



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

NOV 10 2015

NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7015 0640 0003 6795 8399

Ms. Serena L. Giordani
P.O. Box 1147
Banning, CA 92220

Dear Ms. Giordani:

This is notice of our decision upon your application as a member of the Morongo Band of Mission Indians, to have the below described real property accepted by the United States of America in trust for Serena L. Giordani of the Morongo Band of Mission Indians of the Morongo Reservation, California. The land referred to herein is situated in the State of California, Riverside County, and is described as follows:

Lot 55 of Block 1, Desert Hills No. 1, in the County of Riverside, State of California, as shown by map on file in Book 23, Pages 26 and 27 of Maps, in the Office of the County Recorder of said County.

Excepting all gas, metals, minerals, petroleum, and other hydrocarbon substances lying below a depth of 500 feet without right to surface entry as reserved by deed recorded February 4, 1947, in Book 808, Page 585, of Official Records of said County and modified by instrument recorded April 4, 1955, in Book 1718, Page 287, of Official Records of said County, containing 1.17 acres, more or less.

Assessor's Parcel Number: 519-121-009-4

Review of the legal description and maps provided with the application disclose that the land is located contiguous to the checkerboard boundaries of the Morongo Reservation and therefore, is being processed as an "on-reservation" acquisition. The subject parcel contains 1.17 acres, more or less.

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title on behalf of the United States of America for the benefit of an individual Indian in trust status when such acquisition is authorized by an Act of Congress and (1) when the land is

located within the exterior boundaries of an Indian reservation, or adjacent thereto, or (2) when the land is already in trust or restricted status. In this particular instance, the authorizing Act of Congress is the Indian Land Consolidation Act of 1983 (25 U.S.C. § 2202). The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25 INDIANS, Part 151, as amended.

On May 15, 2015, by certified mail, return receipt requested, we issued notice regarding the proposed fee-to-trust application and sought comments from the California State Clearinghouse, Office of Planning and Research; Sara Drake, Deputy Attorney General, CA Department of Justice; Joe Dhillon, Senior Advisor for Tribal Negotiations, Deputy Legal Affairs Secretary, Office of the Governor; Dianne Feinstein, US Senator; Duncan Hunter, Member of Congress; Riverside County Assessor; Riverside County board of Supervisors; Riverside County Planning Department; Riverside County Treasurer & Tax Collector; Riverside County Sheriff's Department; Riverside County, Office of County Counsel; Agua Caliente Band of Cahuilla Indians; Augustine Band of Mission Indians; Cabazon Band of Mission Indians; Cahuilla Band of Mission Indians; Morongo Band of Mission Indians; Pechanga Band of Luiseno Indians; Ramona Band of Mission Indians; Santa Rosa Band of Mission Indians; Soboba Band of Mission Indians; Torres Martinez Desert Cahuilla Indians; and Twenty-Nine Palms Band of Mission Indians.

In response to our notification, we received the following comment letter:

1. Letter dated June 16, 2015, from the State of California, Department of Justice, requesting that the Bureau of Indian Affairs deny the trust application for three (3) reasons:
 - 1) Ms. Giordani has failed to demonstrate that taking fee land located outside the reservation's boundaries into trust will further land consolidation within its boundaries. As the applicant notes, the reservation is a checkerboard of trust and fee lands. Given the map accompanying the trust application shows vast areas of undeveloped fee land, land consolidation could be better accomplished by acquiring some of the undeveloped fee land located within the reservation's boundaries in trust.
 - 2) ...the application indicates that Ms. Giordani already has a beneficial interest in a trust parcel located on the Morongo Reservation. There is no indication as to why Ms. Giordani needs an additional parcel.
 - 3) ...the trust application should be denied because Ms. Giordani has failed to provide any evidence that she needs assistance in handling her affairs and, thus, is entitled to the protections afforded by a trust conveyance. Under 25 CFR § 151.10(d), when considering whether land is to be acquired for an individual Indian, the BIA is required to determine "the degree to which he needs assistance in handling his affairs." Without any evidence from Ms. Giordani, the BIA cannot make this required determination.

