

SCOTTS VALLEY BAND OF POMO INDIANS NEGATIVE RESTORED LANDS DETERMINATION

Decision

- The Assistant Secretary – Indian Affairs and the Solicitor have reviewed the Scotts Valley Band’s “restored lands” gaming application under IGRA and determined that the Band does not have a significant historical connection to the proposed gaming site in Contra Costa County, California.
- The Assistant Secretary has disapproved the Tribe’s request for a positive Indian Lands Determination for a proposed gaming site in Contra Costa County, California. The Tribe could amend its fee-to-trust application for a different purpose, or submit a new gaming application for other lands.

Background

- The Tribe is headquartered near Lakeport, California (Lake County), and has approximately 230 members. The Tribe does not have any existing trust lands.
- The Tribe is proposing to develop a class III gaming facility on 30 acres near the City of Richmond, California (in an unincorporated area of Contra Costa County). The proposed gaming site is located approximately 80 miles south of the Tribe’s headquarters.
- The Tribe was restored to recognition by a court approved settlement with the United States in *Scotts Valley Band of Pomo v. U.S.* in 1991. In 2008, the Office of the Solicitor issued a determination that the Tribe was a “restored tribe” for purposes of IGRA’s “restored lands” exception.
- The Tribe submitted its initial fee-to-trust application for the gaming site in 2005.

Overview of Analysis – No Significant Historical Connection

- The Part 292 Regulations allow a tribe to establish a significant historical connection through two ways: 1) the site is within the Tribe’s former reservation under a ratified or unratified treaty; or 2) the Tribe submits historical documentation that it engaged in subsistence use or occupancy in the vicinity of the Site.
- In this case, the proposed gaming site is not located within the Tribe’s former reservation. The evidence in the Record also shows that the site is not even within the territory ceded in unratified treaties by the Tribe’s ancestors.
- The Tribe’s historical documentation falls far short of demonstrating that it, and its predecessors, made continuous use and/or occupancy of lands in the vicinity of the proposed gaming site.

Noteworthy Issues

- The Department's regulations at Part 292 require a tribe to demonstrate that it has a modern connection, a historical connection, *and* a temporal connection to the proposed gaming site to satisfy the Indian Gaming Regulatory Act's "Restored Lands" Exception.
- The Department did not make a determination as to whether the Scotts Valley Band established either a modern or temporal connection, because the Band's lack of a historical connection to the proposed gaming site – alone – failed to satisfy the Restored Lands Exception.