



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



JAN 04 2008

The Honorable George Wickliffe
Chief, United Keetoowah Band of
Cherokee Indians
P.O. Box 746
Tahlequah, Oklahoma 74465

Dear Chief Wickliffe:

By memorandum dated July 11, 2007, the Director, Eastern Oklahoma Regional Office (EORO) transmitted to the Assistant Secretary of Indian Affairs (ASIA), her recommendation, along with supporting documentation, that a ten-acre parcel of land in Sebastian County, Arkansas, known as the "Fort Smith Property" not be acquired in trust for the benefit of the United Keetoowah Band of Cherokee Indians of Oklahoma (Tribe). The Tribe proposes to use the property for development of a hotel, resort, and casino.

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.

FINDINGS OF FACT

I. AUTHORITY

Section 5 of the IRA authorizes the Secretary, in his discretion, to acquire any interest in land, within or without Indian reservations, for the purpose of providing land for Indians. Section 203 of the Indian Land Consolidation Act (ILCA), (96 Stat. 2517; P.L. 97-459) makes Section 5 of the "Act of June 18, 1934, applicable to all tribes.

On May 8, 1950, the Assistant Secretary of the Interior submitted the Constitution and Bylaws of the United Keetoowah Band of Cherokee Indians for ratification to the members of the United Keetoowah Band of Cherokee Indians in Oklahoma. The Constitution and Bylaws were ratified on October 3, 1950.

Pursuant to Article V, Section 1 of the Constitution and Bylaws, Tribal Resolution No. 06-UKB-32 dated March 18, 2006, requests the Bureau of Indian Affairs (BIA) to acquire in trust the ten-acre parcel for the purpose of economic development, and more specifically for the development of a hotel, resort, and casino. The resolution was adopted by an affirmative vote of 12 members; 0 against; and 0 abstentions.

II. DESCRIPTION OF THE PROPERTY

A part of the Northeast Quarter (NE¼) of Section 8, Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas. More particularly described as follows:

Commencing at the Northeast (NE) corner of said Section 8; thence North 86°00'00" W, 65.00 feet along the north land of said Section 8; thence S 00°25'41" W, 305.10 feet; thence N 85°57'19" W, 762.10 feet to a point on the centerline of Clayton Expressway; thence N 70°38'17" W, 114.0 feet to a point on the westerly right of way of Clayton Expressway; thence S 13°55'41" W, 55.78 feet along said westerly right of way; thence S 26°03'10" W, 411.78 feet along said right of way; thence S 23°31'32" W, 105.12 feet along said right of way; thence S 17°13'07" W, 54.93 feet along said right of way to ½" iron pin set for the Point of Beginning; thence S 17°13'07" W, 270.68 feet along said right of way to a ½" iron pin set; thence S 22°28'33" W, 209.85 feet along said right of way to an ½" iron pin set; thence S 33°19'46" W, 153.30 feet along said right of way to a ½" iron pin set; thence S 34°21'39" W, 4.82 feet along said right of way to a ½" iron pin set at the northerly line of a tract described in Sebastian County Document number 7082031 dated 9/11/2002; thence along said northerly line N 63°56'43" W, 658.72 feet to a ½" iron pin set on the lower right bank of the Arkansas River; thence N 24°26'37" E, 123.44 feet along said right bank to a ½" iron pin set; thence N 23°47'56" E, 258.86 feet along said right bank to a ½" iron pin set; thence North 21°47'52" E, 229.11 feet

along said right bank to a ½” iron pin set; thence South 65°53’43” E, 682.21 feet to the Point of Beginning. Containing 435,603 square feet or 10.00 acres, more or less. And being subject to an unrecorded OG&E easement with OG&E work order #7208071.

III. TITLE TO THE PROPERTY

The Commitment for Title Insurance Policy No. S0009438 dated February 7, 2006, and legal description prepared by Chicago Title Insurance Company, reflect the title to be vested in United Keetoowah Band of Cherokee Indians.

IV. COMPLIANCE WITH IGRA

The Tribe’s gaming ordinance was approved by the National Indian Gaming Commission (NIGC) on March 22, 1995. The Tribe does not have a class III gaming compact with the State of Arkansas.

V. 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. These regulations provide the basis upon which we exercise the Secretary’s discretionary authority.

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

The regulations, in 25 C.F.R. 151(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 application suggests that the economic benefit to the Tribe would be projected cash flow from casino operations in Fort Smith that could then be used to satisfy the needs of Tribal members in Oklahoma.

