



FEE-TO-TRUST APPLICATION #2 2015



SHINGLE SPRINGS BAND OF MIWOK INDIANS

SHINGLE SPRINGS BAND OF MIWOK INDIANS,
SHINGLE SPRINGS RANCHERIA, (VERONA TRACT), CALIFORNIA
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October 22, 2015

Ms. Arvada Wolfin
California Fee to Trust Consortium
Bureau of Indian Affairs
P.O. Box 1539
Sacramento, CA 74056

Re: Land Acquisition Application #2 – Parcels Contiguous to the Shingle Springs Rancheria

Dear Ms. Wolfin:

The Shingle Springs Band of Miwok Indians (“Nation,” or “Tribe”), hereby submits this fee-to-trust application pursuant to Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 465, and regulations in 25 C.F.R. Part 151, requesting that the United States accept parcels 319-100-20 and 319-100-21 commonly referred to as the “Solomon” and “Lee” parcels and consisting of approximately 10.18 acres, in trust for the Nation. The Nation owns these parcels in fee and are depicted on the map attached as Exhibit A. As explained below, the Nation plans to build homes to house tribal members on the parcels.

This application tracks the structure and requirements of the Part 151 regulations, and contains all of the information and documentation necessary in order for your office to consider this land acquisition request. The Nation is happy to supplement this application, if necessary, and to answer any questions that you may have so as to facilitate the prompt processing of this request.

1. Tribal Resolution

Enclosed as Exhibit B, please find Shingle Springs Band of Miwok Indians Resolution Number 2015-19 (“Resolution”), requesting that an application be made to place the parcels listed above in trust, and that the parcels be accepted in trust by the United States for the use and benefit of the Nation. The Resolution authorizes the Chairman to submit this request, on behalf of the Nation, and to take any and all actions necessary to facilitate the transfer of the parcels into trust for the Nation.

2. Land Acquisition Policy (25 C.F.R. § 151.3)

Section 151.3 provides that the Secretary may acquire land in trust for a tribe where (1) the land is within or adjacent to the exterior boundaries of the tribe's reservation, (2) the tribe already owns an interest in the property in question, or (3) the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. §151.3(a).

The "Solomon" and "Lee" parcels are located in El Dorado County, California, and are located contiguous to the reservation of the Nation, as the term "reservation" is defined in 25 C.F.R. §151.2, "*Indian reservation* means that area of land over which the tribe is recognized by the United States as having governmental jurisdiction..."

The United States has previously determined that the Shingle Springs Rancheria is a reservation.

We first turn to whether the Shingle Springs Rancheria meets a definition of "Indian lands." We find that it meets the first definition of Indian lands because the Rancheria is a reservation. 25 U.S.C. §2703(4) ("The term 'Indian lands' means-(A) all lands within the limits of any Indian reservation"); 25 CFR §502.12(a) ("Indian lands means: (a) Land within the limits of an Indian reservation"). *Memo from General Counsel to Chairman Hogen of the National Indian Gaming Commission, dated November 25, 2003. See Exhibit C.*

The "Solomon" and "Lee" parcels are currently owned in fee by the Nation, and thus meet the requirement of 25 C.F.R. § 151.3(a)(2). *See* Paragraph 11 below.

The acquisition of "Solomon" and "Lee" parcels in trust is necessary to facilitate tribal self-determination and housing as explained below in Paragraph 5.

3. Location and Description of the Property (25 C.F.R. § 151.9)

The "Solomon" and "Lee" parcels are located contiguous to the boundaries of the Tribe's current reservation in Shingle Springs, El Dorado County, California. Specifically, the "Solomon" and "Lee" parcels are contiguous to the Tribe's original Rancheria Tract Number: 546 T 5023.

The Solomon Parcel has a street address. The Lee parcel does not have a street addresses. The vesting deeds are attached at Exhibit D. The parcels total approximately 10.18 acres as outlined below.

