



**COUNTY ATTORNEY
MIAMI-DADE COUNTY, FLORIDA**

111 N.W. FIRST STREET
SUITE 2810
MIAMI, FLORIDA 33128-1993
TEL (305) 375-5151
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August 23, 2012

NOTICE OF APPEAL AND STATEMENT OF REASONS

The Interior Board of Indian Appeals
Office of Hearings and Appeals
U.S. Department of the Interior
801 North Quincy Street, Suite 300
Arlington, VA 22203

Via Federal Express and U.S. Mail

**Name of Appellant: Miami-Dade County
Stephen P. Clark Center
111 NW 1st Street
Suite 2810
Miami, Florida 33128
305-375-5151**

Notice of Appeal

The undersigned hereby appeal to the Interior Board of Indian Appeals from the decision and incorporated findings of fact dated July 27, 2012, by: Mr. Randall Trickey, Acting Director, Eastern Region, Bureau of Indian Affairs, Eastern Regional Office, 4545 Marriott Drive, Suite 700, Nashville, TN 37214 (the "Bureau"). See **Exhibit A**, attached hereto.

The decision attached as **Exhibit A** was unreasonable and also erroneous because it failed to properly consider the relevant factors and the objections stated by Miami-Dade County in its letter dated October 8, 2003, a copy of which is incorporated herein and attached as **Exhibit B**. These objections include, but are not limited to, the effects from the inability to enforce the existing 99 year zoning covenant which limits the subject property's use, and which currently requires the consent of the Miami-Dade County Board of County Commissioners and 75% of the neighboring residents prior to any change of use. As originally stated in **Exhibit B**, these effects include public safety, transportation, water and sewer, and environmental impacts, which are particularly significant given the subject property's location in a heavily developed residential area of Miami-Dade County. See **Exhibit C**, attached hereto.

*Interior Board of Indian Appeals
Office of Hearings and Appeals
August 23, 2012*

One example of the effects which the Bureau's decision failed to properly consider is that many neighboring associations use the lakes within the subject property for stormwater drainage, and the County's regional drainage system also utilizes the subject property via flowage easements to provide stormwater drainage for surrounding areas. See **Exhibit D**, attached hereto. Thus, any change in future use will negatively impact existing drainage systems, which could have profoundly negative impacts on these flood-prone areas within Miami-Dade County.

The County additionally appeals the Bureau's decision due to the Bureau's failure to provide notice and an opportunity to be heard regarding the Miccosukee Indian Tribe's requested fee-to-trust land acquisition to the surrounding residents, who are interested parties by virtue of their interest in the existing 99-year restrictive covenant and drainage easements which flow into the subject property. Thus, given the failure to notify interested parties, as required by law, this proceeding is void *ab initio*.

Statement of Reasons

The County's reasons for taking this appeal are the same grounds previously stated in **Exhibit B**, and which are readopted and incorporated herein by reference. Additionally, the County states as reasons for this appeal the facts stated within this notice of appeal, including but not limited to, the Bureau's failure to notify all interested parties of the requested acquisition.

Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by Federal Express and U.S. mail on August 23rd, 2012 on all interested parties, including:

The Assistant Secretary – Indian Affairs, 4140 MIB
US Department of the Interior
18th and C Street, NW
Washington, D.C. 20240

Director, Eastern Region
Eastern Regional Office
Bureau of Indian Affairs
U.S. Department of the Interior
545 Marriott Drive, Suite 700
Nashville, TN 37214

*Interior Board of Indian Appeals
Office of Hearings and Appeals
August 23, 2012*

The Honorable Colley Billie
Chairman
Miccosukee Indian Tribe of Florida
P.O. Box 440021
Tamiami Station
Miami, Florida 33144

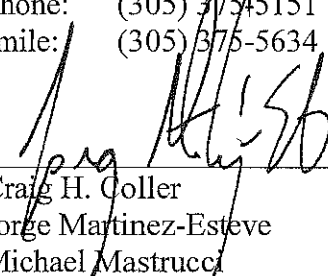
The Honorable Colley Billie
Chairman
Miccosukee Indian Tribe of Florida
US Highway 41 - Mile Marker 70
Miami, Florida 33194

The Honorable Rick Scott
Governor, State of Florida
400 S. Monroe Street
Tallahassee, Florida 32399-0001

Respectfully submitted,

R. A. CUEVAS, JR.
Miami-Dade County Attorney
Stephen P. Clark Center
111 NW 1st Street, Suite 2810
Miami, FL 33128
Telephone: (305) 375-5151
Facsimile: (305) 375-5634

