



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240



IN REPLY REFER TO:

Indian Gaming Management
MS 2070-MIB

APR 16 1997

Memorandum

To: Ada E. Deer
Assistant Secretary - Indian Affairs

Through: Deputy Commissioner of Indian Affairs *Hilda A. Manuel*

From: George Skibine
Director, Indian Gaming Management Staff

Subject: Request of the Saginaw Chippewa Indian Tribe of Michigan for Trust
Acquisition of 480.32 Acres for Gaming

I. INTRODUCTION

By memorandum dated February 8, 1996, the Minneapolis Area Office (MAO) transmitted to the Assistant Secretary - Indian Affairs (AS-IA), the request and application of the Saginaw Chippewa Indian Tribe of Michigan (Tribe) to transfer 480.32 acres of fee land, known as the Ervin property in trust (Vol I). A portion of the parcel, 444.85 acres are located within the exterior boundaries of the Tribe's reservation (Isabella Reservation) and the remaining 35.47 acres are located outside but contiguous to the reservation. The Tribe plans to construct a Class III gaming facility on a portion of the property which will be owned and operated exclusively by the Tribe.

The Tribe's request, the MAO's recommendation and supporting documentation were submitted in accordance with a July 19, 1990 Secretarial Directive, which requires that all acquisitions for gaming be approved or disapproved by the AS-IA. The documents were referred to the Indian Gaming Management Staff (IGMS). The IGMS has completed its review of the request and the supporting documentation. The findings, analysis, and recommendations of the IGMS are set forth in this memorandum for your review and final consideration.

This memorandum documents the findings of the transaction's compliance with the requirements of Section 20 of the Indian Gaming Regulatory Act (IGRA), and the land acquisition regulations in 25 CFR 151.

II. AUTHORITY

The Tribe is a federally recognized tribe organized under the Indian Reorganization Act (IRA) of June 18, 1934, (48 Stat. 884; 25 U.S.C. § 465). The Tribe's original Constitution was approved on May 6, 1937 by the Acting Secretary of the Interior. On November 4, 1986, the Tribe adopted the Amended Constitution and By-laws of the Saginaw Chippewa Indian Tribe of Michigan (Vol. I, Ex. 10B). The Tribe's headquarters are located in central Michigan at Mt. Pleasant, Michigan. The Tribe has an existing land base of 914.98 acres of trust land. Individual tribal membership trust holdings total 762.73 acres.

In accordance with the amended Constitution and By-laws of the Tribe, Article VI - Powers of the Tribal Council, Section 2, the Tribe is authorized to transfer fee land into trust status. On November 20, 1995, the Tribe enacted Resolution No. 96-012 (Vol. I, Ex. 9) to clarify the description of the land and to request that the United States accept conveyance by the Tribe of a 480.32 acre parcel comprising the Ervin land in trust for the Tribe, and that a 35.47 acre portion of the Ervin land which lies adjacent to the exterior boundary of the Tribe's reservation be added and declared to be part of the Isabella Reservation. The resolution passed by a vote of six "yes" and "zero" against or abstaining. The property will be used for gaming and other purposes.

III. PROPERTY TO BE ACQUIRED

The property is described by a metes and bounds description (Vol. I, Ex. 9). The property described in the Tribe's resolution comprises 544.74 acres, more or less, and is known as the Ervin property. The Area Director by Memorandum dated April 5, 1996, provided a copy of the Tribe's letter and Resolution (No. 96-045 dated April 1, 1996) revising its application to exclude a 64.42 acres tract located in Union Township (Vol. V, Ex. 4 and 5). Presently, the Tribe is only requesting trust status for 480.32 acres. The land to be acquired in trust is located in Sections 17, 18 and 19, Township 14 North, Range 3 West, Chippewa Township, Isabella County, Michigan. According to the Area Director's Memorandum dated February 8, 1996, 444.85 acres are located within the exterior boundaries of the Tribe's reservation (Isabella County) and 35.47 acres are outside the reservation boundary but adjacent to its southern exterior boundary. The Area's determination that the land is located on and contiguous to the reservation is confirmed by Solicitor Opinions dated January 30, 1996, and April 1, 1993 (Vol. III, Ex. 7 and 8). The property is located approximately three miles east of the City of Mt. Pleasant, Isabella County, Michigan (Vol. III, Ex. 10). According to the Area Director, Isabella County has a population of 54,624, and the City of Mt. Pleasant, a population of 23,600. The property is located near two major thoroughfares. U.S. Highway No. 27 which runs north and south is located approximately one and one-half mile west, and Michigan Highway No. 20 which runs east and west is located immediately north of the property to be acquired. Central Michigan University is located in Mt. Pleasant. Additionally, the Tribe's Soaring Eagle Casino is located on trust land which adjoins the property to be acquired.

