

NOV 15 1993

Memorandum

To: Ada E. Deer
Assistant Secretary - Indian Affairs

From: Acting Deputy Commissioner of Indian Affairs /S/ James D. Cain, Jr.

Subject: Request by the Tunica-Biloxi Tribe of Louisiana for Trust Acquisition of 21.054 Acres in Avoyelles Parish, Louisiana

Introduction: The Eastern Area Director (Area Director) transmitted to Central Office, the request of the Tunica-Biloxi Tribe of Louisiana (Tribe) to acquire fee property in trust. The acquisition request and the supporting documentation were transmitted by the Area Director to the Central Office in accordance with the July 19, 1990, Secretarial directive which required that all requests to acquire land in trust for gaming purposes be approved or disapproved by Central Office. Since the acquisition is intended for a gaming facility, the acquisition documents were referred to the Office of Indian Gaming Management (OIGM) in December of 1992. The OIGM completed a review of the acquisition request and the supporting documentation. The documentation was insufficient to satisfy the consultation requirements of Section 20. Therefore, the documents were returned to the Area Director on December 23, 1992, with instructions to address certain issues during the consultation process and to provide certain information to ensure compliance with Section 20 of the Indian Gaming Regulatory Act (IGRA).

The land proposed for trust acquisition borders the southern edge of the Tribe's Village lands. Section 20 generally prohibits gaming on off-reservation lands acquired in trust after passage of the IGRA, with certain exceptions. One such exception permits gaming when the newly acquired lands are located within or contiguous to the boundaries of a tribe's reservation on the date the IGRA was passed. The key issues are whether the Village lands are "reservation" lands as defined by the IGRA and whether the proposed acquisition is within or contiguous to the Village lands.

Both these questions were addressed in a Field Solicitor opinion dated December 3, 1992, which found that the lands proposed for trust acquisition were contiguous to the Village lands of the Tribe. But the Village lands, which were conveyed in trust to the United States of America on August 11, 1989, and accepted in trust status on March 28, 1990, by the Bureau of Indian Affairs (BIA) were found not to be a reservation for

purposes of the IGRA on October 17, 1988. Therefore, the lands to be acquired were not contiguous to a reservation and the Tribe would need to obtain the concurrence of the Governor pursuant to Section 20 (b)(1)(A) of IGRA (25 U.S.C. §2719(b)(1)(A)) in order to conduct the gaming activity on the newly-acquired land in trust status.

Over the course of the next several months, the Area Director conducted the required consultation process with State and local officials including nearby tribal officials. The consultation process was designed to help the Eastern Area Office (EAO) develop factual findings and support for the two-part Secretarial determination required by Section 20.

On June 29, 1993, the Area Director submitted the factual documentation of the Section 20 consultation process to OIGM for review. Upon completion of staff review on July 9, 1993, the Area Director was notified that additional data was needed for completion of the Section 20 process. Although the EAO provided the additional documentation, the information was hand-carried to the OIGM without a transmittal memorandum to explain the data delivered to OIGM. Later, at a meeting held on September 14, 1993, with EAO staff, a copy of a transmittal memorandum dated July 26, 1993, was furnished to OIGM staff. At this time, the incoming documentation was returned to the EAO staff for further review and resubmission. It had been determined that the EAO submission had not been finalized to complete the Section 20 process. In addition, the documentation to satisfy the criteria of 25 CFR Part 151, Land Acquisitions, had not, at this time been submitted.

In the interim, pending the completion of the Section 20 review, the Tribe requested a meeting with the BIA to discuss the progress of the acquisition process. A meeting was scheduled on July 27, 1993, with Acting Deputy Commissioner, Woodrow Hopper, EAO staff, the Solicitor's Office and OIGM staff. At this meeting, the Tribe asked for reconsideration of the Regional Solicitor's December opinion. Both the Tribe and EAO provided supplemental information in support of the Tribe's contention that its land base, i.e. the Village lands, was a reservation and that the proposed acquisition was contiguous to the reservation. The additional documentation was submitted to the Office of the Solicitor with a request for reconsideration of the December 3, 1992, Regional Solicitor's opinion.

On October 5, 1993, the Southeast Regional Solicitor issued a revised opinion which withdrew the December opinion. The revised opinion was reviewed by the Central Office Solicitor's office and concurred in by the Associate Solicitor - Indian Affairs. The revised opinion found that the Village lands of the Tribe are a reservation for the purposes of Section 20 of the IGRA, negating the need to obtain the concurrence of the Governor in the Secretary's two-part determination. The only requirement left was 25 CFR Part 151. The Area Director transmitted the documentation for compliance with 25 CFR Part 151 on October 7, 1993. This memorandum describes the outcome of the staff's review of this documentation and includes findings, conclusions and recommendations relative to the decision to approve or disapprove the acquisition for trust status.

