



THE ASSOCIATE DEPUTY SECRETARY OF THE INTERIOR  
WASHINGTON, DC 20240

JAN 04 2008

The Honorable Paul Spicer  
Chief, Seneca-Cayuga Tribe or Oklahoma  
P.O. Box 1283  
Miami, Oklahoma 74355

Dear Chief Spicer:

On April 13, 2006, the Seneca-Cayuga Tribe or Oklahoma (Tribe) submitted to the Bureau of Indian Affairs (BIA) an application to acquire in trust a 230-acre parcel of land in Montezuma, Cayuga County, New York (Montezuma parcel). The Tribe proposes to construct, develop, and manage a gaming facility, hotel, and other uses incidental thereto on the parcel.

### **Background**

In explaining the Department or the Interior's (Department) decision, it is important to begin by restating the core principles that underlie the land acquisitions regulations. The Part 151 regulations implement the trust land acquisition authority given to the Secretary by the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. § 465. The IRA was primarily intended to redress the effects of the discredited policy of allotment, which had sought to divide up the tribal land base among individual Indians and non-Indians, and to destroy tribal governments and tribal identity. To assist in restoring the tribal land base, the IRA gives the Secretary the authority to: 1) return "to tribal ownership the remaining, surplus lands of any Indian reservation" that had been opened to sale or disposal under the public land laws; 2) consolidate Indian ownership of land holdings within reservations by acquiring and exchanging interests of both Indians and non-Indians; and 3) acquire, in his discretion, interests in lands within or without existing reservations." The IRA also contains provisions strengthening tribal governments and facilitating their operation. The policy of the IRA, which is just the opposite of allotment, is to provide a tribal land base on which tribal communities, governed by tribal governments, could exist and flourish. Consistent with the policy, the Secretary has typically exercised his trust land acquisition authority to take lands into trust that are within, or in close proximity to, existing reservations.

The IRA has nothing to do directly with Indian gaming. The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et. seq., adopted more than 50 years after the IRA, sets the criteria under which gaming activities can occur on Indian lands. One requirement is that if gaming is to occur on off-reservation lands, those lands must be trust lands "over which the Indian tribe exercises governmental power." The authority to acquire trust lands, however, is derived from the IRA; no trust land acquisition authority is granted to the Secretary by IGRA. The Department has taken the position that although IGRA was

intended to promote the economic development of tribes by facilitating Indian gaming operations, it was not intended to encourage the establishment of Indian gaming facilities on off-reservation land. Whether off-reservation land should be taken into trust for gaming purposes is a decision that must be made pursuant to the Secretary's IRA authority.

#### **Compliance with 25 C.F.R. Part 151**

In a letter dated February 13, 2007, the Department made it clear that the Tribe's land-into-trust application would receive a thorough and critical review under the Department's land acquisition regulations in 25 C.F.R. Part 151. Our review of the Tribe's application has identified several concerns, particularly with criteria in 25 C.F.R. §§ 151.3, 151.10(b), 151.10(c), and 151.11(b), as explained below.

##### **A. 25 C.F.R. 151.3 Land acquisition policy.**

The regulations, in 25 C.F.R. 151.3(a)(3), require the Department to make a determination that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing. The justification provided with your land-into-trust application directed our attention to economic development as the key reason for seeking our approval of this application. The proposed gaming site is approximately 1,500 miles from the Tribe's existing reservation. The application suggests that the economic benefits to the Tribe would be a projected cash flow from casino operations at the Montezuma parcel that could then be used to satisfy tribal needs on the reservation.

##### **B. 25 C.F.R. 151.10(b). The need of the Tribe for additional land.**

The regulations, in 25 C.F.R. 151.10(b), require the Department to evaluate the need of the Tribe for additional land. The Tribe owns approximately 1,200 acres of trust land. This application does not address a need for more land to support tribal housing, government infrastructure, or to resolve local land management conflicts. Rather, the application seeks a particular site of 230 acres, located 1,500 miles away from the reservation, which has been selected due, principally, to its proximity to the connector highways to the urban areas of Rochester and Syracuse, New York.

##### **C. 25 C.F.R. 151.10(c). The purposes for which the land will be used.**

The regulations, in 25 C.F.R. 151.10(c), require the Department to consider the purposes for which the land will be used. In this case, the land will be used for the development of a very large off-reservation class III gaming facility. It is worth noting that the Tribe already has a class III gaming facility located on its reservation.

