



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

AUG 28 2014

NOTICE OF DECISION

CERTIFIED MAIL RECEIPT REQUESTED – 7009 3410 0000 1328 2220

Honorable Jeff Grubbe
Chairman, Agua Caliente Band of Cahuilla Indians
5401 Dinah Shore Drive
Palm Springs, CA 92264

Dear Chairman Grubbe:

This is notice of our decision upon the Agua Caliente Band's application to have the below described real property accepted by the United States of America in trust for the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California.

The land referred to herein is situated in the State of California, County of Riverside, and is described as follows:

Parcel 1 (APN 516-090-010-8):

That portion of the southwest Quarter of Section 10, Township 3 South, Range 3 East, San Bernardino Base and Meridian, of Official Records of Riverside County, California, lying Southerly of those certain lines described in deed to the State of California, recorded December 30, 1965 as Instrument No. 145763 of Official Records of Riverside County, California;

EXCEPTING therefrom that portion described in that certain Final Order of Condemnation Superior Court Case No. 197647 a certified copy of which recorded April 20, 1994 as Instrument No. 164443 of Official Records;

Also, EXCEPTING therefrom 25% of all right, title and interest in and to any oil, gas or other mineral rights to said property, excluding from the reservation underground water right, as reserved by William A. Betterley et al, in Deed recorded August 20, 1970 as Instrument No. 82007 of Official Records of Riverside County, California.

Parcel 2 (APNs 522-040-001-0, -002-1, -003-2):

**TAKE PRIDE
IN AMERICA** 

The Northwest Quarter of the Northwest Quarter of Section 15, Township 3 South, Range 3 East, San Bernardino Base and Meridian, in the County of Riverside, State of California, according to the Official Plat thereof;

EXCEPT that portion included in the Southern Pacific Railroad Company Right of Way;

Also EXCEPT that portion described in Deed to the County of Riverside, Recorded March 30, 1915 in Book 406 Page 162 as Instrument No. 7 of Deeds, Records of Riverside County, California;

Also EXCEPT that portion described in Deeds to the State of California, Recorded December 17, 1964 as Instrument No. 149870 in Book 3879 Page 583 and as Instrument No. 149880 in Book 3879 Page 591 All of Official Records of Riverside County, California;

EXCEPTING therefrom 25% of all right, title and interest in and to any oil, gas or other mineral rights to said property, EXCLUDING from the reservation underground water rights, as Reserved by William A. Betterley et al, in Deed Recorded August 20, 1970 as Instrument No. 82007 of Official Records of Riverside County, California.

The subject property consists of two parcels of land, encompassing approximately 138.60 acres, more or less, commonly referred to as the "Beylik" property and Assessor's Parcel Numbers 516-090-010-8, 522-040-001-0, 522-040-002-1 and 522-040-003-2. The parcels are contiguous to lands that are held in federal trust for the Agua Caliente Band.

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 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. This land acquisition falls within the land acquisition policy as set forth by the Secretary of the Interior.

The Reservation was originally established by Executive Order of May 15, 1876 and Trust Patent dated May 14, 1896.

Pursuant to 25 U.S.C. § 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. See Ten Years of Tribal Government Under I.R.A, United States Services, 1947, at Department of the Interior's website at <http://www.doi.gov/library/internet/subject/upload/Haas-TenYears.pdf>. 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, *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.*

On October 7, 2011, by certified mail, return receipt requested, we issued notice of, and sought comments regarding the proposed fee to trust application from the following: California State Clearinghouse; Sara J. Drake, Deputy Attorney General; Mr. Jacob Applesmith, Deputy Legal Affairs Secretary; James Peterson, District Director, Office of U.S. Senator Feinstein; Riverside County Board of Supervisors; Office of the Assessor, County of Riverside; Planning Department, County of Riverside; Riverside County Treasurer and Tax Collector; Office of the Mayor, City of Palm Springs; City of Palm Springs Planning Department; Palm Springs Police Department; Palm Springs Fire Department; Augustine Band of Mission Indians; Cabazon Band of Mission Indians; Cahuilla Band of Mission Indians; Morongo Band of Cahuilla Mission Indians; Pechanga Band of Luiseno Indians; Ramona Band of Mission Indians; Santa Rosa Band of Mission Indians; Torres-Martinez Desert Cahuilla Indians; and Soboba Band of Luiseno Indians.

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

1. Letter dated November 9, 2011 from the County of Riverside, Assessor-County Clerk-Recorders Office stating that the 2011-12 taxes and special assessment levied on all four APN(s) 516-090-010-8, 522-040-001-0, 522-040-002-1 and 522-040-003-2 was \$15,960.72. In addition, the County stated that the zoning and land use for all four parcels is AY – Vacant Property Assigned to Agricultural Division.

