Indian Affairs - Office of Public Affairs

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Washington, D.C. – Assistant Secretary of the Interior for Indian Affairs Larry Echo Hawk today issued decisions on four tribal gaming applications in California and New Mexico, determining that two of the proposed gaming sites meet the legal and regulatory requirements and two do not.

Assistant Secretary Echo Hawk determined that a proposed gaming facility in Yuba County, California would be in the best interest of the Enterprise Rancheria of Maidu Indians, and would not be detrimental to the surrounding community. He made a similar determination for the North Fork Rancheria of Mono Indians for a proposed gaming facility in Madera County, California.

“Our responsibility under the Indian Gaming Regulatory Act is clear: we must review each application on a case by case basis and determine whether it meets the standards outlined in law and regulation,” said Echo Hawk. “Following a careful and thorough review of the applications from the Enterprise Rancheria and the North Fork Rancheria tribes, I have determined that both tribes’ applications meet the strong standards under the law. Both tribes have historical connections to the proposed gaming sites, and both proposals have strong support from the local community, which are important factors in our review."

The Assistant Secretary also issued two negative decisions on other tribal gaming applications: one for the Guidiville Band of Pomo Indians in California, and the other for the Pueblo of Jemez, in New Mexico.

The Guidiville Band of Pomo Indians had sought to develop a gaming facility in Richmond California, more than 100 miles from its existing tribal lands in Mendocino County. The Pueblo of Jemez is located northwest of Albuquerque, and was seeking to develop a class III gaming facility nearly 300 miles away in Doña Ana County, near the New Mexico-Texas border.

“We have closely reviewed the proposals from the Guidiville Band of Pomo Indians and the Pueblo of Jemez and have determined that they do not meet the requirements under the law necessary for approval,” said Echo Hawk. “The Guidiville Band’s application did not satisfy many of the requirements to develop a gaming facility at that particular site. With the Pueblo of Jemez, we had significant concerns about the Tribe’s ability to effectively exercise jurisdiction over a parcel nearly 300 miles from its existing reservation.”

The Enterprise Rancheria of Maidu Indians is headquartered in Butte County, 36 miles from the proposed 40-acre gaming site. The North Fork Rancheria of Mono Indians is headquartered in Madera County, California, 36 miles from the proposed 305-acre gaming site. Both tribes submitted applications under the Indian Gaming Regulatory Act’s “Secretarial Determination” exception, which allows tribes to conduct gaming on lands outside of their existing reservation where the Department determines that it would be in the best interest of the tribe and its members, and not detrimental to the surrounding community.

Under the Indian Gaming Regulatory Act, the Governor of the State of California has one year to concur in the Assistant Secretary’s determinations on the Enterprise Rancheria and the North Fork Rancheria,

before the parcels can be acquired in trust for each tribe to conduct gaming. If the Governor does not concur in the Assistant Secretary's determination for each tribe, respectively, then that tribe may not conduct gaming on the proposed site.

The Guidiville Band sought to develop its facility under what is known as the Indian Gaming Regulatory Act's "equal footing exception." IGRA prohibits Indian gaming on lands acquired in trust after its enactment in 1988, unless one of three explicitly crafted exceptions applies. The "equal footing exception," was intended to ensure that a number of tribes had an equal opportunity to pursue Indian gaming on their own lands as those tribes that had lands eligible for gaming in 1988.

Under one sub-category of this exception, a tribe must demonstrate both modern and significant historical connections to the proposed gaming site. The Guidiville Band failed to demonstrate that it had either a modern connection or a significant historical connection to the proposed gaming site in Richmond, California.

The Pueblo of Jemez was also seeking to develop its gaming facility under the Secretarial Determination exception. The Department did not issue a determination on whether the proposed gaming facility would be in the best interest of the Tribe, and not detrimental to the surrounding community. Instead, the Department notified the Tribe that it would not acquire the land in trust because of concerns about the Tribe's ability to effectively exercise jurisdiction on the proposed gaming site.

