



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**DEC 22 2010**

Honorable Jason Hart  
Chairman, Redding Rancheria  
2000 Redding Rancheria Road  
Redding, California 96001

Dear Chairman Hart:

## **Background**

On March 10, 2009, the Redding Rancheria (Tribe) transmitted to the Office of the Assistant Secretary – Indian Affairs, Office of Indian Gaming a request for trust acquisition and a determination from the Department of the Interior that certain lands in Shasta County, California, referred to as “Strawberry Fields” and the “Adjacent 80 Acres” (the Parcels) are or would be eligible for gaming pursuant to 25 U.S.C. § 2719(b)(1)(B)(iii) and the implementing regulations set forth in 25 C.F.R. Part 292. The Tribe amended its request in July 2010 to include the Adjacent 80 Acres.

The Tribe seeks to have the Parcels in Shasta County, California, taken into trust in order to conduct gaming. The Parcels consist of a total of 231.90 acres located approximately 1.6 miles from the original 30.89 acres of land that the Bureau of Indian Affairs (BIA) purchased for members of the Tribe in 1922 near Redding, California (the original Rancheria). Because the Parcels would be “acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988,” they would only be eligible for gaming if they meet one of the exceptions within Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719.

I have determined that the Tribe is a restored tribe, but the Tribe’s prior requests for trust acquisitions and its current gaming operation preclude a finding under the regulations that the Parcels are eligible for the restored lands exception.

The subject Parcels are located in an unincorporated part of Shasta County, California and are approximately 1.6 miles from the Redding Rancheria, approximately 3.7 miles by road. The Strawberry Fields property includes five separate parcels, which total approximately 151.89 acres, and it is bound by the Sacramento River on the west and Interstate 5 on the east. These parcels were purchased by the Tribe in 2004 and are currently held in fee. The Adjacent 80 Acres includes three parcels located directly to the south of the Strawberry Fields property. The Tribe purchased this property in April 2010 and it is also currently held in fee.

The original Rancheria was comprised of approximately 30.89 acres, and was purchased by the United States for the members of the Tribe on August 10, 1922. In 1965, the Rancheria’s status as a federally recognized tribe was terminated pursuant to the California Rancheria Termination

Act of 1958. On June 11, 1984, the Tribe was restored to federally-recognized status pursuant to a court-approved settlement agreement with the United States. *Hardwick v. United States*, No. C79-1710 SW (N.D. Cal. 1983).

Since restoration, the Tribe has become the beneficial owner of about 8.5 acres of trust lands, all within the boundaries of the original Rancheria. The Tribe's first trust holdings came in 1992 when the Bureau of Indian Affairs approved trust-to-trust transfers of several small trust parcels that were previously held in trust for individual tribal members. The Tribe currently owns and operates a gaming facility called the Win-River Casino on two of these trust-to-trust transfer parcels within the original Rancheria.

The Tribe submitted its first fee-to-trust acquisition request in 1995.<sup>1</sup> The request was to acquire into trust a 1.06-acre site where the Tribe maintained its Head Start facility.<sup>2</sup> The Tribe submitted another fee-to-trust acquisition request sometime prior to December 6, 2000.<sup>3</sup> This request included four on-reservation parcels, including a 0.5-acre site referred to as the Memorial Parcel or the Tribal Burial Grounds and three other parcels currently used as parking lots for the Win-River Casino.<sup>4</sup> In January 2009, the Department accepted the Head Start and Memorial parcels into trust for the benefit of the Tribe.<sup>5</sup> Currently, the three parking lot parcels remain held by the Tribe in fee.<sup>6</sup>

In November 2003, the Tribe adopted Tribal Council Resolution #055-11-12-03 requesting the Department to accept the Strawberry Fields property (not including the Adjacent 80 Acres) into trust for the Tribe. It is unclear from the existing record when this resolution was received by the Department, although we know it was sometime before April 2006 when the Regional Director of the BIA sent a letter to the Tribe referencing the resolution.<sup>7</sup> The Tribe's trust acquisition request for Strawberry Fields, dated November 2003, could not have been received before, or even contemporaneously with, the Tribe's requests for trust acquisition of the Head Start and Memorial parcels, both of which were submitted prior to December 2000.

