



PALA BAND OF MISSION INDIANS

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August 12, 2009

Dale Morris, Regional Director
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way, Suite W2820
Sacramento, California 95825

Reg Dir	<u>Amy</u>
Dep Reg Dir	_____
Reg Adm Ofcr	_____
Route	<u>FTT</u>
Response Required	<u>YES</u>
Due Date	<u>8-26-09</u>
Memo	_____ Ltr <input checked="" type="checkbox"/>
File	_____ Other _____

Dear Mr. Morris:

Enclosed please find a fee-to-trust application package for parcels APN 109-141-03-00, 109-371-04-00 and 109-160-05-00, hereinafter collectively referred to as the "Rimsa" property. The Pala Band of Mission Indians (hereinafter "Tribe") owns this property in fee and desires that the United States accept the property to be held in trust for the Tribe. The enclosed application package should include the documentation and information necessary so that your office may proceed in the processing of the application.

1. Applicable Regulations

Section 25, Part 151 of the Code of Federal Regulations sets forth the authorities, policy and procedures governing the acquisition of land by the United States in trust for the benefit of Indian tribes. In determining whether to approve a tribe's request to accept fee land that is on or contiguous to the reservation in trust, the Secretary must consider the following: (1) the existence of statutory authority for the acquisition (§ 151.10(a)); (2) the tribe's need for additional trust land (§ 151.10(b)); (3) the proposed use for the land (§ 151.10(c)); (4) the impact on the state in which the land is located, and its political subdivisions, resulting from removal of the land from the tax rolls (§ 151.10(e)); (5) jurisdictional problems and conflicts that may arise as a result of transfer of the land into trust (§ 151.10(f)); (6) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from acquisition of the land into trust (§ 151.10(g)); and (7) compliance with 516 DM 6, appendix 4, the National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations (§151.10(h)). Each of these considerations is discussed in turn below.

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

Pursuant to the Indian Reorganization Act (25 U.S.C. §§ 461 et seq.) (hereinafter "IRA"), the Secretary of the Interior is authorized to acquire any interest in land for the purpose of

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providing land for Indian tribes. The Indian Land Consolidation Act (25 U.S.C. §§ 2201 et seq.) (hereinafter "ILCA") extends the provisions of the IRA to all tribes under federal jurisdiction at the time of passage of the IRA notwithstanding a tribe's decision to opt out of the IRA's provisions. The Tribe was under federal jurisdiction at the time of passage of the IRA, but voted to reject the terms of the IRA on December 18, 1934. See Ten Years of Tribal Government Under the I.R.A., Theodore H. Hass, United States Indian Service, p.14 (1947). Therefore, ILCA provides statutory authority for acquisition of the subject parcels.

3. Location and Description of Property

The Rimsa property consists of three adjoining parcels totaling \pm 330.22 acres, lying approximately 2- $\frac{1}{2}$ miles north of Highway 76 and approximately one mile south of Rancho Heights Road in the unincorporated area of North San Diego County. The property is traversed by Pala Temecula Road. The property is entirely undeveloped but for a small, old and abandoned adobe structure located in the southern portion of the property, on the east side of Pala Temecula Road.

The Rimsa property is contiguous to the Pala Reservation:

- Parcel APN 109-371-04-00, consisting of \pm 176.15 acres, abuts along its southern boundary BIA Tract T1026.
- Parcel APN 109-141-03-00, consisting of \pm 17.01 acres, abuts along its southern boundary BIA Tract T1022, touches BIA Tract T1009 at the southeast corner of the parcel, and shares its eastern boundary with APN 109-160-05-00.
- Parcel APN 109-160-05-00, consisting of \pm 137.06 acres, abuts along its southern boundary BIA Tract T1009, abuts along its eastern boundary BIA Tract T1026, and touches BIA Tract T1022 at the southwest corner of the parcel.