#	Assessor's Parcel Number	Address	Approximate Acreage	Nickname
1.	319-100-20	4801 Reservation Rd.	5.007	Solomon
2.	319-100-21	No address	5.173	Lee
Total Acreage			10.18	

The "Solomon" and "Lee" properties share a similar topography of a gentle slope. Oak trees provide ground cover and both properties are vacant, undeveloped land. The parcels are accessible only through the Nation's Rancheria.

#	Assessor's Parcel Number	Address	Legal Description
1.	319-100-20	4801 Reservation Rd.	PM 12/46/B (Parcel B of Book 12 of Parcel Maps, Page 46)
2.	319-100-21	No address	PM 12/46/A (Parcel A of Book 12 of Parcel Maps, Page 46)

4. Statutory Authority (25 C.F.R. § 151.10(a))

In *Carcieri v. Salazar*, 555 U.S. 379 (2009), the Supreme Court held that the Secretary's authority to take land into trust for an Indian tribe extends only to those tribes that were "under Federal jurisdiction" when the Indian Reorganization Act (IRA), 25 U.S.C. § 461 et seq., was enacted on June 18, 1934.

On March 12, 2014, the Office of the Solicitor has issued Opinion M-37029, analyzing the *Carcieri* decision and interpreting the meaning of the phrase "under federal jurisdiction" as it appears in section 19 of the Indian Reorganization Act¹ for purposes of determining whether an Indian tribe can demonstrate that it was under federal jurisdiction in 1934.

The Shingle Springs Band of Miwok Indians is one of the tribes included on the Haas List, which is attached as Exhibit E.

5. Need for Additional Land (25 C.F.R. § 151.10(b))

The Nation needs to have its fee lands placed into trust in order to exercise its sovereignty over these lands, to protect them from alienation and to allow the Tribe to exercise jurisdiction over them, free from state and local regulations. These parcels are currently vacant and will be used for housing, as there is a shortage of housing available for Tribal Members.

¹ See 25 U.S.C. § 479.

At the present time, the Tribe has 41 housing units available on the Rancheria. Each of these units is being utilized, and the Tribe has a waiting list of 83 Tribal Members waiting for homes.

While the Nation's need for additional trust lands is a factor to be considered in determining whether to accept additional lands in trust for the Nation, a tribe need not be literally "landless" (i.e., the United States does not hold land in trust for the tribe) in order to establish the requisite "need" for trust lands. See, e.g., *State of Kansas v. Acting Southern Plains Regional Director, Bureau of Indian Affairs*, 36 IBIA 152, 155 (2001). Likewise, the "need" for additional trust land need not be financial: the United States may accept land in trust for tribes that are not suffering financially. See *Avoyelles Parish, Louisiana, Police Jury v. Eastern Area Director, Bureau of Indian Affairs*, 34 IBIA 149, 153 (1999). Among other things, a showing that additional land is necessary to improve the economic and social well being of the tribe, is enough to satisfy the "need" requirement. *Id.* Here, trust status will allow the Nation to exercise sovereignty rights over the land, in compliance with the federal policy of promoting tribal self-governance.

6. Purpose for Which the Land will be Used (25 C.F.R. § 151.10(e))

The Nation plans to change the current use of the "Solomon" and "Lee" parcels. Currently, the parcels are vacant and undeveloped, and the Nation proposes to use them for housing. The Nation plans to build homes on the parcels, consistent with Tribal land use guidelines and the Nation's agreement, if any, with El Dorado County. Exhibit F. Attached as Exhibit G is the proposed parcel map showing how the Nation will divide the Solomon and Lee parcels for housing purposes.

7. Impact Resulting from Removal of the Property from County Tax Rolls (25 C.F.R. § 151.10(e))

The real property tax assessed on the Property in 2014-2015 is listed below. Exhibit H.

