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September 1, 2016

The Honorable Lawrence Roberts
Acting Assistant Secretary for Indian Affairs
U.S. Indian Affairs Bureau
MS-3642-MIB
1849 C St., N.W. #4160
Washington, D.C. 20240

RE: Request for “Restored Lands” Opinion From Scotts Valley Band of Pomo Indians

Dear Assistant Secretary Roberts:

As you may recall, the City of Vallejo sent you a letter, dated July 28, 2016, expressing our views concerning the request by the Scotts Valley Band of Pomo Indians (“Tribe”) for an opinion on whether its proposed gaming facility in or near the City of Vallejo qualifies as a “restored land” for purposes of the “restored lands” exception in the Indian Gaming Regulatory Act (“IGRA”). As indicated in our letter, the City of Vallejo opposes the Tribe’s proposed gaming facility in or near the City of Vallejo, and does not believe that the proposed facility qualifies under IGRA’s “restored lands” exception. More specifically, the City of Vallejo believes that the Tribe’s proposed facility does not meet the “significant historical connection,” “modern connection” and “temporal connection” requirements of the Department of the Interior’s IGRA regulations set forth in 25 C.F.R. § 292.12.

After our July 28 letter was sent, the Tribe provided to us a copy of its request for an opinion, dated January 28, 2016, and a copy of the Tribe’s application to have the lands taken into trust, dated August 11, 2016. After reviewing these documents, and in particular a document attached to the opinion request labeled “Legal Analysis by Steven J. Bloxham, Frederick Peebles & Morgan LLP” (hereinafter “Legal Analysis”), we remain convinced that the Tribe’s proposed gaming facility does not meet the “modern,” “significant historical” and “temporal” requirements of the regulations. In this letter, we would like to briefly explain why we continue to believe that the Tribe’s opinion request, even as amplified by the Tribe’s Legal Analysis, does not demonstrate that the Tribe’s proposed facility qualifies under IGRA’s “restored lands” exception. The cited page references are to the pages in the Tribe’s Legal Analysis except as otherwise noted.

We remain concerned that Department’s timeline for review of this request is unnecessarily short and has excluded the City of Vallejo’s opportunity to provide meaningful input to the

Department prior to its pending decision. Our analysis is based upon a cursory review of the Tribe's documents, and does not represent the entirety of arguments which we may have made had we had additional time to review this request. **Accordingly, the City respectfully requests that the Department delay its opinion on this matter for ninety (90) days to allow the City time to more fully review the Tribe's application and supporting documentation, and provide meaningful input on the City's position.**

1. "Significant Historical Connection"

The IGRA regulations provide that the Tribe must demonstrate that it has a "significant historical connection" to the land where its proposed gaming facility would be located. 25 C.F.R. § 292.12(b). The City of Vallejo does not believe that the Tribe has demonstrated that it has a "significant historical connection" to the lands where its proposed gaming facility would be located.

On May 25, 2012, the Solicitor of the Department of the Interior issued an opinion letter stating that the Tribe did not have a "significant historical connection" to lands in or near the City of Richmond, California, where the Tribe earlier proposed to conduct a gaming facility, and therefore that the Tribe's proposed facility did not qualify under IGRA's "restored lands" exception. The City of Richmond is located in the San Francisco Bay area, near the City of San Francisco. The City of Vallejo is also located in the San Francisco Bay area, also near the City of San Francisco and only about six miles away from the City of Richmond. Thus, the Cities of Richmond and Vallejo are located in approximately the same area in reference to where the Tribe's historic homeland is located, and where its former rancheria was located, which is in the area around Clear Lake in northern California. Since the Solicitor concluded that the Tribe did not have a "significant historical connection" to the lands in the City of Richmond where its proposed gaming facility would have been located, the Tribe does not appear to have a "significant historical connection" to the lands in the City of Vallejo where its currently proposed gaming facility would be located. Because of the close proximity of the Cities of Richmond and Vallejo, there is no basis for concluding that the Tribe has a "significant historical connection" to lands in one of these areas but not the other.