I. PROPERTY TO BE ACQUIRED

The property to be acquired consists of an irregular-shaped parcel of land situated within Section 66, Township 2 North, Range 4 East, Avoyelles Parish, Louisiana, consisting of 21.054 acres, described by metes and bounds as follows:

Commencing at the intersection of the East right-of-way of La. Hwy. No. 1 and the North right-of-way of Avoyelles Parish Road No. 199, thence North 15 degrees 16 minutes West, along the East right-of-way of La. Hwy. No. 1, a distance of 396.0 feet to the point of beginning (P.O.B. 2) of the land to be described; thence North 74 degrees 44 minutes East a distance of 523 feet, thence South 83 degrees 16 minutes East a distance of 437.0 feet; thence North 2 degrees 44 minutes East a distance of 1,072.0 feet; thence North 74 degrees 44 minutes East a distance of 514.0 feet; thence North 13 degrees 27 minutes East a distance of 60.1 feet; thence North 16 degrees 17 minutes East a distance of 367.4 feet; thence South 78 degrees 08 minutes West a distance of 731.4 feet; thence South 1 degree 44 minutes West a distance of 552.3 feet; thence South 52 degrees 44 minutes West a distance of 757.8 feet; thence South 74 degrees 44 minutes West a distance of 400.4 feet; thence south 15 degrees 16 minutes East, along the East right-of-way of La. Hwy. No. 1, a distance of 453.0 feet to the point of beginning (P.O.B. 2).

The property is currently occupied by a cattle auction barn surrounded by pasture land and the remnants of an old dairy farm operation. The remainder consists of wooded and pasture areas with two ponds. The Tribe's reservation borders the north end of the property. A parish asphalt roadway bordering the property on the south and Louisiana Highway No. 1 bordering the property on the West provide sufficient ingress and egress.

Originally, the property to be acquired in trust status for gaming purposes was the same 19.904 acre parcel described as "gaming lands" in the Tribal-State Compact governing Class III gaming. Later an additional 1.15 acre parcel was added to the 19.904 acre parcel resulting in a total of 21.054 acres that the Tribe has requested be taken into trust status. The additional acreage is necessary for proper utilities and storm drainage access related to the planned casino building. Because the additional 1.15 acre parcel is not covered by the Compact, no Class III gaming may take place on that parcel unless the Compact is amended. The Tribe has acknowledged this limitation on the use of the 1.15 acre addition in Tribal Council Resolution 22-93, dated November 9, 1993.

II. TITLE TO THE PROPERTY

The title insurance policy lists title in the name of Grand Casinos of Louisiana, Inc. - Tunica-Biloxi, a Minnesota corporation. An *Act of Donation* was completed on June 3, 1993, whereby the "Donor" is listed as Grand Casino of Louisiana, Inc. - Tunica-Biloxi

and the "Donee" is United States of America to hold in trust for the Tunica-Biloxi Indians of Louisiana. The title will not be officially in trust status until the Area Director approves the acquisition.

A preliminary title opinion for the 21.054 acres proposed for acquisition was issued by the Southeast Regional Office of the Solicitor on October 20, 1993, outlining the curative actions required before that office will approve title.

III. COMPLIANCE WITH LAND ACQUISITION REGULATIONS

The factors on which the request was evaluated are outlined in 25 CFR 151.10, land acquisitions, and discussed herein.

A. 25 CFR 151.10(a)-The existence of statutory authority for the acquisition and any limitations contained in such authority.

The statutory authority for the Tribe to acquire land in trust is the Indian Reorganization Act (IRA) of June 18, 1934 (40 Stat. 984). The Tribe is a federally recognized Indian tribe located in Avoyelles Parish in the central portion of Louisiana. The Tunica-Biloxi Tribe received Federal acknowledgment on July 23, 1981, 46 Fed. Reg. 38411 (1981). The Tribe is governed by Articles of Incorporation dated October 26, 1974.

On May 2, 1993, the Tribe enacted Resolution No. 10-93, to request that 21.054 acres be taken in trust status for the Tribe. The resolution also authorized the Chairman to take all necessary steps to expeditiously have the property received into trust by the United States of America. The resolution was adopted by a unanimous vote of all seven members of the Council.

