



THE HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT

John F. Kennedy School of Government • Harvard University

HONORING NATIONS: 2010 HONOREE

California Fee-to-Trust Consortium Elk Valley Rancheria

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The loss of traditional land is a source of longstanding trauma for Native nations. It has far reaching consequences that began at the time of dispossession and persist today. Many tribes struggle to regain territory in order to support the basic needs of their citizens — housing, economic development, and essential services such as schools and health care. Frustrated by the federal government's handling of applications to put land into trust, a group of California tribes began working with the Bureau of Indian Affairs in 1998 to streamline the process by which tribes can secure landholdings that are protected by trust status. The California Fee-to-Trust Consortium has made it possible for the federal government to manage tribal trust applications in a timely and consistent way.

Waiting Years for Government Action

The tribes of California have a unique history of tribal land loss in the United States. The results devastated the region. Between treaties that were never ratified, a land-poor Rancheria system that is unique to the State, and a federal termination policy in the 1950s that dismantled California tribes' governments, the Native nations were left with hardly any lands under their authority. By the 1980s, many California tribes were re-instated by the courts or the federal government, but they did not regain their original lands during the process. An estimated 8.5 million acres that had once been Indian reservation land were no longer available to tribes; some tribes were left with no land at all. Without adequate territory, it is a struggle to build communities, house tribal governmental functions, address the health needs of tribal citizenry, and engage in countless other tasks that make up modern governance. In fact, in numerous instances, Indian law and federal policy specifically link tribal governmental powers to tribal land, thus favoring those with large reservations.

Tribal trust land is obtained by petitioning the federal Bureau of Indian Affairs (BIA) to transfer a specific parcel into trust. This is known as the fee-to-trust process. If a request is successful, the land receives federal status that, among other things, provides a mechanism to safeguard the land from future alienation and loss by the tribe. In California, however, the process was a bureaucratic quagmire. By 1998, more than a decade of applications from tribes in California had effectively gone unresolved. Almost no land had been transferred into trust because the BIA lacked the staff and expertise to deal with the requests put forth by tribes. When a California tribe submitted an



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application, the BIA would commonly take months or years to even respond, and then often would only ask for clarification or point out an error somewhere in the paperwork. It was not uncommon for an application to be under review for more than a decade, leading to a frustrating waste of time and resources for the tribes.

Tribal Funds for BIA Staffing

Recognizing that bringing land into trust was critical to re-building their nations, several tribes in California launched a discussion with the BIA in the late 1990s to see what could be done to remove administrative roadblocks. The resulting California Fee-to-Trust Consortium facilitates collaboration between the BIA's Pacific Region office and tribes located in California that choose to participate. With a current membership of 66 tribes from all regions of the state, the Consortium holds regular meetings to discuss the fee-to-trust process. BIA officials provide training in best practices to help tribes submit applications that conform to the regulations and are less likely to be returned or stalled because of a lack of documentation. The Consortium has also helped develop a standardized application package to provide a much needed model of a successful fee-to-trust request.

Notably, the Consortium accelerates the land review process by making funds available for the BIA to hire and train BIA staff to work exclusively on fee-to-trust applications. The fee-to-trust employees are under the sole direction of the BIA and subject to all federal government policies and procedures. Funding comes from Consortium member tribes who contribute a portion of their Tribal Priority Allocations. These are federal monies earmarked for tribal government operations and service provision, which can legally be used to fund BIA work. Under the Consortium's Memorandum of Understanding, each tribal government must give \$3,000 yearly, although tribes can contribute up to their entire federal allocation. Should a tribe want to join the Consortium, but be unable to pay the annual fee, other tribes will cover the cost for them. No tribe has been turned away due to an inability to pay.

There is no guarantee that a land application will be successful, but the Consortium's work has had a dramatic effect on the speed of the fee-to-trust process. While applications used to languish for an average of seven years, they are now usually processed in less than two years. Since the Consortium was first set up, over 15,000 acres of land have been taken into trust for tribes located in California, the majority of which is on-reservation land.

Land Is a Top Priority

Prior to the existence of the Consortium, the BIA treated tribal land applications as a discretionary task that rarely got attention. By setting up a mechanism to cultivate a strong working relationship focused on the fee-to-trust process, tribes in California and the BIA's Pacific Region office have acknowledged the importance of this issue. Through its efforts, the Consortium makes it clear that land reclamation is a crucial task



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of tribal governments, an important component of the federal government's obligation to tribes, and a mission that can no longer be put on the back burner.

The decision to direct tribal funds toward the hiring and training of federal employee positions is unusual and raises the question of whether tribes ought to pay for something that is clearly a federal responsibility. Yet, the Consortium faced the reality that the BIA did not have the staff or the knowledge to perform the task adequately. By definition, tribes cannot put land into trust themselves, but expanding their limited territories is crucial to their ability to govern. Through the California Fee-to-Trust Consortium, tribes have found a creative way to use the tools at their disposal to improve this vital process. As an official from one participating tribe notes, "the Consortium was and remains an innovation born from desperation." Essentially, member tribes channel their federal dollars to the BIA so that land requests are given the appropriate time and attention they deserve. This is an unambiguous act of self-determination.

A critical component that has contributed to the Consortium's success has come in the form of education. To address the public's concerns, Consortium tribes actively educate residents of neighboring towns about the land process. All stakeholders are taught about the history of land alienation in California, possible uses for the land, and the importance of trust land as the foundation for tribal communities.

Bringing the Lessons Home

Land is at the heart of a people's existence. Without a territorial base, it is almost impossible to sustain an economy and provide services to citizens. For the land-starved tribes in California, waiting until the BIA sorted out its mandate and staffing for land requests was not an option. The Fee-to-Trust Consortium allows tribes to work with each other and with BIA officials to make sure that they submit well-documented applications that are reviewed by highly qualified employees. These efforts have turned a bureaucratic bottleneck into an efficient process that helps tribes restore their lands so they can get on with the job of building their nations.

Lessons:

- Loss of land does not mean loss of self-determination.
- Investments in land rights are investments in Indigenous nation building.
- Stakeholder education can help build consensus around tribal development priorities.