In April 2009, the Tribe submitted a trust acquisition request for three small parcels totaling 3.65 acres where the Tribe maintains its tribal administration building.<sup>8</sup> In June 2010, the Secretary granted that request and acquired those lands into trust for the Tribe.<sup>9</sup>

<sup>1</sup> Letter from Barbara Murphy, CEO of Redding Rancheria, to Virgil Akins, Superintendent of California Agency of BIA, re: fee-to-trust application package for Head Start facility AP#:049-400-22 (Jan. 19, 1995).

<sup>2</sup> *Id.*; see also Letter from Sara Dutschke Setshwaelo, Counsel for the Tribe, to Paula Hart, Director of DOI Office of Indian Gaming at 4 (Oct. 29, 2010).

<sup>3</sup> Notice of Land Acquisition Application (Dec. 6, 2000).

<sup>4</sup> *Id.*; see also Letter from Sara Dutschke Setshwaelo, Counsel for the Tribe, to Paula Hart, Director of DOI Office of Indian Gaming at 4 (Oct. 29, 2010); Letter from Barbara Murphy, Chairperson of the Redding Rancheria, to Paula Hart, DOI's Office of Indian Gaming at 10 (Dec. 22, 2008) ("Request").

<sup>5</sup> Grant Deed APN: 049-400-002 (accepted Jan. 21, 2009); Grant Deed APN: 049-400-027 (accepted Jan. 21, 2009).

<sup>6</sup> Request at 10 (Dec. 22, 2008).

<sup>7</sup> Letter from Clayton Gregory, BIA Regional Director, to Barbara Murphy, Redding Rancheria (April 19, 2006).

<sup>8</sup> Letter from Sara Dutschke Setshwaelo, Counsel for the Tribe, to Paula Hart, Director of DOI Office of Indian Gaming at 4 (Oct. 29, 2010).

<sup>9</sup> Grant Deed APN 049-400-14; 049-400-023; 049-400-007 (accepted June 3, 2010).

In July 2010, the Tribe amended its fee-to-trust application for Strawberry Fields to include the Adjacent 80 Acres that the Tribe had recently purchased.<sup>10</sup>

### **Legal Analysis**

Subject to several potential exceptions, IGRA generally prohibits gaming on any lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988.

25 U.S.C. § 2719(a). This general prohibition is inapplicable when:

lands are taken into trust as part of –

- (i) a settlement of a land claim,
- (ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgement process, or
- (iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

25 U.S.C. § 2719(b)(1)(B).

On August 25, 2008, after extensive notice and public comment, the Department published comprehensive regulations governing gaming on lands acquired after October 17, 1988 at 25 C.F.R. Part 292. The Department's Part 292 regulations include standards to determine whether a tribe qualifies for the restored lands exception. The first inquiry is whether the Tribe meets the regulatory requirements for a restored tribe. In this case, I find that the Tribe is a restored tribe. The second inquiry is whether the Tribe meets the regulatory requirements under Sections 292.11 and 292.12. I find that the Tribe has established both a historical and modern connection to the land, but I have determined that the Tribe cannot establish a temporal connection under Section 292.12(c).

#### **A. The Redding Rancheria is a Restored Tribe.**

The regulations pertaining to the restored lands exception provide in part:

Gaming may occur on newly acquired lands under this exception only when all of the following conditions in this section are met:

- (a) The tribe at one time was federally recognized, as evidenced by its meeting the criteria in § 292.8;
- (b) The tribe at some later time lost its government-to-government relationship by one of the means specified in § 292.9;
- (c) At a time after the tribe lost its government-to-government relationship, the tribe was restored to Federal recognition by one of the means specified in § 292.10; and
- (d) The newly acquired lands meet the criteria of "restored lands" in § 292.11.

25 C.F.R. § 292.7.

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<sup>10</sup> Letter from Jason Hart, Acting Chairperson of the Redding Rancheria, to Paula Hart, DOI Office of Indian Gaming (July 27, 2010).

### **1. The Redding Rancheria was a federally recognized tribe.**

In order to show that a tribe was at one time federally recognized for purposes of Section 292.7(a), a tribe must demonstrate one of the following:

- (a) The United States at one time entered into treaty negotiations with the tribe;
- (b) The Department determined that the tribe could organize under the Indian Reorganization Act or the Oklahoma Indian Welfare Act;
- (c) Congress enacted legislation specific to, or naming, the tribe indicating that a government-to-government relationship existed;
- (d) The United States at one time acquired land for the tribe's benefit; or
- (e) Some other evidence demonstrates the existence of a government-to-government relationship between the tribe and the United States.

