TESTIMONY
OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE NATURAL RESOURCES COMMITTEE
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Good morning, my name is Carl Artman, and I am the Assistant Secretary – Indian Affairs at the Department of the Interior (Department). I am here today to discuss guidance issued on January 3, 2008, to Bureau of Indian Affairs (BIA) Regional Directors and to the Office of Indian Gaming (OIG). The January 3rd memorandum dealt with tribal requests for the Department to take off-reservation land into trust for gaming.

We had approximately 30 applications for land to be taken into trust under the "two-part determination" exception to the Indian Gaming Regulatory Act's (IGRA) general prohibition against gaming on land acquired into trust after October 17, 1988. That exception, 25 U.S.C. § 2719(b)(1)(A), allows gaming if "the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination."

In the 20 years since the passage of IGRA, only 4 times has a governor concurred in a positive two-part Secretarial determination made pursuant to section 20(b)(1)(A) of IGRA. The number of applications for this exception has increased in recent years, and BIA regional directors lacked clarification on how to make consistent recommendations on the applications.

There has also been confusion about the interplay between IGRA and the Indian Reorganization Act (IRA). The IGRA authorizes tribes to conduct gaming and does not contain any authority to take land into trust. Specifically, section 2719(c) of IGRA provides: "[n]othing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust." In contrast, the Department's authority to take land into trust for Indians stems from section 465 of IRA and its implementing regulations, 25 C.F.R. Part 151. It has been unclear whether the BIA should first decide whether a trust acquisition would be in the best interest of an Indian tribe and not detrimental to the surrounding community under section 2719 of IGRA or whether the land should be acquired in trust under Part 151.

The guidance instructs the BIA Regional Directors to begin their analysis of applications using the Part 151 factors. The factors considered when analyzing a tribal application under these regulations for land to be taken into trust include under 25 C.F.R. 151.10:

(a) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(b) The need of the individual Indian or the tribe for additional land;

(c) The purposes for which the land will be used;

(e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;

(f) Jurisdictional problems and potential conflicts of land use which may arise; and

(g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

(h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, Appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW, Room 4525 MIB, Washington, DC 20240.)

For off-reservation applications, as the distance between the tribe's reservation and the land to be acquired increases, 25 C.F.R. Part 151.11(b) directs the Secretary to give:

1) greater scrutiny to the tribe's justification of anticipated benefits from the acquisition; and
2) greater weight to concerns raised by state and local governments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

Some of the 30 applications under consideration were for distances only 2 or 20 miles away from a tribe's reservation while others were for land over 1000 miles away. Traditionally, the off-reservation applications the Department has seen for non-gaming purposes have been close to the reservation with the intention of serving reservation residents. The BIA is used to dealing with requests for land 20, 30, or 50 miles away from a tribe's reservation. The BIA is not accustomed to assessing applications for land 100, 200, or 1500 miles away from a tribe's reservation. The Part 151 regulations do not elaborate on how or why the Department is to give "greater weight" and "greater scrutiny" as the distance from the reservation increases. Clarification of the analysis used under section 151.11(b) was needed.

The Department's guidance memorandum of January 3, 2008, provided that clarification. The Department looked to the purpose of the IRA and the factors that influenced its enactment. The IRA was enacted in 1934 in the aftermath of the disastrous allotment era when millions of acres of reservation land was broken up and tribal communities were

floundering. The IRA aims to counter the effects of the allotment era by growing the tribal land base and strengthening tribal governments to promote flourishing Indian communities.

One of the clarifications within the guidance relates to 151.11(b). We are concerned that taking land into trust for economic development far from the reservation may increase the potential for negative consequences on reservation life. The typical tribal gaming facility provides job training and employment for tribal members as well as a revenue stream. We are concerned that an economic enterprise too far away from the reservation to allow for reasonable commuting may end up harming the tribe by encouraging tribal members to leave the reservation for an extended period to take advantage of the job opportunities. Another factor that we examine involves state and local concerns, including jurisdictional problems. Thus, the guidance advises the BIA Regional Directors to give a hard look at these concerns before making a recommendation.

The Department has now issued several letters to tribes that are consistent with the new guidance. These provide clarification to the tribes and BIA Regional Directors on what must be submitted for an application to be approved. Knowledge of the process and consistency in review of the applications will promote speedier decision-making.

The Department favors tribal economic development and has many initiatives to promote and support tribes as they address the high unemployment and poverty rates found on many reservations. We have and do support off-reservation enterprises. The farther from the reservation the land acquisition is, the more difficult it will be for the tribal government to efficiently and effectively project and exercise its governmental and regulatory powers, especially if the distance is in the hundreds of miles.

This concludes my testimony. I welcome any questions that the Committee may have.