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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

RIN 1076–AC51

Land Acquisitions (Nongaming)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rule modifies three existing sections within Part 151 (Land Acquisitions) and creates a new section which contains additional criteria and requirements used by the Secretary in evaluating requests for the acquisition of lands by the United States in trust for federally recognized Indian tribes when lands are outside and noncontiguous to the tribes' existing reservation boundaries.

EFFECTIVE DATE: July 24, 1995.

FOR FURTHER INFORMATION CONTACT: Alice A. Harwood, Chief, Branch of Technical Services, Division of Real Estate Services, Bureau of Indian Affairs, Room 4522, Main Interior Building, 1849 C Street, NW, Washington, DC 20240, Telephone No. (202) 208–3604.

SUPPLEMENTARY INFORMATION: The primary authors of this document are Stan Webb, Lee Maytubby, and Alice A. Harwood along with the members of the Regulation Task Force.

On July 15, 1991, the proposed rule for off-reservation land acquisitions for Indian tribes was published in the **Federal Register** (Vol. 56, No. 135, pages 32278–32280).

The Department certifies to the Office of Management and Budget that these final regulations meet the standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

The Department has determined that this rule:

- does not have significant federalism effects.
- is not a major rule under Executive Order 12866 and will not require a review by the Office of Management and Budget.
- will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) because this rule applies only to Indian applicants.
- does not have significant takings implications under E.O. 12630.
- does not have significant effects on the economy, nor will it result in increases in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographical regions.
- does not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.
- is categorically excluded from the National Environmental Policy Act of 1969 because it is of an administrative, technical, and procedural nature. Therefore, neither an environmental assessment nor an environmental impact statement is warranted.

Office of Management and Budget approved the information requested in Sections 151.9, 151.10, 151.11(c) and 151.13 under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0100. This information is required from Indian tribes and individuals to acquire land in trust status and used to assist the Secretary in making a determination. Response to this request is required to obtain a benefit.

Public reporting for this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct your comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337–SIB, 18th and C Streets, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs (Project 1076–0100), Office of Management and Budget, Washington, DC 20502.

The annual number of tribal requests to place lands in trust is small. There will be some costs incurred by the requesting tribes in providing information to the Secretary.

Summary of Comments on Proposed Rule

Sixty-seven comments were submitted in response to the July 15, 1991, **Federal Register** publication of proposed amendments to 25 CFR Part 151.

A number of commenters expressed a fear that the regulations would undermine tribal sovereignty and self-determination and inhibit the development of reservation economies, and that they would be inconsistent with the Indian policy statement issued by President Bush on June 14, 1991. There is additional concern that the proposed rules would:

(1) afford state and local governments a virtual veto power over tribal governments;

(2) promote a "guardian-ward" relationship between the United States and the tribes, rather than the preferred "government-to-government" relationship; and

(3) force tribes to divert their limited resources into "unnecessary" efforts aimed at regulatory compliance;

(4) be inconsistent with the federal trust responsibility to Indian tribes, and

(5) further complicate an already cumbersome and time-consuming process by placing tribal interests lower than those of state and local governments.

One commenter argued that a "federalism assessment" would be needed under Executive Order 12612, and another maintained that a "compete regulatory analysis" would be required under the Regulatory Flexibility Act.

Due to comments received, the gaming section, proposed as 151.12 has been deleted and will be incorporated into a new CFR part under a separate rulemaking.

Section 151.10 On-Reservation Acquisition

Comment: It was suggested that 25 CFR 151.10(e) be revised to reflect the BIA's position that Indian-owned fee lands within the boundaries of a reservation should be exempt from state property.

Response: It should be noted that the United States Supreme Court recently held that (under certain circumstances) on-reservation fee lands *will* be subject to local property taxes. Therefore, 25 CFR 151.10(e) is not revised.

Comment: Comments suggested that *all* of the existing rules be made inapplicable to on-reservation acquisitions, and another requested a clarification that the strict notice and consultation requirements set forth in the proposed 25 CFR 151.11 would not apply to acquisitions of lands which are either within the boundaries of a reservation or contiguous thereto.