By letter dated February 13, 2014, the Agua Caliente Band of Cahuilla Indians responded stating, the Tribe's tax bills for the same property in the same year shows that the Tribe actually paid \$13,359.80. The Tribe also stated that whatever the amount of property tax the Beylik parcels yield to Riverside County, it is clear that the taxes are miniscule when compared with the far larger amounts the Tribe contributes directly to the County, its agencies, cities and other local civic organizations. A January 6, 2014 Desert Sun article cites this amount to be 29 million. Furthermore, Riverside County's entire 2012-13 annual budget is \$4,684,857,290. The \$13,359.80 contributed by the Beylik parcels in property taxes is 1 part in 350,651 of the County's total budget, a relatively infinitesimal amount.

Therefore, while the Assessor-County Clerk-Recorder is correct in noting the tax loss of \$13,359.80, that loss is insignificant both in absolute terms when compared with the multitudinous benefits that the Tribe gratuitously confers on the County itself and other public and private entities associated with the County.

2. Letter dated December 5, 2011 from the Department of Transportation stating that a meeting was held on May 7, 2008 and a letter from the Tribe dated December 3, 2008 referring to Whitewater Ranch property development. The Whitewater Ranch is located at the junction of I-10 and SR-111, abutting the Whitewater Rest Area and west of Tipton Road, of which the subject property is a part. The development would include commercial and retail mixed use. A new interchange on I-10 was also discussed. The letter indicates that the Tribe would initiate the process of preparing a Project Study Report.

The Tribe responded by letter dated February 13, 2014, stating that the Department of Transportation (DOT) asserts that contrary to the Notice, there are specific plans for the subject property. The DOT based this statement on Tribal staff participation in a meeting on May 7, 2008 and a December 3, 2008 letter from the Tribe's economic development director. The economic development director did indeed indicate the Tribe's desire to develop a new interchange I-10 over a period of several decades. In the Tribe's December 7, 2004 application for trust status, the Tribe indicated its proposed use for the Beylik Ranch Parcels: "Where there is no specific development proposal for the property, it has the potential for exceptional highway commercial development." To date, there remain no specific plans for this parcel. Due to issues regarding cost and complexities, the Tribe ceases pursuing the interchange.

3. Letter dated November 14, 2011 from the Desert Water Agency (DWA) addressed the following points:
 - a. DWA requests that the Secretary condition any approval of the Tribe's proposed fee-to-trust conversion on its continuing obligation to pay assessments for water delivery service provided by DWA. In addition, DWA stated that the Tribe is bound to an agreement DWA had with the previous owner of Whitewater Ranch. The Tribe approved the agreement and concurred that it would bind the Tribe as well. DWA stated the taxes levied upon the subject property are used to repay bonded indebtedness and that such taxes are in the nature of service charges.
 - b. DWA understands that the subject property is not within the Tribe's "Traditional Use Area" or "Tribal Consolidation Area", nor is it contiguous to the Tribe's reservation.
 - c. DWA understands the Tribe intends to use the converted lands for business/commercial use and not for gaming purposes.
 - d. DWA requested that they be added to the BIA's distribution list for this application;

The Tribe's responded by letter dated February 13, 2014 stating that the Tribe now pays no such fees or assessments because there are no operating wells on the property to which such fees or assessments could be attached. 25 U.S.C. §465 does not speak of conditional trust takings. The two charges to which DWA wishes to subject the Beylik Ranch are taxes. There is no basis for the Secretary, even if such authority existed, to condition the proposed trust taking on the

payment of the two taxes sought by DWA. Both P.L. 280 and the IRA prohibit such taxation.

In response to the DWA's claim that the Beylik Ranch parcel is not within the Traditional Use Area, the Tribe states that, the aboriginal territory of the Cahuilla peoples is shown on the map appearing at p. 576 of Handbook of North American Indians (Robert F. Heizer, Ed.), vol. 8 (Smithsonian Institution, 1978). The Beylik Ranch Parcel is located between villages 8, 9 and 10. See also A.L. Kroeber, Handbook of the Indians of California, p. 693, n. 1 (Dover ed., 1976): "Palm Springs Canyon thus remains as the focus of this Cahuilla group, and their boundary should run northward or northwestward from Mount San Jacinto . . . The hill near White Water probably marked their limit against the Serrano . . .". Thus, the Beylik parcel is within the Tribe's aboriginal territory, or its traditional area.

As for the DWA's claim that the parcel is not within the Tribal Land Consolidation Area, the Tribe states, "Although the Tribe does not have an approved interim land consolidation plan, it covers a different portion of the Agua Caliente Indian Reservation. Therefore, the Beylik parcel is not within an approved Tribal land consolidation area.

In response to the allegation that the Beylik parcel is not contiguous to the Tribe's reservation, the Tribes response is that the BIA (Bureau of Indian Affairs) did take into trust for the Tribe two parcels, identified as T5000 (83.313 acres) and T5273 (21.280 acres)...These two parcels are immediately west of and adjacent to the subject Beylik Ranch parcels. Thus the parcels are contiguous to existing trust land in Section 16, T. 3 S., R. 3 E., S.B.M.

