

TESTIMONY
OF
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ACTING DIRECTOR
BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SUB-COMMITTEE ON INDIAN, INSULAR, AND ALASKA NATIVE AFFAIRS
HOUSE OF REPRESENTATIVES
ON
H.R. 5244, THE “MASHPEE WAMPANOAG TRIBE RESERVATION REAFFIRMATION ACT”

JULY 24, 2018

Chairman LaMalfa, Ranking Member Gallego, and Members of the Subcommittee, I am Darryl LaCounte, Acting Director of the Bureau of Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present the Department’s views on H.R. 5244, the “Mashpee Wampanoag Tribe Reservation Reaffirmation Act.” This bill would ratify and confirm the action of the Secretary of the Interior to take certain lands into trust for the benefit of the Mashpee Wampanoag Tribe of Massachusetts (Tribe).

Background

In 2007 the Tribe was federally acknowledged and submitted a fee-to-trust application to the Department. In September 2015, the Assistant Secretary - Indian Affairs issued a decision approving the Tribe’s request to acquire 151 acres in trust in the City of Taunton, Massachusetts for gaming purposes and 170 acres in trust in the Town of Mashpee, Massachusetts for tribal governmental purposes. The Assistant Secretary’s decision found that the Tribe was eligible under the second definition of “Indian” in the Indian Reorganization Act of 1934 (IRA) for having resided on a “reservation” in 1934. The Department acquired the parcels in trust on November 10, 2015.

Although the City of Taunton supported the trust acquisition, residents of Taunton challenged the Assistant Secretary’s decision in federal court. On July 28, 2016, the Federal District Court for the District of Massachusetts held that the second definition in the IRA incorporates the first definition of “Indian” and remanded to the Department to determine whether the Tribe might be eligible under the IRA’s first definition as having been “under federal jurisdiction” in 1934. The Tribe is pursuing an appeal, which the First Circuit stayed pending resolution of remand proceedings. The Department is holding the parcels in trust pending the ongoing review on remand.

H.R. 5244

H.R. 5244 provides that the action taken by the Department to place lands into trust for the Tribe as described in the final notice of the Reservation Proclamation published at 81 Fed. Reg. 948 (Jan. 8, 2016) is ratified and confirmed.

The Department recommends the legislation refer to the Fee to Trust final notice along with the Reservation Proclamation. Citing the Fee to Trust final notice (80 Fed. Reg. 57848 (September 25, 2015)) would legislatively ratify the Secretary's decision, alleviating any uncertainty concerning the acquisition.

H.R. 5244 also provides that federal court action related to the Reservation Proclamation shall not be filed or maintained in a federal court and any current action would be dismissed, and that all laws, including the IRA, shall be applicable to the Tribe and its members. In 2018, the Supreme Court in *Patchak v. Zinke* narrowly rejected a constitutional challenge to almost identical statutory language regarding a trust acquisition for the Gun Lake Tribe. In light of that litigation, the Department would appreciate the opportunity to work with the Committee, along with the Department of Justice, to clarify the language in Sections 2(b) and 2(c).

Conclusion

Administering trust lands is an important responsibility that the United States undertakes on behalf of Indian tribes. Where Congress has provided authority, such as the IRA, through which the Department administers its trust responsibilities for tribes, clarity and equitable treatment are extremely important. We welcome the opportunity to work with the bill sponsor, the Committee, and Congress to improve this legislation.

This concludes my statement and I would be happy to answer questions.