



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

OCT 07 2019

The Honorable Jeff L. Grubbe
Chairman, Agua Caliente Band
of Cahuilla Indians
32250 Bob Hope Drive
Rancho Mirage, California 92270

Dear Chairman Grubbe:

On November 9, 2017, the Agua Caliente Band of Cahuilla Indians (Tribe) submitted to the Bureau of Indian Affairs (BIA) an application to transfer into trust approximately 13 acres of land known as the Section 33 Parcel in the City of Cathedral City (City or Cathedral City), Riverside County, California, for gaming and other purposes.¹ The Tribe also submitted a request for a determination that the Tribe is eligible to conduct gaming on the Section 33 Parcel.² The Tribe seeks to construct a casino and mixed-use facilities, including a combination of tribal government office space, restaurants, and retail uses.

We have completed our review of the Tribe's request and the documentation in the record. As discussed below, it is my determination that the Section 33 Parcel will be transferred into trust for the benefit of the Tribe pursuant to Section 5 of the Indian Reorganization Act, 25 U.S.C. § 5108. Once transferred into trust, the Tribe can conduct gaming on the Section 33 Parcel pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*

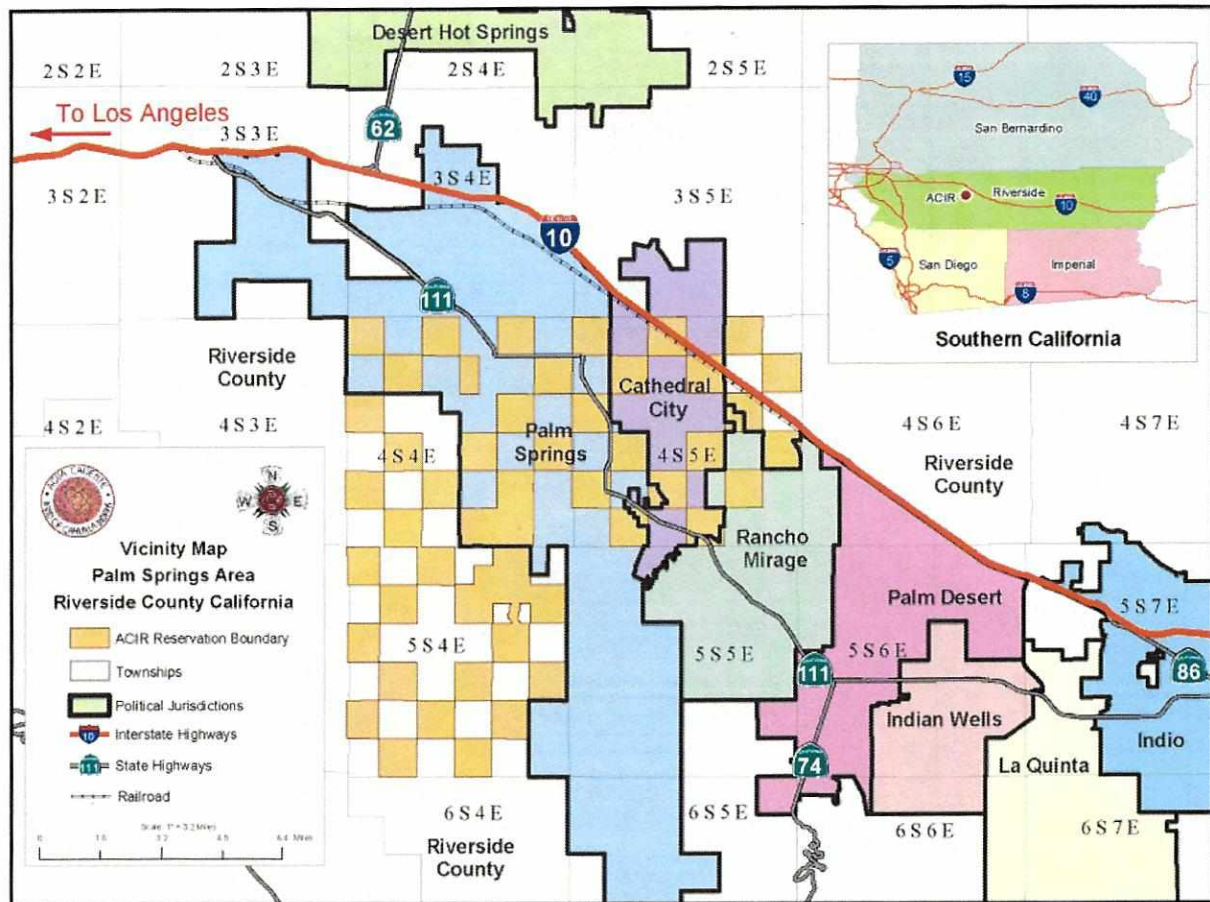
Background

In 1876 and 1877, the executive orders of Presidents Grant and Hayes established a reservation with tribal lands interspersed with non-tribal lands in a checkerboard pattern.³

¹ See Letter to Amy L. Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Regional Office, from Jeff L. Grubbe, Chairman, Tribal Council, Agua Caliente Band of Cahuilla Indians (Nov. 9, 2017) [hereinafter Tribe's Application].

² See Letter to Maria Wiseman, Acting Director, Office of Indian Gaming, from Jeff L. Grubbe, Chairman, Tribal Council, Agua Caliente Band of Cahuilla Indians (Nov. 8, 2017).

³ See Executive Order of May 15, 1876, in *Indian Affairs, Laws and Treaties*, Vol. I, compiled and edited by Charles J. Kappler (1927) 818, available at <https://dc.library.okstate.edu/digital/collection/kapplers/id/27768>; Executive Order of September 29, 1887; *Id.* at 822, available at <https://dc.library.okstate.edu/digital/collection/kapplers/id/27769>.