Response: It should be noted that the decision whether to accept title in trust status is a discretionary one, and that the Secretary has chosen to regulate the decision-making process in order to promote national uniformity.

The notice and comment procedures, which do not require formal consultation, were informally adopted in 1980. Notice and *comment* procedures are incorporated in the introductory paragraph to 25 CFR 151.10.

Comment: It was also suggested that the proposed rules be revised to accept legislatively-mandated acquisitions from compliance with 25 CFR 151.10 and the proposed 151.11. An alternatively suggested that they be revised to specify that certain provisions

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would apply even when a complete evaluation of the acquisition would be precluded by legislation.

Response: The introductory paragraph to both 25 CFR 151.10 and the new 25 CFR 151.11 exempts such legally mandated acquisitions.

Section 151.10(h) Hazardous Substances and NEPA Compliance

Comment: Commenters addressed the requirement that acquired property "be free of all hazardous and toxic material as required by 602 DM 2 Land Acquisitions: Hazardous Substances Determinations." It was suggested that an acquisition be allowed where the proposed use of the land would involve hazardous substances, or where identified substances have been safely isolated.

Response: It should be noted that the Secretary retains the power to approve any acquisition "for good cause," i.e., where the benefits of the acquisition would clearly outweigh the potential risks.

Comment: Commenters suggested that the proposed rule be modified to more accurately reflect the policy set forth at 602 DM 2.

Response: The policy set forth in the manual attempts to limit potential federal liability by prohibiting acquisitions where "an expenditure of Departmental funds is required for cleanup of such real estate, except at the direction of Congress, or for good cause with the approval of the Secretary." The rule is modified to reference the "extent to which the applicant has provided information that allows the Secretary to comply" with the Departmental Manual.

Comment: Commenters also stated that the regulation would be too restrictive, suggesting that exceptions be made when:

(1) the seller agrees to indemnify the acquiring tribe and the United States;

(2) the estimated remedial costs would be minimal, or the acquiring tribe has adopted a corrective action plan;

(3) the waste has been safely isolated, or the land value is "sufficient" to justify the acquisition; or

(4) the acquiring tribe wishes to utilize the land for such purposes as waste disposal, incineration, or recycling.

Response: 602 DM 2 suggests that the survey process must be completed in *all* cases (with indemnification to be *required* in those cases where contaminated lands are to be acquired).

602 DM 2 permits the acquisition of contaminated lands which can be restored without a reprogramming of funds.

Comment: It was suggested that the proposed rule be extended to *all* federal acquisitions, and another recommended that the rule specify the types of clearances needed and the extent to which the BIA would absorb the cost of site surveys.

Response: 602 DM 2 applies to all agencies within the Department of the Interior.

The guidelines provide for a three-tiered survey process, with approval authority retained by the Department. However, funding may be determined on a case by case basis.

Comment: It was recommended that the "rigorous" innocent purchaser provisions in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) be made applicable to tribal land acquisitions.

Response: It should be noted that such a defense only protects purchasers who "did not know and had no reason to know" that they were acquiring contaminated property. (The proposed BIA guidelines provide for a survey process which is intended to ensure the availability of this defense.)

Comment: Commenters suggested that the proposed rules be revised to require compliance with the National Environmental Policy Act of 1969 (NEPA).

Response: The new 25 CFR 151.10(h) also requires compliance with the BIA's "final revised implementing procedures" for NEPA. In 1988, the procedures were published in the **Federal Register** (after a public comment period) and added to the Departmental Manual at 516 DM 6, Appendix 4.

Section 151.11 Off-reservation Acquisitions

Comment: Comments addressed the general premise that more stringent rules are needed to govern the trust acquisition of lands which are "off-reservation" (hereinafter meaning lands "outside of and noncontiguous to" the boundaries of an existing reservation). Other comments suggested that lands which are contiguous to existing reservation boundaries should be treated as other lands outside such boundaries.

Response: It should be noted that the acquisition of contiguous lands may be analogized to annexations by municipalities. It should be noted that treatment may be afforded by the Secretary on a case-by-case basis.

