UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

The State of Michigan,

Plaintiff,

Case No. 1:12-cv-00962-RJJ

v.

Hon. Robert J. Jonker

The Sault Ste. Marie Tribe of Chippewa Indians, et al.

Defendants.

Saginaw Chippewa Indian Tribe of Michigan's
Index of Exhibits in Support of Amicus Curiae Brief in Opposition to Motion to Dismiss

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Exhibit #	Item Description
Exhibit 1	Treaty with the Chippewa, 7 Stat. 528 (1837).
Exhibit 2	Royce Map 29.
Exhibit 3	Memo from Deputy Comm'r of Indian Affairs to Reg. Dirs. and Agency Sup'ts, April 17, 2002.
Exhibit 4	Memo from Asst. Sec'y Artman to Regional Dir's, Jan. 3, 2008.
Exhibit 5	Letter from Asst. Sec'y Echo Hawk to Chairman Norris, July 23, 2010
Exhibit 6	Memo from Asst. Sec'y Echo Hawk to Regional Dir's, June 13, 2011.
Exhibit 7	Excerpt of Department of the Interior, Bureau of Indian Affairs Fee-to-Trust Handbook, Version II, July 13, 2011.
Exhibit 8	Dockets 18-E and 58, Opinion of the Commission, 26 Ind. Cl. Comm. 538 (1971).
Exhibit 9	Docket 18-R, Opinion of the Commission, 32 Ind. Cl. Comm. 303 (1973).
Exhibit 10	Docket 364, Opinion of the Commission, 40 Ind. Cl. Comm. 6 (1977).

INDIAN AFFAIRS: LAWS AND TREATIES

Vol. II, Treaties

Compiled and edited by Charles J. Kappler. Washington : Government Printing Office, 1904.

TREATY WITH THE CHIPPEWA, 1837.

Jan. 14, 1837. | 7 Stat., 528. | Proclamation, July 2, 1838.

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Margin Notes
Cession of land to United States.
Indians may live on certain tracts for five years.
Payment for cession, etc.
Proviso.
Sums set apart by the Indians.
To be expended under direction of the President.
Payment of the moneys set apart for debts, etc.
The United States will advance the amount.
[See art. 3, treaty of Dec. 20, 1837.]
Removal of Indians.
The smith's shop, etc., to be continued, etc.
Proviso.
Payment for two certain reservations.
Annuities by former treaties not affected.
[Abrogated by art. 4, treaty of Dec. 20, 1837.]
Expenses of treaty to be paid by United States.

Articles of a treaty made and concluded at Detroit, in the State of Michigan, on the fourteenth day of January, in the year of our Lord eighteen hundred and thirty-seven, between the United States of America by their commissioner, Henry R. Schoolcraft, and the

Saganaw tribe of the Chippewa nation, by their chiefs and delegates, assembled in council.

ARTICLE 1.

The said tribe cede to the United States the following tracts of land, lying within the boundaries of Michigan; namely; One tract of eight thousand acres, on the river Au Sable. One tract of two thousand acres, on the *Misho-wusk* or Rifle river. One tract of six thousand acres, on the north side of the river *Kawkawling*. One tract of five thousand seven hundred and sixty acres upon Flint river, including the site of Reaums village, and a place called *Kishkawbawee*. One tract of eight thousand acres on the head of the Cass (formerly Huron) river, at the village of Otusson. One island in the Saganaw bay, estimated at one thousand acres, being the island called *Shaingwaukokaug*, on which *Mukokoosh* formerly lived. One tract of two thousand acres at *Nababish*, on the Saganaw river. One tract of one thousand acres, on the east side of the Saganaw river. One tract of six hundred and forty acres, at Great Bend, on Cass river. One tract of two thousand acres at the mouth of Point Augrais river. One tract of one thousand acres, on the Cass river at *Menoquet's* village. One tract of ten thousand acres on the *Shiawassee* river at *Ketchewaundaugumink* or Big Lick. One tract of six thousand acres at the Little Forks, on the

Tetabwasing river. One tract of six thousand acres at the Black-Birds' town, on the *Tetabwasing* river. One tract of forty thousand acres, on the west side of the Saganaw river. The whole containing one hundred and two thousand four hundred acres, be the same more or less.