The area is primarily agricultural. The acquired property consists of open, active agricultural fields and small wooded areas. The property is relatively flat and gently slopes to the northeast and southeast with drainage leading to the Chippewa River and Onion Creek.

There is no appraisal or opinion of value contained in the transaction documents which establishes the value of the property. Despite the use of title policy insurance, an appraisal or opinion of value is usually obtained and included as an exhibit in all acquisition applications. The Area Director, by memorandum dated December 20, 1996, (**IGMS Vol., Ex. 8, No. 7**) states that the Tribe objects to expending funds necessary to obtain an appraisal since no justification was provided for its completion and questions its necessity since similar applications have been apparently approved without requiring such an appraisal.

IV. TITLE TO THE PROPERTY

According to the Area Director, the Tribe acquired title to the Ervin property on November 11, 1993. The Area Director by memorandum dated December 20, 1996, (**IGMS Vol., Ex. 8, No. 1**) has submitted copies of three Commitments for Title Insurance issued by the Fidelity National Title Insurance Company of New York, effective July 10, 1996, and Amended Description riders to the Commitment for Title Insurance TI19077B and Commitment for Title Insurance TI19077C have been issued (**Vol. V, Ex. 8**). These three title insurance commitments replace the commitments issued by First American Title Insurance Company effective May 8, 1995. The current commitments show title to the Ervin land to be vested in the name of the Tribe. The Union Township property is excluded from the descriptions in the commitments and draft warranty deed.

The Area Director, by memorandum dated December 20, 1996, (**IGMS Vol., Ex. 8, No. 2**) has submitted a copy of a Preliminary Title Opinion dated September 13, 1996, by the Field Solicitor, Twin Cities (**Vol. V, Ex. 2**) replacing the three Preliminary Title Opinions dated January 30, 1996, and excluding the Union Township acreage.

The Area Director states in the last sentence of the second paragraph on page 2 of the April 5, 1996, memorandum (**IGMS Vol., Ex. 4**) that formal acceptance of the property in trust will not be completed until a Final Title Opinion has been issued. The final title opinion cannot be issued until the Deed is approved, filed of record and the title policy updated to reflect the current ownership (USA in trust for Tribe). Therefore, the Area should be advised that upon satisfactory completion of the title requirements as specified by the Field Solicitor's Office, the Area Director should approve and record the Deed, update the title to include the approved Deed, and then submit the title policy to the Field Solicitor for issuance of the final title opinion. In the second to the last sentence on page 1 of the Area Director's Memorandum dated April 5, 1996, the statement is made again that the land will not be accepted into trust until a final title opinion has been issued. The final title opinion cannot be issued until the Deed is approved, filed of record and the title policy updated to reflect the current ownership (USA in trust for the Tribe).

V. COMPLIANCE WITH INDIAN GAMING REGULATORY ACT

By memorandum dated January 30, 1996, (Vol. III, Ex. 7) the Field Solicitor, Twin Cities, has concluded that all but 35.47 acres of the property proposed to be acquired in trust is within the boundaries of the reservation as it existed on October 17, 1988. A small segment of the property, the 35.47 acres, is outside the boundaries but is contiguous to the reservation. This is based upon the boundaries of the reservation as recognized by the BIA. Therefore, gaming on the proposed land to be acquired in trust is authorized pursuant to the exception (to the prohibition on gaming on land acquired after October 17, 1988) contained in 25 U.S.C. § 2719(a)(1) of the IGRA.

The State of Michigan and the Saginaw Chippewa Indian Tribe of Michigan have entered into a compact governing Class III gaming by the Tribe (Vol. IV, Tab 4). Section 2 of the compact defines "Indian Lands" as:

- (1) all lands currently within the limits of the Tribe's Reservation;
- (2) any lands contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; and
- (3) any lands title to which is either held in trust by the United States for the benefit of the Tribe or individual or held by the Tribe or individual subject to restriction by the United States against alienation and over which the Tribe exercises governmental power.

Therefore, provisions of the Tribe's compact will be applicable to a gaming establishment located on the 480.32 acres proposed to be acquired in trust.

VI. COMPLIANCE WITH 25 CFR PART 151

The factors on which this request were evaluated are outlined in 25 CFR 151.10, Land Acquisitions, and discussed herein.

