



IN REPLY REFER TO  
*Fee to Trust*

# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way, Room. W-2820  
Sacramento, California 95825

AUG 28 2019

Governor's Office of Planning & Research

**AUG 29 2019**

## STATE CLEARINGHOUSE

### NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7019 0140 0000 7335 7289

Honorable Frederick “Bo” Mazzetti  
Chairman, Rincon Band of Luiseno Mission Indians  
One Government Center Lane  
Valley Center, CA 92082

Dear Chairman Mazzetti:

This is our Notice of Decision for the application of the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California (Tribe) to have the below described property accepted by the United States of America in trust for the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California.

REAL PROPERTY IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA,  
DESCRIBED AS FOLLOWS:

#### PARCEL 1

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, AND THE NORTH HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, ALL IN TOWNSHIP 10 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA ACCORDING, TO UNITED STATES GOVERNMENT SURVEY APPROVED APRIL 10, 1886, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE WEST LINE OF SAID SECTION 36 WHICH BEARS SOUTH 378.90 FEET FROM THE NORTHWEST CORNER THEREOF; THENCE NORTH 84° 36' 20" EAST 731.68 FEET; THENCE NORTH 68° 46' 40" EAST 131.15 FEET; THENCE NORTH 56° 17' 50" EAST, 69.52 FEET; THENCE NORTH 43° 58' 20" EAST 249.63 FEET; THENCE NORTH 65° 01' 20" EAST 82.08 FEET; THENCE NORTH 59° 37' 40" EAST 171.01 FEET; THENCE NORTH 83° 01' 40" EAST TO AN INTERSECTION WITH THE EAST

LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 25.

PARCEL 2

THE NORTH HALF OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 10 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA ACCORDING, TO UNITED STATES GOVERNMENT SURVEY APPROVED APRIL 10, 1886.

PARCEL 3:

AN EASEMENT FOR ROAD AN UTILITY PURPOSES OVER THE WESTERLY 10.00 FEET OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, BOTH IN TOWNSHIP 10 SOUTH, RANGE I WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BY DEEDS RECORDED JUNE 17, 1952 AS INSTRUMENT NO. 73065 IN BOOK 4497, PAGE 197 AND NOVEMBER 25, 1958 AS INSTRUMENT NO. 197361 IN BOOK 7366, PAGE 273.

EXCEPTING THAT PORTION LYING WITHIN PARCELS 1 AND 2 ABOVE.

PARCEL 4:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS, OVER THE WESTERLY 30 FEET OF THE NORTHERLY 660 FEET OF THE SOUTHERLY HALF OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 10 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA ACCORDING, TO UNITED STATES GOVERNMENT SURVEY APPROVED APRIL 10, 1886, BY DEED RECORDED DECEMBER 20, 1976 AS INSTRUMENT NO 76-425899

EXCEPTING THEREFROM THE NORTHERLY 330 FEET THEREOF.

PARCEL 5:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THE WESTERLY 30 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 10 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIGEO, STATE OF CALIFORNIA ACCORDING, TO UNITED STATES GOVERNMENT SURVEY APPROVED APRIL 10, 1886, BY DEED RECORDED DECEMBER 20, 1976 AS INSTRUMENT NO. 76-0425900

EXCEPTING THEREFROM THE SOUTHERLY 330 FEET OF THE NORTHERLY 660 FEET.

PARCEL 6:

AN EASEMENT FOR INGRESS AND EGRESS OVER THE WEST 20.00 FEET OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 10 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BY DEED RECORDED OCTOBER 3, 1942, AS INSTRUMENT NO 60978 IN BOOK 1417, PAGE 65 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ANY PORTION LYING WITHIN PARCEL 1 ABOVE.

The subject property consists of the above described parcels of land totaling approximately 22.9 acres more or less, commonly referred to as the Ganje property and Assessor's Parcel Number 133-190-03-00 and 133-190-08-00. The property is contiguous to the Rincon Reservation.

**Note: The total acreage is consistent with the Bureau of Land Management Indian Land Surveyor's Land Description Review dated March 22, 2019.**

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 tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the exterior boundaries of the tribe's reservation, or adjacent thereto, or when such lands are within the consolidation area; or (2) when the tribe already owns an interest in the land; or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. 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.

The Rincon Reservation was established by the Executive Order of March 2, 1881. The Reservation was patented to the Rincon Band on September 13, 1892, by the Secretary of Interior.