The Interior Board of Indian Appeals (IBIA) has affirmed the denial of multiple individual trust applications when the applicant failed to demonstrate that he or she needed assistance in handling his or her affairs. For example, in *Bradley v. Anadarko*

Area Director, Bureau of Indian Affairs, (1989) IBIA 89-45-A, at 17 IBIA 212, the regional director denied the application because he found that:

“For many years you have managed this property without the assistance of the government. There is nothing in the record to indicate you need government assistance in handling your affairs, nor does it reflect based on your education and past experience that any help is needed in the administration and maintenance of your land.”

Likewise, in *Louis J. King, Jr. v. Eastern Oklahoma Regional Director, Bureau of Indian Affairs*, (2007) IBIA 06-2-A, at 46 IBIA 155-56, the IBIA affirmed a BIA decision denying an individual’s trust application based on the applicant’s failure to demonstrate a present inability to manage his affairs. The IBIA concluded that the potential future need for government supervision did not meet the required criterion and that the BIA was required to make a determination concerning the applicant’s need for assistance in managing his affairs:

“With respect to the Regional Director’s consideration of the fee-to-trust criteria set forth at 25 CFR § 151.10, Appellant specifically challenges only one rationale relied on by the Regional Director: that Appellant does not need assistance in handling his affairs. See 25 CFR § 151.10(d). Appellant acknowledges that he currently does not need assistance in handling his affairs. See Letter from Appellant to Board, Sept. 25, 2005, at 2 (“I am currently able to manage my affairs”); Notice of Appeal and Statement of Reasons filed with the Regional Director (“I may at present be of sound mind and capable of attending to my own affairs”). He argues, however, as he did before the Regional Director, that the possibility exists that he may be incapable of doing so in the future. The Regional Director specifically rejected this argument, noting that a potential future need for Government supervision does not lend support to a present inability to manage appellant’s own affairs.”

“... In addition, we note that BIA is required to reach a particular conclusion as to each factor, but proof of BIA’s consideration of each factor must appear in the record. Skagit County, 43 IBIA at 63. The Superintendent and the Regional Director both fully considered this factor. Moreover, after reviewing the record, we conclude that the Regional Director made a reasonable determination concerning Appellant’s need for assistance in managing his affairs. Therefore, we conclude that Appellant has failed to carry his burden of showing the Regional Director did not properly exercise her discretion in denying Appellant’s trust acquisition request.”

Finally, in *Shotpouch v. Acting Eastern Oklahoma Regional Director, Bureau of Indian Affairs*, (2002) IBIA 02-94-A, at 38 IBIA 219-20, the IBIA discussed the

differing standards for a tribal trust acquisition and an individual trust acquisition and...the need for an individual to demonstrate his inability to manage his own affairs before the BIA may approve a trust application for him:

"In other respects as well, the regulations set out a broader acquisition authority for tribes than they do for individuals. (Compare 25 CFR § 151.3(a) with 25 CFR § 151.3(b)). Further, the regulations make acquisitions for individuals subject to an additional criterion, not applicable to acquisitions for tribes. With respect to individual applicants, BIA is required to consider "the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs." 25 CFR § 151.10(d).

"In the exercise of its discretionary authority, BIA has chosen to distinguish between trust acquisitions for tribes and trust acquisitions for individuals. It is well within BIA's authority to make such a distinction. As was observed by the Regional Director, and as is particularly apparent from 25 CFR § 151.10(d), BIA has chosen to view trust acquisitions for individuals as protective of those individuals (thus making the individuals' need for protection a relevant factor)."

Here, Ms. Giordani has failed to demonstrate that she cannot manage her own affairs or that she needs the assistance of the federal government. To the contrary, the record suggests that she is properly managing her own affairs. While Ms. Giordani has asked that the BIA waive this requirement, the BIA is required to consider whether the individual applicant needs the government's assistance in managing his affairs before it may approve that individual's application. 25 CFR § 151.10(d). Thus, the BIA lacks the authority to simply waive the requirement.

