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Attorneys for Confederated Salish and Kootenai Tribes

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA, MISSOULA DIVISION

CONFEDERATED SALISH AND
KOOTENAI TRIBES,

Plaintiff,

v.

LAKE COUNTY BOARD OF
COMMISSIONERS and LORI
LUNDEEN,

Defendants.

Cause No. CV 19-90-M-DLC

AMENDED COMPLAINT

Plaintiff Confederated Salish and Kootenai Tribes (“CSKT”) bring this complaint for declaratory judgment.

PARTIES AND LAND

1. Plaintiffs are a federally-recognized confederation of Indian tribes with a government operating in accordance with the Indian Reorganization Act of 1934, 25 U.S.C. § 461, et seq. The CSKT reserved from their aboriginal territory the Flathead Indian Reservation (“FIR”) as their exclusive and permanent homeland pursuant to the Hellgate Treaty of July 16, 1855, 12 Stat. 975 (1855).
2. Defendant Lake County Board of Commissioners is the elected governing body for Lake County, a political subdivision of the State of Montana. The Board oversees provision of services to the citizens of Lake County. The Board reviews and approves subdivision proposals, constructs and maintains certain roads, or authorizes construction of certain roads.
3. Defendant Lori Lundeen is the owner of 40 acres of rural land located west and immediately adjacent to trust title land owned by the CSKT. Lundeen proposed a 60-lot RV subdivision (“Wild Horse RV Resort Subdivision”) with access through platted and undeveloped roads within the town site of Big Arm, Montana (“town site”). To the best information and belief of the CSKT, the undeveloped access roads at issue traverse CSKT-owned trust title land. The Lake

County Board of County Commissioners granted conditional approval of the subdivision.

4. The Big Arm town site is described on the 1913 plat as Government Lot 1 and 2 in the S2NE and SE of Section 33, Township 24 North, Range 21 West.

JURISDICTION AND VENUE

5. Federal question jurisdiction exists under 28 U.S.C. § 1331. Jurisdiction also arises under 28 U.S.C. § 1362, as a civil action brought by an Indian tribe and the matter in controversy arises under the Constitution, laws, and treaties of the United States. Under the Declaratory Judgement Act, an actual controversy exists concerning the property rights of the parties within the jurisdiction of the Court. 28 U.S.C. §§ 2201-02.

6. Venue is proper in Missoula Federal District Court pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 1362. Venue is also proper under Civil Rule 3.2 of the Local Rules of Procedure of the United States District Court for the District of Montana.

FACTS

A. Flathead Indian Reservation

7. Prior to July 16, 1855, the CSKT held aboriginal title to much of present day Montana, including what is now the FIR. *Confederated Salish and Kootenai Tribes v. U.S.*, 193 Ct. Cl. 801, 437 F.2d 458 (1971).
8. The 1855 Treaty of Hellgate (July 16, 1855), 12 Stat. 975, caused no break in the chain of Tribal title to Reservation lands. The FIR was reserved by and for the CSKT; title went directly from CSKT aboriginal title to trust title held by the United States for the exclusive use and benefit of the CSKT.
9. Commonly called the Flathead Allotment Act (“FAA”), the Act of Apr. 23, 1904, Pub. L. No. 58-159, 33 Stat. 302 (1904), was enacted in spite of decades of express CSKT opposition to allotting the FIR.
10. The FAA, as amended, is the preemptive federal law on land title on the FIR.
11. The 1904 FAA forced the allotment of the FIR to individual Indians. The act was implemented by a Presidential Proclamation dated May 22, 1909, (3 Kapp. 655), and unallotted CSKT lands were opened to non-Indian entry under unspecified “general provisions of the homestead, mineral, and town-site laws of the United States.” 33 Stat. at 303-04.

12. Section 16 of the FAA makes clear that when opening CSKT lands for non-Indian entry the United States, through the Secretary of Interior (“SOI”), shall “act as trustee for said Indians.” 33 Stat. at 305-06.

13. Section 17 of the FAA, Pub. L. No. 59-258 § 17, 34 Stat. 325, 354 (1906), authorized the platting of specific town sites. Section 17 also gave the SOI discretionary authority to plat other town sites within the FIR. All town sites were to be platted, appraised and disposed of in accordance with Section 2381 of the United States Revised Statutes.

14. Section 2381, a Public Lands Act from 1863, is not specific to Montana Indian Reservations or Indian Country generally. It permits town sites reserved from public lands to be platted into lots, appraised and offered for sale to the public. Rev. Stat. § 2381 (Mar. 3, 1863).

