



**United States Department of the Interior**

**Bureau of Indian Affairs  
Northwest Regional Office  
911 NE 11<sup>th</sup> Avenue  
Portland, Oregon 97232-4169**



In Reply Refer To:

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED 7013 1090 0001 2825 6061**

Board of County Commissioners  
Ravalli County Courthouse  
215 South 4<sup>th</sup> Street  
Hamilton, Montana 59840

RE: Notice of Decision on the Application of the Confederated Salish and Kootenai Tribes in Trust of 58-Acre Tract in Ravalli County, Montana

Dear Commissioners:

This letter is to inform you that the Northwest Regional Director of the Bureau of Indian Affairs, U.S. Department of the Interior, has decided to acquire in trust for the Confederated Salish and Kootenai Tribes a 58-acre tract located in Ravalli County, Montana. A copy of the decision is enclosed.

This decision may be appealed to the Interior Board of Indian Appeals, 801 Quincy Street, Suite 300, Arlington, Virginia 22203, in accordance with the regulations at 43 C.F.R. Sections 4.310-4.340. Your notice of appeal to the Interior Board of Indian Appeals must be signed by you and your attorney and must be mailed within 30 days of the date you receive this decision. It should clearly identify the decision being appealed. If possible, attach a copy of this decision. You must send copies of your notice of appeal to: (1) the Assistant Secretary – Indian Affairs, 4140 MIB, U.S. Department of the Interior, 1849 C Street, N.W., Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Interior Board of Indian Appeals must certify that you have sent copies these parties. If you file a notice of appeal, the Interior Board of Indian Appeals will notify you of further appeal 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,

  
Realty Officer  
Northwest Region

**RECEIVED**

Enclosure: Notice of Determination on Application

JUN 12 2014

Ravalli County Commissioners

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United States Department of the Interior  
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Northwest Regional Office  
911 NE 11<sup>th</sup> Avenue  
Portland, Oregon 97232-4169



In Reply Refer To:

**MAY 29 2014**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

**7012 2210 0002 2755 0008**

The Honorable Ron Trahan  
Chairman  
Confederated Salish and Kootenai Tribes  
Post Office Box 278  
Pablo, Montana 59855

Dear Chairman Trahan:

This letter is with regard to the application of the Confederated Salish and Kootenai Tribes (Tribes) for the acquisition in trust of the Tribes' 58.00-acre tract commonly known as "Medicine Tree Property" located in Ravalli County, Montana. On May 13, 2013, I issued a decision approving the application. Ravalli County appealed that decision to the Interior Board of Indian Appeals (IBIA). Upon our request, the IBIA vacated the decision and remanded the matter to me for a new decision. The following are my findings of fact and conclusions of law in support of my new decision to approve the application to acquire the subject land in trust for the Tribes.

**1. Application Information:**

The Confederated Salish and Kootenai Tribal Council by Tribal Resolution Number 99-143 (dated March 25, 1999), (Attachment A) requested acquisition in trust of a 58.00-acre tract commonly called "Medicine Tree Property." The property is located in Ravalli County, Montana.

The property is located outside the exterior boundaries of the Flathead Indian Reservation in the southern end of Ravalli County. (Attachment B – Location Map). The property is approximately 87 miles by road from the southern boundary of the Flathead Indian Reservation. The description of the subject property is as follows:

The SE $\frac{1}{4}$ NW $\frac{1}{4}$  and all that part of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  which lies East and North of the right-of-way of U.S. Highway 93, all in Section 22, Township 2 North, Range 20 West, P.M.M., Ravalli County, Montana. Recording Reference: Book 176 Deeds, page 908.

AND

A tract of land in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 22, Township 2 North, Range 20 West, P.M.M., Ravalli, County, Montana, as shown by the shaded area on plat, attached and made part of Instrument No. 544781.

