



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



APR 18 2008

The Honorable Greg Sarris
Chairman
Federated Indians of Graton Rancheria
320 Tesconi Circle, Suite G
Santa Rosa, California 95401

Dear Chairman Sarris:

On March 24, 2006, the Federated Indians of Graton Rancheria (Tribe) submitted to the Bureau of Indian Affairs (BIA) an application to acquire in trust a 254-acre parcel of land located adjacent to the City of Rohnert Park in Sonoma County, California. The Tribe intends to develop a gaming facility on the parcel.

By memorandum dated October 29, 2007, the Regional Director, Pacific Region Office (PRO) transmitted to the Assistant Secretary - Indian Affairs (AS-IA), his recommendation that the property be accepted into trust, along with the Tribe's request and supporting documentation in accordance with a July 19, 1990, Secretarial Directive, which requires all acquisitions for gaming purposes to be approved or disapproved by the AS-IA. We have completed our review of the Tribe's request, supporting documentation, and the PRO's recommendation. For the reasons set forth below, it is our determination that the parcel will be taken into trust.

BACKGROUND

The Graton Rancheria was restored to federal recognition under Title XIV of Pub. L. 106-568, the Graton Rancheria Restoration Act (*PRO Volume 1, Tab 2*), 25 U.S.C. § 1300n-3, which mandates:

(A) Lands to be taken in trust – Upon application by the Tribe, the Secretary shall accept into trust for the benefit of the Tribe any real property located in Marin or Sonoma County, California, for the benefit of the Tribe after the property is conveyed or otherwise transferred to the Secretary and if, at the time of such conveyance or transfer, there are no adverse legal claims to such property, including liens, mortgages, or taxes.

The Graton Rancheria Restoration Act further provides:

(C) Lands to be part of reservation – Any real property taken into trust for the benefit of the Tribe pursuant to this subchapter shall be part of the Tribe's reservation.

The Constitution of the Federated Indians of the Graton Rancheria, California was adopted by the qualified voters of the Tribe on December 14, 2002 and approved pursuant to the authority delegated to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended and delegated to the Deputy Commissioner of Indian Affairs by 230 DM 2.4 and redelegated to the Regional Director by Memorandum of Agreement dated August 16, 1994 (*PRO Volume 2, Tab 2*).

Pursuant to Article VI, Section 1.A.6 Powers of the Tribal Council, Tribal Resolution No. 06-08 dated March 24, 2006, (*PRO Volume 2, Tab 3*) requests the Secretary to acquire in trust the 254 acres for the benefit of the Tribe. The resolution was adopted by a vote of seven (7) for and (0) against and (0) abstentions.

DESCRIPTION OF THE PROPERTY

The legal description of the property is as follows:

All that certain real property situated in the Unincorporated Area, County of Sonoma, State of California, described as follows:

TRACT ONE:

Farms 102, 103, 104, 105, 106, 124, 125, 126 and 127, as shown upon the Map of PLAN OF SUBDIVISION OF SANTA ROSA FARMS NO. 2, filed March 7, 1910 in the Office of the County Recorder of Sonoma County in Book 21 of Maps, Page 14, Sonoma County Records.

Certificate of Compliance recorded January 28, 1998 as Document No.'s 1998 0008588 through 1998 0008596, Sonoma County Records.

Being Assessors Parcel No. 045-073-001

TRACT TWO:

PARCEL ONE:

Farms 130 and 131 as shown upon the Map of Plan of Subdivision of Santa Rosa Farms No. 2 filed March 7, 1910 in the Office of the County Recorder of Sonoma County in Book 21 of Maps, Page 14, Sonoma County Records.

Certificate of Compliance recorded January 28, 1998 as Document No.'s 1998 0008597 and 1998 0008598, Sonoma County Records.

Being a portion of Assessor's Parcel No. 045-074-009

PARCEL TWO:

Farm 129 of Santa Rosa Farms No. 2, according to Map thereof filed in the Office of the County Recorder of said County on March 7, 1910 in Book 21 Maps, Page 14, Sonoma County Records.

Being Assessor's Parcel No. 045-074-010

PARCEL THREE:

Farm No. 128 as same is shown upon that certain Map ENTITLED "PLAN OF SUBDIVISION OF SANTA ROSA FARMS NO. 2, SONOMA CO., CAL., ETC.", filed March 7, 1910 in Book 21 of Maps at Page 14.

SAVING AND EXCEPTING THEREFROM, the following:

Commencing at the Southeasterly corner of said Farm No. 128; thence Northerly along the Eastern line thereon, 155 feet and 7 inches to a point, for the actual point of commencement of the tract to be herein described; thence from said point of commencement, South 89° West, 289 feet and 6 inches to a point; thence Northerly, parallel with the Eastern line of said Farm No. 128, a distance of 155 feet and 10 inches to a point; thence North 89° East, 289 feet and 6 inches to the Eastern line of said Farm No. 128; thence Southerly along said Eastern line, 155 feet and 10 inches to the point of commencement.