ARTICLE 2.

The said Indians shall have the right of living upon the tracts at the river Augrais, and Mushowusk or Rifle rivers, on the west side of Saganaw bay, for the term of five years, during which time no white man shall be allowed to settle on said tracts, under a penalty of five hundred dollars, to be recovered, at the suit of the informer; one half to the benefit of said informer, the other half to the benefit of the Indians.

ARTICLE 3.

The United States agree to pay to the said Indians, in consideration of the lands above ceded, the net proceeds of the sales thereof, after deducting the expense of survey and sale, together with the incidental expenses of this treaty. The lands shall be surveyed in the usual manner, and offered for sale, as other public lands, at the land offices of the proper districts, as soon as practicable after the ratification of this treaty. A special account of the sales shall be kept at the Treasury, indicating the receipts from this source, and after deducting therefrom the sums hereinafter set apart, for specified objects, together with all other sums, justly chargeable to this fund, the balance shall be invested, under the direction of the President, in some public stock, and the interest thereof shall be annually paid to the said tribe, in the same manner, and with the same precautions, that annuities are paid. *Provided*, That, if the said Indians shall, at the expiration of twenty years, or at any time thereafter, require the said stock to be sold, and the proceeds thereof distributed among the whole tribe, or applied to the advancement of agriculture, education, or any other useful object, the same may be done, with the consent of the President and Senate.

ARTICLE 4.

The said Indians hereby set apart, out of the fund, created by the sale of their lands, the following sums, namely;
For the purchase of goods and provisions, to be delivered to them, as soon as practicable after the ratification of this treaty, forty thousand dollars.[1]
For distribution among the heads of families, to be paid to them, as an annuity in 1837, ten thousand dollars.[2]
For a special payment to each of the principal chiefs, agreeably to a schedule annexed, five thousand dollars.
For the support of schools, among their children, ten thousand dollars.
For the payment of their just debts, accruing since the treaty of Ghent, and before the signing of this treaty, forty thousand dollars.
For compensating American citizens, upon whose property this tribe committed depredations after the surrender of Detroit in 1812, ten thousand dollars.
For meeting the payment of claims which have been considered and allowed by the chiefs and delegates in council, as per schedule B hereunto annexed, twelve thousand two hundred and forty-three dollars, and seventy-five cents.
For vaccine matter, and the services of a physician, one hundred dollars per annum for five years.
For the purchase of tobacco to be delivered to them, two hundred dollars per annum for five years.
The whole of these sums shall be expended under the direction of the President, and the following principles shall govern the application. The goods and provisions shall be purchased by an agent, or officer of the Government, on contract, and delivered to them, at their expense, as early as practicable, after the ratification of the treaty. The annuity of ten thousand dollars shall be divided among the heads

of families, agreeably to a census, to be taken for the purpose. The school fund shall be put at interest, by investment in stocks, and the interest applied annually to the object, commencing in the year 1840, but the principal shall constitute a permanent fund for twenty years, nor shall the stock be sold, nor the proceeds diverted, at *that* period, without the consent of the President and Senate.
The monies set apart for the liquidation of their debts, and for depredations, committed by them, shall be paid, under such precautions for ascertaining the justice of the indebtedness or claim, as the President may direct, but no payment shall be made, under either head, which is not supported by satisfactory proof, and sanctioned by the Indians: and if any balance of either sum remains, it shall be immediately divided by the disbursing officer, among the Indians. The other items of expenditure, mentioned in this article, shall be disbursed, under the usual regulations of the Indian Department, for insuring faithfulness and accountability in the application of the money.

ARTICLE 5.

The United States will advance the amount set apart in the preceding article for the purchase of goods and provisions, and the payment of debts, and depredations by the Indians, also the several sums stipulated to be paid to the chiefs, and distributed to the Indians as an annuity in 1837, and the amount set apart for claims allowed by the Indians, together with the expense of this negotiation.

ARTICLE 6.

