

What Can Be Done?

It is important to remember that agreements need a forum to resolve disputes. Under federal law, Indian tribes have sovereign immunity which has been used to break otherwise valid contracts with non-Indian entities. All agreements with tribal governments should be reviewed as to their enforceability outside tribal courts. Community/tribal agreements should include a “limited waiver of sovereign immunity” from the tribe.

What can I do if I want to oppose the fee to trust process?

Your primary efforts should be directed to the federal government. You should contact your Congressman and your Senator expressing your concerns. You should also write the Secretary of the Department of Interior and to the head of the Bureau of Indian affairs expressing your comments. These are federal policies that require federal solutions.

If a fee to trust application impacts you directly, you can enter the appeal process. A trust land conversion may impact your property value, right of way or other property rights. If you suffer a direct personal harm you may have “standing” to enter the appeals process individually.

Can local governments do anything?

Yes. Local and state governments have an obligation to be aware of these issues and be prepared to respond to them. Read Nixon press release. You should ask your local officials to obtain a copy of the fee to trust regulations and have your city or county attorney review them in the event a fee to trust acquisition is attempted. The fee to trust regulations provide for an appeal process. Your local authorities should be familiar with this process.

Your state government can pass legislation to require a public hearing whenever a fee to trust application has been received by a local jurisdiction. This legislation would ensure local officials are prepared to face fee to trust actions and the public hearing would be the vehicle to educate your community over the issues they may face and their options to oppose it if they choose.

Many state attorneys general are reluctant to press legal action against tribes due to tribal sovereign immunity and our current social concerns over political correctness. You must remind your state law enforcement offices they are bound by your state’s constitution to protect the sovereignty of your state. If your state attorney general is unwilling to assist in opposing fee to trust conversions, you can appeal to your governor or legislature to authorize the hiring of special outside counsel on these issues.

Local governments can encourage tribes to enter into agreements which specifically define responsibilities for jurisdiction and cost sharing. It is important to remember that tribes exercise sovereign immunity so any city/county/tribal agreement should include a waiver of sovereign immunity for the purposes of the agreement.