



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

NOV 04 2003

Memorandum

To: Assistant Secretary - Indian Affairs

From: Deputy Assistant Secretary - Policy and Economic Development

Subject: Request of Skokomish Indian Tribe for Trust Acquisition of 3.0 Acres of Land

I. INTRODUCTION

By memorandum dated April 23, 2003, the Northwest Region Office (NRO) transmitted to the Assistant Secretary - Indian Affairs (ASIA), the Skokomish Indian Tribe of Washington (Tribe) request and application dated June 11, 2001, (*NRO Exhibit 1*) to acquire approximately 3.0 acres of land into trust. The 3.0 acre parcel is located within the exterior boundaries of the Skokomish Indian Tribe in Mason County, Washington. The Tribe's gaming facility "Lucky Dog Casino" is located on this parcel.

The Tribe's request and supporting documentation were submitted in accordance with a July 19, 1990 Secretarial Directive, which requires that all acquisitions for gaming be approved or disapproved by the ASIA. The documents were referred to the Office of Indian Gaming Management (OIGM). The OIGM has completed its review of the request and the supporting documentation. The findings, analysis, and recommendations of the OIGM are set forth in this memorandum for your review and final consideration.

This memorandum documents the findings of the transaction's compliance with the requirements of Section 20 of the Indian Gaming Regulatory Act (IGRA), and the land acquisition regulations in 25 CFR Part 151.

II. AUTHORITY

The Constitution and Bylaws of the Skokomish Indian Tribe approved by the Secretary of the Interior on May 3, 1938, as amended, was adopted by the qualified voters of the Skokomish Indian Tribe on January 15, 1980, and approved by the Commissioner of Indian Affairs on March 17, 1980, in accordance with the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935, (49 Stat. 378). (*NRO Exhibit 7*)

Pursuant to Article V, Section 1(g) Powers of the Tribal Council, Tribal Resolution No. 01-14 dated February 13, 2001, (*NRO Exhibit 1*) requests the Bureau of Indian Affairs to acquire in trust the 3.0 acre parcel. The property is used for the Tribe's gaming facility "Lucky Dog Casino" The resolution was adopted by a vote of four (4) for and (0) against and (0) abstentions.

III. PROPERTY TO BE ACQUIRED

The real property consists of a 3.0 acre tract known as "Parcel 1 of the Jackpot Property" situated in Mason County, Washington. The legal description of the property is as follows: (*NRO Exhibit 2*)

All that portion of the East half (E ½) Northeast quarter (NE 1/4) of the Northwest quarter (NW 1/4) of the Southwest quarter (SW 1/4) of Section two (2), Township twenty-one (21) North, Range four (4) West, W.M., lying Easterly of the Easterly right-of-way line of U.S. Highway No. 101.

EXCEPTING therefrom all that portion thereof which lies Southerly of the Northerly line of a tract of land particularly described as follows:

The Northerly 210 feet of the Southerly 401 feet of the East half (E ½) Northeast quarter (NE 1/4) of the Northwest quarter (NW 1/4) of the Southwest quarter (SW 1/4) of Section two (2), Township twenty-one (21) North, Range four (4) West, W.M., lying Easterly of the Easterly right-of-way line of U.S. Highway No. 101, more particularly described as follows:

COMMENCING at the centerwest sixteenth corner of said Section two (2), which is an iron pipe; thence South 1°10'50" West, 215.95 feet, along the East line of the Northeast quarter (NE 1/4) of the Northwest quarter (NW 1/4) of the Southwest quarter (SW 1/4) of said Section two (2), to the POINT OF BEGINNING of the tract of land hereby described; thence continuing South 1°10'50" West, along said East line, 210.00 feet; thence North 88°50'03" West, parallel with the South line of said Northeast quarter (NE 1/4) of the Northwest quarter (NW 1/4) of the Southwest quarter (SW 1/4), 244.14 feet, more or less, to the Easterly right-of-way line of U. S. Highway No. 101, as located on August 31, 1972; thence North 0°46'28" East, along said Easterly right-of-way line, 210.00 feet, thence South 88°50'03" East, 245.61 feet, more or less, to the POINT OF BEGINNING.

ALSO, EXCEPTING therefrom road rights-of-way.

Parcel No. 42102 32 00000.

IV. TITLE TO THE PROPERTY

The commitment for title insurance prepared by Stewart Title Guaranty Company, Mason County Title Company dated December 9, 2002, (*NRO Exhibit 5*) of Shelton, Washington reflects the title to be vested in the Skokomish Indian Tribe of Washington.

