



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 16 2005

Memorandum

To: Associate Deputy Secretary

From: Acting Deputy Assistant Secretary – Policy & Economic Development

Subject: Request of Snoqualmie Tribe of Washington for Trust Acquisition of 55.84 Acres of Land

I. INTRODUCTION

By memorandum dated April 13, 2004, (*OIGM Exhibit 1*) the Northwest Regional Office (NRO) transmitted to the Director, Bureau of Indian Affairs, the Snoqualmie Tribe of Washington (Tribe) request and application dated July 10, 2001, (*NRO Exhibit 1*) to acquire approximately 55.84 acres of land into trust. The 55.84 acres located in King County, Washington, will be used for the purpose of construction and operation of a class III gaming facility.

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 AS-IA. 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 United States acknowledged the Snoqualmie Tribe through the federal acknowledgement process (25 CFR Part 83), and the notice of final determination acknowledging the Tribe was published in the Federal Register on August 29, 1997 (*NRO Exhibit 6*). On November 26, 1997, the Tulalip Tribes filed a request with the Interior Board of Indian Appeals seeking reconsideration of the Assistant Secretary's Final Determination. On October 6, 1999, the Department of the Interior, Office of the Solicitor, notified all parties that the Secretary declined to refer further consideration of issues to the Assistant Secretary and that the Final Determination of the Tribe's federal acknowledgment would be effective as of the date of his letter (*NRO Exhibit 7*). The Tribe had no trust land at the time of acknowledgment.

The Constitution and Bylaws of the Snoqualmie Tribe were adopted by the General Council on August 17, 2002 (*OIGM Exhibit 2*).

III. PROPERTY TO BE ACQUIRED

The real property consists of a 55.84 acre tract located in King County, Washington. The legal description of the property is as follows:

Lot 1, Block 3 of the unrecorded plat of Si-View acre tracts, more particularly described as follows: Beginning at a point on the south line of the NW quarter of Section 31, Township 24 North, Range 8 East, Willamette Meridian, in King County, Washington, 750.75 feet South 88 degrees 51'11" West of the SE corner of said NW quarter; thence South 88 degrees 51'11" West, 660.36 feet; thence North 3 degrees 02'25" West 308.18 feet; thence North 86 degrees 57'35" East, 660.00 feet to the west line of a 60.0 foot street; thence South 3 degrees 02'25" East along said street, 330.0 feet to the point of beginning;

Except that portion of Lot 1, Block 3 of the unrecorded plat of Si-View acre tracts, in Section 31, Township 24 North, Range 8 East, Willamette Meridian, in King County, Washington, described as follows: Beginning at the NE corner of the above described Lot 1; thence South 86 degrees 57'35" West a distance of 311.14 feet along the north boundary of said Lot 1; thence South 3 degrees 02'25" East a distance of 140.00 feet; thence North 86 degrees 57'35" East a distance of 311.14 feet to the east boundary line of said Lot 1; thence North 3 degrees 02'25" West a distance of 140.00 feet along the east boundary of said Lot 1 to the point of beginning.

And

All of Government Lot 3 and that portion of Government Lot 4, lying northerly of the north margin of SR 90 (State Highway Number 2); Section 31, Township 24 North, Range 8 East, Willamette Meridian, King County, Washington.

Containing a total of 55.84 acres, more or less.

IV. TITLE TO THE PROPERTY

The commitment for title insurance prepared by Transnation Title Insurance Company of Bellevue, Washington, dated February 6, 2001, (*NRO Exhibit 4*) reflects the title to be vested in Snoqualmie Hills Joint Venture, a Washington State Joint Venture.

On October 17, 2002, the Regional Solicitor, Pacific Northwest Region issued a Preliminary Opinion of Title regarding the title, data, and objections of the Special Exceptions in Schedule B of preliminary title evidence No. 870470 prepared by the Transnation Insurance Company (*NRO Exhibit 5*).

V. COMPLIANCE WITH THE INDIAN GAMING REGULATORY ACT

Under IGRA, one of the exceptions to gaming on land acquired after 1988 is for land taken into trust as an initial reservation for a tribe acknowledged under the federal acknowledgement process (*NRO Exhibit 27*). 25 U.S.C. § 2719(b)(1)(B)(ii). Pursuant to Tribal Council Resolution

No. 37-01 (*NRO Exhibit 8*), the Tribe is requesting that the subject property once acquired in trust be proclaimed the Tribe's initial reservation.

The subject property is located approximately one mile from the area known as Snoqualmie Falls which holds significant historical, geographical and cultural importance for the Tribe. (*NRO Exhibit 9 - Snoqualmie Hills Project Environmental Assessment, July 4, 2003*).