15. The sole congressionally directed divestiture of CSKT ownership for town site lands contained in the FAA, as amended, applies to sale of residential *lots*, and excludes sale of roads, alleys and parks. 34 Stat. at 351.

16. When the town site of Big Arm was platted, the lands in question here were held in trust by the United States for the CSKT. Congress authorized the SOI, acting in his trustee capacity to the CSKT, to convey title to the lots within the

town site. Congress did not authorize the Secretary to transfer ownership or regulatory authority of town site roads, alleys, or public parks to any entity.

17. Section 17 of the FAA provides only for the sale of lots at public auction under Section 2381. The roads, alleys and public parks within the town site have remained in trust for the CSKT.

18. The Acts of Mar. 3, 1901, ch. 832, 31 Stat. 1084, 25 U.S.C. § 311 (hereinafter “1901 Act”) and Mar. 4, 1915, Pub. L. No. 63-310, 38 Stat. 1188, 1189 (1915) (hereinafter “1915 Act”), provide for the opening or laying out of public roads on Indian Reservations. Section 2 of the 1915 Act is specific to the laying out of public roads on Montana Indian Reservations.

19. Section 2 of the 1915 Act requires Montana counties to undertake a six-step process to acquire the right to dedicate public access routes on Montana Indian Reservations, pursuant to Montana law. 38 Stat. at 1189.

20. The steps are cumulative; all must be accomplished. First, Section 2 requires that the county demonstrate that it has “jurisdiction over any territory” to be impacted by county creation of a public road within the Reservation. Second, the county must comply with steps “in accordance with the laws of the State of Montana relating to the laying out and opening of public roads.” Third, the county must notify the landowner, here the U.S. in trust for the Tribes “as provided in the

State laws.” Fourth, the county must “serve notice upon the superintendent in charge of the restricted Indian lands upon which it is proposed to lay out a public road.” Fifth, the county must provide the superintendent “with a map drawn on tracing linen showing the definite location and width of such proposed road.”

Finally, “no such road shall be laid out until after it has received the approval of such superintendent.” *Id.* The 1901 Act and its implementing regulations essentially require completion of the same steps. There has been no compliance with these laws with respect to roads in the Big Arm Townsite.

B. Town Site of Big Arm, Montana

21. Pursuant to the opening of the FIR, and in anticipation of non-Indian settlement, the General Land Office ordered a plat for the town site of Big Arm on June 20, 1910. *See, Exhibit A: 1913 Big Arm Plat.*

22. Said plat encompassed 206.66 acres, more particularly described as Government Lots 1 and 2 in the S2NE and the SE of Section 33, T24N, R21W.

The plat was completed on August 20, 1913.

23. Subsequently, the Department of Interior approved the plat on Sept. 4, 1913. The plat lacks any dedication of roads, alleys or parks for public use.

24. The 1913 plat states that it was prepared in accordance with the Act of June 21, 1906 (34 Stat. 354), which refers to Section 17 of the FAA, and the Act of Aug.

24, 1912 (37 Stat. 527), granting an easement to lands bordering or adjacent to Flathead Lake for purposes of irrigation or development of water power. The easement does not pertain to roads within the town site.

25. Between 1930 and 1931, the Commissioner of Indian Affairs and FIR Superintendent discussed the lack of demand for land within the town site, the fact that it was not a mandatory town site under Section 17 of the FAA, vacating 80 acres of the town site, and reappraisal of the lots available for sale. Consequently, the S2SE of Section 33, T24N R21W was to be released for Indian allotment, thus removing the 80 acres from the town site.

26. Through the authority granted in the Indian Reorganization Act of 1934, the SOI began restoring surplus lands to Indian Tribes. 25 U.S.C. § 5103. In 1956, noting a lack of public demand for lots in the town site, the Secretary of Interior restored to tribal ownership all undisposed lots within the town site, subject to any valid existing rights.

27. The BIA Title Status Report for T6001 (Certified Aug. 30, 2018) identifies only two valid existing rights-of-way specifically for highway construction. The highway rights-of-way apply to Montana Highway 93 and are not at issue here.

28. The BIA Title Status Report reflects no rights-of-way granted pursuant to the 1901 Act or the 1915 Act, which set out the process for a Montana county to establish a public road on a Montana Indian Reservation.

