



## **Fredericks Peebles & Morgan Successfully Defends Gun Lake Tribe's Trust Status**

Omaha, Nebraska – June 19, 2015

Fredericks Peebles & Morgan LLP (FPM) achieved a major victory on behalf of the Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians (Tribe or Gun Lake Tribe) this week. The United States District Court for the District of Columbia has dismissed a lawsuit brought by David Patchak challenging the Secretary of Interior's authority to take land into trust on behalf of the Tribe. The decision represents an important victory for the tribe and the ten long years of uncertainty regarding the trust status of a small tract of land known as the Bradley Tract, the Tribe's initial reservation and is the location of the Gun Lake Casino.

In 2001, the Tribe identified the 147-acre parcel of land known as the Bradley Tract, which it wished to acquire as its initial reservation under the Indian Reorganization Act (IRA) and on which it intended to open a casino to create revenue that would sustain its government. The United States issued its Notice of Final Agency Determination accepting the Bradley Tract into trust on May 13, 2005.

After the Tribe and FPM defeated the anti-Indian, anti-casino group MichGO's first challenge to the Bradley Tract in 2007, David Patchak took up their fight and filed his suit alleging that the United States lacked the authority to take land into trust under the IRA because, he alleged, the Tribe was not under federal jurisdiction when the IRA was enacted in 1934. The United States District Court for the District of Columbia dismissed Patchak's suit on procedural grounds, which he ultimately appealed to the United States Supreme Court, which held in *Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, 132 S. Ct. 2199 (2012), that he indeed had standing to bring his suit. The case was remanded to the D.C. District Court to determine whether the Tribe was under federal jurisdiction in 1934.

During the two years between the remand and when Mr. Patchak decided to take action in this case on remand, two important events occurred. First, on September 3, 2014, the Secretary of the Interior issued an Amended Notice of Decision concerning the Tribe's fee-to-trust application for two other parcels of land, and expressly considered, and confirmed, its authority under the IRA to take land into trust on behalf of the Tribe, which it held was unquestionably under federal jurisdiction in 1934. Second, on September 26, 2014, President Obama signed into law the Gun Lake Trust Land Reaffirmation Act (the "Gun Lake Act"), which reaffirmed that the Bradley Tract was legally in trust and directed that any action brought relating to its trust status, including Mr. Patchak's suit must be "promptly dismissed." Pub. L. No. 113-179, 128 Stat. 1913, Sec. 2(a)-(b).

Despite the Department of Interior's and Congress's express affirmation of the Bradley Tract's trust status, Patchak persisted in his lawsuit. Both Patchak and the Tribe filed Motions for Summary Judgment on October 31, 2014. The Tribe argued that Congress had properly enacted the Gun Lake Act, which conclusively resolved the instant suit by affirming the Bradley Tract's trust status and

divesting the Court of jurisdiction to hear the suit, in addition to arguing that Patchak's suit was barred by the doctrine of laches.

The Court ruled in favor of the tribe and rejected each and every one of Mr. Patchak's constitutional challenges to the Gun Lake Act. The Court held that the Gun Lake Act had divested it of jurisdiction to hear the merits of the Mr. Patchak's challenge by substantively affirming Interior's decision to take the Bradley Tract into trust. Accordingly, the Court denied Patchak's Motion for Summary Judgment and dismissed Patchak's lawsuit challenging the Bradley Tract's trust status in its entirety. The Court's decision means, not only that the Gun Lake Act has prohibited Mr. Patchak's challenge to the Bradley Tract's trust status, but that the Act has prohibited all legal challenges to the Bradley Tract's trust status.

The Bradley Tract has officially been in trust since 2009. The Gun Lake Casino opened on the Bradley Tract in Wayland Township, Michigan on February 10, 2011. Since its opening, the Tribe has contributed more than \$80,000,000 to state and local revenue sharing boards and the casino has created 800 jobs for the community at large as well as tribal members. The casino funds the Tribe's government and has enabled the Tribe to provide essential services to its members, including housing, health care, education, infrastructure, and other important services for the first time in many years. The Gun Lake Tribe was represented in this matter by Fredericks Peebles & Morgan LLP (FPM). The FPM team included Partner Conly Schulte and Partner Nicole Ducheneaux.

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