Comment: Commenters voiced concerns relative to "the loss of regulatory control and removal of the property from the tax rolls." Specifically, they questioned whether the proposed rules would protect the states' power to regulate the appropriation and administration of water on acquired lands, and suggested that a mechanism for the collection of "appropriate" state taxes be incorporated in the rules.

Response: The BIA has instructed its field offices that proposed acquisitions of off-reservation contiguous lands for commercial purposes should be carefully scrutinized with consultation considered to avoid jurisdictional conflicts.

The new 25 CFR 151.11(d) establishes a consultation process which may give rise to agreements which could result in resolution of the above types of regulatory issues.

Comment: Other comments addressed the need for flexibility in applying the proposed rules to:

(1) newly recognized tribes, restored tribes, and landless tribes (including those whose land bases consist of scattered sites);

(2) lands within tribal consolidation areas, tribal service areas, and ancestral areas or tribal homelands; and

(3) acquisitions for non-commercial purposes, such as housing, recreation, and mineral development, resource protection or wildlife management.

Response: It should be noted that the revised introductory paragraph exempts acquisitions on behalf of newly recognized or restored tribes, when such acquisitions are "legally mandated" by legislation or court order.

Designated (off-reservation) tribal consolidation areas will be treated as other off-reservation lands, pending the issuance of further rules under the Indian Financing Act of 1974 and the Indian Land Consolidation Act (ILCA); tribal service areas will be treated as other off-reservation lands, unless such areas fall within the exception for "legally mandated" acquisitions. The new 25 CFR 151.11(b) allows landless tribes (i.e., those without any *trust* lands) to acquire land within their aboriginal homelands, subject to the other restrictions in 25 CFR 151.11.

Section 151.11(b) Geographic Limitations

Comment: Those provisions which prohibit off-reservation acquisitions of "out-of-state" lands (i.e., lands in a state other than that in which the acquiring tribe's "reservation or trust lands" are located) were opposed on the grounds that out-of-state lands may be historically significant, vital to tribal economic self-sufficiency, or within a designated tribal consolidation area or tribal service area. Specifically, some of

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the commenters suggested that the proposed rule would discriminate against geographically isolated tribes, and should not apply to acquisitions for gaming purposes [due to preemption by the Indian Gaming Regulatory Act (IGRA)].

The exception on out-of-state acquisitions, was largely attacked as being too vague and inflexible. However, one commenter indicated that the exception should be modified to flatly prohibit *any* out-of-state acquisition for gaming purposes. Another commenter objected to the provision which would implicitly require that excepted tribes provide greater justifications for out-of-state acquisitions. Another comment suggested that the rule be expanded to require that such justifications include evaluations of alternative sites.

Response: The provisions which prohibit off-reservation acquisitions of "out-of-state" lands have been deleted. The portion of the proposed rule which referred to administrative costs has been deleted and other minor editorial changes (including the elimination of the term "current or former reservation") have been made in 25 CFR 151.11(b) of this Part.

The rule has not been relaxed for acquisitions of lands within tribal consolidation areas or tribal services areas, unless such acquisitions are legally mandated. The blanket exception for landless tribes has been narrowed to require that any lands to be acquried on behalf of such tribe be located in a state in which the tribe's aboriginal homelands are located. (Guidance in identifying "aboriginal homelands" may be obtained from federal court decisions and Indian Claims Commission proceedings.) It should be noted that the absence of more proximate economic opportunities would provide part of the "greater justification" required by 25 CFR 151.11(b) of this Part.

Comment: Comments about greater justifications as distance increases suggested that such distance should be irrelevant. Commenters questioned whether the use of the phrase "current or former reservation" was meant to distinguish the general definition of "Indian reservation" set forth in 25 CFR 151.2. They also questioned whether administrative costs should be considered, under either the existing 25 CFR 151.10 or the provision in the proposed rule which would suggest that such costs be addressed in tribal justifications.

Response: It should be noted that the BIA has informally required such justifications for acquisitions of distant lands since 1980. Section 20(c) of IGRA expressly restricts the Secretary's authority to acquire land for gaming purposes.

