



March 26, 2009

Ken Salazar
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Re: Tohono O'odham Nation Fee-to-Trust Application for 134.88 Acres of Land in Glendale, Arizona for a Casino

Dear Secretary Salazar:

The Tohono O'odham Nation has filed an application requesting that the Department of Interior take land into trust for the Nation's benefit that lies within the exterior boundaries of the City of Glendale. The Nation asserts that it is "mandatory" that the land be placed into trust under the Gila Bend Indian Reservation Lands Replacement Act of 1986 (the "Gila Bend Act"). Thus, the Nation argues, the Department's duly adopted regulations, including those which address the affect of this application on the local governmental entities, including the county, city and school districts, are irrelevant and cannot be considered in the creation of this reservation for gaming purposes.

Glendale, however, is significantly impacted by this application; it is in the interests of its citizens and the citizens of the State of Arizona that Glendale's concerns be heard. This land that is the subject of the Nation's application lies completely within the corporate limits of the City. While remaining under the jurisdiction of Maricopa County, it is surrounded by the City of Glendale and is within the City's Municipal Planning Area. The Gila Bend Act requires land to be outside of a city or town. The language and clear intent of this requirement is for the land taken into trust under the Act to not unduly affect local governments. The Nation's proposal, therefore, fails to meet that requirement of the Act.

More specifically, the Gila Bend Act states:

(d) The Secretary, at the request of the Tribe, shall hold in trust for the benefit of the Tribe any land which the Tribe acquires pursuant to subsection (c) which meets the requirements of this subsection . . . *[L]and does not meet the requirements of this subsection if it is . . . within the corporate limits of any city or town.*

Pub. L. No. 99-503, § 6, 100 Stat. 1798 (1986) (emphasis added).

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The Nation says that the land at issue is located "near the City of Glendale." In reality, the land is completely encircled by land annexed by the City, thereby making it within the City's corporate limits, as that term is used in the Act. Reading the phrase "land . . . within the corporate limits of any city or town" to not include parcels which are completely encircled by a city or town but which have not been annexed requires ignoring the plain meaning of the words. Webster's Third New International Dictionary defines "within" as "on the inside or on the inner side; inside the bounds of a place or region." Even though the land at issue constitutes an unincorporated county island, it is still inside the bounds of the City of Glendale consistent with the holding by the Arizona Supreme Court in *Flagstaff Vending Co. v City of Flagstaff*, 578 P.2d 985, 987 (Ariz. 1978), wherein the Court defined the City of Flagstaff's corporate limits to mean the city's "exterior boundary."

By ordinance enacted in 1977, long before passage of the Gila Bend Act, Glendale assured that the land was within its statutorily required Municipal Planning Area. It was been included in all of the regional water and wastewater plans that have been developed over decades. No municipality other than Glendale has the statutory right to annex or provide water or wastewater services to the land at issue. It should also be noted that a small piece of the land the Nation seeks to have placed into trust was annexed by the City many years ago. The land at issue is thus within Glendale's corporate limits, it does not meet the requirements of § 6 of the Gila Bend Act, and taking it into trust is not mandatory.

Moreover, the plain intent of the Gila Bend Act fails to support the Nation's application. The Act authorizes the Secretary of Interior to take up to 9,880 acres of replacement lands into trust. This is a large amount of land which was to replace flooded agricultural land in southern Arizona. The Act was never intended to provide the Nation the ability to create reservations made up of relatively small parcels of land within municipalities. And, certainly it was not intended to provide land for casino developments, the Indian Gaming Regulatory Act having not yet even been enacted. Congress deliberately chose to make clear that the property was to be rural in nature, and not in urban areas.

Had Congress intended the Gila Bend Act to require the mandatory acquisition in trust of an unincorporated parcel of property within the corporate limits of a city, it would have made that clear. For example, it could have required that any "unincorporated area" within the listed counties be taken into trust, regardless of location. Congress has used the term "unincorporated" in similar pieces of legislation. *See e.g.*, the MAINE INDIAN CLAIMS SETTLEMENT FUND, 25 U.S.C. § 1724. In this case, however, Congress deliberately and specifically excluded lands "within . . . corporate limits" from being taken into trust pursuant to the Gila Bend Act. Moreover, had Congress contemplated the taking of lands in urban areas pursuant to the Act, it would have provided the local planning jurisdiction some viable role and means to have its interests and concerns addressed. For instance, in the TORRES-MARTINEZ DESERT CAHUILLA INDIANS CLAIMS SETTLEMENT Congress authorizes the Secretary to acquire trust lands of up to 640 acres within Riverside County, California. 25 U.S.C. § 1778d (2000). But, if these lands are located "within [the] incorporated boundaries" of a city and a majority of the city's governing body opposes the land acquisition, then the trust application will fail.

