



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 1 0 2010

Honorable Leonard Forsman
Chairman, Suquamish Tribe
P.O. Box 498
Suquamish, Washington 98392-0498

Dear Chairman Forsman:

On December 30, 2009, the Suquamish Tribe (Tribe) submitted to the Bureau of Indian Affairs (BIA) an application to acquire in trust a 6.67 acre tract of land, known as the Hotel/Casino & Waterfront Properties, consisting of nine (9) parcels located within the exterior boundaries of the Port Madison Indian Reservation, Kitsap County, Washington, and contiguous to other trust parcels, (*Northwest Regional Office (NRO Exhibit 1)*). The Hotel/Casino & Waterfront Properties are currently used for gaming related purposes which include the Tribe's hotel, spa, administrative offices, and surface parking for the Suquamish Clearwater Casino and Hotel operations.

By memorandum dated April 26, 2010, the Regional Director, NRO transmitted to the Assistant Secretary – Indian Affairs (AS-IA), his recommendation that the property be accepted into trust, (*Office of Indian Gaming (OIG) Tab 1*), along with the Tribe's request and supporting documentation. We have completed our review of the Tribe's request, the supporting documentation in the administrative record, and the NRO's recommendation. For the reasons set forth below, it is our determination that the 6.67 acre tract of land will be taken into trust.

BACKGROUND

The Suquamish Tribe is a federally recognized Indian Tribe located in Suquamish, Washington. The Constitution and Bylaws of the Suquamish Tribe, Port Madison Reservation was adopted by the qualified voters of the Suquamish Tribe of Indians and approved by the Under-Secretary of the Interior on July 2, 1965, (*NRO Exhibit 7*). The tribal headquarters are located in Suquamish, Washington.

Pursuant to Resolution No. 2008-075, (*NRO Exhibit 1*) adopted by the Suquamish Tribal Council on May 5, 2008, the Tribe requests the Secretary to acquire in trust the 6.67 acre tract of land which is currently used for gaming related purposes for the Tribe's hotel, spa, administrative offices, and surface parking for the Suquamish Clearwater Casino and Hotel operations. The resolution was adopted by a vote of six (6) for, zero (0) against, and zero (0) abstentions.

DESCRIPTION OF THE PROPERTY

The legal description of the property is as follows, (*NRO Exhibit 5*):

THAT PART OF GOVERNMENT LOTS 2 AND 4, SECTION 29, TOWNSHIP 26 NORTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

PARCELS I THROUGH IX, INCLUSIVE, AS SHOWN ON VOLUME 72 OF SURVEYS, PAGES 226 THROUGH 234, INCLUSIVE, AUDITOR'S FILE NO. 200907220134, RECORDS OF KITSAP COUNTY, WASHINGTON;

TOGETHER WITH AN EASEMENT 16 FEET IN WIDTH FOR ACCESS AND UTILITIES OVER PORTIONS OF GOVERNMENT LOT 2, SAID SECTION 29, TOWNSHIP 26 NORTH, RANGE 2 EAST, W.M., AS ESTABLISHED IN INSTRUMENTS RECORDED ON DECEMBER 8, 195, UNDER AUDITOR'S FILE NOS. 1117923 AND 1117924, RECORDS OF KITSAP COUNTY, WASHINGTON;

SITUATE IN THE COUNTY OF KITSAP, STATE OF WASHINGTON.

TITLE TO THE PROPERTY

The commitment for title insurance No. MM-20338273 issued by Lawyers Title Insurance Corporation dated October 21, 2009, and December 23, 2009, reflects the title to be vested in the name of Port Madison Enterprises, an independent tribally chartered agency of the Suquamish Tribe, (*NRO Exhibit 5*).

