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Via Facsimile & U.S. Mail
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Amy Dutschke
Regional Director
United States Department of Interior
Bureau of Indian Affairs, Pacific Regional Office
2800 Cottage Way, Room 2820
Sacramento, California 95825

Re: Cloverdale Rancheria of Pomo Indians – Notice of (Gaming) Land Acquisition Application for 73.14 acres

Dear Ms. Dutschke:

This comment 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 (Gaming) Land Acquisition Application ("Notice") issued by the Bureau of Indian Affairs ("BIA") on April 12, 2012, regarding the application of the Cloverdale Rancheria of Pomo Indians ("Tribe") to have real property totaling 73.14 acres in Sonoma County ("Trust Acquisition") accepted into tribal trust.[1] One parcel of the Trust Acquisition is located in the incorporated area of the City of Cloverdale, California. (Tribe's Application to Acquire Land [for trust status], p. 7 ("Application")). Thank you for granting the State's request to extend the time within which to comment to June 15, 2012.

The State respectfully requests that this Trust Acquisition be denied because the Trust Acquisition contains parcels that are not contiguous to each other as stated in the Application and a portion of Parcel No. 116-310-044 is actually owned by the City of Cloverdale ("City"); the Trust Acquisition will create conflicts of land use since over half of the proposed acquisition is under Williamson Act contracts; the proposed Trust Acquisition cannot be adequately evaluated prior to issuance of a Final Environmental Impact Statement; the proposed Trust Acquisition will

[1] We note that the Notice itself does not indicate the acreage under trust consideration. The Tribe's Application to Acquire Land [for trust status], submitted December 31, 2010, indicates the proposal is for six parcels which total 64.48 acres. The Sonoma County Tax Assessor records for the six parcels in question, however, indicate a combined acreage of 73.14 acres.

result in a significant loss of tax revenue to the County of Sonoma ("County") and fails to consider future lost revenues to both the County and City that will result from the proposed development; and the acreage of the Trust Acquisition greatly exceeds the acreage of the Tribe's Rancheria such that it constitutes more than a "restoration" of tribal land, to the detriment of local and State jurisdictions.

BACKGROUND

The Cloverdale Rancheria was originally established in 1921 with 27.5 acres located in Sonoma County. The Tribe does not currently have any tribal trust land although individual members do have trust lands that were part of the original Rancheria. By letter dated December 12, 2008, the United States Department of the Interior notified the Tribe that it was considered a "restored tribe pursuant to IGRA's Restored Lands Exception" and that "if the Secretary takes the Cloverdale Parcels into trust, the Parcels will be taken into trust as part of the restoration of lands for the Cloverdale Tribe." Pursuant to such restored lands exception, these parcels will be eligible for gaming when taken into trust. This Notice concerns trust status for 73.14 acres, which is 45.64 acres more than that of the original Rancheria.

COMMENTS

I. The proposed Trust Acquisition parcels are not all contiguous and are not owned by the Tribe

Section 465 of title 25 of the United States Code authorizes the federal government to acquire land in trust for an Indian tribe's benefit. The land to be conveyed into trust must be unrestricted land owned by the tribe. (25 C.F.R. § 151.4.) The tribe's request for approval of the trust acquisition must provide "a description of the land to be acquired and other information which would show that the acquisition comes within the terms of this part." (25 C.F.R. § 151.9.) The Notice cites the federal regulation applicable to on-reservation acquisitions as authority for the Notice. (25 C.F.R. § 151.10.)[2]

The Sonoma County Assessor's records indicate that none of the Trust Acquisition parcels are owned in fee by the Tribe. The Application indicates that the Tribe has contracts to acquire fee interests in the parcels (Application, p. 4) but at the present time none of the parcels is owned by the Tribe and so the Notice is premature. In addition, both the Application and the

[2] Three of the six parcels in question, which three parcels total 29.29 acres, are contiguous to Rancheria land. Parcel No. 116-310-020 consisting of 2.05 acres overlaps part of the original Rancheria; Parcel No. 116-310-005 consisting of 10.8 acres is, in part, contiguous to a boundary of the original Rancheria; and Parcel No. 116-310-035 consisting of 16.44 acres is, in part, contiguous to a boundary of the original Rancheria. The remaining three parcels are each contiguous to one of these parcels or another fee parcel also included in the proposed Trust Acquisition.

