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DEPARTMENT OF JUSTICE



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Via Facsimile & U.S. Mail
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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 (23.32 acres), Pauma Band of Luiseño Mission Indians

Dear Ms. Dutschke:

This letter is submitted on behalf of the State of California (State), at the request of the Governor's Office, in response to the Notice of (Non-Gaming) Land Acquisition Application (Notice), dated January 22, 2015, regarding the Application to the Bureau of Indian Affairs to Take Land into Trust (Application) for the Benefit of the Pauma Band of Luiseño Mission Indians (Tribe). The Application is to convey three parcels of land totaling 23.32 acres, and currently owned in fee by the Tribe, into federal trust. The land is located in rural northern San Diego County (County). The stated purpose of the proposed trust conveyance is to increase the Tribe's reservation land base, increase the Tribe's ability to self-govern and engage in self-determination by transferring governance and land use decisions from the County to the Tribe, increase critical housing for members of the Tribe, enhance the Tribe's historical and culturally significant agricultural practices, provide economic benefits through increasing Tribal agricultural lands, and preserve and protect lands used and inhabited by ancestors of the Tribe. (Application, ¶ 5, p. 3.) The Notice states that the parcels currently contain orchards, a residence, and storage for household and orchard materials. (Notice, ¶ 1, p. 4.) The Application states that the land is currently used for agricultural and residential purposes. (Application, ¶ 4, p. 5.) The Application states that it is the Tribe's intent to maintain the existing uses of the land and that there are currently no plans to develop any of the parcels, other than possible

improvements to existing facilities and equipment. (Application, ¶ 4, p. 5; ¶ 1, p. 6.) The Notice states that long range plans may include Tribal residences and associated improvements. (Notice, ¶ 2, p. 4.)

With regard to the foregoing 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 and economic development, 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 at Least Two of the Parcels Proposed for Acquisition Are Not Contiguous to the Tribe's Reservation 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 three parcels numbered APN 131-060-25, APN 131-090-03, and APN 131-090-11. (Application, ¶ 3, p. 4.) The Notice states that the parcels are "located immediately adjacent to the west boundary" of the Tribe's reservation. (Notice, ¶ 4, p. 1-2.) San Diego County Assessor maps show that one parcel is across a road from the reservation, with the other two parcels contiguous to the parcel that is across the road from the reservation. The Notice further states that the Application was submitted pursuant to 25 C.F.R. § 151.10, the regulation pertaining to on-reservation acquisitions. (Notice, ¶ 1, p. 1.)

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).) While land "adjacent" to an existing reservation may be taken in trust, to be evaluated as an on-reservation acquisition, the regulations require that land also be "contiguous" to the existing reservation. (25 C.F.R. § 151.10.) Lands that "are 'contiguous' for purposes of 25 C.F.R. § 151.10 are lands that adjoin or abut." (*Jefferson County, Oregon, Bd. of Comrs. v. Northwest Regional Director* (2008) 47 IBIA 187, 205.) Pursuant to the regulatory definition of contiguous, parcels that are contiguous to a parcel that adjoins a reservation boundary, but do not themselves adjoin the reservation boundary, are not contiguous to the reservation. If land is not contiguous to a reservation, the application for that land must be considered an off-reservation acquisition subject to separate requirements. (25

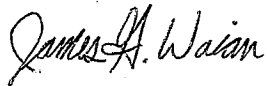
C.F.R. § 151.11.) In this case, at least two of the parcels are not contiguous to the reservation. As the parcels are not all contiguous to the reservation, the trust acquisition should be evaluated as an off-reservation acquisition, at least with regard to the two parcels that are not across the road from the existing reservation. Since two of the three 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 two 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.

Conclusion

Since the parcels proposed for trust acquisition are not all contiguous to the existing reservation, 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 and economic development.

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: Randall Majel, Chairman, Pauma Band of Luiseño Mission Indians (via U.S. Mail only)
Joe Dhillon, Office of the Governor (via U.S. Mail only)