On March 24, 2010, the Regional Solicitor, Northwest Region, Portland, Oregon issued a Preliminary Title Opinion (PTO), (*NRO Exhibit 6*). The Regional Solicitor reflects the title to be vested in the name of Port Madison Enterprises, an independent tribally chartered agency of the Suquamish Tribe and determined that the grantors should be able to convey title to the property in a manner that meets the standards set forth in "Department of Justice Title Standards," provided the various observations, conclusions, and needed actions listed in the PTO are taken prior to closing.

COMPLIANCE WITH THE INDIAN GAMING REGULATORY ACT

The Hotel/Casino & Waterfront Properties have been used for commercial purposes since they were acquired and no change from the current use is planned or anticipated. This acquisition is "gaming related." Therefore, an analysis of its compliance with 25 U.S.C. § 2719 is not needed.

The Suquamish Tribe and the State of Washington entered into a Class III gaming compact, which was approved on March 17, 1995. On March 31, 1995, the Department published a notice of effect of the Tribal-State Compact between the Suquamish Tribe and the State of Washington.

An amendment to the Tribal-State Compact was approved on January 14, 1999, and the notice of effect published in the *Federal Register* on January 28, 1999.

The Tribe's Gaming Ordinance was approved by the National Indian Gaming Commission (NIGC) on January 5, 1996.

COMPLIANCE WITH 25 CFR PART 151

The Secretary's authority, procedures, and policy for accepting land into trust are set forth at 25 CFR 151. Section 151.3 sets forth under what conditions land may be acquired in trust by the Secretary for an Indian tribe or individual Indian, but states that it is "subject to the provisions in the acts of Congress which authorize land acquisition."

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)(1) when the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

The Northwest Regional Director (NRD) has determined that the acquisition of the 6.67 acre tract of land is authorized under 25 CFR 151.3 (a)(1) because the land is located within the exterior boundaries of the Port Madison Indian Reservation, (*OIG Tab 1*). The acquisition qualifies under 25 CFR 151.3 (a)(3) because the acquisition of the land is necessary to facilitate both tribal economic development and tribal self-determination.

The AS-IA concurs with the NRD's determination that acquiring the land in trust for the Tribe is necessary to facilitate tribal self-determination and economic development.

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

In *Carcieri v. Salazar*, __U.S. __, 129 S.Ct.1058, 172 L.Ed.2d 791 (2009) (*Carcieri*) the United States Supreme Court held that the Secretary's authority to take land into trust for an Indian tribe extends only to those tribes that were "under Federal jurisdiction" when the Indian Reorganization Act (IRA), 48 Stat. 984, codified at 25 USC §461 *et seq.* (the "IRA"), was enacted on June 18, 1934. We have evaluated the applicability of *Carcieri* to the Tribe's application, and have determined that the Tribe was under Federal jurisdiction in 1934, and is eligible to have land taken into trust pursuant to 25 USC § 465.

The Tribe was signatory to the Treaty of Point Elliott in 1855 and its Chief, Chief Seattle led the successful charge to expand its Port Madison Indian Reservation to its current size which ultimately came to pass by Executive Order on October 21, 1864. Moreover, on May 28, 1904, the Tribe entered into another agreement with the United States ceding certain land on Agate Pass and finally, on April 6, 1935, the Tribe voted 30 to 0 to accept the terms of the IRA. See the 1947 Tribal Relations Pamphlet called, "Ten Years of Tribal Government Under I.R.A." written by Theodore H. Haas, Chief Counsel, United States Indian Services.

Thus, the Tribe was under Federal jurisdiction when the IRA was enacted, and the Secretary has the authority to take the land into trust using the authority of Section 5, of the IRA.

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

The acquisition of the 6.67 acre tract of land is needed to support the Hotel/Casino & Waterfront Properties, which is currently used for gaming related purposes and include the Tribe's hotel, spa, administrative offices, and surface parking for the Suquamish Clearwater Casino and Hotel operations.

The NRD has also determined that the Tribe needs to have the land acquired in trust by the United States to enable the Tribe to achieve self-determination and economic self-sufficiency through their gaming operations.

Based on this information the NRD had determined that the need for the additional land is adequately justified, and the AS-IA concurs.

