



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

NOV 09 2018

In Reply Refer To:
Realty Department

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

The Honorable Tom Wooten
Chairman
Samish Indian Nation
Post Office Box 217
Anacortes, Washington 98221

Dear Chairman Wooten:

This is the decision of the Bureau of Indian Affairs ("BIA"), Northwest Regional Director, on the Samish Indian Nation's ("Samish Nation" or "Samish" or "Nation") land into trust application for the property more fully identified below, known as the "**Campbell Lake South Property**" consisting of 6.70 acres, more or less, and located in Skagit County, Washington. The property is currently used for both a buffer and another point of ingress and egress to the Nation's existing 79 acres and will continue in its current use as the Nation does not plan to change the use of the property.

1. Application Information

The Samish Nation requested by Resolution No. 2011-11-012 (dated January 27, 2016) and by an updated Fee-to-Trust application (dated March 18, 2016) that the United States acquire a 6.70-acre tract in trust for the use and benefit of the Nation and its membership.

The Nation acquired the land from John L. and Karolyn M. Sullivan, by Deed dated May 7, 2010 and recorded the purchase on May 27, 2010 in Skagit County, Washington, under document number 2010005270044 and Elden G. and Mary J. Awes, by Deed dated December 27, 2002 and recorded the purchase on January 3, 2003 in Skagit County, Washington, under document number 200301030107.

2. Land Description of the Property

The subject property is contiguous as it shares a common boundary with Tribal Trust Tract 130-T1216. As such, the subject property is considered an on-reservation acquisition.

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Samish Indian Nation - Campbell Lake South Property

The land is described as follows:

PARCEL "A":

That portion of Government Lot 2 of Section 18, Township 34 North, Range 2 East, W.M., described as follows:

Commencing on the centerline of vacated Lincoln Avenue in vacated "Carlyle's Addition to Fidalgo City, Washington", recorded in Volume 2 of Plats, page 3, records of Skagit County, 200 feet North of the South line of said Carlyle's Addition; thence West 200 feet to the true point of beginning of this description; thence West to the Southeasterly line of State Highway 20 as it existed on June 16, 1932 (being the same shown as "Permanent Highway No. 18" on a Washington State Department of Transportation right-of-way plan dated June 1932 on Sheet 1 of 3); thence Northeasterly along the Southeasterly line of said Highway 20 to a point 200 feet West of the centerline of Lincoln Avenue; thence South to the true point of beginning; EXCEPT therefrom any portion lying within the right-of-way for Permanent Highway No. 18 as conveyed to Skagit County by Auditor's File No. 251879.

EXCEPT portion conveyed to the State of Washington under Auditor's File No. 200701290009.

All of the above being vacated portions of Lake Avenue, Thirteenth Street, Blocks 9 and 11 of vacated "Carlyle's Addition to Fidalgo City, Washington", as per plat recorded in Volume 2 of Plats, page 3.

PARCEL "B":

That portion of vacated "CARLYLE'S ADDITION TO FIDALGO CITY, WN.", as recorded in Volume 2 of Plats, page 3, records of Skagit County, TOGETHER WITH that portion of vacated Lake Avenue, if any, that has reverted thereto by operation of law, described as follows:

Beginning on the Southeasterly line of State Highway 20, (shown as "Permanent Highway No. 18" on a Washington State Department of Transportation right-of-way plan dated June 1932 on Sheet 1 of 3) 200 feet West of the centerline of Lincoln Avenue; thence South to a point of intersection with the South line of 13th Street as platted in said Addition produced West; thence East to the centerline of Lincoln Avenue; thence North to the Southeasterly line of State Highway 20; thence Southwesterly along the Southeasterly line of Highway 20 to the point of beginning; ALSO, vacated Lots 21 to 30 inclusive and Lot 31 in Block 8, vacated, of "CARLYLE'S ADDITION TO FIDALGO CITY, WN.", as per plat recorded in Volume 2 of Plats, page 3, of the records of Skagit County; TOGETHER WITH the East ½ of vacated Lincoln Avenue adjoining; TOGETHER WITH a non-exclusive easement for ingress, egress, vehicular and pedestrian travel and for utilities, over, along, under and across an existing access road, the same being 20 feet in width and the center line of which is described as beginning at