Responses by the Morongo Band of Mission Indians to the above comments are on behalf of Ms. Serena L. Giordani as follows:

1. Letter dated August 18, 2015, from Karen Woodard, Realty Administrator, Morongo Band of Mission Indians, states the following:

...The Morongo Realty Department assists the Morongo Band of Mission Indians (Tribe) and individual Tribal members in preparing Fee-to-Trust applications. This letter is being provided on behalf of Serena L. Giordani and should be included in the Secretary's Decision to bring the fee parcel into trust status for Ms. Giordani.

The notice from the Bureau of Indian Affairs, dated May 15, 2015, specifically requested comments regarding the proposed trust acquisition "in order to obtain sufficient data that would enable an analysis of the potential impacts on local government which may result from the removal of the subject property from the tax roll and local jurisdiction." With all due respect to the office of the California Attorney General, the comment letter sent

by that office failed to respond to the Bureau's request for information and instead made arguments that are not relevant to the purpose for which the Bureau's Notice was sent.

The comment letter did not provide any information that would assist the Secretary in conducting an analysis of the potential impact on local government of the acquisition of the property by the United States. Instead the comment letter addressed, in a factually inaccurate manner, the issue of whether taking the particular land in question into trust will further land consolidation within reservation boundaries. Ms. Giordani's fee parcel is contiguous to Morongo tribal trust lands. Pursuant to 25 CFR § 151.10, which governs "on-reservation" acquisitions and explicitly states that it covers the proposed acquisition of land "located contiguous to an Indian reservation," the acquisition proposed by Ms. Giordani's application would be an "on-reservation" acquisition. Therefore, the Tribe takes the position that the comment letter is factually inaccurate and Ms. Giordani's application requesting that her fee parcel be brought into trust status does in fact; further the goal of land consolidation.

Mr. Kaufman also commented on the fact that a request was made to waive the requirement in 25 CFR § 151.10(d) as to Ms. Giordani's degree to which she needs assistance in handling her affairs. Because the Tribe is a self-governance tribe and it will ultimately have jurisdiction over the parcel, therefore, the Tribe believes that there is no need to define the extent to which Ms. Giordani, a tribal member, may or may not need assistance in handling her affairs at this particular state of her life, and therefore the Tribe requested the Bureau of Indian Affairs waive this requirement. The Morongo Band of Mission Indians supports Ms. Giordani's request to bring the parcel into trust status and understands the responsibilities of having jurisdiction over the subject property.

The comment letter failed to show that by bringing Ms. Giordani's parcel into trust status would have any significant impact on the State of California or on local government. The Tribe also notes that copies of the Bureau's Notice were sent to the County of Riverside and were made available to other local agencies, and no comment letter has been received from any of them regarding Ms. Giordani's application, which strongly supports the conclusion that there would be no significant impacts to the County or any local agency if the property in question were to be acquired by the United States to be held in trust for Ms. Giordani.

In light of the foregoing, it is the Tribe's position that the comment letter raised no issue of significance, and acquisition of the subject property is in accordance with the discretion granted to the Secretary pursuant to 25 USC § 465 and meets the criteria set forth in 25 CFR § 151.10. The Morongo Realty Department, on Ms. Giordani's behalf and on behalf of the Tribe, therefore requests that the Bureau of Indian Affairs complete the Fee-to-Trust process and acquire the subject property to be held in trust for Ms. Serena L. Giordani, an enrolled tribal member.

Our analysis contained within this notice includes and considers comments received on behalf of the State of California, Department of Justice and the responsive information provided by the Morongo Band of Mission Indians on behalf of Ms. Serena L. Giordani, applicant.

Pursuant to CFR 151.10, the following factors were considered in formulating our decision: (1) need of the individual Indian for additional land; (2) the purpose for which the land will be used; (3) the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs; (4) impact on the State and its political subdivisions resulting from removal of the land from the tax rolls; (5) jurisdictional problems and potential conflicts of land use which may arise; (6) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; and (7) the extent to which the applicant has provided information that allows the Secretary to comply with National Environmental Policy Act revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

Factor 1 – Need for Additional Land

The Morongo Band of Mission Indians was originally established by Executive Order dated May 15, 1876. Currently, the Tribe is governed by the General Council Concept and Custom Tradition. To promote the Tribe's sovereign interests and governmental ability to protect and promote the health, safety and welfare of its members and reservation residents, Ms. Giordani wishes to bring the subject property into trust status for the purpose of housing and land consolidation.

