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August 23, 2016

VIA OVERNIGHT MAIL, EMAIL, AND FACSIMILE

The Honorable Lawrence Roberts
Acting Assistant Secretary for Indian Affairs
United States Department of the Interior
MS-3642-MIB
1849 C Street, N.W.
Washington, D.C. 20240
Email: sarah_walters@ios.doi.gov
Facsimile: (202) 208-5320

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

Dear Assistant Secretary Roberts:

The County of Solano ("County") recently learned that the Scotts Valley Band of Pomo Indians ("Scotts Valley Band") on January 29, 2016 applied to the Office of Indian Gaming ("OIG") of the U.S. Department of the Interior ("Department") for a determination that certain real property acquired within the city limits of Vallejo is eligible for the establishment of gaming operations under the "restored lands" exception of the Indian Gaming Regulatory Act ("IGRA") at 25 U.S.C. 2719(b)(2)(B)(iii). Pursuant to IGRA's implementing regulations at 25 C.F.R. 292.12, the Scotts Valley Band cannot meet the requisite criteria necessary to establish a connection to the newly acquired lands. Additionally, for OIG to grant the determination would not only be contrary to IGRA and OIG's past actions in prior restored lands determinations, such an action would fly in the face of the trust responsibilities incumbent upon the Department of the Interior not to harm other tribes when making restored lands determinations. The County therefore requests that such a determination be denied based upon both the facts and the law at issue here.

Initially, the County is deeply concerned at the lack of transparency exhibited by both the Scotts Valley Band and the Department in this determination process. The public and local governments (tribal, county, and city) should have been provided notice and an opportunity to comment on this request for a determination, particularly in this extremely unusual situation where the tribe has requested an *expedited* "restored lands" determination *absent* a concurrent fee-to-trust application. In the seven months since the exception request was submitted, neither the Scotts Valley Band nor the Department ever contacted or otherwise notified the County that the Scotts Valley Band was seeking to establish a gaming site using the "restored lands" exception within the geographical boundaries of the County. For the Department to base its determination solely on the Scotts Valley Band's assertions that it qualifies for the "restored lands" exception and cutting out any potential contrary evidence that tribes, cities, or the County may have poisons and undermines what is supposed to be a fair and balanced process and flies in the face of the congressional intent for enacting the "restored lands" exception. In order to cure the procedural irregularities that have occurred thus far in this matter, the County requests that any consideration by the Department of the "restored lands" exception be concurrent with consideration of the recently filed fee-to-trust application to ensure proper notice and a comment period of all the pertinent issues.

As you know, IGRA allows for the establishment of gaming operations on acquired lands located outside of a tribe's original lands if a tribe can demonstrate three types of connections to the land as described in 25 CFR 292.12: a "modern connection"; a "significant historical connection"; and, a "temporal connection". The Scotts Valley Band, however, cannot demonstrate all three types of connections; accordingly, its request for a determination of a "restored lands" exemption must be denied.

The County has been unable to find any "modern connection" between the Scotts Valley Band and the proposed gaming site in Vallejo or any other location within the borders of Solano County. (25 CFR 292.12(a).) Moreover, the County knows of no Scotts Valley Band governmental offices and no sizable membership of that tribe residing within the geographic boundaries of Solano County. In fact, the Scotts Valley Band has its governmental headquarters in Lakeport within Lake County, which is over 80 miles away from the City of Vallejo. Lake County is also the site of the tribe's original reservation. While the Scotts Valley Band does have Tribal TANF offices in both Contra Costa County and Lake County, according to the "FAQ" on its website at <http://www.svtribaltanf.org/about-us/faqs/>, these offices refuse to provide any services to residents of Vallejo or Solano County. The presence of a tribal social services office in a neighboring county that will not provide services to any tribal members living in Solano County cannot satisfy the "modern connection" requirement, regardless of how close to the Solano County border this particular office is located. In prior cases, the Department has refused to give credence to a tribal government office established solely for the advancement of establishing a gaming site, and this case should be no different. (See, *e.g.* pages 6-9 of the Letter from Larry Echo Hawk, Assistant Secretary for Indian Affairs to the Honorable Merlene Sanchez, Chairperson of the Guidiville Band of Pomo Indians available at <http://www.bia.gov/cs/groups/public/documents/text/idc015051.pdf>.) Further, it is our understanding that the OIG has never granted a "restored lands" determination in California for lands more than 15 miles away from a tribe's original reservation site, much less the more than 80 miles at issue here. No reasonable rationale exists for the Department to disturb that precedence now.