Commonly known as 5788 US Hwy 93 S, MT 59827

I find the Tribes fulfilled the requirements of 25 CFR Section 151.9 in filing a request for approval of such acquisition with the Secretary because the Tribes have set out the identity of the parties, a description of the land, and other information showing that the acquisition comes within terms of 25 CFR Part 151. The Tribes established ownership of the land in the Tribes as provided in 25 CFR Section 151.3(a)(2) and by depicting the location of the subject property in relation to the exterior boundaries of the Flathead Indian Reservation as provided by 25 CFR Section 151.3(a)(1).

This decision of the Northwest Regional Director, Bureau of Indian Affairs is discretionary. In evaluating the Tribes' request to have the off-reservation land taken into trust for non-business purposes, the BIA must consider the criteria set out in 25 CFR § 151.10 (a) through (c) and (e) through (h) and 25 CFR § 151.11 (a), (b) and (d). Proof that the Northwest Regional Director considered the factors set forth in 25 CFR § 151.10 and 25 CFR § 151.11 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. *Thurston County, Nebraska v. Great Plains Regional Director, Bureau of Indian Affairs*, 56 IBIA 296, 300, 301 (04/03/2013).

## **2. Factors of Title 25 CFR Part 151:**

### **A. Statutory Authority (151.10(a)):**

The Confederated Salish and Kootenai Tribes of Montana are organized under the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984). The applicant qualify to convert the land to trust status pursuant to Section 5 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), codified as 25 U.S.C. §465 provides in relevant part as follows:

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

In accordance with the *Carrieri v. Salazar* case, the Secretary may use this authority only for tribes that were under federal jurisdiction in 1934. Based on 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, the Tribes participated in a vote to accept or reject the IRA in 1934. See 25 U.S.C. § 478. Thereafter they organized under the IRA. Based on the above facts, the Nation was under federal jurisdiction when the IRA was enacted, and the Secretary may rely upon the authority of Section 5 to take the land into trust. *Shawano County, Wisconsin v. Acting Midwest Regional Director*, 53 IBIA 62, 71-17 & 75-76 (2011).

Section 151.3(a) of Title 25 of the Code of Federal Regulations Land acquisition policy authorizes this acquisition, providing:

Land not held in trust or restricted status may only be acquired for an individual Indian or a tribe in trust status when such acquisition is authorized

by an Act of Congress. No acquisition of land in trust status, including a transfer of land already held in trust or restricted status, shall be valid unless the acquisition is approved by the Secretary.

(a) Subject to the provisions contained in the Acts of Congress which authorize land acquisitions, land may be acquired for a tribe in trust status:

- (1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
- (2) When the tribe already owns an interest in the land; or
- (3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

I find that this acquisition is consistent with this stated policy. The Tribes already own the subject land as evidenced by the commitment for title insurance policy (Attachment C). The Office of Regional Solicitor reviewed the title commitment and provided a Preliminary Opinion of Title (Attachment D), finding title vested in the Tribe. As described more fully below, I also find that the acquisition is necessary to facilitate tribal self-determination because the Tribes' intended purpose is to preserve the property to support its tribal cultural and spiritual goals. Placing the land into trust status will prevent any possible alienation of the land and provide the Tribes will additional support to protect the land.

I further find that the Confederated Salish and Kootenai Tribal Council has authority to convey the subject property to the United States of America in trust for the Confederated Salish and Kootenai Tribes pursuant to Article VI, Section 1 and Article VIII, Section 2 of the tribal Constitution and By-Laws.

**B. Need (151.10(b)):**

The Salish and Pend d'Oreille are the two easternmost tribes of the Salish people, which extend from Montana to British Columbia to the Pacific Coast. The territories of the Salish and Pend d'Oreille tribes originally encompassed parts of over 22 million acres of land straddling the east and west sides of the Continental Divide in parts of British Columbia, Idaho, Montana, Washington, and Wyoming. Today, the Flathead Indian Reservation encompasses just over 1.3 million acres.

