



IN REPLY REFER TO  
Fee to Trust

# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way, Room. W-2820  
Sacramento, California 95825

SEP 06 2019

Governor's Office of Planning & Research

SEP 09 2019

STATE CLEARINGHOUSE

## NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7019 0140 0000 7335 9528

Honorable Frederick “Bo” Mazzetti  
Chairman, Rincon Band of Luiseno Mission Indians  
One Government Center Lane  
Valley Center, CA 92082

Dear Chairman Mazzetti:

This is our Notice of Decision for the application of the Rincon Band of Mission Indians (Tribe) to have the below described property accepted by the United States of America in trust for the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California.

THE LAND HEREINAFTER REFERRED TO IS SITUATED IN THE UNINCORPORATED AREA OF VALLEY CENTER, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

### PARCEL 1:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 10 SOUTH, RANGE 1 WEST, SAN BERNADINO BASE AND MERIDIAN IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF LYING NORTHWESTERLY AND WESTERLY OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OF THE WEST LINE OF SAID SOUTHWEST QUARTER DISTANT THEREON NORTH 0°14'20" WEST 147.53 FEET FROM THE SOUTHWEST CORNER THEREOF; THENCE NORTH 68°14'30" EAST 84.66 FEET; THENCE NORTH 53°35'10" EAST 128.56 FEET; THENCE NORTH 79°48'40" EAST 400.63 FEET TO A POINT HEREBY DESIGNATED AS POINT “A” OF THIS DESCRIPTION; THENCE NORTH 5°23'50" EAST 143.18 FEET; THENCE NORTH 15°12'20" EAST TO A POINT ON THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER.

EXCEPTING THEREFROM ONE HALF OF ANY MINERAL AND OIL RIGHTS, CONVEYED TO CLIFFORD M. MICHAEL AND GERTRUDE M. MICHAEL, AS COMMUNITY PROPERTY, IN DEED RECORDED JULY 17, 1981 AS INSTRUMENT NO. 81-0226365 OF OFFICIAL RECORDS.

#201816

PARCEL 2:

AN EASEMENT AND RIGHT OF WAY FOR ROAD, SEWER, WATER, GAS, POWER AND TELEPHONE LINES AND APPURTENANCES THERETO, OVER, UNDER, ALONG AND ACROSS A STRIP OF LAND 20 FEET IN WIDTH, THE NORTHWESTERLY LINE OF SAID 20 FOOT STRIP BEING THAT PORTION OF THE SOUTHEASTERLY LINE OF PARCEL 1 ABOVE WHICH LIES BETWEEN THE POINT OF BEGINNING OF SAID SOUTHEASTERLY LINE AND SAID POINT "A".

THE EASEMENT HEREIN DESCRIBED IS DECLARED TO BE APPURTENANT TO AND FOR THE USE AND BENEFIT OF THE PRESENT AND FUTURE OWNERS OF ALL OR ANY PORTION ON SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER.

PARCEL 3:

AN EASEMENT AND RIGHT OF WAY FOR ROAD AND UTILITY PURPOSES OVER AND ACROSS THE WESTERLY 20 FEET OF THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 10 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, LYING SOUTHERLY OF THE SOUTHERLY BOUNDARY OF PARCEL 2 HEREINBEFORE DESCRIBED.

THE EASEMENT HEREIN DESCRIBED IS DECLARED TO BE APPURTENANT TO AND FOR THE USE AND BENEFIT OF THE PRESENT AND FUTURE OWNERS OF ALL OR ANY PORTION OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER.

The subject property consists of the above described parcels of land totaling approximately 16.41 acres more or less, commonly referred to as the Carvajal property and Assessor's Parcel Number 133-190-11-00. The property is contiguous the Rincon Reservation.

**Note: The total acreage is consistent with the Bureau of Land Management Indian Land Surveyor's Land Description Review dated August 8, 2018.**

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title on behalf of the United States of America for the benefit of tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the exterior boundaries of the tribe's reservation, or adjacent thereto, or when such lands are within the consolidation area; or (2) when the tribe already owns an interest in the land; or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. In this particular instance, the authorizing Act of Congress is the Indian Land Consolidation of 1983 (25 U.S.C. § 2202). The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended.

The Rincon Reservation was established by the Executive Order of March 2, 1881. The Reservation was patented to the Rincon Band on September 13, 1892, by the Secretary of Interior.