While portions of the parcels are level or gently sloping, much of the property contains steeply sloping topography. The steeply sloping topography renders much of the property inaccessible and therefore unusable for development purposes. Only approximately 67 acres (or 20%) of the property are appropriate for development purposes.

The subject property is more particularly described as follows:

Parcel 1:

All that portion of the west half of the west half of Section 15, Township 9 South, Range 2 West, San Bernardino Meridian, in the County of San Diego, State of California, according to the official plat thereof, as described in parcel 1 of certificate of compliance recorded July 31, 1980 as File No. 80-242819 of Official Records, more particularly described as follows:

All that portion of the west half of the west half of said Section 15, lying easterly of the centerline of County Road Survey No. 319, according to plat thereof on file in the Office of the County Engineer of said San Diego County and lying southerly of the following described line:

Commencing at the southeast corner of the west half of the west half of said Section 15; thence along the easterly line thereof north $01^{\circ}06'05''$ east 3100.00 feet to the true point of beginning; thence leaving said easterly line north $50^{\circ}34'20''$ west 835.04 feet more or less to a point in the center line of said Road Survey no. 319.

Excepting from that portion lying within the southwest quarter of the southwest quarter, 1/16th of all coal, oil, gas and other mineral deposits contained in said land, as reserved to the State of California in the patent to said land recorded in Book 15, Page 259 of Patents, records of San Diego County.

Parcel 2:

All that portion of the west half of Section 15 and that portion of the east half of Section 16, Township 9 South, Range 2 West, San Bernardino Meridian, in the County of San Diego, State of California, according to the Official Plat thereof, as described in Parcel 2 of Certificate of Compliance recorded July 31, 1980 as File No. 80-242819 of Official Records, more particularly described as follows:

All that portion of the west half of said Section 15 lying westerly of the centerline of County Road Survey No. 319, according to plat thereof on file in the office of the County Engineer of said San Diego County and lying southerly of the following described line:

Beginning at a point in the west line of said Section 15, distant along said line north 3845.67 feet from the southwest corner of said Section 15, thence north $59^{\circ}56'15''$ east 802.00 feet more or less to a point in the centerline of said County Road Survey No. 319.

Together with that portion of the east 195.00 feet of said section 16, lying southerly of a line which bears south $59^{\circ}56'15''$ west from a point in the east line of said Section, distant along said east line north 3845.67 feet from the southeast corner of said Section 16.

Excepting from that portion lying within the southwest quarter of the southwest quarter of Section 15, 1/16th of all coal, oil, gas and other mineral deposits contained in said land, as reserved to the State of California in the patent to said land recorded in Book 15, Page 259 of Patents, records of San Diego County.

Excepting from that portion lying within Section 16, all oil, gas, oil, shale, coal, phosphate, sodium, gold, silver and all other mineral deposits contained in said land as reserved by patent recorded October 20, 1954, in Book 5404, Page 188 of Official Records.

Parcel 3:

All those portions of the west half of the west half of Section 15 and the southwest quarter of the southwest quarter of Section 10, Township 9 South, Range 2 West, San Bernardino Meridian, in the County of San Diego, State of California, according to the Official Plat thereof, as described in Parcel 3 of Certificate of Compliance recorded July 31, 1980 as File No. 80-242819 of Official Records, more particularly described as follows:

All that portion of the west half of the west half of said Section 15 lying easterly of the centerline of County Road Survey No. 319 according to plat thereof on file in the Office of the County Engineer of said San Diego County lying northerly of the following described line:

Commencing at the southeast corner of the west half of the west half of said Section 15; thence along the easterly line thereof north $01^{\circ}06'05''$ east 3100.00 feet to the true point of beginning; thence leaving said easterly line north $50^{\circ}34'20''$ west 835.04 feet more or less to a point in the centerline of said County Road Survey No. 319.

Together with that portion of the southwest quarter of the southwest quarter of said Section 10 lying easterly of said County Road Survey No. 319 and southerly of the following described line:

Commencing at the southeast corner of the southwest quarter of the southwest quarter of said Section 10; thence along the easterly line thereof north $00^{\circ}35'42''$ west 920.00 feet to the true point of beginning; thence leaving said easterly line north $67^{\circ}29'52''$ west 626.60 feet, more or less to a point in the centerline of said County Road Survey No. 319.