The IBIA has already determined that the on-reservation procedures of 25 CFR §151.10 apply whenever the parcel being considered for trust status is adjacent and contiguous to existing trust land. See Aitkin County, Minnesota v. Acting Midwest Regional Director, 47 IBIA 99, 107 (2008).

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

The Agua Caliente Band of Cahuilla Indians has a strong functioning tribal government with many capabilities and a growing economy. The tribal government and the life of its members rely on the highest and best use of its land resources to generate income and opportunities that contribute to tribal self-sufficiency. While the Tribe has moved ahead on its existing land base, it recognizes the need to re-establish its original 31,410 acre land base for development now, or land-banking for development by future generations. The Tribe's goals for this land is (1) preservation and restoration of cultural, natural and scenic values (2) create a strong "sense of place" that reflect the cultural and natural history of the Tribe and (3) create an interpretation of Native American history and culture and (4) generate sustained revenue for tribal support through public access and recreation.

Factor 2- Proposed Land Use

This parcel of land is within the Tribe's Traditional Use Area. The Tribe seeks to consolidate their land base by acquiring land within its aboriginal territory. There is no proposed change in land use anticipated; however, the Tribe is actively managing the land, which contains cultural and natural resources unique to the Tribe. As stated in the application, while there is no specific development proposal for the property, it has the potential for exceptional highway commercial development. The subject parcels of land are contiguous to the existing trust lands of the Agua Caliente Band of Cahuilla Indians.

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

Assessed property taxes for 2013-2014:

516-090-010-8	\$11,466.16
522-040-001-0	\$1,042.60
522-040-002-1	\$1,026.80
522-040-003-2	\$142.56

Factor 4 – Jurisdictional Problems/Potential Conflicts

The parcel is currently zoned AY – Vacant Property Assigned to Agriculture Division. Zoning for the site will not be changed; therefore, no jurisdictional problems are foreseen.

The Tribe does not anticipate any adverse impacts as a result of its intended land use and removal of the property from State and local jurisdiction. However, in the event such adverse impacts are claimed, the Tribe will continue its long standing working relationship with the local communities and area residents to address any concerns which may arise. The Tribe has in place an excellent working relationship with the community to address and resolve any issues of concern.

Factor 5 – Whether the BIA is equipped to discharge the additional responsibilities

The Bureau of Indian Affairs has a trust responsibility for all lands held in trust by the United States for Tribes. This acquisition anticipates the land use will remain the same; therefore, any additional responsibilities resulting from this transaction will be minimal. Accepting the property into trust would not impose any significant additional burdens on the BIA beyond those already inherent in the Federal trust relationship between the BIA and the Tribe. As such, it our determination that the BIA is equipped to provide the trust services that are anticipated by approval of this action.

Factor 6- The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM6, Appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions; Hazardous Substances Determinations

In accordance with the 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 October 31, 2011, reflecting that there are no hazardous materials or contaminants.

National Environmental Policy Act Compliance

An additional requirement which must 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 NEPA Handbook 59 IAM 3. 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 April 26, 2010, and 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 Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California, in accordance with the Indian Land Consolidation Act of January 12, 1983 (25 U.S.C. § 2202).

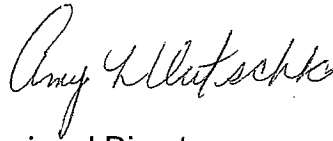
Should any of the below listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 North Quincy St., Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340 (copy enclosed).

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,



Regional Director

Enclosure

cc: Distribution List
43 CFR 4.310-4.340

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Legal Affairs Secretary
Office of the Governor
State Capitol Building
Sacramento, CA 95814

Ms. Sara Drake – 7013 2630 0001 5558 0398
Deputy Attorney General
State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Office of the Honorable Dianne Feinstein – 7013 2630 0001 5558 0404
331 Hart Senate Office Building
Washington, DC 20510

Riverside County Board of Supervisors – 7013 2630 0001 5558 0411
4080 Lemon Street, 14th Floor
Riverside, CA 92501

Riverside County Treasurer & Tax Collector – 7013 2630 0001 5558 0428
4080 Lemon Street, 4th Floor
Riverside, CA 92501

Riverside County Office of the Assessor – 7013 2630 0001 5558 0435
4080 Lemon Street, 1st Floor
Riverside, CA 92501

County of Riverside Planning Department – 7013 2630 0001 5558 0442
P.O. Box 1409
Riverside, CA 92502-1409

City of Palm Springs Police Department – 7013 2630 0001 5558 0459
3200 E. Tahquitz Canyon Way
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Office of the Mayor - 7013 2630 0001 5558 0466
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Bureau of Indian Affairs
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