By: _____


Craig H. Goller
Jorge Martinez-Esteve
Michael Mastrucci
Assistant County Attorneys



Real Estate Services

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Eastern Regional Office

545 Marriott Drive, Suite 700

Nashville, TN 37214

JUL 27 2012

CERTIFIED LETTER - RETURN RECEIPT REQUESTED

Honorable Colley Billie
Chairman, Miccosukee Indian Tribe of Florida
P. O. Box 440021, Tamiami Station
Miami, Florida 33144

Dear Chairman Billie:

This is the decision of the Bureau of Indian Affairs (Bureau), Eastern Regional Office, on the fee-to-trust land acquisition request of the Miccosukee Indian Tribe (Tribe) of Florida for land known as Tracts A and B, Kendale Lakes North Section 1 (Golf Course and Clubhouse), located in Miami-Dade County, Florida, consisting of 229.3 acres, more or less. The tract is more particularly described in Exhibit "A" (enclosed).

The determination whether or not to acquire property in trust is made in the exercise of discretionary authority which is vested in the Secretary of the Interior (Secretary) and now delegated to this office. The request was evaluated in accordance with the regulations contained in Title 25 of the Code of Federal Regulations, Part 151 (25 CFR 151), Land Acquisitions. The proposed acquisition is not located within or contiguous to the Tribe's reservation and is not mandated. Accordingly, this request has been reviewed under the requirements of §151.11 for off-reservation fee-to-trust land acquisitions. For the reasons discussed below, it is my decision to approve the proposed fee-to-trust land acquisition request, subject to the notification requirements of 25 CFR 151.12 and a satisfactory title examination as required by §151.13.

§ 151.3 - Land acquisition policy

Land may be acquired in trust by the United States government for Indian tribes only when there is statutory authority to do so. The primary statutory authority used for the acquisition of land in trust for Indian tribes and individuals is Section 5 of the Indian Reorganization Act (IRA) of 1934, codified at 25 U.S.C. 465. Section 465 authorizes the Secretary to take land into trust for "the purposes of providing land for Indians." In addition, Section 203 of Indian Land Consolidation Act (ILCA), (P.L. 97-459) 96 Stat. 2517, makes Section 5 of the Act of June 18, 1934, applicable to all tribes. The Tribe's request to acquire land in trust was made pursuant to the authority of Section 5 of the IRA. The Tribe is a federally recognized tribe eligible for funding and services from the federal government.

EXHIBIT A

The regulations of 25 CFR 151 set out the process by which land may be acquired by the United States in trust for a Tribe. § 151.3(a), states that land may be acquired for a tribe in trust when (1) the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto; or, (2) when the tribe already owns an interest in the land; or, (3) when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing. The property is owned in fee by the Tribe and is not located within the Tribe's current reservation boundaries or adjacent thereto. The Tribe has no plans to change the current use of this property. The property will provide an area for the Tribe to utilize for tribal economic development purposes and to facilitate its self-determination efforts.

Accordingly, I find that there is statutory and regulatory authority to acquire land in trust for the benefit of the Tribe and the proposed acquisition request is included within the scope of that authority.

§ 151.11 - Off-reservation acquisitions

§ 151.11(a) - Application of the criteria listed in 151.10(a) through (c) and (e) through (h);

§ 151.10(a) The existence of statutory authority for the acquisition and any limitations in such authority

The statutory authority for the acquisition of the subject property is 25 USC 465 which provides in part that the Secretary of the Interior is authorized, in his discretion, to acquire any interest in lands for the purpose of providing land for Indians. The Tribe is federally recognized eligible for services from the federal government. The Tribe and its members were extended all federal laws of general application to Indians, including specifically, the Indian Reorganization Act of June 18, 1934 (IRA). Section 5 of the IRA, states, "The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians." Accordingly, there is statutory authority for the acceptance of land in trust by the United States of America for the benefit of the Tribe.

§ 151.10(b) The need of the Individual Indian or the tribe for additional land;

The need for the Miccosukee Golf and Country Club is to increase the land base, to provide an additional source of revenue, and provide diversity to the economic development ventures of the Tribe. The revenue derived from the Golf and Country Club will be used for the well-being of tribal members and to attain the Tribe's goal of economic self-sufficiency. The Tribe has approximately 80,587 acres of trust lands in Broward, Hendry, Highlands, and Miami-Dade Counties. The Tribal Community is located on 667 acres on the northern boundary of Everglades National Park in the Miccosukee Reserved Area. Governmental offices, schools, health facilities, and housing occupy the area. The Tribe has historically subsisted on the natural resources of the Everglades but the increased

pollution of the Everglades and competition from non-Indian hunters and fishermen in the area now make subsistence living by tribal members impossible. The majority of the land in trust for the Tribe is rural and undeveloped, and located within or near the Everglades National Park. Acquiring this land in trust for the Tribe will provide an additional area for the Tribe to address their economic development needs and to facilitate tribal self-determination.