B. 25 C.F.R. 151.10(a). The existence of statutory authority for the acquisition and any limitations contained in such authority.

The Department finds that Section 5 of the IRA is the requisite statutory authority to consider and act upon the Tribe’s application.

C. 25 C.F.R. 151.10(b). The need of the individual Indian or 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 United Keetoowah Band of Cherokee Indians has no trust land. This application does not address a need for land to support tribal housing or government infrastructure or to resolve local land management conflicts. Rather, the application seeks a particular site of approximately ten acres, located seventy (70) miles away from the Tribe’s

headquarters, which has been selected due, principally, to its proximity to the nearest urban area to the east of Oklahoma outside the Cherokee Nation.

D. 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.

E. 25 C.F.R. 151.10(e). If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of land from the tax rolls.

The regulations, in 25 C.F.R. 151.10(e), require the Department to consider the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls. The removal of the parcel from the tax rolls would result in minimal impact to the State of Arkansas, Sebastian County, and the City of Fort Smith.

F. 25 C.F.R. 151.10(f). Jurisdictional problems and potential conflicts of land use which may arise.

The regulations, in 25 C.F.R. 151.10(f), require the Department to consider potential jurisdictional problems and conflicts of land use which may arise in light of the comments of the State and its political subdivisions. The Governor of Arkansas and his immediate predecessor are strongly opposed to the Tribe's proposed acquisition for gaming. In addition, local officials have submitted comments in opposition to the proposed gaming facility. Further, the Regional Director noted the City of Ft. Smith provides police, fire, water, and sanitation services. The Tribe's application anticipated a Memorandum of Understanding (MOU) with the City to provide these services, but was not received. I find that significant jurisdictional problems and potential land use issues exist for the property.

G. 25 C.F.R. 151.10(g). If the land to be acquired is in fee status whether the Bureau of Indian Affairs (BIA) is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

The regulations, in 25 C.F.R. 151.10(g), require the Department to evaluate whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status. The Tribe indicates that the BIA will be responsible for law enforcement, but believes that any additional responsibility of the BIA will be minimal. A finding on this issue is not necessary to my decision on the application.

H. 25 C.F.R. 151.10(h). The extent of information to allow the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

The regulations, in 25 C.F.R. 151.10(h), require the Department to consider the extent to which the applicant has provided sufficient information to allow compliance with 516 DM 6, Appendix 4, National Environmental Policy Act Revised Implements Procedures and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. An Environmental Assessment (EA) was prepared by the Tribe. A finding on the sufficiency of the EA is not necessary to my decision on the Tribe's application.

I. 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 headquarters. The Tribe's headquarters are located in the State of Oklahoma approximately 70 miles away from the proposed site. As the distance between the Tribe's headquarters and the land to be acquired increases, the Department shall give greater weight to the concerns raised by the State and its political subdivisions. As outlined above there is significant local opposition to this acquisition.

J. 25 C.F.R. § 151.11(c). Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

The regulations, in 25 C.F.R. 151.11(c), require the Department to consider the Tribe's plan describing the anticipated economic benefits associated with the use of the proposed site. The Regional Director's recommendation does not address this requirement, but the application contains a November 2005 Feasibility Study from Old Fort Entertainment, LLC by the Innovation Group that satisfies this criterion.

K. 25 C.F.R. 151.11(d). Consultation with State and local governments with regulatory jurisdiction over the land pursuant to § 151.10(e) and (f).

The Regional Director consulted with appropriate State and local governments. The Governor, State of Arkansas responded to the consultation letter expressing opposition to the acquisition. The City of Fort Smith and Sebastian County also have expressed opposition to the proposed acquisition.

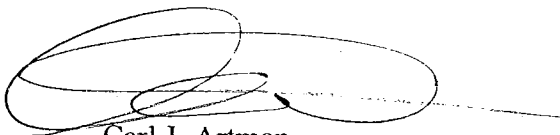
Decision

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 its evaluation of the Tribe's fee-to-trust application for the "Fort Smith Property" and has determined that it will not accept the property into trust.

The Department's evaluation of this land-into-trust application has identified several concerns, as outlined above, with criteria in 25 §§ C.F.R. 151.10(b), 151.10(c), 151.10(g), 151.11(b), and 151.11(d) that lead to a determination that the Department will not exercise its discretionary authority to take the parcel into trust. I concur with the Regional Director's recommendation. 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, appearing to read 'Carl J. Artman', with a horizontal line extending to the right from the end of the signature.

Carl J. Artman
Assistant Secretary - Indian Affairs