



United States Department of the Interior

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DEC 12 2008

Patricia Hermosillo
Chairperson
Cloverdale Rancheria of Pomo Indians of California
555 S. Cloverdale Blvd., Suite A
Cloverdale, California 95425

Dear Chairperson Hermosillo:

In December of 2007, the Cloverdale Rancheria of Pomo Indians of California (Tribe) declared its intent to take certain lands in Cloverdale, California (Cloverdale Parcels or Parcels) into trust for the purpose of gaming. Since these Parcels will be “acquired by the Secretary in trust for the benefit of [the] [T]ribe after October 17, 1988,” they can only be eligible for gaming if they meet one of the exceptions within 25 U.S.C. § 2719. Therefore, the Tribe submitted a request seeking a determination from the Department of the Interior (Department) that the Parcels are eligible for gaming pursuant to 25 U.S.C. § 2719(b)(1)(B)(iii) (Restored Lands Exception) of the Indian Gaming Regulatory Act (IGRA).¹

The Restored Lands Exception says that the general gaming prohibition on after-acquired lands “will not apply when – lands are taken into trust as part of – the restoration of lands for an Indian tribe that is restored to Federal recognition.” 25 U.S.C. § 2719(b)(1)(B)(iii). The statute requires two inquiries: 1) is the tribe a “restored tribe,” and 2) will the lands be taken into trust as part of the restoration of lands for a restored tribe? In a Memorandum dated November 12, 2008, the Solicitor’s Office (SOL) applied 25 C.F.R. Part 292 – Gaming on Trust Lands Acquired After October 17, 1988 and concluded that the Cloverdale Tribe is a restored tribe pursuant to IGRA’s Restored Lands Exception. Since the Tribe is a restored tribe, the Secretary may address the second inquiry; whether the lands will be taken into trust as part of the restoration of lands for a restored tribe. The Department reviewed your request pursuant to the factors detailed in 25 C.F.R. Part 292. I have decided that if the Secretary takes the Cloverdale Parcels into trust, the Parcels will be taken into trust as part of the restoration of lands for the Cloverdale Tribe.

25 C.F.R. Part 292

On August 25, 2008, the Department regulations implementing 25 U.S.C. § 2719 of IGRA became effective. The requirements to meet the Restored Lands Exception are detailed in Subpart B – Exceptions to Prohibitions on Gaming on Newly Acquired Lands:

¹ The Tribe submitted a *Request for an Indian Land Determination for the Cloverdale Rancheria of Pomo Indians of California* on December 10, 2007. The Tribe’s request and subsequent supplemental submissions detail the reasons why the Tribe believes they are a restored tribe and why the Secretary should take the Parcels into trust as part of the restoration of lands for a tribe that is restored to Federal recognition. The submissions also include detailed descriptions of the Parcels. In December of 2005, the Tribe submitted a similar *Request for an Indian Land Determination*. The Tribe withdrew the 2005 request when it submitted the December 2007 request and the Department did not consider it as part of this recommendation.

Gaming may occur on newly acquired lands under this exception only when all of the following conditions in this section are met:

- (a) The tribe at one time was federally recognized, as evidenced by its meeting the criteria in § 292.8;
- (b) The tribe at some later time lost its government-to-government relationship by one of the means specified in § 292.9;
- (c) At a time after the tribe lost its government-to-government relationship, the tribe was restored to Federal recognition by one of the means specified in § 292.10; and
- (d) The newly acquired lands meet the criteria of “restored lands” in § 292.11.

25 C.F.R. § 292.7. As discussed in the November 12, 2008 Memorandum, the Tribe meets the criteria of sections 292.7(a)-(c) and thus qualifies as a “restored tribe.” Section 292.7(d) directs us next to look at whether the Cloverdale Parcels meet the criteria of “restored lands” in section 292.11. As part of this examination, section 292.11(c) points us toward additional requirements in section 292.12. (“If the tribe was restored by a Federal court determination in which the United States is a party or by a court-approved settlement agreement entered into by the United States, it must meet the requirements of § 292.12”). Here, the Cloverdale Rancheria of Pomo Indians was restored to Federal recognition pursuant to a Stipulation For Entry Of Judgment in *Tillie Hardwick, et al. v. United States*, No. C-79-1710 SW (N.D. Cal., Dec. 22, 1983.). Therefore, the Tribe must meet the requirements of section 292.12.

25 C.F.R. § 292.12 – The Cloverdale Parcels are “restored lands”

Section 292.12 answers the question, “[h]ow does a tribe establish connections to newly acquired lands for the purposes of the ‘restored lands’ exception?” It reads:

To establish a connection to the newly acquired lands for purposes of § 292.11, the tribe must meet the criteria in this section.

- (a) The newly acquired lands must be located within the State or States where the tribe is now located, as evidenced by the tribe’s governmental presence and tribal population, and the tribe must demonstrate one or more of the following modern connections to the land:
 - (1) The land is within reasonable commuting distance of the tribe’s existing reservation;
 - (2) If the tribe has no reservation, the land is near where a significant number of tribal members reside;
 - (3) The land is within a 25-mile radius of the tribe’s headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust; or
 - (4) Other factors demonstrate the tribe’s current connection to the land.
- (b) The tribe must demonstrate a significant historical connection to the land.

(c) The tribe must demonstrate a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration. To demonstrate this connection, the tribe must be able to show that either:

- (1) The land is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition; or
- (2) The tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands.

