

EXHIBIT H



OFFICE OF THE GOVERNOR

July 26, 2010

Via Facsimile (916) 978-6099 & U.S. Postal Service

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: Draft Environmental Assessment
Proposed Fee-to-Trust Transfer for the Tule River Indian Tribe

Dear Mr. Risling:

The Governor's Office has received a notice of availability of the Draft Environmental Assessment (DEA) for the proposed fee-to-trust acquisition of 17 parcels of property totaling approximately 40 acres of land (Subject Property) on behalf of the Tule River Indian Tribe (Tribe or Tule River). In February 2010, the Governor's Office submitted comments regarding the Tribe's March 2002 application to have the Subject Property conveyed to the United States of America in trust for the Tribe. The Bureau of Indian Affairs issued notice in July 2003 and reissued notice in December 2009. (See February 2010 comment letter, attached Exhibit A.) The Subject Property is located within the city limits of the City of Porterville (City) in an industrial zone adjacent to the City's airport. The Tribe's 55,396 acre Reservation is located approximately 20 miles away.

Tule River's 2003 trust application indicates that the Tribe intends to utilize the land for economic development activities. These uses include a lease for Indian Health Services, a lease to the United States Department of Agriculture Forest Service, a lease for the Eagle Mountain Casino and a lease or other arrangement for Tule River Aero Industries, which maintains an aircraft manufacturing and repair facility at the City's airport. This enterprise also manufactures

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and installs fixed wing and helicopter avionics and kits to increase aircraft speed and performance. Two of the 17 parcels comprising the Subject Property have development on them while the remaining 15 parcels lie vacant.

In December 2009, the Tribe opened a new 20,000-square foot hanger at the City's airport that is capable of housing five general aviation airplanes for private charter flights and air attacks on forest fires. Recent news articles report that the Tribe has restructured the leadership structure of the Tule River Economic Development Corporation, the Tribal non-profit corporation that operates the enterprise on the Subject Property, and that the Tribe's aircraft operations are expanding.

In April 2010, the City and the Tribe entered into a Cooperation Agreement (Agreement) regarding future development of the Subject Property. The Agreement revokes the March 2008 Memorandum of Understanding between the City and the Tribe that envisioned relocation of the Tribe's casino to the subject property. The Agreement provides that the Tribe will not engage in any new development, construction or conduct any new operations on the land unless a written agreement is executed by the City and the Tribe that assures consistency with the City's General Plan, regulations, and policies in effect at the time of the proposed development. (Agreement, attached to the DEA, ¶ 1.) As an agreement with an Indian tribe that encumbers Indian land, it appears that the Agreement is one that requires the Secretary of the Interior's approval pursuant to 25 U.S.C. § 81(a). There is no information in the DEA regarding the Secretary's approval of the Agreement.

Additionally, the Agreement does not address the potential use of the Subject Property for gaming purposes. As we noted in our February 2010 letter, the City and the Tribe have previously publicly identified the Subject Property as a potential casino site and sought legislation allowing redevelopment of an adjacent 1,200 acres pursuant to a joint powers agreement. Although the DEA states that the Agreement "creates a legally binding process in which future actions will be subject to the City's general plan and land use regulations and policies," the Agreement does not specifically restrict the Subject Property from use for casino and casino-related purposes. If in the future a decision was made to develop the Subject Property as a potential casino site or for casino-related purposes, the City could revise the applicable zoning ordinances.

ANALYSIS

The Tribe's application states that it plans to utilize the land for the existing Tule River Aero Industries' purposes, warehouses, and unspecified "other future commercial development." The DEA does not provide any additional information regarding the proposed use of the Subject Property once it is taken into trust. Section 2.1.2 of the DEA states that "construction of future developments [is] not known at this time due to a combination of external issues" and that "the

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specific nature of future developments is speculative at this time as the financing options available are dependent in part on the trust conveyance of the property.” (DEA, p. 9.) The DEA also states that “there are no new or future changes in land use for the project parcels.” (DEA, p. 10.)

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, there has been no showing that the United States’ failure to accept this proposed trust acquisition will preclude the Tribe from developing any needed housing for its members in the future. Likewise, there has been no showing that a failure to take the land into trust will prevent Tule River from proceeding with the further expansion of Tule River Aero Industries. The reported expansion of Tule River Aero Industries appears to demonstrate that this economic development project can function successfully without trust status and federal supervision. Additionally, there has been no showing that this trust conveyance is essential to the Tribe’s ability to exercise sovereign authority.

Moreover, pursuant to 25 C.F.R. § 151.11(c), when land is being acquired for business purposes, the Tribe must provide a plan which specifies the anticipated economic benefits associated with the proposed use. The DEA provides no plans for the land. The only identified anticipated economic benefit provided to the Tribe if the land were held in trust would be the savings of the \$33,459.98 in property taxes the Tribe currently pays to Tulare County. (DEA, p. 23.) In discussing the “no action” alternative, the DEA states that the “project’s contribution to the economy of the Tribe and the City of Porterville may not be sustained unless an infusion of cash is obtained through trust status designation.” There are no details provided regarding how a cash infusion would result from the land being taken into trust status. As we commented regarding the Tribe’s application, the DEA provides no information regarding the specific economic benefits to the Tribe with the proposed use of the land.

Additionally, the Agreement between the City and the Tribe is portrayed in the DEA as limiting any future development to existing zoning purposes, which are currently light industrial. However, the Agreement does not preclude the City from changing the applicable zoning regulations in the future based on the past agreement between the City and the Tribe regarding relocating the Tribe’s casino to this land, it is possible that future zoning changes might result in a renewed attempt to use the land for casino or casino related purposes.

CONCLUSION

The DEA has not allayed the main concerns the Governor’s Office discussed in its February 10, 2010 letter regarding the Tribe’s application. We do not believe that there is enough information regarding the future use of the land to allow proper evaluation of the

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proposed economic benefit to the Tribe or to provide for a proper determination of whether the proposed acquisition meets the standards of the Department of the Interior's policy for trust acquisitions. Additionally, because the planned use of the Subject Property is not clearly defined, we do not believe that the DEA complies with the requirements of the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.

Thank you for the opportunity to comment on the draft environmental assessment. Other agencies within the State of California may have additional comments. Should you have any additional questions regarding this matter, please feel free to contact this office.

Sincerely,



ANDREA LYNN HOCH
Legal Affairs Secretary

Attachment