**D. 25 C.F.R. 151.11(b). The location of the land relative to State boundaries, and its distance from the boundaries of the Tribe's reservation.**

The regulations, in 25 C.F.R. 151.11(b), require the Department to consider the location of the land relative to State boundaries and its distance from the boundaries of the Tribe's reservation. As the distance increases, the Secretary must give greater scrutiny to the Tribe's justification of anticipated benefits from the acquisition, and greater weight to the concerns of local governments. The Tribe's reservation is located in the State of Oklahoma, and the proposed Montezuma parcel is located in the State of New York, and they are 1,500 miles apart. The Department is concerned that approval of this application would not support the option for tribal members to live on their existing reservation and to have meaningful employment opportunities at the proposed gaming establishment in Montezuma because the proposed gaming establishment will not be located within a reasonable commuting distance from the Tribe's reservation.

In your application you state that, "While the Grand Lake Casino in Grove, Oklahoma generates much needed revenue for the Tribe, its size and location render it insufficient to meet all of the economic development needs of the Tribe." Therefore, the primary expected benefit is the income stream from the gaming facility, which can be used to fund tribal services anticipated to provide a positive effect on reservation life regardless of the distance of the gaming facility from the reservation. The application does not provide sufficient detail to allow a determination by the Secretary on the specific benefits expected from the use of net gaming revenues to either on-reservation employment of tribal members, or specific tribal programs and operations.

The other benefit of a gaming facility is the opportunity for job training and employment of tribal members living on reservation. The expected employment benefits are not described or evaluated in the application for the employment expected for Tribal members living on the reservation. The location of the gaming facility can have other significant negative effects on reservation life that can worsen as the distance increases. If the gaming facility is not within a commutable distance of the reservation, resident tribal members will either: a) decline the job opportunity if they desire to remain on the reservation; or b) move away from the reservation to take advantage of the job opportunities.

In either case, the negative impacts on reservation life could be considerable. In the first case, the operation of the gaming facility would not directly improve the employment rate of tribal members living on the reservation. A high on-reservation unemployment rate, with its attendant social ills, is already a problem on the Tribe's reservation. A gaming operation on or close to the reservation allows the Tribe to alleviate this situation by using its gaming facility as a conduit for job training and employment programs for tribal members. Provision of employment opportunities to reservation residents promotes a strong tribal government and tribal community. Employment of tribal members is an important benefit of tribal economic enterprises.

In this case, the remote location of the proposed gaming facility may encourage reservation residents to leave the reservation for an extended period to take advantage of the job opportunities created by the tribal gaming facility. The potential departure of a significant number of reservation residents and their families could have serious and far-reaching implications for the remaining tribal community and its continuity as a community. While the financial benefits of the proposed gaming facility might create revenues for the Tribe and may mitigate some potential negative impacts, the Tribe's application fails to carefully address and comprehensive]y analyze the potential negative impacts on reservation life and does not clearly demonstrate why these negative impacts should be out weighed by the financial beneits oftribal ownership of a remote gaming facility.

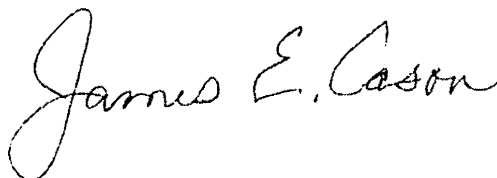
### **Decision**

The Department's regulations, in 25 C.F.R. 151.3, state that no acquisition of land in trust status shall be valid unless the acquisition is approved by the Secretary. The Department has completed an evaluation of the Tribe's fee-to-trust application for the Montezuma parcel and has determined that it will not accept the property into trust.

The Department's evaluation of this off-reservation land-into-trust application has identified several concerns, as outlined above, that lead to a determination that the Department will not exercise its discretionary authority to take the parcel into trust. This decision is a final agency action consistent with the provisions of 25 C.F.R. 2.6(c).

Please be advised that since this land will not be accepted into trust, the proposed site does not qualify for Indian gaming pursuant to IGRA. It is our hope that the Department will be able to work with the Tribe to identify economic development opportunities that we can support mutually.

Sincerely,

A handwritten signature in black ink that reads "James E. Cason". The signature is written in a cursive style with a large, looping initial "J".