

Stand Up For California!

“Citizens making a difference”

www.standupca.org

P. O. Box 355
Penryn, CA. 95663

December 21, 2016

VIA Email, Fax and First Class Mail

Larry Roberts
Acting Assistant Secretary—Indian Affairs
Department of the Interior
1849 C Street, NW
Washington, DC 20240

RE: Wilton Rancheria Fee-to-Trust Application for Land in Elk Grove, California

Dear Mr. Roberts:

Stand Up For California! (Stand Up), Elk Grove GRASP, and concerned citizens of Elk Grove are writing in response to the Bureau of Indian Affairs’ (BIA) November 17, 2016 Notice of (Gaming) Land Acquisition Application as Sacramento County Assessor's Parcel Number 134-1010-001-0000 (Portion). Thank you for the extension. At this time, we must request confirmation from BIA that it will not proceed with the trust application until a number of state law questions affecting title to the proposed trust land are resolved.

We explained in our September 27, 2016 comment letter that the proposed casino site could not be acquired in trust because it is encumbered by development agreements approved by the City of Elk Grove. In 2005 and 2014, the City approved by ordinance, executed and recorded development agreements with respect to Parcel Number 134-1010-001-0000 (Portion). BIA is aware of those development agreements, having previously informed the parties that the United States could not acquire Parcel Number 134-1010-001-0000 (Portion) in trust for the proposed purpose until the encumbrances associated with those agreements were removed. Schedule B to the November 17, 2016 application also identifies those encumbrances as exceptions number 13, 14 and 27.

The development agreements expressly reserve to Elk Grove the right, subject to the vested rights, to:

- grant or deny land use approvals;
- approve, disapprove or revise maps;
- adopt, increase, and impose regular taxes, utility charges, and permit processing fees applicable on a city-wide basis;

- adopt and apply regulations necessary to protect public health and safety;
- adopt increase or decrease fees, charges, assessments, or special taxes;
- adopt and apply regulations relating to the temporary use of land, control of traffic, regulation of sewers, water, and similar subjects and abatement of public nuisances;
- adopt and apply City engineering design standards and construction specification;
- adopt and apply certain building standards code;
- adopt laws not in conflict with the terms and conditions for development established in prior approvals; and
- exercise the City’s power of eminent domain with respect to any part of the property.

These encumbrances are not only inconsistent with the federal title standards, they prevent the land from qualifying as “Indian lands” eligible for gaming under the Indian Gaming Regulatory Act (IGRA). 25 U.S.C. § 2703(4). These rights, which are recorded on the deed, establish that the City of Elk Grove has governmental jurisdiction over the site. The City can impose taxes; the City can adopt regulations to protect public health and safety; the City will regulate building codes, engineering design standards, etc.; and the City will regulate land use, sewers, traffic, etc. BIA has previously denied gaming determinations based on development agreements that accord local governments some authority over the proposed gaming sites. *See e.g.*, Letter to Michael Toledo from Assistant Secretary L. Echo Hawk Regarding Trust Application of Pueblo of Jemez (Dec. 1, 2011). Here, the authority is part of the deed itself. The land cannot qualify as “Indian lands” under IGRA.

On November 9, 2016, the City recorded an amendment to a development, which made it appear that these encumbrances had been removed from an approximately 35.92-acre parcel of land. That recordation was premature and of no legal effect.

Under California law, a city must enact an ordinance approving the execution of a development agreement, which is then recorded as an encumbrance on the title to the property.¹ A city must approve amendments to a development agreement by ordinance, as well. California law requires cities to wait for 30 days before any ordinance goes into effect. The purpose of that delay is to allow aggrieved parties to exercise their rights under Section 9 Article II of the California Constitution (i.e., the referendum right) and/or to file claims arising under State law, including the California Environmental Quality Act. Specifically, with respect to the referendum power, Government Code section 36937 and Elections Code section 9235.2 provide that an ordinance approving or amending a development agreement will not take effect for thirty days, during which time the voters of a jurisdiction are entitled to exercise their right of referendum by presenting a petition protesting the ordinance. See Government Code sections 65867.5(a) and 65868 and Elections Code sections 9235 and following.

¹ A development agreement is an agreement between a local jurisdiction and an owner of legal or equitable interest in property that addresses the development of the property it affects. It must specify the duration of the agreement, the permitted uses of property, the density or intensity of use, the maximum height and size of proposed building, and provisions for reservation or dedication of land for public purposes. A development agreement is a legislative act that must be approved by ordinance and is subject to referendum. After a development agreement is approved by ordinance and the City accordingly is enabled to enter into it, the agreement may be executed and recorded with the county recorder, as it was in this case.

The City failed to comply with applicable state laws. On October 26, 2016, the City approved an amendment to the development agreement encumbering Parcel Number 134-1010-001-0000 (Portion) by removing the parcel from the existing development agreement. Although State law imposes a 30-day waiting period before an ordinance goes into effect, the City executed the amendment to the development agreement prior to that date and recorded the amendment on November 9, 2016. The City therefore did not have authority to execute the amendment to the development agreement when it did, nor record that amendment.

On November 21, 2016, approximately 14,800 citizens filed with the City Clerk's office a referendum petition protesting the ordinance authorizing the amendment. The City has until January 6, 2017, to complete an initial verification of their signatures, during which time the effective date of the ordinance is suspended. If the petition is verified, the ordinance will not go into effect until such time as a majority of the voters in Elk Grove approve that ordinance. Accordingly, the City was without authority to execute and record the amendment.

In addition, on November 23, 2016, the undersigned filed a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief challenging the City's ordinance under the California Environmental Quality Act (CEQA), alleging that approval of the amendment authorizing the removal of Parcel Number 134-1010-001-0000 (Portion) from the development agreement was a discretionary decision subject to review under that Act. In addition, the petitioners allege that by entering into the amendment without an effective ordinance in place and recording that amendment, the City violated statutory law and the right to referend.

Finally, we are concerned that the Regional Director is involved in the decision-making in this case.² The Regional Director, however, shares extensive family ties with members of the Wilton Rancheria. These ties present a clear conflict of interest. Until this matter can be reviewed thoroughly by the incoming Administration, and all ethical concerns are fully addressed, any decision to take land into trust will be inherently tainted and subject to investigation.

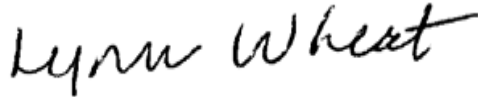
We therefore request that the Bureau of Indian Affairs withdraw the November 17, 2016 Notice of (Gaming) Land Acquisition Application until such time as these matters have been resolved at the State level. If BIA fails to do so, and moves to acquire the land in trust, it will effectively negate the Constitutional right of the citizens of Elk Grove to referend, as well as our right to have our CEQA claims heard. A decision to acquire in trust under these circumstances will negate our rights under State law, and raise serious ethical concerns.

² Letter from Paula Hart, Director of the Office of Indian Gaming, to Raymond Hitchcock, Chairman of the Wilton Rancheria (April 28, 2016).

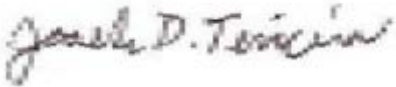
Sincerely,



Cheryl Schmit
Director, Stand Up for California!



Lynn Wheat
Elk Grove GRASP



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Committee to Protect Elk Grove Values



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