Notice incorrectly identify Parcel No. 16-310-044 as a trust parcel when, in fact, such parcel no longer exists.[3] Futhermore, part of what was once Parcel No. 16-310-044 is now owned by the City of Cloverdale (Parcel No. 16-310-080 (5.26 acres)) according to County tax records.

The Tribe incorrectly states in its Application that "[t]he Property consists of six parcels that are contiguous to each other subject to a railroad right of way that separates the west and the east parcels . . . ." (Application, p. 3.) These six parcels are not contiguous to each other. The four west parcels (32.08 acres) are separated from the remaining east parcels (41.06 acres) by a parcel of land that is *owned* by the North Coast Railroad Authority (Parcel No. 116-310-054). We are informed that the Tribe has no agreement with the North Coast Railroad Authority regarding any use or easements of the railroad property, and that the Tribe has not informed the North Coast Railroad Authority of its planned surrounding use. Land should not be taken into trust until such time as the North Coast Railroad Authority has had the opportunity to understand and evaluate the impact of the trust acquisition on its fee parcel, and until the requisite environmental analysis has been conducted.

II. The majority of the Trust Acquisition is subject to Williamson Act contracts which restrict and encumber the land

The California Land Conservation Act (Gov. Code, § 51200 et seq.), better known as the Williamson Act, is intended to preserve agricultural and open space lands by means of private landowner contracts with counties and cities to voluntarily restrict land to agricultural and compatible land open-space uses in return for substantially reduced property taxes. A Williamson Act contract secures an enforceable restriction on the subject property. (Cal. Const., art. XIII, § 8; Gov. Code, § 51252.) Of the 73.14 acres in the Trust Acquisition, 41.06 acres are under Williamson Act contracts (Parcel No. 116-310-079[4] consisting of 30.26 acres, and Parcel No. 116-310-005 consisting of 10.80 acres). The Tribe does not mention this fact in its Application or discuss the implications arising from the encumbrance of the fee property in question nor does the Notice acknowledge the encumbrance. The restricted fee status of the land must be addressed before the Application can proceed. (25 C.F.R. § 151.10(e).) Although the Draft Environmental Impact Statement (August 2010) ("DEIS") briefly mentioned the Williamson Act restrictions, there was no environmental analysis regarding the significant effects of the Tribe's proposed land use that is prohibited under the existing Williamson Act contracts. The development of a wastewater treatment plant, treatment ponds, and sprayfields, proposed by the Tribe for such property, does not meet the Williamson Act requirement that the land be devoted to an agricultural use. There has been a complete failure to address retention, non-renewal or cancellation (if even possible) of the Williamson Act contracts.

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[3] See footnote 4, *infra*.

[4] Parcel No. 116-310-044 which the Notice lists as part of the Trust Acquisition was at some point split into Parcel No. 116-310-079 and Parcel No. 116-310-080. Parcel No. 116-310-080 is owned by the City of Cloverdale.

The nature of a Williamson Act contract creates a jurisdictional issue that the BIA must consider when evaluating trust acquisitions. (25 C.F.R. § 151.10(f).) This Trust Acquisition cannot proceed until compliance with Williamson Act contract restrictions has been addressed.

III. The proposed Trust Acquisition cannot be adequately evaluated prior to issuance of a Final Environmental Impact Statement

The required National Environmental Policy Act ("NEPA") process has not been completed in that only a DEIS has been issued. To date no Final Environmental Impact Statement ("FEIS") has been forthcoming, making it impossible to accurately assess the environmental impact of taking the property into trust. By letter dated October 19, 2010, Governor Schwarzenegger's Office commented on the DEIS, raising serious issues regarding the preliminary environmental evaluation for the proposed acquisition, and expressed its concern that multiple significant environmental issues had not been adequately addressed or had not been addressed at all. In addition we are aware that the City and the County each submitted approximately 30 pages of detailed criticism of the DEIS. These comments enumerated extensive conflicts with the City's General Plan and a failure of the DEIS to appropriately address multiple significant impacts from the proposed project.