Prior to creation of the Tribe's reservation, Congress granted a fee interest to the Southern Pacific Railroad in odd-numbered sections on either side of the railroad right-of-way as an incentive for the company to build a railroad through the area. The company retained rights of way and sold the bulk of its land grants on which the cities of Palm Springs, Cathedral City, and Rancho Mirage were established.

The Presidents' executive orders created the Tribe's Reservation on the even-numbered sections. The government allotted most of the Tribe's Reservation lands to tribal members. Many of the allottees sold or leased their lands to non-Indians, who now operate hotels, restaurants, golf courses, and other business establishments, or maintain residences on the allotted lands.⁴

The Reservation consists of more than 31,000 acres in a checkerboard pattern. Within its boundaries, the United States holds in trust approximately 4,000 acres for the Tribe and approximately 18,000 acres for individual Indian allottees.⁵ The Tribe, tribal members and non-Indians hold the remaining

⁴ See *Agua Caliente Band of Cahuilla v. Riverside Co.*, 181 F. Supp.3d 725, 731 (D.D.C 2016)(noting the existence of approximately 20,000 master leases, mini-master leases, subleases, and sub-subleases for the use and occupancy of reservation trust lands subject to federal statutes governing the lease of trust lands).

⁵ Memorandum to Director, Office of Indian Gaming, from Regional Director, Pacific Region (May 31, 2019) [hereinafter Findings of Fact] at 5.

approximately 9,300 acres in fee. As discussed in more detail in Section 151.10(b), approximately 14,718 acres of the Tribe's trust and fee lands located both on and off-reservation are subject to development restrictions, making them unsuitable for economic development.

Description of the Property

The Section 33 Parcel is located within the boundaries of Cathedral City in Riverside County. The legal description of the Section 33 Parcel is included as Enclosure I.

Eligibility for Gaming Pursuant to the Indian Gaming Regulatory Act

Congress enacted the Indian Gaming Regulatory Act (IGRA), to in part, provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development and self-sufficiency.⁶ Section 20 of IGRA generally prohibits gaming activities on lands acquired in trust by the United States on behalf of a tribe after October 17, 1988. Congress expressly provided several exceptions to the general prohibition. One such exception exists for lands located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988 (Contiguous Exception).⁷

⁶ See 25 U.S.C. § 2702(2).

⁷ *Id.* at. § 2719(a)(1).



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 Contiguous 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." Here, the Tribe's Reservation clearly meets this definition because it was established by executive orders in 1876 and 1877.

Second, Section 292.4(a) requires that the land must be contiguous to the boundaries of a tribe's reservation. Section 292.2 defines "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.” Here, the BIA Regional Office confirmed that the Section 33 Parcel shares a common boundary with the Tribe’s Reservation.⁸

We, therefore, conclude that the Section 33 Parcel meets the Contiguous Exception of Section 20 of IGRA, and the Tribe can conduct gaming on the Section 33 Parcel upon its transfer into trust.

Trust Acquisition Determination Pursuant to 25 C.F.R. Part 151.

The Secretary of the Interior’s (Secretary) general authority for acquiring land in trust is found in Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 5108. The Indian Land Consolidation Act, 25 U.S.C. § 2202, extends the Secretary’s acquisition authority to all tribes. The Department’s regulations at 25 C.F.R. Part 151 set forth the procedures for implementing Section 5 of the IRA.

25 C.F.R. § 151.3 – Land acquisition policy

Section 151.3(a) sets forth the conditions under which land may be acquired in trust by the Secretary for an Indian tribe:

- (1) When the property is located within the exterior boundaries of the tribe’s 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 acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

Transfer of the Section 33 Parcel into trust will facilitate tribal self-determination and economic development, thus, satisfying the criteria of Section 151.3(a)(3).⁹

The proposed gaming facility is expected to provide a source of revenue for the Tribe, create employment opportunities for tribal members, fund essential tribal governmental programs, and fund other development opportunities that will facilitate tribal self-determination and economic stability. For example, the Tribe seeks to develop a tribal court system, create a tax commission, and address the growing homelessness problem on the Reservation.¹⁰

The Tribe also seeks to re-establish its historic land base following the loss of reservation land to allotment. The Tribe is prioritizing the acquisition of parcels with cultural significance and parcels for tribal economic development.¹¹ The cost of reacquiring land on and off the Reservation in the Palm Spring, Cathedral City, and Rancho Mirage area is extremely high. Median prices can reach into the millions of dollars per acre.¹² The proposed gaming facility is expected to provide a significant source

⁸ Findings of Fact at 3.

⁹ Although only one factor in Section 151.3(a) must be met, the Tribe’s application also satisfies the criteria of subsections (a)(1) and (a)(2) because the Section 33 Parcel is contiguous to the boundaries of the Tribe’s Reservation, and the Tribe owns the Section 33 Parcel in fee.

¹⁰ Tribe’s Application at 11.

¹¹ *Id.* at 9.

¹² *Id.*

of revenue that the Tribe will use to mitigate the effects of checkerboard jurisdiction by consolidating existing trust allotments within the Reservation.

The Regional Director determined, and we concur, that acquisition of the Section 33 Parcel in trust will facilitate tribal self-determination and economic development.¹³

25 C.F.R. § 151.10 – On-reservation acquisitions

Section 151.10 requires the Secretary to evaluate requests for acquisition of land under the on-reservation criteria when the land is located within or contiguous to an Indian reservation. The Section 33 Parcel is contiguous to the Tribe's Reservation, making the on-reservation criteria applicable to the Tribe's application.