Pursuant to 25 U.S.C. § 5125 (previously § 478), the Secretary held such an election for the Tribe on December 15, 1934, at which the majority of the Tribe's voters voted to reject the provisions of the Indian Reorganization Act of June 18, 1934<sup>1</sup>. The Secretary's act of calling and holding this election for the Tribe informs us that the Tribe was deemed to be "under Federal jurisdiction" in 1934. The Haas List tribes are considered to be under federal jurisdiction in 1934<sup>2</sup>.

On May 30, 2019, by certified mail, return receipt requested, we issued notice of and sought comments regarding the proposed fee-to-trust application from the California State

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<sup>1</sup> See "Ten Years of Tribal Government Under I.R.A.", United States Services, 1947, at Interior's website at <http://www.doi.gov/library/internet/subject/upload/Haas-TenYears.pdf>.

<sup>2</sup> See *Shawano County, Wisconsin v. Acting Midwest Regional Director, BIA*, 53 IBIA 62 (February 28, 2011) and *Stand Up for California, etal, v. U.S. Department of Interior v. North Fork Rancheria of Mono Indians*, 919 F. Supp. 2d 51 (January 29, 2013), the District Court for District of Columbia.

Clearinghouse, Office of Planning and Research; Senior Advisor for Tribal Negotiations, Deputy Legal Affairs Secretary, Office of the Governor; Sara Drake, Deputy Attorney General, State of California; Office of the Honorable Senator Diane Feinstein; U.S. House of Representatives, 50<sup>th</sup> District; San Diego County Assessor; San Diego County Treasurer and Tax Collector; County of San Diego, Board of Supervisors; San Diego County Sheriff's Department; San Diego County Department of Public Works; San Diego Department of Planning and Development; Barona Group of Capitan Grande Band of Mission Indians; Campo Band of Diegueno Mission Indians; Ewiiapaayp Band of Kumeyaay Indians; Jamul Indian Village; La Jolla Band of Luiseno Indians; La Posta Band of Diegueno Mission Indians; Los Coyotes Band of Cahuilla & Cupeno Indians; Manzanita Band of Mission Indians; Mesa Grande Band of Mission Indians; Pala Band of Mission Indians; Pauma Band of Mission Indians; Pechanga Band of Luiseno Mission Indians; Rincon Band of Luiseno Indians; San Pasqual Band of Diegueno Mission Indians; IIPAY Nation of Santa Ysabel; Sycuan Band of the Kumeyaay Nation; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians. Regular Mail: Inaja-Cosmit Band of Mission Indians and Superintendent, Southern California Agency.

In response to our notification, we received the following comments:

- 1. Letter dated June 14, 2019 from the San Diego County Assessor's Office, which provided a copy of the Assessor's Master Property Records showing a printout of the 2018-2019 tax roll information and distribution of taxes.**
- 2. Letter dated July 1, 2019 from the State of California Native American Heritage Commission, which stated the following that they reviewed the application and had no comments regarding the cultural resources impact of this proposal.**
- 3. Letter dated July 5, 2019 from the State of California – Natural Resources Agency, Department of Fish and Wildlife (Department), which stated the following:**
  - The proposed annexation property is approximately 0.53 acres north of the San Luis Rey River which is a key regional linkage for numerous species and provides core areas for several sensitive biological resources. The Department requests that any future change in land use or development of the property include consideration of potential impacts to the adjacent areas.
  - The Department requests that any change in land use or development include documentation that discloses potential impacts to sensitive species (including those identified by the California Endangered Species Act (CESA) and the federal Endangered Species Act). In the event of significant impacts, the Department requests mitigation planning be located in a way which helps maintain wildlife connectivity.
  - The quality and quantity of wetlands habitat in the region have been significantly reduced from development and consequently the Department wants to emphasize the need to avoid, reduce, and minimize direct and indirect impacts to biological resources and water quality associated with the San Luis Rey River and continued protection of the surrounding watershed.