Factor 2 – Proposed Land Use

As stated above, acquisition of the subject parcel into trust status is for the purpose of land consolidation, Indian housing and protection of cultural heritage. Placing the land into trust status by the United States for the benefit of Ms. Giordani, a member of the Morongo Band of Mission Indians, will provide the inalienable protection unique to federal Indian land and ensure that its integration into the Reservation land base will help support the Tribe's self-governance and protection of the Tribe's cultural resources.

Factor 3 – The Amount of Trust or Restricted Land Already Owned by or for the Individual and the Degree of Which Assistance is Needed in Handling His Affairs

In their comment letter dated June 18, 2015, the California Department of Justice (CA DOJ) stated that Ms. Giordani's trust application should be denied because she already owns interests in a trust parcel and that Ms. Giordani has failed to provide any evidence that she needs assistance in handling her affairs.

The CA DOJ also stated in their comments that the Interior Board of Indian Affairs (IBIA) affirmed decisions by the Bureau of Indian Affairs to deny multiple individual trust applications when the applicant failed to demonstrate that he or she needed assistance in handling his or her affairs.

Our review of the IBIA decisions referenced in the CA DOJ's comments reveal that, in addition to the criteria of whether or not the individual needed assistance in handling his own affairs, there were additional factors the BIA took into consideration in their overall decision to deny the applications.

In *Bradley v. Anadarko Area Director, BIA, IBIA 89-45-A*, at 17 IBIA 212, in addition to Factor 3, the Superintendent denied applicant's application for trust acquisition by stating that, "The main direction of BIA leasing of trust lands has been for farming and grazing purposes because almost all allotments were in agricultural areas. BIA regulations address agricultural leases and do not apply very well to residential leases...BIA is not equipped to administer residential leases on behalf of Indian owners.

In *Louis J. King, Jr. v. Eastern Oklahoma Regional Director*, at 46 IBIA 151, the BIA found that other factors weighing against trust acquisition were that the applicant did not have a need for the land as he intended to retire to the land at some point in the future and that the acquisition would place additional responsibilities on the Agency and the Agency was concerned that it could not adequately discharge these responsibilities.

Finally, in *Shotpouch v. Acting Eastern Oklahoma Regional Director*, at 38 IBIA 218-19, the applicant sought restricted status for the property under 25 U.S.C § 409a. The applicant stated the planned use for the property was a smoke shop. The application was denied because the granting of restricted status for the purpose described by Appellant was contrary to the policy of 25 USC § 409a and BIA's trust acquisition regulations in 25 CFR Part 151, as the regulations do not specifically identify "economic development" as a purpose for which trust acquisitions may be made for individuals.

Section 5 of the Indian Reorganization Act (IRA) indicates that the taking of land in trust by the Secretary of Interior need not be just for landless, destitute or incompetent Indians. *City of Tacoma, Wash. V. Andrus, D.C.D.C.1978, 457 F.Supp. 342.*

The Board has consistently stated their standard of review in trust acquisition appeals is well established. Decisions by BIA officials to take land into trust are discretionary, and the Board does not substitute its judgment in place of BIA's judgment in such decision. The decision must reflect that the BIA considered the factors set forth in section 151.10, but there is no requirement that BIA reach a particular conclusion with respect to each factor. The factors are not weighted or balanced in any particular way, nor must each factor be exhaustively analyzed.

Although this section clearly does not define the meaning of the degree to which Ms. Giordani needs assistance in in handling her own affairs and given that we have considered that CA DOJ's comments regarding the amount of land already owned by Ms. Giordani, we have determined that trust acquisition of Ms. Giordani' land is in order to protect it against alienation and outweighs the fact that she does not currently need assistance.

Factor 4 – Impact on State and Local Government’s Tax Base

If the parcel proposed for acquisition is accepted into trust, it will no longer be subject to property taxes. Assessed taxes for the subject parcel during the 2014-2015 tax year was \$317.00. Given the nominal amount collected, it is our determination that the removal of this property from the tax rolls will have minimal impact on the State and its political subdivisions.

