



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

Indian Gaming Management
MS2070-MIB

AUG 27 1999

Memorandum

To: Assistant Secretary - Indian Affairs *Kevin Gove*
Through: Deputy Commissioner of Indian Affairs *Lois G. M...*
From: *ATM* Director, Indian Gaming Management Staff *David J. ...*
Subject: Request of the Little Traverse Bay Bands of Odawa Indians for Trust
Acquisition of 5± Acres of Land for Gaming

I. INTRODUCTION

By memorandum dated August 11, 1999, (*IGMS Exhibit A*), the Minneapolis Area Office transmitted to the Assistant Secretary - Indian Affairs (AS-IA), an application to acquire 5 ± acres of land in trust for the Little Traverse Bay Bands of Odawa Indians of Michigan (also called the Little Traverse Bay Bands or Tribe). The application was received in the Indian Gaming Management Staff (IGMS) Office on August 12, 1999. The land is known as the Victories Tract. If acquired in trust, the Tribe will use the land for class II and class III gaming.

The Tribe's request and supporting documentation dated December 14, 1998, were submitted in accordance with the July 19, 1990, Secretarial Directive which requires all land trust acquisitions for gaming be approved or disapproved by the AS-IA. The documents were referred to 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 Part 151.

II. AUTHORITY

The Little Traverse Bay Bands of Odawa Indians is a federally recognized Indian tribe and was organized, reaffirmed and restored by Congress pursuant to the Little Traverse Bay Bands of Odawa Indians; Little River Band of Ottawa Indians Act (LTBB Act), Public Law 103-324, 25 U.S.C. §§ 1300k - 1300k-7 (1994) (*IGMS Exhibit B*). As confirmed by the LTBB Act, the Little River Band and the Little Traverse Bay Bands are the political successors to signatory bands to the 1836 Treaty of Washington and the 1855 Treaty of Detroit. The Little Traverse Bay Bands

have continued to maintain a strong political and social presence in their ancestral homeland in Emmet County, Michigan and more specifically, the locations near the city of Petoskey, Michigan. On September 21, 1994, Congress reaffirmed the federal recognition of the Little Traverse Bay Bands and their members.

The interim Constitution and Bylaws of the Tribe was adopted on March 11, 1989, and remains in effect until a new constitution is ratified in an election to be conducted by the Secretary of the Interior in accordance with Section 8 of the LTBB Act and Section 16 of the Indian Reorganization Act (*LTBB Exhibit Victories, Tab 7*).

On August 4, 1996, the Tribe adopted a Land Base Restoration Plan, (*IGMS Exhibit C*) which addresses the development of short-term and long range land restoration priorities. Acquisition of the Victories Tract is consistent with this plan of restoration.

The Tribal Council of the Little Traverse Bay Bands enacted Resolution No. 10119802 (*LTBB Exhibit Victories Tab 6*) on October 11, 1998, authorizing the acquisition of the Victories Tract in trust. It requests the United States, through the Secretary of the Interior, to take 5 ± acres of land in trust on behalf of the Little Traverse Bay Bands of Odawa Indians in Michigan. The Tribe proposes to utilize the property for class II and class III gaming. The March 11, 1989 Constitution and Bylaws of the Little Traverse Bay Bands authorizes the Tribal Council to act in this manner.

III. PROPERTY TO BE ACQUIRED

The Victories Tract consists of approximately 5 acres of land that was developed as a bowling alley, located about two miles from the downtown area of the City of Petoskey, Emmet County, Michigan. The parcel is easily accessible from U.S. Highway 31. The parcel is more particularly described as follows:

commencing at the South 1/4 corner of Section 7, Township 34 North, Range 5 West; thence North 01°02'30" East 133.03 feet to a T-iron stake which is the Point of Beginning; thence West 425.07 feet to a T-iron stake; thence North 05°08'30" East 120.16 feet to a T-iron stake; thence North 03°06'30" East 408.43 feet to a T-iron stake; thence South 89°54'30" East 401.67 feet to a T-iron stake; thence South 01°02'30" West 526.91 feet to the Point of Beginning; being a part of the Southeast 1/4 of the Southwest 1/4 of said Section 7 in the Township of Bear Creek, Emmet County, Michigan.

IV. TITLE TO THE PROPERTY

On May 14, 1999, the Tribe entered into a land contract with AMI Land Company, and on June 30, 1999, a warranty deed was executed between AMI Land Company and the Tribe subject to three mortgages (*MAO Exhibit II*). As a result, the Little Traverse Bay Bands now hold title to the Victories Tract property in fee.

The Interim Title Opinion, August 6, 1999, lists eleven objections which the Minneapolis Area Office and the Tribe must satisfy before title may be accepted by the United States in trust for the Little Traverse Bay Bands. These objections will all be satisfied before the property is transferred into trust status.

V. COMPLIANCE WITH THE INDIAN GAMING REGULATORY ACT

In a memorandum dated August 5, 1999, the Associate Solicitor, Division of Indian Affairs, concluded that the prohibition on gaming on after-acquired trust lands contained in Section 20 of IGRA, 25 U.S.C. § 2719, does not apply in this case because the Little Traverse Bay Bands is a restored tribe within the meaning of 25 U.S.C. § 2719(b)(1)(B)(iii) and the Victories Tract property qualifies as "restored" land for purposes of 25 U.S.C. § 2719(b)(1)(B)(iii) because it is located within one of the two counties (Emmet and Charlevoix) where the LTBB Act mandates that the Secretary acquire land for the Little Traverse Bay Bands (*IGMS Exhibit D*).