ALSO SAVING AND EXCEPTING THEREFROM, the following:

Beginning at a point on the center line of Labath Avenue, which point is the Southeast corner of Lot 128 as shown upon the Map entitled "PLAN OF SUBDIVISION OF SANTA ROSA FARMS NO. 2, SONOMA CO., CAL., ETC.", filed March 7, 1910 in Book 21 of Maps, Page 14, Sonoma County Records; thence North 1° West along the Easterly line of Lot 128, a distance of 155 feet, 7 inches to a point; thence South 89° West, 289.5 feet; thence North 1° West, 77 feet, 10 inches; thence South 89° West, 283.66 feet to the Westerly line of said Lot 128; thence along said line, South 1° East, 233.5 feet to the Southwest corner of said Lot 128; thence along the Southerly line of said Lot, North 89° East, 573.16 feet to the point of beginning.

Being Assessor's Parcel No. 045-073-002

TRACT THREE:

A Portion of Farm No. 128 as shown upon the Map entitled "Plan of Subdivision of Santa Rosa Farms No. 2, Sonoma County, California", filed in the Office of the County Recorder of Sonoma County, California, on March 7, 1910 in Book 21 of Maps, page 14, more particularly described as follows:

Commencing at the Southeasterly corner of said Farm No. 128; thence Northerly along the Easterly line thereof, 155 feet, 7 inches to a point for the true point of beginning of the tract to be herein described; thence South 89° West 289 feet, 6 inches to a point; thence Northerly parallel with the Easterly line of said Farm No. 128, a distance of 155 feet, 10 inches to a point; thence North 89° East, 289 feet, 6 inches to the Easterly line of said Farm No. 128; thence Southerly along said Easterly line, 155 feet, 10 inches to the point of beginning.

Being Assessor's Parcel No. 045-073-003

TRACT FOUR:

Beginning at a point on the center line of Labath Avenue which point is the Southeast corner Lot 128 as shown upon the Map entitled Plan of Subdivision of Santa Rosa Farms No. 2, Sonoma County, California, etc., filed March 7, 1910 in Book 21 of Maps, page 14, Sonoma County Records; thence North 1° West along the Easterly line of Lot 128, a distance of 155 feet 7 inches to a point; thence South 89° West, 289.5 feet; thence North 1° West, 77 feet 10 inches; thence 89° West, 283.66 feet to the Westerly line of said Lot 128; thence along said line South 1° East, 233.5 feet to the Southwest corner of said Lot 128; thence along the Southerly line of said Lot, North 89° East, 573.16 feet to the point of beginning.

Being Assessor's Parcel No. 045-073-004

TRACT FIVE:

A tract of land, being a portion of the Rancho Llano de Santa Rosa, and commencing on the boundary line of said Rancho on the line between Section 21 and 22, in Township 6 North, Range 8 West, Mount Diablo Base & Meridian, at a point in the center of the County Road known as the Santa Rosa and Stony Point Road, from which point the post for the railing of the bridge, across the Laguna and standing on the Southeast corner of the same, is North 31° West, 13 links distant; thence from said point of beginning, North 89° $30'$ East, 11.92 chains, South 39° $05'$ East, 2.61 chains, South 53° East, 1.36 chains, South 64° East, 1.23 chains, South 77° $15'$ East, 2.62 chains, South 88° $05'$ East, 3.94 chains, North 4° $15'$ East, 1.43 chains, South 88° East, 2.03 chains, South 56° East, 2.44 chains, North 87° $15'$ East, 22.62 chains to the Northwest boundary line of the Cotati Rancho; thence along said line, North 29° $15'$ East, 39.44 chains; thence leaving said line, West 67.92 chains to the center of the aforesaid Road and Section line; thence South, 32.18 chains to the point of beginning. Magnetic Variation 17° East.

Excepting therefrom those portions of land described in the Deeds from Manuel T. Pimentel, et al, to the Sonoma County Flood Control and Water Conservation District, recorded August 16, 1961 in Book 1840 of Official Records, page 280, Serial No. G-60050, Sonoma County Records, and recorded September 24, 1963 in Book 1989 of Official Records, page 575, Serial No. H-56600, Sonoma County Records.

Also excepting therefrom that portion of land described in the Deed from Mary C. Pimentel, et al, to the Sonoma County Flood Control and Water Conservation District, recorded February 11, 1966 in Book 2187 of Official Records, page 957, Serial No. J-83549, Sonoma County Records.

Also excepting therefrom that portion of and described in the Deed to the City of Rohnert Park, recorded January 11, 1989, as Document No. 89002750 of Official Records of Sonoma County.

Also excepting therefrom that portion of land described in the Deed to the County of Sonoma, recorded May 17, 1996 as Document No. 1996 0044116 of Official Records of Sonoma County.

An easement for cattle and agricultural equipment crossing, as described in the Deed from the Sonoma County Flood Control and Water Conservation District to Manuel L. Pimentel and Mary C. Pimentel, recorded August 15, 1961 in Book 1840 of Official Records, page 284, Serial No. G-60051, Sonoma County Records.