The Medicine Tree is one of two off-reservation properties that the Tribes requested to be taken in trust. Both of the off-reservation properties are of religious and cultural significance to the Tribes of the Confederated Salish and Kootenai Tribes. The Medicine Tree property is sacred to members of the Salish tribe.

On July 16, 1855 near Missoula, eighteen tribal leaders reluctantly signed the Treaty of Hellgate with the United States government, which established the Flathead Indian Reservation with headquarters in the Jocko Valley near present day Arlee. The final treaty language left the tribes with a fraction of their original territory set in two reservations, the "Jocko Reserve" and a Conditional Reservation in the Bitterroot Valley.

The Hellgate Treaty of 1855 provided that the Bitter Root Valley, above the Loo-lo Fork, shall be carefully surveyed and examined, and if it shall prove, in the judgment of the President, to be

better adapted to the wants of the Flathead tribe than the general reservation provided for in this treaty, then such portions of it as may be necessary shall be set apart as a separate reservation for the said tribe. No portion of the Bitter Root Valley, above the Loo-lo fork, shall be opened to the settlement until such examination is had and the decision of the President made known.

Following the passage of the 1862 Homestead Act, settlers claimed desirable agricultural land in the Bitterroot Valley and pressured the federal government to remove the Salish Tribe from the Bitterroot Valley.

The Act of June 5, 1872 (17 Stat., 226) was an act to provide for the removal of the Flathead (Salish) and other Indians from the Bitter-Root Valley, in the Territory of Montana, to the Jocko reservation. The Salish were the first recorded inhabitants of the Bitterroot Valley and the home of the Salish people until Chief Charlo and the Salish were forcibly removed to the Jocko Reservation after 36 years of resisting removal, in the conviction that the 1855 Treaty of Hell Gate had guaranteed the Bitterroot Valley for their reservation. Chief Charlo, with the remaining band, continued to resist moving and kept his small band in the area of St. Mary's Mission.

On October 15, 1891, due to the hardships forced upon his people, Chief Charlo and the last of the Bitterroot Salish Tribe leave for the Jocko Reservation.

To the Salish people, the Medicine Tree is living evidence to a way of life gone but not forgotten. The Medicine Tree is the heart of the Bitterroot Salish with semi-annual treks being made by tribal membership. It has and continued to be an important place in tribal culture and this is why it is so important to maintain that connection to the aboriginal Bitterroot Salish homeland in the Bitterroot Valley

Moreover, it happened even as Coyote prophesied. For generations, people passing through the Bitterroot Valley saw the face on the cliff and left their offerings with the tree. Salish people gather each summer at the Medicine Tree to hang their offerings on the tree and through it prayed to the Great Power for special benefits and protection of their ancestors. Tribal members make regular pilgrimages to the site.

The Tribes purchased the property to protect this sacred site of the Medicine Tree and acquisition of this property in trust status will ensure that the land remains protected for future generations by restricting its alienation.

The property is vacant. There is no proposed change in land use. Acquiring the land in trust for the Tribes will facilitate tribal self-determination goals by preserving a culturally sensitive area.

C. Purpose (151.10( c)):

The subject property consists of two connected parcels. The State of Montana Department of Transportation transferred the 0.085-acre parcel in which the Medicine Tree is located to the Tribe by deed dated October 25, 2004. The 58-acre parcel was transferred to the Tribe by deed dated November 5, 1998. The Tribe purchased this 58-acre parcel to protect the site of the Medicine Tree and surrounding area. This parcel includes a house, septic system, water well, small barn appurtenant water rights to Medicine Tree Creek, perimeter wire fence, pole yard fence and pole corral.

The Phase I ESA at page 12 describes the uses of adjacent properties to the north and northwest as rangeland, to the west as residential and commercial, to the south and southwest as agricultural and residential, to the southeast as agricultural, and to the east and northeast as rangeland.