#	Assessor's Parcel Number	Address	Most Recent Tax Assessment	Nickname
1.	319-100-20	4801 Reservation Rd.	\$2,785.74	Solomon
2.	319-100-21	No address	\$2,785.74	Lee
Total Tax Assessment			\$5,571.48	

In 2014, El Dorado County's total revenues were approximately \$314,309,148. All taxes collected by El Dorado County in 2014 totaled approximately \$103,576,423, which was just over 32% of the County's total revenue for that year. Of that \$103 million, property taxes accounted

for about \$82,164,728 of that total amount. Exhibit I [County of El Dorado Annual Financial Report for the Year Ended June 30, 2014]

The combined taxes for the 2014-2015 fiscal year for the properties subject to this application were \$5,571.48 or .006% of the total property tax collected by El Dorado County.

We believe the impact of the loss of the tax revenue from these properties can best be described as de minimis.

8. Potential Jurisdictional Problems and Conflicts of Land Use Arising from Acquisition of the Property in Trust (25 C.F.R. § 151.10(f))

No jurisdictional issues or concerns are foreseen. Law enforcement services will continue to be provided by the El Dorado County Sheriff's Office. Fire, emergency services, water, and sanitation services for the property are provided by El Dorado County and the Nation. Intergovernmental agreements addressing these services and issues are attached as Exhibit J.

The use of the properties will change as a result of the acquisition of the "Solomon" and "Lee" parcels in trust. The parcels will be used to develop tribal housing, in accordance with the Tribe's Land Use and Land Assignment Ordinance, and consistent with the Tribe's agreement, if any, with El Dorado County. Therefore, no conflicts of land use will arise.

9. Potential Additional Burdens on the Bureau Resulting from this Trust Acquisition (25 C.F.R. § 151.10(g))

The United States' trust responsibility for Indian tribes is well established, and is deeply rooted in the precedent of the United States Supreme Court, as well as the vast body of federal laws, policies and procedures governing the unique relationship between Indian tribes and the United States. This relationship has long been understood to include federal oversight over, and responsibility for, lands held in trust by the United States for the use and benefit of Indian tribes.

Acceptance of the "Solomon" and "Lee" parcels in trust will not impose any significant additional burdens or responsibilities on the Bureau of Indian Affairs beyond those already inherent in the federal trusteeship over the Nation. The "Solomon" and "Lee" parcels are within the jurisdictional boundaries of the BIA's Central California Agency located in Sacramento, California, ("Agency"). The Properties are contiguous to the exterior boundaries of the Nation's existing Reservation. The Agency provides technical assistance, review and approval of real estate transactions. The Agency's staff should be able to handle all business leases, easements and permitting that may need to be processed for the Nation once the land is taken into trust.

10. Compliance with NEPA (516 DM 6, appendix 4) and Hazardous Substances determinations (602 DM 2) (25 C.F.R. § 151.10(h))

Compliance with 516 DM 6, appendix 4, the National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations, as required in connection with this land acquisition request, will be addressed in the Environmental Assessment prepared in contemplation of the proposed acquisition. The Tribe commits to adopting and implementing any mitigation measures that may be identified in the public environmental review process as needed to eliminate or minimize to a less than significant threshold any potentially significant impact to the environment as a result of the proposed uses associated with the proposed acquisition.

A Level 1 Contaminant Survey for this parcel was completed in _____ as part of the Phase 1 Environmental Investigation for this parcel, in compliance with the pre-acquisition environmental site assessment requirement in 602 DM 2. That survey confirmed that no contaminants exist on the property. A copy of the Level 1 Contaminant Survey is enclosed as Exhibit K.

11. Title Requirements (25 C.F.R. § 151.13)

The United States Department of Justice Title Standards ("Title Standards") require that title insurance be obtained prior to the acquisition of land by the United States. The required form for the title insurance policy is the American Land Title Association (ALTA) U.S. Policy - 9/28/91. The policy must list the United States of America as the proposed insured and, where the consideration is not readily ascertainable (as is generally the case with trust land acquisitions), the liability amount must be equal to the estimated value of the land being acquired.