Based on the information provided with the request, it is my determination that the Tribe has sufficiently justified the need for additional land.

§ 151.10(c) The purposes for which the land will be used;

The Tribe plans no change from the existing use of the property as an operating golf course and country club. The property has 12 tennis courts, a junior size Olympic style swimming pool, clubhouse with banquet facilities, pro shop, snack bar, driving range, practice putting green, and 27-hole golf course. The Golf and Country Club is being used as an attraction for the Miccosukee Resort guests as part of their stay. The proposed acquisition is not for gaming purposes. A change in use to gaming would require compliance with the provisions of Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 USC 2719, prior to any gaming activities being conducted on the properties.

It is my determination that the Tribe has adequately described the purposes for which the land will be used.

§ 151.10(e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;

The golf course and club house property was acquired in fee simple title by the Tribe in 2001. The subject property is located approximately 25 miles east of the Miccosukee Reserved Area and approximately 5 miles southeast of the Tribe's Krome Avenue Reservation. It is not contiguous to any reservation or tribal trust land. By letters dated August 8, 2003, notices were sent to the Florida State Governor's Office and the Mayor, Miami-Dade County, requesting comments, including the amount of real property taxes and special assessments for the properties, and current zoning. Comments were received from the Miami-Dade County Manager by letter dated October 8, 2003, and the Florida State Attorney by letter dated October 15, 2003.

The amount of taxes assessed on the property in 2011 is approximately \$64,893.59. Miami-Dade County (County) currently provides a variety of governmental services to the property, including fire rescue and suppression, police protection, environmental protection, public works, code enforcement, building plan review and inspection, water and sewer, planning and zoning, emergency management, transportation service delivery, transportation planning, and business regulation. There are no special assessments against the property. According to the County, the acquisition of the property into trust and the resultant loss of oversight would adversely impact water quality protection, building safety, land use, public safety, fire, and drainage system maintenance in the surrounding

area. The County contends that standards for safety and protection of people and property would not be met by the Tribe. Additionally, the cost of some of these impacts would be passed on to the taxpaying citizens of the County in the form of increased fees.

The State Attorney expressed opposition to the Tribe's fee-to-trust land acquisition over jurisdictional concerns but did not otherwise identify any impacts on the State and its political subdivisions resulting from the removal of the land from the tax rolls.

There are approximately 859 acres of tribal trust land currently located in Miami-Dade County, or approximately 0.07% of the total county land base¹. Property taxes levied in Fiscal Year 2011 for Miami-Dade County total approximately \$1.3 billion.² The amount of taxes assessed on the property would amount to less than 0.005% of county property tax revenues. The Tribe also contends that the economic benefits to the County from the purchase of goods and services for the golf course, employee payroll, etc., by the Tribe's enterprises more than offsets any adverse impact to the taxpaying citizens of the County. Additionally, property taxes levied in Florida have reduced by 26% or \$2.97 billion since 2006-07³ resulting in major workforce cuts as well as cuts to all levels of service. Major factors in the decline of property tax revenues in Florida since 2007 are the recession and resulting decline in property values, the implementation of the roll back rates in 2007, and Amendment 1 in 2008. While any loss of revenue might be considered detrimental, no negative impacts to the level of services currently being provided to the property were specifically identified.

The Tribe has also demonstrated that it has the desire and the resources to ensure its operations are in compliance with county and state environmental standards, as well as its own, and has the capability to maintain all existing easements for water drainage and storm water. The Tribe typically utilizes local building codes as minimum standards for their tribal properties and employs its own building official to ensure compliance. The Tribe also utilizes and pays for services provided by the County, particularly, water and sewer, and has not indicated any plans to discontinue that practice. In addition, the cost of some community services provided to this land will be partially offset by the contributions of the Tribe by virtue of the land's trust status; for example, assumption of law enforcement responsibility and road maintenance funding.

Accordingly, it is my determination that the acquisition of the property in trust for the Tribe will not have a significant impact on the existing level of services currently being provided by state and its political subdivisions.