Parcel 4:

That portion of Section 10, Township 9 South, Range 2 West, San Bernardino Meridian, in the County of San Diego, State of California, as described in parcel 4 of Certificate of Compliance recorded July 31, 1980 as File No. 80-242819 of Official Records, more particularly described as follows:

The southeast quarter of the northwest quarter and the southwest quarter of Section 10, Township 9 South, Range 2 West, San Bernardino Meridian, in the County of San Diego, State of California, according to the official plat thereof.

Excepting therefrom that portion of the south half of the southwest quarter of the southwest quarter which lies westerly of the centerline of County Road Survey No. 319 according to plat thereof on file in the office of the county engineer of said San Diego County.

Also excepting therefrom that portion of the southwest quarter of the southwest quarter which lies easterly of the centerline of said County Road Survey No. 319 and southerly of the following described line:

Commencing at the southeast corner of the southwest quarter of the southwest quarter of said Section 10; thence along the easterly line thereof north 00°35'42" west 920.00 feet to the true point of beginning; thence leaving said easterly line north 67°29'52" west 626.60 feet more or less to a point in the centerline of said County Road Survey No. 319.

APN: 109-141-03-00 and 109-371-04-00 and 109-160-05-00

4. Tribe's Desire and Need for Acquisition in Trust (25 C.F.R. § 151.10(b))

The Tribe wants to ensure that the Rimsa property is adequately maintained and protected for future generations, and that the Tribe has the ability to exercise its jurisdiction as a sovereign tribal government over the parcels. The only way to achieve this is transfer of the property into trust for the Tribe. Moreover, the only way to ensure that the Tribe continues to be, at minimum, the beneficial owner of the property is to transfer the property into trust. Otherwise it is at least possible that the Tribe is divested of some, if not all, of its rights with respect to the subject property if, for example, the state exercises its condemnation power on the property.

Transfer of the Rimsa property into trust can also be of benefit to existing tribal trust lands by expanding the exterior boundaries of the reservation and increasing the area between developed tribal land and non-tribal land. Expansion of the exterior boundaries of the reservation to include the Rimsa property will likely significantly reduce problems such as non-Indian encroachment upon the contiguous trust parcels. Furthermore, because the Tribe has no plans to develop the Rimsa property, the property can act as a "buffer zone" between existing tribal lands and non-tribal lands, helping to protect tribal lands from the adverse effects that may potentially result from development of surrounding non-tribal lands.

While the United States currently holds approximately 11,119 acres of land in trust for the Tribe, a large portion of this acreage is steep and not appropriate for commercial or even residential development. Exhibit E contains maps that depict the buildable portions of the existing reservation. As you can see, a large percentage of the reservation consists of steep slopes that are generally inaccessible and either not capable of being developed or can only be developed with considerable, and perhaps cost prohibitive, expense. While only twenty-percent (20%) of the Rimsa property is usable for development purposes, the sixty-seven (67) acres of developable land can be a great benefit to the tribal community. The Tribe has no intention of developing the property at present, nevertheless, it is entirely possible that the sixty-seven (67) developable acres can be used to expand the Tribe's current agricultural operations or even to provide much needed housing for tribal members.

The Tribe is fully aware of the effect of conveying the subject parcels to the United States to be held in trust for the Tribe, including the significant degree of oversight that will be exercised by the Bureau of Indian Affairs once the parcels are accepted into trust. Nevertheless, the Tribe desires the transfer. Overall, the transfer of the Rimsa property into trust benefits both the Tribe and its lands. These benefits are entirely consistent with the United States' trust responsibility to the Tribe.

5. Proposed Use (25 C.F.R. § 151.10(c))

The Rimsa property is undeveloped, open space. The Tribe has no plans at present to develop the property.

