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National Policy Memorandum

Assistant Secretary – Indian Affairs

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Title: Fee-to-Trust Decisions for Gaming Eligible Lands and Fee-to-Trust Decisions for Gaming Purposes

1. Purpose

This memorandum establishes an interim policy regarding the delegated authority for the review and approval of fee-to-trust acquisitions of property that is gaming eligible Indian Lands for the purpose of the Indian Gaming Regulatory Act (IGRA) 25 U.S.C. §§ 2703(4) and 2719. This memorandum also renews and restates the delegated authority for the review and approval of fee-to-trust acquisitions including restricted fee-to-trust, restricted-to-restricted transfers, and trust-to-trust transfers for gaming, also known as Gaming Acquisitions.

The IGRA provides that Tribes may conduct gaming on Indian lands within the Tribe's jurisdiction, and defines such lands as:

> (A) all lands within the limits of any Indian reservation; and
>
> (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.
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> 25 U.S.C. § 2703(4).

The IGRA prohibits Tribes from conducting gaming on lands acquired in trust after October 17, 1988, known as newly acquired land, subject to several exemptions and exceptions. 25 U.S.C. § 2719. The exemptions include:

> (1) all newly acquired land within or contiguous to the boundaries of the tribe's reservation on October 17, 1988,
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> (2) or if the tribe had no reservation on October 17, 1988, and
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> (A) lands are located in Oklahoma and
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> (i) the newly acquired land is within the boundaries of the tribe's former reservation in Oklahoma, or
>
> (ii) is contiguous to other land held in trust or restricted fee status for the Indian

tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the tribe's last recognized reservation with the State or Staes within which the tribe is presently located.

25 U.S.C. § 2719(a).

Land which satisfies one of the exemptions to IGRA's general prohibition on the conduct of gaming on newly acquired lands is gaming eligible land. The Department's longstanding policy has reserved the authority to approve or disapprove land acquisitions for gaming, also known as Gaming Acquisitions, to the Assistant Secretary – Indian Affairs (AS-IA).[1] The authority to issue decisions on non-gaming acquisitions has been delegated to the Bureau of Indian Affairs Regional Directors (RDs).[2] The Department understands that some Tribes have submitted fee-to-trust acquisitions for non-gaming purposes for land that would be gaming eligible once acquired in trust. After the land is acquired in trust, Tribes then seek approval to conduct gaming on the land.

Fee-to-trust applications involve the acquisition in trust of whole or undivided interests in land held in fee, including restricted fee. There are several different types of possible acquisitions, and operating procedures for each type are documented in detail in the following handbook: "Indian Affairs Fee-to-Trust Acquisitions and Reservation Proclamations Handbook," January 15, 2025 ("BIA FTT Handbook"), 52 IAM 12-H, which can be found online: https://www.bia.gov/policy-forms/handbooks.

Pursuant to this memorandum, the delegated authority for on-reservation and contiguous non-gaming fee-to-trust acquisitions remains with the RDs. However, the AS-IA or his delegee must be informed regarding the proposed decision prior to the RD's issuance of a Notice of Determination for all gaming eligible lands.

2. Scope

This policy applies to all employees of the Bureau of Indian Affairs (BIA) involved in the review and approval of non-gaming fee-to-trust acquisitions under 25 CFR 151.9 and 151.10. This policy also applies to all employees of the BIA involved in the review and approval of all gaming fee-to-trust acquisitions. It does not affect any delegations of authority issued by RDs to subordinate officials (as documented in 3 IAM 4).

3. Policy and Procedures

The following interim policy will be implemented with regard to the review and approval of all fee-to-trust acquisitions under 25 CFR 151.9 and 151.10. This policy also applies to the review and approval of all gaming fee-to-trust acquisitions.

A. Determining When an Application is for Gaming Eligible Lands

When an RD receives an on-reservation fee-to-trust application for processing pursuant to

[1] See 52 IAM 12 §1.5
[2] *Id.*

25 CFR 151.9, or contiguous for processing under 25 CFR 151.10, the RD should presume the land would be gaming eligible and, therefore, subject to this process. The applicant Tribe's intended non-gaming use of the property does not factor into the determination of whether the application is subject to this process. If the Tribe's intended use of the property is for gaming, then the application will be processed as a Gaming Application consistent with this memorandum.