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§ 151.10(f) Jurisdictional problems and potential conflicts of land use which may arise;

The property is currently used as a golf course and country club. It is zoned Commercial BU-2 and B-GU which is consistent for a golf course and country club. Letters received from the Miami-Dade County Manager and the State Attorney's office stated concerns

¹ Based on 1,945 square miles shown for Miami-Dade County according to National Association of Counties.

² Florida Association of Counties

³ Florida Association of Counties

with the loss of state and local jurisdiction, specifically as it applies to environmental protection, water quality preservation, building and safety code enforcement, land use zoning, and police and fire protection.⁴ The State Attorney expressed opposition to the Tribe's fee-to-trust land acquisition over jurisdictional concerns. The County expressed concerns over the loss of regulatory oversight and the County's ability to make land use and zoning decisions from the acquisition of the property into trust. The County also pointed out that the property is subject to a restrictive zoning covenant put in place in 1972 which runs for a period of 99 years and it only allows for the property to be used as a golf course and clubhouse. Both the County Manager and the State Attorney expressed concern for public safety and stated that the Miami-Dade Police Department (MDPD) would no longer routinely patrol the area of the golf course. The State Attorney also cited past and ongoing criminal jurisdiction issues between the State and the Tribe as a basis for opposing the proposed acquisition. Another issue cited was the Florida Department of Environmental Protection's unsuccessful efforts to acquire tribal fee property referred to as the "Golden Gate Estate South" as part of the "Save Our Everglades" project. The acquisition was believed to be necessary to enhance and preserve water quality, to protect fish and wildlife habitat and to protect an endangered natural resource area. The State Attorney proposes that a formal cooperation agreement between the Tribe and State addressing jurisdictional issues be entered into prior to the acquisition of more land into trust for the Tribe. Both the County Manager and State Attorney cite concerns relating to possible gaming activities on the property.

The Tribe has stated that it will continue to use the land as a golf course and clubhouse as an added attraction to the guests staying at the Miccosukee Resort and Convention Center located approximately 5 miles away. In its response to the concerns of the County Manager and the State Attorney, the Tribe set out its capability to manage the property with regard to environmental protection, building and safety codes, water quality preservation, and land stewardship. In response to concerns by both the County Manager and the State Attorney over public safety and law enforcement, the Tribe stated its commitment to exercising effective law enforcement authority over the property. The Tribe also pointed out that its Miccosukee Police Department has concurrent jurisdiction agreements in place with the MDPD and the Florida Highway Patrol. According to the Tribe, the MDPD has stated that it will not cease community patrolling of the area should the property be accepted into trust. The State of Florida currently exercises civil and criminal jurisdiction on tribal trust land pursuant to Federal statute.⁵ The Tribe also provides law enforcement capability through its P.L. 93-638 contracts with the Bureau of Indian Affairs. As to concerns over the impacts from gaming being conducted on the property, the Tribe asserts that no change in the current use of the property as a golf course is planned and that concern over gaming is without foundation.

My analysis of the Tribe's request reveals that the proposed acquisition is not for gaming purposes. A change in use to gaming would require compliance with the provisions of Section 20 of the Indian Gaming Regulatory Act, 25 U.S.C. 2719, prior to any gaming activities being conducted on the property. The current land use is for a purpose that is not

⁴ October 8, 2003, and October 15, 2003, respectively.

⁵ P.L. 97-399, §8, Dec. 31, 1982, 96 Stat. 2015,

illegal or in conflict with existing land use patterns. The Tribe states that the current use of the property as a golf course and country club will not change. The Tribe currently provides law enforcement capability on tribal trust property through its Public Law 93-638 contract with the Bureau. The Miccosukee Police Department maintains a full-time staff of 53, including 36 sworn police officers who are also certified in accordance with State of Florida standards. The Miccosukee Police Department has concurrent jurisdiction agreements in place with the Miami-Dade Police Department and the Florida Highway Patrol. By agreement, Miccosukee Police Officers already patrol the Tamiami Highway. This will continue once the property is in trust. While there have been past jurisdictional issues between the State and Tribe, both the Tribe and the State of Florida have exhibited the willingness to address them. The Tribe has demonstrated its concern for and commitment to preserving the environment, including water resources, ensuring public safety, and maintaining the local infrastructure. With 2 federally recognized Indian tribes with trust land located within the State of Florida, the State has experience in Indian affairs and in dealing jurisdictional issues and potential conflicts of land use resulting from the transfer of the property into trust status. Additionally, the Tribe has as much, if not greater, interest in restoring and maintaining the Everglades as the State of Florida and could be a valuable partner in achieving that goal.

