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From: **Parsons, Matthew** <matthew.parsons@sol.doi.gov>

Date: Thu, Jan 19, 2017 at 12:19 PM

Subject: Re: Wilton Rancheria NOA - supplemental comments

To: Jennifer Turner <jennifer.turner@sol.doi.gov>

Cc: Alison Grigonis <alison.grigonis@bia.gov>, Melinda J Loftin <Melinda.Loftin@sol.doi.gov>, "Adams, Michael" <Michael.Adams@bia.gov>, "Roberts, Lawrence" <lawrence_roberts@ios.doi.gov>, "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>, Amy Dutschke <amy.dutschke@bia.gov>

Jennifer, We have reviewed the ethics allegations made by Stand up for California (Stand Up) in its submission on

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the proposed Wilton Rancheria fee to trust transfer. In its submission, Stand Up asserts that Amy Dutschke, the BIA Pacific Region Director, has a number of family relatives who are members of the Wilton Rancheria and therefore she has a conflict of interest that should have barred her participation in the proposed transfer. It is our understanding that, as the BIA Pacific Regional Director, Ms Dutschke assembled information on the proposed transfer, including the submission from Stand Up, and provided a recommendation to the Assistant Secretary for Indian Affairs (ASIA) supporting the transfer from fee to trust status, but that the ASIA exercises final decision authority on the matter.

Although Stand Up did not provide any legal authorities for its position that a conflict of interest exists for Ms. Dutschke, there are two ethics authorities that are potentially relevant. First, the Federal conflict of interest statute, 18 USC 208, bars employees from participating in official matters which would have a direct and predictable effect on their financial interests or those of persons or entities whose interests are imputed to the employee. Under the statute the financial interests of a spouse and minor children are imputed to an employee, but not those of other family members. The submission from Stand Up does not allege that Ms. Dutschke's personal financial interests would be affected by the proposed transfer. Based on information provided by Ms. Dutschke she has no personal financial interests that would be impacted by the proposed transfer and she has no spouse or minor children nor is she a member of the Wilton Rancheria. Thus there does not appear to be a violation of 18 USC 208.

Second, the "impartiality" regulation at 5 CFR 2635.502 bars participation in official matters involving a specific party or parties that is likely to have a direct and predictable effect on the financial interests of a member of the employee's household or where the employee has a "covered relationship" with a party or a representative of a party to the matter and a reasonable person with knowledge of the relevant facts would question the impartiality of the employee. More broadly, the regulation also requires that an employee recuse him or herself any time he or she believes a reasonable person with knowledge of relevant facts would question the employee's impartiality.

Ms. Dutschke has no other members of her household, so there is no issue there. While the regulation identifies relatives with whom the employee has a close personal relationship as a covered relationship, in this instance Ms. Dutschke does not have a close personal relationship with the family members identified in the submission from Stand Up. Ms. Dutschke did not realize she was related to the Hatch family and she does not know them personally. The Stand Up submission also mentions a relationship with the Andrews family by marriage, however, as noted above, Ms. Dutschke is not married, so it is unclear what, if any, actual family relationship exists in that instance. The Stand Up submission also hypothesizes that Ms. Dutschke may be related to other families in the Wilton Rancheria. While this may or may not be true, the test for a covered relationship is if there is a close personal relationship with a relative and we are not aware of any such close personal relationship.

Moreover, the families themselves are not parties to the transfer; rather the Tribe is the party. Also, while gaming on the land in question by the Tribe appears to be an ultimate and long term concern of those involved, the land transfer is only one of several procedural and contingent hurdles that must be met in order for gaming to be approved and conducted, including a compact with the State and approval by NICG. Beyond that, how the Tribe might decide to distribute possible future gaming proceeds to Tribal members, including those who are distant relatives of Ms. Dutschke, is speculative and dependent upon future events, which may or may not occur. Given that Ms. Dutschke does not know the relatives in question and that any financial impact on them is speculative and unknown, under 5 CFR 2635.502(c) we have determined that a covered relationship with a party does not exist and that a reasonable person with knowledge of the relevant facts would not question the impartiality of Ms. Dutschke's actions to date in the proposed transfer. Ms. Dutschke properly considered her participation in the proposed transfer once the existence of family relationships was known by virtue of the submission from Stand Up and correctly determined that recusal was not necessary or appropriate. Accordingly, she has complied with 5 CFR 2635.502.

