

## WHERE INDIAN TRIBES MAY CONDUCT GAMING OPERATIONS UNDER THE TERMS OF THE INDIAN GAMING REGULATORY ACT

An Indian tribe may conduct gaming under the Indian Gaming Regulatory Act if: (1) the tribe is a federally recognized Indian tribe and possesses powers of self-government; (2) the tribe exercises jurisdiction over lands held in trust for the tribe; (3) the tribe has adopted a gaming ordinance that has been approved by the chairman of the National Indian Gaming Commission; and (4) for class III gaming, the tribe and the state have negotiated a tribal-state compact that is in effect or the Secretary of the Interior has approved class III gaming procedures under federal regulatory authority.

The Secretary is empowered to acquire lands in trust for Indian tribes and proclaim the acquired lands a reservation under Department of the Interior regulations. However, if the land to be acquired in trust is to be used for gaming, IGRA imposes additional restrictions and requirements.

IGRA generally prohibits gaming on Indian lands that are acquired in trust after October 17, 1988 (the date of enactment of IGRA), but IGRA includes several exceptions to this general prohibition. The exceptions include lands acquired in trust as part of:

1. The initial reservation of an Indian tribe acknowledged by the Secretary under the federal acknowledgment process.
2. Settlement of a land claim;
3. Restoration of lands for a landless tribe restored to federal recognition;
4. For those tribes that already have some land in trust, but want a more economically viable location for gaming, there is one other exception, known as the **“two-part determination.”** Newly acquired trust lands could be taken into trust if the Secretary, after consultation with the Indian tribe, other nearby tribes, and appropriate state and local officials, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members and would not be detrimental to the surrounding community. For this exception to be applicable, the governor must concur in the Secretary’s determination.

### Process

Any application to acquire land in trust for gaming must include the following:

- A citation to the statutory authority authorizing the trust acquisition and a legal survey of the property to be acquired in trust.

- An Environmental Impact Statement that complies with the National Environmental Policy Act.
- A tribal resolution from the governing body of the tribe authorizing the trust acquisition request and a statement that the land is needed to facilitate tribal economic development.
- An identification of any jurisdictional problems or land use conflicts.

#### Additional Requirements for a Two-Part Determination

For any proposed acquisition under the Two-Part Determination process, additional information is required.

For the BIA to determine whether the acquisition of land for gaming purposes would be in the best interest of the tribe (Determination 1), the application must include:

- Financial projections for the gaming enterprise and the tribe covering the term of any management agreement, but not less than three years, prepared in accordance with generally accepted accounting principles.
- Projected tribal employment, job training and career development and projected benefits to the tribe from tourism. Projected benefits to the tribe and its members from the proposed uses of the increased tribal income.
- Projected benefits to the relationship between the tribe and the surrounding community.
- Possible adverse impacts on the tribe and plans for responding to those impacts.

For the BIA to determine whether the gaming establishment will (or will not) be detrimental to the surrounding community (Determination 2), the tribe is required to address the following:

- The environmental impacts and plans for mitigating adverse impacts.
- Reasonably anticipated impact on the social structure, infrastructure, services, housing, community character and land use patterns of the surrounding community.
- Impact on the economic development, income and employment of the community.

- Costs of impacts to the community and sources of revenue to accommodate them.
- Proposed programs, if any, for compulsive gamblers and the source of funds.

### BIA Process

The BIA regional office has the responsibility for processing the trust application and preparing findings of fact and recommendations to the Secretary. This includes consulting with state and local officials and nearby Indian tribes on whether the proposed casino would be in the best interest of the tribe and not be detrimental to the surrounding community. Recently revised regulations require the BIA to consult with all units of local government within 10 miles of the site and with all Indian tribes within 50 miles of the site. The farther the land proposed for trust status is from the tribe's original lands, the greater the weight given to local concerns.

After analyzing the documentation, the BIA prepares findings of fact to support its recommendation on the two determinations, which is analyzed by the BIA's Indian Gaming Management Staff in Washington, D.C. If the IGMS determines that the trust application should be approved, it prepares a decision document for the Secretary, which is reviewed by the Solicitor's Office before being presented to the Secretary.

If the Secretary determines that the gaming establishment would be in the best interest of the tribe and would not be detrimental to the surrounding community, the Secretary sends a letter to the governor of the state seeking concurrence with the two-part determination. Only if the governor concurs will the Secretary acquire the land in trust.