Acquiring land in trust may negatively impact the ability of state and local governments to provide cohesive and consistent governance due to loss of regulatory control and lack of contiguity/compactness among the trust lands. The State of Florida and its local governmental entities; however, have experience in dealing with Indian trust land issues such as law enforcement jurisdiction, changes in land use, and tribal sovereignty. While there is always a potential for jurisdictional problems and/or land use conflicts, it is not anticipated that the unchanged use of the property will create new or unique jurisdictional issues as a result of the acquisition of the property in trust for the Tribe. The no change in use proposed for the property and the common interests of the entities involved will minimize the impacts. Accordingly, I find no substantial problems or potential conflicts of land use from the proposed use of the property that cannot be resolved or mitigated either through the existing jurisdictional scheme or by cooperative agreement with the local authorities.

§ 151.10(g) If the land to be acquired is in fee status, whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status;

The requested property totals 229.30 acres, more or less, and is located approximately 935 miles southeast of the Eastern Regional Office in Nashville, Tennessee. The Eastern Regional Office is responsible for administering trust services to approximately 80,587 acres of land held in trust for the Tribe. Trust resource management program services are provided to the Tribe by the Bureau. The Tribe's Realty staff consists of 1 Realty Planner Manager and 1 Realty Planner Assistant. The Regional Office currently provides technical advice and limited direct field services on trust resources program management matters to the Tribe, as well as, to the other 26 federally recognized tribes and 3 Agency Offices of the Eastern Region. There are approximately 598,191 acres of tribal trust and restricted

land within the Eastern Region. The Regional Office's trust resources management programs include real estate services, forestry, archeology, environmental management services, and natural resources management. The Region's Realty staff consists of 1 Realty Officer and 3 Realty Specialists. There are also 11 Natural Resources staff persons with expertise in the fields of forestry, archeology, environmental sciences, and natural resources management. These resources are considered minimally adequate for administering the existing trust and restricted properties of the Region.

While the distance of the property from the Regional Office limits the number and frequency of onsite monitoring visits, the Tribe provides direct, onsite trust resource management services to its trust lands pursuant to its P.L. 93-638 contract. The Tribe has demonstrated over the years that it is fully competent to deliver quality trust program services under its contract. The proposed use of the property and its close proximity to the Tribe's other trust lands minimize the need for critical management and regular onsite monitoring by Regional Office Bureau staff. Although Bureau resources are limited and not expected to increase, accepting the property into trust should not impose any significant additional responsibilities or burdens on the level of trust services currently being provided by the Bureau.

Accordingly, it is my determination that the Bureau, through its P.L. 93-638 contract with the Tribe, has the capability to assume the additional responsibilities resulting from the acquisition of the property in trust status.

§ 151.10 (h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

The record reflects compliance with 516 DM 6, Appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. A Categorical Exclusion under exclusion category 516 DM 10.5.D was issued for the property on November 15, 2007. A Level I Contaminant Survey prepared in compliance with 602 DM 2 by Eastern Region staff and signed April 17, 2012, determined that no contaminants or other environmental problems were present on the property and there were no obvious signs of any effects of contamination. Future changes from the current uses of the properties could require an environmental assessment of the impacts.

§ 151.11(b) - The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation.

The land known as the Golf Course property, being 229.30 acres, more or less, is located in Miami-Dade County, Florida. The property is located approximately 25 miles from the Tribe's Miccosukee Reserved Area and approximately 5 miles away from its Krome Avenue Reservation. It is within the historical range and aboriginal territory of the Tribe in Florida. Accordingly, I find that the property is within the geographic range of the Tribe's traditional and

ancestral lands, and is readily accessible to the Tribe and its members for the intended uses and purposes.

§ 151.11(c) - Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

An analysis of the Tribe's business plan for the golf & country club reveals that the net profit continues to fall short of breaking even and must be supported from the Miccosukee Tribe. The operation can be profitable; however, with a focus on reducing expenditures and increasing revenues as projected in 2014. Revenues are generated from golf memberships, greens fees, tournament coupons, swimming pool memberships and lease, golf pro and equipment repair shops, and sales of golf merchandise. In addition, the golf course compliments the Tribe's Miccosukee Resort and Convention Center located nearby which enhances that facility's position as a destination resort. The Tribe purchased the 27-hole Mark Mahannah designed Miccosukee Golf & Country Club in 2001. Since purchasing the property, the Tribe has spent approximately \$4,000,000.00 in upgrades to meet Professional Golfers Association of America (PGA) standards. The facility offers a challenging layout and annually hosts the Miccosukee Championship PGA Nationwide Tour. The property includes a pro shop, lighted practice facility, maintenance building, grill room, Olympic-size pool, tennis courts and banquet facilities that can host up to 350 guests for corporate meeting, weddings, banquets, etc. Approximately 30,000 rounds of golf are played over the 27 holes of golf. Planned improvements essential in maintaining a competitive edge and establishing the facility as a leader in the local community include refurbishing the current irrigation system, a potential new clubhouse and the building of a golf cart storage area.