For more information concerning each of these decisions please click on the following links:

Enterprise Rancheria of Maidu Indians

North Fork Rancheria of Mono Indians

Guidiville Band of Pomo Indians

Pueblo of Jemez

FACT SHEET: ENTERPRISE RANCHERIA POSITIVE SECRETARIAL DETERMINATION

Decision

- The Assistant Secretary – Indian Affairs has reviewed the Enterprise Rancheria's off-reservation gaming application under the Indian Gaming Regulatory Act (IGRA) and determined that:
    - Gaming on the proposed site would be in the best interest of the Tribe and its members; and,
    - Gaming on the proposed site would not be detrimental to the surrounding community.
- The application now goes to the Governor of the State of California for concurrence in this determination. The Governor has one year to concur. Upon concurrence, the Tribe will be able to conduct gaming on the lands when they are acquired in trust.

Background

- The Tribe is located in Butte County, California (north of Sacramento), and has approximately 800 members. It currently has only 40 acres of land in trust, located in the Sierra Nevada foothills 21

miles east of the town of Oroville, CA. Those lands have been in trust since 1915 and are currently used for residential purposes. The Tribe also had an additional 40 acres of land in trust that were flooded for construction of a dam in the 1960's.
- The Tribe is proposing to operate a gaming facility on 40 acres of land in Yuba County, California – 36 miles south of the Tribe's headquarters in Oroville, and 54 miles from its existing trust lands (driving distance). The proposed gaming site is approximately 40 miles north of Sacramento, CA.
- The Tribe originally submitted its application in 2002. The proposed scope of the facility would include 1,700 machines, and an 8-story/170 room hotel.

Overview of Analysis – Best Interest Determination

- The gaming facility would result in annual net revenues of $46.2 million by year 7, with $19.3 million in cash available to the Tribe's government in year 7.
- Revenues would allow Tribe to provide jobs to its members, increase its service-delivery to tribal members, and allow the Tribe to develop a land-base.
- The gaming facility would only be 36 miles from its government headquarters, allowing the Tribe's government to exercise governmental power over the gaming site.
- The Tribe has a historical connection to the area around the Site, which has been recognized by the State of California and the Army Corps of Engineers (for purposes of repatriation of human remains and funerary objects).
- Development of gaming at the proposed site is an appropriate alternative to gaming on existing trust lands, which are limited (40 acres), difficult to access (narrow, dirt roads), difficult to develop (steep, uneven terrain), and currently used for tribal member housing.

Overview of Analysis – Not Detrimental to the Surrounding Community

- The Tribe has entered into a Memorandum of Understanding with Yuba County, which will require payments to the county to mitigate impact of gaming. Under this MOU, the County will receive $83 million over 20 years for various services.

- The Tribe has entered into a Memorandum of Understanding with the City of Marysville, which is the closest municipal government to the proposed gaming facility. Under this MOU, the City will receive $4.8 million over 15 years.

- The gaming facility would be located in a 900-acre area zoned for "Sports and Entertainment." The original purpose of the property was for the construction of a NASCAR track and outdoor amphitheatre.

- The United Auburn Indian Community is also a "surrounding community" under IGRA, meaning that the Department must determine that the Enterprise Rancheria's proposed gaming facility is not detrimental to the United Auburn Indian Community (Auburn).Auburn operates its own gaming facility in Lincoln, California – approximately 21 miles southeast. Any claimed historical connection to the area around the site is not exclusive of other tribes, and does not lead to a detriment.

- Auburn did not submit sufficient evidence showing that gaming on the site would be detrimental to its own community.

FACT SHEET: NORTH FORK RANCHERIA POSITIVE TWO-PART DETERMINATION

Decision

- The Assistant Secretary – Indian Affairs has reviewed the North Fork Rancheria's off-reservation gaming application under the Indian Gaming Regulatory Act (IGRA) and determined that:
    - Gaming on the proposed site would be in the best interest of the Tribe and its members; and,
    - Gaming on the proposed site would not be detrimental to the surrounding community.
- The application now goes to the Governor of the State of California for concurrence in this determination. The Governor has one year to concur. Upon concurrence, the Tribe will be able to conduct gaming on the lands when they are acquired in trust.

