



Skagit County Prosecuting Attorney

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VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

December 12, 2016

Marcella L. Teters, Superintendent
Bureau of Indian Affairs
2707 Colby Avenue, Suite 1101
Everett, WA 98201-3528

Re: Objection of Skagit County to Application of Swinomish Indian Tribal Community's Fee to Trust Application for Parcel No. P19843

On behalf of Skagit County, we write to object to the application submitted by the Swinomish Indian Tribal Community ("SITC") seeking to take Skagit County Tax Assessor Parcel No. P19843 into trust (hereinafter, the "Property"), notice of which was received by Skagit County on November 21, 2016.

Skagit County objects to the inadequacy of the notice furnished by the Bureau. The Bureau's two-page notice fails to include the application package submitted by SITC, and, therefore, Skagit County is unable to formulate a meaningful response to the factors of 25 C.F.R. §§ 151.10, 151.11, and implementing guidance. Skagit County has requested a complete copy of the SITC application file through a Freedom of Information Act Request, which, to date, we have not received.

The Bureau is required to but apparently failed to provide notice to impacted fire, school and other taxing districts, independent agencies of government that will be severely impacted by this proposal. The Bureau, not Skagit County, is obligated to learn who its decision will impact and furnish Constitutionally-adequate notice, which the Bureau in this case (and systemically) has failed to do. This issue takes on heightened significance given the recent defunding of the La Conner School District and other junior taxing districts by SITC in the wake of the Ninth Circuit Court of Appeals' *Great Wolf Lodge* decision.

Skagit County generally objects on grounds that the Bureau's application of its statutory authority under the 1934 Indian Reorganization Act violates Constitutional guarantees of equal

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protection, by, among other things, requiring Skagit County taxpayers to increasingly fund community infrastructure and services in a competitively disadvantageous environment – infrastructure used by tribes, their members, and by the customers of SITC businesses, all without financial contribution by SITC.

Skagit County generally objects on grounds that the factors under 25 C.F.R. 151.10 and 151.11 are applied by the Bureau arbitrarily, with no particular weight or significance assigned to any particular factor, and are unconstitutionally vague.

By continuing to participate in these proceedings and object to SITC's application, Skagit County waives no rights of any nature, including but not limited to those discussed above.

Responsive to the request in your November 18, 2016 letter, we attach as **Exhibit 1** a copy of the Property's tax statement for 2016, which reflects the annual property taxes, special assessments and services furnished to the Property by various units of local government. We reiterate that Skagit County does not represent the other units of government listed here, to whom the Bureau improperly failed to furnish notice of this proposed action.

While Skagit County is unable to adequately register its objections given the insufficiency of the Bureau's notice, Skagit County notes the following objections, reserving the right to supplement as further information is received:

1. SITC Does Not Need The Property In Trust - 25 C.F.R. § 151.10(b).

The purpose of the 1934 Indian Reorganization Act's ("Act") land acquisition provisions was to help frequently landless Indians acquire property for their economic development. The Act was not limited to landless Indians, but, rather, envisioned tribal need for economic development. See, *South Dakota v. U.S. Dep't of the Interior*, 423 F.3d 790, 798 (8th Cir. 2005) ("Congress believed that additional land was essential for the economic advancement and self-support of the Indian communities...").

When land is placed in trust status, it is removed from County regulatory and taxation jurisdiction, and tribes pay no property or sales tax. The tax burden is shifted to the remaining taxpayers in the community, a declining number of whom continue to fund infrastructure and services for the benefit of the entire community (schools, roads, law enforcement, and the like), which tribes, their customers and tribal members continue to use without any requirement that they contribute on the same level as other citizens.

While this arrangement may have made sense in the context of 1934, non-existent tribal economies, and a tribal land base degraded by the allotment era, it no longer makes sense, where, as in Skagit County, there are four tribes that have assembled monopoly or economically preferential positions in a wide range of vice industries; tremendous economic and political power; an increasing rate of land acquisition; and very large tribal governmental organizations in relation to the number of tribal members served.