As a matter of statute and regulation, the Secretary may acquire land in trust for a tribe under 25 CFR 151.3(a)(3) when the acquisition is found to be necessary to facilitate tribal self-determination, economic development and Indian housing. Further, it provides the Secretary under 151.3(a)(1) and (2) with the ability to take land into trust when the land is located within the exterior boundaries of a tribe's reservation or adjacent thereto or if the tribe already owns an interest in the property.

The Area Director has determined that the acquisition of the 444.85 acres satisfies 25 CFR 151.3(a)(1) and (2) and that the 35.47 satisfies 151.3(a)(2) and that the land is needed by the Tribe to facilitate tribal self-determination and economic development.

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

The statutory authority to be used by the Tribe to acquire the land in trust is the IRA of June 18, 1934 (48 Stat. 884; 25 U.S.C. § 465). Specifically, Section 5 authorizes the Secretary, in his/her discretion, to acquire any interest in land for the purpose of providing land for Indians (IGMS Vol., Ex. 2 and 3).

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

According to the Area Director, the Tribe has an existing tribal trust land base of 914.98 acres. Because the Tribe has a small land base, the Tribe indicates that it needs the land to "alleviate several critical land-shortage problems facing the Tribe and to achieve certain broad objectives of the Tribe" (Vol. I, Ex. 2). The Tribe indicates that the land it currently owns is not suitable or sufficient in size to satisfy its basic financial and program needs.

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

Although the Tribe has not completed development of a comprehensive land use plan, the Tribe states it intends to use the land for expansion of its gaming enterprise as well as non-gaming economic development purposes (retail strip mall, gas station/convenience store), tribal housing, tribal administrative offices and associated governmental offices, i.e. tribal police, court and fire, training facilities space, and recreational facilities. Some of these facilities have been completed, others are under construction or planning stage. Development of these facilities should entice tribal members to relocate in the area because of the employment opportunities made available by the Tribe's development of the acquired property. In addition to enhancing the Tribe's ability to assure its continued efforts to achieve economic stability and growth, the acquisition will assist in preservation of its cultural heritage (Vol. I, Ex. 2).

According to the Area Director, the Tribe intends to locate its gaming facility in the NE/4 of Section 18, Township 14 North, Range 3 West, Chippewa Township. The facility will encompass approximately 307,000 square feet of gaming space to accommodate 3500 slot machines. Other gaming to be offered include blackjack, poker, roulette, craps and a 3000 seat bingo hall (Vol. IV, Ex. 3). According to the Environmental Assessment, the gaming facility is intended to serve as the focal point in the Tribe's development of a destination entertainment complex. Included in the complex will be a 500 room hotel, convention center and parking area.

- 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.**

By letter dated April 20, 1994, the Michigan Agency notified the local governmental entities of the Tribe's request to the Secretary to acquire, in trust, land located in Chippewa Township (**Vol. II, Ex. 1**). The letters sought input from the governmental entities on property taxes; governmental services; impact on the removal of the land from the tax rolls; assessments and zoning and jurisdictional issues.

Chippewa Township responded by letter dated May 17, 1995, to Michigan Agency (**Vol. II, Ex. 2**). The Township advised (1) the annual amount of property taxes currently levied is \$5,529.46 based on an SEV of \$113,100; (2) removal of the property from the tax rolls would result in a loss of \$113.00 in current tax revenue, and if the property were fully developed into residential housing the impact on the tax revenue would be greater; (3) there are no sewer or water special assessments against the property; (4) the Township pays a drains assessment of \$40,000.00 which serves the property to be acquired and if the land is placed in trust the Township will continue to pay but will not benefit from the development; and (5) the property is zoned for single family residential. The primary areas of concern for the Township are the potential loss of tax revenues and development of the land for other than residential use. Other than providing information on the potential impact of the acquisition, the Township does not object to the proposed acquisition. The last paragraph of Township's letter states that it has a long working relationship with the Saginaw Chippewa and wish them the best of luck in their expansion. The Township states that it would like to obtain utility rights of way across the properties in order to avoid circling the property with utility lines. The Area Director states in his December 20, 1996 memorandum that should the Chippewa Township request to acquire any rights of way the Tribe is amenable to considering such a request (**IGMS Vol., Ex. 8, No. 4**) (**Vol. 5, Ex. 1**).

