

LEXISNEXIS' CODE OF FEDERAL REGULATIONS
Copyright (c) 2009, by Matthew Bender & Company, a member
of the LexisNexis Group. All rights reserved.

*** THIS SECTION IS CURRENT THROUGH THE JUNE 4, 2009 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 25 -- INDIANS
CHAPTER I -- BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR
SUBCHAPTER N -- ECONOMIC ENTERPRISES

PART 292 -- GAMING ON TRUST LANDS ACQUIRED AFTER OCTOBER 17, 1988

SUBPART A -- GENERAL PROVISIONS

§ 292.1 What is the purpose of this part?

The Indian Gaming Regulatory Act of 1988 (IGRA) contains several exceptions under which class II or class III gaming may occur on lands acquired by the United States in trust for an Indian tribe after October 17, 1988, if other applicable requirements of IGRA are met. This part contains procedures that the Department of the Interior will use to determine whether these exceptions apply.

§ 292.2 How are key terms defined in this part?

For purposes of this part, all terms have the same meaning as set forth in the definitional section of IGRA, [25 U.S.C. 2703](#). In addition, the following terms have the meanings given in this section.

Appropriate State and local officials means the Governor of the State and local government officials within a 25-mile radius of the proposed gaming establishment.

BIA means Bureau of Indian Affairs.

Contiguous means two parcels of land having a common boundary notwithstanding the existence of non-navigable waters or a public road or right-of-way and includes parcels that touch at a point.

Former reservation means lands in Oklahoma that are within the exterior boundaries of the last reservation that was established by treaty, Executive Order, or Secretarial Order for an Oklahoma tribe.

IGRA means the Indian Gaming Regulatory Act of 1988, as amended and codified at [25 U.S.C. 2701-2721](#).

Indian tribe or tribe means any Indian tribe, band, nation, or other organized group or community of Indians that is recognized by the Secretary as having a government-to-government relationship with the United States and is eligible for the special programs and services provided by the United States to Indians because of their status as Indians, as evidenced by inclusion of the tribe on the list of recognized tribes published by the Secretary under [25 U.S.C. 479a-1](#).

Land claim means any claim by a tribe concerning the impairment of title or other real property interest or loss of possession that:

(1) Arises under the United States Constitution, Federal common law, Federal statute or treaty;

(2) Is in conflict with the right, or title or other real property interest claimed by an individual or entity (private, public, or governmental); and

(3) Either accrued on or before October 17, 1988, or involves lands held in trust or restricted fee for the tribe prior to October 17, 1988.

Legislative termination means Federal legislation that specifically terminates or prohibits the government-to-government relationship with an Indian tribe or that otherwise specifically denies the tribe, or its members, access to or eligibility for government services.

Nearby Indian tribe means an Indian tribe with tribal Indian lands located within a 25-mile radius of the location of the proposed gaming establishment, or, if the tribe has no trust lands, within a 25-mile radius of its government headquarters.

Newly acquired lands means land that has been taken, or will be taken, in trust for the benefit of an Indian tribe by the United States after October 17, 1988.

Office of Indian Gaming means the office within the Office of the Assistant Secretary-Indian Affairs, within the Department of the Interior.

Regional Director means the official in charge of the BIA Regional Office responsible for BIA activities within the geographical area where the proposed gaming establishment is to be located.

Reservation means:

(1) Land set aside by the United States by final ratified treaty, agreement, Executive Order, Proclamation, Secretarial Order or Federal statute for the tribe, notwithstanding the issuance of any patent;

(2) Land of Indian colonies and rancherias (including rancherias restored by judicial action) set aside by the United States for the permanent settlement of the Indians as its homeland;

(3) Land acquired by the United States to reorganize adult Indians pursuant to statute; or

(4) Land acquired by a tribe through a grant from a sovereign, including pueblo lands, which is subject to a Federal restriction against alienation.

Secretarial Determination means a two-part determination that a gaming establishment on newly acquired lands:

- (1) Would be in the best interest of the Indian tribe and its members; and
- (2) Would not be detrimental to the surrounding community.

Secretary means the Secretary of the Interior or authorized representative.

Significant historical connection means the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land.

Surrounding community means local governments and nearby Indian tribes located within a 25-mile radius of the site of the proposed gaming establishment. A local government or nearby Indian tribe located beyond the 25-mile radius may petition for consultation if it can establish that its governmental functions, infrastructure or services will be directly, immediately and significantly impacted by the proposed gaming establishment.

