



OFFICE OF THE GOVERNOR

November 12, 2010

Via Facsimile (951) 276-6641 & U. S. Mail

Mr. Robert Eben, Superintendent
United States Department of the Interior
Bureau of Indian Affairs
Southern California Agency
1451 Research Park Drive
Riverside, CA 95207-2154

Re: Land Acquisition Application of the Agua Caliente Band of Cahuilla Indians (40 Acres)

Dear Mr. Eben:

The Governor's Office of Legal Affairs has reviewed the September 10, 2010 Notice of (Non-gaming) Land Acquisition Application (Notice) in reference to the Agua Caliente Band of Cahuilla Indians' ("Agua Caliente" or "Band") application to have the United States accept the conveyance of approximately 40 acres of property located in Riverside County in trust for the Band. We have also reviewed the Band's May 15, 2009 fee to trust application for the proposed acquisition (Application).

Description of Parcel

From the Application, it is our understanding that the proposed trust acquisition consists of one 40-acre parcel of property (Parcel No. 513-320-012-9) located in the southeast quarter of the northwest quarter of Section 29, Township 4 South, Range 4 East, San Bernardino Meridian, (Riverside County). The Application describes the parcel as mountainous, undeveloped sloping rocky terrain, in a generally inaccessible area within the Santa Rosa and San Jacinto Mountains National Monument.

Mr. Robert Eben, Superintendent
November 12, 2010
Page 2

Summary of Information Set Forth for Acquisition in Application

The Band's Application states that the parcel is "within the Traditional Use area" of the Band but does not state that the parcel is within the Band's reservation. Furthermore, "Factor 7" of the Band's Application notes that it includes "an aerial reflecting distances of this parcel *from the boundaries* of the Agua Caliente Indian Reservation . . ." (Emphasis added.) The Band states its need for this land as the "need to re-establish its original 31,410 acre land base for development now, or land-banking for development by future generations." It notes that the "goals for this land are (1) preservation and restoration of cultural, natural and scenic values (2) create a strong 'sense of place' that reflects the cultural and natural history of the Tribe and (3) create an interpretation of Native American history and culture." The Application states that there "are no immediate plans for utilization changes on this parcel."

Comments

The BIA Notice appears to contain several mistakes which should be corrected for purposes of clarity. The Notice is incorrect in stating that the parcel "is within the exterior boundaries of the Agua Caliente Reservation . . ." To our knowledge, Section 29 is not part of the Band's checkerboard reservation and this fee land is not within the boundaries of the reservation. The Application itself indicates that the parcel is not within the Band's reservation. Furthermore, as indicated in the Notice, it is not contiguous to the reservation. Since this parcel is an off-reservation acquisition, we believe it must be evaluated pursuant to 25 C.F.R. section 151.11 and not section 151.10 as stated in the Notice. Section 151.11 incorporates many of the factors for consideration contained in section 151.10 but it also places an added responsibility on the Secretary of the Interior to consider the distance of the land from the reservation boundaries and apply the stated level of scrutiny. In addition, the Notice contains the correct parcel number designation but incorrectly identifies the parcel name as "commonly referred to as the 'Boys Club of Palm Springs' property" while the County Assessor's records indicate the common name of the parcel is the "LeBlanc" parcel.

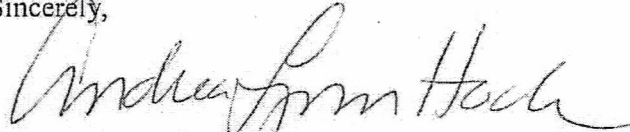
Title 25 U.S.C. § 425 authorizes the federal government to acquire land in trust for an Indian tribe's benefit. Federal regulations require the Secretary of the Interior to consider certain criteria in evaluating a tribe's request to acquire land in trust status that is not within or adjacent to the tribe's existing reservation (i.e., off-reservation). (25 C.F.R. § 151.11.) Two of the criteria to be considered in determining whether to grant an application are: "[t]he need of the individual Indian or the tribe for additional land," and "[t]he purposes for which the land will be used." (25 C.F.R. § 151.10(b) & (c).) After reviewing the Application, we do not believe that it sets forth adequate information in relation to these criteria to allow for consideration of the Application and/or the impacts of granting the acquisition.

Mr. Robert Eben, Superintendent
November 12, 2010
Page 3

The application speaks generally of the need to establish a larger land base but provides no specific uses for these proposed additional lands. The Band states no immediate need or use for the land. The Application states that the property is in a mountainous area and generally inaccessible, indicating that the Band may be able to preserve the land in its present state while holding it in fee. Since the Notice does not indicate a particular need or use for the parcel, there does not appear to be enough information for the Secretary to properly review the Band's application. (25 C.F.R. § 151.10, 151.11.)

Thank you for the opportunity to comment on this application. If you have any questions concerning this comment letter please feel free to contact the undersigned.

Sincerely,

A handwritten signature in cursive script, appearing to read "Andrea Lynn Hoch".

ANDREA LYNN HOCH
Legal Affairs Secretary