Pursuant to 25 U.S.C. § 5125 (previously § 478), the Secretary held such an election for the Tribe on December 15, 1934, at which the majority of the Tribe's voters voted to reject the

provisions of the Indian Reorganization Act of June 18, 1934<sup>1</sup>. The Secretary's act of calling and holding this election for the Tribe informs us that the Tribe was deemed to be "under Federal jurisdiction" in 1934. The Haas List tribes are considered to be under federal jurisdiction in 1934<sup>2</sup>.

On November 2, 2018, by certified mail, return receipt requested, we issued notice of and sought comments regarding the proposed fee-to-trust application from the California State Clearinghouse, Office of Planning and Research; Mr. Joe Dhillon, Senior Advisor for Tribal Negotiations, Office of the Governor; Sara Drake, Deputy Attorney General, State of California; Office of the Honorable Senator Diane Feinstein; U.S. House of Representatives-50<sup>th</sup> District; San Diego County Assessor; San Diego County Treasurer and Tax Collector; County of San Diego, Board of Supervisors; San Diego County Sheriff's Department; San Diego County Department of Public Works; San Diego County Department of Planning and Land Use; Barona Group of Capitan Grande Band; Campo Band of Mission Indians; Ewiiapaayp Band of Kumeyaay Indians; Jamul Indian Village; La Jolla Band of Luiseno Indians; La Posta Band of Mission Indians; Los Coyotes Band of Cahuilla & Cupeno Indians; Manzanita Band of Mission Indians; Mesa Grande Band of Mission Indians; Pala Band of Mission Indians; Pauma Band of Mission Indians; Pechanga Band of Luiseno Mission Indians; San Pasqual Band of Mission Indians; Iipay Nation of Santa Ysabel, California; Sycuan Band of the Kumeyaay Nation; and Viejas Band of Mission Indians. Regular Mail: Inaja-Cosmit Band of Mission Indians and Superintendent, Southern California Agency.

In response to our notification, we received the following comments:

- 1. Letter dated November 20, 2018 from the State of California Native American Heritage Commission stating that they have no comments.**
- 2. Letter dated November 20, 2018 from the San Diego County Assessor's Office, which provided a copy of the Assessor's Master Property Records showing a printout of the 2018-2019 tax roll information and distribution of taxes.**

Pursuant to 25 CFR 151.10, the following factors were considered in formulating our decision: (1) the need of the tribe for additional land; (2) the purposes for which the land will be used; (3) impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls; (4) jurisdictional problems and potential conflicts of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of land in trust status; (6) 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. Accordingly, the following analysis of the application is provided.

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<sup>1</sup> See "Ten Years of Tribal Government Under I.R.A.", United States Services, 1947, at Interior's website at <http://www.doi.gov/library/internet/subject/upload/Haas-TenYears.pdf>.

<sup>2</sup> See *Shawano County, Wisconsin v. Acting Midwest Regional Director, BIA*, 53 IBIA 62 (February 28, 2011) and *Stand Up for California, et al, v. U.S. Department of Interior v. North Fork Rancheria of Mono Indians*, 919 F. Supp. 2d 51 (January 29, 2013), the District Court for District of Columbia.

## Factor 1 - Need for Additional Land

This acquisition of the Carvajal property in trust for the Tribe is part of the Tribe's comprehensive plan for restoration of its original reservation land base. The Tribe must ensure that the Carvajal property is maintained and protected well into the future and that the Tribe continues to be the beneficial owner of the property.

The Rincon Reservation consists of approximately 4,659 acres (7.24 square miles) and is designed as follows:

- 4,066 acres are held in trust for the Tribe;
- 250 acres are held in trust for the Tribe, but have been assigned to individual tribal members for their exclusive use;
- 319 acres are held in trust for individual allottees

The Tribe currently uses, and intends to continue to use, the Carvajal property as vacant, open space. Acquisition of the Carvajal property in trust will allow the Tribe to maintain the property as open space on the Reservation. As of 2015 (when the latest tribal census was conducted), there were 489 members of the Tribe. Merely twenty-four percent (24%) of the Tribe's membership is able to reside on the Reservation. The Tribe anticipates that on-reservation housing needs will grow in the future as a result of tribal population growth, as well as an increase in the desire of tribal members to return to and live on the Reservation. Based on population growth estimates alone, an estimated forty (40) additional homes will be needed over the next thirty (30) years.