25 C.F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority

Section 151.10(a) requires the Secretary to consider whether there is statutory authority for the trust acquisition and, if such authority exists, to consider any limitations contained in it. Section 5 of the IRA authorizes the Secretary to acquire lands in trust for "Indians."¹⁴ The first definition of "Indian" in the IRA applies to "all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction."¹⁵ In *Carcieri v. Salazar*, the Supreme Court considered the ordinary meaning of the term "now," its sense within the context of the IRA, as well as contemporaneous Departmental correspondence,¹⁶ and concluded that the phrase "now under the federal jurisdiction" unambiguously referred to tribes "that were under the federal jurisdiction of the United States when the IRA was enacted in 1934."¹⁷ The majority did not, however, address the meaning of the phrase "under federal jurisdiction," concluding that the parties had conceded that the Narragansett Indian Tribe of Rhode Island was not under federal jurisdiction in 1934.¹⁸

In 2014, the Department's Solicitor issued a signed M-Opinion interpreting the statutory phrase "under federal jurisdiction" for purposes of determining whether an Indian tribe can demonstrate that it was under such jurisdiction in 1934 for purposes of Section 5 of the IRA.¹⁹ Because a signed M-Opinion is binding on Department offices and officials until modified by the Secretary, the Deputy Secretary, or the Solicitor, we must rely on Sol. Op. M-37029 to guide our analysis here.²⁰

¹³ *Id.* at 7.

¹⁴ Act of June 18, 1934, § 5, Pub. L. No. 73-383, 48 Stat. 984 (1934), codified at 25 U.S.C. § 5108.

¹⁵ 25 U.S.C. § 5129.

¹⁶ 555 U.S. at 388-90.

¹⁷ *Id.* at 395.

¹⁸ *Id.* at 382, 395.

¹⁹ The Meaning of 'Under Federal Jurisdiction' for Purposes of the Indian Reorganization Act, Op. Sol. Interior M-37029 (Mar. 12, 2014) (Sol. Op. M-37029).

²⁰ U.S. Dep't of the Interior, 209 Departmental Manual 3.2(A)(11). The D.C. Circuit and the Ninth Circuit have both recently upheld the framework embodied in Sol. Op. M-37029 as reasonable; see *Confederated Tribes of the Grand Ronde Cmty. of Or. v. Jewell*, 830 F.3d 552 (D.C. Cir. 2016) (*Cowlitz*); *Cty. of Amador v. United States Dep't of the Interior*, 872 F.3d 1012, 1025 (9th Cir. 2017), reh'g en banc den. (Jan. 11, 2018), petition for cert pending, No. 17-1432 (U.S. 2018).

Sol. Op. M-37029 concluded that neither the text of the IRA nor its legislative history defined or otherwise clearly established the meaning of “under federal jurisdiction.” As such, the Department was then required to interpret the phrase in order to continue to exercise the authority delegated to the Secretary under Section 5 of the IRA.²¹ To resolve the ambiguity for purposes of implementing Section 5 of the IRA, the Solicitor established a two-part inquiry for determining whether a tribe was “under federal jurisdiction” in 1934. Sol. Op. M-37029 rejected the argument that Congress’ constitutional plenary authority over tribes alone may be sufficient to show that a tribe was “under federal jurisdiction.”²² It concluded that the decision in *Carcieri* requires some indicia of Federal authority beyond the general principle of plenary authority,²³ in the form of evidence that demonstrates the Federal government’s exercise of responsibility for and obligation toward a tribe and its members in or before 1934.²⁴

The first part of the “under federal jurisdiction” inquiry examines whether evidence from a tribe’s history demonstrates that it was under federal jurisdiction in or before 1934. This step looks to whether the United States had, in 1934 or earlier, taken an action or series of actions - through a course of dealings or other relevant acts for or on behalf of the tribe - that establish or generally reflect federal obligations, duties, responsibility for or authority over the tribe. Evidence unambiguously demonstrating that a tribe was under federal jurisdiction in 1934 will eliminate the need for further examination of the tribe’s earlier history.²⁵ Sol. Op. M-37029 instructs that some federal actions in and of themselves demonstrate that a tribe was under federal jurisdiction at some identifiable period in its history, such as the treaties or the implementation of specific legislation (*e.g.*, votes conducted under Section 18 of the IRA).²⁶

Where a tribe establishes that it was under federal jurisdiction before 1934, the second part of the inquiry determines whether the tribe’s jurisdictional status remained intact through 1934.²⁷ The Solicitor concluded, and courts have affirmed,²⁸ that the two-part inquiry for determining whether a tribe was “under federal jurisdiction” in 1934 is consistent with the IRA’s remedial purpose and with the Department’s post-enactment practices in implementing the statute.²⁹ The Department recognizes however that some activities and interactions could so clearly demonstrate Federal jurisdiction over a federally recognized tribe as to render elaboration of the two-part inquiry unnecessary.³⁰ The Section 18 elections under the IRA held between 1934 and 1936 are such an example of unambiguous Federal

²¹ The Secretary receives deference to interpret statutes that are consigned to his administration, see *Chevron v. NRDC*, 461 U.S. 837, 842–45 (1984); *United States v. Mead Corp.*, 533 U.S. 218, 229–31 (2001); see also *Skidmore v. Swift*, 323 U.S. 134, 139 (1944) (holding that agencies merit deference based on “specialized experience and broader investigations and information” available to them).

²² Sol. Op. M-37029 at 19.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 20.

²⁷ *Id.*

²⁸ See *Citizens for a Better Way v. United States DOI*, 2015 WL 5648925 (E.D. Cal. Sept. 23, 2015) (not reported), *aff’d sub. nom. Cachil Dehe Band of Wintun Indians v. Zinke*, 889 F.3d 584 (9th Cir. 2018); *Stand Up for Cal. v. United States DOI*, 204 F. Supp. 3d 212 (D.D.C. 2016), 879 F.3d 1177 (D.C. Cir. 2018), *reh’g en banc den.* (Apr. 10, 2018); *Shawano County, Wisconsin v. Acting Midwest Reg’l Dir.*, 53 IBIA 62 (2011); *Village of Hobart, Wisc. v. Acting Midwest Reg’l Dir., Bureau of Indian Affairs*, 57 IBIA 4 (2013).

²⁹ Sol. Op. M-37029 at 20.