The Solicitor's opinion letter also concluded (p. 6) that the Tribe has not demonstrated that its "villages, burial grounds, occupancy, or subsistence use" were located in the vicinity of the "Richmond parcels," and that this provided another basis for the conclusion that the Tribe did not have a "significant historical connection" to the area. Similarly, although the Tribe has submitted a lengthy historical report by Mr. Albert L. Hurtado, which provides an extensive analysis of the Tribe and its history, the historical report does not indicate that the Tribe had villages, burial grounds, occupancy or subsistence use, at least to any substantial degree, in the vicinity of the City of Vallejo.

The Tribe's Legal Analysis contends (p. 11) that the Tribe meets the "significant historical connection" requirement because the land where its proposed gaming facility would be located is "within the area ceded by the Tribe and the Clear Lake Bands to the United States under an

unratified treaty.” In the following discussion, however, the Tribe states that it is a successor to the “Clear Lake Bands” (p. 12), and that the Clear Lake Bands were “located in and around Clear Lake, California” (p. 11). Further, the Tribe’s historic homeland, where its former rancheria was located, is in the Clear Lake area as well. The Clear Lake area is located at a substantial distance—roughly 60 miles—from the City of Vallejo. Thus, assuming that the Tribe was a successor to the Clear Lake Bands located in the Clear Lake area, the Clear Lake Bands were located a substantial distance from the City of Vallejo and thus did not have a significant historical connection to the area where the Tribe proposes to conduct its gaming facility—thus further proving the Tribe does not have a significant historical connection to the area.

The Tribe’s Legal Analysis contends (p. 21) that the unratified treaty entered into by the United States and the Clear Lake Bands demonstrated that the Tribe has a significant historical connection to lands in the vicinity of the City of Vallejo, because the treaty contained a provision stating that the United States would furnish certain goods to the Clear Lake bands “at or near Vallejo, or elsewhere,” for their subsistence. The Tribe’s Legal Analysis does not, however, indicate why the United States agreed to furnish goods to the Clear Lake band at that particular location. There may be numerous reasons why the United States would have agreed to furnish goods to the Clear Lake bands at that location that would have no relevance to whether the Clear Lake Bands have a significant historical connection to that area. Indeed, it is likely that the United States agreed to deliver goods to the Indians at that location because it was convenient for the United States to do so, and the tribes would then be responsible for transporting the goods to their respective reservations. In fact, the Tribe’s Legal Analysis states (p. 22) that the unratified treaty “necessarily contemplated that the bands would have a right of access to and from Vallejo—to travel from their reservation to Vallejo to receive the provisions, and to return to their reservation from Vallejo with the provisions they received.” The fact that the treaty may have contemplated that the Tribe would receive their supplies in the Vallejo area does not demonstrate that the Tribe has a “significant historical connection” to the area. Otherwise, an Indian tribe would be able to qualify for IGRA’s “restored lands” exception in many different locations by simply demonstrating that it historically received its supplies in the different locations. In any event, the fact that the United States agreed to deliver goods to the Tribe in the Vallejo area does not demonstrate that the Tribe has a significant historical connection to the area, particularly because its historic homeland was located in the Clear Lake area, far from where the Tribe proposes to conduct its gaming operation.

The Tribe also contends (pp. 22-27) that it has “reserved rights to such off-reservation lands identical in kind and similar in scope to those established in treaties that reserved off-reservation hunting, fishing and gathering rights over lands ceded in those treaties.” On the contrary, the federal reserved rights doctrine, as established by the Supreme Court in *Winters v. United States*, 207 U.S. 564 (1908), and its progeny, recognizes that federal reserved rights may exist only on lands reserved from the public domain for specific federal purposes, such as for Indian purposes, and does not recognize that such reserved rights may exist on lands that have not been reserved for specific purposes. Therefore, the reserved rights doctrine does not authorize the Tribe to claim a reserved right on off-reservation lands.

The City of Vallejo also disagrees with the Tribe's contentions that an Indian "encampment" near the City of Vallejo (p. 24), or the fact that the Band's ancestors were "held as captive labor" near the City of Vallejo (p. 25), establishes a "significant historical connection" within the meaning of IGRA's "restored lands" exception. Although these factors, if true, may warrant sympathy for the plight of the Tribe's ancestors, the factors are not relevant in determining that the Tribe has a significant historical connection to the lands where its proposed gaming facility would be located.