While the United States currently holds approximately 4,659 acres more or less of land in trust for the Tribe, approximately one-third (1/3) of the Reservation consists of rugged and steep terrain that is generally inaccessible, or is subject to environmental constraints which has made development difficult or, in some cases impossible. The Tribe has no intention of developing the property at the present; nevertheless, an additional 16.41 acres of land added to the land base may be contemplated for residential purposes at some point in the future.

The Tribe is fully aware of the effect of conveying the subject parcels to the United States to be held in trust for the Tribe, including the significant degree of oversight that will be exercised by the Bureau of Indian Affairs once the parcels are accepted into trust.

It is our determination that the Rincon Band has established a need for additional lands to protect the environment and preserve the reservation.

## Factor 2 - Proposed Land Use

The Carvajal property is generally vacant with one vacant structure and one fire-destroyed structure. The Carvajal property will continue to be used as vacant, open space. The Tribe has no plans for any development of the property.

### Factor 3 – Impact on State and Local Government’s Tax Base

Parcels accepted into federal trust status are exempt from taxation and would be removed from the County’s taxing jurisdiction. In the 2018-2019 tax years, the total tax assessed on the subject parcels was \$5,286.34. During the comment period, none of the solicited agencies indicated that any adverse impacts would result from the removal of the subject parcel from the tax rolls.

Transferring the subject property into trust will not have a significant impact on the State of California or San Diego County’s tax revenue because the amount of property taxes assessed on these parcels is small in comparison to the County’s annual property tax revenue.

The County of San Diego does not currently provide many of the services typically funded by property tax revenue on the Carvajal property. The Tribe consistently provides fire protection, security, trash collection, access, and water on and for the Carvajal property. Additionally, pursuant to an agreement with the San Diego County Sheriff’s Department, the Tribe pays approximately \$500,000 annually for law enforcement services on the Reservation, encompassing the Carvajal property.

It is our determination that no significant impact will result from the removal of this property from the county tax rolls given the relatively small amount of tax revenue assessed on the subject parcel.

### Factor 4 - Jurisdictional Problems and Potential Conflicts of Land Use Which May Arise

The Tribe does not anticipate that any significant jurisdictional conflicts will occur as a result of transfer of the Carvajal property into trust. The property is contiguous to the exterior boundaries of the Rincon Reservation, and is surrounded by trust property on two sides, and as such, constitutes an area over which the Tribe exercises a significant degree of jurisdiction. Most of the land surrounding the Carvajal property is sparsely developed. Currently, the property is vacant, open space. The Tribe has no plans to change the use of the property; therefore it is unlikely that any jurisdictional conflicts will arise.

The land presently is subject to the full civil/regulatory and criminal/prohibitory jurisdiction of the State of California and San Diego County. Once the land is accepted into trust and becomes part of the Reservation, the State of California will have the same territorial and adjudicatory jurisdiction over the land, persons and transactions on the land as the State has over other Indian counties within the State. Under 18 U.S.C. § 1162 and 28 U.S.C. § 1360 (P.L. 83-280), except as otherwise expressly provided in those statutes, the State of California would retain jurisdiction to enforce its criminal/prohibitory law against all persons and conduct occurring on the land. Transfer of the Carvajal property into trust will not have an effect on San Diego County’s regulatory jurisdiction or zoning over the subject property as the property is subject to tribal, not County regulatory jurisdiction and zoning regulations.

Factor 5 - Whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status

Acceptance of the Carvajal property into Federal trust status should not impose any additional responsibilities or burdens on the BIA beyond those already inherent in the Federal trusteeship over the existing Rincon Reservation. The Tribe will ensure that all essential services, security, fire protection, natural resources protections, etc. are provided to the property using existing federal allocations and/or profits from the Tribe's economic enterprises. This acquisition anticipates no change in land use on the Carvajal property; and therefore, any additional responsibilities resulting from this transaction will be minimal.

Factor 6 – The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 1-7, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determination

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential of, and extent of liability from hazardous substances or other environmental remediation or injury. The record includes a negative Phase 1 "Contaminant Survey Checklist" dated June 21, 2017, reflecting that there were no hazardous materials or contaminants.

National Environmental Policy Act Compliance

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA's guidelines for NEPA compliance are set forth in the Bureau of Indian Affairs Manual (59 IAM). The proposed action herein has been determined not to require the preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). A Categorical Exclusion requires a qualifying action in this case, 516 DM 10.5I, Land Conveyance and Other Transfers, where no immediate change in land use is planned. A Categorical Exclusion for the acquisition for the subject property was approved by this Agency on August 22, 2019. Compliance with NEPA has been completed.

