



United States Department of the Interior

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

MAR 19 2019

Governor's Office of Planning & Research

MAR 22 2019

NOTICE OF DECISION

STATE CLEARINGHOUSE

CERTIFIED MAIL RECEIPT REQUESTED – 7018 1130 0001 5785 4117

Honorable Cody Martinez
Chairman, Sycuan Band of the Kumeyaay Nation
1 Kwaapaay Court
El Cajon, CA 92019

Dear Chairman Martinez,

This is our Notice of Decision for the application of the Sycuan Band of the Kumeyaay Nation (Tribe) to have the below described property accepted by the United States of America in trust for the Sycuan Band of the Kumeyaay Nation.

The land referred to is situated in the unincorporated area of the County of San Diego, State of California, and is described as follows:

THE SOUTHWESTERLY 275 FEET OF THE NORTHEASTERLY 825 FEET OF THAT PORTION OF SECTION 12, TOWNSHIP 16 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS.

BEGINNING AT A POINT IN THE WEST LINE OF THE EAST HALF OF THE WEST HALF OF SECTION 12, DISTANT THEREON SOUTH 0°00'16" WEST 375 FEET FROM THE EAST AND WEST CENTER LINE OF SAID SECTION 12, BEING POINT "A" OF THIS DESCRIPTION; THENCE NORTH 83°36' EAST 1025 FEET; THENCE NORTH 18°32' EAST 290 FEET TO POINT "B" OF THIS DESCRIPTION; THENCE NORTH 18°32', EAST 243 FEET TO THE MOST WESTERLY CORNER OF LAND DESCRIBED IN DEED TO TITLE INSURANCE AND TRUST COMPANY, A CORPORATION RECORDED FEBRUARY 13, 1963 AS DOCUMENT NO. 26616 OF OFFICIAL RECORDS; THENCE ALONG THE NORTHWESTERLY LINE OF SAID LAND CONTINUING NORTH 18°32' EAST 880.90 FEET TO AN ANGLE POINT IN THE BOUNDARY OF LAND DESCRIBED IN DEED TO LOIS D. CULLMER RECORDED SEPTEMBER 17, 1964 AS DOCUMENT NO. 170476 OF OFFICIAL RECORDS IN THE OFFICE OF COUNTY RECORDER OF SAN DIEGO COUNTY, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE ALONG SAID BOUNDARY, SOUTH 71°28' EAST 846.74 FEET; THENCE SOUTH 67°22'50" EAST 30 FEET TO THE CENTER LINE OF THE COUNTY ROAD KNOWN AS ROAD SURVEY NO. 631 AS DESCRIBED IN DEED TO THE COUNTY OF SAN DIEGO, RECORDED AUGUST 21, 1940 IN BOOK 1059, PAGE 371 OF OFFICIAL RECORDS; THENCE ALONG SAID CENTER LINE

SOUTH 22°37'10" WEST 89.05 FEET TO A TANGENT 5037.30 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH AN ANGLE OF 4°06'10" A DISTANCE OF 360.70 FEET; THENCE SOUTH 18°31'00" WEST 628.65 FEET TO THE MOST EASTERLY CORNER OF LAND DESCRIBED IN DEED TO TITLE INSURANCE AND TRUST COMPANY, RECORDED JUNE 12, 1964 AS DOCUMENT NO. 106876 OF OFFICIAL RECORDS; THENCE ALONG THE NORTHEASTERLY LINE OF SAID LAND NORTH 71°29' WEST 30 FEET AND NORTH 71°28' WEST 827.69 FEET TO AN ANGLE POINT THEREIN; THENCE NORTH 18°32'00" EAST 1080 FEET TO THE TRUE POINT OF BEGINNING.

APN: 513-073-23-00

The subject property consists of one (1) parcel of land, encompassing approximately 5.23 acres more or less, commonly referred to as Assessor's Parcel No. 513-073-23-00 (Lumn). The property is contiguous to the exterior boundaries of the Sycuan Reservation at the Northeast corner.

Note: The total acreage is consistent with the Bureau of Indian Affairs; Bureau of Land Management Indian Land Surveyor Legal Description Review dated August 29, 2017.

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title in the name 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 an Indian reservation, or adjacent thereto, or within a tribal 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, et. seq). The applicable regulations are set forth in the Code of Regulations (CFR), Title 25, Indians, Part 151, as amended.

The Sycuan Reservation was established by the Executive Order of December 27, 1875. The Reservation was patented to the Sycuan Band on February 10, 1893, 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, 1934¹. 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 1934².

