

## § 292.8

### **§ 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

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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.

#### **APPLICATION CONTENTS**

#### **§ 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