



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Northwest Regional Office

911 Northeast 11<sup>th</sup> Avenue

Portland, Oregon 97232

August 15, 2022

The Honorable Bill Sterud, Chairman  
Puyallup Tribe of Indians  
3009 Portland Avenue East  
Tacoma, WA 98404

Dear Chairman Sterud:

I am aware that the Puyallup Tribe ("Tribe") seeks to place into trust two properties on Ruston Way in Tacoma, Washington ("Properties"). The Tribe currently uses the Properties for retail use including a restaurant at 3001 Ruston Way and a vacant restaurant building located at 3017 Ruston Way. The Tribe has expressed that it intends to continue the retail use of the Properties, including a first of its kind fine dining restaurant that will infuse tribal cuisine. I was excited to visit these properties and I look forward to the Tribe's return to Commencement Bay with these exciting ventures. For the reasons explained below, congressional action directing the Department of the Interior to place the Properties into trust may be the most viable option for the Tribe.

As you know, the Department of the Interior's land into trust acquisition regulatory process is set forth in 25 C.F.R. Part 151. Particularly, 25 C.F.R. 151.10(h) and 25 C.F.R. 151.11(a) require, in relevant part, that an applicant seeking land into trust provides information allowing the Department to comply with the Department Manual on Land Acquisition and Exchange Real Property Pre-Acquisition Assessments: Environmental Due Diligence ("602 DM 2"). 602 DM 2 applies to discretionary fee-to-trust acquisitions and states the Department's policy to minimize its exposure to potential liability and remediation costs by avoiding acquiring real property that is contaminated unless directed by Congress, court mandate, or as determined by the Secretary. Additionally, 602 DM 2 describes the Department's process for preserving defenses to liability through Environmental Site Assessments prior to acquisition.

The Tribe conducted a Phase I Environmental Site Assessment ("Phase I ESA") that identified potential soil and ground water contamination from petroleum products, fuels, and wood preservatives that may have been used at the historical mill on the property. The Phase I ESA also identified undocumented fill and potentially "refuse fill", and potential arsenic and metals contamination in the soil possibly associated with the Tacoma Smelter Plume. The Tribe conducted a Phase II Environmental Site Assessment ("Phase II ESA"). The Phase II ESA identified gasoline and diesel-range hydrocarbons, various metals, and polycyclic aromatic hydrocarbon contamination in the fill materials, as well as diesel-range hydrocarbons and naphthalene in the groundwater on the Properties.

If the Tribe were to apply to place the Properties into trust through the regulatory process at 25 C.F.R. Part 151, the Department may require a remediation plan prior to acquisition to minimize its exposure to liability, consistent with 602 DM 2. I understand that a remediation plan for the Properties is cost prohibitive for the Tribe. However, should Congress direct the Department to place the Properties into trust through legislation, the Department could accept the



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land into trust without requiring a remediation plan.

The Department understands the legacy contamination is a result of industrial development in the Tribe's homelands in the City of Tacoma that has greatly impacted the Tribe's efforts to restore its homeland. Given the cost implications that may arise for the Tribe through the regulatory process, congressional action to take the Tribe's Properties into trust may be the most viable option for the Tribe to restore these lands as a part of the Reservation.

Sincerely,

Bryan Mercier,  
Northwest Regional Director

Cc: Bryan Newland, Assistant Secretary of Indian Affairs