25 C.F.R. § 292.8.

As detailed in the Background section, the United States acquired lands for the benefit of the Tribe and established the reservation/Rancheria in 1922. Therefore, the Tribe meets the requirements of 25 C.F.R. § 292.8(d).

### **2. The Redding Rancheria lost its government-to-government relationship.**

Once a tribe establishes that it was at one time federally recognized, as required by 25 C.F.R. § 292.7(a), it is required by Section 292.7(b) to show that its government-to-government relationship was terminated by one of the following means:

- (a) Legislative termination;
- (b) Consistent historical written documentation from the Federal Government effectively stating that it no longer recognized a government-to-government relationship with the tribe or its members or taking action to end the government-to-government relationship; or
- (c) Congressional restoration legislation that recognizes the existence of the previous government-to-government relationship.

25 C.F.R. § 292.9.

The Redding Rancheria meets the requirement of Section 292.9(a) because pursuant to the California Rancheria Act, Congress authorized termination of tribal status of 41 California Rancherias. Pub. L. No.85-671, 72 Stat. 619 (1958), as amended by Pub. L. No. 88-419, 78 Stat. 390 (1964). Pursuant to this Act, the Tribe was terminated by notice published in the Federal Register on June 13, 1962.

### **3. The Redding Rancheria has been restored to Federal recognition.**

In order for a tribe to qualify as having been restored to Federal recognition for purposes of 25 C.F.R. § 292.7, the tribe must also meet one of the criteria in 25 C.F.R. § 292.10. Among the listed criteria is "A Federal court determination in which the United States is a party or court-approved settlement agreement entered into by the United States." 25 C.F.R. § 292.10(c).

In 1979, the Redding Rancheria joined 17 other terminated California rancherias in a class action lawsuit to restore the tribes' federally recognized status and the trust status of their tribal lands. *See Hardwick v. United States*. A settlement with the United States was achieved through a stipulated agreement, and a judgment pursuant to that stipulation agreement was entered on December 22, 1983. On June 11, 1984, pursuant to the agreed upon stipulation and resulting judgment, the Secretary of the Interior restored to federally-recognized status the 17 Rancherias, including the Redding Rancheria. 49 Fed. Reg. 24084 (1984).

### **4. Conclusion: the Redding Rancheria is a "restored tribe."**

The acquisition of land in 1922 for the benefit of the Tribe establishes that the Tribe formerly had a government-to-government relationship with the United States; the government-to-government relationship ended pursuant to the California Rancheria Act; and the government-to-government relationship was "restored" and "reaffirmed" pursuant to the Hardwick Stipulation. Therefore, the Redding Rancheria Tribe satisfies the "restored tribe" requirements of the restored lands exception.

Having concluded that the Tribe is a restored tribe under IGRA, the next question is whether the Parcels will be "land taken into trust as a part of the restoration of lands."

#### **B. The Parcels Cannot be "Restored Lands."**

Because the Tribe was restored by a court-approved settlement agreement, the pertinent regulations state:

If the tribe was restored by a Federal court determination in which the United States is a party or by a court-approved settlement agreement entered into by the United States, it must meet the requirements of Section 292.12.

25 C.F.R. § 292.11(c).

Section 292.12 sets forth three criteria that must be established in order for a parcel to qualify as restored lands. These criteria may be summarized as requiring a modern connection, a historical connection, and a temporal connection. Although I find that the Parcels meet the modern and historical connections, I have determined that the Parcels do not meet the temporal connection requirement.

## 1. Modern Connection

Subsection 292.12(a) provides:

The newly acquired lands must be located within the state or states where the tribe is now located, as evidenced by the tribe's governmental presence and tribal population, and the tribe must demonstrate one or more of the following modern connections to the land:

- (1) The land is within a reasonable commuting distance of the tribe's existing reservation;
- (2) If the tribe has no reservation, the land is near where a significant number of tribal members reside;
- (3) The land is within a 25-mile radius of the tribe's headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust; or
- (4) Other factors demonstrate the tribe's current connection to the land.