6. Non-Gaming Acquisition

The Tribe does not plan to use the Rimsa property for gaming purposes and, as a result, this fee-to-trust application is not subject to the special provisions as contained in Section 20 of the Indian Gaming Regulatory Act (25 U.S.C. § 2719) governing the transfer of land into trust to be used for gaming or gaming-related purposes.

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

The 2008-2009 tax assessments for the Rimsa property parcels are as follows: APN 109-141-03-00 - \$2,971.08; APN 109-371-04-00 - \$32,128.88; and APN 109-160-05-00 - \$25,181.42. All taxes due and owing have been paid in full and there are no prior year delinquencies. Copies of the 2008-2009 tax bills for each parcel have been included as Exhibit C for your review.

Transferring the Rimsa property into trust will not have a significant impact on the State of California or San Diego County's tax revenue because the amount of property taxes assessed on these parcels is small in comparison to the County's annual property tax revenue. According to the San Diego County Assessor's Office, the total of all assessed property taxes in San Diego County for the 2008-2009 tax year was \$391,186,058,062. Available at <http://www.sdcounty.ca.gov/auditor/trb0809/docs/InventoryofParcels.pdf>. Property taxes for the Rimsa parcels are de minimus in comparison to the County's overall tax revenue:

- APN 109-141-03-00 represents approximately 0.0000000076% of the annual property tax revenue.
- APN 109-371-04-00 represents approximately 0.000000082% of the annual property tax revenue.
- APN 109-160-05-00 represents approximately 0.000000064% of the annual property tax revenue.

Even in the aggregate, the property taxes assessed on the Rimsa property account for less than 0.00000015% of San Diego County's annual property tax revenue. Thus, removal of the subject parcels' property tax amounts from the County tax roll will have little, if any, effect on the County's annual property tax revenue.

8. Jurisdictional Concerns (25 C.F.R. § 151.10(f))

The Tribe does not anticipate that any significant jurisdictional conflicts will occur as a result of transfer of the Rimsa property into trust. The property is located in a rural area, completely surrounded by undeveloped open space and, as explained above, is surrounded on its southern and eastern boundaries by tribal trust lands. With the exception of the reservation, the closest commercial and residential development is in the City of Temecula, approximately 6.5 miles to the north of the Rimsa property. Given the rural location of the property, coupled with the fact that the Tribe has no plans to develop the property, it is unlikely that jurisdictional conflicts will arise once the property is transferred into trust.

All criminal and some civil state jurisdiction over the property will not change as a result of the acquisition of the property in trust. The Rimsa property lies wholly within the State of California, a "Public Law 280" state. Pursuant to Public Law 280, the State maintains criminal jurisdiction over Indian lands in California and maintains jurisdiction over civil causes of action between Indians or to which Indians are parties. 18 U.S.C. § 1162; 25 U.S.C. § 1360. The transfer of land into trust does not affect the State's Public Law 280 jurisdiction. Thus, the State and its political subdivisions will continue to maintain a degree of control over certain activities on the Rimsa property despite the transfer of the property into trust.

That the Tribe will no longer be bound by San Diego County's zoning regulations with respect to the Rimsa property will not present a significant problem as the property lies in a rural unincorporated area of San Diego County and, as explained above, is entirely surrounded by undeveloped land. The property is currently zoned A70 (Limited Agricultural) with a four-acre minimum parcel size. Permitted uses generally include single-family residential, fire protection services, and agricultural uses. Given the topography of the property, it is unlikely that all of the currently permitted uses can be attained. Perhaps the only plausible use would be residential and/or agricultural use of the developable sixty-seven (67) acres. Still, the Tribe's anticipated use of the property as undeveloped open space is entirely consistent with San Diego County's zoning of the property. Because the Tribe does not have any plans to develop the property that would be inconsistent with its current zoning, it is unlikely that jurisdictional conflicts in connection with use of the property will arise.

