
Monday
July 15, 1991

Federal Register

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

RIN 1076-AC51

Off Reservation Land Acquisitions for Indian Tribes

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: On July 19, 1990, the Secretary of the Interior announced a new policy for the placement of lands in trust status for Indian tribes when such lands are located outside of and noncontiguous to a tribe's existing reservation boundaries. The proposed regulations will modify an existing section within Part 151 (Land Acquisitions) and create a new section which will contain additional criteria and requirements to be used by the Secretary in evaluating requests for the acquisition of tribal lands in trust when such lands are located outside of and noncontiguous to the tribes' existing reservation boundaries.

DATES: Comments must be received on or before September 13, 1991.

ADDRESSES: Written comments should be directed to the Chief, Branch of Technical Services, Division of Real Estate Services, Bureau of Indian Affairs, 1849 C Street, NW., MS-4522 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Alice A. Harwood, Acting 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; Telephone No. (202) 208-4861; or by mail at the address listed above.

SUPPLEMENTARY INFORMATION: This proposed amendment to a rule is published in exercise of the authority delegated by the Secretary of the Interior (Secretary) to the Assistant Secretary—Indian Affairs by 209 DM 8.

On July 19, 1990, the Secretary announced a new policy for the placement of land in trust status for an Indian tribe when such land is located outside of and noncontiguous to the tribe's existing reservation boundaries. The Secretary is vested by statute with broad discretionary authority to accept land in trust status for individual Indians and Indian tribes, within or outside existing Indian reservation boundaries. To assist in making these discretionary decisions, the Secretary promulgated the current land acquisition

regulations (25 CFR part 120a, now 151) and associated Implementation Instructions which set forth a very generalized policy and set of procedures. Since each tribe's circumstances are different, all such acquisition requests have been reviewed on a case by case basis using the following factors found in 25 CFR 151.10: Statutory authority, need, purpose, amount of trust land currently owned, impact of removing land from local government tax rolls, potential land use and zoning conflicts, and the impact on Bureau of Indian Affairs services.

In recent years, the Bureau has witnessed a number of requests by tribes for the acquisition of land, in trust, located outside of and noncontiguous to the reservation, for purposes of economic development projects and, in particular, gaming establishments. These enterprises, which are often located in urbanized areas, are sought by tribes as a stated means of achieving economic and financial self-sufficiency. Such acquisitions have in many cases become highly visible and controversial due to their possible impact on local governments. The loss of regulatory control and removal of the property from the tax rolls are the objections most often voiced by local governments to the acquisition of noncontiguous, off-reservation land in trust status.

The Secretary has announced the aforementioned policy and rule change in order to ensure that requests for the placement of off-reservation, noncontiguous lands in trust will be reviewed in a consistent manner and, if possible, reduce or eliminate adverse impacts on surrounding local governments, while supporting tribal sovereignty and self determination.

The proposed rules, which incorporate the Departmental policy, add new criteria and requirements to be used in evaluating tribal off-reservation and noncontiguous acquisitions, in trust, differentiating between lands acquired for gaming and for nongaming purposes.

Section 151.10 will be modified to clarify that listed criteria presently found in this section pertain only to requests for the acquisition of tribal and individual lands in trust when such lands are located within or contiguous to the tribe's reservation.

Section 151.10(d) will be modified to be all inclusive in terms of gender.

Section 151.10(h) is added to incorporate the Department's concern that proposed trust property be free of hazardous and toxic substances before title is accepted by the Secretary.