The rule's exception for acquisitions on behalf of tribes which "have lands in one state but are located near the border of another state" has been narrowed (to ensure that the land to be acquired is located near existing *trust* land). The term "near" has been retained (to be defined on a case-by-case basis, in the exercise of the Secretary's discretion).

Section 151.11(b) Acquisitions in Non-Indian Communities

Comment: Commenters objected to the provision which would require that tribes show that trust status is essential to the planned use of off-reservation property which is located "within an urbanized and primarily non-Indian community." Commenters noted that the proposed rule would have the following anomalous results:

(1) Off-reservation acquisitions which would *not* have adverse jurisdictional impacts (i.e., where trust status is not essential to the planned use) would be prohibited, even thought he apparent purpose of the rule was to discourage gaming acquisitions and other acquisitions which *would* have such impacts;

(2) "Low-impact" off-reservation acquisitions within urban communities might be prohibited, even through "high-impact" on-reservation acquisitions within similar communities would be permitted;

(3) Tribal members how have relocated to urban communities would be denied the opportunity to benefit directly from many potential tribal economic development projects; and

(4) The cost of many tribal initiatives and federal housing projects would be driven up due to the relatively higher infrastructure costs associated with on-reservation construction.

Commenters criticized the proposed rule on the ground that the phrase "urbanized and primarily non-Indian community" was vague and over-broad, and one of the commenters expressed concern that the rule could possibly be applied to limit acquisitions in areas which are primarily rural in character.

Another commenter noted that, while trust status might not be essential for a particular use, the economic benefits to be derived from such use (which would also be covered by the proposed rule) could depend on trust status; it was thus suggested that the "essential" requirement be more clearly defined.

Response: 25 CFR 151.11(c) has been revised and the last sentence has been deleted. This change is based on the fact that the new 25 CFR 151.11(b) will already require that tribes whose reservations are not located in urban communities provide a "greater justification" when lands in such communities are to be acquired. [It is also anticipated that "high-impact" acquisitions in urban communities will be limited by the consultation process set forth in 25 CFR 151.11(d) of this Part.] The deletion of the last sentence is also based on the specific criticisms set forth in the comments, i.e., that the proposed rule would be ambiguous, anti-growth, and detrimental to tribes whose reservations are located in urban communities (and other tribes whose justifications would otherwise suffice).

Section 151.11(c) Economic Development Plans

Comment: Commenters suggested that economic development plans should not be needed when land is being acquired for non-commercial purposes.

Response: An introductory clause has been added to exempt non-business acquisitions.

Comment: Commenters also indicated that the proposed rule would undermine tribal sovereignty and self-sufficiency by:

(1) Allowing the BIA to second-guess tribal leaders' business decisions;

(2) Forcing the disclosure of confidential business information; and

(3) Preventing tribes from acquiring investment properties for future development.

Response: It should be noted that the likelihood of success of an off-reservation project has long been considered by the Secretary in deciding whether to accept title to the underlying lands in trust status. [It should also be noted that the feasibility of the proposed use would already be considered pursuant to 25 CFR 151.10(c), which will be incorporated at 25 CFR 151.11(a) of this Part.]

Comment: Another commenter suggested that pre-acquisition planning would necessarily be so speculative as to be of minimal value, and one commenter recommended that the planning requirement be made applicable to only those acquisitions which are opposed by local governing bodies.

Response: 25 CFR 151.11(c) of this Part will merely require that the acquiring tribe has a plan for the *immediate* development or utilization of the property, and that the plan reflects that a prudent buyer would complete the acquisition (given the projected return on investment, incidental benefits, and risks associated with the proposed use). It should be noted that certain confidential business

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information would be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Seciton 151.11(d) Ordinances

Comment: Commenters suggested that the scope of the proposed rule be narrowed to better reflect its apparent purpose (to protect the health, safety, and welfare of the general public); specifically, ti was suggested that the rule be made applicable only to acquisitions for commercial development purposes (or, alternatively, that it be made inapplicable to acquisitions for housing purposes).