Conclusion

Based on the foregoing, we at this time issue notice of our intent to accept the subject real property into trust. The subject acquisition will vest title in the United States of America in trust for the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California in accordance with the Indian Land Consolidation Act of January 12, 1983, (25 U.S.C. §2202).

Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with 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 (copy enclosed).

Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within thirty (30) days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed.

If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior 1849 C Street, N.W., MS-3071-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures. If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b). No extension of time may be granted for filing a notice of appeal.

If any party receiving this notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward a copy of this notice to said party or timely provide our office with the name and address of said party.

Sincerely,

A handwritten signature in blue ink that reads "Amy Alluttschko". The signature is written in a cursive style.

Regional Director

Enclosure:

43 CFR 4.310, et seq.

cc: Distribution List

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Office of Honorable Dianne Feinstein – 7019 0140 0000 7335 7326  
331 Hart Senate Office Building  
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U.S. House of Representatives – 7019 0140 0000 7335 7333  
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1611 N. Magnolia Ave., Suite 310  
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San Diego County Assessor – 7019 0140 0000 7335 7340  
1600 Pacific Highway, Suite 103  
San Diego, CA 92101

San Diego Treasurer & Tax Collector – 7019 0140 0000 7335 7371  
1600 Pacific Highway, Suite 162  
San Diego, CA 92101-2480

County of San Diego – 7019 0140 0000 7335 7357  
Board of Supervisors  
1600 Pacific Highway, Room 335  
San Diego, CA 92101

San Diego County Sheriff's Department – 7019 0140 0000 7335 7364  
John F. Duffy Admin. Center  
P.O. Box 939062  
San Diego, CA 92193-9062

San Diego County – 7019 0140 0000 7335 7388  
Department of Public Works  
5510 Overland Ave., Suite 410  
San Diego, CA 92123

San Diego County – 7019 0140 0000 7335 7395  
Department of Planning and Development  
5510 Overland Ave., Suite 110  
San Diego, CA 92123

Chairperson – 7019 0140 0000 7335 7401  
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Chairperson – 7019 0140 0000 7335 7418  
Campo Band of Mission Indians  
36190 Church Rd., Suite 1  
Campo, CA 91906

Chairperson – 7019 0140 0000 7335 7425  
Ewiiapaayp Band of Kumeyaay Indians  
4054 Willows Road  
Alpine, CA 91901

Chairperson – 7019 0140 0000 7335 7432  
Jamul Indian Village  
P.O. Box 612  
Jamul, CA 91935

Chairperson – 7019 0140 0000 7335 7449  
La Jolla Band of Luiseno Indians  
22000 Highway 76  
Pauma Valley, CA 92061

Chairperson 7019 0140 0000 7335 7456  
La Posta Band of Mission Indians  
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Boulevard, CA 91905

Spokesperson – 7019 0140 0000 7335 7463  
Los Coyotes Band of Cahuilla & Cupeno Indians  
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Warner Springs, CA 92086

Chairperson – 7019 0140 0000 7335 7470  
Manzanita Band of Mission Indians  
P.O. Box 1302  
Boulevard, CA 91905

Chairperson – 7019 0140 0000 7335 7487  
Mesa Grande Band of Mission Indians  
P.O. Box 270  
Santa Ysabel, CA 92070

Chairperson – 7019 0140 0000 7335 7494  
Pala Band of Mission Indians  
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PMB - 50  
Pala, CA 92059

Chairperson – 7019 0140 0000 7335 7500  
Pauma Band of Mission Indians  
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Pauma Valley, CA 92061

Chairperson – 7019 0140 0000 7336 0012  
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12705 Pechanga Rd.  
Temecula, CA 92592

Spokesperson – 7019 0140 0000 7335 9481  
San Pasqual Band of Mission Indians  
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Valley Center, CA 92082

Chairperson – 7019 0140 0000 7335 9498  
IIPAY Nation of Santa Ysabel  
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Santa Ysabel, CA 92070

Chairperson – 7019 0140 0000 7335 9504  
Sycuan Band  
1 Kwaapaay Court  
El Cajon, CA 92019

Chairperson – 7019 0140 0000 7335 9511  
Viejas (Baron Long) Band of Mission Indians  
P.O. Box 908  
Alpine, CA 91903

Regular Mail:

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Superintendent, BIA  
Southern California Agency  
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Ms. Denise Turner Walsh, Attorney  
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