

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



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JAN 04 2008

The Honorable Raymond Gachupin
Governor, Pueblo of Jemez
P.O. Box 100
Jemez Pueblo, New Mexico 87024

Dear Governor Gachupin:

On December 23, 2004, the Pueblo of Jemez (Tribe) submitted to the Bureau of Indian Affairs (BIA) an application to acquire in trust a 78.43-acre parcel of land in Anthony, Dona Ana County, New Mexico (Anthony property). The Tribe proposes to develop and operate a major resort, and casino facility, and other uses incidental thereto on the parcel.

Background

In explaining the Department of 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 an 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 require the Department, in 25 C.F.R. 151.3(a)(3), 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 293 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 Anthony property gaming facility 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 require the Department, in 25 C.F.R. 151.10(b), to evaluate the need of the Tribe for additional land. The Tribe owns approximately 89,600 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 less than 79 acres, located 293 miles away from the reservation, which has been selected due, principally, to its proximity to urban markets.

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.

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 and the proposed Anthony property are located in the State of New Mexico, approximately 293 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 on the Anthony property 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, "an off reservation gaming operation in Anthony, NM, is preferred because the Pueblo's current location of its existing reservation is too remote from major population centers and the competition from neighboring Indian tribes who have established gaming casinos is too great." Therefore, the primary expected benefit is the income stream from the gaming facility, which can be used to fund tribal services, develop tribal infrastructure, and provide per capita payments to tribal members, all anticipated to provide a positive effect on reservation life regardless of the distance of the gaming facility from the reservation. The application describes the existing conditions of government operations on the reservation, including the unmet needs. However, the general descriptions do not provide sufficient detail to allow a determination by the Secretary on the specific benefits expected from the use of net gaming revenues.

The second benefit of the proposed gaming facility is the opportunity for job training and employment of tribal members living on reservation. Your application says, "there is serious unemployment among tribal members," and, "the Tribe's unemployment rate is thought to be in excess of 50%, and is possibly 66%, and there are few employment opportunities on the Reservation." Further, the application states, "[T]he Pueblo intends to hire Dona Ana County residents for the casino." These statements indicate that the Tribe does not expect the off-reservation location to provide jobs directly to residents of the reservation. The location of the gaming facility can have significant negative effects on reservation life. Because the proposed 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 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 would allow 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 the second 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 comprehensively analyze the potential negative impacts on reservation life and does not clearly demonstrate why these negative impacts should be outweighed by the financial benefits of tribal ownership of a remote gaming facility.

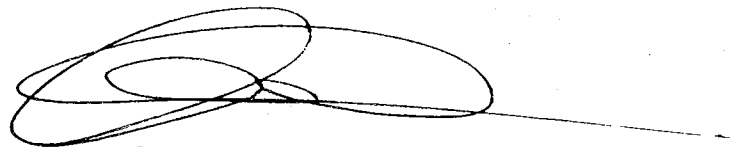
Decision

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 Anthony property and has determined that it will not accept the land 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, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Carl J. Artman
Assistant Secretary – Indian Affairs