



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOV 29 2016

The Honorable Bill Sterud
Chairman, Puyallup Tribe of the Puyallup Reservation
3009 East Portland Avenue
Tacoma, Washington 98404

Dear Chairman Sterud:

On November 2, 2015, the Puyallup Tribe of the Puyallup Reservation (Tribe) submitted a written request¹ to the Northwest Regional Office (Regional Office) of the Bureau of Indian Affairs (BIA) requesting that the Department of the Interior (Department) acquire in trust 67 parcels (approximately 9.39 acres) known as the “Congressional Parcels” pursuant to the Puyallup Indian Tribe Land Claims Settlement Act of 2006 (2006 Settlement Act).² The Congressional Parcels are located within the Tribe’s reservation in the City of Tacoma, Pierce County, Washington. The Tribe also requested that the Department determine whether the Congressional Parcels are eligible for gaming pursuant to Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719. In addition, the Tribe requested a determination of whether 11 parcels (approximately 2.19 acres) known as the “Trust Parcels” are also eligible for gaming pursuant to Section 20 of IGRA.³ The Trust Parcels are located within the Tribe’s reservation and are contiguous to the Congressional Parcels.

The Tribe currently operates a gaming facility in temporary tent structures on its reservation.⁴ The Tribe proposes to develop the site with a gaming facility, parking garage, paved parking, and infrastructure improvements.⁵

Decision

As discussed in detail below, the Department has determined that it will acquire the Congressional Parcels in trust as mandated by the 2006 Settlement Act. The Department has

¹ See Puyallup Tribe of Indians, Tribal Council, Resolution No. 291015 – A (Oct. 29, 2015), in Memorandum from Northwest Regional Director to Director, Office of Indian Gaming (Nov. 5, 2015) [hereinafter Regional Director’s Recommendation], Ex. 1.

² Pub. L. No. 109-224, 120 Stat. 376 (May 18, 2006) [hereinafter 2006 Settlement Act], *codified at* 25 U.S.C. § 1773 *et seq.* (2015).

³ A slight discrepancy of .54 acres for the Congressional Parcels and .08 acres for the Trust Parcels has been corrected. The Regional Director’s Recommendation listed the acreage for the 67 parcels of the Congressional Parcels as 9.95 acres and the acreage of the Trust Parcels as 2.11 acres. See Regional Director’s Recommendation at 1. The discrepancy for the Congressional Parcels was the result of differences in acreage calculations between agencies, and has been resolved and will be recorded correctly when acquired in trust. The discrepancy for the Trust Parcels was the result of a typographical error, and has been corrected as reported on the BIA Title Status Reports. See corrected Title Status Reports (Aug. 1, 2016) (on file with the Office of Indian Gaming).

⁴ See *supra* note 1.

⁵ Regional Director’s Recommendation at 1.

further determined that the Congressional Parcels and Trust Parcels are eligible for gaming pursuant to Section 20 of IGRA.

Background

The United States Court of Appeals for the Ninth Circuit summarized the history of the Tribe's reservation:

Prior to the arrival of white settlers in the mid-nineteenth century, the Puget Sound area ... [was] inhabited by Indians known as Coast Salish. In 1854, representatives of various bands and groups of these Indians entered into the Treaty of Medicine Creek with the United States. In return for a number of reservations, a guarantee of continued fishing rights, and other promises, the Indians gave up their claim to their aboriginal homeland.

One of the Indian groups that signed the Treaty of Medicine Creek was ... the Puyallup Tribe. These Indians settled on a reservation on the south side of Commencement Bay near present-day Tacoma. This site did not include access to the Puyallup River and its fishery on which the Puyallup Tribe depended. The Tribe was very dissatisfied with its reservation and agitated vigorously (and sometimes violently) for an enlargement of the reservation to include a section of the river.⁶

Subsequently, the Tribe's reservation was enlarged by Executive Order dated January 20, 1857, and Executive Order dated September 6, 1873, which expanded the reservation under the terms of the 1854 Treaty of Medicine Creek.⁷ However, in 1904, Congress authorized the sale of allotted lands within the reservation with restrictions against alienation effective only for 10 years.⁸ Over the next 100 years, most of the reservation land was allotted to individual Indians or passed into non-Indian ownership.⁹

In the 1980s, the Tribe engaged in litigation to settle longstanding claims to land.¹⁰ The litigation culminated in a negotiated settlement in 1988 between the Tribe, the United States, the State of Washington, and numerous local governmental organizations and non-Indian interests.¹¹ The settlement agreement was ratified by Congress through the Tribe's first settlement act in 1989.¹²

⁶ *Puyallup Indian Tribe v. Port of Tacoma*, 717 F.2d 1251, 1253 (9th Cir. 1983).