The Department published a notice of effect of the Tribal-State compact for the Little Traverse Bay Bands and the State of Michigan on February 18, 1999. The compact defines Indian lands as "trust and reservation lands acquired under 25 U.S.C. § 1300k-4(a) within Emmet or Charlevoix Counties, Michigan." The Victories Tract falls within Emmet County.

A class II and class III gaming ordinance also is required before gaming may legally occur on the property. The Tribe says that these documents are pending review and approval by the National Indian Gaming Commission (NIGC).

VI. COMPLIANCE WITH 25 CFR PART 151

The authority, procedures and policies governing the Secretary's acquisition of trust land for Indian tribes and individual Indians are set forth in 25 CFR Part 151. The Associate Solicitor's November 12, 1997 memorandum (*IGMS Exhibit E*) concludes that the proposed trust acquisition of the Macinaw City tracts in Emmet County are exempt from the provisions of 25 CFR § 151.3 because under the explicit terms of the LTBB Act the Secretary is required to acquire any real property located in Emmet County in trust for the benefit of the Little Traverse Bay Band, if conveyed or otherwise transferred to him, "if at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages or taxes owed." 25 U.S.C. § 1300k-4(b). That legal conclusion applies as well to the Victories Tract, which also is in Emmet County. The explicit mandatory language of the LTBB Act supersedes the provisional language of Section 151.3.

Additionally, the Associate Solicitor concluded that the proposed acquisition is also exempt from the provisions of 25 CFR § 151.10 because, by its own terms, the requirements therein do not apply to the Victories Tract property since the "acquisition is mandated by legislation."

VII. REVIEW OF ENVIRONMENTAL DOCUMENTATION

A. National Environmental Policy Act of 1969 (NEPA):

Although NEPA compliance is generally required on trust acquisitions under the provisions of 25 CFR § 151.10, the terms of NEPA itself and the CEQ regulations, the Associate Solicitor's November 12, 1997 memorandum concludes that NEPA compliance is not necessary in this instance since the acquisition of property for the Little Traverse Bay Bands is explicitly mandated by Congress under the LTBB Act. In *Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians v. Portland Area Director*, the Interior Board of Indian Appeals found that the BIA was not required to comply with NEPA prior to taking land into trust pursuant to the Coquille Tribe's restoration act because the acquisition was mandated by Congress and the action of the BIA Area Director, in taking the land into trust, was ministerial in nature. The Coquille Act contains

language similar to that found in the LTBB Act. Thus, NEPA compliance is not necessary for the acquisition of the Victories Tract.

Nevertheless, in January, 1999, the BIA conducted a Phase I Environmental Site Assessment of the Victories Tract. The Assessment did not identify any potential environmental hazards on or nearby the Victories parcel.

B. Hazardous Substance Determination (25 CFR § 151.10(h)):

The acquisition of the Victories Tract property can occur only if there are no adverse legal claims existing on the property, including potential environmental claims. As a result, the BIA must comply with the requirements of 602 DM 2, Land Acquisitions: Hazardous Substance Determinations, to determine whether any such potential environmental claims may exist.

To satisfy this requirement, the Planning Department of the Little Traverse Bay Bands of Odawa Indians completed a Phase I Environmental Assessment for the Victories Tract property (*MAO Exhibit VJ*). The purpose of the environmental site assessment was to determine and document the environmental conditions on the property by systematically reviewing whether the property may be affected by hazardous materials. The Assessment says, "the site appears to present no immediate hazards and represents minimal environmental risk."

The Minneapolis Area Office states that its Environmental Scientist concurs with the Phase I ESA and has determined that no further environmental activities are warranted for the subject property. Therefore, there appear to be no adverse legal claims related to any environmental contamination possibilities on the Victories Tract property.

VIII. TWO PART DETERMINATION UNDER SECTION 20 OF IGRA

The two part determination pursuant to Section 20 of IGRA (25 U.S.C. § 2719(b)(1)(A)) is not applicable. *See* discussion under Section V, *supra*.

IX. OTHER REQUIREMENTS

The Little Traverse Bay Bands has entered into various agreements with NORAM VII, Inc. and have submitted them for review and approval by the NIGC, as required under IGRA. The NIGC has not yet approved the agreements.

X. AREA DIRECTOR'S RECOMMENDATION

By a memorandum dated August 11, 1999, (/GMS *Exhibit A*) the Area Director, Minneapolis Area Office, recommends that the Victories Tract be accepted in trust for the benefit of the Little Traverse Bay Bands of Odawa Indians.

XI. IGMS RECOMMENDATION

Our review indicates that the federal requirements for acquiring land in trust for gaming have been satisfied. This office recommends that the identified parcel of land be taken into trust for the benefit of the Little Traverse Bay Bands. We recommend that the Minneapolis Area Director be authorized to approve the conveyance document accepting the property in trust for the Tribe subject to any condition set forth herein, including approval of all title requirements identified by

the Office of the Field Solicitor, Twin Cities and expiration of the thirty-day period following publication in the FEDERAL REGISTER of the notice required in 25 CFR § 151.12(b).

If you concur with our recommendation to approve the trust acquisition of the identified parcel of land, we have attached for your signature a memorandum to the Minneapolis Area Director authorizing him to proceed with the conveyance to the United States in trust for the Tribe, subject to satisfaction of all title requirements in 25 CFR § 151.13.

Attachments