



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240



APR 05 2008

Memorandum

To: Jeanette Hanna
Director, Eastern Oklahoma Region

From: Carl J. Artman
Assistant Secretary – Indian Affairs

Subject: United Keetoowah Band – Land Into Trust

I have reviewed your decision of April 7, 2006 to deny the United Keetoowah Band's (UKB) application to take a 76-acre parcel in trust under 25 C.F.R. Part 151. In your decision, you indicated that you denied the application because of jurisdictional conflicts that will arise between the UKB and the Cherokee Nation of Oklahoma (CNO), the inability of the Bureau of Indian Affairs (BIA) to discharge additional responsibilities resulting from the acquisition of the land in trust status, and the need for additional environmental documentation. I have asked the Associate Solicitor, Indian Affairs, to review your decision and provide me with his comments, a copy of which I am attaching.

Please take the following actions with regard to this application:

1. Request a remand from the Interior Board of Indian Appeals (IBIA) to reconsider your decision.
2. Inform the UKB of any additional environmental evaluation that needs to occur in order for the application to be approved. You denied the UKB's application because "additional environmental examination" was needed but you did not identify just what examination still needs to be done to satisfy the Part 151 NEPA requirements.
3. Further substantiate the basis of your decisions or arrive at a different conclusion based on the evidence before you.
 - a. The UKB charter, approved by the Secretary in 1950, contemplates the UKB holding land for tribal purposes. See Section 3(j)(power to prevent any disposition, lease or encumbrance of land), Section 3(k)(power to make assignments of land belonging the Band), and Section 4 (imposing limitations on the authority of the corporation over Band lands). The position in your April 7, 2006 decision vitiates those charter provisions authorizing the Band to have tribal land. If you resubmit a decision denying the land into trust for the UKB, explain why the charter, and the secretarial intent expressed therein, does not apply to this particular tract of land or this situation.

b. Another stated ground for your denial is that the BIA is not equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status. The proposed trust land is a small parcel of land with community program buildings and a dance ground on it. It would not appear that supervision needs to be extensive and you state in your decision the UKB, Cherokee County, and the CNO already provide law enforcement services within the proposed acquisition area. It does not appear from the record there is sufficient evidence to substantiate a denial on these grounds. If you have additional evidence to substantiate the need for additional supervision, and if you again decline to accept the land into trust for the UKB, please make the additional evidence part of the record.

4. Lastly, your decision and the brief before the IBIA defending your decision did not take a position on whether section 151.8 requires consent of the CNO in order to take land into trust for the UKB or whether the 1999 appropriations rider providing that the Department of the Interior (Department) shall not take land into trust without consulting with the CNO controls. I am advised by the Associate Solicitor that the 1999 appropriations rider controls and that while the Department must consult with the CNO before acquiring land in trust, it is not required to get the consent of the CNO. It would appear that the Department has fulfilled its responsibility to consult with the CNO by giving the CNO an opportunity to comment on the UKB's Part 151 application.

I would expect you to file within 30 days a request with the Interior Board of Indian Appeals to remand to you for reconsideration your decision not to take the 76-acre parcel in trust. I would expect you to complete your reconsideration of your earlier decision within 90 days from today. Thank you for your efforts.

Please let me know if you have any questions and keep me advised of your planned actions.

Attachment