Depending upon ASIA's final determination on the proposed transfer, Ms. Dutschke may be called upon to take further action in the matter. In that event, we recommend that Ms. Dutschke consult with the BIA Deputy Ethics Counselor on her further participation. Matt

On Tue, Jan 10, 2017 at 1:47 PM, McDonnell, Edward <edward.mcdonnell@sol.doi.gov> wrote:
Hi Alison,

At first blush, since the Regional Director is a BIA employee, it appears that this would be a matter for the BIA ethics office to review. Additionally, the author claims that the matter is being referred to the OIG. This may take it out of our hands altogether.

Please let us discuss here and with Mike Adams and coordinate with the OIG to determine the appropriate way ahead. I've included Melinda Loftin, Matt Parsons, and Mike Adams (the Deputy Ethics Counselor for BIA). If you have additional information that you believe is important to our analysis, please let us know that as well.

Matt, would you please take the lead on coordinating this?

Thanks,
Ed

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Ed McDonnell

Alternate Designated Agency Ethics Official/Deputy Designated Agency Ethics Official
U.S. Department of the Interior

Departmental Ethics Office

Office of the Solicitor

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Fax: (202) 208-5515 *(Please call or e-mail me to let me know you've sent me a fax as the fax machine is in a separate room.)*

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From: **Grigonis, Alison** <alison.grigonis@bia.gov>

Date: Tue, Jan 10, 2017 at 11:00 AM

WR_AR0006552

Subject: Fwd: Wilton Rancheria NOA - supplemental comments
To: "McDonnell, Edward" <edward.mcdonnell@sol.doi.gov>
Cc: Larry Roberts <Lawrence_Roberts@ios.doi.gov>

Hi Ed,

We just received the attached comment back on the Notice of Application for the Wilton Rancheria. The coverletter raises the suggestion that there is a conflict of interest between our Regional Director Amy Dutschke and the Wilton Rancheria due to her family relationships. We're hoping to get some guidance from you on whether Ms. Dutschke should recuse herself from this matter. I'm happy to chat if you want to discuss further today. Please let me know what would work for your schedule.

All the best,
Alison

----- Forwarded message -----

From: **Lawrence Roberts** <lawrence_roberts@ios.doi.gov>
Date: Fri, Jan 6, 2017 at 4:50 PM
Subject: Fwd: Wilton Rancheria NOA - supplemental comments
To: Alison Grigonis <alison_grigonis@bia.gov>, Paula.Hart@bia.gov, jennifer.turner@sol.doi.gov, eric.shepard@sol.doi.gov, john.hay@sol.doi.gov, maria.wiseman@bia.gov

Sent from my iPhone

Begin forwarded message:

From: "Smith, Odin (Perkins Coie)" <OSmith@perkinscoie.com>
To: "Lawrence.Roberts@bia.gov" <Lawrence.Roberts@bia.gov>, "hilary.tompkins@sol.doi.gov" <hilary.tompkins@sol.doi.gov>, "Amy.Dutschke@bia.gov" <Amy.Dutschke@bia.gov>, "john.rydzik@bia.gov" <john.rydzik@bia.gov>
Cc: "Pais, Sheri (Perkins Coie)" <SPais@perkinscoie.com>
Subject: Wilton Rancheria NOA - supplemental comments

Attached please find supplemental comments by Stand Up for California! et al. regarding the November 17, 2016 Notice of (Gaming) Land Acquisition Application for the Wilton Rancheria. Thank you for the extension of the comment period until January 6, 2017. Copies will also follow by fax and first class mail.

Odin Smith | Perkins Coie LLP

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