The said tribe agrees to remove from the State of Michigan, as soon as a proper location can be obtained. For this purpose, a deputation shall be sent, to view the country, occupied by their kindred tribes, west of the most westerly point of Lake Superior,[3] and if an arrangement for their future and permanent residence can be made in that quarter, which shall be satisfactory to them, and to the Government, they shall be permitted to form a reunion, with such tribes, and remove thereto. If such arrangement cannot be effected, the United States will afford its influence in obtaining a location for them at such place, west of the Mississippi, and southwest of the Missouri, as the legislation of Congress may indicate. The agency of the exploration, purchase, and removal will be performed by the United States, but the expenses attending the same shall be chargeable to said Indians at the Treasury, to be refunded out of the proceeds of their lands, at such time and in such manner as the Secretary of the Treasury shall deem proper.

ARTICLE 7.

It is agreed, that the smith's shop shall be continued among the Saganaws, together with the aid in agriculture, farming utensils, and cattle, secured to them under the treaty of September 24th 1819, as fixed, in amount, by the act of Congress of May 15th 1820. But the President is authorized to direct the discontinuance of the stated farmers should he deem proper, and the employment of a supervisor or overseer, to be paid out of this fund, who shall procure the services, and make the purchases required, under such instructions as may be issued by the proper department. And the services shall be rendered, and the shop kept, at such place or places, as may be most beneficial to the Indians. It shall be competent for the Government, at the request of the Indians, seasonably made, to furnish them agricultural products, or horses and saddlery, in lieu of said services, whenever the fund will justify it. *Provided*, That the whole annual expense, including the pay of the supervisor, shall not exceed the sum of two thousand dollars, fixed by the act herein above referred to.

ARTICLE 8.

The United States, agree to pay to the said tribe, as one of the parties to the treaty, concluded at Detroit, on the 17th of November 1807, the sum of one thousand dollars, to quiet their claim, to two reservations of land, of two sections each, lying in Oakland county, in the State of Michigan, which were ceded to the Government by the Pottowatomies of St. Joseph's, on the nineteenth of

September 1827. This sum will be paid to the chiefs, who are designated in the schedule referred to, in the fourth article, at the same time and place, that the annuities for the present year are paid to the tribe. And the said tribe hereby relinquish, and acknowledge full satisfaction, for any claim they now have, or have ever possessed, to the reservations aforesaid.

ARTICLE 9.

Nothing in this treaty shall be construed to affect the payment of any annuity, due to the said tribe, by any prior treaty. But the same shall be paid as heretofore.

ARTICLE 10.

Should not the lands herein ceded, be sold, and the avails thereof, vested for said tribe, as provided in the third article, before the thirtieth day of September of the present year, so that the annual interest of such investment may be relied on, to constitute an annuity for said tribe in the year eighteen hundred and thirty-eight, the United States will, during the said year 1838, advance the same amount which is provided for that object in the fourth article of this treaty, which sum shall be refunded to the Treasury by said tribe with interest, out of any fund standing to their credit, at the discretion of the Secretary of the Treasury.

ARTICLE 11.

The usual expenses, attending the formation of this treaty, will be paid by the United States, provided, that the Government may, in the discretion of the President, direct the one moiety thereof to be charged to the Indian fund, created by the third article of this treaty.

In testimony whereof, the said Henry R. Schoolcraft, commissioner on the part of the United States, and the chiefs and delegates of the said tribe, have hereunto set their hands, and affixed their marks, at the city of Detroit in Michigan, the day and year above written.

Henry R. Schoolcraft, Commissioner.

Ogima Keegido,

Naum Gitchigomee,

Osau Wauban,

Penayseewubee,

Washwa,

Peenaysee Weegezhig,

Mauk Esaut,

Peetwayweetum,

Tontagonee,

Kaitchenoding,

Maishkoodagwana,

Naishkayshig,

Wasso,

Pabaumosh,

Monetogaubwee,

Aindunossega,

Ugahbakwum,

Shawun Epenaysee,

Waubredoaince,

Sheegunageezhig,

Etowanaquot,

Mukuday Ghenien,

Mukuckoosh,

Penayshee Weegezhig, the 2d,

Mazinos,

Pondiac,

Nawa Geezhig.