C. Approval of the Wild Horse RV Resort Subdivision

29. Despite concerns over legal access through the town site raised by Janet Camel, CSKT's representative to the Lake County Planning Board, the Planning Board recommended approval of the RV resort on Apr. 11, 2018. Developer Lori Lundeen and Lake County Commissioner Gale Decker were present and participated in the discussion.

30. Lake County Board of Commissioners subsequently issued a conditional approval of the Wild Horse RV Resort Subdivision on May 16, 2018, with a condition that legal access be investigated by the county's Planning Department and Lundeen to confirm the county considers the access legal, prior the recording of the final subdivision plat.

31. The primary access to the subdivision, as conditionally approved, would be gained by a road identified as Seventh Street on the town site plat, with two secondary access roads identified as F and H Streets.

32. With the exception of a portion of road in front of Block 17, the entire route proposed and approved by Defendants is surrounded by Tribal land held in trust for the CSKT by the United States and undeveloped.

33. CSKT compiled research then submitted to Lake County Board of Commissioners a written response to the conditional approval on Aug. 2, 2018. CSKT requested land title records or other documents that may resolve the issue in an amicable manner. CSKT received no response to this request.

34. CSKT reiterated their concerns as to legal access by sending comments to the Lake County Planning Department on Jan. 10, 2019, pursuant to a notice the developer sought to amend the conditional approval. CSKT requested a title policy or land title records indicating County authority or ownership.

35. The amendment eliminated the request for access over F and H Street and instead substituted E Street.

36. On Feb. 13, 2019, CSKT promptly responded to the Lake County Attorney's request for information dated Feb. 8, 2019. At that time, CSKT again requested records that justify the County's assertion of ownership or regulatory authority over undeveloped land within the town site. In addition, CSKT requested an un-redacted copy of a 1912 document (provided to Janet Camel at the Jan. 31, 2019 hearing) along with the County Clerk's postings mentioned in the

1912 document. To date, CSKT is unable to determine if such a response was received from the County.

COUNT 1

37. The CSKT reallege and incorporate all paragraphs 1-36 above.

38. An actual and substantial controversy exists concerning the title of the land in question. Declaratory judgement is appropriate under 28 U.S.C. §§ 2201-02.

39. CSKT's trust title to the subject lands derives from the Treaty of Hellgate. The Treaty caused no break in the chain of title to FIR lands; title went from aboriginal title to trust title held by the United States for its beneficiary CSKT.

40. The town site lands remained in trust title until lots were sold. Congress permitted the SOI to act as trustee for the Indians in the sale of residential lots within the town site.

41. The 1901 Act and the 1915 Act specifically apply to this situation and describe the process for a county to acquire the right to dedicate public access routes on a Montana Indian Reservation. According to the Bureau of Indian Affairs Title Status Report, no rights-of-way were recorded under the authority of this Act within the town site.

42. By 1931, the Commissioner of Indian Affairs acknowledged a lack of demand for land within the former town site. Consequently, 80 acres (S2SE of Section 33,

T24N, R21W) were eliminated from the platted town site for purposes of allotment to a Flathead Indian.

43. In 1956, the Secretary of Interior again recognized the lack of demand for the lots within the town site and restored the remaining unsold lots to the FIR.

44. In the intervening 43 years, the Defendants took no steps necessary to assume authority or ownership over the town site roads, alleys or public parks.

45. This action arises out of the Lake County Board of Commissioners conditional approval of the access routes through the town site and Lori Lundeen's commencement of road construction, despite known issues regarding legal access over land held in trust title for the CSKT.

46. CSKT has provided evidence of their possessory interest, while the Defendants have failed to offer any evidence supporting their claim to regulatory authority or an ownership interest of the subject land.

47. The roads, alleys and public parks designated by the 1913 plat for the town site were not alienated from the FIR at any time and continue to be held in trust for the benefit of the CSKT and no public right of way has ever been established on E Street or the other roads and alleys in the Big Arm Townsite, except those addressed above in Paragraph 27.

PRAYER FOR RELIEF

WHEREFORE, the CSKT request that the Court enter the following order:

- A. Judgment quieting Plaintiff's beneficial interest to the real property, including streets, alleys, and public reserves (held in trust by the United States for the benefit of the CSKT) in the Big Arm Townsite, and determining that Defendants have no right, title, or interest in or to the real property or any public right of way;
- B. For such other and further relief as the Court deems just and proper.

Respectfully submitted this 19th day of September, 2019.

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/s/ *James H. Goetz*

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