By the Treaty of Point Elliott in 1855, the Snoqualmie ceded their traditional homeland in return for a small Federal reservation near Snohomish Bay, which eventually became the Tulalip Reservation. Although some tribal members went to live there, most preferred to stay within the Snoqualmie Valley. Three primary off-reservation settlement areas emerged: Lake Sammamish, the Upper Prairie above Snoqualmie Falls, and below the Falls in the area of the aboriginal villages at Tolt/Carnation and Fall City. The 55.84 acres where Snoqualmie Hills will be located is in close proximity to the Snoqualmie Falls areas. Snoqualmie Falls is considered a sacred site where many tribal ceremonies are held and is considered by the Tribe to be the birthplace of mankind. (*Determination of Office of Federal Acknowledgment, U.S. DOI, October 6, 1999*).

Documentary sources relied upon by the Office of Federal Acknowledgment have clearly and consistently identified a body of Snoqualmie Indians living in the general vicinity of the Snoqualmie River Valley of Western Washington from at least 1844. The Snoqualmie Tribe inhabited the drainage area of the Snoqualmie River from near its confluence with the Skykomish River, above the present town of Monroe, southward to Annet Lake and from Snoqualmie Pass in the east, the lowest route over the Cascade Mountain Range, westward to the headwaters of Tuck Creek. The heartland of this territory was the Snoqualmie River shore between the present towns of Carnation and Fall City. The Snoqualmie Tribe maintained a number of permanent winter villages along the river, the principal ones being where the townsites of Carnation and Fall City now stand. We conclude that the Snoqualmie Tribe has significant historical and traditional ties to the land so that it will meet the "initial reservation" exception contained in 25 U.S.C. § 2719(b)(1)(B) once the land is taken into trust, and thus, may be proclaimed to be a reservation for the Tribe pursuant to 25 U.S.C. § 467.

The Tribe has entered into a management contract with MGU Development, LLC. Pursuant to an agreement between MGU and the Tribe, the tribe will execute a note that will cover the purchase price of the property upon issuance of a preliminary determination to place the land into trust status. The management contract is under review by the National Indian Gaming Commission (NIGC), as required under Section 12 of IGRA, 25 U.S.C. § 2711.

The Snoqualmie Indian Tribe and the State of Washington entered into a Class III gaming compact, which was approved on April 4, 2002. The Department published a notice of effect of the Tribal-State Compact for the Snoqualmie Tribe and the State of Washington on April 15, 2002 (*NRO Exhibit 22*).

The Tribe's Gaming Ordinance was approved by the NIGC and is listed in the Federal Register dated August 26, 2002 opposite No. 197 (*OIGM Exhibit 3*).

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.

1. 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 or Indian housing.

2. 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.

3. 25 C.F.R. § 151.10(b). *The need of the individual Indian or tribe for additional land.*

The Regional Director has determined that the acquisition in trust of this 55.84 acre parcel is needed to facilitate self-determination and economic development of the Snoqualmie Hills Project to: 1) promote economic opportunity for Tribal members; 2) support the continued operation of Tribal governmental services in the Tribe's effort to reverse the economically depressed high unemployment conditions among enrolled Tribal members; 3) reestablish tribal homelands lost from federal treaty actions; and 4) build a strong Tribal economic base by maintaining and encouraging development on a reservation consistent with Tribal objectives.

The Regional Director further states that although the application facilitates gaming it does not address other future needs of the community including housing, community services, natural resource development, diversified community and economic development, but believes the trust acquisition of this property will be an important first step in reestablishing a land base in the Tribe's traditional area and is necessary to facilitate tribal self-determination and economic development. Currently, the Tribe has no reservation or tribal trust lands.

4. 25 C.F.R. § 151.10(c). *The purposes for which the land will be used.*

The Tribe will use the property for gaming. The Tribe proposes that the Snoqualmie Hills Project will be a mixed-use commercial development of approximately 170,000 square feet of which 37% of the space will be utilized for management, administration, employee and warehouse use, 35% will be utilized for restaurants, entertainment, retail and public areas, and 28% will be used for the class III gaming operation

5. 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.*

King County Executive responded on July 27, 2001, to the BIA's consultation letter (NRO Exhibit 12) explaining that the property is located within the Urban Growth Area of the City of

Snoqualmie and currently zoned Urban Reserve. The County Executive did not raise any issues concerning the proposed development but provided tax information regarding road maintenance, library, hospital, fire, school, and emergency medical service assessments knowing that the property would become “tax exempt.” The Regional Director states that the potential loss of taxable inventories, about \$15,600, to King County is very minimal to the overall King County budget or special taxing districts. No response was received from the Governor of the State.