On December 21, 2018 by certified mail, return receipt requested, we issued notice of and sought comments regarding the proposed fee-to-trust application from the California State Clearinghouse, Office of Planning and Research; Joe Dhillon, Senior Advisor for Tribal Negotiations, 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, 50th District; San Diego

¹ 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>.

² 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.

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 County, Department of Planning and Development; Barona Group of Capitan Grande Band; Campo Band of Mission Indians; Ewiiapaayp Band of Kumeyaay Indians; Jamul Indian Village; La Jolla Band of Luiseno Indians; La Posta Band of Mission Indians; Los Coyotes Band of Cahuilla & Cupeno Indians; Manzanita Band of Mission Indians; Mesa Grande Band of Mission Indians; Pala Band of Luiseno Mission Indians; Pauma Band of Mission Indians; Pechanga Band of Luiseno Mission Indians; Rincon Band of Mission Indians; San Pasqual Band of Mission Indians; IIPAY Nation of Santa Ysabel; Sycuan Band of the Kumeyaay Nation; Viejas (Baron Long) Band of Mission Indians. Regular Mail: Superintendent, Southern California Agency and Inaja-Cosmit Band of Mission Indians.

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

1. **Letter dated February 12, 2019, from the State of California Native American Heritage Commission stating that they have no comments.**
2. **Letter dated February 12, 2019, from the County of San Diego Assessor's Office which provided property tax information and a list which showed the distribution of taxes for the 2018-2019 tax roll.**

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

Prior to the establishment of the Sycuan Indian Reservation, the Tribe's land base extended South well beyond the current Mexican border and many miles North into what is now Riverside County. The original Sycuan Indian Reservation was established by Executive Order dated December 27, 1875, and the subsequent 1891 Act for the Relief of Mission Indians. The Trust Patent dated February 10, 1893, was issued to the Tribe formally placing the one-square mile Reservation into trust to provide the Tribe with a permanent home. Since that time, much of the original reservation was previously allotted to individuals, leaving only 30% of the one-square mile available to the tribe for economic and/or housing for the Tribe's growing population. Most of the Tribe's Reservation is steep, undevelopable mountainside, until recent property acquisitions were accepted into trust. With more tribal members moving back to the Reservation, and with growing families, the need for Tribal housing is critical. The purchase of the subject property is a key element of the Tribe's overall goal of providing Tribal housing to all its members who wish to live on the Reservation.

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 parcel is accepted into trust.

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

Factor 2 - Proposed Land Use

The subject property is zoned general agricultural/semi-rural land use. The subject property is mostly grasslands with a few trees and ornamental vegetation and contains two single family homes and associated outbuildings. The single family homes are being utilized for Tribal Housing.

The Tribe will continue to use the subject property for Tribal Housing and has no plans to change the land use.

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

This parcel will have little impact on the state and its political subdivisions. The Tribe provides fire protection, emergency medical services and a Tribal police department. In addition, the Tribe has an agreement with the County of San Diego which delegates all County Sheriff’s calls to the Sycuan Police Department on the reservation as well as the surrounding off-reservation areas. By extending tribal services to this parcel, it has a positive impact on the County of San Diego, within which the parcel is located. The Sycuan Fire Department (SFD) has mutual aid agreements with San Miguel Fire, Cal Fire, the U.S. Forest Service and other Indian Reservations. The SFD has significantly enhanced the level of fire and paramedic response service to the areas surrounding the reservation.

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 year, the total tax assessed on the subject parcels was \$5,232.18. 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 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.

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 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.

The Tribe does not anticipate that any significant jurisdictional conflicts will occur as a result of transfer of the subject property into trust. Currently, the property is used for residential purposes, it will not present a problem as the current and proposed use is consistent with the County’s zoning for

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

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 acquired land 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 Sycuan Reservation. The Tribe will continue to provide fire protection, emergency medical services and Tribal police. This acquisition anticipates no change in land use; 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 April 5, 2017, 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 10.51, 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 October 17, 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 Sycuan Band of the Kumeyaay Nation in accordance with the Indian Land Consolidation Act of January 12, 1983, (25 U.S.C. §2202).

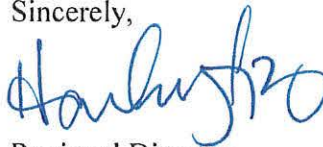
Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203,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

A handwritten signature in blue ink, appearing to read "H. Hughes", written over a faint, light blue watermark that says "Acting".

Regional Director

Enclosure:

43 CFR 4.310, et seq.

cc: See Distribution List

DISTRIBUTION LIST

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