SUBPART B -- EXCEPTIONS TO PROHIBITIONS ON GAMING ON NEWLY ACQUIRED LANDS

§ 292.3 How does a tribe seek an opinion on whether its newly acquired lands meet, or will meet, one of the exceptions in this subpart?

- (a) If the newly acquired lands are already in trust and the request does not concern whether a specific area of land is a "reservation," the tribe may submit a request for an opinion to either the National Indian Gaming Commission or the Office of Indian Gaming.
- (b) If the tribe seeks to game on newly acquired lands that require a land-into-trust application or the request concerns whether a specific area of land is a "reservation," the tribe must submit a request for an opinion to the Office of Indian Gaming.

§ 292.4 What criteria must newly acquired lands meet under the exceptions regarding tribes with and without a reservation?

For gaming to be allowed on newly acquired lands under the exceptions in [25 U.S.C. 2719\(a\)](#) of IGRA, the land must meet the location requirements in either paragraph (a) or paragraph (b) of this section.

- (a) If the tribe had a reservation on October 17, 1988, the lands must be located within or contiguous to the boundaries of the reservation.
- (b) If the tribe had no reservation on October 17, 1988, the lands must be either:

- (1) Located in Oklahoma and within the boundaries of the tribe's former reservation or contiguous to other land held in trust or restricted status for the tribe in Oklahoma; or
- (2) Located in a State other than Oklahoma and within the tribe's last recognized reservation within the State or States within which the tribe is presently located, as evidenced by the tribe's governmental presence and tribal population.

§ 292.5 When can gaming occur on newly acquired lands under a settlement of a land claim?

This section contains criteria for meeting the requirements of [25 U.S.C. 2719\(b\)\(1\)\(B\)\(i\)](#), known as the "settlement of a land claim" exception. Gaming may occur on newly acquired lands if the land at issue is either:

- (a) Acquired under a settlement of a land claim that resolves or extinguishes with finality the tribe's land claim in whole or in part, thereby resulting in the alienation or loss of possession of some or all of the lands claimed by the tribe, in legislation enacted by Congress; or
- (b) Acquired under a settlement of a land claim that:
 - (1) Is executed by the parties, which includes the United States, returns to the tribe all or part of the land claimed by the tribe, and resolves or extinguishes with finality the claims regarding the returned land; or
 - (2) Is not executed by the United States, but is entered as a final order by a court of competent jurisdiction or is an enforceable agreement that in either case predates October 17, 1988 and resolves or extinguishes with finality the land claim at issue.

§ 292.6 What must be demonstrated to meet the "initial reservation" exception?

This section contains criteria for meeting the requirements of [25 U.S.C. 2719\(b\)\(1\)\(B\)\(ii\)](#), known as the "initial reservation" exception. Gaming may occur on newly acquired lands under this exception only when all of the following conditions in this section are met:

- (a) The tribe has been acknowledged (federally recognized) through the administrative process under part 83 of this chapter.
- (b) The tribe has no gaming facility on newly acquired lands under the restored land exception of these regulations.
- (c) The land has been proclaimed to be a reservation under [25 U.S.C. 467](#) and is the first proclaimed reservation of the tribe following acknowledgment.
- (d) If a tribe does not have a proclaimed reservation on the effective date of these regulations, to be proclaimed an initial reservation under this exception, the tribe must demonstrate the land is located within the State or States where the Indian tribe is now located, as evidenced by the tribe's governmental presence and tribal population, and within an area where the tribe has significant historical connections and one or more of the following modern connections to the land:
 - (1) The land is near where a significant number of tribal members reside; or
 - (2) The land is within a 25-mile radius of the tribe's headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-

into-trust; or

(3) The tribe can demonstrate other factors that establish the tribe's current connection to the land.

§ 292.7 What must be demonstrated to meet the "restored lands" exception?

This section contains criteria for meeting the requirements of [25 U.S.C. 2719\(b\)\(1\)\(B\)\(iii\)](#), known as the "restored lands" exception. Gaming may occur on newly acquired lands under this exception only when all of the following conditions in this section are met:

- (a) The tribe at one time was federally recognized, as evidenced by its meeting the criteria in § 292.8;
- (b) The tribe at some later time lost its government-to-government relationship by one of the means specified in § 292.9;
- (c) At a time after the tribe lost its government-to-government relationship, the tribe was restored to Federal recognition by one of the means specified in § 292.10; and
- (d) The newly acquired lands meet the criteria of "restored lands" in § 292.11.

§ 292.8 How does a tribe qualify as having been federally recognized?

