



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**DEC 29 2023**

The Honorable Peter S. Yucupicio  
Chairman, Pascua Yaqui Tribe  
7474 S. Camino de Oeste  
Tucson, Arizona 85757

Dear Chairman Yucupicio:

On March 22, 2023, the Pascua Yaqui Tribe of Arizona (Tribe) submitted a written request<sup>1</sup> to the Secretary of Interior to take certain fee lands owned by the Tribe into trust status for the purpose of gaming pursuant to the Old Pascua Community Land Acquisition Act of 2022, Pub. L. 117-275, 136 Stat. 4184 (2022) (the 2022 Act). The lands consist of parcels totaling approximately 25.56 acres (the Parcels) located off-reservation within the City of Tucson and are within the “Compact-Designated Area” as defined in Section 2 of the 2022 Act.<sup>2</sup>

## **Decision**

As discussed below, the Department of the Interior (Department) has determined that Congress mandated the trust acquisition of the Parcels pursuant to Section 3 of the 2022 Act. The Parcels are also eligible for gaming under the Indian Gaming Regulatory Act (IGRA)<sup>3</sup> pursuant to Section 5(a)(2) of the 2022 Act.

## **Background**

The Tribe is a federally recognized Tribe<sup>4</sup> with a 2,216-acre Reservation southwest of Tucson, Arizona, recognized pursuant to the Act of September 18, 1978, Pub. L. 95-375, 48 Stat. 984.<sup>5</sup> The 2022 Act was enacted in response to the Tribe’s need to develop a larger land base to accommodate the needs of its members.<sup>6</sup> The 2022 Act requires that, upon the Tribe’s request, the Secretary of Interior shall accept and take into trust for the benefit of the Tribe, subject to all valid existing rights, any land within the “Compact-Designated Area” that is owned by the Tribe. The term “Compact-Designated Area” means the area south of West Grant Road, east of Interstate 10, north of West Calle Adelanto, and west of North 15<sup>th</sup> Avenue in the City of Tucson, Arizona, as specified in the Pascua Yaqui Tribe – State of Arizona Amended and Restated

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<sup>1</sup> Request dated March 21, 2023, submitted by Peter S. Yucupicio, Chairman, Pascua Yaqui Tribe to Deb Haaland, Secretary, U.S. Department of the Interior (Tribe’s Request).

<sup>2</sup> See Exhibit C of the Tribe’s Request; See also Memorandum dated September 12, 2023, from Regional Director, Western Region to Director, Office of Indian Gaming at p. 1.

<sup>3</sup> 25 U.S.C. §§ 2701-2721 (October 17, 1988).

<sup>4</sup> See 87 Fed. Reg. 4636 (January 28, 2022), Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs.

<sup>5</sup> See Tribe’s Request, Exhibit A.

<sup>6</sup> See Tribe’s Request at p. 2.

Gaming Compact.<sup>7</sup> The Parcels are inside the boundaries of the area described in the Act as the “Compact-Designated Area”.<sup>8</sup>

### **Mandatory Acquisition Under the Act**

Statutory authority is required for the United States to accept real property into trust on behalf of the Tribe.<sup>9</sup> Such authority may be discretionary or mandatory. Mandatory acquisitions are not subject to the discretionary criteria listed in the Department’s implementing regulations for land acquisitions at 25 C.F.R. §§ 151.10 and 151.11. Instead, mandatory acquisitions are either “flatly required” by the terms of the applicable statute, turn on the absence of certain legal impediments, or require the occurrence of certain events.<sup>10</sup>

Section 3 of the Act provides clear, mandatory statutory authority to take the Parcels into trust, stating that, “Upon the request of the Tribe, the Secretary shall accept and take into trust for the benefit of the Tribe, subject to all valid existing rights, any land within the Compact-Designated Area that is owned by the Tribe.” Therefore, the trust acquisition is mandatory because the Parcels are located within the Compact-Designated Area and are owned in fee by the Tribe.

### **Gaming Under IGRA**

Section 4 of the 2022 Act provides that gaming conducted by the Tribe within the Compact-Designated Area is subject to IGRA. Once taken into trust, the Parcels are eligible for gaming under IGRA because they fall within the definition of the term “Indian lands” in Section 2 of IGRA, 25 U.S.C. § 2703.<sup>11</sup> In addition, the Parcels are not subject to the IGRA’s restrictions on lands acquired in trust after October 17, 1988, because Section 5(a)(2) of the 2022 Act provides that land placed into trust pursuant to the Act shall be deemed to have been acquired and taken into trust on September 18, 1978.

### **Title Evidence**

The Bureau of Indian Affairs’ (BIA) title review requirements are governed by the Department’s implementing regulations for land acquisitions at 25 C.F.R § 151.13. However, in a Memorandum dated April 6, 2012, to all BIA Regional Directors and Superintendents, the Assistant Secretary – Indian Affairs determined that 25 C.F.R. § 151.13 does not apply to mandatory trust acquisitions. Instead, the Memorandum instructs that title determination for mandatory trust acquisitions shall require current evidence of title ownership from the Tribe, demonstrating that the interest is owned by the Tribe and detailing how it was acquired. This

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<sup>7</sup> See Section 2 of the 2022 Act, Tribe’s Request, Exhibit B.

<sup>8</sup> See map in Exhibit C of the Tribe’s Request; *see also* Regional Director’s Memorandum at p. 1.

<sup>9</sup> 25 C.F.R. § 151.3

<sup>10</sup> See *State of Minnesota v. Acting Midwest regional Director*, 47 IBIA 122, 126 (2008), *aff’d*, 604 F.Supp.2d1252 (D. Minn. 2009). See also Bureau of Indian Affairs, *Acquisition of Title to Land Held in Fee or Restricted Status (Fee to Trust Handbook)*, Sec. 3.1.3 (“Mandatory Trust Acquisitions”) dated June 28, 2016.

<sup>11</sup> The term “Indian lands” means (A) all lands within the limits of any Indian reservation; and (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power. 25 U.S.C. § 2703(4).

evidence should include an abstract of title or a title commitment dating from the time the interest was acquired in fee ownership by the Tribe.<sup>12</sup> The Tribe has satisfied these requirements by providing ALTA Commitments for title insurance for the Parcels in Exhibit E of the Tribe's Request, and warranty deeds for the Parcels in Exhibit F of the Tribe's Request.

### **Environmental Due Diligence**

It is well-established that the environmental review requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.* are not applicable to mandatory acquisitions.<sup>13</sup> Therefore, trust acquisitions made pursuant to mandatory acquisitions statutes, as is the case here, need not comply with NEPA.

### **Conclusion**

As mandated by the Act, the Department will acquire the approximately 25.56-acre Parcels in trust for the Tribe. Consistent with applicable law, the Regional Director will be instructed to immediately record the land in trust. The Parcels are eligible for gaming under IGRA.

Sincerely,



Bryan Newland  
Assistant Secretary – Indian Affairs

<sup>12</sup> See Memorandum from Assistant Secretary – Indian Affairs to Regional Directors and Superintendents, dated April 6, 2012, *Updated Guidance on Processing Mandatory Trust Acquisitions*; see also *Fee to Trust Handbook*, Section 3.1.3.

<sup>13</sup> See AS-IA 2012 Memorandum at 5, citing *Sierra Club v. Babbitt*, 65 F.3d 1502, 1512 (9<sup>th</sup> Cir. 1995) (NEPA only applies to discretionary agency actions).