



Assistant Secretary-Indian Affairs Proposed Changes to Fee-to-Trust Procedures

On May 24, 2013, Assistant Secretary-Indian Affairs Kevin Washburn issued a proposed rule to modify the process for challenging the Secretary's decision to take fee lands into trust,¹ apparently in response to the United States Supreme Court's decision in *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak* ("Patchak"),² which we reported on in our [Fall 2012](#) Native American Law Watch. As we reported, the *Patchak* Court ruled that the plaintiff in that case, who did not have an interest in the land to be taken into trust, had standing to challenge the Secretary's decision to take land into trust, that his claim could proceed under the Administrative Procedures Act ("APA"), and that the general six year statute of limitations applied to such challenges. In her dissent, Justice Sotomayor cautioned that the majority decision may frustrate the United States' ability to quickly resolve challenges to fee-to-trust decisions, because, under the BIA's regulations (and before the *Patchak* decision), challenges to a fee-to-trust decision had to be raised within 30 days of the Secretary's decision. Justice Sotomayor thus explained that the majority decision "will...retard[] tribes' ability to develop land until the APA's 6-year statute of limitations has lapsed."³

The proposed rule addresses some of the uncertainty caused by the *Patchak* holding and is designed to encourage economic development on Indian Reservations. As Assistant Secretary Washburn explained: "The principal purpose of this proposed rule is to provide greater certainty to tribes in their ability to develop lands acquired in trust for purposes such as housing, schools and economic development." He characterized the proposed rule as creating "a 'speak now or forever hold your peace moment' in the land-into-trust process. If parties do not appeal the decision within the administrative appeal period, tribes will have the peace of mind to begin development without fear that the decision will be later overturned." The proposed rule will be published in the Federal Register on May 29, 2013, and public comments may be submitted on the proposed rule for sixty days following publication.

For more information, please contact [Deana M. Bennett](#) at deanab@modrall.com.

1 [Press Release](#), U.S. Dep't of the Interior, Bureau of Indian Affairs, Washburn Proposes Changes to Land-into-Trust Procedures to Achieve Greater Transparency, Clarity and Certainty for Tribes, May 24, 2013.

2 [U.S. ___](#), 132 S. Ct. 2199 (2012).

3 *Id.* at 2217