By letters dated November 22, 1995, the Area Director notified the Governor, State of Michigan, and the Michigan Tax Commission of the Tribe's request for the Secretary to acquire, in trust, land located in Chippewa Township (**Vol. II, Ex. 10 and 11**). Although not explained in the Area Director's Memorandum, it is presumed the Area Director notified the State because the acquisition regulation was amended to include notification to the State. The regulation became final on July 24, 1995. The Minneapolis Area Director telefaxed on March 11, 1996, comments dated March 5, 1996, of the State of Michigan, Department of Treasury (**IGMS Vol., Ex. 1**). These comments indicate that the Michigan Treasury Department believes that the removal of the proposed land from tax rolls will impact the Townships of Union and Chippewa, the schools, and County of Isabella by 1) reducing cash flow and taxable base, jeopardize financial status of these units if they cannot meet their financial obligations because of reduction in the tax base, and the townships, schools, and county

will also lose out in any future increase in Taxable Value because of inflationary increase or improvement of the parcels. The Area Director, in his December 20, 1996, memorandum, states that the March 5, 1996, comments from the Michigan Department of Treasury should not be considered because they were not timely received within 30 days of notification, as required by 25 CFR 151.10. However, the Area Director does concur with the Tribe's position that the State and all of its political subdivisions lack authority to impose and collect ad valorem real property taxes on fee lands owned by the Tribe within the exterior boundaries of the Tribe's Reservation (Vol. V, Ex. 1). That position was also the position of the United States in U.S. et al. v. Michigan, et al. On January 22, 1997, the Sixth Circuit ruled that absent cession of jurisdiction or other permissive federal statute, the State of Michigan is without power to tax reservation lands and reservation Indians, and that there is no clear congressional intent to authorize state taxation of Indian real property within the boundaries of the Saginaw Chippewa Indian Reservation (IGMS Vol., Ex. 11). The Tribe has been paying ad valorem real property taxes to the local units of government on the Ervin land under protest, pending final disposition of the litigation. The Tribe is also aware that all objections listed in the Preliminary Title Opinion must be satisfied before that land will be accepted into trust. This includes the payment of any delinquent and current property taxes.

The Tribe states in its application (Vol. I, Ex. 2) that there will be no adverse impact on the state or its political subdivisions because of the removal of the land from the tax rolls. The Tribe and Area Director state that any loss in property tax revenue from the acquired property will more than be compensated due to the increase in other tax revenues from increased tourism, business activity and creation of jobs due to the Tribe's economic development activities. The Area Director and Tribe reference the case of Sault Ste. Marie Tribe of Chippewa Indians, et. al. v. John M. Engler, No. 1:90 CV 611 (W.D. Mich. 1993). The Area Director and Tribe state that the Consent Judgment in this case requires the Tribe to pay the State and local governments a fixed percentage of specified net gaming revenues, with a required minimum paid to the local government in the immediate vicinity of the Tribe's class III facility. The Consent Judgment does bind the Tribe as a party to the terms of the Stipulation and Consent Judgment (IGMS Vol., Ex. 9). In a letter dated January 23, 1997, the tribal attorney states that although the Tribe's obligation under the consent decree to make payments to the State recently expired due to the passage of a state referendum that permits non-Indian casinos in the City of Detroit, the Tribe's obligation to make payments to local governments (2% of net win under the consent judgment), including Chippewa Township, remains unaffected by the new state law. In this letter, the tribal attorney also supplies tax information supplied by Chippewa Township that indicates that total taxes for the Ervin land are approximately between \$4,300 and \$6,000 on a yearly basis (IGMS Vol., Ex. 10).

We agree with the Area Director's opinion that the information supplied by the Michigan Department of Taxation was not timely submitted, but conclude that, even if taken into consideration, this information would not affect our determination that there is minimal impact on the state and its political subdivisions from taking the land into trust because tribal fee lands within the Tribe's reservation are not subject to state property taxes, and the financial contribution to local jurisdictions under the Consent Judgment in the Sault Ste. Marie v. Engler litigation outweighs any adverse impact.

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

The Tribe states in its application (Vol. I, Ex. 2) that it has a cooperative working relationship with the Chippewa Township and that no jurisdictional problems or conflicts are foreseen.

The Area Director states that the State of Michigan is not a mandatory Public Law 280 State and has not assumed jurisdiction under the law. Therefore, the Tribe exercises civil and criminal jurisdiction within the boundaries of the reservation. Further, the Area Director and Tribe state the Isabella County Sheriff deputized several tribal officers but the Tribe has not deputized any of the County deputies as tribal officers. The Tribe advises there is no agreement between the County and Tribe for cross deputization; however, if one is developed it would be provided to the Area Office (Vol. III, Ex. 2). The class III gaming compact between the Tribe and the State of Michigan does not give any jurisdiction to the State.