Francis Willett Shearman, secretary.

Henry Whiting, major, U. S. Army.

J. P. Simonton, captain, U. S. Army.

Z. Pitcher, surgeon, U. S. Army.

Henry Connor, subagent.

Robert Stuart.

Jno. Hulbert.

Douglass Houghton.

G. D. Williams.

William Johnston.

Joseph F. Menoy, interpreter.

John A. Drew.

Darius Lawson.

Charles H. Rodd.

(To the Indian names are subjoined marks.)

Schedule of the names of chiefs entitled to payments under the fourth and eighth articles of the foregoing treaty:

The following chiefs, representing the several bands of the tribe of the Saganaws, are entitled to receive the several sums of five hundred and one hundred dollars each, to wit:

1. Ogima Kegido
2. Shawun, Epenaysse
3. Naum Gitchegomee

4. Mauk Esaub
5. Muckuk, Kosh
6. Peteway, Weetum

7. Paypah, Monshee
8. Tontagonee
9. Wasse
10. Wahputo-ains.

HENRY R. SCHOOLCRAFT,
Commissioner.

Schedule B.	
To Wawasso	$400.00
Ke-she-ah-be-no-qua, sister of Wawasso	400.00
Ke-wah-ne-quot	400.00
Peter Provencal	400.00
Leon, or Oge-ma-ge-ke-to	400.00
Moran, or Chemoquemont	200.00
Ke-she-go-qua	200.00
Wetonsaw, son of James Connor	400.00
Odis-pa-be-go-qua and children	800.00
Pen-a-see	400.00
Ozhe-me-ega	400.00
Bourissa's wife, at River au Sable	800.00
Nah-bwa-quo-una	400.00
Muttoway-bun-gee	400.00
Chonne	400.00
Mah-in-gun	800.00
Ma-conse	800.00
J. P. Simonton	800.00
Wabishkindib, or Henry Conner	3,243.75
Peepegauaince	200.00

Ogima Keegido,

Shawun Epenaysee,

Naum Gitchegomee,

Mauk Esaub,

Muckuk, Kosh,

Peteway, Weetum,

Pabaumoshee,

Tontagonee,

Wasse,

Waputo ains.

Signed in presence of—

Henry Whiting, major, U. S. Army.

E. Backus, U. S. Army.

J. P. Simonton, captain, U. S. Army.

Levi Cook, mayor of the city of Detroit.

Jno. Hulbert.

Francis Willett Shearman, Secretary.

(To the Indian names are subjoined marks.)

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[1] Abrogated by art 4 of treaty of Dec. 20, 1837.

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[2] Abrogated by art 4 of treaty of Dec. 20 1837.