An easement for cattle and agricultural equipment crossing, as described in the Deed from the Sonoma County Flood Control and Water Conservation District to Manuel L. Pimentel and Mary C. Pimentel, recorded August 15, 1961 in Book 1840 of Official Records, page 288, Serial No. G-60052, Sonoma County Records.

Being Assessor's Parcel Nos. 046-021-020 & 021,046-021-039 & 040

TRACT SIX:

All that certain real property situated in the City of Rohnert Park, County of Sonoma, State of California, described as follows:

Lot 6, as shown on the map of "Rohnert Business Park Subdivision", filed August 12, 1985 in the office of the County Recorder in Book 375 of Maps, at pages 10 and 11, Sonoma County Records.

Being Assessor's Parcel No. 143-040-068

TITLE TO THE PROPERTY

The commitment for title insurance prepared by First American Title Insurance Company dated July 10, 2006, reflects the title to be vested in SC Sonoma Development, LLC, a California limited liability company.

On May 15, 2007, the Regional Director requested a Preliminary Title Opinion from the Solicitor, Pacific Southwest Region. On July 26, 2007, the Solicitor determined that the exceptions to title do not constitute an adverse legal claim that would prevent acquisition in accordance with the Graton Rancheria Restoration Act. Exception number 7 will be removed from Title Commitment No, 10005105-001 pursuant to a memorandum from

the Tribe's attorney dated June 18, 2007.

COMPLIANCE WITH 25 C.F.R. PART 151

The Secretary's authority, procedures, and policy for accepting land into trust are set forth at 25 CFR 151. Section 151.3 sets forth under what conditions land may be acquired in trust by the Secretary for an Indian tribe or individual Indian, but states that it is "subject to the provisions in the acts of Congress which authorize land acquisition." Pursuant to Title XIV of Public Law 106-568, the Graton Rancheria Restoration Act, 25 U.S.C. § 1300n-3, the Secretary is mandated to accept the acquisition of any real property located in Marin or Sonoma County, California, for the benefit of the Tribe. The Graton Rancheria Restoration Act further mandates that any real property taken into trust for the benefit of the Tribe shall be part of the Tribe's reservation. The explicit language in the Graton Rancheria Restoration Act supercedes the provisional language in 25 CFR § 151.3. The Regional Solicitor, Pacific Southwest Region issued an opinion on September 15, 2003 (*PRO Volume 2, Tab 1*) that concluded that pursuant to the Graton Rancheria Restoration Act, the acquisition of real property in Marin and/or Sonoma County in trust for the benefit of the Graton Rancheria would be a mandatory acquisition and would not be discretionary with the Secretary of the Interior. The Solicitor further noted that, Congress, not the Secretary, has mandated that any property taken into trust "shall" be part of the Tribe's Reservation.

COMPLIANCE WITH THE INDIAN GAMING REGULATORY ACT

A determination on whether the property to be acquired will be eligible for gaming under the Indian Gaming Regulatory Act (IGRA) has not been made because such a determination is unnecessary when the Secretary's decision on whether to acquire the land in trust is not discretionary, but mandated by an act of Congress.

At this time the Tribe does not have a class III tribal-state compact with the State of California.

Notwithstanding the Secretary's ministerial decision to take the land in trust, the Tribe could not engage in gaming activities on the land without first complying with all applicable requirements of the IGRA.

REVIEW OF ENVIRONMENTAL DOCUMENTATION

1. NEPA

Although NEPA compliance is generally required on trust acquisitions under the provisions of 25 CFR §151.10, as well as the terms of NEPA itself and the CEQ regulations, NEPA compliance is not required in this instance since the acquisition of property for the Graton Rancheria is explicitly mandated by Congress under the Graton Rancheria Restoration Act. Nevertheless, we note that the National Indian Gaming Commission (NIGC), with the BIA as a cooperative agency, will complete an environmental impact statement in connection with the NIGC's consideration of a

management contract for the gaming establishment.

2. Hazardous Substance Determination

The acquisition of the parcels in trust for the Graton Rancheria can occur only if there are no adverse legal claims expiring on the property, including potential environmental claims. As a result the BIA must comply with the requirements of 602 CM 2, Land Acquisitions: Hazardous Substance determinations to determine whether any such potential environmental claims may exist.

On February 15, 2007, the Pacific Regional Director approved the certification of the Environmental Protection Specialist and Regional Environmental Scientist on a Phase I Contaminant Survey indicating that no contaminants are present on the parcels proposed to be acquired in trust, and that there are no obvious signs of any effects of contamination. An updated Contamination Survey must be completed before the land is taken into trust.

DECISION

Our evaluation of the Tribe's request indicates that the federal requirements for acquiring this parcel of land into trust have been satisfied. The Regional Director, Pacific Region, will be authorized to approve the conveyance document accepting the property in trust for the Tribe subject to any condition set forth herein, approval of all title requirements by the Office of the Regional Solicitor, Pacific Southwest Region, and expiration of the thirty-day period following publication in the *Federal Register* of the notice required in 25 CFR § 151.12(b).

Sincerely,



Carl J. Artman
Assistant Secretary – Indian Affairs