F. 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.

Despite the Tribe's determination, the Area Director has reservations about the ability of the BIA to administer the land due to the size of the parcel but concurs with the Michigan Agency in its determination that it has the ability to administer the land and, therefore recommends approval. The Area Director has determined that the revenues derived from the Tribe's gaming enterprise will enable it to effectively administer all governmental services. The Area Director states that the 14 percent allocated by the Tribe for governmental purposes from its gaming revenues is significant and will greatly assist in strengthening tribal government. The Area Director states that the Tribe's funding allocation will greatly enable the Tribe to provide the majority of site services and, thereby, reduce the responsibility of the BIA in the administration of the land. Further, the Tribe's action will be the primary force in the Tribe's efforts to achieve its self-determination goals.

G. 25 CFR 151.10(h) - The extent of information to allow 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.

A Level I Contaminant Survey for the Ervin property was prepared by the Realty Specialist for the BIA Michigan Agency on December 3, 1996, approved by the Agency Superintendent on that date, and received concurrence by the Environmental Specialist for the MAO on December 5, 1996. No evidence of contaminants or other environmental conditions were found on the Ervin property. The Environmental Specialist who performed the contaminant survey, Sally McArthur, appears to be qualified to perform that function (Vol. V, Ex. 6).

An environmental assessment (EA) was prepared in November 1995, by Michael Phelan, Reservation Attorney, and Resources Management Group Inc., regarding the trust acquisition of the Ervin property for the development of the Soaring Eagle Resort on the Isabella Reservation in Isabella County, Michigan. A Finding of No Significant Impact (FONSI) was signed by the MAO Director on November 22, 1995, and a Notice of Availability was published on November 27, 1995. The record indicates that no comments from the public were received during the comment period. We have examined the EA and the FONSI, and have determined that they comply with the requirements of NEPA.

The impacts, as described in the EA, of the proposed action would be: the development (and implied withdrawal from other uses) of approximately 115 acres of land; site grading to insure positive drainage; limited temporary disruption, due to construction activities, of access and uses of some tribal lands which are adjacent to the land which has been proposed for trust acquisition; drawdown of the aquifer, and consequently the water level, in residential wells which are near the site proposed for acquisition; increased waste-water flows; increased automobile emissions resulting in a reduction in the quality of the air; temporary impacts to the quality of the air during the construction of the casino; loss of wildlife habitat; increased disturbance of the remaining nearby wildlife habitat due to human activities; decreased use of fertilizers and pesticides; positive changes in aesthetics; changes in the diversity of vegetation due to landscaping; significant socio-economic benefits to the tribe and to the surrounding community; the creation of 1,500 new jobs; and an expansion of the tribal police force and the gaming security force. Also mentioned are burdens on the sewage, drainage and water supply systems; a potential increase in crime; a need for better fire protection; noise generated by increase traffic; off-site impacts from increases in lighting; and negative impacts on aesthetic values.

Mitigating measures are described in the EA in varying degrees of detail in the case of some of the impacts listed above.

~~not applicable~~ to this application, as stated in the Twin Cities Field Solicitor's letter of January 30, 1996, to the Acting Area Director, MAO (Vol. III, Ex. 7).

VIII. OTHER REQUIREMENTS

There are no other requirements or issues to be discussed with respect to this application.

IX. AREA DIRECTOR RECOMMENDATIONS

By memorandum dated February 8, 1996, the Area Director has recommended that the property be taken into trust for the benefit of the Tribe. In his memorandum dated December 20, 1996, the Area Director addresses all concerns raised by IGMS in its July 19, 1996, memorandum, and restated his recommendation that the land be taken into trust (IGMS Vol., Ex. 8).

X. IGMS RECOMMENDATIONS

Our review indicates that the federal requirements for acquiring land in trust for gaming purposes have been satisfied. It is the recommendation of this office that the Ervin property be taken into trust for the benefit of the Tribe. We recommend that the MAO be authorized to approve the conveyance document accepting the property in trust for the Tribe subject to any conditions set forth herein, including approval of all title requirements by the Twin Cities Field Solicitor, and expiration of the thirty-day period following the publication in the FEDERAL REGISTER of the notice required in 25 CFR § 151.12.

If you concur with our recommendation to approve the trust acquisition of the Ervin property, we have attached for your signature a proposed notice for publication in the FEDERAL REGISTER proposing to take the Ervin property in trust for the Tribe following expiration of the thirty-day waiting period as required pursuant to 25 CFR § 151.12, and a memorandum to the MAO Director authorizing him to proceed with the conveyance to the United States in trust for the Tribe, subject to satisfaction of all title requirements pursuant to 25 CFR § 151.13.

Attachments

bcc: Surname, 101-A, Bureau RF, 100, Chron, Hold