On March 21, 2001, the Regional Solicitor, Pacific Northwest Region reviewed the draft Statutory Warranty Deed (*NRO Exhibit 6A*) and issued a Preliminary Opinion Title regarding the title, data and objections of the Special Exceptions in Schedule B of preliminary title evidence No. 83036 prepared by the Stewart Title Guaranty Company. The Special Exceptions in Schedule B of the title commitment will be satisfied and removed prior to acceptance by the United States.

V. COMPLIANCE WITH THE INDIAN GAMING REGULATORY ACT

On April 2, 2001, the Regional Solicitor, Pacific Northwest Region determined that gaming or Parcel 1 of the Jackpot Property is exempt from the prohibition on gaming on lands acquired after October 17, 1988 contained in Section 20 of IGRA, 25 U.S.C. § 2719, (*NRO Exhibit 15*) because the land is located within or contiguous to the boundaries of the reservation of the tribe on October 17, 1988. Therefore, the Tribe may conduct gaming on this property pursuant to 25 U.S.C. § 2719(a)(1).

On May 9, 2001, the Title Plant Manager of the Northwest Regional Office provided a certification (*NRO Exhibit 16*), that the property is located within the boundaries of the Skokomish Indian Reservation, and was located within the boundaries of the Reservation on October 17, 1988 and was part of the Reservation established by the Executive Order of February 25, 1874, as provided by Article 2 of the Treaty of January 26, 1855.

The Skokomish Indian Tribe and the State of Washington entered into a Class III gaming compact which was approved on May 25, 1995 (*NRO Exhibit 11*). The Department of the Interior published a notice of effect of the Tribal-State Compact for the Skokomish Indian Tribe and the State of Washington on September 6, 1995. The Compact was subsequently amended and approved on May 5, 1999, and notice of effect published on May 14, 1999.

The Tribe's Gaming Ordinance was approved by the National Indian Gaming Commission (NIGC) on April 30, 1996. The Ordinance was subsequently amended on May 16, 2001 and approved by the NIGC on July 3, 2001. (*OIGM Exhibit 2*).

VI. COMPLIANCE WITH 25 CFR PART 151

The authority, procedures and policies governing the Secretary's acquisition of trust land for Indian tribes and individual Indians are set forth in 25 CFR Part 151.

A. 25 CFR 151.3. Land acquisition policy.

As a matter of statute and regulation, the Secretary may acquire land in trust for a tribe under 25 CFR § 151.3(a)(3) when the acquisition is found to be necessary to facilitate tribal self-determination economic development and Indian housing.

The Regional Director has determined that the acquisition in trust of this 3.0 acre parcel is needed for the tribal gaming facility known as “Parcel 1 of the Jackpot Property”, which is an economic development activity (*OIGM Exhibit 1*). We concur in the Regional Director’s conclusion.

B. 25 CFR 151.10(a). The existence of statutory authority for the acquisition and any limitations contained in such authority.

The statutory authority used by the Tribe to acquire the land in trust is Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. 465. Pursuant to the Act of May 24, 1990, 104 Stat. 207, the IRA including Section 5 was made applicable to all Indian tribes, 25 U.S.C. 478-1.

C. 25 CFR 151.10(b). The need of the individual Indian or tribe for additional land.

The acquisition of this parcel in trust is needed to support the Tribe’s casino operation which currently receives 200 daily customers and supports approximately 40 full time employees. The Tribe also intends to consolidate all of their fee lands and interests of lands into trust status. The Regional Director states that the property is needed to facilitate the gaming facility as an economic development activity (*OIGM Exhibit 1*).

D. 25 CFR 151.10(c). The purposes for which the land will be used.

The property is currently used for the Tribe’s gaming facility and there is no anticipated change in the use of the land. The gaming facility includes 74 video lottery terminals and a small cafe that provides pre-prepared food and beverages. The casino receives approximately 200 daily customers and support 40 full time positions and maintains a parking lot for approximately 150 automobiles and 35 recreational vehicles (*NRO Exhibit 10*).

E. 25 CFR 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 land from the tax rolls.

On March 13, 2001, the Superintendent, Olympic Peninsula Agency provided notice of the Tribe’s trust application, requesting information and comments from Mason County and the Governor of Washington (*NRO Exhibit 12*).