Enclosed as Exhibit L please find a Commitment to Issue Title Insurance prepared by the Fidelity Nation Title Company, Order No. FSSE-0101500298, dated October 6, 2015 ("Commitment"). The Commitment contemplates an ALTA U.S. Policy - 9/28/91, and lists the "United States of America, in Trust for the Shingle Springs Band of Miwok Indians" as the proposed insured, as required by §§5(a)(1) and (2) of the Title Standards. The amount of liability is currently set at \$535,000, the estimated market value of the property, as required by §5(c) of the Title Standards.

#	Assessor's Parcel Number	Address	Purchase Price	Nickname
1.	319-100-20	4801 Reservation Rd.	\$267,500	Solomon
2.	319-100-21	No address	\$267,500	Lee

Section 5(a)(5) of the Title Standards requires that Schedule "B" of the title commitment list any exceptions to the proposed title policy, including any liens, easements, or similar encumbrances on the property. Schedule "B" of the Commitment does not contain any title exceptions that would generally be unacceptable to the United States, such as unpaid taxes, mortgage liens, access issues, or special assessments which create or have the potential to create a lien on the property. We have included copies of all instruments referenced in the title commitment as required by §5(a)(6) of the Title Standards, and have briefly addressed each exception listed in Schedule "B" below. The Nation has determined that these exceptions are acceptable as they will not interfere with the Nation's current and planned use of the "Solomon" and "Lee" parcels. This determination is evidenced in Tribal Council Resolution 2015-66, which is attached as Exhibit M.

CONCLUSION

For the foregoing reasons, the Shingle Springs Band of Miwok Indians Nation hereby requests that the Secretary of the Interior accept trust title "Solomon" and "Lee" parcels on behalf of the Nation. The Nation has made every effort to comply with the Department's regulations and guidance governing its fee-to-trust application, and believes that all required information has been provided through this submission.

If there are any questions about this submission, please feel free to contact either AmyAnn Taylor, General Counsel for the Nation at (530) 387-4194, Aurene Martin, at (202) 250-0477, or counsel for the Nation, Nicholas Bryson at (530) 387-4979. We will be happy to provide BIA with any assistance needed as it continues to move forward in its review of our fee-to-trust application.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas Fonseca", with a long horizontal flourish extending to the right.

Nicholas Fonseca
Chairman

Enclosures



**SHINGLE SPRINGS BAND
OF MIWOK INDIANS**

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October 23, 2015

Ms. Amy Dutscke
Bureau of Indian Affairs
P.O. Box 1539
Sacramento, CA 74056

Re: Land Acquisition Application #2 – Parcels Contiguous to the Shingle Springs Rancheria

Dear Ms. Dutscke:

Please consider the enclosed Land Acquisition Application from the Shingle Springs Band of Miwok Indians ("Tribe").

Pursuant to Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 465, the United States is authorized to acquire land into trust for the Tribe. With this understanding, on March 5, 2015 the Tribal Council approved Resolution 2015-19. This resolution authorized the preparation, submission and process of an application to the Bureau of Indian Affairs to take certain contiguous lands into trust on behalf of the Tribe.

In accordance with the wishes of the Tribal Council, I officially submit the Tribe's Land Acquisition Application and accompanying Exhibits. This application complies with the requirements of 25 C.F.R. § 151, which sets forth the authorities, policy, and procedures governing the acquisition of land by the United States in trust status for individual Indians and tribes.

These parcels will be used for housing. Putting these lands into trust would greatly relieve the Tribe's need for housing. Therefore, I formally request that you accept and approve the enclosed fee-to-trust application. The Tribe appreciates your assistance in this matter. If you have any questions, please feel free to contact the Tribe's General Counsel, AmyAnn Taylor, at your earliest convenience.

Sincerely,

Nicholas Fonseca
Chairman

Enclosure

CC: Arvada Wolfin