**By letter dated August 19, 2019 the Rincon Band's responses are as follows:**

- *The Tribe has executed a Memorandum of Understanding (MOU) with the Bureau of Indian Affairs (BIA) to govern the application of the Endangered Species Act on the Rincon Reservation. The Tribe will continue to work with the BIA and U.S. Department of Fish and Game to ensure NEPA compliance.*

Pursuant to 25 CFR 151.10, the following factors were considered in formulating our decision: (1) the need of the tribe for additional land; (2) the purposes for which the land will be used; (3) impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls; (4) jurisdictional problems and potential conflicts of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of land in trust status; (6) 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. Accordingly, the following analysis of the application is provided.

#### Factor 1 - Need for Additional Land

This acquisition of the Ganje property in trust for the Tribe is part of the Tribe's comprehensive plan for restoration of its original reservation land base. The Tribe wants to ensure that the Ganje property is maintained and protected well into the future and that the Tribe continues to be the beneficial owner of the property.

The Rincon Reservation consists of approximately 4,635 acres (7.24 square miles) and is designed as follows:

- 4,066 acres are held in trust for the Tribe;
- 250 acres are held in trust for the Tribe, but have been assigned to individual tribal members for their exclusive use;
- 319 acres are held in trust for individual allottees

The Tribe currently uses, and intends to continue using, the Ganje property as vacant, open space. Acquisition of the Ganje property in trust will allow the Tribe to maintain the property as open space on the Reservation. As of 2015 (when the latest tribal census was conducted), there were 489 members of the Tribe. Merely twenty-four percent (24%) of the Tribe's membership are currently able to reside on the Reservation. The Tribe anticipates that on-reservation housing needs will grow in the future as a result of tribal population growth, as well as an increase in the desire of tribal members to return to and live on the Reservation. Based on population growth estimates alone, an estimated forty (40) additional homes will be needed over the next thirty (30) years.

While the United States currently holds approximately 4,635 acres more or less of land in trust for the Tribe, approximately one-third (1/3) of the Reservation consists of rugged and steep terrain that is generally inaccessible, or is subject to environmental constraints which has made

development difficult or, in some cases impossible. The Tribe has no intention of developing the property at the present; nevertheless, an additional 22.9 acres of land added to the land base may be contemplated for residential purposes at some point in the future.

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.

It is our determination that the Rincon Band has established a need for additional lands to protect the environment and preserve the reservation.

#### Factor 2 - Proposed Land Use

The subject property will continue to be used as vacant, open space. The Tribe has no plans for any development of the property.

#### Factor 3 – Impact on State and Local Government’s Tax Base

Parcels accepted into federal trust status are exempt from taxation and would be removed from the County’s taxing jurisdiction. In the 2018-2019 tax years, the total tax assessed on the subject property was \$5,038.58. During the comment period, none of the solicited agencies indicated that any adverse impacts would result from the removal of the subject parcel from the tax rolls.

Transferring the subject property into trust will not have a significant impact on the State of California or the County of San Diego’s tax revenue because the amount of property taxes assessed on these parcels is small in comparison to the County of San Diego’s annual property tax revenue.

The County of San Diego does not currently provide many of the services typically funded by property tax revenue on the Ganje property. The Tribe consistently provides fire protection, security, trash collection, access, and water on and for the Ganje property. Additionally, pursuant to an agreement with the San Diego County Sheriff’s Department, the Tribe pays approximately \$500,000 annually for law enforcement services on the Rincon Reservation, encompassing the Ganje property.

It is our determination that no significant impact will result from the removal of this property from the county tax rolls given the relatively small amount of tax revenue assessed on the subject parcel.

#### Factor 4 - Jurisdictional Problems and Potential Conflicts of Land Use Which May Arise

The Tribe does not anticipate that any significant jurisdictional conflicts will occur as a result of transfer of the Ganje property into trust. The property is contiguous to the exterior boundaries of the Rincon Reservation, and is surrounded by trust property on two sides, and as such, constitutes an area over which the Tribe exercises a significant degree of jurisdiction. Currently,

the property is vacant, open space. The Tribe has no plans to change the use of the property; therefore it is unlikely that any jurisdictional conflicts will arise.

The land presently is subject to the full civil/regulatory and criminal/prohibitory jurisdiction of the State of California and San Diego County. Once the land is accepted into trust and becomes part of the Reservation, the State of California will have the same territorial and adjudicatory jurisdiction over the land, persons and transactions on the land as the State has over other Indian counties within the State. Under 18 U.S.C. § 1162 and 28 U.S.C. § 1360 (P.L. 83-280), except as otherwise expressly provided in those statutes, the State of California would retain jurisdiction to enforce its criminal/prohibitory law against all persons and conduct occurring on the land. Transfer of the Ganje property into trust will not have an effect on San Diego County's regulatory jurisdiction or zoning over the subject property as the property is subject to tribal, not County regulatory jurisdiction and zoning regulations.

