



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

**JUN 15 2004**

## Memorandum

To: Principal Deputy Assistant Secretary – Indian Affairs

From: Acting Deputy Assistant Secretary - Policy and Economic Development

Subject: Request of Picayune Rancheria for Trust Acquisition of 48.53 Acres of Land

### I. INTRODUCTION

By memorandum dated July 31, 2003, the Regional Director, Pacific Region Office (PRO) transmitted to the Assistant Secretary - Indian Affairs (ASIA), the Picayune Rancheria of Chukchansi Indians of California (Tribe) request an application dated March 4, 2001, to acquire approximately 48.53 acres of land into trust (*OIGM Exhibit 1*). The 48.53 acres consist of six (6) contiguous parcels located within the restored boundaries of the Picayune Rancheria in Madera County, California. The parcels will be used for operation of a 296,000 square foot gaming, entertainment and hotel facility.

The Tribe's request and supporting documentation were submitted in accordance with a July 19, 1990, Secretarial Directive, which requires all acquisitions for gaming purposes to be approved or disapproved by the ASIA. The documents were referred to the Office of Indian Gaming Management (OIGM) for its review of the request and the supporting documentation. Our findings, analysis, and recommendations 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 C.F.R. Part 151.

### II. AUTHORITY

The Constitution of the Picayune Rancheria was adopted by the qualified voters of the Picayune Rancheria on October 22, 1988 (*PRO Tab 3*).

Pursuant to Article V Powers of the Tribal Constitution, Tribal Resolution No. 2003-06 dated February 26, 2003, (*PRO Tab 8-1*) requests the Bureau of Indian Affairs (BIA) to acquire in trust the six (6) parcels of land consisting of 48.53 acres to facilitate tribal self-determination and economic

development. The resolution was adopted by a vote of five (5) for and (0) against and (0) abstentions.

### **III. PROPERTY TO BE ACQUIRED**

The real property consists of six (6) separate parcels totaling 48.53 acres, more or less, all within the restored boundaries of the Picayune Rancheria (*PRO Tab 1-I*).

#### **LEGAL DESCRIPTION**

##### Parcel 1:

That portion of the North half of the Northwest quarter of the Northeast quarter and the West half of the Northwest quarter of the Northeast quarter of the Northeast quarter of Section 29, Township 8 South, Range 21 East, Mount Diablo Base and Meridian, according to the official Plat thereof, lying Northeasterly of the Northeasterly line of a strip of land 50 feet in width conveyed to the County of Madera, State of California, for highway purposes by deed dated September 11, 1961 and recorded in Records of Madera County in Volume 808 of Official records at page 410.

EXCEPTING THEREFROM: that portion of the Northeast quarter of Section 29, Township 8 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official Plat thereof described as follows:

Beginning at the Southeast quarter corner of the West half of the Northwest quarter of the Northeast quarter of the Northeast quarter of said Section 29; thence West along the South line of the North half of the Northeast quarter of the North half of the Northeast quarter of said Section 580.8 feet; thence Northeasterly 600 feet, more or less, to a point in the East line of the West half of the Northwest quarter of the Northeast of the Northeast quarter of said Section 29, located 150 feet North from the Southeast corner thereof; thence South 1,590 feet to the POINT OF BEGINNING.

##### Parcel 2:

All that portion of the South half of the Northwest quarter of the Northeast quarter and the West half of the Southwest quarter of the Northeast quarter of the Northeast quarter of Section 29, Township 8 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, lying North and Northeasterly of the North and Northeasterly boundary of County Road No. 417.

##### Parcel 3:

That portion of the Northeast quarter of Section 29, Township 8 South, Range 12 East,

Mount Diablo Base and Meridian, according to the Official Plat thereof described as follows:

BEGINNING at the Southeast quarter of the West half of the Northwest quarter of the Northeast quarter of the Northeast quarter of said Section 29; thence West along the South line of the North half of the North half of the Northeast quarter of said Section 29 580.8 feet; thence Northeasterly 600 feet, more or less, to a point in the East line of the West half of the Northwest quarter of the Northeast quarter of said Section 29, located 150 feet North from the Southeast corner thereof, thence South 150 feet to the POINT OF BEGINNING.

APN: 054-330-025 (Parcel 1) & 054-330-026 (Parcels 2 & 3) containing 27.49 acres, more or less.

Parcel "A"

All that portion of the North half of the Northwest quarter of the Northeast quarter of Section 29, Township 8 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official Plats thereof, lying Southwesterly of County Road No. 417.

APN: 054-330-015 (containing 3.92 acres, more or less)

Parcel "B"

Parcel 1 of Parcel Map No. 1870, according to the map thereof, recorded August 21, 1981 in Book 27 of Maps, at page 182, Madera County Records.

APN: 054-330-031 (containing 5.92 acres more or less)

Parcel "C"

Parcel 2 of Parcel Map No. 1870, according to the map thereof, recorded August 21, 1981 in Book 27 of Maps, at page 182, Madera County Records.

