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GENERAL MEMORANDUM 20-016

BIA Self-Governance Application Deadline of March 1, 2021

The Bureau of Indian Affairs (BIA) published a notice in the December 17, 2020, Federal Register that the deadline for Indian tribes/consortia to submit completed applications to begin participation in the Self-Governance program in fiscal year 2022 or calendar year 2022 is March 1, 2021. The notice is attached.

Agreements for fiscal year 2022 need to be signed and submitted to tribes who are party to the agreement by July 1, 2021. Agreements for calendar year 2022 need to be signed and submitted by October 1, 2021.

Tribes who are seeking to begin participation in self-governance must complete a planning phase that: 1) is conducted to the satisfaction of the tribe, and 2) includes legal and budgetary research and internal tribal planning, training and organizational preparation.

This is the first BIA self-governance solicitation since enactment of the Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for Indian Tribes Act was signed into law on October 21, 2020, as Public Law 116-180.

Tribes/tribal consortia that are currently involved in self-governance negotiations with the BIA or already have a signed agreement do not need to respond to this notice.

Please let us know if we may provide additional information or assistance regarding the BIA Self-Governance program.

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Inquires may be directed to:

Geoff Strommer (gstrommer@hobbsstrauss.com)

2. Setting speed limits to avoid collisions with tortoise;
3. Having an approved biologist ensure implementation of minimization measures, monitor covered activities to avoid collisions, and clear the work site and materials, vehicles, and equipment of tortoises before work activity;
4. Requiring pre-movement vehicle and equipment inspections by workers;
5. Installing temporary tortoise exclusion fencing around substation area;
6. Conducting pre-construction clearance surveys and translocation by an approved biologist;
7. Developing a plan for spill prevention and control, with countermeasures;
8. Implementing proper waste management and disposal actions;
9. Developing a fire management plan; and
10. Implementing certain weed management efforts.

The proposed action will result in the permanent loss of moderate-quality habitat in Nye County, Nevada. In addition to the minimization measures, the applicant will make a one-time contribution of \$26,500, payable to the National Fish and Wildlife Foundation (NFWF), to offset the impacts of permanent Mojave desert tortoise habitat loss and habitat modification of about 18.2 acres.

No-Action Alternative

Under the No-Action Alternative, the Service would not issue an ITP to the applicant, and the draft HCP would not be implemented. Under this alternative, the applicant may choose not to construct the facility or would do so in a manner presumed not to result in the take of ESA-listed species.

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on permit application, draft HCP, and associated documents. If you wish to comment, you may submit comments by any of the methods in **ADDRESSES**.

Public Availability of Comments

Any comments we receive will become part of the decision record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time.

While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

Issuance of an incidental take permit is a Federal proposed action subject to compliance with NEPA and section 7 of the ESA. We will evaluate the application, associated documents, and any public comments we receive during this comment period to determine whether the application meets the requirements of section 10(a) of the ESA. If we determine that those requirements are met, we will conduct an intra-Service consultation under section 7 of the ESA for the Federal action for the potential issuance of an ITP. If the intra-Service consultation confirms that issuance of the ITP will not jeopardize the continued existence of any endangered or threatened species, or destroy or adversely modify critical habitat, we will issue a permit to the applicant for the incidental take of the covered species.

Authority

We provide this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1539(c) and its implementing regulations (50 CFR 17.32), and NEPA (42 U.S.C. 4321 *et seq.*) and NEPA implementing regulations (40 CFR 1501.4).

Glen W. Knowles,

Field Supervisor, Southern Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, Las Vegas, Nevada.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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Notice of Deadline for Submitting Completed Applications To Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2022 or Calendar Year 2022

AGENCY: Office of Self-Governance, Bureau of Indian Affairs, Interior.

ACTION: Notice of application deadline.

SUMMARY: In this notice, the Office of Self-Governance (OSG) establishes the deadline for Indian Tribes/consortia to submit completed applications to begin participation in the Tribal self-governance program in fiscal year 2022 or calendar year 2022.

DATES: Completed application packages must be received by the Director, Office of Self-Governance, by March 1, 2021.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to Sharee M. Freeman, Director, Office of Self-Governance, Department of the Interior, Mail Stop 3624-MIB, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, Office of Self-Governance, Telephone (202) 821-7107, kenneth.reinfeld@bia.gov.

SUPPLEMENTARY INFORMATION: Under the Tribal Self-Governance Act of 1994 (Pub. L. 103-413), as amended by the Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination Act of 2019-2020 or the PROGRESS for Indian Tribes Act (Pub. L. 116-180), Section 402(b)(1)(A), the Secretary, acting through the Director of the Office of Self-Governance, may select not more than 50 new Indian Tribes per year from those eligible Tribes. *See* 25 U.S.C. 5362(b)(1).

The Tribal Self-Governance Act, as amended by the PROGRESS for Indian Tribes Act, mandates that copies of the funding agreements be sent at least 90 days before the proposed effective date to each Indian Tribe that is served by the Bureau of Indian Affairs' agency that is serving the Tribe that is a party to the funding agreement. Initial negotiations with a Tribe/consortium located in a region and/or agency that has not previously been involved with self-governance negotiations will take approximately 2 months from start to finish. Agreements for an October 1 to September 30 funding year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 need to be signed and submitted by October 1.

