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Hoopa Valley Tribe

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BOARD OF SUPERVISOR:

DEC 16 2013

Ryan Sundberg
Chairperson
Humboldt County Board of Supervisors
825 5th Street
Eureka, CA 95501

December 13, 2013

Dear Mr. Sundberg,

On behalf of the Hoopa Valley Tribe I thank you for the opportunity to comment on the Humboldt County General Land Use Plan proposed amendments, in particular your proposed addition of a Tribal Lands Designation process. The Hoopa Valley Tribe supports the County's efforts to clarify for their records the land designations of tribal property in Humboldt County. However, the language in the draft Tribal Lands Designation provision is overly vague, and the intended assertion of county jurisdiction over tribal members and tribal lands is unclear. I fear that the provision, if implemented as it is currently drafted, will result in avoidable jurisdictional conflicts with the Humboldt County Tribes.

In general, the Tribe believes that clarifying language that indicates deference to Tribal regulatory authority and jurisdiction over its lands would improve implementation of the Tribal Lands Designation provision of the County's Land Use Plan. Selected suggestions and requests for clarification are detailed in the paragraphs below for the Board's consideration, and the Tribe looks forward to continuing to communicate with the Board and the Humboldt County Planning Department as the Tribal Lands Designation language is refined.

- 1) **The Tribal Lands Designation provision should express deference to any established regulatory authority of a Tribe over fee property within its reservation.** Hoopa is distinct from other Tribes in Humboldt County in that it has express authority from Congress to regulate activity on all property within the Hoopa Valley Reservation. In 2001 the Ninth Circuit affirmed this express congressional delegation of regulatory authority in the case *Bugenig v. Hoopa Valley Tribe*, 266 F.3d 1201 (9th Cir. 2001). In this case the Ninth Circuit confirmed that Congress expressly delegated such authority to the Tribe in the Hoopa Yurok Settlement Act of 1988, which "ratified and confirmed" the existing governing documents of the Tribe. The ratification language in the Settlement Act gave the Hoopa Valley Tribe's Constitution and Bylaws the force of law, which extends the Tribe's jurisdiction "to all lands

within the confines of the Hoopa Valley Reservation boundaries,” (Art. III) and empowers the Tribal Council to “regulat[e] the conduct of trade and the use and disposition of property upon the reservation, provided that any ordinance directly affecting non-members of the Hoopa Valley Tribe shall be subject to the approval of the Commissioner of Indian Affairs.” (Art. IX, Sec. 1(1)).

As it currently reads the Tribal Lands Designation provision does not contemplate a scenario in which the Tribe would have jurisdiction over non-Indian fee property within its Reservation. However, as explained above, the Hoopa Valley Tribe has established regulatory authority over all property within its reservation boundaries, regardless of whether the property is held in fee or trust, or whether the owner is a member of the tribe or not. The Tribal Lands Designation language should assure Tribes that the County will not attempt to assert concurrent jurisdiction over select fee property within a Reservation if the Tribe has established express regulatory authority over such property.

- 2) **County jurisdiction over fee property within a Reservation *must* be administered in a manner consistent with any tribally adopted land use plan.** The Tribal Lands Designation provision currently states that “the County shall use the Tribal government’s adopted land use plan as *policy guidance* for land use and permit approvals relating to non-Tribal fee property” (emphasis added). If the County does assert jurisdiction in a manner that is appropriate and not duplicative of tribal regulatory authority, the County must maintain consistency with tribal land use plans in their permitting approvals. The current language implies that the County may ignore tribally adopted land use plans if, as a policy matter, it does not agree with them. The Hoopa Valley Tribe recommends the above quoted language be amended as follows: “The County shall administer permits for non-tribal fee property in accordance with the Tribal government’s adopted land use plan.”

The tribal lands designation provision also states that the “Proposed subdivisions of land planned Tribal Lands shall be originated with contact with the appropriate Tribal government and shall be processed in accordance with the Tribal Government’s adopted subdivision regulations, *where applicable.*” (emphasis added). This language shows more clear deference to tribal land use plans, but stronger language would be preferable to ensure that the Tribe’s intended land use plan will be the governing plan under all circumstances, regardless of whether it conflicts with County subdivision regulations.

Consideration should be made into the allocation of fees associated with permitting. If the County is asserting jurisdiction over property within the reservation, using a tribal land use plan as the basis for their assertion of jurisdiction, it seems appropriate that such fees would be administered in a manner that benefits the Tribe and the County, as the Tribe and the County are both responsible for the amenities enjoyed by the property owner.

- 3) **Clarification is needed on which types of fee property the County would be regulating within Indian Reservations as a result of the tribal lands designation.** The first paragraph of the Tribal Lands Designation provision indicates the County intends to assert some form of regulatory authority over “non-Tribal fee land that is planned Tribal Lands.” This phrase is confusing, and does not lend any insight into how such non-tribal fee land is to

be identified. As a preliminary matter it should be noted that the Hoopa Valley Tribe plans to have *all* lands within the Hoopa Valley Reservation designated as “Tribal Lands” in the future through a comprehensive buy-back plan. Thus, as the language currently reads, it would seem that all fee land within the Hoopa Valley Reservation that is not owned by the Tribe would fall under this definition. Does this mean that, if the County were to assert jurisdiction within Hoopa in a manner that is not duplicative of the Tribe’s jurisdiction, only fee property owned by the Tribe would be excluded from County jurisdiction? Does the County contemplate asserting jurisdiction over fee property owned by individual tribal members, owned by a member of a different federally recognized tribe, or owned jointly by a tribal member or member of a federally recognized Tribe and a non-Indian?

There is similarly confusing language used in Paragraph 2 to identify the specific lands over which the county intends to assert jurisdiction. Paragraph 2 states that, in the absence of a tribal land use plan, “the allowable use types for *non-Tribal fee land designated Tribal Lands* shall be one of the following. . . .” (emphasis added). Is this “designated Tribal Lands” language intended to be synonymous with “planned Tribal Lands,” or is this language referring to a different category of non-Tribal fee property altogether? How is land identified as “planned” or “designated” Tribal Lands? The overly vague language used to identify the lands intended for county jurisdiction begs clarification.

- 4) **The Board must take into consideration that all Tribes within Humboldt County are individual sovereign nations with a unique land base.** The implementation of this Tribal Lands Designation provision will impact each Humboldt County Tribe differently. As such each Tribe will certainly have a differing opinion regarding its implementation. I recommend that the Board of Supervisors conduct a one-on-one consultation with each Tribe to explain the impetus for this language and its intended implementation. Such consultation would be most welcome here at Hoopa, and I would expect other Tribes to respond in kind.

Thank you for your consideration of our comments the County’s proposed tribal land use designation policy to be included in its general land use plan. As stated above, this is simply a summary of select comments the Tribe has identified for the Board’s consideration. My staff and I are willing to provide additional input and recommendations at your request. I strongly urge the Board to actively seek additional suggestions for clarification from the Humboldt County Tribes through consultation before implementation of this Tribal Lands Designation provision, in an effort to increase its effectiveness and minimize potential jurisdictional conflicts. I look forward to hearing from you to arrange a consultation with the Tribal Council and relevant staff.

Sincerely,



Danielle Vigil-Masten,
Chairperson

Cc:

Kevin R. Hamblin, Director of Planning and Building
Michael Richardson, Senior Planner
Hoopa Valley Tribe Land Management Department