The purpose in acquiring the 58.085-acre property of the Medicine Tree site and adjoining property is to ensure federal protection of a significant cultural area as described above in the section on "Need." I find that the Tribe has established the purpose for the trust acquisition of the subject property to ensure protection of the site in perpetuity since the trust status of the land would restrict alienation of the land.

D. Impact (151.10(e)):

Notice of the application of the Confederated Salish and Kootenai Tribes was sent to the Governor of the State of Montana. The State of Montana did not comment or respond to the notice.

Notice of the application of the Confederated Salish and Kootenai Tribes was sent to Ravalli County on December 4, 2013. In response to the March 26, 2013 Notice of Application, the Ravalli County Commissioners expressed their concerns by letter dated April 24, 2013. The County has expressed concerns about the potential loss of tax revenues for \$808.00. According to Ravalli County's Financial & Compliance Report for the year ended June 30, 2011, Ravalli County collects approximately \$11,468,000.00 in property taxes. The Medicine Tree property accounts for approximately 0.0000704569236 of the county's property taxes.

By letter, dated December 18, 2013 to the Northwest Regional Office duplicated their arguments of March 26, 2013. Ravalli County Commissioners stated that the annual property taxes currently levied on the property is \$808 per year, there are no special assessments on the property, the subject property is not currently zoned, and government services are provided such as police and fire protection.

The letter states that Ravalli County object to any such removal from the tax rolls because the property is minimally taxed, the County's budget has already been severely stressed, and that over 70% of the real property in Ravalli County is owned by the Federal Government.

I have also considered the arguments raised by the County in its Appellant's Brief filed with the Interior Board of Indian Appeals (IBIA) in its appeal of my previous decision. The County did not identify in more detail why trust acquisition and the loss of \$808.00 annual would be an impact to the County. It did note that the Federal Government owns 3/4<sup>th</sup> of the land within the County at this time, and thus the County is already "stressed" due to the limitations on its real property tax base. With respect to this comment, we note that much of the existing federal land is managed by the U.S. Forest Service and is not residential in nature, and thus places minimal burdens on the County for provisions of services that relate to residents (streets, schools, social services, etc.).

Title 25 CFR Section 151.10(c) requires that I consider the impact on the State of Montana and its political subdivisions resulting from the removal of the land from the tax rolls. I find that

there is very little loss in annual property taxes but the economic benefits and preservation of a cultural site by the Confederated Salish and Kootenai Tribes outweigh the loss of tax revenues.

E. Jurisdiction Problems and Potential Land Use Conflicts (151.10(f)):

Neither the State of Montana nor Ravalli County expressed concerns about the acquisition creating potential land use conflicts. I note that the land use of adjoining properties is predominantly agricultural and rangeland as stated above herein.

There is nothing in the record to suggest that continued use of the property will be in conflict with these uses. Furthermore, neither the State nor County identified any jurisdictional problems that would arise from this acquisition. Therefore, I conclude that my consideration weighs in favor of the acquisition.

F. Weather the BIA is equipped to discharge additional responsibilities (151.10(g)):

The Tribe has compacted the realty and other natural resource management functions of the BIA under the Self-Governance authority of P.L. 93-638. Therefore, the Tribe performs all the realty functions for approval by the Superintendent of the Flathead Agency. The Tribe has not adopted any plans to alter the property. Currently the land is rural and undeveloped and the intention of the Tribe is to conserve and protect the religious and cultural values of the property.

I find that the addition of the 58.00-acre tract, more or less, located outside of the exterior boundaries of the Flathead Indian Reservation would not substantially increase the workload on the Bureau of Indian Affairs.

G. Environmental Compliance (151.10(h)):

A Categorical Exclusion checklist dated November 4, 2013, in compliance with the National Environmental Policy Act, indicates that an environmental assessment is not required because the Tribe has indicated that no development, physical alteration, or change of land use after acquisition is planned or known.