The original § 151.11 will be renumbered as § 151.13. The new

§ 151.11 will establish several criteria and requirements, in addition to applicable criteria found in § 151.10, to assist the Secretary in reviewing requests for the acquisition of tribal lands in trust when such lands are located outside of and noncontiguous to the tribe's reservation. The new section provides that the property to be acquired in trust be free of hazardous substances (consistent with existing acquisition policy), and that the land should be located within the same state(s) where other tribal trust land for that tribe currently exists. This requirement will be relaxed for tribes with no existing reservation land base, or tribes which have reservations near state borders. However, the Secretary will give greater weight to the concerns of state and local governments for such "out of state" land acquisition requests. The tribe must provide an economic plan with an in depth analysis of the costs and benefits of such plan. The analysis must demonstrate the economic feasibility of the plan and must list any factor, economic, legal or political, which may jeopardize the development plan or expose tribal assets to risk of loss. As distance from the reservation land base increases, particularly towards or into urbanized areas, the value of reasonable alternative uses of the land must be examined and a relatively stronger justification for trust status will be required. As warranted and relevant to the proposal under consideration, the justification could address such factors as the cost and ability to administer the land to be acquired in trust. A documented effort by the tribe must be made in order to resolve various differences or objections from local governments, as well as to adopt standards similar to local ordinances pertaining to health, safety, building construction and zoning.

The new § 151.12 will also establish several additional criteria and requirements to assist the Secretary in reviewing requests for the acquisition of tribal lands in trust when such lands, located outside of and noncontiguous to the tribe's reservation, are for gaming purposes. Such requests must be in compliance with the Indian Gaming Regulatory Act, Public Law 100-497, and reviewed (when applicable) by the National Gaming Commission and the Secretary of the Interior. The tribes request must also include a feasibility study and an economic analysis of possible non-gaming alternative enterprises which would provide equivalent economic benefits from said property.

The primary author of this document is Alice A. Harwood, Acting Chief, Branch of Technical Services, Division of Real Estate Services.

The policy of the Department is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit their written comments, suggestions, or objections regarding the proposed rule to the location identified in the ADDRESSES section of this preamble.

The information collections requirements contained in §§ 151.09 through 151.15 have been approved by the Office of Management and Budget and assigned approval number 1076-0100. The information collected in this part is being collected to meet the requirements in this regulation and will be used to evaluate off-reservation acquisition requests. In response to this requirement it is necessary to obtain an estimate of its benefit in accordance with 5 U.S.C. 601. Public reporting burden for this requirement is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data and completing and reviewing this submission. Direct comments regarding the burden estimate for any other aspect of this requirement should be directed to Gail Sheridan (telephone number 202-208-2685) at the Bureau of Indian Affairs, Department of the Interior, and Department of the Interior Desk Officer, Office of Management and Budget, room 3108, NEOB Washington, DC 20503.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 because it simply identifies a limited number of criteria and requirements to be considered in the exercise of the Secretary's discretion to place lands in trust for tribes when such lands are located outside of and noncontiguous to Indian reservations. Historically, the annual number of tribal requests to place such lands in trust has been small. In terms of additional expense incurred by the requesting tribes in providing studies and information to the Secretary, the overall effect of this rule will be negligible. The rule will not have any significant effects on the economy or result in increases in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographical regions. The rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

The Department of the Interior has determined that this rule will not have a significant economic impact on a

substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because of the limited applicability as stated above.

This proposed rulemaking is categorically excluded from the National Environmental Policy Act of 1969 because it is of an administrative, financial, legal, technical, and procedural nature, and therefore neither an environmental assessment nor an environmental impact statement is warranted.

List of Subjects in 25 CFR Part 151

Indians—lands, Reporting and recordkeeping requirements.

Accordingly, it is proposed that part 151 of subchapter H of chapter I of the Code of Federal Regulations be amended as follows:

PART 151—LAND ACQUISITIONS

1. The authority citation for part 151 continues to read 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; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d-10, 1486, and 1495, and other authorizing acts.

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

§ 151.10 Factors to be considered in evaluating requests.

The Secretary shall 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:

* * * * *

(h) The property must be free of all hazardous and toxic material as required by 602 DM 2 Land Acquisitions: Hazardous Substances Determinations (for copies write to the Office Management Improvement, 1849 C Street NW., room 2252, Washington, DC 20240).

§§ 151.11-151.14 [Redesignated as §§ 151.13-151.16]

3. Sections 151.11, 151.12, 151.13 and 151.14 will be redesignated as 151.13, 151.14, 151.15, and 151.16, respectively.

4. A new § 151.11 will be added to read as follows:

§ 151.11 Considerations in evaluating requests when the land is located outside of and noncontiguous to an Indian reservation.