⁷ Treaty with the Nisqualli, Puyallup, Etc., Dec. 26, 1854, in *Indian Affairs, Laws and Treaties*, Vol. II, compiled and edited by Charles J. Kappler (1904), available at <http://digital.library.okstate.edu/kappler/Vol2/treaties/nis0661.htm>.

⁸ See 33 Stat. 565 (1904).

⁹ *Puyallup Indian Tribe* at 1254.

¹⁰ See *supra* note 6.

¹¹ See *Agreement between the Puyallup Tribe of Indians, local Governments in Pierce County, the State of Washington, the United States of America, and certain private property owners* (Aug. 27, 1988) (on file with the Office of Indian Gaming).

¹² See Puyallup Tribe of Indians Settlement Act of 1989, Pub. L. 101-41 (1989).

The Port of Tacoma later sought to build a new container terminal on the Tribe's trust land.¹³ While the Tribe agreed to facilitate the Port's request, doing so required the Tribe to move its existing casino to another location within its reservation.¹⁴ To facilitate the move, Congress mandated through the 2006 Settlement Act that the Secretary of the Interior (Secretary) accept specific parcels of land in trust within the reservation, and to hold the land in trust for the benefit of the Tribe.¹⁵ The Congressional Parcels that the Tribe now requests be taken in trust fall under the mandate of the 2006 Settlement Act.

Authorities

Mandatory Acquisition Authority

The authority for acquisition of the Congressional Parcels is found in the 2006 Settlement Act. Sections 1(a)(1) and (2), and (b)(3) of the 2006 Settlement Act, when read together mandate that:

The Secretary of the Interior *shall*, accept the conveyance of the parcels of land within the Puyallup Reservation described in subsection (b) and hold the land in trust for the benefit of the Puyallup Indian Tribe ..., [a]ny lots acquired by the Puyallup Indian Tribe located in block 7846, 7850, 7945, 7946, 7949, 7950, 8045, or 8049 in the Indian Addition to the city of Tacoma, State of Washington (emphasis added).¹⁶

The 2006 Settlement Act lists eight blocks that are subject to mandatory acquisition. The Congressional Parcels are located on these eight blocks.¹⁷ Accordingly, the acquisition of the Congressional Parcels is mandated by the 2006 Settlement Act.

¹³ See 152 Cong. Rec. H2191 - 2192 (2006).

¹⁴ See *id.*

¹⁵ See 2006 Settlement Act. The House Report supporting the 2006 Settlement Act explains:

The purpose of this legislation is to expedite the fee-to-trust process to move the location of a tribal casino owned by the Puyallup Indian [T]ribe in Washington State for the purposes of complying with an agreement to expand the Port of Tacoma in Washington. Although the Tribe could pursue the fee-to-trust process administratively through the Department of the Interior, the Department's lengthy application process to place land into trust within the boundaries of a reservation risks possible delay on port construction. By handling this process legislatively, the Tribe accomplishes its goal in a timely manner and allows the port project to begin immediately. H.R. Rep. No. 109 -422 (2006).

¹⁶ The language "shall accept" tracks similar language in other statutes that the Department has construed as making a trust acquisition mandatory. See e.g., *City of Bloomfield, Nebraska v. Acting Great Plains Regional Director*, 61 IBIA 296; *Manistee County Board of Comm'rs v. Midwest Regional Director*, 53 IBIA 293, 297 (2011); *Todd County, South Dakota v. Aberdeen Area Director*, 33 IBIA 110, 116 (1999); *Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians v. Portland Area Director*, 27 IBIA 48, 56 (1994).

¹⁷ See Regional Director's Recommendation at 2 - 14.



The Indian Gaming Regulatory Act

The Tribe requested a determination whether the Congressional Parcels and the Trust Parcels are eligible for gaming pursuant to IGRA. Section 20 of IGRA generally prohibits Indian gaming on lands acquired in trust after October 17, 1988. There are several exceptions to this general prohibition. One exception is made for lands that are located within or contiguous to the boundaries of the reservation of an Indian tribe on October 17, 1988 (On-Reservation Exception).¹⁸ The Department’s regulations at 25 C.F.R. Part 292 implement Section 20 of IGRA. Section 292.4 sets forth two criteria for determining whether land qualifies for the On-Reservation Exception.