³⁰ *Id.* at 19-20.

actions that obviate the need to examine the tribe's history prior to 1934 and engage in the second step of the two-part inquiry.³¹

The IRA was a statute of general applicability, but included an opt-out provision.³² Section 18 of the IRA provides that “[i]t shall be the duty of the Secretary of the Interior, within one year after the passage [of the IRA] to call . . . an election” regarding application of the IRA to each reservation.³³ Therefore, unless a majority of the adult Indians residing on a reservation voted to reject it, the IRA would apply to that reservation.³⁴ In order for the Secretary to conclude that a reservation was eligible for a vote, a determination had to be made that the relevant Indians met the IRA's definition of “Indian” and were thus subject to the IRA.³⁵ Such an eligibility determination would include deciding the tribe was under federal jurisdiction, as well as an unmistakable assertion of that jurisdiction.³⁶

In 1934, the United States understood that the Tribe and the Tribe's Reservation were under the federal jurisdiction of the United States, and that the adult residents of the Reservation met the IRA's definition of “Indian” making them eligible to determine whether they wanted to avail themselves of the benefits of the IRA via the IRA Section 18 election process. As indicated in the report prepared in 1947 by Theodore H. Haas, Chief Counsel for the United States Indian Service, a majority of the adult Indians residing at the Tribe's reservation voted to reject the IRA at a special election duly held by the Secretary on December 15, 1934.³⁷ The Haas Report indicates the Palm Springs Reservation³⁸ had a total population of 50 and a voting population of 31.³⁹ The Tribe voted to reject the terms of the IRA by a count of 4-yes votes, and 16-no votes.⁴⁰ The Haas Report also includes the Tribe in the “List of Indian Tribes not under the Indian Reorganization Act which operate under Constitutions” and identifies the population on June 2, 1939, as 58.⁴¹

³¹ *Id.* at 20. See also *Stand Up for California! v. U.S. Dept. of the Interior*, 919 F.Supp.2d 51, 67-68 (D.D.C. 2013) (Section 18 elections conclusive evidence of being under federal jurisdiction); *Stand Up for California! v. U.S. Department of the Interior*, 204 F.Supp.3d 212, 289 (D.D.C. 2016), *aff'd*, 879 F.3d 1177 (D.C. Cir. 2018), *cert. den.*, 139 S.Ct. 786 (Jan. 7, 2019) (Section 18 election an “acknowledgment of federal power and responsibility (*i.e.*, federal jurisdiction) toward any Indians associated with the reservations on which the elections were called...regardless whether the government then formally recognized, as distinct political groups, the tribes to which those Indians belonged”). See also *Stand Up for California! v. U.S. Dep't of the Interior*, 204 F.Supp.3d 212, 285 (D.D.C. 2016), *aff'd*, 879 F.3d 1177 (D.C. Cir. 2018), *cert. den.*, 139 S.Ct. 786 (Jan. 7, 2019) (Indians on a reservation voting in Section 18 election meet IRA's definition of “tribe”).

³² *Id.*

³³ Act of June 18, 1934, § 18, Pub. L. No. 73-383, 48 Stat. 984 (1934), codified at 25 U.S.C. § 5125.

³⁴ *Id.* (providing that the IRA “shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application.”) See also, Haas Report at 3 (“The [IRA] applies to 14 groups of Indians who did not hold elections to exclude themselves from application of the act.”).

³⁵ M-Opinion at 21.

³⁶ *Id.*

³⁷ Theodore H. Haas, *Ten Years of Tribal Government Under I.R.A.*, 15 (1947)(Haas Report) (listed as the Palm Springs Reservation).

³⁸ The Agua Caliente Indian Reservation was variably referred to as the Palm Springs Reservation, see e.g., An Act to Authorize the Secretary of the Interior to lease or sell certain lands of the Agua Caliente or Palm Springs Reservation, California, for public airport use, and for other purposes, 50 Stat. 811 (Aug. 25, 1937).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 34.

The calling of a Section 18 election at the Tribe's Reservation unambiguously establishes that the Tribe was under federal jurisdiction in 1934.⁴² Despite the vote to reject the IRA, the later-enacted amendment to the IRA makes clear that Section 5 applies to Indian tribes whose members voted to reject the IRA. In 1983, Congress enacted the Indian Land Consolidation Act,⁴³ which amended the IRA to provide that Section 5 of the IRA applies to "all tribes notwithstanding Section 18 of such Act" including Indian tribes that voted to reject the IRA.⁴⁴ As the Supreme Court stated in *Carcieri*, the ILCA amendment "by its terms simply ensures that tribes may benefit from [Section 5] even if they opted out of the IRA pursuant to [Section 18], which allowed tribal members to reject application of the IRA to their tribe."⁴⁵

The Section 18 election called on the Palm Springs Reservation on December 15, 1934, establishes that the Tribe was under federal jurisdiction in 1934 and that as such the Tribe falls within the definition of "Indian" contained in Section 19 of the IRA. Therefore, the Secretary has the authority to acquire land into trust for the Tribe under Section 5 of the IRA.

25 C.F.R. § 151.10(b) - The need of the individual Indian or the tribe for additional land

Section 151.10(b) requires the Secretary to consider the tribe's need for additional land.