The Secretary shall consider the following criteria and requirements in evaluating requests for the acquisition of tribal land in trust status, when the land is located outside of and noncontiguous to the tribe's reservation:

(a) Criteria presented in paragraphs (a) through (c) and (e) through (h) of § 151.10;

(b) The land to be acquired in trust should, in general, be located within the state(s) in which the tribe's reservation or trust lands are currently located. Exception to this requirement may be made for tribes which have lands in one state but are located near the border of another state, or tribes which have no trust lands. In situations where the land to be acquired is in a state in which the tribe is not located, the Secretary will give greater weight to the considerations concerning the effect of the land acquisition on state and local governments. However, all other things being equal, the greater the distance of the land proposed to be taken in trust from the tribe's current or former reservation or trust land, the greater the justification required to take the land in trust. As warranted and relevant to the proposal under consideration, the justification could address such factors as the cost and ability to administer the land to be acquired in trust. In addition, applications for trust land located within an urbanized, and primarily non-Indian community must demonstrate that trust status is essential for the planned use of the property and the economic benefits to be realized from said property.

(c) The tribe shall provide an economic development plan specifying the proposed uses for the trust land with an in-depth analysis of the costs and benefits of such plan. The cost/benefit analysis should contain, at a minimum, start up costs, anticipated operating costs, the anticipated employment opportunities for tribal members, the anticipated net revenue to the tribes and any economic, legal or political factor which could jeopardize the development plan or expose tribal assets to risk of loss.

(d) The tribe will adopt standards and safeguards comparable to all local ordinances including, but not limited to, fire safety, building codes, health codes, and zoning requirements.

(e) Upon receipt of the tribe's formal written request to have the Secretary take lands in trust, the Assistant Secretary—Indian Affairs shall notify

the affected state and local governments of the proposal and shall inform them that they shall be given 30 days to provide written comment to the Assistant Secretary—Indian Affairs. If the acquisition is formally opposed by the state or local governments, or if the state and local governments raise concerns, then the tribe must consult with them and attempt to resolve any conflicts including, but not limited to, issues concerning taxation, zoning and jurisdiction. After the 30 day comment period for state and local governments has expired, and, if necessary, after the tribe has consulted with the state and local governments, the tribe may submit a written request statement describing its discussions with the state and local governments and requesting that the Assistant Secretary—Indian Affairs issue a final decision. The Assistant Secretary—Indian Affairs is then authorized to issue a final decision.

5. A new § 151.12 will be added to read as follows:

§ 151.12 Considerations in evaluating requests when the land is located outside of and noncontiguous to an Indian reservation and will be used for gaming purposes.

The Secretary shall consider the following criteria and requirements in evaluating requests for the acquisition of tribal land in trust status, when the land is located outside of and noncontiguous to the tribe's reservation:

(a) Criteria presented in paragraphs (a) through (c) and (e) through (h) of § 151.10;

(b) Criteria presented in paragraphs (a) through (e) of § 151.11;

(c) The request must be in compliance with section 20 of the Indian Gaming Regulatory Act (Pub. L. 100-497);

(d) When appropriate, the request must be reviewed by the National Indian Gaming Commission;

(e) The request must include an analysis by the tribe showing that it explored the feasibility of all reasonable alternatives (other than gaming) which would provide equivalent economic benefits from said property; and

(f) The request must provide that the tribe, in any gaming activities on the lands to be acquired, will withhold the appropriate portion of individual winnings from gaming activities for Federal taxes pursuant to Federal tax laws and the amount assessed by the National Indian Gaming Commission pursuant to Section 18 of the Indian Gaming Regulatory Act.

6. Newly redesignated Section 151.16 is amended by revising the first sentence to read as follows:

§ 151.16 Information collection.

The information collection requirements contained in §§ 151.9 through 151.15 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1076-0100.

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Dated: July 8, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-16715 Filed 7-12-91; 8:45 am]

BILLING CODE 4310-02-M