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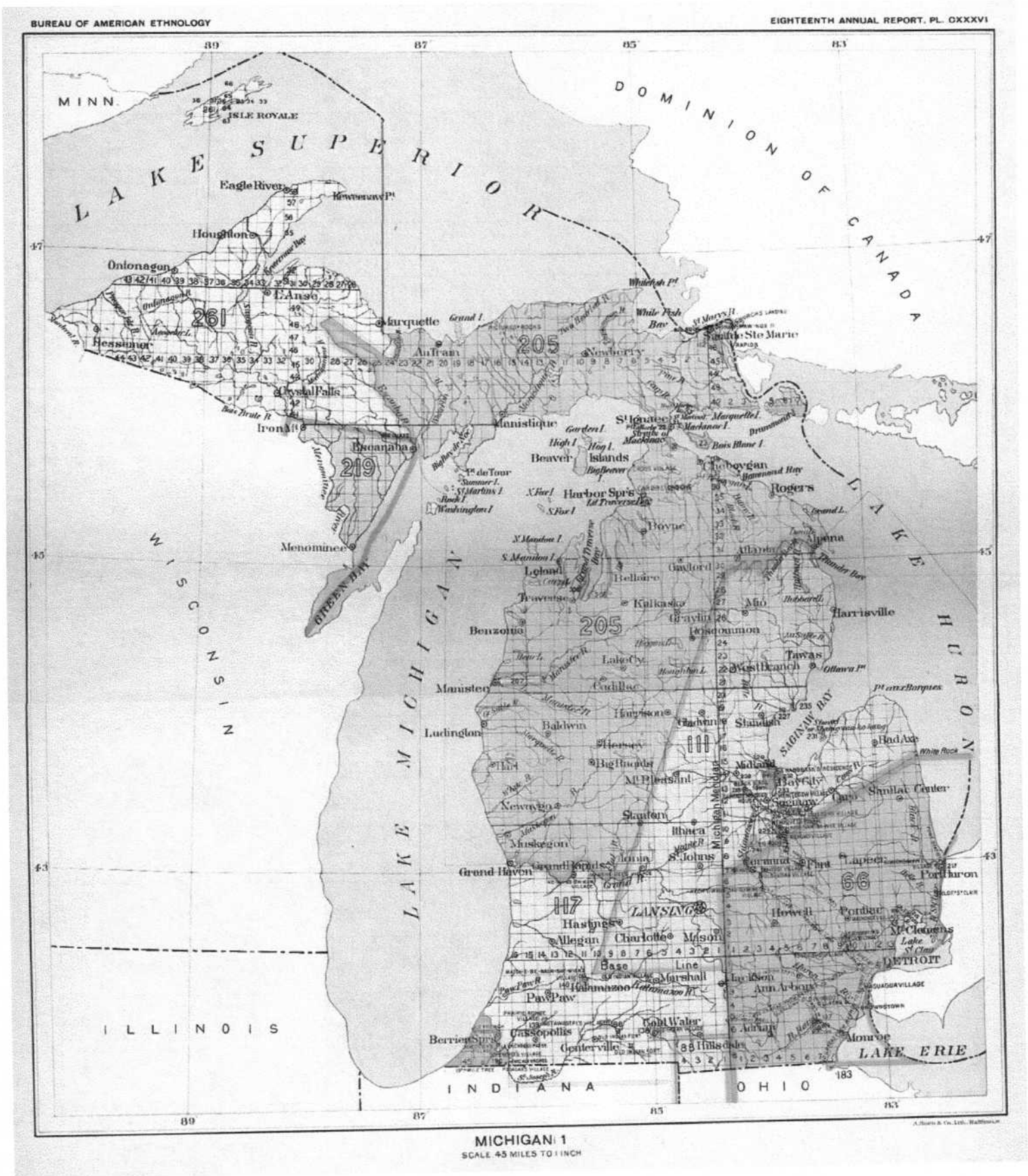
[3] See art. 2, treaty of Dec. 20, 1837.

Exhibit 1



MICHIGAN 1
SCALE 45 MILES TO 1 INCH

Exhibit 2

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20245

IN REPLY REFER TO:

APR 17 2002

Memorandum

To: Regional Directors and Agency Superintendents

Through: Deputy Assistant Secretary - Indian Affairs

From: Deputy Commissioner of Indian Affairs /s/ Sharon Blackwell

Subject: Processing of Mandatory Lands Into Trust Applications

This memorandum addresses how BIA realty staff should process mandatory land into trust applications. A determination that a statute is mandatory is made on a case by case basis. No clear definition of a mandatory statute currently exists. However, in order for a statute to be considered mandatory, the statutory language must include some restrictions on the Secretary's discretion in addition to the word "shall." The Regional/Field Solicitor's Office should issue a written determination that a statute is mandatory before the Bureau processes the application as a mandatory acquisition.

Once a determination is made that a statute is mandatory, certain provisions of the Part 151 regulations do not apply to the processing of the application. Most notably, the notice and comment provision of 25 CFR 151.10, where the agency notifies the local governments of the Tribe's application is not applicable and compliance with the National Environmental Policy Act (NEPA) 42 U.S.C. § 4321 *et. seq.*, is not required.