6. 25 C.F.R. § 151.10(f). *Jurisdictional problems and potential conflicts of land use which may arise.*

The Tribe will provide all civil and criminal law enforcement in accordance with all applicable Federal and tribal laws. Because Washington State is a Public Law 280 State where the State has incorporated within its constitution the ability to enforce criminal jurisdiction on Indian land, the Tribe will work with the State in this area of co-jurisdiction. Adverse impacts on local non-Indian governments for law enforcement services may be mitigated and negotiated with the State by appropriating a portion of the revenue generated from the casino. On April 26, 2004, the City of Snoqualmie and the Tribe reached an agreement that will provide police services for the Project.

The property is located within the Urban Growth Area of the City of Snoqualmie and currently zoned Urban Reserve, intended to preserve future urban development options by maintaining the properties in low density residential uses until the City expands and extends services. The City of Snoqualmie did not raise any issues or concerns about the proposed development or conflicts of land use.

The Regional Director states that the acquisition of the land in trust will not significantly increase problems arising over civil and criminal jurisdiction because the Tribe will have law enforcement and judicial programs in place to provide jurisdiction on tribal lands. Also the State of Washington, King County Executive and City of Snoqualmie did not raise any issues concerning the proposed development or concerns about conflicts of land use.

7. 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.*

The proposed property would be under the administrative jurisdiction of the Puget Sound Agency (Agency). The Northwest Region’s Workforce Plan 2003 indicates that there are five realty positions in the Realty Branch of the Puget Sound Agency. The Agency serves nine reservations and administers over 24,861 acres of tribal and individual Indian trust lands. The addition of 55.84 acres will not unduly burden the realty staff at the Agency. The property is also under the administrative jurisdiction of the Northwest Region, with a 2003 Workforce Plan that indicates there are eleven realty positions in the Northwest Regional Office who are available for consultation and assistance to the agencies and tribe. The addition of this 55.84 acre tract will not unduly burden the realty staff of the Northwest Region.

8. 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.*

The Tribe submitted an Environmental Assessment (EA), dated July 22, 2002. Revised versions were prepared in May 2003 and July 2003 in response to comments raised by OIGM (*OIGM Exhibit 4*). The NRO and the Tribe responded to the public comments and the necessary changes were made to the EA. A final EA, dated September 2005, addresses the short and long term impacts of construction and operation of the casino on the proposed property. A draft Revised Finding of No Significant Impact (FONSI) is attached with a recommendation that it be signed. The draft Revised FONSI replaces the FONSI that was published in February 2004 for this Project, which was issued prior to the completion of consultation with the U.S. Fish and Wildlife Service and the concurrence of the Office of Indian Gaming Management.

In compliance with section 2.6A of Departmental policy 602 DM 2, a Phase I Environmental Site Assessment (Phase I ESA) dated October 29, 2001, was prepared for the proposed site following standard practice of the American Society of Testing and Materials (ASTM) E-1527. Northwest Regional Realty Specialist accompanied the Tribe's contractor, Golder Associates of Seattle, Washington, on the field inspection of the subject property. The assessment revealed no evidence of recognized environmental conditions and environmental concerns in connection with the subject property based on information collected from the property investigation, record reviews, interviews, and property reconnaissance (*NRO Exhibit 9, Appendix G*). In the late spring of 2003 the site was revisited by Puget Sound Agency to determine if the property had experienced substantial changes since October 29, 2001, and reported that there were no contaminants present on the property and no obvious signs of contamination. The site was inspected by Puget Sound Agency staff on March 29, 2004 and reported no observed changes on the property that would result in altering the findings of the Phase I Site Assessment prepared in 2001 and updated in 2004 (*NRO Exhibit 26*). An updated Phase 1 Assessment was prepared on December 8, 2005. No recognized environmental conditions were identified.

9. 25 C.F.R. § 151.11(b). *The location of the land relative to state boundaries, and its distance from the boundaries of the Tribe's reservation.*

The Tribe does not presently have an existing Indian reservation. The property is located near the City of Snoqualmie, King County, Washington, approximately 0.5 miles east of Exit 27 on Interstate 90 (I-90). The property is located within the aboriginal territory of the Snoqualmie Tribe. The property will serve as the Snoqualmie Tribe's initial reservation.

10. 25 C.F.R. § 151.11(c). *Where land is being acquired for business purposes, the Tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.*

The Tribe intends to use the property for the purpose of operating a class III gaming facility. It is also an important first step in reestablishing a land base in the Tribe's traditional area and is necessary to facilitate tribal self-determination and economic development, employment opportunities for tribal members and to fund tribal government institutions and services.