The Tribe, through the Northwest Regional Office, submitted a Phase I Environmental Site Assessment (ESA) prepared by Advanced Environmental Technologies, dated June 5, 2013. The Regional Physical Scientist approved the Phase I ESA by memorandum dated July 15, 2013.

H. Historic and Endangered Species Compliance:

The Tribe has indicated that it has no plans for any development on this property. Should the Tribes decide to develop the property later, they will be required to comply with federal laws governing threatened and endangered species and the protection of cultural resources. If any further developments require federal agency action, it will require compliance with the National Environmental Policy Act.

I. Requirements of the Indian Gaming Regulatory Act:

The subject land is not for gaming purposes.

J. Off-Reservation Acquisitions (151.11)

Because this land is located off the Flathead Indian Reservation, my consideration of the Tribe's application is different from that of an on-reservation. 25 CFR § 151.11(b) states:

The location of the land relative to state boundaries, and distance from the boundaries of the tribe's reservation, shall be considered as follows: as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition [and] greater weight to the concerns raised by the state and local governments.

The property is located 87 road miles away from the southern boundaries of the Flathead Reservation. The property is located approximately 10 miles from the border of the State of Montana. I acknowledge that I need to give greater weight to the local governments' concerns, but the property is located in the same state as the reservation and is reasonable distance from the reservation.

**3. Summary and Recommendations:**

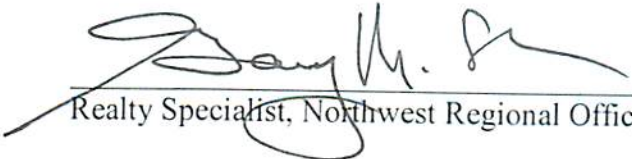
This case has been completed and documented in compliance with 25 CFR Section 151.10 and Departmental and Regional Directives. The following items, which were relied on or provided in support of the proposed acquisition, are indexed and attached for reference:

- A. Tribal Council Resolution No. 14-113
- B. Location Map, Land Description Review and Chain of Survey Certificates
- C. Commitment for Title Insurance Policy No. 383371-R
- D. Office of Regional Solicitor's Preliminary Opinion of Title BIA.PN.13155

By a copy of this decision the applicant and other interested parties are hereby notified of the decision. This decision may be appealed to the Interior Board of Indian Appeals, 801 Quincy Street, Suite 300, Arlington, Virginia 22203, in accordance with the regulations at 43 CFR Sections 4.310-4.340. Your notice of appeal to the Interior Board of Indian Appeals must be signed by you and your attorney and must be mailed within 30 days of the date you receive this decision. It should clearly identify the decision being appealed. If possible, attach a copy of this decision. You must send copies of your notice of appeal to: (1) the Assistant Secretary – Indian Affairs, 4140 MIB, U.S. Department of the Interior, 18<sup>th</sup> and C Streets, N.W., Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Interior Board of Indian Appeals will notify you of further appeal procedures.

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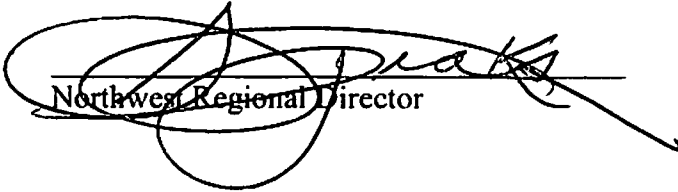
RECOMMENDED:

  
Realty Specialist, Northwest Regional Office

5/20/2014  
Date

I attest that I have reviewed this transaction to convert from fee to trust a tract for the Confederated Salish and Kootenai Tribes and the case file is documented and in compliance with all of the above stated facts and regulations. I further state that I will not approve this transaction until I have received satisfactory title evidence in accordance with Section 151.13 of Title 25 of the Code of Federal Regulations.

ATTEST AND APPROVE:

  
\_\_\_\_\_  
Northwest Regional Director

MAY 29 2014

\_\_\_\_\_  
Date