In processing a mandatory trust acquisition, you must still comply with the remaining relevant portions of the Part 151 regulations. The first requirement is that the Tribe submit a request in writing that the land be placed in trust. The Tribe's resolution requesting that the land be taken into trust should cite the specific statutory authority mandating the acquisition. Even though NEPA compliance is not required, the BIA must conduct a contaminant survey on the lands to be acquired to ensure that no hazardous materials exist. 602 DM 2. The Bureau must also examine the title insurance to ensure compliance with the Department of Justice's Title Standards. 25 CFR 151.13. Even though an acquisition is mandated, the Department of Justice requires that lands to be acquired by the United States be free from liens and encumbrances.

After the contaminant survey and title review are completed, the Regional Director or delegated official should notify the Tribe of the approval of its request and that notice must contain the appeal

Route	Initial	Date
Regional Director	AAA	4/22/02
Deputy Regional Director		

Exhibit 3

provisions of Part 2 of the regulations. After the Part 2 appeal period has run (30 days) and if no appeal is filed, the Regional Director or delegated official must publish notice in the local newspaper of the decision to take the land into trust, pursuant to 151.12(b). That notice must state that a final agency determination has been made to take the land into trust and that the Secretary shall acquire title to the land no sooner than 30 days after the notice is published. 25 CFR 151.12(b). (*Note*: If the Assistant Secretary - Indian Affairs issues the decision to take land into trust, that decision is final for the Department (unless provided for otherwise in the decision), and no Part 2 appeal process is provided. After the AS-IA's decision is issued, the notice of final agency action is published in the FEDERAL REGISTER pursuant to 25 CFR 151.12(b)).

Any questions concerning the processing of mandatory applications should be directed to the Office of Trust Responsibilities, Central Office, (202) 208-5831.

Exhibit 3

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

Memorandum

To: Regional Directors, Bureau of Indian Affairs
George Skibine, Office of Indian Gaming

From: Assistant Secretary Carl Artman

Date: January 3, 2008

Subject: Guidance on taking off-reservation land into trust for gaming purposes

The Department currently has pending 30 applications from Indian tribes to take off-reservation land into trust for gaming purposes as part of the 25 U.S.C. § 2719(b)(1)(A) two-part determination. Many of the applications involve land that is a considerable distance from the reservation of the applicant tribe; for example, one involves land that is 1400 miles from the tribe's reservation. Processing these applications is time-consuming and resource-intensive in an area that is constrained by a large backlog and limited human resources.

The decision whether to take land into trust, either on-reservation or off-reservation, is discretionary with the Secretary. Section 151.11 of 25 C.F.R. Part 151 sets forth the factors the Department will consider when exercising this discretionary authority with respect to "tribal requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the tribe's reservation." Section 151.11(b) 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:

1) greater scrutiny to the tribe's justification of anticipated benefits from the acquisition; and

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, however, does not further elaborate on how or why the Department is to give "greater scrutiny" and "greater weight" to these factors as the distance increases. The purpose of this guidance is to clarify how those terms are to be interpreted and applied,

Exhibit 4

particularly when considering the taking of off-reservation land into trust status for gaming purposes.

Core Principles

As background to the specific guidance that follows, it is important to restate the core principles that underlie the Part 151 regulations and that should inform the Department's interpretation of, and decisions under, those regulations. The Part 151 regulations implement the trust land acquisition authority given to the Secretary by the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. § 465. The IRA was primarily intended to redress the effects of the discredited policy of allotment, which had sought to divide up the tribal land base among individual Indians and non-Indians, and to destroy tribal governments and tribal identity. To assist in restoring the tribal land base, the IRA gives the Secretary the authority to: 1) return "to tribal ownership the remaining surplus lands of any Indian reservation" that had been opened to sale or disposal under the public land laws; 2) consolidate Indian ownership of land holdings within reservations by acquiring and exchanging interests of both Indians and non-Indians; and 3) acquire, in his discretion, interests in lands "within or without existing reservations". The IRA contains also provisions strengthening tribal governments and facilitating their operation. The policy of the IRA, which was just the opposite of allotment, is to provide a tribal land base on which tribal communities, governed by tribal governments, could exist and flourish. Consistent with the policy, the Secretary has typically exercised discretion regarding trust land acquisition authority to take lands into trust that are within, or in close proximity to, existing reservations.