Commenters criticized the proposed rule on the grounds that the "comparability" standard is too vague, and the incorporation of *all* local ordinances too broad. Individual commenters specifically asked whether the proposed rule would:

(1) mandate absolute compliance with local ordinances, or merely "a documented effort" to adopt *similar* standards (as suggested in the preamble to the proposed rules);

(2) require that tribes also adopt comparable implementation processes and enforcement capabilities, or modify their adopted ordinances in order to comply with local ordinances; and

(3) allow tribes to adopt higher standards than the relevant local governing bodies, or freely modify adopted ordinances to accommodate changes in land use. Individual commenters suggested that the rule cover only those ordinances which pertain to land use or construction, or those which are identified by local government through consultation.

Response: It is anticipated that the consultation process described in Section 25 CFR 151.11(d) of this Part will result in the negotiation of agreements between tribes and local government, relative to regulatory issues which pertain to public health, safety, and welfare. Where such agreements do not result, and jurisdictional issues remain unresolved, it will be left to the Secretary's discretion to balance the potential benefits to be derived by the acquiring tribe against the potential harm to the general public. (It should also be noted that lands which are acquired with federal funds may be subject to certain federal standards.) The deletion of the proposed 25 CFR 151.11(d) is also based on the criticisms set forth in the comments, i.e., that the proposed rule would be shortsighted, overly cumbersome, and largely unenforceable.

Comment: Commenters expressed concern that the delimiting language in the proposed rule would allow local government to tax off-reservation trust lands and the activities conducted thereon.

Response: It should be noted that the only taxation issues to be *directly* considered in the consultation process are those which relate to a proposed acquisition's potential impacts on real property taxes or special assessments. (Other tax impacts may also be considered, if they will curtail the local government's ability to provide *specific* community services.)

Comment: Commenters indicated that the proposed rule would contradict other federal policies supporting tribal sovereignty and self-determination. It was noted that local ordinances may reflect political considerations wholly unrelated to concerns about public health and safety. It was suggested that the rule flatly provide that the lands to be acquired would be subject to state regulatory jurisdiction. Commenters questioned whether the local ordinances would have to be formally adopted prior to the completion of the acquisition process.

Response: It should be noted that current law suggests that (in the absence of cooperative agreements) tribal, federal, and state/local jurisdiction over off-reservation trust lands will be mixed, depending on the activities and parties to be regulated. The proposed 25 CFR 151.11(d) has been deleted.

Section 151.11(e) Notice and Consultation

The proposed 25 CFR 151.11(e) will be re-designated as 25 CFR 151.11(d).

Comment: The provision which requires that "affected state and local governments" be notified of all proposed off-reservation acquisitions, and given thirty days in which to provide written comments, was criticized as being both too vague in its reference to "affected" governments and too restrictive in its definition of the comment period. Commenters suggested that the proposed rule be clarified to ensure that neighboring jurisdictions would be given an opportunity to comment, and another suggested that the rule specify which state and local offices would be contacted.

Response: Based on the BIA's past experience with its informal consultation procedures, the 30-day response time set forth in the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) has been retained in the new rule.

Relative to these revisions, it should be noted that (1) the narrower definition of the "notified party" will generally mean city or county officials, but will also recognize the wide variation in the designations and functions of "local governments," as well as the fact that many such governments operate as administrative agents for the states (especially in rural settings); (2) the burden of obtaining additional information from state officials, neighboring jurisdictions, or other units of local governments (including special function districts, public authorities, or higher political subdivisions) will rest with the local officials who are directly notified by the BIA; and (3) the BIA notices will identify the land to be acquired and the acquiring tribe (as has been done under the informal notice and comment procedures), as well as the tribe's proposed use (which has generally not been identified in the past).

Comment: Provisions which would require tribes to consult with opposing local governments were objected to on the ground that it would undermine tribal sovereignty by granting state and local governments an effective veto power over tribal acquisitions. Commenters acknowledged that some consultation process would be essential to the tribes' implementation of a government-to-government relationship, others said that such a process would be marred by racial bias and discrimination.

