

January 4, 2008

Contact: Shane Wolfe (202) 208-6416

Department of the Interior Issues Off-Reservation Gaming Guidance and Sends Letters to Tribes

Department of the Interior Guidance Issued by Assistant Secretary

Assistant Secretary of the Interior for Indian Affairs Carl Artman today issued guidance to Bureau of Indian Affairs (BIA) regional directors and the director of the Office of Indian Gaming to be used in the determination of whether or not to take off-reservation land into trust pursuant to the Indian Reorganization Act of 1934 (IRA) for gaming purposes pursuant to the Indian Gaming Regulatory Act of 1988 (IGRA).

Indian Gaming Regulatory Act of 1988 and Indian Reorganization Act of 1934

- IGRA specifies the criteria that must exist for off-reservation gaming to occur on Indian lands. Indian lands must be trust lands “over which an Indian tribe exercises governmental power.” A separate act, the Indian Reorganization Act of 1934 (IRA), enacted to provide a tribal land base on which tribal communities can flourish, gives the Secretary of the Interior discretionary authority to take off-reservation Indian land into trust. Section 151.11 of 25 C.F.R. Part 151 (Part 151) sets forth the factors the Department will consider when exercising the authority.

“Part 151”

- Part 151 contains two provisions of particular relevance to applications that involve land that is a considerable distance from the reservation. It states that, as the distance between the tribe’s reservation and the land to be acquired increases, the Secretary shall give:

- o 1) greater scrutiny to the tribes justification of anticipated benefits from the acquisition; and
- o 2) greater weight to concerns raised by state and local governments as to the acquisition’s potential impacts on regulatory jurisdiction, real property taxes and special assessments.

- Part 151 does not elaborate further on how or why the Department is to give “greater scrutiny” or “greater weight” to the above factors as the distance increases.

Purpose of Guidance

- The guidance clarifies how to interpret and apply the Part 151 terms ‘greater scrutiny’ and ‘greater weight’ when considering the taking of off-reservation land into trust status for gaming purposes.

- o The guidance directs that a reviewer ask specific questions for those applications with lands that exceed a “commutable distance” from the reservation because of the impact that such a distant acquisition may or may not have on life on the reservation.

o The guidance emphasizes that as the distance from the reservation increases, greater weight should be given to state and local concerns, including jurisdictional problems and potential conflicts of land use and the removal of the land from the tax rolls.

Letters to 22 Tribes

- Pursuant to the guidance, the Department of the Interior today issued letters to 22 separate tribes with pending applications to take land into trust.

o 11 tribes were informed that the Department of the Interior will not exercise its discretionary authority to take respective properties into trust.

o 11 other tribes were informed that their applications lacked complete information and cannot be acted upon by the Office of Indian Gaming.

Off-Reservation Lands

- 14 of the 22 tribes to receive letters had submitted applications to take land into trust that is situated more than 100 miles from the reservations on which tribal members reside, with some more than 1000 miles from the reservation.

Resubmission

- Any application that is denied pursuant to the guidance may be resubmitted with information that may satisfy Part 151.

Courtesy of Victor Rocha