The Tribe needs additional land for economic development. The Reservation consists of more than 31,000 acres. Since the establishment of the Reservation, however, the Tribe has lost more than 26,000 acres due to allotment and passage into fee ownership. The Tribe now only has 4,000 acres in trust on its Reservation. Of the Tribe's trust and fee land both on and off-reservation, approximately 14,718 acres are subject to development restrictions that severely limit the Tribe's economic

⁴² In addition to the IRA vote, there exists a wealth of indicia demonstrating that the Tribe was under federal jurisdiction prior to and through 1934. For example, the Federal Government negotiated and executed a treaty with the Tribe in 1852. Temecula Treaty of 1852. In the decades following 1852, the United States established a reservation for the Tribe. Executive Order of May 15, 1876 and Executive Order of September 29, 1877. The Federal Government continued to add to the Reservation through Patents. Patent, May 14, 1896; Patent, Oct. 29, 1906; Patent, Jan. 5, 1911; and Patent, Mar. 29, 1923. Congress authorized the Secretary to establish the Palm Canyon National Monument from a portion of the Tribe's reservation. An Act to Authorize the Secretary to dedicate and set apart a national monument and to seek consent from Agua Caliente Band of Indians to relinquish their right and title to certain lands in Riverside County, California, 42 Stat. 832 (1922). The Federal Government maintained jurisdiction over the Tribe by employing a BIA Superintendent. *See e.g.*, Hearings Before a Subcommittee of the Committee on Indian Affairs United States Senate Seventy-Third Congress (Jun. 29, 1934) (John Dady, Superintendent Mission Indian agency discussing responsibility for Indians of the Palm Springs reservation and use of money held in the Treasury for the Tribe's benefit). The BIA also continuously provided services to the Tribe prior to 1934. *See e.g.*, Ann. Rep. of the Comm'r of Indian Affairs, *Report of the Indian School Superintendent*, Table A (Nov. 1, 1886) (listing two Agua Caliente schools supported "By Government"); *see also* Pub. L. No. 66-3, 41 Stat. 3 (1919) (appropriating \$3,000 for construction, repair and maintenance of irrigation systems on the Agua Caliente Reservation). The Federal Government continued to exercise jurisdiction over the Tribe through 1934. For example, Congress authorized the Secretary of the Interior to lease or sell the Tribe's lands for public airport use. Pub. L. No. 75-375, 50 Stat. 811 (Aug. 25, 1937). Congress conferred jurisdiction on the State of California over the lands and residents of the Agua Caliente Indian Reservation. Pub. L. No. 81-322, 63 Stat. 705 (Oct. 5, 1949); and the Commissioner of Indian Affairs approved the Constitution and Bylaws of the Agua Caliente Band of Mission Indians, California (April 18, 1957).

⁴³ Indian Land Consolidation Act, Pub. L. No. 97-459, 96 Stat. 2515, (Jan. 12, 1983) codified as amended at 25 U.S.C. §§ 2201 et seq. (ILCA).

⁴⁴ ILCA at § 203.

⁴⁵ *Carcieri*, 555 U.S. at 394-95.

opportunities. For example, 8,640 acres of the Tribe's trust and fee lands are located within the federally protected wilderness of the Santa Rosa and San Jacinto National Monument.⁴⁶ None of the Tribe's lands within the monument are available for development due to federal restrictions. An additional 6,000 acres also have development restrictions. These include lands that are already developed, are subject to land planning agreements between the Tribe and other jurisdictions, contain habitat conservation limitations, are inaccessible due to their size or location, or lack the infrastructure necessary for development.⁴⁷

The Regional Director found, and we concur, that the Tribe has a need for additional land.⁴⁸

25 C.F.R. § 151.10(c) - The purposes for which the land will be used

Section 151.10(c) requires the Secretary to consider the purposes for which land will be used in evaluating a trust application.

The Tribe proposes to develop a casino with 40,000 square feet (sf) of gaming floor space, parking, and mixed-use facilities, including a combination of tribal government office space, restaurants, and retail uses totaling 125,000 sf of development.⁴⁹ The casino will have approximately 500 Class III gaming devices and 8 table games. The Tribe will use the office space for several tribal governmental departments that are located in non-tribal leased office space or have outgrown their existing space. These offices include Tribal Realty, Emergency Services, the Tribal Historic Preservation Officer, and Tribal Education Services.⁵⁰

25 C.F.R. § 151.10(e) - If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls

Section 151.10(e) requires consideration of the impact on the state and its political subdivisions resulting from removal of land from the tax rolls.

⁴⁶ Tribally Owned Parcels Development Analysis, in Tribe's Application, Appendix E at 1.

⁴⁷ Findings of Fact at 8.

⁴⁸ *Id.* at 9.

⁴⁹ See Final Environmental Assessment/Tribal Environmental Impact Report - Agua Caliente Band of Cahuilla Indians Cathedral City Fee-To-Trust Casino Project (July 2019) [hereinafter EA], at § 2.2.

⁵⁰ Tribe's Application at 11.

By correspondence dated March 5, 2019,⁵¹ the BIA solicited comments from the following state and local governments on the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments:⁵²

- California Deputy Attorney General⁵³
- Senior Advisor for Tribal Negotiations, Office of the Governor
- California Office of Planning and Research, State Clearinghouse and Planning (which forwarded the BIA request for comments to numerous state resource agencies)⁵⁴
- Senator Dianne Feinstein
- Riverside County Board of Supervisors
- Riverside County Treasurer and Tax Collector
- Riverside County Planning Department
- Mayor of Cathedral City
- Cathedral City Planning Department
- Cathedral City Police and Fire Department

In response, only Riverside County provided tax-related information.⁵⁵ The County stated that the estimated property tax loss for the Section 33 Parcel was \$78,892.31 based on current property taxes and assessments.⁵⁶ In its Fiscal Year 2019/20 Recommended Budget, the County estimated its revenues for 2018-2019 to be \$5.8 billion, with property tax revenue estimated to be \$390 million.⁵⁷ Accordingly, the removal of the Section 33 Parcel from the County's tax roll represents only a small fraction of the County's property tax revenue.

Cathedral City supports the Tribe's application and stated in a 2017 resolution that the Tribe's application, "will not negatively affect the regulatory jurisdiction of the City, City tax revenues or any special assessment, and that the net financial impact of Secretarial approval will be positive to the

⁵¹ See Notice of Gaming Land Acquisition Application (March 5, 2019), in Findings of Fact, Tab 4.