the intersection of the South line of Highway 20 and the East line of vacated Lot 24, Block 9, all vacated of "CARLYLE'S ADDITION TO FIDALGO CITY, WN.", thence running Easterly 300 feet, more or less, to the centerline of vacated Lincoln Avenue in said addition, the same being the West line of property hereinabove described; EXCEPT that portion of said Easement conveyed to the State of Washington by Auditor's File No. 200705090083.

PARCEL "C":

That portion of Government Lot 2, Section 18, Township 34 North, Range 2 East, W.M., lying within the following described tract:

Vacated Blocks 9 and 10 of "CARLYLE'S ADDITION TO FIDALGO CITY", as per plat recorded in Volume 2 of Plats, page 3, records of Skagit County, Washington; TOGETHER WITH those portions of the following named vacated streets, which have reverted thereto by operation of law: 12th Street, Lincoln Avenue, 13th Street, Washington Avenue and Lake Avenue;

EXCEPT FROM SAID TRACT the four following described parcels:

1. That portion thereof conveyed to John L. Sullivan by Deed recorded under Auditor's File No. 8206180069 and re-recorded under Auditor's File No. 9101100012.
2. That portion thereof conveyed to Mary Jane Awes, et ux, by Deed recorded under Auditor's File No. 8206100003.
3. That portion thereof lying within the right-of-way for Permanent Highway No. 18 as conveyed to Skagit County by Auditor's File No. 251879.
4. That portion thereof, if any, lying Northwesterly of the Southeasterly line of the right-of-way for State Highway No. 20 (shown as "Permanent Highway No. 18" on a Washington State Department of Transportation right-of-way plan dated June 1932 on Sheet 1 of 3).

All situate in the County of Skagit, State of Washington. Containing 6.70 acres, more or less.

The Land Description Review was approved by the Bureau of Land Management's Chief Cadastral Surveyor on November 28, 2011. The Land Description Review states that the land description is acceptable.

I find that the Nation has fulfilled the requirements of 25 C.F.R. § 151.9 governing requests for approval of acquisitions because Resolution No. 2011-11-012 sets out the identity of the parties, a description of the land, and other information showing that the acquisition comes within 25 C.F.R. Part 151.

3. Regulatory requirements: 25 C.F.R. Part 151

This decision of the Northwest Regional Director, Bureau of Indian Affairs is discretionary. In evaluating the Nation's request to have land taken into trust, the BIA must consider the criteria set out in 25 C.F.R. § 151.10 (a) through (c) and (e) through (h). Proof that the Northwest Regional Director considered the factors set forth in 25 C.F.R. § 151.10, must appear in the administrative record; however, there is no requirement that the BIA reach a particular conclusion concerning each factor. Nor must the factors be weighed or balanced or exhaustively analyzed in a particular way.¹

3.1 151.3(a) – Department's land acquisition policy

I find that this acquisition is consistent with the Department's land acquisition policy because:

1. The Nation already owns the land as evidenced by the Statutory Warranty Deeds. The Office of Solicitor, Pacific Northwest Region, U.S. Department of the Interior, reviewed the title commitment and provided Preliminary Opinion of Title BIA.PN.16424, dated September 26, 2018 finding title vested in the Nation.
2. The Nation stated that the land is used for both a buffer and another point of ingress and egress to the Nation's existing 79 acres. The Nation will be increasing its land base, which provides greater options and flexibility for future actions to facilitate its self-determination goals. I find that this land is necessary for facilitating tribal self-determination.