For a tribe to qualify as having been at one time federally recognized for purposes of § 292.7, one of the following must be true:

- (a) The United States at one time entered into treaty negotiations with the tribe;
- (b) The Department determined that the tribe could organize under the Indian Reorganization Act or the Oklahoma Indian Welfare Act;
- (c) Congress enacted legislation specific to, or naming, the tribe indicating that a government-to-government relationship existed;
- (d) The United States at one time acquired land for the tribe's benefit; or
- (e) Some other evidence demonstrates the existence of a government-to-government relationship between the tribe and the United States.

§ 292.9 How does a tribe show that it lost its government-to-government relationship?

For a tribe to qualify as having lost its government-to-government relationship for purposes of § 292.7, it must show that its government-to-government relationship was terminated by one of the following means:

- (a) Legislative termination;
- (b) Consistent historical written documentation from the Federal Government effectively stating that it no longer recognized a government-to-government relationship with the tribe or its members or taking action to end the government-to-government relationship; or
- (c) Congressional restoration legislation that recognizes the existence of the previous government-to-government relationship.

§ 292.10 How does a tribe qualify as having been restored to Federal recognition?

For a tribe to qualify as having been restored to Federal recognition for purposes of § 292.7, the tribe must show at least one of the following:

- (a) Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe (required for tribes terminated by Congressional action);
- (b) Recognition through the administrative Federal Acknowledgment Process under § 83.8 of this chapter; or
- (c) A Federal court determination in which the United States is a party or court-approved settlement agreement entered into by the United States.

§ 292.11 What are "restored lands"?

For newly acquired lands to qualify as "restored lands" for purposes of § 292.7, the tribe acquiring the lands must meet the requirements of paragraph (a), (b), or (c) of this section.

- (a) If the tribe was restored by a Congressional enactment of legislation recognizing, acknowledging, affirming, reaffirming, or restoring the government-to-government relationship between the United States and the tribe, the tribe must show that either:
 - (1) The legislation requires or authorizes the Secretary to take land into trust for the benefit of the tribe within a specific geographic area and the lands are within the specific geographic area; or
 - (2) If the legislation does not provide a specific geographic area for the restoration of lands, the tribe must meet the requirements of § 292.12.
- (b) If the tribe is acknowledged under § 83.8 of this chapter, it must show that it:
 - (1) Meets the requirements of § 292.12; and
 - (2) Does not already have an initial reservation proclaimed after October 17, 1988.
- (c) If the tribe was restored by a Federal court determination in which the United States is a party or by a court-approved settlement agreement entered into by the United States, it must meet the requirements of § 292.12.

§ 292.12 How does a tribe establish connections to newly acquired lands for the purposes of the "restored lands" exception?

To establish a connection to the newly acquired lands for purposes of § 292.11, the tribe must meet the criteria in this section.

- (a) The newly acquired lands must be located within the State or States where the tribe is now located, as evidenced by the tribe's governmental presence and tribal population, and the tribe must demonstrate one or more of the following modern connections to the land:
 - (1) The land is within reasonable commuting distance of the tribe's existing reservation;
 - (2) If the tribe has no reservation, the land is near where a significant number of tribal members reside;
 - (3) The land is within a 25-mile radius of the tribe's headquarters or other tribal governmental

facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust; or

(4) Other factors demonstrate the tribe's current connection to the land.

(b) The tribe must demonstrate a significant historical connection to the land.

(c) The tribe must demonstrate a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration. To demonstrate this connection, the tribe must be able to show that either:

(1) The land is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition; or

(2) The tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands.

SUBPART C -- SECRETARIAL DETERMINATION AND GOVERNOR'S CONCURRENCE

§ 292.13 When can a tribe conduct gaming activities on newly acquired lands that do not qualify under one of the exceptions in subpart B of this part?

A tribe may conduct gaming on newly acquired lands that do not meet the criteria in subpart B of this part only after all of the following occur:

(a) The tribe asks the Secretary in writing to make a Secretarial Determination that a gaming establishment on land subject to this part is in the best interest of the tribe and its members and not detrimental to the surrounding community;

(b) The Secretary consults with the tribe and appropriate State and local officials, including officials of other nearby Indian tribes;

(c) The Secretary makes a determination that a gaming establishment on newly acquired lands would be in the best interest of the tribe and its members and would not be detrimental to the surrounding community; and

(d) The Governor of the State in which the gaming establishment is located concurs in the Secretary's Determination ([25 U.S.C. 2719\(b\)\(1\)\(A\)](#)).

§ 292.14 Where must a tribe file an application for a Secretarial Determination?