⁵² The BIA also notified the Chairs of the following tribes: Cabazon Band of Mission Indians, Torres-Martinez Desert Cahuilla Indians, Augustine Band of Mission Indians, Morongo Band of Mission Indians, Santa Rosa Band of Mission Indians, Pechanga band of Luiseno Indians, Soboba Band of Luiseno Indians, and Ramona Band of Cahuilla. See return receipts for each on file with the Office of Indian Gaming. The BIA received no responses.

⁵³ The BIA extended the Comment for 30 days at the State's request. See letter to Patty Brandt, State of California, Department of Justice, from Regional Director, Bureau of Indian Affairs, Pacific Regional Office (March 18, 2019), in Findings of Fact, Tab 4. The State did not respond during the comment period.

⁵⁴ See memorandum to Reviewing Agencies from State of California, Governor's Office of Planning and Research (March 11, 2019).

⁵⁵ See letter to Amy Dutschke, Bureau of Indian Affairs – Pacific Regional Office, from George A. Johnson, County Executive Office (April 9, 2019), in Findings of Fact, Tab 6. The Native American Heritage Commission had no comments regarding the cultural resources impact of the proposed project. See Letter to Arvada Wolfin, Bureau of Indian Affairs, Pacific Regional Office, from Steven Quinn Associate Governmental Program Analyst, Native American Heritage Commission (April 2, 2019), in Findings of Fact, Tab 5.

⁵⁶ The Tribe disputes this figure, stating that the potential estimated property tax loss is less than \$78,000 considering that only shared portions of some line items could be attributable to the proposed transfer of the Section 33 Parcel into trust. See Letter to Amy Dutschke, Regional Director, Pacific Regional Office, from Jeff L. Grubbe, Chairman, Tribal Council, Agua Caliente Band of Cahuilla Indians (May 6, 2019).

⁵⁷ Riverside County Fiscal Year 2019/20 Recommended Budget at 27, 50 (June 2019), available at https://countyofriverside.us/Portals/0/Government/Budget%20Information/19-20/FY%2019-20_Recommended_Budget.pdf.

City.”⁵⁸ The City also stated its desire to cooperate with the Tribe in the redevelopment of the Section 33 Parcel.

Potential impacts due to the loss of tax revenue would be more than offset by the positive economic contributions that the proposed project will provide to the City and County. The construction phase of the proposed project would generate new, one-time employment opportunities. These include 680 direct, indirect, and induced jobs that would accrue to Riverside County residents, which would result in approximately \$92 million in spending in Riverside County.⁵⁹ The direct spending for construction is estimated to generate \$9.35 million in indirect purchases or spending through supply chains in the County.⁶⁰

Operation of the gaming facility would generate approximately 522 new direct, indirect, and induced jobs that is expected to result in spending of approximately \$69 million in Riverside County in 2021.⁶¹ The mixed-use development would generate an additional 286 new direct, indirect, and induced jobs that would result in spending of more than \$28 million in Riverside County.⁶²

The Regional Director found, and we concur, that the removal of the Section 33 Parcel from the tax rolls would be offset by the contributions and economic development provided by the proposed project.⁶³

25 C.F.R. § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise

Section 151.10(f) requires the Secretary to consider whether any jurisdictional problems and potential conflicts of land use may arise.

The Department received no comments regarding jurisdictional problems in response to its March 5, 2019, letter soliciting comments from state and local governments. As discussed above, Cathedral City supports the Tribe's application, and stated in its 2017 resolution that the Tribe's application will not negatively affect the regulatory jurisdiction of the City.

The proposed project is compatible with surrounding land uses. The lots surrounding the Section 33 Parcel are either empty, previously developed, contain commercial uses, or are public parks.⁶⁴ The proposed project would not physically disrupt neighboring land uses, prohibit access to neighboring parcels, or otherwise significantly conflict with neighboring land uses.

⁵⁸ See A Resolution of the City Council of the City of Cathedral City, California, Supporting the Fee-to-Trust Application of the Agua Caliente Band of Cahuilla Indians for that Certain Real Property Located Within the City of Cathedral City and Accepting a Fire Station Contribution from the City Urban Revitalization Corporation for the Relocation of Existing Fire Station 411 (May 10, 2017), in Tribe's Application, Appendix H.

⁵⁹ Innovation Group, *Economic & Community Impact Analysis, Agua Caliente Band of Cahuilla Indians*, in Environment Assessment, Appendix E at 39.

⁶⁰ *Id.*

⁶¹ *Id.* 34.

⁶² *Id.* 35.

⁶³ Findings of Fact at 13.

⁶⁴ EA § 4.8.1.

Agreements with the State and City

The Tribe, the Cathedral City, and the State entered into agreements related to the use of the Section 33 Parcel.

Tribal-State Compact for Class III Gaming

Section 4.2(b) of the 2016 Tribal-State Compact between the State and the Tribe (Compact) provides that the Tribe may establish and operate a gaming facility on land that is contiguous to the Tribe's Reservation in Riverside County.⁶⁵

Location of the Section 33 Parcel

The Tribe and the State entered into an agreement dated November 23, 2016, regarding the location of the proposed project pursuant to Section 4.2(b) of the Compact.⁶⁶ The agreement memorializes the mutual understanding of the Tribe and the State that the Section 33 Parcel will be the site of the Tribe's gaming facility.

Intergovernmental Agreement

Section 11.7 of the Compact requires that the Tribe negotiate with the County and/or City and enter into enforceable written agreements with respect to several matters. These include 1) mitigation of any significant effect on the off-reservation environment; 2) compensation for law enforcement, fire protection, emergency medical services, and other public services provided to the gaming facility; (3) compensation for programs designed to address and treat gambling addiction; and 4) mitigation of any effect on public safety attributable to the gaming project. The Tribe and County entered into an intergovernmental agreement on September 17, 2019, to ensure implementation of mitigation measures for impacts to the off-reservation environment.⁶⁷

These agreements demonstrate that the Tribe, the State, and the City have agreed to locate the proposed project on the Section 33 Parcel, and have established a process to mitigation potential impacts of the proposed project.