Background

- The Tribe is located in Madera County, California (northeast of Fresno), and has 1,750 members. It currently has only 80 acres of land in trust, located in the Sierra Nevada foothills, 4 miles east of the town of North Fork, CA. Those lands are currently used for residential purposes.
- The Tribe is proposing to operate a gaming facility on 305 acres of land in Madera County, California – 36 miles southwest of the Tribe's headquarters in North Fork, and 38 miles from its existing trust lands (driving distance). The proposed gaming site is approximately 30 miles north of Fresno, CA.
- The Tribe originally submitted its application in 2005. The proposed scope of the facility would include 2,500 machines, and a 200-room hotel.

Overview of Analysis – Best Interest Determination

- The gaming facility would result in annual net revenues of $53.8 million by year 7, with $19 million in cash available to the Tribe's government in year 7.
- The gaming facility would allow Tribe to provide jobs to its members. More than 60% of tribal members live within 50 miles of the proposed site. Gaming revenues would allow the Tribe to increase its service-delivery to tribal members, and allow the Tribe to develop a land-base.
- The gaming facility would only be 36 miles from its government headquarters, allowing the Tribe's government to exercise governmental power over the gaming site.
- The Tribe has submitted documentation demonstrating that it has a significant historical connection to the proposed gaming site, including the fact that the Site is within territory ceded by the Tribe's predecessors by an ungratified treaty.
- Development of gaming at the proposed site is an appropriate alternative to gaming on existing trust lands, which are limited (80 acres), difficult to access (narrow, dirt roads), and currently used for tribal member housing. In addition, the Tribe's existing trust lands are located near Yosemite National Park, and within the Sierra National Forest – making gaming on other lands an appropriate alternative.

Overview of Analysis – Not Detrimental to the Surrounding Community

- The Tribe has entered into a Memorandum of Understanding with Madera County, which will require payments to the county to mitigate impact of gaming. Under its MOU with Madera County, the Tribe will issue a one-time contribution of up to $17.9 million to mitigate potential one-time costs incurred due to the Resort. The Tribe will also make annual payments to Madera County and local foundations of up to $4.03 million.
- The Tribe has entered into a Memorandum of Understanding with the City of Madera, which is the closest municipal government to the proposed gaming facility. Under its MOU with the City of Madera, the Tribe will make a one-time contribution to the City of up $10.3 million to mitigate such potential one-time impacts as law enforcement expansion and road improvements. The Tribe will also make annual contributions of up to $1.075 million to mitigate recurring costs to the City as a result of the Resort.
- The gaming facility would be located in an undeveloped area, and the gaming facility footprint would only cover 55 acres of the 305-acre parcel, creating a buffer between adjoining properties.
- The Picayune Rancheria is not a "surrounding community" under IGRA, meaning the Department is not required to determine whether the North Fork Rancheria's proposed gaming facility would be detrimental to the Picayune Rancheria. Despite not be required to do so, the Assistant Secretary did consider the Picayune Rancheria's objections. AS-IA determined that Picayune's existing gaming facility, more 30 miles from the proposed North Fork facility, has been successful in a competitive gaming market and the tribe would not suffer a detrimental impact.

FACT SHEET: GUIDIVILLE BAND OF POMO INDIANS NEGATIVE RESTORED LANDS DETERMINATION

Decision

- The Assistant Secretary – Indian Affairs and the Solicitor of the Department of the Interior have reviewed the Guidiville Band's "restored lands" gaming application under the Indian Gaming Regulatory Act (IGRA) and determined that:
    - The Band does not have a modern connection to the proposed gaming site in Richmond, California; and,
    - The Band does not have a significant historical connection to the proposed gaming site in Richmond, California.
- The Assistant Secretary has disapproved the Tribe's request for a positive Indian Lands Determination for a proposed gaming site in Richmond, California. The Tribe could amend its fee-to-trust application for a different purpose, or submit a new gaming application for other lands.

Background

- The Tribe is located in Ukiah, California (Mendocino County), and has approximately 113 members. The Tribe currently has land in trust in Ukiah, California, which is used for housing purposes.
- The Tribe is proposing to develop a class III gaming facility on 425 acres in Richmond, California at the former Point Molate Naval Fuel Depot. The proposed gaming site is located approximately 108 miles south of the Tribe's headquarters.
- The Tribe was restored to recognition by a court approved settlement with the United States in

Scotts Valley Band of Pomo v. U.S. in 1991. In 2008, the Office of the Solicitor issued a determination that the Tribe was a "restored tribe" for purposes of IGRA's "restored lands" exception. The Tribe submitted its initial fee-to-trust application for the Point Molate site in 2004.