25 C.F.R. § 292.12.

The Tribe seeks to have approximately seventy (70) acres of land taken into trust in Cloverdale, California. The property as a whole consists of six (6) individual parcels. The parcels are contiguous to each other and in whole, the property is both contiguous and within the former Cloverdale Rancheria. (See map below on page 4).

Section 292.12(a) requires that the "newly acquired lands must be located within the State or States where the tribe is now located, as evidenced by the tribe's governmental presence and tribal population."² The Cloverdale Parcels are in a State (California) where the Tribe is now located. The Tribe has maintained government offices in the City of Cloverdale on South Cloverdale Boulevard for over fourteen (14) years - since 1994. Additionally, of the total tribal population of about four hundred and ninety-nine (499), approximately sixty-six percent (66%) of the Tribe's members live within a 30-mile radius of the Parcels, sixty-nine percent (69%) within a 50-mile radius and eighty-two point five percent (82.5%) within a 100-mile radius. The "newly acquired lands" therefore, are located within the State or States where the Cloverdale Tribe is now located.

² "Newly acquired lands" is a defined term and simply means "land that has been taken, or will be taken, in trust for the benefit of an Indian tribe by the United States after October 17, 1988."

Former and Newly Acquired Lands for the Cloverdale Rancheria



Additionally, section 292.12(a) requires that the Tribe demonstrate a modern connection to the land by way of four different options. Here, the Tribe meets subsections 292.12(a)(3) and 292.12(a)(4). Subsection (3) says that a tribe meets the modern connection requirement if “[t]he land is within a 25-mile radius of the tribe’s headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust.” The Tribe submitted an application for land-into-trust to the Bureau of Indian Affairs (BIA) Pacific Regional Office in March of 2008. The Tribe maintains a tribal headquarters on South Cloverdale Boulevard. The headquarters is approximately 3 miles from the Cloverdale Parcels. It has been at this location since 1994, well past the regulatory requirement of two years. Therefore, the Tribe satisfies subsection (3).

The Tribe also meets the criteria in subsection (4). Subsection (4) allows a tribe to show a modern connection through “[o]ther factors [that] demonstrate the tribe’s current connection to the land.” Although the Tribe was terminated in 1965, tribal members and their descendants continued to reside in the Cloverdale area. For example, at the time of restoration, two original allotment distributees of the former Cloverdale Rancheria still lived on their allotments. The Tribe is therefore able to show a modern connection to the land.

Next, subsection 292.12(b) requires that “[t]he tribe must demonstrate a significant historical connection to the land.” “Significant historical connection” is a defined term and “means the land is located within the boundaries of the tribe’s last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe’s villages, burial

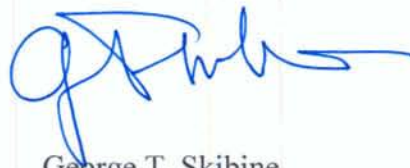
grounds, occupancy or subsistence use in the vicinity of the land.” The Tribe meets this requirement as well. The Tribe once occupied lands in the vicinity of the Cloverdale Parcels. Specifically, the Tribe began occupying the former Cloverdale Rancheria beginning in 1925 when the United States acquired the lands for the Tribe. The Cloverdale Parcels are not only in the vicinity where the Cloverdale Tribe once occupied and subsided on land, but actually contiguous to and within the former Cloverdale Rancheria. Additionally, there is a tribal cemetery within the Tribe’s former Rancheria boundaries, which tribal members continue to use. The Tribe also submitted information regarding its ancestral and indigenous use of the lands in Cloverdale. This provides further evidence of its historical connection with the lands. Thus, the Tribe has successfully displayed that it has significant historical connections to the Cloverdale Parcels.

Finally, subsection 292.12(c) requires that “[t]he tribe must demonstrate a temporal connection between the date of the acquisition of the land and the date of the tribe’s restoration.” A tribe can show this by two ways: “(1) [t]he land is included in the tribe’s first request for newly acquired lands since the tribe was restored to Federal recognition; or (2) [t]he tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands.” Here, the Tribe meets both (1) and (2). The Tribe’s request to take the Cloverdale Parcels into trust is its first request for trust lands since the Tribe was restored to Federal recognition in 1984.³ The Cloverdale Tribe also qualifies under (2) because the request was made within twenty-five (25) years of the Tribe being restored to Federal recognition in 1984 and the Tribe is not gaming on other lands. Therefore, the Tribe can show a temporal connection and meets the requirements of subsection (c).

Conclusion

If the Secretary takes the Cloverdale Parcels into trust, the Parcels are eligible for gaming pursuant to 25 U.S.C. § 2719(b)(1)(B)(iii). As discussed in a Memorandum dated November 12, 2008, the Tribe is a restored tribe and as detailed above the Department has determined that the Cloverdale Parcels meet the criteria set forth in 25 C.F.R. Part 292. Therefore, I have decided that if the Secretary takes the Cloverdale Parcels into trust, the Parcels will be taken into trust as part of the restoration of lands for the Cloverdale Tribe.⁴

Sincerely,



George T. Skibine
Acting Deputy Assistant Secretary –
Policy and Economic Development

³ The Tribe’s December 2005 request, which it subsequently withdrew, does not qualify as the Tribe’s first request because the Department did not make a decision on that request or actually take that land into trust.

⁴ I consider my decision a final agency action that is reviewable under the Administrative Procedure Act (APA).