The County concedes that the Scotts Valley Band may be able to establish a "temporal connection" between the date the proposed gaming site was acquired and the date of the tribe's restoration. 25 CFR 292.12(c)(2) requires that a tribe show that it submitted an application to take land into trust within 25 years of regaining federal recognition. The tribe appears to have had federal recognition restored on September 6, 1991 and submitted a fee-to-trust application for the proposed gaming site in Vallejo on August 11, 2016. Despite seemingly complying with the "letter of the law", it strains credulity that it took 24 years, 11 months and one week for the Scotts Valley Band to determine that lands within the City of Vallejo were necessary to the tribe's sovereignty and should therefore be taken into trust on its behalf.

The Scotts Valley Band's claims are weakest in regards to its "significant historical connection" to the proposed gaming site in Vallejo. (25 CFR 292.12(b).) Simply, no significant historical connection exists as defined by the regulations, evidenced by, among other things, the fact that the proposed gaming site in Vallejo is not within the boundaries of any Scotts Valley Band reservation established by treaty. Further, the Department, in deciding the Scotts Valley Band did not have significant historical connections to lands in adjacent Contra Costa County, found that no historical connection exists between land in the Vallejo area and the Scotts Valley Band. (See, specifically, sections II(A)(2)(c) and (d) at pages 13-18 in the May 25, 2012 letter from Acting Assistant Secretary for Indian Affairs Donald E. Laverdure to the Honorable Donald Arnold, Chairperson of the Scotts Valley Band of Pomo Indians, available at <http://www.bia.gov/cs/groups/public/documents/text/idc-018517.pdf>).

Although the County has not been able to obtain a copy of the Scotts Valley Band's request for a restored lands determination for the Vallejo site or any of its supporting documentation¹, the County believes that the Department's previous 2012 determination and the documents submitted by the parties in that matter clearly establish inadequate and insignificant historical connections between the Scotts Valley Band and the Vallejo site. Specifically, the letter written to you by Dr. Stephen Beckham on August 11, 2016 (attached) regarding the tribe's most recent attempt to locate a casino away from their historic lands conclusively establishes that the Scotts Valley Band was not historically connected to the Vallejo site. Dr. Beckham also authored a report entitled, "The Scotts Valley Band of Pomo Indians: Traditional Use and Occupancy Areas and Residency in Lake County, California" in 2006 (available at <https://www.standupca.org/off-reservation-gaming/contraversial-applications-in-process/scotts-valley-band-of-pomo-indians/B8123429.pdf>), which presents an in-depth examination of the areas the Scotts Valley Band historically resided in and used. This report and Dr. Beckham's letter confirm that historically the Scott's Valley Band neither resided in nor used lands within the modern-day City of Vallejo.

As discussed above, if the Scotts Valley Band is unable to satisfy any of the three requirements for the "restored lands" exception in 25 C.F.R. 292.12, then the determination must be denied. Here, the Scotts Valley Band can, at most, meet one of the three requirements and the Department must therefore deny the request for a "restored lands" exception to 25 U.S.C. 2719(a).

Finally, while this letter expresses opposition to a positive determination for a "restored lands" exemption sought by the Scotts Valley Band for the Vallejo site, the County wishes to make clear that it is not necessarily "anti-casino" or "anti-gaming". However, this "reservation shopping" by the Scotts Valley Band takes away economic opportunity from tribes that actually have historic ties to the lands encompassed by Solano County. A denial of the "restored lands" exemption requested by the Scotts Valley Band is not only merited under the facts and law at issue here, but would ensure the Department meets its trust obligations by refusing to be complicit in harming local tribes and their economic interests for the benefit of a single distant tribe.

The County appreciates your time and attention to our concerns and we are available to meet with you at your earliest convenience to further discuss this matter. We would also request that we be notified of any actions taken or opinions issued, whether advisory or not, by the Department in regards to this "restored lands" exception request.

Sincerely,



cc: Paula Hart, Director, Office of Indian Gaming
Mayor Osby Davis, City of Vallejo

¹ The County therefore explicitly reserves the right to comment further once we are able to access the full submissions to the Department from the Scotts Valley Band on this matter.