The IRA has nothing directly to do with Indian gaming. The Indian Gaming Regulatory Act of 1988 (IGRA), 25 U.S.C. § 2701 et seq., adopted more than 50 years after the IRA, sets the parameters of Indian gaming. One requirement is that if gaming is to occur on off-reservation lands those lands must be trust lands "over which an Indian tribe exercises governmental power." The authority to acquire trust lands, however, is derived from the IRA; no trust land acquisition authority is granted to the Secretary by IGRA. The Department has taken the position that although IGRA was intended to promote the economic development of tribes by facilitating Indian gaming operations, it was not intended to encourage the establishment of Indian gaming facilities far from existing reservations. Whether land should be taken into trust far from existing reservations for gaming purposes is a decision that must be made pursuant to the Secretary's IRA authority.

Implementation of Guidance

This guidance should be implemented as follows:

1. All pending applications or those received in the future should be initially reviewed in accordance with this guidance. The initial review should precede any effort (if it is not already underway) to comply with the NEPA requirements of section 151.10(h).

2. If the initial review reveals that the application fails to address, or does not adequately address, the issues identified in this guidance, the application should be denied and the tribe promptly informed. This denial does not preclude the tribe from applying for future off-reservation acquisitions for gaming or other purposes. However, those future applications will be subject to these same guidelines.

3. A greater scrutiny of the justification of the anticipated benefits and the giving greater weight to the local concerns must still be given to all off-reservation land into trust applications, as required in 25 C.F.R. § 151.11(b). This memorandum does not diminish that responsibility, but only provides guidance for those applications that exceed a daily commutable distance from the reservation.

Greater Scrutiny of Anticipated Benefits

The guidance in this section applies to all applications, pending or yet to be received, that involve requests to take land into trust that is off-reservation. Reviewers must, in accordance with the regulations at 25 C.F.R. 151.11(b), "give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition" as the distance between the acquisition and the tribe's reservation increases. The reviewer should apply this greater scrutiny as long as the requested acquisition is off-reservation regardless of the mileage between the tribe's reservation and proposed acquisition. If the proposed acquisition exceeds a commutable distance from the reservation the reviewer, at a minimum, should answer the questions listed below to help determine the benefits to the tribe. A commutable distance is considered to be the distance a reservation resident could reasonably commute on a regular basis to work at a tribal gaming facility located off-reservation

As noted above, section 151.11(b) requires the Secretary to "give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition" of trust land "as the distance between the tribe's reservation and the land to be acquired increases." The reason for this requirement is that, as a general principle, the farther the economic enterprise - in this case, a gaming facility - is from the reservation, the greater the potential for significant negative consequences on reservation life.

Tribes typically view off-reservation gaming facilities as providing two economic benefits to the tribe. The first is the income stream from the gaming facility, which can be used to fund tribal services, develop tribal infrastructure, and provide per capita payments to tribal members, and thus can have a positive effect on reservation life. Obviously, the income stream from a gaming facility is not likely to decrease as the distance from the reservation increases. In fact, off-reservation sites are often selected for gaming facilities because they provide better markets for gaming and potentially greater income streams than sites on or close to the reservation.

The second benefit of off-reservation gaming facilities is the opportunity for job training and employment of tribal members. With respect to this benefit, the location of the

gaming facility can have significant negative effects on reservation life that potentially worsen as the distance increases. If the gaming facility is not within a commutable distance of the reservation, tribal members who are residents of the reservation will either: a) not be able to take advantage of the job opportunities if they desire to remain on the reservation; or b) be forced to move away from the reservation to take advantage of the job opportunity.

In either case, the negative impacts on reservation life could be considerable. In the first case, the operation of the gaming facility would not directly improve the employment rate of tribal members living on the reservation. High on-reservation unemployment rates, with their attendant social ills, are already a serious problem on many reservations. A gaming operation on or close to the reservation allows the tribe to alleviate this situation by using their gaming facility as a conduit for job training and employment programs for tribal members. Provision of employment opportunities to reservation residents promotes a strong tribal government and tribal community. Employment of tribal members is an important benefit of tribal economic enterprises.