APN: 054-330-32 (containing 5.92 acres, more or less)

Parcel "D"

Parcel 3 of Parcel Map No. 1870, according to the map thereof, recorded August 21 1982 in Book 27 of Maps, at page 182, Madera County Records.

APN: 054-330-033 (containing 5.28 acres, more or less)

#### IV. TITLE TO THE PROPERTY

The commitment for title insurance prepared by Fidelity National Title Insurance Company dated June 12, 2003, of Fresno, California (*PRO Tab 8-3*) reflects the title to be vested in the Picayune Rancheria of California.

On July 14, 2003, the Regional Solicitor, Pacific Southwest Region, Sacramento, California, rendered a favorable title opinion to the encumbrances on the subject title. He also stated that the Fidelity National Title Insurance Company report presents only a Preliminary Title Report and not a Title Opinion. The Report, dated June 12, 2003, does not assume liability until a title commitment or binder is obtained by the Tribe to protect the United States. This must occur prior to accepting the 48.53 acres of property into trust (*PRO Tab 8*).

#### V. COMPLIANCE WITH THE INDIAN GAMING REGULATORY ACT

On March 2, 2000, the Associate Solicitor, Division of Indian Affairs, issued an opinion that fee land in California purchased by the Picayune Tribe in 1966, which is within the boundaries of the Picayune Rancheria, falls within the definition of “Indian lands” under the Indian Gaming Regulatory Act, and that the lands may be used for Indian gaming operations (*PRO Tab I-G*). On December 3, 2001, the National Indian Gaming Commission (*OIGM Exhibit 2*) concurred with the Associate Solicitor, concluding that the proposed gaming operation is located on lands considered to be “Indian lands” pursuant to 25 U.S.C. § 2703(4)(A).

The Picayune Rancheria and the State of California entered into a Class III gaming compact which was approved on May 5, 2000. The Department published a notice of effect of the Tribal-State Compact for the Picayune Rancheria and the State of California on May 16, 2000 (*PRO Tab I-J*).

The Tribe’s Gaming Ordinance was approved by the National Indian Gaming Commission (NIGC) on July 5, 1995.

#### VI. COMPLIANCE WITH 25 C.F.R. 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 C.F.R. Part 151.

##### A. 25 C.F.R. 151.3. Land acquisition policy.

As a matter of statute and regulation, the Secretary may acquire land in trust for a tribe under 25 C.F.R. § 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 of the 48.53 acres satisfies 25 C.F.R. § 151(a)(3) and that the land is needed by the Tribe to facilitate tribal self-determination (*OIGM*

*Exhibit 1).* We concur. The Tribe was terminated on January 15, 1960 and restored to federal recognition pursuant to the Hardwick Stipulation of Judgement (No. C-79-1710SW) for Madera County, filed on June 16, 1987 (*PRO Tab I-F*). The Stipulation restored the exterior boundaries of the Rancheria and declared all lands within the restored boundaries as Indian Country. The acquisition of this parcel in trust is for the purpose of conducting class III gaming and operating an entertainment and hotel facility. This acquisition will be a positive step toward the restoration of the Tribe's lands and the Tribe's sovereignty because there are no lands currently held in trust for the Tribe.

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

The Tribe has no trust lands. The placement of this property into trust is part of the Tribe's efforts to restore its land base, as set forth by the U.S. District Court's decision to reinstate the Picayune Rancheria's status as a "Federally Recognized Tribe". The 48.53 acres will be the first restored lands to be acquired in trust for the Tribe.

The acquisition of this parcel in trust is for the purpose of conducting class III gaming and operating an entertainment and hotel facility. Class III gaming is currently conducted on the 48.53 acres, and there will be no change in the use of the land.

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

The Tribe currently operates a 180,000 square foot casino, with a multi story 200 room hotel and entertainment facility on this property, which is located within the exterior boundaries of the restored Rancheria. The Tribe has no land in trust within the boundaries of the restored Rancheria. These parcels are the first by which the Tribe seeks to begin the process towards re-establishing their community, tradition, and self-sufficiency. There will be no change in the use of this property once trust status is attained.

**E. 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 land from the tax rolls.**

On May 20, 2004, the U.S. District Court for the Northern District of California issued an order in *Tillie Hardwick v. United States*, Case No. C-79-1710-JF, holding that Madera County has no authority to impose taxes on land owned in fee simple by the Picayune Rancheria of Chukchansi

Indians within its reservation. Therefore, removal of the lands from the tax rolls would have no effect on the County (*OIGM Exhibit 5*).

On March 24, 2003, the Superintendent, Central California Agency (*PRO Tab 2*) notified and requested comments regarding the proposed fee to trust acquisition application from the California State Clearing House, Office of Planning and Research; the Deputy Attorney General, State of California; the Deputy Legal Affairs Secretary, Office of the Governor of California; Director, Madera County Planning and Land Use; Madera County Treasurer and Tax Collector; Madera County Assessor; Madera County Board of Supervisors; and North Fork Rancheria. The BIA received four (4) comments in response to the notice.

