acquisitions allow for economic development, *then* 2) that economic development *might* generate revenue, *then* 3) that the revenue *might* be used to enhance lands in the Upper Peninsula. Even assuming we could accept that the potential for revenues arising from activity on, as opposed to the acquisition of, land satisfied MILCSA's requirements, the Tribe has not offered any evidence of its plans to use the gaming revenue to benefit its existing lands or its members.

Conclusions

The mandatory land-into-trust provision in MILCSA is triggered only when the Tribe acquires lands using Self-Sufficiency Fund income and conforming to the limitations provided in MILCSA section 108(c). Here, the Tribe argues that its acquisitions of the Parcels effected an "enhancement" of tribal lands as required by section 108(c)(5). The Tribe, however, has provided no evidence to support its argument and failed to respond to the DAS-PED's invitation to respond to the deficiencies identified in her letter.

Consequently, I conclude that the Tribe has failed to meet its burden of demonstrating that its acquisition of the Parcels would effect an "enhancement" of tribal lands as necessary to trigger the mandatory land-into-trust provision in section 108(f) of MILCSA. Therefore, the applications are denied.

Sincerely,

James E Cason

James Cason
Associate Deputy Secretary

---

[22] *Id.* at 6 (emphasis added).

[23] Because the Tribe's headquarters is on the northern tip of the Upper Peninsula, the Tribe may have lands in the Upper Peninsula that are not quite so distant from the Parcels that the Tribe seeks to have taken into trust. However, even the closest point on the Upper Peninsula is approximately 218 miles from the Lansing Parcels and approximately 267 miles from the Sibley Parcel.