Overview of Analysis – No Modern Connection

- The Department's Regulations allow a tribe to establish a "modern connection" through one of several ways: 1) the site is within a "reasonable commuting distance" from the tribe's reservation; 2) the site is within 25 miles of the Tribe's headquarters, which have existed for 2 years prior to the fee-to-trust application; and, 3) "other factors"
- The Tribe did not submit sufficient evidence that its site was within a reasonable commuting distance from its lands 108 miles away, in Ukiah.
- The Tribe's headquarters within 25 miles of the site were not in existence for two years prior to its fee-to-trust application.
- The Tribe did not sufficiently demonstrate that other factors put the local community on prior notice of its presence in the area.

Overview of Analysis – No Significant Historical Connection

- The Department's Regulations allow a tribe to establish a significant historical connection through two ways: 1) the site is within the Tribe's former reservation under a ratified or unratified treaty; or 2) the Tribe submits historical documentation that it engaged in subsistence use or occupancy in the vicinity of the Site.
- In this case, the proposed gaming site is not located within the Tribe's former reservation. The evidence in the Record also shows that the site is not even within the territory ceded in unratified treaties by the Tribe's ancestors.
- The Tribe's historical documentation falls far short of demonstrating continuous use and/or occupancy of lands in the vicinity of the proposed gaming site.
- The Tribe relies upon anecdotal evidence and presumptions relating to the larger Pomo cultural group, rather than historical evidence relating to its own predecessors, to support its claim of a "significant historical connection" to the site.

FACT SHEET: PUEBLO OF JEMEZ NEGATIVE FEE-TO-TRUST DECISION

Decision

- The Assistant Secretary – Indian Affairs has reviewed the Pueblo of Jemez's off-reservation fee-to-trust application under the Indian Reorganization Act, and the Department's fee-to-trust regulations, and determined that it will not acquire land in trust for the tribe for gaming purposes.

Background

- The Tribe is located in Sandoval County, New Mexico (northwest of Albuquerque), and has approximately 3,400 tribal members. The Tribe is one of 19 pueblos in the State of New Mexico and does not currently conduct any class III gaming.
- In 2004, the Tribe submitted an application to have approximately 70 acres of land in trust for

gaming purposes in Anthony New Mexico, which is in Dona Ana County – 293 miles from its existing reservation. The Tribe is seeking a positive Secretarial Determination under IGRA's "off-reservation" exception.
- The Tribe's application was originally disapproved on January 4, 2008. The Tribe subsequently amended its application to address issues raised in that decision, and resubmitted its application.
- The Tribe proposes to develop a 103,500 square-foot class III gaming facility that would employ approximately 950 people. The Tribe also plans to develop a hotel on an adjacent 31.855-acre parcel that will continue to be held in fee simple, and will consist of approximately 90,000 square feet.

Overview of Analysis

- The Department's fee-to-trust regulations, at 25 C.F.R. Part 151, require the Secretary to consider the purpose for which the newly-acquired trust lands would be used. The Tribe indicated that it would use these lands for class III gaming.
- IGRA requires a tribe to exercise "governmental power" over lands in order for them to be "Indian lands" eligible for gaming.
- The Tribe executed several intergovernmental agreements with local jurisdictions near Anthony, New Mexico, for the actual exercise of governmental power over the proposed trust lands.
- The Department's fee-to-trust regulations require the Secretary to apply greater scrutiny to the Tribe's justification of anticipated benefits from an acquisition as the distance between the tribe's reservation and the land to be acquired increases.
- In this case, the Department applied the heightened scrutiny to the Tribe's ability to actually control the exercise of governmental power over the proposed trust lands, and determined that the lands would not be subject to the Tribe's exercise of governmental power.
- The decision also notes that the Tribe is unlikely to demonstrate a significant historical connection to the Site, which, when coupled with the great distance between the site and the Tribe's reservation, would make it difficult to render a positive Secretarial Determination under our gaming regulations.