Eligibility To Participate in Self-Governance

The Department will be initiating a negotiated rulemaking to develop regulations to meet the requirements of Section 101 of the newly enacted PROGRESS Act. To be eligible to participate in self-governance, an Indian Tribe must:

- (1) Successfully complete the planning phase described in section 402(d) of the Tribal Self-Governance Act

as amended by the PROGRESS Act [25 U.S.C. 5362(d)];

(2) Request participation in self-governance by resolution or other official action by the Tribal governing body;

(3) Demonstrate for the 3 fiscal years preceding the date for which the Tribe requests participation, financial stability and financial management capability as evidenced by the Indian Tribe having no uncorrected significant and material audit exceptions in the required annual audit of its self-determination or self-governance agreements with any Federal Agency.

Planning Phase

An Indian Tribe seeking to begin participation in self-governance must complete a planning phase that:

(1) Is conducted to the satisfaction of the Indian Tribe; and

(2) Includes:

- Legal and budgetary research; and
- Internal Tribal government planning, training, and organizational preparation.

Applicants should be guided by the referenced requirements in preparing their applications to begin participation in the Tribal self-governance program in fiscal year 2022 and calendar year 2022. Copies of these requirements may be obtained from the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Tribes/consortia wishing to be considered for participation in the Tribal self-governance program in fiscal year 2022 or calendar year 2022 must respond to this notice, except for those Tribes/consortia which are either: (1) Currently involved in negotiations with the Department; or (2) one of the 134 Tribal entities with signed agreements.

Information Collection

This information collection is authorized by OMB Control Number 1076-0143, Tribal Self-Governance Program, which expires December 31, 2022.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020-27786 Filed 12-16-20; 8:45 am]

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OFFICE OF MANAGEMENT AND BUDGET

Final Revisions to Uniform Freedom of Information Act Fee Schedule and Guidelines

AGENCY: Office of Management and Budget.

ACTION: Notice of revised guidelines.

SUMMARY: The Office of Management and Budget (OMB) is finalizing revisions to sections of its Uniform Freedom of Information Act Fee Schedule and Guidelines (“Guidelines”) last published in 1987. This action is necessary to conform the Guidelines with statutory amendments to the Freedom of Information Act (FOIA) and to clarify the scope of the Guidelines. This action is intended to provide Federal agencies with guidance on the appropriate and uniform application of FOIA processing fees.

DATES: These revisions to the Guidelines are effective December 17, 2020.

FOR FURTHER INFORMATION CONTACT: Jonathan Hill, Office of Information and Regulatory Affairs, OMB, at (202) 395-1658 or oira_pb_comments@omb.eop.gov.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986, Public Law 99-570 (1986), required OMB to promulgate a uniform schedule of fees and guidelines, pursuant to notice and public comment, for agencies to use when processing FOIA requests. 5 U.S.C. 552(a)(4)(A)(i). OMB issued the Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012 (available at https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/foia_fee_schedule_1987.pdf) on March 27, 1987. In the ensuing years, the FOIA has been amended, notably by the OPEN Government Act of 2007, Public Law 110-175 (2007), and the FOIA Improvement Act of 2016, Public Law 114-185 (2016). In response, OMB has undertaken to revise the Guidelines.

On May 4, 2020, OMB published a notice in the **Federal Register**, 85 FR 26499, seeking comments on four proposed substantive revisions. OMB also proposed to revise Section 4. *Inquiries*, to update contact information for questions about the Guidelines. OMB received comments directly and through *Regulations.gov* from 13 entities, including both individuals and organizations. OMB greatly appreciates the detailed comments it received, and believes the final guidance, as modified in response to those comments, has been significantly improved. A description of the relevant comments, and OMB’s responses, follow.

(1) *OMB proposes to revise Section 2. Scope to indicate that the Guidelines do not address the waiver or reduction of fees if disclosure is in the public interest.*

Four commenters recommended that OMB address public interest fee waivers

in the Guidelines. OMB finds that addressing fee waivers is beyond the allowable scope of this guidance. In relevant part, the FOIA requires OMB to promulgate guidelines “which shall provide for a uniform schedule of fees for all agencies.” 5 U.S.C. 552(a)(4)(A)(i). As OMB explained in the preamble to the first publication of the Guidelines, “OMB’s role is limited by the plain wording of the statute to developing guidelines and a fee schedule.” 52 FR 10016.

The application of the OMB fee schedule to related fee categories is distinct from a public interest fee waiver. A requester’s fee category concerns the services—search, duplication, and review—for which that requester may be assessed fees. *See* 5 U.S.C. 552(a)(4)(A)(ii). By contrast, a public interest fee waiver concerns whether the requester will ultimately be responsible for paying any such fees. *See* 5 U.S.C. 552(a)(4)(A)(iii).

The comments on this proposal suggested that there is an inter-relationship between a requester’s fee category and whether they are eligible for a public interest fee waiver, and as a result, the OMB Guidelines should also address public interest fee waivers. Whether or not the two issues involve a common element, for instance whether there is a commercial interest at stake, the fact remains that separate legal constructs have developed around each, and other, independent considerations are necessary to the analysis of each. To expound on distinct elements of the public interest fee waiver would exceed OMB’s mandate, which is limited to fee categories.

At least one commenter suggested that it would cause confusion among requesters and agencies for the Guidelines to address fee categories but not public interest fee waivers. OMB disagrees. Whatever commonalities there may be, OMB intends these Guidelines only to advise agencies with respect to fee categories. The revision to Section 2 is carefully worded, with citation to the public interest fee waiver provision in the FOIA, to specifically exclude from the scope of the Guidelines “the waiver or reduction of fees if the disclosure of the information is in the public interest.” No commenter offered a recommendation on a more effective way to achieve this limitation on the scope.

OMB emphasizes that, while the Guidelines do not address public interest fee waivers, it is not the case that agencies have no guidance on this topic. Just as OMB issued the original Guidelines in response to the Freedom of Information Reform Act, one