GIBBONSVILLE TOWNSITE

IBLA 76-285 Decided April 18, 1977

Appeal from decision of State Director for Idaho, Bureau of Land Management, rejecting application for townsite patent. I 5775.

Dismissed.

1. Townsites ! ! Rules of Practice: Appeals: Dismissal

An appeal to the Board of Land Appeals will be dismissed where the enactment of legislation renders moot the questions on appeal.

APPEARANCES: Hon. William Puette, Magistrate, Salmon, Idaho, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Application I-5775 was filed July 19, 1972, by a Magistrate of the District Court of Lemhi County, Idaho, on behalf of the occupants of the Community of Gibbonsville, Idaho, for a townsite patent pursuant to the provisions of Revised Statutes 2387, 2388 and 2389, 43 U.S.C. §§ 718-720 (1970). The lands sought lie within the Salmon National Forest.

Following an adverse report from the Forest Service, the Bureau of Land Management State Director for Idaho rejected the application by a decision dated September 8, 1975. This appeal followed.

During the pendency of the appeal, the Federal Land Policy and Management Act of 1976 (FLPMA), was enacted October 21, 1976. Among the other provisions of this Act is the repeal of Revised Statutes 2387, 2388, 2389, pursuant to which the application of Gibbonsville was filed, and amendment of the Act of July 31, 1958, 72 Stat. 438, 7 U.S.C. § 1012a, 16 U.S.C. § 478a (1970), to read as follows:

> Sec. 213. The Act of July 31, 1958 (72 Stat. 438, 7 U.S.C. 1012a, 16 U.S.C. 478a), is amended to read as follows: "When the Secretary of Agriculture determines that a tract of National Forest System land in Alaska or in the eleven contiguous Western States is located adjacent to or contiguous to an established community, and that transfer of such land would serve indigenous community objectives that outweigh the public objectives and values which would be served by maintaining such tract in Federal ownership, he may, upon application, set aside and designate as a townsite an area of not to exceed six hundred and forty acres of National Forest System land for any one application. After public notice, and satisfactory showing of need therefor by any county, city, or other local governmental subdivision the Secretary may offer such area for sale to a governmental subdivision at a price not less than the fair market value thereof: Provided, however, That the Secretary may condition conveyances of townsites upon the enactment, maintenance, and enforcement of a valid ordinance which assures any land so conveyed will be controlled by the governmental subdivision so that use of the area will not interfere with the protection, management, and development of adjacent or contiguous National Forest System lands."

[1] The pending application of Gibbonsville is not a valid existing right within the ambit of section 703 of FLPMA. An appeal to the Secretary of the Interior will be dismissed where enactment of legislation renders moot the questions raised on appeal. Homer S. Wilhelm, A-27564 (August 2, 1966). Accordingly, the appeal of Gibbonsville must be dismissed.

However, in a report dated April 5, 1977, following review of the appeal of Gibbonsville Townsite Committee, the Associate Deputy Chief of the Forest Service stated:

> We believe that it is in the public interest to dispose of all of the National Forest System lands within the applied for area because of isolation from other National Forest lands. Also, because of size and use being made of the land, these parcels are unmanageable for National Forest purposes. Excluding lands from consideration which are within a flood plain leaves the United States with even smaller isolated parcels that are not in the public interest to manage.
>
> We recommend that the appeal be rejected and that a new application be made under the authority of the 1976 Act. The Forest Service is willing to work with the

> proper authorities to develop the protective zoning ordinances needed to permit conveyance of the land pursuant to Section 213 of the 1976 Act [FLPMA].

Thus, dismissal of this appeal will not be prejudicial to consideration of an application filed pursuant to the appropriate provisions of FLPMA.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Douglas E. Henriques
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Anne Poindexter Lewis
Administrative Judge