A tribe must file its application for a Secretarial Determination with the Regional Director of the BIA Regional Office having responsibility over the land where the gaming establishment is to be located.

§ 292.15 May a tribe apply for a Secretarial Determination for lands not yet held in trust?

Yes. A tribe can apply for a Secretarial Determination under § 292.13 for land not yet held in trust at the same time that it applies under part 151 of this chapter to have the land taken into trust.

§ 292.16 What must an application for a Secretarial Determination contain?

A tribe's application requesting a Secretarial Determination under § 292.13 must include the following information:

- (a) The full name, address, and telephone number of the tribe submitting the application;
- (b) A description of the location of the land, including a legal description supported by a survey or other document;
- (c) Proof of identity of present ownership and title status of the land;
- (d) Distance of the land from the tribe's reservation or trust lands, if any, and tribal government headquarters;
- (e) Information required by § 292.17 to assist the Secretary in determining whether the proposed gaming establishment will be in the best interest of the tribe and its members;
- (f) Information required by § 292.18 to assist the Secretary in determining whether the proposed gaming establishment will not be detrimental to the surrounding community;
- (g) The authorizing resolution from the tribe submitting the application;
- (h) The tribe's gaming ordinance or resolution approved by the National Indian Gaming Commission in accordance with [25 U.S.C. 2710](#), if any;
- (i) The tribe's organic documents, if any;
- (j) The tribe's class III gaming compact with the State where the gaming establishment is to be located, if one has been negotiated;
- (k) If the tribe has not negotiated a class III gaming compact with the State where the gaming establishment is to be located, the tribe's proposed scope of gaming, including the size of the proposed gaming establishment; and
- (l) A copy of the existing or proposed management contract required to be approved by the National Indian Gaming Commission under [25 U.S.C. 2711](#) and part 533 of this title, if any.

§ 292.17 How must an application describe the benefits and impacts of the proposed gaming establishment to the tribe and its members?

To satisfy the requirements of § 292.16(e), an application must contain:

- (a) Projections of class II and class III gaming income statements, balance sheets, fixed assets accounting, and cash flow statements for the gaming entity and the tribe;
- (b) Projected tribal employment, job training, and career development;
- (c) Projected benefits to the tribe and its members from tourism;
- (d) Projected benefits to the tribe and its members from the proposed uses of the increased tribal income;
- (e) Projected benefits to the relationship between the tribe and non-Indian communities;
- (f) Possible adverse impacts on the tribe and its members and plans for addressing those impacts;
- (g) Distance of the land from the location where the tribe maintains core governmental functions;
- (h) Evidence that the tribe owns the land in fee or holds an option to acquire the land at the sole discretion of the tribe, or holds other contractual rights to cause the lands to be transferred from a third party to the tribe or directly to the United States;
- (i) Evidence of significant historical connections, if any, to the land; and

(j) Any other information that may provide a basis for a Secretarial Determination that the gaming establishment would be in the best interest of the tribe and its members, including copies of any:

- (1) Consulting agreements relating to the proposed gaming establishment;
- (2) Financial and loan agreements relating to the proposed gaming establishment; and
- (3) Other agreements relative to the purchase, acquisition, construction, or financing of the proposed gaming establishment, or the acquisition of the land where the gaming establishment will be located.

§ 292.18 What information must an application contain on detrimental impacts to the surrounding community?

To satisfy the requirements of § 292.16(f), an application must contain the following information on detrimental impacts of the proposed gaming establishment:

- (a) Information regarding environmental impacts and plans for mitigating adverse impacts, including an Environmental Assessment (EA), an Environmental Impact Statement (EIS), or other information required by the National Environmental Policy Act (NEPA);
- (b) Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community;
- (c) Anticipated impacts on the economic development, income, and employment of the surrounding community;
- (d) Anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them;
- (e) Anticipated cost, if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment;
- (f) If a nearby Indian tribe has a significant historical connection to the land, then the impact on that tribe's traditional cultural connection to the land; and
- (g) Any other information that may provide a basis for a Secretarial Determination whether the proposed gaming establishment would or would not be detrimental to the surrounding community, including memoranda of understanding and inter-governmental agreements with affected local governments.

§ 292.19 How will the Regional Director conduct the consultation process?

(a) The Regional Director will send a letter that meets the requirements in § 292.20 and that solicits comments within a 60-day period from:

- (1) Appropriate State and local officials; and
 - (2) Officials of nearby Indian tribes.
- (b) Upon written request, the Regional Director may extend the 60-day comment period for an additional 30 days.
- (c) After the close of the consultation period, the Regional Director must:
- (1) Provide a copy of all comments received during the consultation process to the applicant tribe; and

- (2) Allow the tribe to address or resolve any issues raised in the comments.
- (d) The applicant tribe must submit written responses, if any, to the Regional Director within 60 days of receipt of the consultation comments.
- (e) On written request from the applicant tribe, the Regional Director may extend the 60-day comment period in paragraph (d) of this section for an additional 30 days.