25 C.F.R. § 292.12(a).

Here, the Parcels are located within California, the same State as the Tribe is located. Furthermore, because the Parcels are only about 3.7 miles by road from the Tribe's existing reservation,<sup>11</sup> they are clearly within a reasonable commuting distance. Therefore, the Parcels meet the modern connection test.

Moreover, under Section 292.12(a)(3), a tribe can demonstrate a modern connection to a tract of land if "the land is within a 25-mile radius of the tribe's headquarters or other tribal government facilities." Here, the Parcels are within 25 miles of the Tribe's headquarters. Therefore, there is a second basis to conclude that the Parcels meet the modern connection test.

## 2. Significant Historical Connection

Next, Section 292.12(b) requires that "[t]he tribe must demonstrate a significant historical connection to the land." "Significant historical connection" is a defined term and means "the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land." 25 C.F.R. § 292.2.

Here the Tribe has demonstrated significant historical connections to the lands by providing historical documentation of the existence of the Tribe's villages, burial grounds, occupancy or

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<sup>11</sup> The regulations define "reservation" to include rancherias such as the Redding Rancheria. 25 C.F.R. § 292.2.

subsistence use in the vicinity of the land. The record indicates that the Redding Rancheria, the site of tribal residences and burial grounds from at least as early as 1922, is less than 2 miles from the subject Parcels. This is sufficient evidence to demonstrate that the Tribe's villages and burial grounds are in the vicinity of the Parcels.

In short, the Tribe can show that it has a significant historical connection to the Parcels. Therefore, the Redding Rancheria meets the requirements of § 292.12(b).

### 3. Temporal Connection

The tribe must demonstrate a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration. To demonstrate this connection, the tribe must be able to show that either:

- (1) The land is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition; or
- (2) The tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands.

25 C.F.R. § 292.12(c).

In order to qualify under Section 292.12(c)(1), the Parcels must have been included in the Tribe's first request for newly acquired lands since the Tribe was restored to Federal recognition. The regulations define the term "newly acquired lands" to mean, "land that has been taken, or will be taken, in trust for the benefit of an Indian tribe by the United States after October 17, 1988." 25 C.F.R. § 292.2.<sup>12</sup>

The Tribe asserts that the trust-to-trust transfers giving the Tribe its first trust holdings in 1992 should not be considered newly acquired land, as the land was already held by the Secretary in trust before October 17, 1988. I do not have to reach that issue. As detailed in the Background section, after the Tribe received its trust-to-trust transfers, the Tribe made two requests for fee-to-trust acquisitions that predate its request relating to the Strawberry Fields Property. Whether we consider the Tribe's first request for newly acquired lands to be the trust-to-trust transfers or the subsequent fee-to-trust requests, it is evident that the subject Parcels were not included in either of those requests. Therefore, the Parcels were not "included in the [T]ribe's first request for newly acquired lands since the [T]ribe was restored to Federal recognition" and they cannot meet the standard in 25 C.F.R. § 292.12(c)(1).

To meet the alternative standard under 25 C.F.R. § 292.12(c)(2), a tribe must demonstrate that it submitted the land into trust application within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands.

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<sup>12</sup> Contrary to the Tribe's arguments, the definition of "newly acquired lands" is not limited to trust lands acquired for gaming purposes or trust lands acquired off reservation.

In this case, the Tribe's existing gaming facility precludes a finding under this section.

**Conclusion**

Because the Tribe cannot meet the standards articulated in Section 292, the Parcels are not eligible for the restored lands exception. The Tribe has not claimed that the Parcels are eligible for any other exception to IGRA's general prohibition against gaming on newly-acquired lands. Therefore, it is my determination that the Parcels, if acquired in trust, are not currently eligible for IGRA's restored lands exception.

This decision does not preclude the Tribe from considering alternative non-gaming uses for the land. The limitation imposed by Congress on the use of the land should not be interpreted as a prohibition against acquiring the land in trust for any other purposes. Therefore, if the Tribe desires to acquire the land for some non-gaming purpose, please make the appropriate adjustments to your application in accordance with the trust acquisition regulations at 25 C.F.R. Part 151. Should the Tribe continue to pursue this site for gaming purposes, an application will need to be submitted pursuant to 2719(b)(1)(A) – the two-part Secretarial determination section of IGRA.

We regret that our decision could not be more favorable at this time.

Sincerely,



*For* Larry Echo Hawk  
Assistant Secretary – Indian Affairs