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July 28, 2016

VIA FACSIMILE, EMAIL & FEDEX

Honorable Lawrence Roberts
Acting Assistant Secretary for Indian Affairs
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240
Fax: (202) 208-7163
Email: ia_meeting_request@bia.gov

Re: Request for "Restored Lands" Opinion from Scotts Valley Band of Pomo Indians

Dear Assistant Secretary Roberts:

It has been brought to our attention that the Scotts Valley Band of Pomo Indians ("Scotts Valley Band," or "Band") has recently requested an opinion from the Office of Indian Gaming (OIG) of the U.S. Department of the Interior concerning whether its proposal to build and operate a casino in or near the City of Vallejo qualifies under the "restored lands" exception of Section 20(b)(1)(B)(iii) of the Indian Gaming Regulatory Act (IGRA). 25 U.S.C. § 2719(b)(1)(B)(iii). As the municipal governmental entity that has jurisdiction over the area where the Scotts Valley Band's proposed casino would be located, the City of Vallejo has an important interest in the issue of whether the Band's proposed casino qualifies under IGRA's restored lands exception, and therefore provides the following comments for your consideration concerning the Band's request for an opinion.

First, since the City of Vallejo has jurisdiction over the lands where the Scotts Valley Band's proposed casino would be located, we request that the City be fully apprised and informed concerning the Department of the Interior's processing of the Band's request for an opinion, and that we be given an opportunity to review submitted documents and fully participate in the process. If the OIG issues an opinion concluding that the Scotts Valley Band qualifies under IGRA's restored lands exception, the opinion would pave the way for the Department of the Interior to approve the Band's construction and operation of the casino in or near the City of Vallejo. The Department's approval of a tribal casino in or near the City of Vallejo would significantly affect the City and its residents in several significant ways. Approval of a tribal casino would limit the City's authority to regulate the use of land in the area where the casino would be located, and would limit the City's authority to apply its taxing authority to the area. Approval of a tribal casino would also unquestionably cause significant impacts to the natural and human environment in and around the City of Vallejo. Such a casino

would entail biological impacts, water impacts, impacts on traffic and noise to the neighboring area, among others. Such impacts must be analyzed under the National Environmental Policy Act (NEPA), and, in providing an environmental review under NEPA, the Department of the Interior cannot provide for a piecemeal or segmented review, ignore cumulative impacts, or otherwise commit the agency to an action without first considering these impacts. Therefore, the City of Vallejo has a significant interest in any action taken by the Department of the Interior that might result in approval of the Scotts Valley Band's proposed casino, or that might pave the way for such departmental approval by issuance of an opinion that the Band qualifies under IGRA's restored lands exception.

Second, on the merits of the Scotts Valley Band's request for an opinion, we have serious doubts that the Band's proposed casino qualifies under IGRA's restored lands exception. In order to qualify under this exception, the Band would need to demonstrate that it has three types of "connections" to the lands where the casino would be located, specifically a "modern connection," a "significant historical connection" and a "temporal connection." 25 C.F.R. § 292.12(a), (b), (c). In our view, the Scotts Valley Band does not satisfy all of these connection requirements, and perhaps meets none of them.

Third, the Scotts Valley Band does not appear to have a "modern connection" to the lands where its proposed casino would be located. To satisfy this requirement, the Band would need to demonstrate that the lands are "within reasonable commuting distance" of the Band's reservation, and are within a 25-mile radius of the Band's headquarters or other governmental facilities. 25 C.F.R. § 292.12(a). According to our understanding, the Band's proposed casino, which would be located in or near the City of Vallejo in Solano County, is at least 60 miles from the Band's reservation, which is located in the Clear Lake area in Lake County, and where its headquarters and governmental facilities are located. Therefore, it is doubtful that the Band satisfies the "modern connection" requirement as applied to its proposed casino.

Fourth, the Scotts Valley Band does not appear to have a "significant historical connection" to the lands where its proposed casino would be located. To satisfy this requirement, the Band would need to demonstrate that the lands are "within the boundaries of" the Band's last reservation under a ratified or unratified treaty, or "by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land." 25 C.F.R. § 292.12(b) (establishing "significant historical exception" requirement); *Id.* at § 292.2 (defining "significant historical connection"). As mentioned above, the lands where the Band's proposed casino would be located are at least 60 miles from where the Band's reservation is located, and thus the lands are not "within the boundaries of" the Band's reservation. Further, according to our understanding, there is no "historical documentation" demonstrating that the Band's villages, burial grounds, occupancy or subsistence use are located in the vicinity of the land where the proposed casino would be located. Therefore, it is doubtful that the Band satisfies the "significant historical connection" requirement as applied to its proposed casino.

Fifth, the Scotts Valley Band does not appear to have a "temporal connection" to the lands where its proposed casino would be located, although, to be sure, this is less clear. To satisfy this requirement, the Band would need to demonstrate that it has "submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition" 25 C.F.R. § 292.12(c)(2). According to our understanding, the Scotts Valley Band was restored to federal recognition on September 6, 1991, as the result of settlement of litigation that the Band brought against the United States. 57 Fed. Reg. 5214 (February 12, 1992). Therefore, to satisfy the "temporal connection" requirement, the Band would need to submit an application for approval of its casino by no later than September 6, 2016. In addition, since the Secretary of the Interior can approve an Indian gaming operation only if the lands are taken into trust, the Scotts Valley Band would also need to submit an application to have the lands taken into trust by the September 6, 2016, date. To date, the Scotts Valley Band apparently has not applied for approval of its casino operation or to have the lands taken into trust. Therefore, unless the Band submits both applications by the September 6, 2016, date, the Band would not satisfy the "temporal connection" requirement as applied to its casino.

For the foregoing reasons, the City of Vallejo has serious doubts concerning whether the Scotts Valley Band can satisfy the "connection" requirements of the IGRA regulations and thus whether the Band qualifies under IGRA's restored lands exception. In any event, since the City of Vallejo has jurisdiction over the lands in question, the City requests that it be kept fully informed and apprised of any developments concerning the Band's proposal, and that it be given an opportunity to fully participate in the process. If the Department of the Interior approves the Band's proposed casino in or near the City of Vallejo, or issues an opinion that the Band qualifies under IGRA's restored lands exception, the City of Vallejo would be obliged to fully consider its available legal remedies that would oppose any such action by the Department of the Interior.

Sincerely,



Claudia Quintana

City Attorney, City of Vallejo

cc Paula Hart, Director, Office of Indian Gaming
Honorable Mayor and Members of Vallejo City Council
Daniel E. Keen, City Manager, City of Vallejo