The Tribe proposes no change in use from the current and present use of the property as a golf course and country club. Accordingly, it is my determination that the economic benefits from the acquisition of the golf course property are reasonable and obtainable.

§ 151.11(d) - Contact with state and local governments pursuant to §151.10(e) and (f) shall be completed.

See discussion under §151.10(e) and (f) above.

§ 151.12 Actions on request.

After considering the factors found at 25 CFR 151.11 for off-reservation fee-to-trust land acquisitions and reviewing the information submitted with the request, I have determined that there is sufficient information to evaluate the request and render a decision.

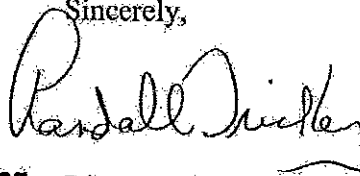
There is statutory authority to acquire the land in trust for the Tribe. The proposed acquisition will facilitate tribal economic development and self-determination for a purpose which is not illegal, controversial or in conflict with local land use patterns. The acquisition will result in the loss of some property tax revenue; however, I have determined that the loss will not significantly impact the existing level of services provided by the state and local governments. Although there is the potential for jurisdictional problems and land use conflicts due to a change in

jurisdictional authority, I have determined that they do not outweigh the findings in support of the trust acquisition; namely, the need of the Tribe for additional trust land supportive of tribal economic development and self-determination, and the ability of the Bureau to assume the additional trust responsibility. For the reasons discussed above, it is my decision to approve the proposed fee-to-trust land acquisition request, subject to the notification requirements of 25 CFR 151.12(b) and a satisfactory title examination as required by § 151.13.

This decision may be appealed to the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St. Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to this office. It should clearly identify the decision being appealed. If possible, enclose a copy of this decision. You must send copies of your notice of appeal to: (1) The Assistant Secretary - Indian Affairs, 4140 MIB, U. S. Department of the Interior, 18th and C Street, NW, Washington, D.C. 20240; (2) Each interested party known to you; (3) and, this office. Your notice of appeal sent to the Interior Board of Indian Appeals must certify that you have sent copies to these parties. If you file a notice of appeal, the Interior Board of Indian Appeals will notify you of further appeal procedures.

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,



Acting Director, Eastern Region

Enclosure

cc: Honorable Rick Scott
Governor, State of Florida
400 S. Monroe Street
Tallahassee, Florida 32399-0001

Honorable Carlos A. Gimenez
Mayor, Miami-Dade County
Stephen P. Clark Center
111 N. W. 1st Street
Miami, Florida 33128

*back - kendale as
app*

Exhibit A

RECEIVED

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OFFICE OF THE MAYOR

242910

Property Description:

Tracts A and B, Kendale Lakes North Section 1, according to the map or plat thereof as recorded in Plat book 93, Page(s) 1, Public Records of Miami Dade County Florida



OFFICE OF COUNTY MANAGER
SUITE 2910
111 N.W. 1st STREET
MIAMI, FLORIDA 33128-1994
(305) 375-5311

October 8, 2003

Mr. Franklin Keel, Director, Eastern Region Office
Bureau of Indians Affairs
711 Stewarts Ferry Pike
Nashville, TN 37214

Dear Mr. Keel:

Thank you for the opportunity to comment on the Miccosukee Tribe of Indians land acquisition for property to be held in trust as described below:

Tracts A and B, KENDALE LAKES NORTH I, according to the Plat thereof, recorded in Plat Book 93, Page 1, of the Public Records of Miami-Dade County, Florida.

The commentary provided herein is on behalf of Miami-Dade County, the local government jurisdiction in which the above referenced acquisition is located. Also included below are the responses to the questions regarding the subject property as requested.