9. Ability of the Bureau to Discharge Trust Responsibility (25 C.F.R. § 151.10(g))

It has long been understood that the Bureau has a trust responsibility for all Indian tribes located within the exterior boundaries of the United States as well as for lands held in trust for Indian tribes and individual Indians. Acceptance of the Rimsa property into trust will not impose any significant additional responsibilities or burdens on the Bureau beyond those already inherent in the federal trusteeship over the existing reservation. The Tribe will ensure that all essential services – security, fire protection, education, natural resources protections, etc. – are provided to the property using existing federal allocations and/or profits from the Tribe's economic enterprises. Moreover, the Tribe is a member of the Fee-to-Trust Consortium and, as a result, elects to forego receipt of federal funding to which it is entitled to help cover the federal

government's costs in processing the Tribe's fee-to-trust applications and otherwise carrying out the trust responsibility.

There are no anticipated additional Bureau obligations as a result of the transfer of the Rimsa property into trust since the Tribe does not have any plans to develop the property. Even if the Tribe develops the property in the future, any additional Bureau obligations resulting from this transfer will be minimal and may include limited real estate services such as approval and recording of leases and easements, recording of transfer documents, and approval of extended contracts affecting trust lands. The Tribe is dedicated to working with the Bureau, to the greatest extent possible, to minimize any additional burdens which may result from the transfer of the property into trust.

10. Title Requirements

The United States Department of Justice Title Standards (hereinafter "Title Standards") require that title insurance be obtained prior to acquisition of land by the Federal Government. 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, the liability amount must be equal to the estimated value of the land being acquired.

Enclosed please find a commitment to issue title insurance prepared by Chicago Title Company, Order No. 930014806-U50, dated May 12, 2009. See Exhibit D. The type of insurance policy contemplated by the commitment is an ALTA U.S. Policy - 9/28/91, and it lists the "United States Department of Interior in trust for the Pala Band of Mission Indians, a federally recognized Indian Tribe" as the proposed insured, as required by §§ 5(a)(1) and 5(a)(2) of the Title Standards. The amount of liability is set at \$3,800,000.00, the approximate total of the assessed values for the subject parcels as set forth on the Shasta County Assessor's rolls, as required by § 5(c) of the Title Standards.

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 enclosed title commitment does not contain any title exceptions that generally would be unacceptable to the United States such as unpaid taxes, mortgage liens, access issues, or special assessments which 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 addressed each exception listed in Schedule "B" briefly below. The Tribe has determined that these exceptions are acceptable as they will not interfere with or prevent the Tribe's current or future use of the subject parcels.

- Exception 1: Refers to treaties and statutes affecting the land and the Tribe. This exception appears to be a standard exception for all Chicago Title Policies issued where a tribe is involved. As you know, there are no ratified treaties with tribes in California. As explained above, the Tribe is fully aware of the fact that special statutes and regulations

will be applicable with respect to the property once it is accepted into trust. These statutes and regulations will not interfere with the Tribe's current or future use of the property.