Factor 5 - Whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status

Acceptance of the Ganje property into federal trust status should not impose any additional responsibilities or burdens on the BIA beyond those already inherent in the federal trusteeship over the existing Rincon Reservation. The Tribe will ensure that all essential services, security, fire protection, natural resources protections, etc. are provided to the property using existing federal allocations and/or profits from the Tribe's economic enterprises. This acquisition anticipates no change in land use on the Ganje property; and therefore, any additional responsibilities resulting from this transaction will be minimal.

Factor 6 – The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 1-7, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determination

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 record includes a negative Phase 1 "Contaminant Survey Checklist" dated May 27, 2016, reflecting that there were no hazardous materials or contaminants.

National Environmental Policy Act Compliance

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA'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 Conveyance and Other Transfers, where no immediate change in land use is planned. A Categorical Exclusion for the acquisition for the subject property was approved by this Agency on January 13, 2017. 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 the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California in accordance with the Indian Land Consolidation Act of January 12, 1983, (25 U.S.C. §2202).

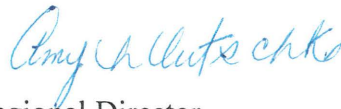
Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203,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

Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within thirty (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-3071-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 this notice to said party or timely provide our office with the name and address of said party.

Sincerely,



Regional Director

Enclosure:

43 CFR 4.310, et seq.

cc: Distribution List



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San Diego, CA 92101

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1600 Pacific Highway, Suite 162  
San Diego, CA 92101-2480

County of San Diego – 7019 0140 0000 7335 7081  
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1600 Pacific Highway, Room 335  
San Diego, CA 92101

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San Diego, CA 92193-9062

San Diego County – 7019 0140 0000 7335 7104  
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San Diego, CA 92123

San Diego County – 7019 0140 0000 7335 7111  
Department of Planning and Development  
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San Diego, CA 92123

Chairperson – 7019 0140 0000 7335 7128  
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Chairperson – 7019 0140 0000 7335 7135  
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Chairperson – 7019 0140 0000 7335 7142  
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4054 Willows Road  
Alpine, CA 91901

Chairperson – 7019 0140 0000 7335 7159  
Jamul Indian Village  
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Jamul, CA 91935

Chairperson – 7019 0140 0000 7335 7166  
La Jolla Band of Luiseno Indians  
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Pauma Valley, CA 92061

Chairperson 7019 0140 0000 7335 7173  
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Boulevard, CA 91905

Spokesperson – 7019 0140 0000 7335 7180  
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P.O. Box 189  
Warner Springs, CA 92086

Chairperson – 7019 0140 0000 7335 7197  
Manzanita Band of Mission Indians  
P.O. Box 1302  
Boulevard, CA 91905

Chairperson – 7019 0140 0000 7335 7203  
Mesa Grande Band of Mission Indians  
P.O. Box 270  
Santa Ysabel, CA 92070

Chairperson – 7019 0140 0000 7335 7210  
Pala Band of Mission Indians  
35008 Pala Temecula Road  
PMB - 50  
Pala, CA 92059

Chairperson – 7019 0140 0000 7335 7227  
Pauma Band of Mission Indians  
P. O. Box 369  
Pauma Valley, CA 92061

Chairperson – 7019 0140 0000 7335 7234  
Pechanga Band of Luiseno Mission Indians  
12705 Pechanga Rd.  
Temecula, CA 92592

Spokesperson – 7019 0140 0000 7335 7241  
San Pasqual Band of Mission Indians  
P.O. Box 365  
Valley Center, CA 92082

Chairperson – 7019 0140 0000 7335 7258  
IIPAY Nation of Santa Ysabel  
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Santa Ysabel, CA 92070

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Sycuan Band  
1 Kwaapaay Court  
El Cajon, CA 92019

Chairperson – 7019 0140 0000 7335 7272  
Viejas (Baron Long) Band of Mission Indians  
P.O. Box 908  
Alpine, CA 91903

Regular Mail:

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2005 S. Escondido Blvd.  
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Superintendent, BIA  
Southern California Agency  
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