



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, DC 20240

MAR 07 2014

IN REPLY REFER TO:

Real Estate Services
IACC000176

The Honorable Lois Capps
House of Representatives
Washington, D.C. 20515

Dear Representative Capps:

Thank you for your letter of September 20, 2013, regarding the Tribal Land Consolidation and Acquisition (TCA) Plan approved by the Pacific Regional Director for the Santa Ynez Band of Chumash Indians of Southern California. The questions posed in your letter and the responses are provided below.

1. Does the BIA follow any specific guidelines or criteria when it approves a TCA plan? If so, what are those criteria and/or guidelines? How were they applied in the approval of the Santa Ynez Band's TCA?

RESPONSE: There are no guidelines currently in place for TCA's under 25 CFR 151.3. Also, the Interior Board of Indian Appeals' decision dated February 20, 1990 (IBIA 80-48-A, Absentee Shawnee Tribe of Indians of Oklahoma v. Anadarko Area Director) held that a Bureau of Indian Affairs (BIA) official may devise and employ reasonable criteria to review such a plan. In this particular instance, the Tribe's submission is titled "PROPOSED", and the Pacific Regional Director considered the proposal as a speculative "area of interest." In fact, the approval specifically states that "All acquisition applications submitted pursuant to said plan shall be considered within the Secretary's discretion and under all applicable laws and regulations, including the National Environmental Policy Act of 1969."

2. Is the development of TCA plans a public process? If so, why did the BIA not solicit input from the community before finalizing the Santa Ynez Band's TCA?

RESPONSE: The development of a TCA plan may be a public process depending on the BIA official's discretion. Since the Pacific Regional Director considered the proposal as a speculative "area of interest", the BIA did not solicit input from the community before finalizing the Santa Ynez Band's TCA plan.

3. Has the BIA (or Secretary) approved a TCA for any other California Indian tribe? If so, when, and which tribe(s) was/were involved? Have other consolidation plans been approved elsewhere in the nation? Please explain those processes and outcomes.

RESPONSE: The Pacific Regional Director approved an "Interim Land Consolidation Plan" for the Agua Caliente Band of Cahuilla Indians in 2006. However, this plan was accomplished under the Indian Land Consolidation Act (25 U.S.C. § 2202 and § 2203), which enables tribes to establish plans for the sale or exchange of tribal lands for the purpose of eliminating undivided fractional interests and consolidating tribal landholdings. Prior to approval of the Agua Caliente

plan, an environmental report was prepared and circulated. However, the plan focused on "Section 14" of the Agua Caliente Reservation, which is located in the downtown area of the City of Palm Springs. A land exchange pursuant to the plan was completed in 2008 that involved a fee to trust transaction on behalf of the Tribe. Notice of the lands being exchanged was issued to State and local governments pursuant to the 25 CFR 151 regulations. We have not been made aware of any controversy regarding the Agua Caliente plan.

Other consolidation plans have been approved in the nation, mostly in the Northwest and Eastern Oklahoma Region. In the Northwest Region, four of the five western Oregon tribes have approved TCA plans from the 1980s. The plans consist of a map and an approval letter. In the Eastern Oklahoma Region, nine tribes have approved TCA plans. For all of these plans, all applicable Federal regulations are followed concerning land acquisitions. These plans merely represent a targeted area for land acquisitions.

4. Under 25 CFR 151.3, land within a TCA appeared to be treated as equivalent to contiguous or on-reservation acquisitions. Does this mean that any land within a TCA would be considered contiguous for the purposes of Sec. 2719(a)(1) of the Indian Gaming Regulatory Act, and therefore automatically deemed eligible for gaming?

RESPONSE: No. The regulations implementing the Indian Gaming Act at 25 CFR 292.2 define the term "contiguous" as "two parcels of land having a common boundary notwithstanding the existence of non-navigable waters or a public road or right-of-way and includes parcels that touch at a point."

5. More generally, if lands lie within a TCA, does the BIA typically treat non-contiguous land acquisitions as "on-reservation acquisitions" for purposes of fee to trust under 25 CFR 151.10 instead of under 25 CFR 151.11 which is typically used for noncontiguous and other "off-reservation" acquisitions?

RESPONSE: No. We are required under BIA procedures to have the Interior Department's legal counsel make determinations as to whether the land is on or off-reservation. If their determination is that the land is off-reservation, then we must comply with 25 CFR 151.11.

6. How does the approval of a TCA specifically impact the Santa Ynez Band's application for fee to trust for Camp 4? For example, the Environmental Assessment for the Santa Ynez Band's application states that the property will be considered an on-reservation acquisition because it lies within a TCA, although the property is not contiguous with, nor within the boundaries of, the tribe's reservation. Please explain clearly whether the existence of the TCA in the Santa Ynez Band's case puts this in a category of an on-reservation acquisition for fee to trust, or otherwise creates any presumption or preference for approval of fee to trust for parcels that lie within an approved TCA.

RESPONSE: As indicated in our response to question 5, we must seek legal determinations as to whether land is on or off-reservation. In the Camp 4 case, the legal determination concluded Camp 4 to be an off-reservation acquisition. Accordingly, the Pacific Region's September 17, 2013, Notice of Application for the Camp 4 property clearly stated that notice was being given pursuant to 25 CFR 151.10 and 151.11.

7. If the approval of a TCA does not provide a presumption or lesser standard for review for tribes seeking to take land into trust within its boundaries, what purposes does a TCA serve?

RESPONSE: The tribes can utilize a TCA as a short or long-range planning tool thereby enabling them to identify specific land acquisition needs and priorities.

8. Does the BIA apply less scrutiny to the distance between the reservation and the parcel than if it is in a TCA? Will it give less consideration to the comments of state and local governments for approval of fee to trust if the land is within a TCA?

RESPONSE: No to both questions. The BIA follows the applicable regulations regarding the distance between the reservation and the parcel and gives equal consideration to all of the solicited comments.


9. If a TCA covers land that is not owned in fee or in trust by a tribe of the federal government, what impact will the designation have on other land owners?
 - a. Will it impact their water rights?
RESPONSE: No.
 - b. Will it put a cloud on their title or have other effects on property values?
RESPONSE: No, it should not. To our knowledge, the TCA was not recorded in county record; it does not meet county recording requirements; and it was not intended to be recorded in county record.
 - c. Does it impact State and local regulation of the lands within the TCA?
RESPONSE: No.
 - d. Does a TCA give the tribe any priority right to acquire the land in fee, such as a right of first refusal?
RESPONSE: No.
 - e. Does a TCA give the tribe or BIA any regulatory jurisdiction over land which they do not own? Do not have held in trust?
RESPONSE: No to both questions.
10. 25 CFR 2.7 requires that, when it makes a decision, the BIA shall give "interested parties" "written notice of the decision by personal delivery or mail." Has the BIA given written notice to all "interested parties", including all landowners within the TCA?

RESPONSE: No. The Santa Ynez TCA was considered as merely an effort by the Tribe to identify a speculative "area of interest." The Pacific Region's position is that if a fee to trust application under the plan is submitted, public comments will be solicited at that time. If a decision is made on any application, notice of the decision will be issued to all known interested parties as required by regulation.

If you have additional questions regarding this letter, please contact Carmen Facio, Realty Officer, Pacific Region, at (916) 978-6062, or via email at carmen.facio@bia.gov.

A similar letter is being sent to The Honorable Diane Feinstein, United States Senate.

Sincerely,


Acting Director, Bureau of Indian Affairs

cc: Regional Director, Pacific Region