



OFFICE OF THE GOVERNOR

January 11, 2010

Mr. Dale Risling
Acting Regional Director
United States Department of the Interior
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

Re: Pala Band of Luiseno Mission Indian's
Supplemental Notice of (Non-Gaming) 49.63 Acre Land Acquisition Application

Dear Mr. Risling:

This is in response to a supplemental notice received by the Governor's Office regarding the Pala Band of Luiseno Mission Indian's (Pala or Band) pending application to have the United States of America accept the conveyance of approximately 49.63 acres of property located in San Diego County in trust for the Band (Trust Acquisition).

From the materials submitted with the application, it is our understanding that the proposed Trust Acquisition consists of two parcels of property (Assessor's Parcel Nos. 110-090-19 and 110-090-20). These parcels are: (a) contiguous to the western boundary of Pala's Gaming Facility; (b) immediately north of the San Luis Rey River; (c) abut and have frontage along their length with State Highway 76; and (d) are surrounded (according to the Band's application) by other fee lands owned by the Band to the West and South.

Pala's application states that the Trust Acquisition will not be developed, but instead will be utilized as a buffer between the Band's reservation and other non-tribal development. Although the notice of application states that the land is undeveloped, Pala's application acknowledges that a home and other improvements are located on Parcel No. 110-090-19 which is leased to the Southern California Tribal Chairman's Association.

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The Governor's Office objects to the approval of the Trust Acquisition at this time on the grounds that: (a) Pala's application does not demonstrate any present need for this Trust Acquisition; (b) it is not apparent that any harm will accrue to the Band if the application is denied; and (c) the removal of State land use jurisdiction over this property containing valuable habitat for the federal endangered southern steelhead trout could have direct adverse impacts on environmentally sensitive state resources.

FACTUAL BACKGROUND

Pala's existing reservation consists of 12,175.58 acres in tribal and individual trust. It operates the Pala Casino Spa and Resort and recently completed a significant expansion of that property. In addition, the Band currently owns approximately 61 separate parcels in San Diego County in fee and, according to published reports, is in the process of acquiring the Warner Springs Resort totaling 2,522 acres.

According to the Band's Environmental Impact Report for its recent Gaming Facility expansion, the only non-tribal development project within two miles of the Trust Acquisition is the proposed Warner Ranch subdivision involving the construction of up to 900 residences composed of estate lots and multi-family condominiums on 806 lots over 531.61 acres. This project is located north of Highway 76 directly across from the Band's Gaming Facility. It is our understanding that the Band has fee lands to the West and the South of the Trust Acquisition.

ANALYSIS

The Department of the Interior's policy for trust acquisitions provides that land may be taken in trust when the Secretary of the Interior determines that the "acquisition is necessary to facilitate tribal self-determination, economic development, or Indian housing." (25 C.F.R. § 151.3(a)(3).) In this case, the Band has not indicated that the proposed Trust Acquisition will be utilized to provide needed housing for its members. Additionally, it is our position that there has been no showing that the United States' failure to accept the proposed Trust Acquisition will prevent the Band from using the property as a buffer from non-tribal development. We do believe, however, that this Trust Acquisition, if approved, could have a significant adverse impact on the State's interest in protecting a sensitive state resource.

A. The Band Has Not Demonstrated Immediate Need or Necessity As Required by 25 U.S.C. § 465 and 25 C.F.R. § 151.3(a)(3).

The application recognizes that the Band currently exercises sovereign control over 12,175.58 acres of land. As previously stated, nothing in its application indicates that the Band requires the Trust Acquisition for the construction of additional housing for its members. Pala's application states that this land will not be utilized for any development, but rather is intended as

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a buffer from non-tribal projects. Highway 76 currently acts as a buffer between Pala's Gaming Facility and the only proposed non-tribal development within two miles. Moreover, the Band's other fee lands to the West and South of the Trust Acquisition and its Gaming Facility provide buffers between the Trust Acquisition and any non-tribal development. As the fee owner of this land, the Band is able to preclude development and thus maintain it as a buffer without a conveyance to the United States. Accordingly, we do not believe that the Band has met its requirement for demonstrating an immediate need for the Trust Acquisition.

B. Any Benefit to the Band From this Proposed Trust Acquisition is Outweighed by the Adverse Effects Approval of this Trust Application Could Have on the State.

Approval of the Band's application absent a showing of immediate need or necessity could adversely affect the State.

The California Department of Fish and Game recently provided the following comments in a letter, dated December 10, 2009:

By placing these two parcels in Trust they will no longer be subject to the rules and regulations of the County of San Diego and/or the State of California, and the Department would no longer be able to affect management decisions related to sensitive biological resources on these parcels. The western-most parcel proposed for acquisition encompasses a short reach of Gomez Creek, a tributary of the San Luis Rey River. The Department's concern with bringing this parcel into Trust is the potential to impact the habitat of the federally-endangered southern steelhead trout (*Oncorhynchus mykiss*). The Department is assisting the federal government (National Marine Fisheries Service) in working toward the recovery of this species in southern California. An important focus of that recovery effort is working with local jurisdictions and landowners to restore or enhance steelhead passage and habitat along the San Luis Rey River and its major tributaries. The removal of barriers to fish passage is a key factor in the recovery plan. Gomez Creek is one of the few tributaries of the San Luis Rey River that does not have an impassable fish barrier where State Route 76 crosses the creek. Fish passage is still possible up this creek under moderate storm events. The Department's concern is that once the parcels are accepted into Trust and become a part of the Pala Reservation, alterations to the creek by the tribe could occur and there would be no recourse to maintain or enhance passage for the steelhead. In addition, Gomez Creek itself has had steelhead trout observed in it, and water temperature data collected by Trout Unlimited indicates that the creek is potentially supportive of summer rearing and adult holding for this species.

Therefore, the Band's jurisdiction over Gomez Creek through this Trust Acquisition could result in the State's inability to protect a state and federal endangered species. Because Pala can

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achieve its objective of creating a buffer even if its trust application were denied, we believe that the threat to the State's legitimate interests in protecting a sensitive state resource outweighs a threat to Pala's interests stemming from the Bureau's denial of the Band's trust application.

CONCLUSION

For the foregoing reasons, the Governor's Office respectfully objects to the approval of Pala's Trust Acquisition at this time. Please note that these comments do not constitute the totality of the State's comments on this application. Other state agencies with specific expertise on environmental and other issues raised by the Trust Acquisition may comment as well. Thank you for the opportunity to comment on this application. If you have any questions concerning this comment please feel free to contact this office.

Sincerely,

A handwritten signature in blue ink that reads "Andrea Lynn Hoch". The signature is fluid and cursive, with the first name "Andrea" being the most prominent.

ANDREA LYNN HOCH
Legal Affairs Secretary