

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT**

Twin Falls District
Shoshone Field Office
400 West F Street
Shoshone, Idaho 83352

CATEGORICAL EXCLUSION

NEPA No. DOI-BLM-ID-T030-2012-0027-CX

BACKGROUND

BLM Office: Shoshone Field Office. Lease/Serial/Case File No.: IDI-37287

Proposed Action Title/Type: Gimlet – Magic Triangle Color-of-Title

Location of Proposed Action: Boise Meridian, Blaine County, Idaho; Township 3 North, Range 18 East, Section 8: Lots 1-13.

Description of Proposed Action: The Magic Triangle, LLC, (Applicant) has applied to the Bureau of Land Management, Shoshone Field Office (BLM), to acquire a 1.14 acre parcel of public land through a Class 1 Color-of-Title claim pursuant to the Color-of-Title Act (43 U.S.C. 1068, and 1068a). The Color-of-Title Act provides that any individual, group, or corporation who has evidence giving the appearance of having title to public lands, which are administered by the BLM, and legal title to the lands remains vested in the United States, may file a color-of-title claim. If the landowner(s), for at least 20 years, have treated the public lands as their own possession without knowing it was public land and have improved the land during that time, it is filed under a Class 1 claim. Under this type of claim, the claimant(s) must demonstrate that they have made valuable improvements upon the land or have reduced part of the land to cultivation.

Qualifications:

The applicant appears to qualify under a Class 1 Color-of-Title claim, having demonstrated that they have held the property in peaceful adverse possession for more than 20 years and upon which valuable improvements have been placed. The County assessor's records show that the claimant(s) have paid taxes on the property for more than the past 20 years. The BLM has investigated the chain of title for the claimants and verified claim of peaceful adverse possession. The subject parcel has been field inspected and is currently encumbered with improvements including portions of houses, decks, manicured lawns with underground sprinkler systems, and areas that have been cleared and planted with native landscaping as well as environmental art and river bank stabilization. It's anticipated that the current use would continue in the future.

History:

The Applicant (representing a group of landowners affected by a re-survey) owns approximately 14 acres of private land that adjoins the subject parcel on the north side. The subject parcel of public land was thought to be private land for 21 to 29 years (or from the early 1980's) until 2010 when the BLM Cadastral Survey conducted a resurvey of the area. During the course of the fieldwork for the resurvey an original monument was located for the ¼ section corner of sections 8 and 17. This is one of the corners that control the location of all property boundaries in section 8. See Attachment A, Gimlet Magic Triangle Color-of-Title Project Location Map.

The original monument had not been located during local surveys in the area in the 1970's; including the surveys for the Willowood and Grove Creek subdivision as well as the Magic Mountain Road area. As a result, the southern most boundary identified by those surveys (i.e., where the private lands abut public lands) incorrectly located the common boundaries between the public lands and the private lands. The previous use of the subject parcel was in conjunction with the adjacent private lands.

Valuation:

The regulations contained in 43 CFR 2541.4 state that the parcel will be appraised on the basis of its fair market value, but that consideration will be given for 1) improvements made to the property and 2) equities to the applicant in determining the price paid by the applicant for the parcel.

The subject parcel was valued at \$185,000.00 (excluding the improvements), based on an appraisal prepared by Henri LeMoyné and approved by the Department of Interior – Office of Valuation Services (OVS) on July 3, 2012. The BLM has determined that the documented price paid by the applicant for the parcel (adjusted to reflect the land value), and the other equities to the applicant exceed the market value of the subject parcel. However, the Act requires that the property be sold for no less than \$1.25 per acre. Therefore, the total value for the 1.14 acre parcel is established at \$1.43.

Upon approval of the application, subsequent conveyance of the property would be made under the authority of the Color-of-Title Act of December 22, 1928 (45 Stat. 1069, 43 U.S.C. 1068, 1068a), as amended, and processed in accordance with federal regulations contained in 43 CFR 2540. Any patent issued will contain the following terms, conditions and reservations:

1. A reservation of a right-of-way to the United States for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);
2. A reservation to the United States of all mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe;
3. A condition that the conveyance be subject to all valid existing rights of record;
4. A notice and indemnification statement under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9620(W)), indemnifying, and holding the United States harmless from any release of hazardous materials that may have occurred; and
5. Additional terms and conditions that the authorized officer deems appropriate.

LAND USE PLAN CONFORMANCE

Land Use Plan Name: Sun Valley Management Framework Plan (MFP), as amended

Date Approved/Amended: 1982, amended by the Amendments to Shoshone Field Office Land Use Plans for Land Tenure Adjustment and Areas of Critical Environmental Concern (Amendment) approved August 2003.

The proposed action is not specifically provided for in the MFP. However it does fall within the guidance for resolving unauthorized use pursuant to current laws, regulation and priorities (Amendment, Pg 15). The Amendment also states that disposal of public lands to private landowners for small parcels due to a resurvey by the United States Department of Interior Cadastral Survey (Amendment, Pg 11,13) is allowed.

COMPLIANCE WITH NEPA

The proposed action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9 E(6). 516 DM 11.9 E(6) states: "Resolution of Class 1 Color-of-Title cases." The Applicant's application has been reviewed and a determination made from the supporting evidence that their claim meets the criteria for a Class 1 Color-of-Title Claim. Therefore, the proposed action qualifies to be processed as a categorical exclusion.

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and none of the extraordinary circumstances described in 516 DM 2 apply. See Attachment B, Gimlet Magic Triangle Color-of-Title Categorical Exclusion Review Sheet.

Based on my review of the project described above and field office staff recommendations, I have determined that the project is in conformance with the applicable land use plan and is categorically excluded from further environmental analysis.

SIGNATURE

Authorizing Official: /s/ Holly Hampton Date: July 6, 2012

Name: Holly Hampton

Title: Acting Field Manager

CONTACT PERSON

For additional information concerning this Categorical Exclusion, contact Tara Hagen, Realty Specialist, at 400 West F Street, Shoshone, Idaho; (208) 732-7205; or via email at thagen@blm.gov.

ATTACHMENTS

Attachment A, Gimlet Magic Triangle Color-of-Title Project Location Map

Attachment B, Gimlet Magic Triangle Color-of-Title Categorical Exclusion Review Sheet.