If a question arises as to whether property that is the subject of a particular FTT application qualifies as on reservation, contiguous, or off-reservation, an opinion should be requested from the appropriate field or regional Office of the Solicitor (SOL). The RD will submit an electronic copy of the field or regional SOL's opinion on contiguity to the Associate Solicitor, Division of Indian Affairs, for his or her review and concurrence before the application in question can move forward.

B. Notice of Receipt of Gaming Eligible Applications

When an RD receives a gaming eligible fee-to-trust application, the RD will immediately provide notice of the application via electronic mail to the BIA Office of Trust Services' (OTS) Division of Real Estate Services (DRES) Division Chief, who will forward the notice to the Director of the Bureau of Indian Affairs (DBIA), the Director of the Office of Indian Gaming, and the AS-IA. The Notice will include the applicant Tribe, the location and size of the land, the Tribe's intended use of the land, and a brief summary of the basis for determining the land is likely gaming eligible under Paragraph A above. The Division Chief, DRES ,OTS will maintain a list of all pending applications which are gaming eligible and provide a monthly report of the pending list to the DBIA, Director of the Office of Indian Gaming (Gaming Director), and the AS-IA. The AS-IA may request additional information, status reports, or briefings on specific applications of interest.

C. Processing Discretionary Non-Gaming Applications

Discretionary gaming eligible fee-to-trust applications will be processed in accordance with the standard procedures set forth in the BIA FTT Handbook.

Upon providing notice to the Division Chief, DRES, OTS of the receipt of a discretionary, gaming eligible fee-to-trust application for non-gaming purposes, the RD will complete all steps required under the regulations for the preparation of a decision package. The RD must inform the Division Chief, DRES, OTS of their intent to issue a Notice of Decision at least 30 days in advance of issuance. The Division Chief, DRES, OTS will immediately forward the RD's notice to the DBIA and AS-IA. The AS-IA may request a briefing on the proposed trust acquisition prior to the RD issuing a Notice of Decision. The RD must brief the AS-IA, on all applications of interest, prior to issuing a Notice of Decision.

D. Processing of Receipt of Gaming Applications

When an RD receives a fee-to-trust for gaming application, a restricted-to-restricted or trust-to-trust beneficial title transfer application for gaming, or business lease for gaming (collectively, Gaming Applications), the RD will immediately provide notice of the

application via electronic mail to the Gaming Director, at IndianGaming@bia.gov, who will forward the notice to the AS-IA. The Notice will include the applicant Tribe, the location and size of the land, the Tribe's intended use of the land, and a copy of the Tribe's application. The Gaming Director will maintain a list of all pending gaming applications and provide a monthly report to the AS-IA.

E. Processing Discretionary Gaming Applications

The delegated authority for deciding requests for fee-to-trust acquisitions for gaming purposes; processing requests for restricted-to-restricted and trust-to-trust beneficial title transfers for gaming purposes; and for approving business leases for gaming purposes lies with the AS-IA.[3] The AS-IA is, therefore, the responsible official for the purpose of NEPA and will process such applications in coordination with the Office of Indian Gaming.

Gaming Applications will be processed in accordance with the standard procedures set forth in the BIA Fee-to-Trust Handbook and other applicable BIA processing guidance and this memorandum.

Upon providing notice to the Gaming Director of the receipt of a gaming application, the RD will complete all steps required under the regulations for the preparation of a Finding of Fact package. The Findings of Fact package will then be sent to the Office of Indian Gaming for further processing and the preparation of a Notice of Decision.

Under no circumstances will the RD submit a recommendation as to whether the application should be approved.

Public facing notices including notice of applications required by 25 CFR Part 151, notices of availability for environmental compliance documents, or if appropriate, consultation notices required by 25 CFR Part 292 Subpart C, should be issued simultaneously, when possible, by the RD in coordination with the Office of Indian Gaming. The Office of Indian Gaming will provide briefings to the AS-IA and DAS-PED and will prepare communications materials for the Office of Public Affairs and the Office of Congressional Affairs, if appropriate. Additionally, to the extent the notice of availability for the environmental compliance document requires publication in the Federal Register, the AS-IA or his designee will sign the notice.