While the Nation's application raises a myriad of other important legal and policy issues, I believe it is necessary to bring your attention to the corporate limit requirement immediately. This issue is dispositive to the extent that the Nation's application rest on the Gila Bend Act. The Nation, of course, has the right to apply for trust status of its land, which would evoke the discretionary factors of 25 C.F.R. Part 151 as well as the Bureau of Indian Affairs Checklist for Gaming Acquisitions.

With respect to the other legal and policy issues involved in this matter, it is imperative regardless of the form of the Nation's application, that the City be given the opportunity to be heard. For that reason, I want to take this opportunity to outline some of the initial questions the Nation's application raises.

First, by way of brief background, the Nation filed its fee-to-trust application on January 28, 2009. As the application states, it concerns 134.88 acres that the Nation purchased in 2003. It bought this land in the name of a Delaware corporate entity with a mailing address that was a property manager in Seattle, Washington. Obviously, the intent was to hide the true ownership. Only after announcing its plans to create a reservation for gaming purposes in January of this year was the property transferred to Tohono O'odham Nation.

The land is located at a well-developed intersection of two primary roadways in an urban and developing area of Glendale. Across the street from the application site, a large, growing public high school was completed in 2005. It has a current enrollment of approximately 1,800 children. It is bounded by a residential apartment complex and hundreds of large, new single-family residences that have been developed within half a mile of the application site over the last five years.

The Nation's announcement of its application two months ago came as a complete shock to Glendale and its citizens. Glendale has no contact with, or relation to, the Nation. Glendale does not exist in an area encompassing any of the Nation's aboriginal lands. In fact, the closest of the Nation's current trust lands to the City are more than 60 miles away in Gila Bend, Arizona. The Nation's governmental seat is in the Sells, Arizona, over 180 miles from the site. In between, are lands held in trust for the Gila River, Fort McDowell, Salt River-Pima Maricopa, and Ak-Chin tribal governments.

Additionally, the Nation's current casino operations are over 100 miles away in Tucson, Arizona. Glendale, in fact, has no casinos, racetracks, or other gaming facilities. The absence of an Indian gaming facility from the City is in keeping with the assertions made during passage of the state-wide ballot measure approving a gaming compact with the Nation that there would be no more casinos located in Arizona's cities. Nation's proposed Glendale casino is directly contrary to that assertion; although it is obvious that plans for this facility were made before that measure was passed. Despite that fact, the Nation never engaged in any dialogue with the City, School District, County or State of Arizona regarding its plan, even though converting this urban land into a reservation raises very significant development issues; such as property access, street design and construction, water and sewer service, signage, building height (which is critical given the existence of Glendale's municipal airport in the immediate area) or any other matter of concern to the City or other governmental entities.

While regulatory control over development is at issue, there are also many other questions that must be addressed, although the Nation would have the Department ignore all of these. Some of these questions include:

- Was Interior's waiver in 2000 of the Gila Bend Act requirements that one of the Nation's parcels of replacement land be located contiguous to San Lucy Village and that the replacement lands consist of no more than three areas, which in turn allows the Glendale land at issue to be considered under the Act, properly granted?
- Given that the Nation can put additional lands into trust under the Gila Bend Act pursuant to Interior's waiver, will the precedent set by the Nation's proposed project allow additional urban casinos, including in or near Glendale?
- Given that a discretionary waiver from Interior was required before the land at issue in Glendale could even be considered under the Gila Bend Act, is this a discretionary taking of land by Interior requiring NEPA review and consultation with the City?
- Should Interior's waiver of the Gila Bend Act requirements be revised or rescinded?

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- Is NEPA review necessary given the requirement to have an appropriate water management plan for lands taken into trust pursuant to the Gila Bend Act, especially given the proposed project's location in an urban area next to residences and a high school?
- Is it possible to conduct gambling on the land at issue pursuant to the Indian Gaming Regulatory Act?

Obviously, this is a matter of great importance to the City and its citizens. We hope that the Department of the Interior will share the City's desire for a complete and careful consideration of the Nation's proposal. Most important, we believe that the City must have a voice in the process because the creation of a reservation on this site has a very significant effect on the City and its citizens.

Sincerely,



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