First, Section 292.4(a) requires that a tribe had a reservation on October 17, 1988. Here, the Tribe’s reservation meets the definition of “reservation” set forth in Section 292.2, which defines “reservation” in relevant part as “land set aside by the United States by final ratified treaty, agreement, Executive Order, Proclamation, Secretarial Order or federal statute for the tribe, notwithstanding the issuance of any patent.” The Tribe’s Reservation clearly meets this

¹⁸ 25 U.S.C. § 2719 (a)(1).

definition because it was established by the Treaty of Medicine Creek in 1854, and was later enlarged by Executive Orders dated January 20, 1857, and September 6, 1873.¹⁹

Second, Section 292.4(a) requires that the lands proposed for acquisition must be located within the boundaries of a tribe's reservation. Here, the Regional Office confirmed that the Congressional Parcels and the Trust Parcels are located within the Tribe's reservation as it existed on October 17, 1988.²⁰

We, therefore, conclude that the Congressional Parcels and the Trust Parcels meet the On-Reservation Exception of Section 20 of IGRA, and the Tribe may conduct gaming on those Parcels.

Procedural Requirements for Mandatory Acquisitions

The Department's trust land acquisition regulations governing notice and comment, and the consideration of certain regulatory criteria at 25 C.F.R. Part 151 are not applicable to mandatory acquisitions of trust land.²¹ Instead, the Department has issued guidance governing the review of mandatory acquisitions.²² Pursuant to this policy guidance, the Department requires a legal description of the property, title evidence, and performance of environmental due diligence.

Legal Description and Title to the Property

The Regional Office provided legal descriptions of the Congressional Parcels and Trust Parcels.²³

The Department's mandatory acquisition guidance requires current evidence of title ownership demonstrating that the interest is owned by the tribe and how it was acquired. Here, the Tribe provided an ALTA Commitment for Title Insurance Number 7001880 – Fourth Report, issued by Tigor Title Company dated September 10, 2015.²⁴ The title commitment shows that the Tribe owns fee title to the Congressional Parcels. The record further documents how the Tribe acquired the property, thus, satisfying the requirements of the Department's mandatory acquisition guidance.

¹⁹ See *supra* note 6.

²⁰ Regional Director's Recommendation at 16, citing Ex. 8 (Certificate of Title Plant Manager, Bureau of Indian Affairs (Sept. 15, 2015)).

²¹ See 25 C.F.R. § 151.10 and § 151.11.

²² See Department of the Interior, Bureau of Indian Affairs, Office of Trust Services, Division of Real Estate Services, Acquisition of Title to Land Held in Fee or Restricted Fee Status (Fee-to-Trust Handbook), Release # 16-47, Version IV (rev. 1), 31 – 38 (6/28/16) at 31 – 38, *available at* <http://bia.gov/WhatWeDo/Knowledge/Directives/Handbooks/index.htm>; Memorandum from Larry Echo Hawk, Assistant Secretary – Indian Affairs, to Regional Directors and Superintendents, Bureau of Indian Affairs (April 6, 2012) [hereinafter Echo Hawk Memorandum], in Fee-To-Trust Handbook at 56 – 60.

²³ See Regional Director's Recommendation at 2 - 14.

²⁴ Regional Director's Recommendation, Ex. 6.

Environmental Due Diligence

Compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.*, is generally required where the acquisition of land in trust is made pursuant to the discretionary authority of the Secretary.²⁵ However, it is well-established that the environmental review requirements of NEPA are not applicable to mandatory acquisitions.²⁶ Therefore, trust acquisition made pursuant to mandatory acquisition statutes, as is the case here, need not comply with NEPA. Accordingly, acquisition of the Congressional Parcels in trust does not require preparation of an environmental assessment pursuant to NEPA.

The Regional Office must, however, conduct site inspections for mandatory acquisitions to understand any environmental hazards that might be present on the land that the Department must acquire, as well as any potential legal liabilities.²⁷ The Regional Office completed an initial Certificate of Inspection and Possession on November 4, 2015, which found that the land is vacant.²⁸ The Regional Office will complete a final site inspection prior to trust acquisition.

Conclusion

As mandated by the 2006 Settlement Act, the Department will acquire the Congressional Parcels in trust for the Tribe. Consistent with applicable law, the Regional Director shall immediately record the land in trust. We also conclude that the Congressional Parcels and the Trust Parcels meet the On-Reservation Exception of Section 20 of IGRA, 25 U.S.C. § 2719(a)(1). The Tribe may, therefore, conduct gaming on those Parcels.

Sincerely,



Lawrence S. Roberts
Principal Deputy Assistant Secretary –
Indian Affairs

²⁵ See 25 C.F.R. § 151.10(h).

²⁶ See Echo Hawk Memorandum at 5, citing *Sierra Club v. Babbitt*, 65 F.3d 1502, 1512 (9th Cir. 1995) (NEPA only applies to discretionary agency actions).

²⁷ Echo Hawk Memorandum at 5.

²⁸ Regional Director's Recommendation at 16, Ex. 7.