Jurisdiction and Land Use

The planning documents applicable to the Section 33 Parcel include the City General Plan, the Date Palm Drive Corridor Connector Plan, and the City Zoning Ordinance.

⁶⁵ See Tribal-State Compact between the State of California and the Agua Caliente Band of Cahuilla Indians (effective date Oct. 31, 2016) available at <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/oig/oig/pdf/idc2-056439.pdf>.

⁶⁶ See Agreement Regarding Compliance with Compact Section 4.2 Concerning the Location of an Authorized Gaming Facility (Nov. 23, 2106), in Tribe's Application, Appendix J.

⁶⁷ See Submittal to the Board of Supervisors, County of Riverside, State of California (Sept. 17, 2019), on file with the Office of Indian Gaming.

Cathedral City General Plan

The City General Plan designates the Section 33 Parcel as Downtown Commercial.⁶⁸ This designation allows for residential neighborhood or mixed-use commercial development, including lodging and entertainment establishments.

Date Palm Drive Corridor Connector Plan

The Date Palm Drive Corridor Connector Plan and Date Palm Drive Specific Plan reinforce the land use designation, zoning designation, and planned development identified in the City General Plan for the Section 33 Parcel.⁶⁹ These plans designate all or portions of the Section 33 Parcel as an area for downtown art and design village developments. This allows for mixed uses within the art and design theme, including small businesses, residential uses, and landscaping with a major retail anchor at the northeast corner of the Section 33 Parcel at Date Palm Drive and East Palm Canyon Drive.

Cathedral City Zoning Ordinance

The City's Zoning Ordinance provides the framework for the development process, and is the primary instrument for implementing City General Plan policies. The Section 33 Parcel is zoned Mixed-Use Commercial (MXC) and Downtown Residential Neighborhood (DRN).⁷⁰ The MXC designation permits the following uses: retail, dining, spas, hotels and resort hotels, performing arts facilities, professional services, and other similar uses. The DRN zoning designation permits single and multiple family dwellings, and other housing uses.

These planning documents indicate that the proposed project is compatible with the surrounding land uses.

Law Enforcement and Fire Protection

The Cathedral City Police Department will provide law enforcement services to the proposed project.⁷¹ The Tribe will maintain security personnel and security guards to provide surveillance of the structures, parking areas, and ancillary facilities. The Cathedral City Fire Department will provide fire protection. Station 411 is currently located on the Section 33 Parcel. The City, using funds provided by the Tribe to the City Urban Revitalization Corporate, will relocate the existing fire station currently located on the parcel and construct of a new nearby fire station.⁷²

The Regional Director found, and we concur, that the transfer of the Section 33 Parcel into trust would not cause conflicts of land use or other jurisdictional problems.⁷³

⁶⁸ EA § 3.8.1; Appendix H.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ EA § 2.2.2.

⁷² *Id.*

⁷³ Findings of Fact at 14.

25 C.F.R. § 151.10(g) - If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status

Section 151.10(g) requires the Secretary to determine whether the BIA has the resources to assume additional responsibilities if the land is acquired in trust.

The Section 33 Parcel does not contain any natural resources requiring BIA management assistance. The Tribe will pay for municipal services for the proposed project. The BIA will administer additional responsibilities that may result from the transfer into trust, which are expected to be minimal.

The Regional Director found, and we concur, that the transfer of the Section 33 Parcel into trust will not impose any significant additional responsibilities or burdens on BIA, and that BIA has sufficient resources to assume the additional responsibilities resulting from this acquisition.⁷⁴

25 C.F.R. § 151.10(h) - 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

Section 151.10(h) requires the Secretary to consider the availability of information necessary for compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and a determination on the presence of hazardous substances.

602 DM 2, Land Acquisitions: Hazardous Substances Determinations

Petra Geosciences prepared a Phase I Environmental Site Assessment (ESA) in July 2017 and a Limited Phase II Environmental Evaluation in February of 2018.⁷⁵ The ESA found no evidence of the presence or likely presence of hazardous substances, with the exception of possible contamination from previous underground storage tanks (USTs) on site. Petra Geosciences conducted Phase II testing which found no evidence of contamination associated with the USTs.

National Environmental Policy Act

The BIA prepared an Environmental Assessment (EA) evaluating the potential impacts of the proposed project.⁷⁶ Section 11 of the Tribal-State Compact requires the Tribe to prepare a Tribal Environmental Impact Report (TEIR) to analyze the potential off-reservation environmental impacts of the proposed project. To reduce paperwork and eliminate redundancy, the TEIR was prepared in coordination with the EA, resulting in a joint EA/TEIR. The BIA initiated a scoping comment period for the EA/TEIR from December 29, 2017, to January 29, 2018, with a scoping hearing held on January 18, 2018. The BIA made the EA/TEIR available to the public on October 19, 2018, for a 45-day public comment

⁷⁴ Findings of Fact at 14-15.

⁷⁵ See EA, Appendix M.

⁷⁶ See note 19 above.

period ending on December 3, 2018. The final EA/TEIR is available on-line at <https://www.cathedralcitycasino.com>.

The BIA evaluated potential direct, indirect, and cumulative impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions and environmental justice, transportation networks, land use, public services and utilities, visual resources, noise, and hazardous materials. As discussed more fully in the Finding of No Significant Impact, I conclude that the development of the proposed project on the Section 33 Parcel would not result in significant impacts to the human environment, and, therefore, an environmental impact statement is not required. The Finding of No Significant Impact is included as Enclosure II.

The BIA considered four alternatives:

Proposed Action Alternative

The proposed action consists of the transfer into trust of the approximately 13-acre Section 33 Parcel in Cathedral City. The Tribe proposes to develop a casino with 40,000 sf of gaming floor space, parking, and mixed-use facilities, including a combination of tribal government office space, restaurants, and retail uses totaling 125,000 sf of development. The casino would have approximately 500 Class III gaming devices and 8 table games.

