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June 26, 2018

Mr. John Tahsuda
Acting Assistant Secretary—Indian Affairs
Department of the Interior
1849 C Street, N.W.
MS-4004-MIB
Washington, D.C. 20240

Re: Opposition to Department's rulemaking effort on Part 151 regulations

Dear Acting Assistant Secretary Tahsuda,

The Habematolel Pomo of Upper Lake ("Tribe") appreciates this opportunity to share its views on the Department of the Interior's ("Department") December 2017 Dear Tribal Leaders Letter requesting comments on the Department's fee-to-trust regulations or 25 C.F.R. § 151 ("Part 151"). The Tribe is concerned that the Department's effort is not rooted in requests from Indian Country and that because of this it will result in increased burdens on fee-to-trust applications. The Tribe cannot support further obstacles being erected in the fee-to-trust process.

It is important to understand that the Tribe's comments and concerns are informed by its unique history and experience with the federal government. The Habematolel Pomo of Upper Lake is a federally recognized tribe that has resided in the Upper Lake, California area since time immemorial. The Tribe's government-to-government relationship with the United States dates back to at least 1850, when the federal military attacked our people in what became known as the "Bloody Island Massacre." The following year, the Tribe signed a treaty with federal negotiators, but like many of the treaties negotiated with California's tribal nations, the Senate never ratified it.¹

By 1878, the Tribe purchased and settled on a 90-acre parcel of land north of Upper Lake. This parcel became known as "Habematolel." In 1907, the federal government set aside the Upper Lake Rancheria on an adjacent parcel of land. Through a series of conveyances, the Rancheria grew to 564 acres. Within these conveyances, a one hundred and sixty (160) acre tract was set-aside for the Tribe by Secretarial Order.²

In 1935, one year after the enactment of the Indian Reorganization Act ("IRA"), the Tribe adopted and ratified a Constitution pursuant to the IRA. The Tribe was targeted for termination in 1958 with the passage of the California Rancheria Act.³ Following the supposed termination of the government-to-government relationship with the Tribe, the federal government ignored its responsibilities to the Tribe and proceeded to liquidate its assets and remove trust restrictions

¹ See "1851-1852 – Eighteen Treaties between California Indians and the United States" (2016). *U.S. Government Treaties, Reports, and Legislation*. Book 5.

² See Indian Office Appropriation Act of 1906, ch. 3504, 34 Stat. 325; Appropriations Act of 1908, ch. 153, 35 Stat. 70, 76.

³ Pub. L. No. 85-671, 72 Stat. 619 (1958).

from our lands. The Tribe fought this unlawful termination in federal court and eventually we were victorious when the United States District Court for the Northern District of California ruled that the termination was unlawful and therefore void.⁴

Although our federal recognition was re-acknowledged, much of the damage was already done. Throughout the termination period the Tribe eventually lost all of its land after the trust status was removed. We were forced to scrape together what few acres we could during our initial fee to trust effort – none of which is from within the exterior boundaries of our original reservation. The process has been tedious, expensive, and full of perils but a land base is essential for sustaining our people and exercising our territorial jurisdiction. As of today, we have only have been able to acquire 11.24 acres of trust land. It is our intention, however, to acquire and convey into trust lands within the boundaries of our former reservation such as our cemetery, as well as lands outside of the reservation boundaries where the Tribe has cultural and historical ties.

It is against this backdrop that our concern and opposition to this effort is rooted. The Tribe opposes any attempt to place new barriers on tribal nations' ability to reacquire lands. The Tribe also objects to the questions put forth by the Department because they appear leading and results-oriented. Instead, the Tribe will state its opposition to this effort and address a few of the themes raised by the questions.

a. Local Communities and MOUs

The Tribe has a great relationship with its neighbors because it strives to be a partner with the local community. However, the Tribe is opposed to any requirement or expedited process for fee-to-trust applications that have MOUs. This is a recipe for disaster for tribal nations. It is frustrating that the Department is raising this issue because the Department has a trust responsibility to tribal nations, not local governments.

The Part 151 regulations already provide the state, local communities, and interested parties with notice and an opportunity to comment on a fee-to-trust application.⁵ The Department even places greater scrutiny on off-reservation acquisitions when it considers the merits of the application. As the “distance between the tribe’s reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe’s justification of anticipated benefits from the acquisition” and the Secretary will also give greater weight to the concerns of the state and local community where the land is located.⁶ Finally, the regulations provide interested parties the opportunity to challenge any fee-to-trust application that the Secretary approves.⁷

Again, the Tribe supports local communities' participation in the fee-to-trust process and we always work towards fostering good relationships with our neighbors. We are concerned though that any attempt to empower local communities further in the fee-to-trust process will come at the expense of tribal nations. Even if this empowerment did not result in a “veto”, any shift in the dynamics could result in tribal nations being held hostage and extorted in order to gain local approval for their fee-to-trust acquisitions.

b. Off-Reservation Versus On-Reservation Applications

⁴ *Upper Lake Pomo Ass'n v. James Watt*, No. C-75-0181SW (N.D. Cal. Aug. 31, 1983).

⁵ 25 C.F.R. §151.11(d).

⁶ 25 C.F.R. §151.11(b).

⁷ 25 C.F.R. §151.12(d)(2)(ii).

The Tribe objects to any new distinctions being drawn between off-reservation and on-reservation applications. Congress did not discriminate against off-reservation acquisitions when it passed the IRA. Congress very clearly provided the Department with the statutory authority to acquire “any interest in lands...within or *without* existing Indian reservations.” 25 U.S.C. § 465 (emphasis added). Due to the way that the Tribe lost our land, we must sometimes pursue off-reservation acquisitions. The Tribe should not be punished for historical circumstances forced upon it.

c. Gaming Versus Non-Gaming Applications

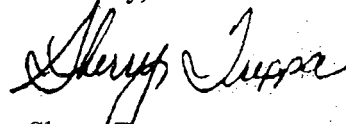
The Tribe is concerned that the Department’s questions about gaming versus non-gaming applications seek to conflate the fee-to-trust process with the gaming eligibility process. The fee-to-trust process is authorized by the IRA and its implementing regulations at 25 C.F.R. § 151, while the gaming eligibility of lands is the province of the Indian Gaming Regulatory Act (“IGRA”) and its implementing regulations at 25 C.F.R. § 292. The Department’s question speaks of the two separate processes as if they were one, they are not. The two statutes and regulations work in tandem at times but allowing the IGRA to seep directly into the IRA’s regulation does a disservice to Congress’ intent and Indian Country.

d. This Effort is Not Supported by Indian Country

The Tribe has long asked for the Department to speed up processing of fee-to-trust applications but that is a matter of additional staff resources and decisional authority – not a revision of the existing Part 151 regulations. Indian Country has spoken out consistently about this effort and asked the Department to abandon it. Indeed, the National Congress of American Indians passed a resolution calling on the Department to cease this rulemaking. NCAI Resolution No. MKE-17-059 (2017). The Department should listen to Indian Country.

In conclusion, the Tribe does not support the Department’s rulemaking effort and is concerned that this is a results-driven process that will lead to further impediments for the fee-to-trust process.

Sincerely,



Sherry Treppa
Chairperson
Habematolel Pomo of Upper Lake