Factor 5 – Jurisdictional Problems and Potential Conflicts of Land Use Which May Arise

Acceptance of the subject property into federal trust status for the benefit of the Ms. Giordani will remove the property from State and local laws concerning real property taxation and other land use regulations. Tribal law will govern these activities after the property is accepted into trust, to much the same extent that it does now on existing trust lands.

There will be no change in criminal jurisdiction as jurisdiction in California is subject to P.L. 83-280. The Morongo Band will assert civil/regulatory jurisdiction. The parcel is zoned Residential Vacant Land, therefore the contemplated use as a future residence would not result in land use or jurisdictional conflict. Tribal services for the parcel will include safety patrols by tribal security, fire safety checks and protection services by the tribal fire department, and weed abatement and general property maintenance by the tribal public works department.

Factor 6 – Whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status

The Morongo Band of Mission Indians has contracted the Title and Realty function from the Bureau of Indian Affairs and as of April 10, 2014 has applied for and been accepted into the tribal self-governance program. There shall be no additional responsibilities or burden on the Bureau of Indian Affairs resulting from Ms. Giordani’ Fee-to-Trust acquisition. The only foreseeable involvement of the Bureau of Indian Affairs would be the probate of the applicant’s estate. However, the Tribe has contracted most of Realty services and has assumed a portion of the probate functions. As such, the Bureau of Indian Affairs is equipped to administer any additional responsibilities resulting from this acquisition.

Factor 7 – The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations

In accordance with Interior Department Policy (602) DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential of and extent of liability from hazardous substances or other environmental remediation or injury. The environmental record includes a negative Phase 1 “Contaminant Survey Checklist” dated January 5, 2015, reflecting that there were no hazardous materials or contaminants. An additional on-site inspection will be conducted prior to any final action to accept title to the subject parcel.

National Environmental Policy Act Compliance

An additional determination, which has to be done when considering land acquisitions proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The Bureau's guidelines for NEPA compliance are set forth in the Bureau of Indian Affairs Manual (59 IAM). The proposed action herein has been determined not to require the preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). A Categorical Exclusion requires a qualifying action; in this case, 516 DM 10.5I, Land Conveyances and Other Transfers: Approvals or grants of conveyances and other transfers of interest in land where no change in land use is planned. A Categorical Exclusion for the acquisition of the subject property, containing 1.17 acres, was approved by this Agency on June 8, 2015 and compliance with NEPA has been completed.

Conclusion

Based on the foregoing, we at this time, issue notice of our intent **to accept** the subject real property into trust. The subject acquisition will vest title in the United States of America in trust for Ms. Serena L. Giordani, a member of the Morongo Band of Mission Indians of the Morongo Reservation, California, in accordance with the Indian Land Consolidation Act of 1983 (25 U.S.C. § 2202).

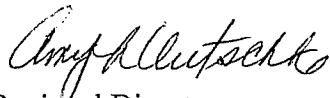
Should any of the below-listed known interested parties feel adversely affected by this proposed decision, an appeal may be filed within (30) days of your receipt of this notice with the Interior Board of Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340.

Any notice of appeal to the Board must signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within (30) days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed.

If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior, 1849 C Street, N.W., MS-4140-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures. If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b). No extension of time may be granted for filing a notice of appeal. If any party receiving this notice is aware of additional governmental entities that may be affected by

the subject acquisition, please forward a copy of the notice to said party or timely provide our office with the name and address of said party.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy H. Cluttsch".

Regional Director

cc: Distribution List

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Riverside County Board of Supervisors – 7015 0640 0003 6796 0613
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Planning Department
P.O. Box 1409
Riverside, CA 92502-1409

County of Riverside – 7015 0640 0003 6796 0637
Office of the Treasurer – Tax Collector
P.O. Box 12005
Riverside, CA 92502-2205

Riverside County Sheriff's Department – 7015 0640 0003 6796 0644
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Added to distribution list as of 5/7/15 per request from Riverside County Counsel
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