In sum, the City of Vallejo believes that the Tribe has failed to demonstrate that it has a "significant historical connection" to the lands where its proposed gaming facility would be located, and thus that the lands do not qualify under IGRA's "restored lands" exception.

2. "Modern Connection"

The IGRA regulations provide that the Tribe must demonstrate that it has a "modern connection[]" to the land where its proposed gaming facility would be located. 25 C.F.R. § 292.12(a). The City of Vallejo does not believe that the Tribe has demonstrated that it has a "modern connection" to the lands where its proposed gaming facility would be located.

The Solicitor's above-referenced opinion letter contains a map (p. 2) indicating that the Tribe's headquarters and former rancheria ("Scotts Valley Tribe HQ & Former Rancheria") were located near the Town of Lakeport, in northern California. According to a scale on the map, the Tribe's headquarters and former rancheria appear to be approximately 80 miles north of the "Richmond Parcels" depicted on the map. The map also depicts the location of the City of Vallejo, which is slightly north of the Richmond Parcels. According to the scale on the map, the Tribe's headquarters and former rancheria appear to be approximately 70 miles north of the City of Vallejo. In short, the Tribe's headquarters and former rancheria are located a substantial distance from the City of Vallejo, where it proposes to conduct its gaming operation. Because of the distance between the Tribe's headquarters and former rancheria, on the one hand, and the City of Vallejo, on the other, the Tribe does not satisfy the "modern connection" requirement of the IGRA regulations, and for the same reason does not satisfy the "significant historical connection" either.

The Tribe's Legal Analysis contends (p. 5) that the Tribe meets the "modern connection" requirement because it maintains its "southern governmental offices" in Contra Costa County, and has done so for more than two years. On the contrary, the City of Vallejo believes that the "modern connection" requirement cannot be satisfied by an Indian tribe's establishment of a satellite office in the area where it proposes to conduct a gaming operation, far removed from where the tribe's former reservation (or in this case, former rancheria) was located. Otherwise, an Indian tribe would be able to conveniently establish a satellite office—a "southern," "northern," "eastern" or "western" office—in the area where it proposes to conduct a gaming facility, and then claim that it satisfies the "modern connection" requirement of the IGRA regulations. The establishment of a satellite office for the purpose of, or at least with the claimed effect of, satisfying the "modern connection" requirement does not comply with either

the spirit or the letter of the regulations and would serve to interfere with the rights and economic interests of recognized tribes with connections to the area.

The Tribe's Legal Analysis asserts (p. 5) that the lands where the Tribe's proposed gaming facility would be located is "near" where a significant number of the Tribe's members reside, because the Bureau of Indian Affairs ("BIA") in an unrelated matter has designated the counties of Mendocino, Lake, Sonoma and Contra Costa as the Tribe's "near-reservation areas" for purposes of providing financial assistance and social services to its members. The City of Vallejo believes that the designation of these areas as "near-reservation areas" for purposes of providing financial assistance and social services does not mean that the lands are "near" the location of the Tribe's former rancheria or the residences of the Tribe's members for purposes of determining whether IGRA's "restored lands" exception applies. Thus, the fact that the BIA may have designated these areas as "near-reservation areas" for purposes of providing financial assistance and social services is not relevant to whether the Tribe has satisfied the "modern connection" requirement of the IGRA regulations.

In sum, the City of Vallejo believes that the Tribe has failed to demonstrate that it has either a "significant historical connection" or a "modern connection" to the lands where its proposed gaming facility would be located, and thus that the lands do not qualify under IGRA's "restored lands" exception.

We appreciate the opportunity to provide the City of Vallejo's views concerning the Tribe's proposed gaming facility. In closing, we again respectfully request that the Department delay its opinion on this matter for ninety (90) days to allow the City time to more fully review the Tribe's application and supporting documentation.

Sincerely,


Daniel E. Keen
City Manager

Cc: Paula Hart, Director, Office of Indian Gaming
Mayor and Members of City Council
Claudia Quintana, City Attorney
Fredericks Peebles & Morgan LLP