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

The 6.67 acre tract of land currently supports the Hotel/Casino & Waterfront Properties which have been used for commercial purposes since they were acquired and no change from the current use is planned or anticipated. The property is located within the boundaries of the Tribe's reservation.

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.

The Tribe owns the parcels in fee simple. By letters dated January 29, 2010, comments on the potential impacts of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments were solicited from the following state and local political subdivisions, (*NRO Exhibit 9 & 10*):

Governor of Washington
No Response

Kitsap County Commissioners
No Response

The Governor and the Kitsap County Commissioners did not respond or provide comments on the trust acquisition or the impacts resulting from the removal of the land from the tax rolls.

The Tribe currently pays state, county and local fees, realty property taxes, and special assessments on the parcels, (*NRO Exhibit 5*). The annual amount of property taxes levied on the property in 2009 was \$72,836.78. Based on the 2010 Budget for Kitsap County, the tax base

totaled \$30,010.865.00. Therefore, the impact on the tax base is only .0024 percent of the county's total tax income.

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

Jurisdictional Problems: The Tribal-State Compact provides primary jurisdiction to the Tribal Gaming Agency over all gaming within the boundaries of the Reservation. The Tribe and the State have concurrent jurisdiction regarding the enforcement of State laws regulating tribal gaming activities within the Reservation boundaries. The Tribe cooperates with non-tribal local law enforcement authorities on gaming-related activities.

The Tribe has law enforcement and judicial programs in place to provide jurisdiction on trust lands within the exterior boundaries of the Reservation.

Potential Conflicts of Land Use: The property is located within the exterior boundaries of the Reservation and subject to the Tribe's zone and land use authority. No jurisdictional issues or potential conflicts are anticipated.

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.

The Tribe is a Self-Governance Tribe and has been administering BIA services and programs under a compact since January 1, 1996. The Tribe performs all preliminary work on transactions affecting trust land and resources. Law enforcement services are provided by the Tribe and the local fire district provides fire suppression services under a Memorandum of Agreement with the Tribe.

This proposed trust acquisition is located within the boundaries of the Tribe's reservation and there is no anticipated change in the use of the land. The placement of this property into trust will not impact services currently provided to the Tribe, nor will it necessitate the need for any significant services from the BIA. The NRD has determined the BIA is equipped to administer any additional responsibilities that may result from this acquisition.

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

On April 26, 2010, the NRD (*NRO Exhibit 11*) 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 NRD 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 4.4.1., Land Conveyance or Other Transfers of interests in land where no

immediate change in land use is planned. This acquisition is for 6.67 acre tract of land, and no change in land use is anticipated.

The acquisition of the 6.67 acre tract of land in trust for the 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 contaminant survey will be completed and certified before the land is taken into trust.

TWO PART DETERMINATION UNDER SECTION 20 OF IGRA

The two-part determination pursuant to Section 20 of IGRA, 25 USC § 2719(b)(1)(A) is not applicable because this acquisition is gaming related.

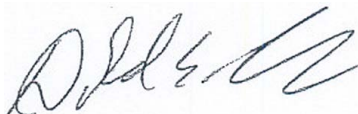
REGIONAL DIRECTOR'S RECOMMENDATION

By memorandum dated April 26, 2010, (*OIG Tab 1*) the NRD recommends that the property be accepted in trust for the benefit of the Tribe.

DECISION

Our evaluation of the Tribe's request indicates that the federal requirements for acquiring this parcel of land into trust have been satisfied. The NRD, will be authorized to approve the conveyance document accepting the property in trust for the Tribe subject to any condition set forth herein, approval of all title requirements by the Office of the Regional Solicitor, the expiration of the thirty-day period following publication in the *Federal Register* of the notice required in 25 CFR § 151.12(b), and the filing of a legal challenge to this decision..

Sincerely,



For Larry Echo Hawk
Assistant Secretary – Indian Affairs