In the second case, the existence of the off-reservation facility would require or encourage reservation residents to leave the reservation for an extended period to take advantage of the job opportunities created by the tribal gaming facility. The departure of a significant number of reservation residents and their families could have serious and far-reaching implications for the remaining tribal community and its continuity as a community. While the financial benefits of the proposed gaming facility might create revenues for the applicant tribe and may mitigate some potential negative impacts, no application to take land into trust beyond a commutable distance from the reservation should be granted unless it carefully and comprehensively analyzes the potential negative impacts on reservation life and clearly demonstrates why these are outweighed by the financial benefits of tribal ownership in a distant gaming facility.

As stated above, some of the issues that need to be addressed in the application if the land is to be taken into trust is off-reservation and for economic development are:

> What is the unemployment rate on the reservation? How will it be affected by the operation of the gaming facility?
>
> How many tribal members (with their dependents) are likely to leave the reservation to seek employment at the gaming facility? How will their departure affect the quality of reservation life?
>
> How will the relocation of reservation residents affect their long-term identification with the tribe and the eligibility of their children and descendants for tribal membership?
>
> What are the specifically identified on-reservation benefits from the proposed gaming facility? Will any of the revenue be used to create on-reservation job opportunities?

As long as it remains the policy of the Federal government to support and encourage growth of reservations governed by tribal governments, these are important questions that must be addressed before decisions about off-reservation trust land acquisitions are made. The Department should not use its IRA authority to acquire land in trust in such a way as to defeat or hinder the purpose of the IRA. It should be noted that tribes are free to pursue a wide variety of off-reservation business enterprises and initiatives without the approval or supervision of the Department. It is only when the enterprises involve the taking of land into trust, as is required for off-reservation Indian gaming facilities, that the Department must exercise its IRA authority.

Greater Weight

Section 151.11(b) also requires the Secretary to give "greater weight" than he might otherwise to the concerns of state and local governments. Under the regulations, state and local governments are to be immediately notified of a tribe's application to take land into trust, and are to file their comments in writing no later than 30 days after receiving notice. The reviewer must give a greater weight to the concerns of the state and local governments no matter what the distance is between the tribe's reservation and the proposed off-reservation acquisition. This is the second part of the two part review required by section 151.11(b).

The regulations identify two sets of state and local concerns that need to be given "greater weight:" 1) jurisdictional problems and potential conflicts of land use; and 2) the removal of the land from the tax rolls. The reason for this requirement of giving "greater weight" is two-fold. First, the farther from the reservation the proposed trust acquisition is, the more the transfer of Indian jurisdiction to that parcel of land is likely to disrupt established governmental patterns. The Department has considerable experience with the problems posed by checkerboard patterns of jurisdiction. Distant local governments are less likely to have experience dealing with and accommodating tribal governments with their unique governmental and regulatory authorities. Second, the farther from the reservation the land acquisition is, the more difficult it will be for the tribal government to efficiently project and exercise its governmental and regulatory powers.

With respect to jurisdictional issues, the application should include copies of any intergovernmental agreements negotiated between the tribe and the state and local governments, or an explanation as to why no such agreements exist. Failure to achieve such agreements should weigh heavily against the approval of the application.

With respect to land use issues, the application should include a comprehensive analysis as to whether the proposed gaming facility is compatible with the current zoning and land use requirements of the state and local governments, and with the uses being made of adjacent or contiguous land, and whether such uses would be negatively impacted by the traffic, noise, and development associated with or generated by the proposed gaming facility. Incompatible uses might consist of adjacent or contiguous land zoned or used for: National Parks, National Monuments, Federally designated conservation areas,

National Fish and Wildlife Refuges, day care centers, schools, churches, or residential developments. If the application does not contain such an analysis, it should be denied.

Conclusion

The Office of Indian Gaming will review the current applications. If an application is denied subsequent to this review, the applicant tribe will be notified immediately. Tribes receiving a denial subsequent to this review may resubmit the application with information that will satisfy the regulations. Regional directors shall use this clarification to guide their recommendations or determinations on future applications to take off-reservation land into trust.