3.2 151.3(a)(2) and (3)

I have determined that the regulatory requirements of 25 C.F.R. § 151.10 applies to this trust acquisition. 25 C.F.R. § 151.11 does not apply because the subject property is contiguous, as it has a common boundary with Tribal Trust Tract 130-T1216. As such, this subject property will be processed as an on-reservation acquisition.

3.3 151.10(a) – Statutory Authority

The primary authority to acquire land in trust for a federally recognized Indian tribe is Section 5 of the Indian Reorganization Act ("IRA"). Section 5 provides in relevant part:

The Secretary of the Interior is authorized in his discretion, to acquire through purchase, relinquishment, gift exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations,

¹ *Thurston County, Nebraska v. Great Plains Regional Director, Bureau of Indian Affairs*, 56 IBIA 296; 300-01 (04/03/2013).

including trust or otherwise restricted allotments, whether the allottee is living or deceased, for the purpose of providing land for Indians.²

Section 19 of the IRA defines those “Indians” eligible for its benefits as:

“[1] all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and [2] all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include [3] all other persons of one-half or more Indian blood.”³

For the reasons set forth in *Attachment 1: NW Regional Director's Analysis of Whether Samish were under federal jurisdiction in 1934* (attached), I find that the Nation satisfies the first definition of “Indian,”⁴ which the United States Supreme Court has construed as meaning recognized tribes “under federal jurisdiction” in 1934, and therefore, the Secretary has the authority to take the subject land into trust for the Samish Indian Nation using the authority of Section 5 of the IRA.

3.4 151.10 (b) – Need for Additional Land

The United States holds 79 acres of land in trust for the Nation. The Nation requests the property to be acquired in trust by the United States in order to govern effectively and exercise self-determination. Trust status of the property will enable the Nation to exercise its inherent governmental authority for the benefit of its members and facilitate tribal self-determination. The property is located within the Nation’s historical and aboriginal territory as set forth in anthropologist reports. The property will establish a land base for the Nation in an area that is central to the Nation’s cultural and governmental activities.

Based on the above facts, and after having given scrutiny to the Nation’s justification of anticipated benefits from the acquisition, I find that the Nation needs this additional land for self-government, self-sufficiency, self-determination purposes, and to increase its land base to better sustain the Nation and its members.

3.5 151.10 (c) – Purpose for which the land will be used

The Nation stated the purpose for the property is for both a buffer and another point of ingress and egress and will continue in its current use. The Nation does not plan to change the use of the land at this time. Therefore, there is no change in land use for the BIA to consider.

² 25 U.S.C. § 5108 (formerly 25 U.S.C. § 465).

³ 25 U.S.C. § 5129 (bracketed numbers added).

⁴ I did not determine whether or not Samish satisfies any other definition of Indian.

3.6 151.10 (e) – Impact on State and local governments’ tax base

A Notice of Application was sent to the Governor of Washington, Skagit County Board of Commissioners (“Board of Commissioners”), and Swinomish Indian Tribal Community (“SITC”) on September 25, 2018. The notice provides 30 days for a written response. The Governor of Washington and the Board of Commissioners received their notices on September 27, 2018 and SITC received their notice on September 28, 2018. The Governor of Washington, Skagit County, and SITC did not respond to the Notice of Application.

The impact on the State of Washington from the removal of the land from the property tax rolls will be minimal because the land has already been declared exempt from taxation for two of the parcels and the third parcel had a tax burden of \$110.72. Therefore, there should be no measurable impact on the County or State based on the removal of the property from the tax rolls. SITC does not tax this parcel, so there will be no impact to their tax base.

3.7 151.10 (f) – Jurisdictional problems and land use conflicts

The State of Washington, the Board of Commissioners, and SITC did not respond to the Notice of Application, and thus, they did not raise any jurisdictional problems.

Currently, all parcels included within this application are zoned Rural Reserve by the Board of Commissioners. The Nation’s use of the property will not conflict with the current zoning of the parcels. The Nation has obtained a Memorandum of Understanding (“MOU”) between it and the Board of Commissioners regarding limits on development of the trust land adjacent to these parcels. The purpose of the MOU is to address specific jurisdictional issues between the two governments and maintain a cooperative working relationship.