- Exception 2 & 3: Refer to regular and supplemental property taxes and assessments. As explained above, all property taxes due and owing have been paid in full and there are no prior year delinquencies encumbering title.
- Exception 4: Refers to water rights, whether or not shown by the public record. The Tribe conducted due diligence at the time of purchasing the property and is not aware of any recorded or unrecorded water rights relating to the Rimsa property.
- Exception 5: Refers to a right of way for ditches and canals reserved to the United States in the patents to the property. This exception does not present a problem as the United States is the owner of the right of way. Upon the acceptance of the property into trust, this right of way will be extinguished because the United States will hold title to both the land and the right of way. Copies of the referenced patents (Book 13, Page 422; Book 14, Page 124; Book 14, Page 454; Book 15, Page 259; and Book 509, Page 228) have been included as Attachments 5, 6, 7, 8 and 9 to Exhibit D.
- Exceptions 6 & 7: Refer to utility easements held by the Pacific Telephone and Telegraph Company for telephone lines. These exceptions will not interfere with the Tribe's current or proposed use of the property. A copy of the recorded easements (Book 978, Page 362 and Book 978, Page 363) have been included as Attachments 10 and 11 to Exhibit D.
- Exception 8: Refers to an easement for public roadway purposes. As explained above, Pala Temecula Road traverses the property. This easement benefits the property in that it provides access to all three parcels. This easement will not interfere with the Tribe's current or proposed use of the property. A copy of the recorded easement (Book 2718, Page 399) has been included as Attachment 12 to Exhibit D.
- Exception 9: Refers to a Certificate of Compliance resulting from division of the Rimsa property into three separate parcels—the same three parcels that are the subject of this request. This division will not interfere with the Tribe's current or proposed use of the property. A copy of the recorded Certificate of Compliance has been included as Attachment 1 to Exhibit D.
- Exception 10: Refers to the rights of any parties in possession of the property which are based on any unrecorded lease. There is no one in possession of the property; it remains undeveloped, unoccupied open space. The Tribe is unaware of any unrecorded lease which may affect the property.

- Exception 11: Refers to any defects, liens, encumbrances, adverse claims or other matters that may arise between the issuance of the title commitment and the final title policy. The Tribe has no intention of encumbering the property during the fee-to-trust process.

11. Environmental Concerns (25 C.F.R. § 151.10(h))

Pursuant to the National Environmental Policy Act (42 U.S.C. § 4321 et seq.), and the Implementing Regulations at 516 DM 6, Appendix 4, all fee-to-trust applications must be accompanied by an Environmental Assessment or a Environmental Impact Statement unless there is an applicable categorical exclusion. Pursuant to 516 DM 6 Appendix 4 § 4I, a categorical exclusion shall be issued in the case of land conveyances and transfers where there is no planned change in land use. Since the Tribe intends to continue use of the Rimsa property as undeveloped open space, a categorical exclusion is appropriate. Draft categorical exclusions for each parcel have been included as Exhibit F.

The Tribe understands that, pursuant to 602 DM 2, the Bureau of Indian Affairs is required to conduct an environmental site assessment and complete a Phase 1 Contaminant Survey to ensure that acquisition of land does not subject the Department of the Interior to liability for hazardous substances or other environmental cleanup costs and damages. The Tribe has not uncovered or been informed of the existence of any hazardous substances or other environmental damage on the property which would subject the Department to liability. We are happy to assist in any way we can in carrying out any requirements resulting from the Bureau's responsibilities pursuant to 602 DM 2, including escorting Bureau staff to the property to conduct a visual inspection.

We thank you for your time and attention to our request for acquisition of the Rimsa property into trust. Should you have any questions or concerns regarding this application, please contact Sara Dutschke, Karshmer & Associates, at (510) 841-5056.

Sincerely,



Robert Smith
Chairman, Pala Band of Mission Indians

Enclosures:

Exhibit A – Tribal Resolution [REDACTED] #09-21
Exhibit B – Grant Deed Conveying Property to Tribe
Exhibit C – Property Tax Statements
Exhibit D – Title Commitment No. 930014806-U50
Attachment 1 – Certificate of Compliance, File No. 80-242819
Attachment 2 – County Road Survey No. 319
Attachment 3 – Patent, Book 15, Page 259

Dale Morris, Regional Director
Rimsa Fee-to-Trust Application Letter
12 August 2009
Page 11

Attachment 4 – Patent, Book 5404, Page 188

Attachment 5 – Patent, Book 13, Page 422

Attachment 6 – Patent, Book 14, Page 124

Attachment 7 – Patent, Book 14, Page 454

Attachment 8 – Patent, Book 15, Page 259

Attachment 9 – Patent, Book 509, Page 228

Attachment 10 – Easement, Book 978, Page 362

Attachment 11 – Easement, Book 978, Page 363

Attachment 12 – Easement, Book 2718, Page 399

Exhibit E – Maps

Exhibit F – Categorical Exclusion Checklist