1. *Annual Amount of Property Taxes currently levied on this property?*

Tract A-2003 Taxable Value= \$884,919. 2003 Taxes= \$19,652

Tract B-2003 Taxable Value= \$2,048,430. 2003 Taxes= \$45,292

2. *Any special assessments, and amounts thereof, which are currently assessed against the property?*

None

3. *Any governmental services provided to these properties?*

Miami-Dade County provides all governmental services to this property and the surrounding area. These services include but are not limited to Fire Rescue and Suppression, County Sheriff and Local Police Patrol Services, Environmental Protection, Public Works, Code Enforcement; Building plans review and inspections, Water and Sewer, Solid Waste, Planning and Zoning, Emergency Management, Transportation service delivery, transportation planning, Business Regulation.

4. *If subject to zoning, how the property is currently zoned?*

**EXHIBIT B
NOTICE OF APPEAL
STATEMENT OF REASONS**

In 1972 this property was placed under a restrictive zoning covenant. This Declaration of Restrictions runs for a period of 99 years. This Covenant states that the subject property would only be used as a golf course with related uses, such as a clubhouse, for 99 years. The only way to modify the Covenant is by approval of the Miami-Dade County, Board of County Commissioners, after an applicant provides 75% consenting signatures of the property owners within 150 feet of the boundaries of this property.

The Specific zoning designations are as follows:

Tract A-Commercial BU-2 (Special Business District) provides for large scale commercial and/or office facilities which service the needs of large urban areas.

Tract B-GU,(Interim District) If a neighborhood in the GU district is predominantly one classification of usage, the Zoning Director shall be governed by regulations for that class of usage in determining the standard zoning regulations to be applied. If a trend of development has been established, meaning that the use or uses which predominate in adjoining properties which because of their geographic proximity to the subject parcel make for a compatible use. If no trend of development has been established in the neighborhood, minimum standards of the EU-2 (Estates one Family 5 acres gross district) shall be complied with.

COMMENTARY

Overview

The Miccosukee Application to place this land in trust raises concerns for Miami-Dade County. If the trust designation were to limit the County's authority to provide land use and zoning decisions, the adjacent residents of this area would be severely impacted. Development that is not in conformance with the local area would severely impact area residents, raise safety concerns, and adversely affect service delivery in areas such as public safety, transportation, water and sewer, and all of the service areas described in Question 3 above. Even if the current use is continued, but under trust designation, the County has serious concerns regarding public safety, fire suppression, building safety and environmental concerns to the surrounding area. As noted in the application, the Miccosukee Tribe indicates that it provides security services to the Golf Course. This poses serious law enforcement safety considerations for the adjoining area residents. Similarly, fire suppression is a concern. Since the County would lose jurisdiction, it is anticipated that the neighborhood would experience a negative spill over effect causing concern that standards for safety and protection of people and property would not be met by the Tribe. Detailed below are specific descriptions regarding the impact of the Miccosukee trust application:

Environmental Concerns

The Department of Environmental Resource Management (DERM) currently regulates a number of activities and facilities at the subject property which potentially could have a significant environmental impact if they were to be exempt from regulatory oversight and routine inspection.

There are active DERM operating permits for two above ground petroleum storage tanks which are inspected on behalf of DERM and the State of Florida to insure compliance with state and county storage tank regulations. There is also an Agricultural Waste operating permit for the agrichemicals stored/mixed for use on the golf course, and a grease trap discharge permit for the restaurant connection to the Water and Sewer Department (WASAD) sanitary sewer system which DERM requires to meet federal pretreatment requirements. All of these facilities are inspected regularly to make certain that they are operating in accordance with applicable regulations and in a manner consistent with other similar facilities throughout the county.

An additional consideration is the fact that the County has flow rights and access and maintenance easements throughout the property with respect to the lakes/waterways. Any change in the status of this property relative to drainage and stormwater management issues could have a significant impact on the regional and local drainage system.

Water Protection

The property is located within the West Wellfield Protection Area and the activities and uses on the property are currently subject to all the local regulatory constraints which are in place to protect the groundwater in the Biscayne Aquifer. The ground water within this protection area is a source of potable drinking water for the general population in the central/southern part of the county and removing any of the regulatory protections in a wellfield could have a very serious impact on Miami-Dade county's public drinking water supplies. This is a serious concern since DERM records have revealed that there were discharges to the environment of waste containing heavy metals (lead), in the aftermath of a fire on site in 2000. More recently a warning notice has been issued on April 30, 2002 for wastewater discharges. The corrective actions necessary to close this case have not been fully implemented to date. DERM's continued inspection and review of these types of situations are necessary to protect the wellfield and overall environment in the area and to protect the Biscayne Aquifer.

Building Safety

If the placement of the Miccosukee Golf Course property in trust results in the preemption of local government regulation, Miami Dade-County's citizens will be adversely affected.