Which is to say, the need for trust land to support tribal economic development must be balanced with the burden imposed on the remainder of the community. For this reason, 25 C.F.R. § 151.10(b) requires on its face that SITC demonstrate “[t]he need of...the tribe for additional land...”

SITC is the second-largest of the four federally-recognized tribes within Skagit County’s borders, consisting of approximately 700 members. According to SITC’s website:

[SITC] owns and operates the Northern Lights Casino, the Swinomish Chevron Gas Station, which includes a tobacco, liquor and convenience store, the Swinomish Fish Company which processes salmon and shellfish for a global market that includes the United Kingdom and the European Union, and a Ramada Hotel in Ocean Shores on the Washington Coast.

The Tribe has become one of the 5 largest employers in [Skagit] County with over 250 employees in Tribal government¹ and approximately 300 employees in its casino and other economic enterprises.²

This foregoing information is dated; Swinomish has since opened a 98-room hotel and conference center co-located with its Northern Lights Casino, and a second Chevron gas station on its reservation near La Conner.³

As previously noted, SITC already owns and operates two Chevron gas stations within several miles of the Property, one of which is located a mere 2.5 miles east on Washington State Highway 20, the same highway on which the Property is located.

According to SITC’s website, “[t]he Tribe’s [existing, on-reservation] Chevron Gas Station is the largest volume Chevron station on the West Coast.”⁴

This raises the obvious question: why would SITC pay double the assessed value⁵ for a third gas station, located mere miles from the two gas stations that SITC already owns? In light of the massive economic advantages that SITC has accrued, including “the largest volume Chevron station on the West Coast” situated just two miles away on the same highway, this acquisition is plainly not needed for SITC’s economic development.

¹ This equates to approximately one SITC tribal government employee for each three SITC tribal members. If Skagit County government were operating at the same level of efficiency, it would involve approximately 35,000 Skagit County government employees on the public payroll.

² <http://www.swinomish-nsn.gov/who-we-are/swinomish-economy.aspx> (last visited December 12, 2016), a copy of which is attached hereto as **Exhibit 2**.

³ Because tribes are not subject to open public records laws, it is difficult to know with any precision the level of SITC’s need.

⁴ *Id.*

⁵ SITC paid \$1,100,00 for the Property, which has a 2016 Assessed Value of \$543,000.

Based on information and belief, this acquisition appears to be principally motivated by SITC's ongoing effort to suppress the Samish Indian Nation's proposed casino at a parcel 0.5 miles to the west of the Property, long owned by Samish.

Specifically, by attempting to "bracket" the proposed Samish Casino with SITC trust property, SITC appears to believe it will bolster SITC arguments in opposition to the Samish Casino. In addition to displaying a thin level of respect for the sovereignty of the Samish Indian Nation – the largest Skagit tribe by membership – SITC fails to demonstrate "need" for the purposes of 25 C.F.R. § 151.10(b).

Skagit County has no issue with SITC operating as a business, buying land and businesses on the open market, paying their fair share of taxes to support the schools that SITC children attend, as well as roads, law enforcement, and the many other aspects of the community's services and infrastructure on which SITC, its customers, and its members rely on a daily basis.

The question posed here is quite different: In order to qualify for the broadly preferential tax and regulatory treatment inherent in trust status, SITC must demonstrate **need** for the Property – which, in this case, SITC cannot. SITC's fee-to-trust application must be denied.

2. The Bureau Must Ensure NEPA Compliance.

The Bureau is required to assess whether the applicant furnished sufficient information to allow it to comply with 516 DM 6, Appendix 4, National Environmental Policy Act Revised Implementing Procedures (NEPA) and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. 25 C.F.R. 151.10(h).