A Business Plan for the Snoqualmie Hills Project, was submitted on April 30, 2004, as part of the Tribe's application (*OIGM Exhibit 5*).

11. 25 C.F.R. § 151.11(d). *Consultation with the State of Washington and local governments having regulatory jurisdiction over the land to be acquired regarding potential impacts on regulatory, jurisdiction, real property taxes, and special assessments.*

On July 12, 2001, the Superintendent, Puget Sound Agency provided notice of the Tribe's trust application, requesting information and identification of potential impacts to the State of Washington and King County (*NRO Exhibits 10 & 11*).

State of Washington

No response was received from the Governor of Washington.

King County

Because the proposed project was determined to be in the designated Urban Growth Area of the City of Snoqualmie, but outside of its current boundaries, King County forwarded a copy of the notice to the City of Snoqualmie, which was further shared with staff and the King County Director of Development and Environmental Services, Current Planning Supervisor, Tribal Liaison for King County Office of Regional Policy and Planning. It was also apparent that the letter received widespread circulation and publicity outside of government circles in King County because the Agency was contacted by other individuals regarding the Project. The NRO placed these other parties on a mailing list for both environmental and decision memorandum documents, however, no further comments were received from these parties.

City of Snoqualmie

On August 30, 2001 the City of Snoqualmie responded, also noting that the proposed acquisition is in the designated Urban Growth Area of the City of Snoqualmie. The City also indicated that representatives of the Tribe had contacted the City regarding water, sewer, and public safety services (*NRO Exhibit 13*). At that time the City was evaluating the Tribe's request for services.

On March 20, 2003, the Director of Public Safety for the City of Snoqualmie indicated that the City will provide police, fire and emergency services for the Project (*NRO Exhibit 14*). On May 28, 2003 (dated May 28, 2002 on original), the City of Snoqualmie advised the Tribe that they had reached agreement on a utility service agreement that would provide sewer service for the Project (*NRO Exhibit 17*). The agreement (*NRO Exhibit 18*) was subject to final review and approval by the Tribe and City. The agreement was signed on April 26, 2004. Pursuant to an agreement on Sewer Collection, the Tribe has committed to upgrading the sewer system as part of its development.

On May 12, 2003, the Kent Meridian Disposal Company operating out of Kent, Washington agreed to provide both garbage and recycle collection services for the Snoqualmie Hills Project (*NRO Exhibit 15*). Kent Meridian Disposal Company is the Washington Utilities and Transportation permitted hauler in the area.

On May 12, 2003, the Puget Sound Energy (PSE) advised American Energy Solutions, Inc., a contractor for the Snoqualmie Tribe evaluating the energy needs of the Project, that PSE is able to meet the energy needs of the planned Project if the energy demand is no more than 2 megawatts. If the actual load is more it may be necessary to increase the capability of the existing three phase electric line S.E. North Bend Way to serve the Project (*NRO Exhibit 16*). This schedule will help define the costs of upgraded service for the casino.

VII. TWO-PART DETERMINATION UNDER SECTION 20 OF IGRA

The two-part Secretarial determination required pursuant to Section 20(b)(1)(A) of IGRA, (25 U.S.C. § 2719(b)(1)(A)) is not applicable because the land to be taken into trust will be part of the initial reservation of the Tribe. *See* discussion under Section V, *supra*.

VIII. OTHER REQUIREMENTS

None.

IX. REGIONAL DIRECTOR RECOMMENDATION

By memorandum dated April 13, 2004, (*OIGM Exhibit 1*) the Regional Director, Northwest Region, recommends that the property be accepted in trust for the benefit of the Snoqualmie Tribe of Washington.

X. OIGM RECOMMENDATION

Our review indicates that the federal requirements for acquiring land in trust for gaming have been satisfied. This office recommends that the identified parcel of land be taken into trust for the benefit of the Snoqualmie Tribe, and that a FONSI be issued for the September, 2005 EA. We recommend that the Regional Director, Northwest Region, be authorized to approve the conveyance document accepting the property in trust for the Tribe subject to any condition set forth herein, including completion and certification of an updated contaminant survey, approval of all title requirements by the Office of the Regional Solicitor, Northwest Region, and expiration of the thirty-day period following publication in the *Federal Register* of the notice required in 25 C.F.R § 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 FONSI and a memorandum to the Regional Director, Northwest Region, authorizing him to proceed with the conveyance to the United States in trust for the Snoqualmie Tribe, subject to all title requirements in 25 CFR § 151.13.

Attachments

I concur ✓

I do not concur _____

Janna E. Casan
Associate Deputy Secretary

1/13/06
Date