Construction and repair of buildings will be performed without building permits under the Florida Building Code. This plan review process ensures that the intended work is designed to meet Florida Building Code standards and the inspection process ensures that the work performed complies with the approved plans and Florida Building Code requirements. Any buildings not meeting Building Code criteria are a threat to the surrounding community.

Furthermore buildings open to the public will be occupied without a Certificate of Completion or Certificate of Occupancy. Certificates of Completion and Occupancy are required to ensure all life-safety requirements of the Florida Building Code including that handicap accessibility standards have been satisfied before a new building or an existing building with a change of use can be occupied.

Another concern is that the Building Official will be precluded from enforcing Florida Building Code provisions governing existing buildings. For example, buildings that deteriorate will not be subject to unsafe structures enforcement action requiring repair or demolition.

Land Use

In the event that the County's land use authority is limited, the Comprehensive Development Master Plan (CDMP), zoning regulations and all other provisions of the Miami-Dade County Code can not be enforced. Miami-Dade County has not previously applied the provisions of the CDMP or other land development regulations to lands clearly determined to be trust lands. Our CDMP sets forth the goals, policies, and objectives for the orderly development of our County and establishes clear policy for the prioritization of infrastructure to serve that development. Without such regulations, there is no authority for elected representatives of the community to guide the patterns of development of Miami-Dade County or to protect the health, safety and welfare of its' citizens due to adverse impacts that could occur.

It is essential that these properties continue to be regulated by local land use agencies to protect the rights of those in the immediate vicinity, as well as, those in the community as a whole.

There will be no compatibility standard applied to ensure neighborhood consistency and property values of adjoining properties will potentially be adversely affected. Issues such as impacts on privacy, lighting shadows and neighborhood character; preservation of sufficient open space and architectural consistency on the parcel owned by Miccosukee as to the neighboring properties, as well as buffering and other mitigation of impacts will not be considered. Also, extreme concerns exists regarding regulation of uses and the ability to control uses such as bars, adult entertainment, telecommunication towers, hours of operation of certain businesses, and any noxious activities. Obviously, this allowance would apply to all types of uses, but indicated above are those that have consistently and historically been the most controversial in our community.

Public Safety

Upon review of the Miccosukee Tribe of Indians' application, the following issues raise concern:

1. Jurisdiction- Currently, the Miami-Dade Police Department (MDPD) has sole law enforcement jurisdiction on the property. The change in the status of the land would give the Miccosukee Police Department and MDPD concurrent jurisdiction on the property. Despite having concurrent jurisdiction, the MDPD would no longer routinely patrol the area.
2. Increased Traffic- If the Tribe decides to incorporate a casino on the property or change the use, the County can expect a substantial increase in traffic and calls for service in the area on and around the property. The cost of servicing the local area would increase and the burden of funding police service would fall upon the taxpayers of Miami-Dade County.

Fire and Related Services

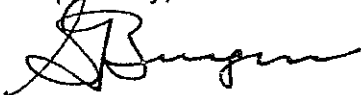
In reference to the possible re-development of this Golf Course, depending on any future use, there is a decided possibility that additional services/possibly an additional station may be needed. Service demand continues to increase in this area and surrounding stations may not be able to absorb the added burden without jeopardizing existing properties and residents. This consideration is consistent with other golf course re-developments.

Public Work Department

A review of the Kendale Lakes North Section I Plat (93-1) shows a series of lakes that connect an east and west portion of the County's secondary drainage canal system and reserves a 50' flow rights within said lakes. The Secondary drainage system is vital to the entire drainage basin and must be respected and preserved. It should not be altered without proper permits. In addition, there are easements on the property are set aside for utilities.

Thank you again for this opportunity to comment on the application. Please give serious consideration to this commentary provided for and on behalf of the citizens of this community. We feel that our citizens would be adversely affected by the trust land designation. In some instances this impact will be passed on in the form of increased fees to the taxpaying citizen of the County. I also welcome the opportunity to discuss this matter with you further or provide additional information as requested. I may be reached at 305-375-1032.

Respectfully,



George M. Burgess
County Manager

cc: Honorable Alex Penelas, Mayor
Honorable Chairperson Barbara Carey-Shuler, Ed.D.
and Members Board of County Commissioners
Ted Mannelli, State Attorney
Jess McCarty, County Attorney

EXHIBIT C



EXHIBIT D

Miccosukee Golf & Country Club



Legend

- Canals/Flow Rights
- Subject Property