While Skagit County lacks adequate information to assess whether this has been accomplished, there are two relevant issues that come immediately to mind. First, Skagit County is presently compiling a complete list of properties held in trust, owned by tribes and tribally-controlled entities, and otherwise not subject to taxation because of their tribal status. Skagit County reserves the right to supplement the record of this action to include discussion of cumulative impacts created by trust conversions. Second, given the Property's long-standing use as a gas station, hazardous materials including failing underground storage tanks have a high likelihood of being present.

3. The Patchwork Of Off-Reservation Property That SITC's Trust Acquisitions Will Create Will Create Jurisdictional Conflict.

25 C.F.R. § 151.10(f) requires the Bureau to consider "[j]urisdictional problems and potential conflicts of land use which may arise." The Property is presently located within the City of Anacortes, adjacent to Skagit County, nearby to City Urban Growth Area slated for later absorption into Skagit County, also adjacent to property that the Samish Indian Nation proposes to bring into trust. As previously noted, Skagit County believes that SITC's intent has to do with

opposing Samish plans rather than any legitimate need for economic development. This is an area of existing intensive commercial and industrial development. The mosaic patchwork of jurisdictional authority that SITC will create with this proposal will create inevitable jurisdictional problems.

4. The Property Is Off-Reservation, And The Bureau Is Therefore Obligated To Apply Heightened Scrutiny To This Application.

The Property is located 1.2 miles from the SITC reservation. The Bureau is required to give "greater scrutiny" to the proposed trust conversion. 25 C.F.R. § 151.11(c). This is particularly relevant here, where it appears that SITC is attempting to convert the Property to trust in order to frustrate the long-standing plans of the Samish Indian Nation.

In the the context of a proposed SITC Constitutional Amendment, currently under review by the Regional Director, SITC appears to be asserting that SITC's historic reservation under the 1855 Treaty of Point Elliott includes the subject Property (as well as March's Point).

Contrary to SITC's apparent contention, the Indian Claims Commission has expressly rejected SITC's assertion that March's Point (including the subject Property) is within SITC's treaty-granted reservation. See, *Swinomish Indian Tribal Community v. United States*, 25 Ind. Cl. Commn. 465 (1971):

Article II of the Treaty of Point Elliott of 1855, supra, simply describes the land as "the peninsula at the southeastern end of Perry's [Fidalgo] Island." Dr. Taylor reported that his investigation was unable to establish, either through ethnographic information or through a search of the historical records, that the defendant made any promises for a larger reservation than that which was actually created.

...

In conclusion, the Commission has determined, on the basis of the extensive review undertaken through the Investigation Division of the Commission, that there is no evidence to support the remaining claim in Docket NO. 293, and that therefore said claim should be dismissed with prejudice

The Subject Property is off-reservation as the Indian Claims Commission has established, and SITC's fee-to-trust application must therefore be afforded a higher level of scrutiny.

5. Conclusion.

Bringing land into trust invokes a wide range of preferential benefits and tax exemptions, frustrating and undermining land use plans and policies democratically established by the broader community, transferring the cost of civilizational infrastructure used by tribal and non-tribal citizens alike onto a declining number of non-Indian landowners.

As this trend progresses over time, it is creating and will continue to create an increasing level of animus in the community between tribal and non-tribal communities.

Skagit County supports near-absolute tribal sovereignty within established reservation boundaries, with tribes determining their own political and economic future as they see fit.

However, Skagit County believes that tribes should be required to contribute property tax and sales tax at the same level as others in the community when functioning as business corporations in the off-reservation environment, and should not be permitted to create a patchwork of jurisdictional conflict within local jurisdictions established over the course of the past 150 years.

Observing this policy will establish a pathway to a stable and amicable relationship between the tribal and non-tribal communities that share this ecosystem – Skagit County's overarching goal.

For this reason, it is important that the Bureau give force to the limited number of threshold criteria the Bureau has established for trust conversion – by denying SITC's application.

Please make Skagit County an official party of record to this action.