The IRA authorizes the Secretary, in his discretion, to acquire interests in land for the purpose of providing land for Indians. Any land purchase made pursuant to the IRA is taken in trust in the name of the United States of America in trust for the Indian tribe for which the land is acquired. Such lands are exempt from State and local taxation.

As a matter of policy, the Secretary may acquire land in trust status for a tribe when the acquisition is found to be necessary to facilitate tribal self-determination, economic development or Indian housing (25 CFR 151.3 (a)(3)). The acquisition documents in this case clearly support a finding that the proposed acquisition is necessary to enable the Tribe to achieve self-determination and economic self-sufficiency through the gaming operation.

B. 25 CFR 151.10(b)-The need of the individual Indian or the tribe for additional land.

The Tribe has an existing land base of 132 acres held in trust status. Although the Tribe has actively pursued economic development projects as a means of developing revenues

for the Tribe, none of the ventures has been successful in achieving the Tribe's goal of economic sufficiency.

The Tribe, like many other Indian tribes, has determined that the economic potential of a gaming operation will provide the needed revenues to enable the Tribe to achieve its goals. The Tribe intends to use the additional land for the establishment of a gaming facility. The property is contiguous to the reservation, unobstructed in visibility. These characteristics are important factors which enhance the potential for success and make this site a choice location. The location of the gaming facility on this property also reserves the existing land base for housing needs and domestic development for the Tribe and its members.

The Tribe has sufficiently justified the need for additional land; the acquisition of this property in trust is needed to facilitate the development of the gaming facility as an economic development activity.

C. 25 CFR 151.10(c)-The purposes for which the land will be used.

The Tribe intends to use this land as the site on which the Tunica-Biloxi Casino, a tribal gaming facility will be built. The Tribe has contracted with Grand Casinos, Inc. for the development and management of the gaming facility. The *Amended and Restated Management and Construction Agreement* between the Tribe and the Grand Casinos of Louisiana, Inc. - Tunica-Biloxi was approved by the Area Director on February 27, 1992. The Tribe is authorized to engage in Class III gaming pursuant to a tribal-state compact executed between the Tribe and the State of Louisiana. The tribal-state compact was approved by the Assistant Secretary - Indian Affairs on November 10, 1992.

D. 25 CFR 151.10(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.

The impact on the parish resulting from removing the land from the tax roll is considered to be minimal primarily because the taxes are low and the land is in an undeveloped rural area. A letter from Mr. Lee Thevenot, Assessor, Avoyelles Parish indicates that the 1992 taxes for the property were \$1,291.90.

As a general matter, the BIA provides notice to state and local governments of any proposal to remove fee land from the tax rolls of the particular state or local government. Typically, this notice is provided by an area director and allows for a 30-day comment period. By letter dated January 29, 1993, the Area Director provided the 30-day notice. The letter was addressed to the Avoyelles Parish Assessor's Office and requested information on the annual amount of taxes assessed against the property, other assessments, services provided and zoning matters. The Assessor provided the information requested by the Area Director in two letters dated February 8, 1993, and March 16, 1993.

The consultation process conducted to determine the impact of the gaming establishment on the surrounding communities also resulted in a large volume of support letters indicating that no adverse impacts were expected by the casino. Many of the letters also gave assurances that issues of jurisdiction, law enforcement, zoning and other assessments would not be obstacles or problems.

It is fair to say that the letters received from political/governmental officials indicate overwhelming support and anticipation for the casino because of the benefits it is expected to bring to a highly impoverished area. The consequences of removing the land from the parish tax roll appears to be a minor consideration which is expected to be offset by the projected revenues and benefits expected from the casino.

E.e 25 CFR 151.10(f)-Jurisdictional problems and potential conflicts of land use which may arise.e

Any jurisdictional problems and related conflicts are expected to be addressed by the Tribe and the State pursuant to the Tribal-State Compact. The compact properly allocates criminal jurisdiction, as allowed by Section 11(d)(3)(C)(ii) of the IGRA, between the State and the Tribe. The State is authorized to exercise criminal jurisdiction over non-Indians in situations where jurisdiction is not exclusive to the Federal Government or the Tribe pursuant to 18 U.S.C. 1166. The Compact also provided that the State's law enforcement officers will be cross-deputized as tribal law enforcement officers.

There is no potential for other jurisdictional or land use conflicts arising from the acquisition and use of the land for gaming purposes.