The Findings of Fact package must include a Findings of Fact containing an independent analysis of the 25 CFR Part 151 factors or appropriate Trust Land Consolidation factors to the Tribe's application signed by the RD; the administrative record with an index; the complete application package submitted by the applicant; all correspondence with the applicant and interested parties including electronic mail; all documentation showing compliance with all steps required under the regulations; and any other relevant documentation including, where appropriate, a Findings of Fact of the 25 CFR Part 292, Subpart C, factors to the tribe's application. Incomplete administrative records will be returned to the RD for additional development and analysis.

[3] SO 3400, 52 IAM 12 § 1.5(A).

The Office of Indian Gaming will review the Findings of Fact package and prepare a Draft NOD and Federal Register Notice of land acquisition for consideration by the AS-IA and DAS-PED. In the event that the fee-to-trust application also contains a request for a reservation proclamation, then NOD and Federal Register Notice must address the reservation proclamation request.

If the AS-IA or DAS-PED (as appropriate) decides to approve the request, the AS-IA will sign the NOD, Federal Register Notice if required, and a memorandum directing the RD (RD Memorandum) to complete the final steps required under the regulations and BIA FTT Handbook. The authority to complete the Certificate of Inspection and Possession (CIP) and Acceptance of Conveyance, which require fieldwork and special expertise, is, therefore, delegated back to the RD. The signed NOD, RD Memorandum, and Federal Register Notice, and administrative record will be returned to the Office of Indian Gaming for archiving.

If the AS-IA or DAS-PED (as appropriate) makes a decision to deny an application, the deciding official must provide notice to the applicant consistent with 25 CFR 151.13 and return the administrative record to the RD for archiving.

Decisions by the Office of the Assistant Secretary–Indian Affairs are final for the Department, are effective immediately, and are not subject to administrative review by the Interior Board of Indian Appeals.

When an RD is advised of federal court litigation challenging a fee-to-trust decision by the AS-IA, the RD must prepare a supplement to the administrative record within 20 calendar days containing any additional correspondence or work completed by the RD after providing the original package to the Division Chief, DRES, OTS and AS-IA. The supplement must contain an index and must be provided to the Associate Solicitor, Division of Indian Affairs.

4. Roles and Responsibilities

A. **AS-IA** is responsible for issuing decisions on all requests for Gaming Acquisitions.

B. **Gaming Director** serves as the Senior Accountable Official for gaming acquisitions and is responsible for coordinating with and providing technical assistance to the RD on gaming acquisitions, collecting, docketing, and conveying all requests for gaming acquisitions, administrative records, and associated notices of availability for environmental compliance documents to the AS-IA and DAS-PED and for drafting Notice of Decisions for gaming acquisitions.

C. **Associate Solicitor, Division of Indian Affairs** is responsible for reviewing and concurring with Field or Regional SOL opinions on contiguity or on mandatory authority submitted to him or her.

D. **DBIA** is responsible for ensuring that appropriate organizational arrangements, resources, and personnel are available to implement and maintain the BIA's Realty program. The

DBIA serves as the Senior Accountable Official for this program and has primary responsibility for implementing and executing BIA programs in accordance with statute, regulation, and Departmental policy.

E. **DBD, OTS** is responsible for the development of trust policy and procedures, and assisting in the dissemination of policy, training, and information to OTS managers and Field Operations; and providing notices of availability for environmental compliance documents to the AS-IA.

F. **Division Chief, DRES, OTS** is responsible for overall policy and guidance development within the division, including establishing Realty program policies and standards to comply with statutory and regulatory requirements; day-to-day oversight of the Realty program; ensuring technical assistance and training is provide to BIA regions as needed; conducting program reviews; managing BIA's federal reporting requirements as they relate to the Realty program; and is responsible for reviewing and routing all requests for off-reservation and new land fee-to-trust acquisitions.

G. **RD** is responsible for or complying with Indian Affairs and DOI policy and procedures for fee-to-trust acquisitions, including all requirements for records management and related responsibilities, and any other policy and procedures as applicable.

5. Approval



11-4-26

William Henry Kirkland III
Assistant Secretary – Indian Affairs

Date