Based on current information, BIA has no basis to conclude that jurisdictional problems or land use conflicts will arise as a result of this land acquisition. I find that there will not be any jurisdictional problems or potential land use conflicts if this land is acquired into trust status. Based on the preceding discussion, I find that my consideration of the criterion in 25 C.F.R. § 151.10(f) weighs in favor of the acquisition of the subject property.

3.8 151.10 (g) – Whether the BIA is equipped to discharge additional responsibilities

The Nation does not anticipate that the BIA will incur additional responsibilities as a result from the acquisition of the land in trust status. The Nation intends to be responsible for all expenses and maintenance with regard to said property and to handle any legal matters that may arise with regard to said property. There will only be duties associated with converting this land into trust and it will only affect Realty, Environmental Services, and Land, Titles and Records at the Northwest Regional Office.

I find that the BIA is equipped to discharge any minimal additional responsibilities resulting from the acquisition of this 6.70 acre parcel in trust status.

3.9 151.10 (h) – Environmental compliance

A Categorical Exclusion dated October 29, 2018, indicates that an environmental assessment is not required because the Nation indicated that no change in land use after acquisition is planned or known. Therefore, I find that approval of this acquisition falls under 516 DM 10.5(1) and is categorically excluded. Should future development occur, compliance with the National Environmental Policy Act may be required.

3.9.1 Historic/Endangered Species Compliance

Since there are no approved plans for further development of this property, I anticipate no impact to any historic or archaeological resources or to any threatened or endangered species that may exist on the property. Should future development occur, compliance with laws governing historic properties and endangered species, if applicable, will be required.

3.9.2 Phase I Environmental Site Assessment

Prior to deed acceptance, a Phase I Environmental Site Assessment will need to be conducted by a qualified Environmental Professional for the property. Additionally, the Phase I Environmental Site Assessment will need to be conducted according to the current ASTM Standards and 40 C.F.R. Part 312. The Phase I Environmental Site Assessment will need to be reviewed and approved by the Northwest Regional Environmental Scientist.

4. Conclusion

Based on the review of all of the documents identified in this decision and Attachment 1, I find that acquisition of the Campbell Lake South Property complies with all of the requirements of 25 C.F.R. 151 and Department and Regional Directives. Therefore, the application is hereby approved. The documents relied on or provided in support of the proposed acquisition are held at the NW Regional Office.

5. Appeal Rights

Any party who wishes to seek judicial review of this decision must first exhaust administrative remedies. The Northwest Regional Director's decision may be appealed to the Interior Board of Indian Appeals ("IBIA") in accordance with the regulations in 43 C.F.R. 4.310–4.340.

If you choose to appeal this decision, your notice of appeal to the IBIA must be signed by you or your attorney and must be either postmarked and mailed (if you use mail) or delivered (if you use another means of physical delivery, such as Federal Express or UPS to the IBIA within 30 days from the date of publication of this notice. The regulations do not authorize filings by facsimile or by electronic means. Your notice of appeal should clearly identify the decision being appealed. You must send your original notice of appeal to the IBIA at the following address: Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Suite 300, Arlington, Virginia 22203.

You must send copies of your notice of appeal to (1) the Assistant Secretary – Indian Affairs, U.S. Department of the Interior, MS-4141-MIB, 1849 C Street NW, Washington, D.C. 20240; (2) each interested party known to you; and (3) the Northwest Regional Director. Your notice of appeal sent to the IBIA must include a statement certifying that you have sent copies to these officials and interested parties and should identify them by names or titles and addresses. If you file a notice of appeal, the IBIA will notify you of further procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,

A handwritten signature in blue ink, appearing to be "B. J. ...", is written over the signature line.

Northwest Regional Director

Enclosure