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State of California
DEPARTMENT OF JUSTICE



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January 10, 2017

Via Facsimile & U.S. Mail
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Amy Dutschke, Regional Director
Pacific Region Bureau of Indian Affairs
United States Department of the Interior
2800 Cottage Way
Sacramento, CA 95825

Re: Notice of On-Reservation Land Acquisition Application (Gaming)
Wilton Rancheria (35.92 acres), APN: 134-1010-001-0000

Dear Ms. Dutschke:

This letter replaces the letter previously submitted on January 9, 2017 and is submitted on behalf of the State of California (State) at the request of the Governor's Office in response to the application of the Wilton Rancheria (Tribe), to have 35.92 acres of land conveyed to the United States in trust for the Tribe, dated November 17, 2016. (Trust Application). The land in question is located in Sacramento County, inside the City of Elk Grove and would be acquired as restored lands for the Tribe pursuant to 25 U.S.C. § 2719(b)(1)(B)(iii).

The State recognizes the legitimate need for tribal governments to obtain land and is respectful of the Bureau of Indian Affairs' (BIA) authority to make decisions regarding an Application to take land into trust pursuant to the federal statutory and regulatory framework. 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 for an individual tribal member complies with the pertinent requirements of federal law.

Based on the facts set forth in the Trust Application and additional material, the State has identified one potential issue with the Trust Application. An agreement between the non-tribal owner of the land and the City of Elk Grove regarding the development of the subject property (Development Agreement) currently encumbers the property. (City of Elk Grove Ordinance No. 29-2014, Oct. 22, 2014.) The Department of the Interior's current Fee-to-Trust Handbook defines an encumbrance as a "limitation on the title of property, such as a claim, lien, easement, charge, or restriction of any kind." (Release # 16-47, Version IV (rev. 1), issued: 6/28/16.) After noting that the BIA may decide not to allow the property to be taken into trust until the

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Development Agreement's encumbrances were removed from the title, the City of Elk Grove Council approved via ordinance an amendment to the Development Agreement to exempt the subject property from the Development Agreement's requirements. (City of Elk Grove Planning Commission Staff Report, Sept. 15, 2016; City of Elk Grove City Council Staff Report, Oct. 12, 2016; City of Elk Grove Ordinance No. 23-2016, Oct. 26, 2016.)

However, pursuant to California Elections Code section 9237, the ordinance approving the amendment has been suspended due to the filing of a referendum petition. (Notice re: First Amendment to Development Agreement, Dec. 16, 2016.) Therefore, the Development Agreement has not been amended and its restrictions currently encumber the property.

Under federal regulations, the Secretary of the Interior may require the elimination of encumbrances prior to the approval of a trust acquisition. (25 C.F.R. § 151.13(b).) The State simply notes the existence of this issue and the BIA's discretion in this area, and requests resolution in a manner consistent with federal and local law.

Thank you for the opportunity to comment on the Trust Application.

Sincerely,



JENNIFER T. HENDERSON
Deputy Attorney General

For KATHLEEN A. KENEALY
CHIEF DEPUTY ATTORNEY GENERAL

JTH:lit

cc: Joginder Dhillon, Governor's Office
Raymond Hitchcock, Tribal Chairperson