§ 292.20 What information must the consultation letter include?

- (a) The consultation letter required by § 292.19(a) must:
 - (1) Describe or show the location of the proposed gaming establishment;
 - (2) Provide information on the proposed scope of gaming; and
 - (3) Include other information that may be relevant to a specific proposal, such as the size of the proposed gaming establishment, if known.
- (b) The consultation letter must include a request to the recipients to submit comments, if any, on the following areas within 60 days of receiving the letter:
 - (1) Information regarding environmental impacts on the surrounding community and plans for mitigating adverse impacts;
 - (2) Anticipated impacts on the social structure, infrastructure, services, housing, community character, and land use patterns of the surrounding community;
 - (3) Anticipated impact on the economic development, income, and employment of the surrounding community;
 - (4) Anticipated costs of impacts to the surrounding community and identification of sources of revenue to mitigate them;
 - (5) Anticipated costs, if any, to the surrounding community of treatment programs for compulsive gambling attributable to the proposed gaming establishment; and
 - (6) Any other information that may assist the Secretary in determining whether the proposed gaming establishment would or would not be detrimental to the surrounding community.

§ 292.21 How will the Secretary evaluate a proposed gaming establishment?

- (a) The Secretary will consider all the information submitted under §§ 292.16-292.19 in evaluating whether the proposed gaming establishment is in the best interest of the tribe and its members and whether it would or would not be detrimental to the surrounding community.
- (b) If the Secretary makes an unfavorable Secretarial Determination, the Secretary will inform the tribe that its application has been disapproved, and set forth the reasons for the disapproval.
- (c) If the Secretary makes a favorable Secretarial Determination, the Secretary will proceed under § 292.22.

§ 292.22 How does the Secretary request the Governor's concurrence?

If the Secretary makes a favorable Secretarial Determination, the Secretary will send to the Governor of the State:

- (a) A written notification of the Secretarial Determination and Findings of Fact supporting the determination;
- (b) A copy of the entire application record; and
- (c) A request for the Governor's concurrence in the Secretarial Determination.

§ 292.23 What happens if the Governor does not affirmatively concur with the Secretarial Determination?

- (a) If the Governor provides a written non-concurrence with the Secretarial Determination:
 - (1) The applicant tribe may use the newly acquired lands only for non-gaming purposes; and
 - (2) If a notice of intent to take the land into trust has been issued, then the Secretary will withdraw that notice pending a revised application for a non-gaming purpose.
- (b) If the Governor does not affirmatively concur in the Secretarial Determination within one year of the date of the request, the Secretary may, at the request of the applicant tribe or the Governor, grant an extension of up to 180 days.
- (c) If no extension is granted or if the Governor does not respond during the extension period, the Secretarial Determination will no longer be valid.

§ 292.24 Can the public review the Secretarial Determination?

Subject to restrictions on disclosure required by the Freedom of Information Act ([5 U.S.C. 552](#)), the Privacy Act ([5 U.S.C. 552a](#)), and the Trade Secrets Act ([18 U.S.C. 1905](#)), the Secretarial Determination and the supporting documents will be available for review at the local BIA agency or Regional Office having administrative jurisdiction over the land.

§ 292.25 Do information collections in this part have Office of Management and Budget approval?

The information collection requirements in §§ 292.16, 292.17, and 292.18 have been approved by the Office of Management and Budget (OMB). The information collection control number is 1076-0158. A Federal agency may not collect or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control.

SUBPART D -- EFFECT OF REGULATIONS

§ 292.26 What effect do these regulations have on pending applications, final agency decisions, and opinions already issued?

These regulations apply to all requests pursuant to [25 U.S.C. 2719](#), except:

- (a) These regulations do not alter final agency decisions made pursuant to [25 U.S.C. 2719](#) before the date of enactment of these regulations.
- (b) These regulations apply to final agency action taken after the effective date of these regulations

except that these regulations shall not apply to applicable agency actions when, before the effective date of these regulations, the Department or the National Indian Gaming Commission (NIGC) issued a written opinion regarding the applicability of [25 U.S.C. 2719](#) for land to be used for a particular gaming establishment, provided that the Department or the NIGC retains full discretion to qualify, withdraw or modify such opinions.