No response was received from the Governor of Washington.

Mason County Treasurer's memorandum dated March 20, 2001, indicates the total annual property taxes for the proposed site as \$1,290.85.

Mason County Department of Community Development memorandum dated April 4, 2001, states that zoning or other specific land use regulations do not apply because the land is shown as an Indian reservation.

F. 25 CFR 151.10(f). Jurisdictional problems and potential conflicts of land use which may arise.

The State of Washington is subject to Public Law 280, therefore both civil and criminal jurisdiction are exercised by the State over Indians and non-Indians. The Tribe exercises concurrent criminal and civil jurisdiction with the State consistent with federal law. In accordance with the Tribal-State gaming compact the Tribal Gaming Agency and State Gaming Agency have concurrent jurisdiction to investigate violations of the compact (*NRO Exhibit 11*). The property is located within the exterior boundaries of the reservation and adjacent to commercial properties Mason County Land Use Regulations do not apply and the Tribe does not have zoning regulations. The Regional Director indicates there are no jurisdictional problems (*OIGM Exhibit 1*).

G. 25 CFR 151.10(g). If the land to be acquired is in fee status whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

Because the property is located within the exterior boundaries of the Reservation and the BIA already provides services to the Tribe, the Regional Director has determined that there should be no significant increase in the workload or additional anticipated problems. Also, because the Tribe is a Self Governance compact tribe and performs all of the functions of the realty program up to the approval of a transaction, the Superintendent, Olympic Peninsula Agency has determined that the acquisition of the 3.0 acre parcel will not represent a significant increase in the workload of the Agency. (*OIGM Exhibit 1*).

H. 25 CFR 151.10(h). The extent of information to allow 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.

On February 20, 2003, the NRO (*NRO Exhibit 13*) concluded that this acquisition is an administrative action subject to a categorical exclusion in accordance with 30 BIAM, Supplement 1. Pursuant to 516 DM 6, Appendix 4, the NRO has determined that this action will not individually or cumulatively affect the quality of the human environment and therefore does not require the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). A categorical exclusion requires a qualifying action, in this case, 516 DM 6, Appendix 4, Part 4.4.I., Land Conveyance or Other Transfers of interests in land where no

immediate change in land use is planned. This acquisition is for 3.0 acres, and no change in land use is anticipated.

The acquisition of the 3.0 acre parcel in trust for the Skokomish Indian Tribe can occur only if there are no adverse legal claims existing on the property, including potential environmental claims. As a result, the BIA must comply with the requirements of 602 DM 2, Land Acquisitions Hazardous Substance determinations, to determine whether any such potential environmental claims may exist.

A Phase I Environmental Site Assessment of the proposed site was conducted on June 8, 2001 by the Director of the Skokomish Department of Natural Resources (*NRO Exhibit 14A*). The Northwest Regional Director's memorandum of August 23, 2003 states that there are no hazardous substances, contaminants or signs of any effects of contaminants on the parcel proposed to be acquired in trust.

VIII. TWO PART DETERMINATION UNDER SECTION 20 OF IGRA

The two-part determination pursuant to Section 20(b)(1)(A) of IGRA, 25 U.S.C. § 2719(b)(1)(A) is not applicable. See discussion under Section V, *supra*.

IX. REGIONAL DIRECTOR'S RECOMMENDATION

By memorandum dated April 23, 2003, (*OIGM Exhibit 1*) the Regional Director, Northwest Region, recommends that the property be accepted in trust for the benefit of the Skokomish Indian Tribe of Washington.

X. OIGM RECOMMENDATION

Our review indicates that the federal requirements for acquiring land in trust for gaming have been satisfied. It is the recommendation of this office that the identified parcel of land be taken into trust for the benefit of the Skokomish Indian Tribe. We recommend that the Northwest Regional Director be authorized to approve the conveyance document accepting the property in trust for the Skokomish Indian Tribe subject to any condition set forth herein, including approval of all title requirements identified by the Regional Solicitor, Portland, Oregon, and expiration of the thirty-day period following publication in the FEDERAL REGISTER of the notice required in 25 CFR § 151.12(b).

If you concur with our recommendation to approve the trust acquisition of the identified parcel of land, we have attached for your signature a memorandum to the Regional Director, Northwest Region, authorizing him to proceed with the conveyance to the United States in trust for the Skokomish Indian Tribe, subject to all title requirements in 25 CFR § 151.13.

Attachments