Very Truly Yours,



Will Honea

cc: Samish Indian Nation
Upper Skagit Indian Tribe
Sauk-Suiattle Indian Tribe
Swinomish Indian Tribal Community
City of Anacortes
Anacortes School District
Skagit County Fire District No. 13
Shell Puget Sound Refinery
Tesoro Anacortes
Board of Skagit County Commissioners
Richard Weyrich, Skagit County Prosecuting Attorney
Dave Thomas, Skagit County Assessor
Katie Jungquist, Skagit County Treasurer

2016 Real Estate Tax Statement

Account Number

Parcel ID: P19843
Xref ID: 340204-0-050-0003

Owner Information

SWINOMISH INDIAN TRIBAL COMMUNITY
11404 MOORAGE WAY
LA CONNER, WA 98257

Site Address

12515 CHRISTIANSON ROAD
Anacortes, WA

Property Description

(0.7000 ac) THAT PORTION OF THE WEST HALF OF SECTION 4, TOWNSHIP 34 NORTH, RANGE 2 EAST, W.M., DESCRIBED AS FOLLOWS: COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 4; THENCE SOUTH 2 DEGREES 24'00" WEST ALONG THE WEST LINE OF SAID SECTION 4 - Abbreviated Legal Description, click the Assessment Details link above for viewing the full LEGAL DESCRIPTION

2016 First Installment DUE by APRIL 30: **PAID: \$2,614.53**

2016 Second Installment DUE by OCTOBER 31: **PAID: \$2,614.42**

2016 Property Tax, Assessments, and Fees			2016 Summary	
Tax District	Rate	Amount	Levy Code:	0901
CEMETERY DISTRICT 2	0.0572	\$30.04	Levy Rate:	9.9618
ANACORTES	1.8773	\$985.39	Land Market Value:	\$205,600.00
SKAGIT COUNTY	1.6650	\$821.45	Building Market Value:	\$319,300.00
CONSERVATION FUTURES FUND	0.0554	\$29.07	Total Market Value:	\$524,900.00
MEDIC 1 SERVICES	0.3689	\$193.64	Taxable Value:	\$524,900.00
FIDALGO PARK & RECREATION DISTRICT	0.1319	\$69.26	General Tax:	\$5,228.95
HOSPITAL DISTRICT 2	0.6628	\$347.90	Special Assessment/Fees:	0
PORT DISTRICT 1	0.0880	\$45.13	2016 Total Due:	\$5,228.95
STATE LEVY	2.1500	\$1,128.54	2016 Amount Paid:	\$5,228.95
SCHOOL DISTRICT 103	3.0073	\$1,578.53		
Special Assessment and Fees				
2016 Property Tax, Assessments, and Fees Total:				
		\$5,228.95		

Amount due may be revised without notice, contact Treasurer's Office for current tax status.

First half tax paid after April 30th requires interest plus penalty on full amount.

Second half becomes delinquent after OCTOBER 31st.

TAX OF LESS THAN \$50.00 MUST BE PAID IN FULL.

Skagit County Treasurer, P.O. Box 518, Mount Vernon, WA 98273

First half tax DUE APRIL 30

Second half tax DUE OCTOBER 31

EXHIBIT 1

SWINOMISH ECONOMY

While a number of tribal members still rely on salmon fishing and shellfish harvesting for at least a portion of their livelihood, such traditional subsistence methods are no longer the sole means of support for many tribal families. In addition the Tribe owns and operates the Northern Lights Casino, the Swinomish Chevron Gas Station, which includes a tobacco, liquor and convenience store, the Swinomish Fish Company which processes salmon and shellfish for a global market that includes the United Kingdom and the European Union, and a Ramada Hotel in Ocean Shores on the Washington Coast.

The Tribe has become one of the 5 largest employers in the County with over 250 employees in Tribal government and approximately 300 employees in its casino and other economic enterprises. The Tribe's Chevron Gas Station is the largest volume Chevron station on the West Coast.

SWINOMISH ECONOMY

contact

General Reception

Phone (360) 466.3163

EXHIBIT 2