FACT SHEET: PUEBLO OF JEMEZ NEGATIVE FEE-TO-TRUST DECISION

Decision

 The Assistant Secretary – Indian Affairs has reviewed the Pueblo of Jemez's offreservation fee-to-trust application under the Indian Reorganization Act, and the Department's fee-to-trust regulations, and determined that it will not acquire land in trust for the tribe for gaming purposes.

Background

- The Tribe is located in Sandoval County, New Mexico (northwest of Albuquerque), and has approximately 3,400 tribal members. The Tribe is one of 19 pueblos in the State of New Mexico and does not currently conduct any class III gaming.
- In 2004, the Tribe submitted an application to have approximately 70 acres of land in trust for gaming purposes in Anthony New Mexico, which is in Dona Ana County – 293 miles from its existing reservation. The Tribe is seeking a positive Secretarial Determination under IGRA's "off-reservation" exception.
- The Tribe's application was originally disapproved on January 4, 2008. The Tribe subsequently amended its application to address issues raised in that decision, and resubmitted its application.
- The Tribe proposes to develop a 103,500 square-foot class III gaming facility that would employ approximately 950 people. The Tribe also plans to develop a hotel on an adjacent 31.855-acre parcel that will continue to be held in fee simple, and will consist of approximately 90,000 square feet.

Overview of Analysis

- The Department's fee-to-trust regulations, at 25 C.F.R. Part 151, require the Secretary to consider the purpose for which the newly-acquired trust lands would be used. The Tribe indicated that it would use these lands for class III gaming.
- IGRA requires a tribe to exercise "governmental power" over lands in order for them to be "Indian lands" eligible for gaming.
- The Tribe executed several intergovernmental agreements with local jurisdictions near Anthony, New Mexico, for the actual exercise of governmental power over the proposed trust lands.

- The Department's fee-to-trust regulations require the Secretary to apply greater scrutiny to the Tribe's justification of anticipated benefits from an acquisition as the distance between the tribe's reservation and the land to be acquired increases.
- In this case, the Department applied the heightened scrutiny to the Tribe's ability to actually control the exercise of governmental power over the proposed trust lands, and determined that the lands would not be subject to the Tribe's exercise of governmental power.
- The decision also notes that the Tribe is unlikely to demonstrate a significant historical connection to the Site, which, when coupled with the great distance between the site and the Tribe's reservation, would make it difficult to render a positive Secretarial Determination under our gaming regulations.