Reduced Intensity Alternative

The Reduced Intensity Alternative consists of the transfer of the Section 33 Parcel into trust and the subsequent development of a 40,000 sf casino, parking, and mixed-use facilities. The Reduced Intensity Alternative is similar to the Proposed Action Alternative, except that the mixed-use facilities would be reduced in size and the total development area would consist of 103,000 sf.

Non-Gaming Alternative

The Non-Gaming Alternative consists of the transfer of the Section 33 Parcel into trust and the subsequent development of commercial uses on the site, including a combination of tribal government office space, restaurants, and retail uses totaling 90,000 sf of development.

No Action Alternative

Under the No Action Alternative, none of the development alternatives would be implemented. No land would be placed in trust for the benefit of the Tribe, and no development would occur.

Findings

Land Resources (EA § 4.1) – The act of the transferring title to the Section 33 Parcel to the United States to hold in trust for the Tribe would have no effect on land resources. Impacts to land resources would be less than significant.

Water Resources (EA § 4.2.1) – The Tribe shall comply with the National Pollutant Discharge Elimination System General Construction Permit from the U.S. Environmental Protection Agency. A Stormwater Pollution Prevention Plan shall be prepared for the project site. Impacts to surface water resources would be less than significant. Operational water demand would constitute only approximately 0.02 percent of the total projected outflows in 2020 from the Coachella Valley Groundwater Basin. Impacts to ground water resources would be less than significant.

Air Quality (EA § 4.3.1) – Construction of the Proposed Project Alternative would emit criteria pollutants during the operation of construction equipment and earth-moving grading activities. Emissions of individual criteria pollutants during construction would not exceed applicable *de minimis* levels. No further analysis is required. Operation of the proposed project would result in the generation of mobile emissions from patron, employee, and delivery vehicles, as well as from combustion of natural gas in boilers, stoves, heating units, and other equipment. Operational emissions of individual criteria pollutants from the proposed project Alternative would not exceed applicable *de minimis* levels (area and stationary). No further analysis is required. Impacts to air quality would be less than significant.

Biological Resources (EA § 4.4.1) – There are no unique or sensitive ecosystems or biological communities within the Section 33 Parcel. The western yellow bat is a state special-status species, which may have the potential to occur on the site within palm skirts. Implementation of mitigation measures in Section 5.0 in the EA/TEIR will prevent violation of state regulations related to special-status species as well as avoid or reduce impacts to this species. Impacts to biological resources would be less than significant.

Cultural Resources (EA § 4.5.1) – No known historic properties, archaeological sites, or cultural materials are located within the Section 33 Parcel. Impacts to cultural resources would be less than significant.

Socioeconomic Conditions (EA § 4.6.1) – During construction, the proposed project would create an estimated 680 new direct, indirect, and induced jobs for Riverside County residents. Operation of the facilities would provide approximately 808 new direct, indirect, and induced jobs. Removal of the Section 33 Parcel from the County's tax roll represents only a small fraction of the County's property tax revenue. Impacts to socioeconomic conditions would be less than significant.

Transportation/Circulation (EA § 4.7) – The 2018 traffic impact study determined that with implementation of mitigation measures identified in Section 5.0 of the EA, impacts to transportation/circulation would be less than significant.

Land Use (EA § 4.8.1) – The proposed project is compatible with surrounding land uses. The proposed project would not physically disrupt neighboring land uses, prohibit access to neighboring parcels, or otherwise significantly conflict with neighboring land uses. Impacts to land use would be less than significant.

Public Services and Utilities (EA §§ 2.2.3, 4.9) – All utility agencies have enough capacity to provide water, wastewater, electricity, gas, and solid waste services for the proposed project. Impacts to public services would be less than significant.

Visual Resources (EA § 4.10.1) – The proposed project will be consistent with surrounding commercial developments and will not substantially block scenic views of the mountains or the surrounding valley. Impacts to visual resources would be less than significant.

Noise (EA § 4.11) – Construction activities will be limited to daytime hours. Mitigation measures will be implemented during operation to prevent violation of the Federal Noise Abatement Criteria (NAC) standards used by the Federal Highway Administration and City and Federal Transit Administration's guideline. Impacts from noise would be less than significant.

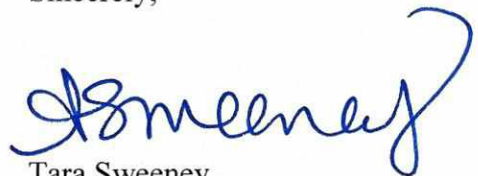
Hazardous Materials (EA 2.2.3) – A Phase I Environmental Site Assessment was completed in July 2017 and a Limited Phase II Environmental Evaluation was completed in February of 2018 (EA Appendix M). There is no evidence of the presence or likely presence of hazardous substances. Impacts from hazardous materials would be less than significant.

Cumulative Impacts (EA § 4.13) – Best management practices and/or mitigation measures identified in Section 5.0 would ensure that cumulative impacts to land resources, water resources, air quality and climate change, cultural resources, biological resources, transportation/circulation, land use, public services, visual resources, noise, and hazardous materials are not significant. There would be no significant growth inducing or other indirect effects. Cumulative impacts would be less than significant.

Decision to approve the Tribe's fee-to-trust application

Pursuant to Section 5 of the IRA, 25 U.S.C. § 5108, the Department will transfer the Section 33 Parcel in trust for the Tribe. Further, once transferred into trust, the Tribe can conduct gaming on the Section 33 Parcel pursuant to Section 20 of IGRA, 25 U.S.C. § 2719 (a)(1). Consistent with applicable law, upon completion of the requirements of 25 C.F.R. § 151.13 and any other Departmental requirements, the Regional Director shall immediately acquire the land in trust. This decision constitutes a final agency action under 5 U.S.C. § 704.

Sincerely,



Tara Sweeney
Assistant Secretary – Indian Affairs

Enclosures