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**DEPARTMENT OF JUSTICE**



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August 12, 2014

**Via Facsimile & U.S. Mail**  
**(916) 978-6099**

Amy Dutschke  
Regional Director  
United States Department of the Interior  
Bureau of Indian Affairs  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825

Re: Notice of (Non-Gaming) Land Acquisition Application (56.79 acres), Berry Creek Rancheria of Maidu Indians of California

Dear Ms. Dutschke:

This letter is submitted on behalf of the State of California (State), at the behest of the Governor's Office, in response to the Notice of (Non-Gaming) Land Acquisition Application (Notice), dated July 3, 2014, regarding the application (Application) of the Berry Creek Rancheria of Maidu Indians of California (Tribe) to convey 56.79 acres of land currently owned in fee by the Tribe into federal trust for an eventual housing development project (Project). The land is located in Butte County, near the City of Oroville, and adjacent to State Highway 162 and Hildale Avenue. The State requested and was granted an extension until August 12, 2014 to comment on the Application. After review of the Application, the State makes the comments as set forth below. The comments in this letter are limited to the issues the Governor's Office has identified, and do not purport to identify potential issues observed by other agencies of the State with regard to their particular areas of expertise.

The State recognizes the legitimate need for tribal governments to obtain land and is respectful of the BIA's authority to make decisions regarding an Application to take land into trust pursuant to the federal statutory and regulatory framework. However, this framework requires that decisions be made only after careful identification and consideration of the impacts on the State and the affected local jurisdictions. These purposes cannot be achieved without

adherence to the procedures mandated by federal law. While the State is not opposed to the concept of trust acquisition for the purpose of Tribal housing, the State's comments are offered to ensure that the analytical process which supports a decision regarding trust acquisition complies with the requirements of federal law.

**The Application Cannot Be Approved as an On-Reservation Application Because the Majority of the Parcels Proposed for Acquisition Are Not Contiguous to the Tribe's Rancheria and the Application Has Failed to Demonstrate Compliance with the Requirements for an Off-Reservation Application**

The Application states that the proposed trust acquisition consists of five parcels totaling approximately 56.79 acres. The parcels are numbered APN 068-160-019, APN 068-160-066, APN 068-160-088, APN 068-341-030, and APN 068-341-017. While the Notice and the Application state that the parcels are contiguous to the Tribe's Rancheria, (Notice, ¶ 1, p. 2; Application, ¶ 4, p. 2.) a review of Butte County records indicates that only two of the parcels are contiguous to the existing Rancheria. The remaining three parcels are contiguous to each other and to one of the parcels contiguous to the Rancheria.<sup>1</sup>

Under the BIA's land acquisition policy, land may be taken into trust when it is adjacent to a tribe's reservation. (25 C.F.R. § 151.3(a).) For on-reservation land acquisitions, each parcel proposed to be conveyed in trust must be considered on the basis of whether it is contiguous to the reservation. (25 C.F.R. § 151.10.) If a parcel is not contiguous to the reservation, the application for that parcel must be considered an off-reservation acquisition subject to separate requirements. (25 C.F.R. § 151.11.) Since three of the five parcels are not contiguous to the Tribe's existing reservation and the Notice and Application presume that all of the parcels are contiguous to the reservation, the Application does not provide a sufficient basis under federal law for the proposed trust acquisition of those three parcels. As a result, the Application must be denied or, alternatively, the Application must be amended to include a discussion demonstrating compliance with the requirements of 25 C.F.R. § 151.11.

**The State Does Not Object to the Stated Purpose of the Project as Tribal Housing and the State Expects the Tribe to Use the Land for Tribal Housing as Described in the Application**

The stated purpose of the proposed trust conveyance is "to continue to expand the Tribe's land base to satisfy Tribal needs in the areas of Tribal self-determination and Indian housing." (Application, ¶ 5, p. 4.) The Application also states that the purposes of the proposed action are

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<sup>1</sup> The State notes that one parcel (APN 068-160-088) is across State Highway 162 from the other parcels.

additional Tribal housing as well as cultural and social preservation, expression, and identity, together with political self-determination.

The Application does not provide a detailed description of the Project. The Application includes the following description of the Project as the proposed action:

There are currently no specific plans for development of the subject parcels. However, the Tribal Council has established that 36 to 40 single-family dwellings are likely to be constructed on the property within the next 5 to 10 years.

(Application, ¶ 1, p. 5.) The Application further states that homes would eventually be constructed through various programs from the Native American Housing Assistance and Self Determination Act and/or private financing. The Application states that commercial development of the property is not “currently anticipated.” (Application, ¶ 4, p. 5.) The Application claims that existing Butte County zoning designations applicable to the fee parcels inhibit the Tribe’s ability to develop Tribal housing on the parcels. The Application concludes that the removal of the property from the Butte County tax rolls will have a negligible impact on the County tax base.

The Application does not provide a definitive time frame or development plan for the Project, however, the State understands from the Application that the purpose of the trust acquisition is Tribal housing. While the State does not agree with all of the conclusions stated in the Application, particularly with regard to the effect of existing zoning designations and the impact of the proposed trust acquisition on the County tax base,<sup>2</sup> the State does not object to the proposed trust acquisition to the extent that Tribal housing is the purpose of the trust acquisition. If the Application is eventually approved, the State expects the Tribe to use the parcels for Tribal housing as described in the Application.

### **Conclusion**

Since the parcels proposed for trust acquisition are not all contiguous to the existing Rancheria, the State believes that the Application must be denied or, alternatively, amended to demonstrate compliance with the requirements applicable to an off-reservation trust acquisition. While the State believes that the Application must be denied or amended to satisfy the requirements of federal law, the State does not object to the stated purpose of the trust acquisition to use the parcels for Tribal housing. Should the Application eventually be approved, the state expects the Tribe to use the land for Tribal housing as described in the Application

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<sup>2</sup> The State’s comments regarding the adverse economic impacts of the proposed trust acquisition were provided in its letter dated February 6, 2014 commenting on the Environmental Assessment for these same parcels of land. Those comments are applicable to the proposed trust acquisition and are incorporated by reference herein.

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Thank you for this opportunity to comment on the Application.

Sincerely,



JAMES G. WAIAN  
Deputy Attorney General

For KAMALA D. HARRIS  
Attorney General

JGW:cs

cc: James Edwards, Chairman, Berry Creek Rancheria of Maidu Indians of California (via U.S. Mail only)  
Joe Dhillon, Office of the Governor (via U.S. Mail only)