



United States Department of the Interior

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

OCT 04 2019

Governor's Office of Planning & Research

OCT 14 2019

STATE CLEARINGHOUSE

NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7016 2140 0000 7173 9251

Honorable Kevin Day
Chairperson, Tuolumne Band of Me-Wuk Indians
P.O. Box 699
Tuolumne, CA 95379

Dear Chairman Day:

This is our Notice of Decision for the application of the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California (Tribe) to have the below described property accepted by the United States of America in trust for the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

All that certain real property in the unincorporated area of the County of Tuolumne, State of California, described as follows:

PARCEL ONE

PARCEL D AS SHOWN AND DESIGNATED ON THE RECORD OF SURVEY, FILED IN THE OFFICE OF THE COUNTY RECORDER, TUOLUMNE COUNTY, CALIFORNIA ON AUGUST 8, 1969 IN VOLUME 10 OF RECORD OF SURVEYS AT PAGE 31 AND BEING A PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 2 NORTH, RANGE 16 EAST, M.D.B. & M.

The subject property consists of the above described parcel of land totaling approximately 3.089 acres more or less, commonly referred to as the Sheldon property and Assessor's Parcel Number 088-050-006-000. The property is contiguous lands held in trust for the Tuolumne Rancheria.

Note: The total acreage is consistent with the Bureau of Land Management Indian Land Surveyor's Land Description Review dated July 9, 2019.

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 Reorganization Act (IRA) of June 18, 1934 (48 Stat. 984; 25 U.S.C. § 5108 (previously § 465)). The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended.

The Tuolumne Rancheria was established October 25, 1910, under the authority of the Acts of June 21, 1906 (34 Stat. 325, 333) and April 30, 1908 (35 Stat. 70, 77).

Pursuant to 25 U.S.C. § 5125 (previously § 478), the Secretary held such an election for the Tribe on November 17, 1934, at which the majority of the Tribe's voters voted to accept the provisions of the Indian Reorganization Act of June 18, 1934¹. 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 1934².

The Tribe has also requested that certain lands be proclaimed "reservation" pursuant to Section 7 of the Indian Reorganization Act of June 18, 1934 (Stat. 984; 24 U.S.C. 5110 (Formerly § 467)), which provides that the Secretary of the Interior may proclaim an Indian reservation or add lands to existing reservations. A Proclamation is simply an administrative function that allows the Tribe to take advantage of special federal assistance programs. The Office of the Assistant Secretary – Indian Affairs review all requests for adding land to a reservation, and prepares the proclamation and Federal Register notice.

BIA has reviewed the Tribe's Proclamation request and has determined that, immediately following the expiration of the 30-day administrative appeal period, if no appeal is filed, the BIA official will recommend that the Assistant Secretary – Indian Affairs issue the Proclamation. If an appeal is filed, and a final decision is issued affirming the BIA official's decision, BIA will immediately recommend that the Assistant Secretary – Indian Affairs issue the Proclamation. Reservation proclamations will only be issued after land is acquired in trust.

On August 13, 2019, 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; 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-4th District; Tuolumne County Assessor's Office; Tuolumne County Board of Supervisors; Tuolumne County Treasurer and Tax Collector; Tuolumne County Administrative Officer; Tuolumne County Sheriff's

¹ 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>.

² See *Shawano County, Wisconsin v. Acting Midwest Regional Director, BIA*, 53 IBIA 62 (February 28, 2011) and *Stand Up for California, etal, 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.

Office; Tuolumne County Department of Planning Division; Tuolumne Rancheria; and Chicken Ranch Rancheria. Regular Mail: Superintendent, Central California Agency.

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

1. Letter dated September 4, 2019 from the California Department of Transportation (Caltrans) stating that they have no comments on this project.

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.

Factor 1 - Need for Additional Land

This acquisition of the Sheldon property in trust for the Tribe will help the Tribe address its on-Rancheria housing shortage by providing a single family home and infrastructure for immediate occupancy by a tribal family. Further, it will assist in insuring the Tribe's long term ownership and the use of their ancestral lands.

The Tribe's current land base is largely comprised of hilly, remote land with hard soils which are not readily conducive for residential construction. Most of these sites lack water systems, waste disposal systems, telecommunications capability, and have limited access roads. As a result, there are only 80 on-Rancheria homes, which are fully occupied. The lack of available housing is forcing Tribal members to leave the Rancheria in order to find housing for themselves and their families.

The Tribe currently uses, and intends to continue to use the existing single family home and infrastructure on the Sheldon property for occupancy by a Tribal family.

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 Tribe has established a need for additional lands for housing and self-determination.

Factor 2 - Proposed Land Use

The Sheldon property currently contains one single family residence and associated outbuildings that are all in good condition. The Sheldon property is being used for residential purposes and is currently occupied by a Tribal family. The Tribe has no plans to change the use 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 \$2,582.32. 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 Tuolumne 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 Tribe has an excellent working relationship with Tuolumne County. The Tribe and the County have a Memorandum of Understanding (MOU) which provides a binding annual payment to the County in order to offset any costs or losses the County incurs from providing services to the Rancheria and tribally owned lands. Further, most of the on-Rancheria emergency patrols and initial emergency responses are provided by the Tribal Security Force. The Tribe also funds its own Tribal Fire department which responds to both wild land and residential fires on and off Rancheria lands under a mutual-aid assistance agreement with the County and State. The Sheldon property is already included in those agreements.

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 Sheldon property into trust. The property is contiguous to lands held in trust for the Tribe. Currently, the property is zoned residential. 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 Tuolumne County. Once the land is accepted into trust and becomes part of the Rancheria, 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 country 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 Sheldon property into trust will not have an effect on Tuolumne 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 Sheldon 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 Tuolumne. The Tribe currently funds many of its existing services with the Tribe's gaming and economic development revenue. This acquisition anticipates no change in land use on the Sheldon 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 March 22, 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 May 2, 2017. 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 Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California in accordance with the Indian Reorganization Act (IRA) of June 18, 1934 (48 Stat. 984; 25 U.S.C. § 5108 (previously § 465)). The applicable regulations are set forth in the Code of Federal Regulations, Title 25, INDIANS, Part 151, as amended.

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-4660-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, appearing to read "Amy Allutseck".

Regional Director

Enclosure:

43 CFR 4.310, et seq.

cc: Distribution List

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