These issues have not yet been acknowledged or addressed. The State reiterates by incorporation all of the concerns expressed in its October 19, 2010 letter. The lack of a final environmental document also prevents the State from considering the specific comments of other interested parties that might provide additional information or points of view regarding various facets of the DEIS, and from determining if those comments have been adequately considered and addressed in a final environmental document. Without an FEIS there has been no "hard look" at environmental consequences and there has been no determination of whether the proposed acquisition will have a "significant" impact on the environment (*Kleppe v. Sierra Club* (1976) 427 U.S. 390, 399, 410, fn. 21; *Save our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1752), thus making it impossible to offer the most useful comments regarding the potential environmental effects of the trust acquisition at this time. Even if an FEIS is forthcoming prior to a BIA decision to actually take the proposed parcels into trust, the State has lost the opportunity to provide meaningful input prior to the BIA decision. This is of particular concern where the Trust Acquisition is opposed by local governments and where there has been a complete failure to address important issues regarding the agricultural preserve status of more than half of the Trust Acquisition.

The County and the City have also raised serious criticisms regarding the adequacy of the DEIS. We are informed that the Tribe has failed to attempt to negotiate any agreements with the City or the County for services or to reduce the impact that the proposed project will have on the local community or on municipal or county services. Consequently, any decision to take land out of local and state jurisdiction and into trust is premature.

V. The proposed Trust Acquisition will result in a significant loss of tax revenue

We observe that the Notice itself does not provide any analysis or justification for removing the parcels from the County tax rolls and the State's jurisdiction. The Notice does indicate that the current combined property tax on these parcels is $42,956.98 (fiscal year 2010-2011). The Application indicated that the tax liability was $138,870.16. While the Application figure states it is for the fiscal year 2009-2010 there is no explanation for such a large discrepancy. The accuracy of the tax amount must be clarified before it is possible to consider the true effect of tax loss on local government.[5] Furthermore, the fact that over half of the property is under Williamson Act contracts means that the tax assessments for such parcels are considerably under their true value since a reduced tax liability is a great incentive to encumber the land. Consequently, the true tax value of such parcels is not correctly represented by tax payments on such land while under Williamson Act contracts.

The Notice also fails to consider appreciating property values and corresponding tax revenue losses as the Tribe continues to develop the Trust Acquisition. As this property is developed, the tax value will increase exponentially and the County will suffer a substantial loss of tax revenue that is inversely proportionate to the increased property value. Additionally, the increased usage of all infrastructure and land within or near the Tribe's development, without any incoming property taxes to prevent, mitigate or offset damages to the infrastructure and land, will negatively impact the State, the City and the County. The Tribe has not fairly and accurately considered future negative impacts of removing the subject property from the tax rolls, especially when one considers that this loss will continue in perpetuity.

IV. The notice fails to state justification for land exceeding that of the Tribe's Rancheria to be taken into trust as restored lands

Pursuant to IGRA gaming may not take place on lands taken into trust after October 17, 1988, absent specified circumstances. One such circumstance is that the lands to be taken into trust are "restored" lands for a tribe that does not already have trust land. As mentioned above, the Tribe's original Rancheria consisted of 27.5 acres. This Trust Acquisition would be for 73.14 acres, which is 45.64 acres more than that of the original Rancheria. Thus, the Trust Acquisition exceeds by almost three times the "restoration" of the Tribe's Rancheria property. The notice presents no justification for a "restoration" to exceed the size of the parcel that was lost to tribal jurisdiction. Absent any such analysis and discussion, the Trust Acquisition is premature. Since there is no sufficiently articulated reason to support this additional Trust Acquisition, it should not proceed. A mere tribal desire for trust acquisition of additional land is inadequate to justify the federal action of removing property from the jurisdiction of the State,

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[5] We are informed that the Tribe has not attempted to negotiate any "in lieu" payment to the County to compensate for the loss of property tax specific to these parcels.

land in the same manner as all other citizens of the State, County and City are entitled to use property.

CONCLUSION

The State requests that the BIA deny the Trust Acquisition. The Trust Acquisition is incorrectly identified and described. The Trust Acquisition will create conflicts of land use since the majority of the property is under Williamson Act contracts that will remain in existence for at least ten years. In addition the Trust Acquisition cannot be adequately evaluated at this time absent a Final Environmental Impact Statement. Furthermore, the Trust Acquisition would result in substantial tax losses to the local jurisdiction and, finally, the Tribe is not entitled to a "restoration" of land far in excess of land that has been lost by the Tribe. These factors, independently or collectively, present just cause to deny the Trust Acquisition.

Thank you for the opportunity to comment on this Trust Acquisition and Notice. If you have any questions concerning this comment please feel free to contact the undersigned.

Sincerely,

Sara K. Drake for

KATHLEEN E. GNEKOW
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

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Enclosure

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