Response: It should be noted that tribal governmental authority over land will generally not attach until the Secretary accepts title to this land in trust status. It should also be noted that the new 25 CFR 151.11(d) will not create a veto power, and that objections which are not made in good faith (or which are clearly biased) will be discounted in the decision-making process.

As for the assertion that the case precedent for the BIA's informal consultation procedures has been overruled, it should be noted that the preamble to the original 25 CFR 120a (now 25 CFR 151) cited the need for a uniform policy as the basis for its issuance; it should also be noted that (while the case cited by the commenter held that local governments are not entitled to formal notification as a matter of due process) the preamble to the proposed rules indicated that the notice requirement set forth in the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) would be based primarily on principles of federalism.

Comment: Other commenters recommended that the comment period be extended, and requested that additional supplemental information be furnished with the notifications. Others suggested, however, that certain proposals would be unduly

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compromised by the release of additional information, and another indicated that the case precedent for the BIA's existing (non-regulatory) notice requirement had been overruled.

Response: 25 CFR 151.11(d) has been revised to (1) *generally* identify the local government to be notified as the "lowest political subdivision having jurisdiction over the land to be acquired"; and (2) codify certain informal procedures (relative to the solicitation of specific information and the presumption of no impact when a response is not received within thirty days) which have been implemented by BIA since 1980.

Comment: Commenters addressed those provisions within the proposed rule which would describe the consultation process. (Where a state or local government formally opposes a proposed acquisition, or "raises concerns" relative thereto, the rule would require that the acquiring tribe "consult with them and attempt to resolve any conflicts including, but not limited to, issues concerning taxation, zoning and jurisdiction"; the proposed rule would also permit the tribe to submit documentation of its discussions with state or local governments, whether the formal consultation process is triggered or not.) It was suggested that the consultation process should be triggered only by good faith objections, rather than mere "concerns," and that the proposed rule be clarified to reflect that a tribe's burden would be met by a mere good faith *attempt* at resolution. Where differences remain unresolved after consultation, it was suggested that state and local governments should be allowed to submit their own documentation of consultation efforts. Another suggested that a formal dispute resolution process be incorporated in the proposed rule, and a (non-BIA) federal official recommended that the BIA assume a mediation role.

It was also recommended that the consultation process be terminated at the end of a specific time period. Other commenters said that the process should be made: (1) applicable to court-ordered acquisitions not otherwise subject to 25 CFR 151.10 or 151.11 of this Part; (2) inapplicable to acquisitions of off-reservation lands which have been designated in land consolidation plans approved pursuant to ILCA; and (3) consistent with provisions in the Federal Land Policy and Management Act (FLPMA) which require state approval.

Response: With respect to the comments which suggested that the rule provide for arbitration or mediation where differences remain unresolved after consultation, it should again be noted that such cases will be left to the Secretary's discretion (to balance the potential benefits to be derived by the acquiring tribe against the potential harm to the general public). With respect to the comments which suggested that the consultation process be made applicable to court-ordered acquisitions, it should again be noted that the introductory paragraph to 25 CFR 151.11 of this Part will *expressly* exempt such "legally mandated" acquisitions. With respect to the comment which suggested that the new rule be made inapplicable to acquisitions of off-reservation lands which have been designated in approved land consolidation plans, it should again be noted such lands will be treated as other off-reservation lands (and thus subject to 25 CFR 151.11) pending the promulgation of further rulemaking. With respect to the comment which suggested that the consultation process be made consistent with the Federal Land Policy and Management Act (FLPMA), it should be noted that Congress has clearly distinguished conveyances of public lands (which are subject to consultation, under FLPMA) for acquisitions on behalf of sovereign tribes (which are not subject to any statutory consultation requirements).

Section 151.11(e) Delegations of Authority and Appealability

Comment: Commenters objected to those provisions within the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) which indicate that the Assistant Secretary-Indian Affairs would issue the above-described notifications of proposed off-reservation acquisitions. It was suggested that the authority to issue such notices and ultimately approve the acquisitions should be delegated to the BIA's agency or area office level, in order to comply with ongoing efforts to reorganize the BIA and decentralize its critical functions. One commenter questioned whether the proposed rule was meant to separate the local BIA staff from the entire acquisition process (where off-reservation lands are to be acquired), and whether the "final decision" to be made by the Assistant Secretary would be appealable. It was suggested that the proposed rule specifically provide that the Assistant Secretary's decision would be appealable to the Interior Board of Indian Appeals.

