



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 22 2021

The Honorable Brenda Meade
Chairperson, Coquille Indian Tribe
3050 Tremont Street
North Bend, Oregon 97459

Dear Chairperson Meade:

I write to inform you that I have withdrawn and remanded the Department of the Interior's (Department) denial of the Coquille Indian Tribe's (Tribe) application to transfer land into trust in Medford, Oregon, dated May 27, 2020 (2020 Denial).¹ The 2020 Denial resulted in the Department's cancellation of the environmental review process, which deprived the decision maker of important information critical to making a final determination, and pre-empted the Tribe's effort to negotiate inter-governmental agreements with local authorities.

The Tribe's application has been remanded to the Bureau of Indian Affairs (BIA) to complete the environmental review process under the National Environmental Policy Act (NEPA) and for consideration as may be necessary and appropriate once the review complete.²

Background

In 2012, the Tribe submitted an application to the BIA requesting that the Secretary of the Interior (Secretary) transfer into trust approximately 2.42 acres of land located in the City of Medford, Jackson County, Oregon, for gaming purposes.³

The Secretary's general authority for acquiring land in trust is found in Section 5 of the Indian Reorganization Act (IRA).⁴ The Department's land acquisition regulations at 25 C.F.R. Part 151 set forth procedures for implementing Section 5 of the IRA. Section 151.10(h) requires the Department to consider "[t]he extent to which the applicant has provided information that allows the Secretary to comply with" NEPA. The BIA initiated the preparation of an environmental impact statement (EIS)

¹ Letter, Principal Deputy Assistant Secretary – Indian Affairs to Chairperson Meade (May 27, 2020) (hereinafter, 2020 Denial).

² The Department has the inherent authority and broad discretion to reconsider the 2020 Denial under the purview of the Administrative Procedures Act, 5 U.S.C. § 701 *et. seq.* Further, in the absence of a specific statutory limitation, an administrative agency has the inherent authority to reconsider its decisions. *See Macktal v. Chao*, 286 F.3d 822, 825-826, (5th Cir. 2002); *King v. Norton*, 160 F. Supp. 2d 755 (E.D. Mich. 2001), discussing the Bureau of Indian Affairs authority to reconsider an earlier decision; *see also* 43 C.F.R. § 4.5 (the power of the Secretary of the Interior includes "[t]he authority to review any decision of any employee or employees of the Department ... or to direct any such employee or employees to reconsider a decision.").

³ Letter from Brenda Meade, Chairperson, Coquille Indian Tribe, to Stan Speaks, Regional Director, Northwest Region, Bureau of Indian Affairs (Nov. 2, 2012).

⁴ 25 U.S.C. § 5108.

pursuant to NEPA to analyze the potential environmental consequences of the proposed acquisition. In January 2015,⁵ the BIA published in the Federal Register a Notice of Intent to prepare an EIS and initiated scoping in February 2015.

In late 2019, the BIA was completing its review of the draft EIS but had not yet issued it for public review and comment. The Principal Deputy Assistant Secretary – Indian Affairs issued the 2020 Denial before the BIA issued the draft EIS. On September 3, 2020, the Assistant Secretary – Indian Affairs issued a Notice of Cancellation of the EIS announcing that the environmental review process had been discontinued.⁶ On February 5, 2021, the Tribe requested the withdrawal of the 2020 Denial.⁷

Discussion

The Principal Deputy Assistant Secretary – Indian Affairs issued the 2020 Denial before completion of the NEPA process even though a draft EIS was pending at the time under BIA’s internal review. The Department need not analyze every factor of 25 C.F.R. Part 151, including the NEPA analysis required by Section 151.10(h), to render a decision on a tribe’s fee-to-trust application,⁸ and the Department need not reach a particular conclusion or exhaustively analyze each factor.⁹

In this case, however, the environmental review process should have been allowed to proceed prior to issuing the 2020 Denial. The BIA had completed significant environmental analysis in the years between publication of the Notice of Intent and preparation of the draft EIS – all at considerable cost to the Tribe. The 2020 Denial was based partly on the determination that potential jurisdictional problems from the proposed acquisition outweighed its anticipated benefits to the Tribe.¹⁰ The analysis of jurisdictional problems and potential conflicts of land use with proposed mitigation measures is, however, the type of information that would have been addressed through the NEPA process.

In addition, the Tribe has been working with local authorities for many years to negotiate inter-governmental agreements to address jurisdictional questions. As the 2020 Denial noted, the Tribe was relying on the NEPA process to identify and detail impacts to be addressed and mitigated through negotiation of inter-governmental agreements.¹¹

After reviewing the 2020 Denial, and the history of this application, it is apparent that the NEPA process should have been allowed to proceed prior to issuing a final decision.

⁵ Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Coquille Indian Tribe Fee-to-Trust and Casino Project, City of Medford, Jackson County, Oregon, 80 Fed. Reg. 2120 (Jan. 15, 2015).

⁶ See Notice of Cancellation of Environmental Impact Statement for Proposed Coquille Indian Tribe Fee-To-Trust and Gaming Facility Project, City of Medford, Jackson County, Oregon, 85 Fed. Reg. 55026, (Sept. 3, 2020).

⁷ See Letter from Brenda Meade, Chairperson, Coquille Indian Tribe, to Scott de la Vega, Acting Secretary, U.S. Department of the Interior (Feb. 5, 2021).

⁸ See *Johnnie Louis McAlpine v. Muskogee Area Director, Bureau of Indian Affairs*, 19 IBIA 2, 3 (1990).

⁹ See *City of Moses Lake, Washington v. Northwest Regional Director, Bureau of Indian Affairs*, 60 IBIA 11 (2015).

¹⁰ 2020 Denial at 5, *citing* 25 C.F.R. § 151.10(f) (The Secretary will consider the following criteria: “[j]urisdictional problems and potential conflicts of land use” which may arise from the proposed acquisition.)

¹¹ 2020 Denial at 6.

Withdrawal Determination

The decision to truncate the NEPA process deprived the Department of critical information and analysis that should have informed its final decision. Failure to complete the EIS after reaching such an advanced stage of the environmental review process deprived the decision maker of information relevant to the Tribe's application and hindered the Tribe's ability to negotiate inter-governmental agreements with local authorities to address their jurisdictional concerns.

To ensure comprehensive review and complete consideration of the Tribe's application, I have withdrawn the 2020 Denial and remanded the Tribe's application to the BIA for further processing consistent with the Department's regulations, the BIA's procedures, and this decision. Because the 2020 Denial has been withdrawn and remanded there is no final agency action from which an appeal can be taken.

Sincerely,



Bryan Newland

Assistant Secretary – Indian Affairs

cc: Regional Director, Northwest Region
Director, Bureau of Indian Affairs
Director, Office of Indian Gaming