TESTIMONY OF
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PRAIRIE BAND POTAWATOMI NATION

BEFORE
THE U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS
ON "UNLOCKING INDIAN COUNTRY'S ECONOMIC POTENTIAL"

MARCH 1, 2023

Good morning, Chair Hageman, Ranking Member Leger-Fernandez, and distinguished members of the Subcommittee. My name is Joseph Rupnick and I serve as the Chairman of the Prairie Band Potawatomi Nation. I am a veteran of the United States Calvary and I represent approximately 4,500 Potawatomi people most of whom live on our reservation in Kansas defined by our 1846 Treaty with the United States government.

I am honored to be with you today to share my thoughts on "Unlocking Indian Country's Economic Potential," particularly as it relates to the ownership and use of tribal lands for economic development. Originally, our people owned and resided on lands in northern Illinois, but we were subject to removal treaties in 1829 and 1833 that relinquished all but 1,280 acres of that land. Our 1846 treaty established a 900 square mile reservation for us in Kansas, but development pressure, the federal government's land allotment policies and outright theft resulted in most of our land being lost to non-Indians. Just a few decades ago, our Nation owned less than 5% of the land originally promised to us.

Today, lands within our Reservation are heavily "checkerboarded" – meaning that there are mixed parcels of land within the Reservation owned by our Nation, individual Nation citizens, and non-Indians. And because the status of the land differs based on ownership, so too

does the jurisdiction and taxing authority of the tribal, federal, state, and county governments. Frankly, what the government has done to us and our lands has been to create a mess.

This mess is compounded by the fact that that the lands that we have retained are considered to be "trust lands" – that, is – lands owned by and under the jurisdiction of the federal government. In my view, the idea of "trust land" is not normal and should be fixed to recognize that our Nation is the owner of our lands within our treaty-defined reservations and subject to our primary jurisdiction. The federal government's role should be to protect our lands against sale and external taxation and regulation, not management and interference with our tribal government's land use decisions.

Perhaps the most glaring defect of trust land status is how it interferes with economic development activities that we wish to pursue to support our people. For example, in recent years we have sought to expand a retail shopping plaza with a convenience store to support our Class III gaming facility. We acquired the land in fee from non-Indian sellers. We had to apply to the Bureau of Indian Affairs to have the land taken into trust, which took 14 years. We had to undergo excessive environmental review because of the land is now considered to be in trust status. The utility service takes time to hook up because of the federal regulations governing rights of way on trust land. We started this project 22 years ago and it is still not finished. Nowhere in America other than Indian Country does this kind of bureaucratic stranglehold occur.

To remedy this situation, I recommend that the Subcommittee consider acting in three different areas to improve use of tribal lands.

First, the Congress should enact legislation to allow for any Indian nation at its own choosing to acquire lands under its jurisdiction in restricted fee status. Restricted fee status is a

long-established form of tribal landownership similar to trust status, but the land is considered owned by the Indian nation not the federal government.

The late Don Young, the former Dean of the House, supported tribal sovereignty for tribal governments to own our own lands and exercise jurisdiction over them within our reservations. He developed legislation – the "Native American Land Empowerment Act" – that he introduced in the 112th and subsequent Congresses to allow for Indian nations to acquire restricted fee lands within our existing reservations. He proposed a 90-day process that land acquired by a tribe in fee within its reservation would automatically be converted to restrict fee status under its ownership and jurisdiction.

Enactment of this legislation would create an alternative process to the current fee-to-trust process. All tribal nations could save time, money, and strengthen our ability to engage in economic development within our reservations if we had this tool at our disposal. Some tribes may not like the idea and would prefer to have their lands held in trust. That is their right. But for those nations that want greater control over our land use from the federal government, we should have that opportunity as well.

In addition, I would like to suggest two other important changes to expand tribal government authority over our own lands.

Right now, Indian nations are limited in our ability to lease our lands without federal approval. In 2012, the Congress took a major step forward when it enacted the HEARTH Act to amend the Indian Long-Term Leasing Act of 1955 (25 USC 415) to allow for the leasing of trust or restricted lands of up to 75 years. But, to regain that inherent authority, a tribe must first ask permission and secure approval from the federal government to exercise that authority. And to

get that approval, a tribe's laws must have a variety of restrictions and controls governing land use that are nearly as burdensome as the federal government's own regulations.

In true fashion, the federal government acted in a manner that looks like it is respecting tribal sovereignty but loads up the process with so many other restrictions that you have to wonder whether it's really worth it.

The Congress should simply fix this situation by enacting legislation that allows any Indian that wants the authority to lease its trust lands for 99-years to do so. Again, if a tribe wants to utilize the existing legal regime, that is their choice. But if other tribes like ours want a streamlined process, the federal government should just get out of the way.

Lastly, Congress should amend the Nonintercourse Act to clarify that it does not apply to the purchase and sale of fee lands. This Act, one of the first pieces of legislation enacted by the Congress in 1790, serves an important function to protect the sale and alienation of Indian lands. But it should not apply to land transactions involving the purchase and sale of fee lands. Many tribal governments, including ours, are interested in expanding our economic opportunities into real estate development, but any future sale could be stopped because of a restrictive interpretation of the Nonintercourse Act.

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In conclusion, I want to thank you again Madam Chair and Subcommittee members for the opportunity to testify today. For 50 years, the official policy of the Congress has been to support tribal sovereignty and self-determination. More must be done to make this a reality to support tribal economic self-sufficiency.

I am glad to take any questions that you may have.