



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 3 1 2008

The Honorable Tom Gamble
Chief, Miami Tribe
P.O. Box 1326
Miami, Oklahoma 74355

Dear Chief Gamble:

On May 12, 2008, the Miami Tribe (Tribe) submitted to the Bureau of Indian Affairs ("BIA") an application to acquire in trust a 95-acre parcel of land in Gary, Lake County, Indiana (Lake County parcel), pursuant to the Indian Reorganization Act, 25 U.S.C. § 465 (IRA), for the purpose of constructing, developing, and operating a Class III gaming facility pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2710 *et seq.* (IGRA).

Pursuant to the IRA's implementing regulations, 25 C.F.R. Part 151, and the January 3, 2008, Memorandum entitled "Guidance on taking off-reservation land into trust for gaming purposes" (Guidance), the AS-IA has given "greater scrutiny to the tribe's justification of the anticipated benefits from the acquisition." ¹ 25 C.F.R. § 151.11(b). After a thorough review of the administrative record, the AS-IA has decided to exercise his discretion, as delegated by the Secretary of the Interior, to decline acquiring the Lake County parcel into trust.

Background

In explaining the Department of 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 IRA.

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 gave 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

¹ The duties of the AS-IA were delegated to the Acting Deputy Assistant Secretary, Policy and Economic Development, on May 23, 2008.

or without existing reservations." *See* 25 U.S.C. §§ 463, 465. The IRA also contains provisions strengthening tribal governments and facilitating their operation. The policy of the IRA, which was 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 IGRA, adopted more than 50 years after the IRA, sets the criteria under which gaming activities can occur on Indian lands. The authority to acquire trust lands, however, is derived from the IRA; no trust land acquisition authority is granted to the Secretary by IGRA. *See* 25 U.S.C. § 2719(c). 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

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 609 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 Lake County 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 86.89 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 95 acres, located approximately 609 miles away from the reservation, which has been selected due, principally, to its proximity to the connector highways to the urban areas of Chicago, Illinois.

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 large off-reservation class III gaming facility under IGRA. 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 Lake County parcel is located in the State of Indiana, and they are 609 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 Lake County because the proposed gaming establishment will not be located within a reasonable commuting distance from the Tribe's reservation.

The other stated benefit of a gaming facility is the opportunity for job training and employment of tribal members living on reservation. The expected employment benefits for tribal members living on the reservation are not described or evaluated in the application. 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 on-reservation 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 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 comprehensively analyze the potential negative impacts on reservation life and does not clearly demonstrate why these should be overshadowed by the financial benefits of tribal 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 Lake County parcel and has determined that it will not accept the property into trust under the IRA.

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 and may be appealed pursuant to 25 C.F.R. 2.6(c) and applicable law.

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, appearing to read "G. Skibine", with a stylized flourish at the end.

George T. Skibine

Acting Deputy Assistant Secretary for
Policy and Economic Development