F.e 25 CFR 151.10(g)-If the land to be acquired is in fee status, whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.e

It is the determination of the EAO that it is equipped to handle any additional responsibilities expected to result from the acquisition. Although the EAO staff expect that guidance and oversight regarding the administration of the property will be necessary, this effort is not expected to add appreciably to the workload of the EAO staff. The only responsibility expected is the normal accounting of trust property. The Tribe itself is expected to undertake the bulk of responsibility including overseeing activities related to the development of the property such as planning, traffic control, expansion of the facility, adherence to zoning and building codes.

II. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The requirements of the National Environmental Policy Act (NEPA), P.L. 91-130, 83 Stat. 852, January 1, 1970, have been satisfied. The documentation in support of the

acquisition includes a Finding of No Significant Impact (FONSI) signed by the Area Director on June 15, 1993. The FONSI was published in The Weekly News (a weekly publication in the City of Marksville, Louisiana) for a period of one day on June 24, 1993. The issuing of the FONSI was based on the results of an Environmental Assessment (EA) dated March 17, 1993, prepared by Willis Engineering, Inc., Civil and Environmental Consultants, Alexandria, Louisiana. The EA was reviewed by the Environmental Services Staff in the Division of Trust Responsibilities to determine whether NEPA requirements had been complied with. By memorandum dated July 19, 1993, the Environmental Services staff advised that the environmental documents adequately satisfied the requirements of the NEPA.

III. HAZARDOUS SUBSTANCES DETERMINATION

The hazardous survey form entitled the, *Level I Survey: Contaminant Survey Checklist of Proposed Real Estate Acquisitions*, was completed on February 16, 1993, by the Area Environmental Coordinator and approved by the Area Director on June 4, 1993. The required survey is designed to determine whether hazardous substances are located on property to be acquired in trust. The completion of the survey in this case indicates that there are no contaminants present on the property.

IV. OTHER CONSULTATION/REQUIREMENTS

In addition to compliance with NEPA, the documentation supports a finding of compliance with other related requirements. Compliance with such requirements has been determined by the conclusions and or clearances provided by key or responsible governmental agencies.

historical preservation and archeological sites: The State of Louisiana, Department of Culture, Recreation and Tourism, Office of Culture Development, concluded in a response dated April 23, 1993, that present archaeological findings did not warrant additional investigations and had no objections to the proposed project proceeding to development.

endangered species or wetlands: The Endangered Species Coordinator, U.S. Fish and Wildlife Services, Lafayette, Louisiana provided a signatory clearance dated April 2, 1993, indicating that the proposed activity would not significantly affect listed or proposed threatened or endangered species.

The Tribe has complied with applicable Federal laws relating to archeological sites, endangered species and historic preservation.

V. AREA DIRECTOR RECOMMENDATION

The Area Director recommends that the land be taken in trust by the United States of America for the benefit of the Tribe. The recommendation is based on his opinion that the requirements of 25 CFR Part 151 have been met. We concur with this opinion.

VI. INDIAN GAMING REGULATORY ACT (IGRA)

The proposed acquisition will be used for the location of a gaming facility. The Tribe intends to conduct Class II and Class III gaming activities at the facility, subject to the terms of the tribal-state compact and the management contract and pursuant to the regulations of the National Indian Gaming Commission.

As a general rule, gaming is prohibited on lands acquired in trust status after October 17, 1988, the date the IGRA was enacted, 25 U.S.C. § 2719, unless one of several exceptions applies to the land. One exception permits gaming on lands acquired in trust after October 17, 1988, if the lands are within or contiguous to the tribe's reservation as it existed on that date.

In an opinion dated October 5, 1993, the Regional Solicitor for the Southeast Region concluded that the land proposed for trust conveyance was contiguous to tribal village lands of the Tunica-Biloxi. This opinion also concluded that the village lands of the Tribe should be treated as a reservation for purposes of Section 20 of the IGRA.

Accordingly, this property may be conveyed to trust status as it is contiguous to the Tribe's reservation and falls within the exception of 25 U.S.C. 2719(a)(1).

VII. RECOMMENDATION

It is the recommendation of this office that the property be taken in trust for the benefit of the Tribe. The documents provided by the Tribe and EAO staff support this recommendation. We recommend that the Area Director be authorized to approve the conveyance document accepting the property in trust for the Tribe subject to all title requirements having been satisfactorily approved by the Office of the Solicitor, Regional Office, Southeast Region.

If you concur with our recommendation to approve the trust acquisition, we have attached for your signature a memorandum to the Area Director authorizing him to proceed with the conveyance to *The United States of America in Trust for the Tunica-Biloxi Tribe of Louisiana*, subject to satisfaction of all title requirements pursuant to 25 CFR 151.12.