TESTIMONY
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UNITED STATES DEPARTMENT OF THE INTERIOR
TO THE SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
OVERSIGHT HEARING ON
"EXECUTIVE BRANCH STANDARDS FOR LAND-IN-TRUST DECISIONS FOR GAMING PURPOSES"

SEPTEMBER 19, 2013

Good afternoon Chairman Young, Ranking Member Hanabusa, and Members of the Subcommittee. My name is Kevin Washburn, and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to provide the Department's views at this oversight hearing on the Executive Branch's standards for land-in-trust decisions for gaming purposes.

Background and Overview of Federal Policies Relating to Tribal Lands.

As this Committee is well aware, in 1887 Congress passed the ill-fated General Allotment Act. More than a century later, tribes continue to feel the effects of this repudiated and devastating policy that divided tribal lands, allotted parcels to individual tribal members and provided for the public sale of any surplus tribal lands remaining after allotment. The General Allotment Act resulted in the loss of approximately two-thirds of the tribal land base, set in motion the current fractionation problem of individual trust allotments and established the "checkerboard" pattern of ownership on many Indian reservations. In less than 50 years, tribal ownership of tribal lands plummeted from 130 million acres to 49 million acres with tribes losing 80 percent of the value of their lands.

In 1934, Congress took action to reverse the destructive assimilation policies of the General Allotment Act, enacting the Indian Reorganization Act (IRA) to promote tribal self-determination and economic development. The Indian Reorganization Act expressly discontinued the allotment of Indian lands and permanently continued the trust status of those lands retained by tribal members. In order to promote tribal self-determination and economic development, Congress authorized the Secretary to place lands in trust for Indian tribes. This fundamental component remains the primary means by which the Department implements the IRA's "overriding purpose" of ensuring that "Indian tribes would be able to assume a greater degree of self-government, both politically and economically." *Morton v. Mancari*, 417 U.S. 535, 542 (1974). Nearly eighty years later, self-determination and self-governance have proven to be the right federal policy. Lands held in trust for tribes continue to fall woefully short of the 130 million acres owned by tribes in 1887, despite the Administration's efforts to prioritize fee-to-trust acquisitions.

Fee-To-Trust Land Acquisition For Gaming Purposes

The Department's process for acquiring land in trust for tribes is rigorous. Before any land will be placed into trust, regardless of the purposes for which it will be used, the applicant tribe must satisfy the requirements set forth at 25 C.F.R. Part 151 (Part 151). Pursuant to Part 151, the Department considers the following factors before accepting any land into trust: the tribe's need for the land; the purpose for which the land will be used; the statutory authority to accept the land in trust; jurisdictional and land use concerns; the Bureau of Indian Affairs' ability to manage the land; and compliance with all necessary environmental laws. 25 C.F.R. §151.10. Compliance with all necessary environmental laws includes compliance with the National Environmental Policy Act (NEPA). NEPA is used as the vehicle for identifying and addressing the various Federal, tribal, state, and local environmental requirements necessary for accepting the land into trust. NEPA requires preparation of an Environmental Assessment or Environmental Impact Statement, both of which provide opportunities for state, local and public comment on the potential impacts of placing the land into trust. Importantly, the Department also considers the impact that the acquisition will have on the state and local governments with regulatory jurisdiction over the land resulting from removal of the land from the tax rolls, and any jurisdictional problems and potential conflicts of land use.

Off-reservation acquisitions must meet a heightened standard. Along with the requirements for tribal trust acquisitions under § 151.10, the Department considers additional factors under § 151.11 relating to the location of the land relative to state boundaries; the distance of the land from the tribe's reservation; the tribe's business plan; and concerns from state and local governments. The Department gives "greater scrutiny to the tribe's justification of anticipated benefits from the acquisition . . . [and] greater weight to the concerns raised" by the local community the farther the proposed acquisition is from the tribe's reservation. Further, the Department notifies state and local governments having regulatory jurisdiction over the land at issue and requests their comments concerning potential impacts on regulatory jurisdiction, real property taxes and special assessments.

There is a misperception that the Department commonly accepts off-reservation land into trust for gaming purposes. However, the facts show that of the 1,300 trust acquisitions since 2008, fewer than 15 were for gaming purposes and even fewer were for off-reservation gaming purposes. There are presently four (4) applications pending that were submitted by tribes seeking to conduct gaming on lands contiguous to their reservations and nine (9) applications pending for gaming on off-reservation land acquired in trust after the enactment of IGRA.

As you know, section 20 of the Indian Gaming Regulatory Act (IGRA) allows for gaming on off-reservation lands acquired in trust after IGRA's enactment on October 17, 1988 only in very limited instances. There are a few limited and narrow statutory exceptions that operate to provide equal footing for tribes that would otherwise be disadvantaged. These include: the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, restored lands for tribes restored after termination, and lands acquired in settlement of a land claim. In other cases, off-reservation trust lands are eligible for gaming only if the tribe satisfies the rigorous standards set forth in Departmental regulations at Subpart C of 25 C.F.R. Part 292, and generally known as the "Secretarial Determination" or "two-part determination."

These regulations, promulgated by the previous Administration, require a tribe to demonstrate that the proposed off-reservation gaming establishment is in the best interest of the tribe, taking into account a wide range of information, including information regarding:

- projected tribal income and employment;
- projected benefits to the tribe and its members from projected income;
- possible adverse impacts on the tribe and its members and plans of addressing such impacts; and
- distance of the land from the location where the tribe maintains core governmental functions.

The tribe must also demonstrate that the proposed gaming facility will not be detrimental to the surrounding community. The applicant must provide information on the following:

- anticipated impacts on the social structure, infrastructure, services, housing, community character and land use patterns of the surrounding community;
- anticipated impacts on the economic development, income and employment of the surrounding community; and
- if any nearby tribe has a significant historical connection to the land, the impact on that tribe's traditional cultural connection to the land.

Further, the Department consults with state and local officials, including officials of nearby tribes, regarding the application. The Department then evaluates all the information. Even if the Department concludes that the gaming establishment is in the best interest of the applicant tribe and not detrimental to the surrounding community, the Governor of the state retains the ultimate authority to veto any gaming on the parcel. In the 25 years since the passage of IGRA, only eight (8) times has a governor concurred in a positive two-part Secretarial determination made pursuant to section 20(b)(l)(A) of IGRA.

It is important to note that the public, state, and local governments, and other tribal governments, have many opportunities to participate throughout the process. As noted above, prior to deciding whether to place the off-reservation land into trust, the Department seeks comment from state and local governments; the public and local governments may also provide input during the NEPA process. Moreover, before off-reservation land can be found eligible for gaming through the two-part determination process, the Department requests additional comments from nearby tribal, state and local governments. In most cases, Tribes and local governments enter into agreements to address impacts of placing land into trust for gaming, often compensating local governments for impacts.

In sum, the Department's review of land in trust applications – regardless of location or the activity that is proposed for the land to be acquired – is rigorous and considers the concerns of all stakeholders, including the applicant tribe as well as potentially impacted state, local and tribal governments and the public at large.

This concludes my prepared statement. I am happy to answer any questions the Subcommittee may have concerning land into trust applications for gaming.