On April 8, 2003, the State of California Department of Transportation (Caltrans) responded stating "Caltrans has no objection to this application" (*PRO Tab 2-A*).

On April 16, 2003, the County of Madera Assessor's Office states that the annual property tax levied for the 2002-2003 tax year on the parcels is \$16,152.90. This amount is expected to increase substantially for the 2003-2004 tax year due to the completion of the casino and hotel. The Assessor further states that the County would not only be impacted by the current loss of tax revenue, but also by the removal of the subject property from the tax roll, based on the improvements currently being made. This loss is not contemplated in the Memorandum of Understanding (MOU) between the County of Madera and the Tribe, which only addresses additional services created by the new casino. Furthermore, the removal of these properties from the tax roll would financially impact the School Districts, County of Madera and other County Assessment Districts (*PRO Tab 2B*).

On April 23, 2003, the Coarsegold Union (Elementary) School District and the Yosemite Union High School District responded that they should have been notified because they are a local government and that compensation for their loss in the removal of the property from the tax rolls should have been addressed in the MOU. They further believe that there will be negative impacts due to potential growth from the hotel and casino.

The Regional Director (*OIGM Exhibit 1*) states that comments regarding the MOU and the fact that the County did not include the School Districts during the negotiations is a matter between the County and the School Districts. Based on the MOU the County has agreed to the trust conversion of the property.

On April 23, 2003, the Madera County Board of Supervisors responded favorably requesting that the transfer of land be made as quick as possible (*PRO Tab 2D*).

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

Tribal jurisdiction in California is subject to Public Law 83-280 and there will be no change in criminal jurisdiction. The Rancheria is provided with law enforcement services from Madera County.

On August 28, 2001, the Tribe entered into a Memorandum of Understanding (MOU) (*PRO Tab 1-K*) with the County of Madera in order to mitigate environmental impacts with regard to the construction and operation of the Tribe's hotel and casino. The MOU provides for reimbursement to Madera County of all actual costs incurred for law enforcement, not to exceed \$365,000.00 for actual costs, plus a 12% add-on for County general and administrative burden.

The MOU also provides that Madera County will provide adequate fire protection; in return the Tribe has contributed \$350,000.00 as a one time cost toward the purchase of fire apparatus and equipment. The Tribe will also reimburse Madera County for all actual costs of fire protection staffing not to exceed \$415,000.00 plus a 12% add-on for general and administrative burden. The Tribe has contributed \$175,000.00, of which 50% will be reimbursed to the Tribe by the County, toward the new construction of a fire station located within one mile of the Casino. For emergency services, the Tribe has agreed to pay \$100,000.00 for ambulance service the first year of operation, thereafter future payments will be calculated using a formula based on actual volume. The Tribe will also staff two Level 1 EMT's 24/7 at the gaming and hotel facility.

In addition, the MOU addresses rights-of-way, water and sewer services and ground water aquifer impacts and establishes a committee to address any issues concerning implementation of the MOU.

- G. 25 C.F.R. 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.**

This acquisition is for land located within the boundaries of the Tribe's Reservation and there is no anticipated change in the use of the land. The Regional Director's memorandum (*OIGM Exhibit 1*) states that because there is no change in the land use the BIA, Central California Agency is equipped to administer any additional responsibilities that may result from this acquisition. The Tribe also intends to incur all expenses related to the maintenance of the property and to handle all legal matters regarding the property (*PRO Tab 1*).

- H. 25 C.F.R. 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 July 2, 2003, the PRO (*PRO Tab 7*) concluded that this acquisition is an administrative action subject to a categorical exclusion in accordance with 30 BIAM, Supplement I. Pursuant to 516 DM 6, Appendix 4, the PRO has determined that this action will not individually or cumulatively effect 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 is available pursuant to 516 DM 6, Appendix 4, Part 4.4.I., because no change in land use is anticipated.

The acquisition of the 48.53 acres in trust for the Picayune Rancheria 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.

On June 19, 2003, the Pacific Regional Director approved the certification of the Regional Environmental Scientist on a Phase 1 Contaminant Survey (*PRO Tab 6*), indicating that no hazardous materials or contaminants are present on the parcels 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 July 31, 2003 (*OIGM Exhibit 1*), the Regional Director, Pacific Region, recommends that the property be accepted in trust for the benefit of the Picayune Rancheria of California.

#### **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 parcels of land be taken into trust for the benefit of the Picayune Rancheria. We recommend that the Pacific Regional Director be authorized to approve the conveyance document accepting the property in trust for the Picayune Rancheria subject to any condition set forth herein, including approval of all title requirements identified by the Regional Solicitor, Sacramento, California, 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, Pacific Region, authorizing him/her to proceed with the conveyance to the United States in trust for the Picayune Rancheria, subject to all title requirements in 25 CFR § 151.13.

Attachments