Response: All references to the "Assistant Secretary—Indian Affairs" in the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) will be changed to "Secretary", as indicated above, and the final sentence in the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) will be deleted.

This change will ensure that all actions will be taken by an authorized official, since 25 CFR 151.2(a) of this Part will define "Secretary" to mean "the Secretary of the Interior or authorized representative." It is anticipated that local BIA officials will continue to notify local governments of proposed off-reservation acquisitions, but that the authority to approve certain acquisitions may continue to be held by the Assistant Secretary—Indian Affairs or the BIA Area Directors. It is also anticipated that the recommendations of the intertribal group which recently reported on the possible reorganization of the BIA will be considered in determining which offices should have the ultimate approval authority.

In response to the comments which questioned whether decisions on off-reservation acquisition requests would be appealable, the final sentence in the proposed 25 CFR 151.11(e) (re-designated 151.11(d)) has been deleted. This change is needed to ensure that such decisions will be appealable if they are made below the Assistant Secretary—Indian Affairs' level. If the authority to make such decisions is held by the Assistant Secretary—Indian Affairs, the decision would be "final" for the Department of the Interior and therefore not appealable.

Section 151.12 Off-reservation Acquisitions for Gaming

In response to the comments received, it has been determined by the Bureau of Indian Affairs that the proposed section 151.12 of this part will not be adopted and a new part will be added to the 25 CFR pertaining to off-reservation acquisitions for gaming.

List of Subjects in 25 CFR Part 151

Indians—lands, Reporting and recordkeeping requirements.

For reasons set out in the preamble, Part 151 of Title 25, Chapter I of the Code of Federal Regulations is amended as set forth below.

PART 151—LAND ACQUISITIONS (NONGAMING)

1. The authority citation for Part 151 is revised to include 25 U.S.C. 2 and 9 as follows:

Authority: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530;

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86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

2. In § 151.2, paragraph (a) is revised to read as follows:

§ 151.2 Definitions.

(a) "Secretary" means the Secretary of the Interior or authorized representative.

* * * * *

Section 151.10 is amended by revising the section heading and introductory text and by adding a new paragraph (h) to read as follows:

§ 151.10 On-reservation acquisitions.

Upon receipt of a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The notice will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. If the state or local government responds within a 30-day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply and/or request that the Secretary issue a decision. The Secretary will consider the following criteria in evaluating requests for the acquisition of land in trust status when the land is located within or contiguous to an Indian reservation, and the acquisition is not mandated:

* * * * *

(h) The extent to which the applicant has provided information that allows 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. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW, Room 4525 MIB, Washington, DC 20240.)

§§ 151.11 through 151.14 [Redesignated as 151.12 through 151.15]

4. Sections 151.11 through 151.14 are redesignated as 151.12 through 151.15, respectively.

5. A new § 151.11 is added to read as follows:

§ 151.11 Off-reservation acquisitions.

The Secretary shall consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the tribe's reservation, and the acquisition is not mandated:

(a) The criteria listed in Section 151.10 (a) through (c) and (e) through (h);

(b) The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section.

(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.

(d) Contact with state and local governments pursuant to 151.10 (e) and (f) shall be completed upon receipt of a tribe's written request to have lands taken in trust, the Secretary shall notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice shall inform the state and local government that each will be given 30 days in which to provide written comment as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

6. Newly designated § 151.15 is revised to read as follows:

§ 151.15 Information collection.

(a) The information collection requirements contained in Sections 151.9; 151.10; 151.11(2)(c), and 151.13 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0100. This information is being collected to acquire land into trust on behalf of the Indian tribes and individuals, and will be used to assist the Secretary in making a determination. Response to this request is required to obtain a benefit.

(b) Public reporting for this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337–SIB, 18th and C Streets, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Project 1076–0100], Office of Management and Budget, Washington, DC 20502.

March 20, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

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