On May 29, 2013, the Department of the Interior (DOI) issued a Proposed Rule to clarify the process by which applications to acquire land in trust are approved or denied under 25 C.F.R. Part 151. A copy of the Proposed Rule is available at the following link:


In response to the Supreme Court’s decision in Match-E-Be-Nab-She-Wish Band of Pottawatomi Indians v. Patchak, the DOI is proposing to remove the 30-day waiting period for implementing a final determination to take land into trust. This 30-day waiting period was added to the regulations in 1996 in response to federal court rulings that a separate statute, the Quiet Title Act (QTA), barred judicial review of the agency’s decision under the Administrative Procedure Act (APA) once title was acquired by the Secretary. To ensure that interested parties have an opportunity to seek judicial review following the agency’s final determination, the current rule requires the DOI to wait a minimum of 30 days before actually taking land into trust.

However, the Supreme Court recently held that the QTA does not bar judicial review of the agency’s final determination under the APA unless the aggrieved party asserts an ownership interest in the property. Since parties can now seek judicial review of a final determination even after the land has been taken into trust and title has transferred, the 30-day waiting period is no longer necessary for judicial review purposes. The DOI is thus proposing to remove this procedural requirement from the regulation.

The DOI is also proposing to distinguish the processes for judicial review based on whether the land is being taken into trust by the Assistant Secretary - Indian Affairs (AS-IA) or by a Bureau of Indian Affairs (BIA) official. The Proposed Rule clarifies that decisions issued by the AS-IA, which generally relate to gaming and other complex acquisitions, will immediately be deemed a “final agency action” until administrative remedies have been exhausted or until the time for filing a notice of appeal has expired and no appeal has been filed. This means that interested parties will be required to exhaust all administrative remedies within the DOI before seeking judicial review of a BIA decision, and that the BIA official will be precluded from taking land into trust until either after the 30-day administrative appeal period has expired or until an appeal with the Interior Board of Indian Appeals has been finalized. We note that BIA trust acquisition decisions are generally for non-gaming purposes and make up most of the agency’s land-into-trust decisions.

Finally, the Proposed Rule revises the notice requirements following an agency decision to take land into trust. Under the current regulation, the Secretary is required to publish its decision to take land into trust in either the Federal Register or newspaper. The Proposed Rule now specifies the media by which notice must be published by requiring AS-IA decisions to be published in the Federal Register and BIA decisions to be published in a newspaper of general circulation serving the affected area. The Proposed Rule also adds a new requirement for BIA officials to provide written notice of its decision to known interested parties and state and local governments with jurisdiction over the land to be acquired. This notice requirement does not apply to decisions issued by the AS-IA.

Overall, the changes in this Proposed Rule are favorable and will help provide greater certainty to the trust acquisition process under 25 C.F.R. Part 151. Written comments are due July 29, 2013, and may be submitted by any one of the following methods:


Email: consultation@bia.gov. The number 1076-AF15 must be included in the subject line of the message.


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