STATE OF CALIFORNIA – THE RESOURCES AGENCY EDMUND G BROWN, *GOVERNOR*

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE AND TDD (415) 904- 5200
FAX (415) 904- 5400

June 13, 2012

Assemblyman Isadore Hall, Chairman
Assembly Governmental Organization Committee
1020 N St, Room 157
Sacramento, Ca. 94814

RE: SB 162 (Anderson) – California Coastal Commission Oppose

Dear Chairman Hall and Committee Members:

On behalf of the California Coastal Commission, I write to inform you that the California Coastal Commission has voted to oppose SB 162, as amended May 21, 2012.

The recent amendments would prohibit any state agency from opposing a tribal fee-to-trust acquisition application if the acquisition was intended for the purpose of housing, environmental protection or cultural restoration.

Section 465 of Title 25 of the United States Code authorizes the federal government to acquire land in trust for an Indian tribe's benefit. This process is known as a "fee-to-trust acquisition." Once land is annexed in a federal fee-to-trust process, the land is taken out of city/county/state jurisdiction in perpetuity and added to the reservation of the tribal applicant. The practical effect of this within the coastal zone is that tribal lands taken into trust are removed from the coastal zone for purposes of the Commission's review authority, or local governments' Local Coastal Program (LCP) review.

Under existing law, the Commission and other state agencies have the ability to comment on fee-to-trust acquisitions as part of the NEPA consultation process. This process allows state agencies to concur with or object to the acquisition. The Commission has additional review authority under the federal Coastal Zone Management Act (CZMA). The Department of Interior's subsequent action is subject to appeal and ultimately to judicial review. Plaintiffs must have standing in order to appeal or litigate. This standing is achieved by participating in the public comment period.

Recognizing that fee-to-trust acquisitions may be an important mechanism for facilitating Native American self-determination, the Commission has generally been supportive of these applications when they are for purposes that can be carried out consistent with Coastal Act policies Since 2000, the Commission has concurred with nine of the ten fee-to-trust applications it has considered. At least three of the Commission's concurrence determinations relied upon changes pre-negotiated with the tribes relating to future uses of the lands taken into trust. The Commission concurred with every fee-to-trust application since 2000 except for one: the Big Lagoon Rancheria's application to take five acres of land into trust for housing in Humboldt

County. The Commission's objections were based on cumulative impacts and concentration of development. The Commission is currently participating in an administrative appeal regarding this matter.

While the Commission rarely objects to applications for fee-to-trust acquisition, the ability to do so when necessary is important, because there is no state oversight once an acquisition is complete. The development that follows fee-to-trust acquisition has the potential to cause significant environmental and land use impacts, including impacts to traffic and circulation, sensitive habitat, public access and public service impacts. Subsequent development does not undergo environmental review under CEQA, nor any local permit process. Because local governments cannot regulate tribal trust lands, LCP standards do not apply to development. No do standard regulatory instruments such as coastal development permits, or other state permits.

Because there is no prohibition for a change of use once land is taken into trust by a tribal government, a tribe can apply to take land into trust for non-gaming activities such as housing, environmental protection, or cultural preservation and upon approval of the application immediately begin planning and implementation of a gaming facility or other type of project. This has occurred on some fee-to-trust lands in the past, including Big Lagoon. While many fee-to-trust acquisitions don't raise public agency concerns, those that have been pursued to facilitate controversial projects such as casinos, golf courses, and resorts have generated concerns from surrounding communities and local governments.

SB 162 would revoke the only meaningful opportunity for the State to influence the outcome of a fee-to-trust acquisition is before the land is taken into trust. If state agencies are prohibited from objecting to these acquisition applications, the state agencies will forfeit the opportunity to raise issues and objections on the part of the state and local communities where the impacts are most significant. At least one such action is currently pending. On May 14 of this year, the Attorney General objected to a 535-acres fee-to-trust acquisition in the City of San Jacinto, based on the impacts to city residents and municipal services.

If SB 162 were to become law, the Commission would retain its federal consistency review authority under the Coastal Zone Management Act. However, the language prohibiting a state agency from opposing a fee-to-trust acquisition would arguably prevent the Commission from either objecting to, or conditionally concurring with, future consistency determinations by the BIA regarding fee-to-trust acquisitions.

The Commission would also lose the benefit of other agencies' review of such applications. In its own analysis, the Commission would not be able to utilize information generated by the Department of Fish and Game, State Parks, Caltrans, the State Water Resources Control Board, etc. SB 162 would significantly diminish state authority in these matters, and has the potential to undermine the Commission's existing authority under the CZMA. **For the forgoing reasons, the Commission urges you to oppose SB 162 when it comes before your committee June 20.**

Sincerely,

Sarah Christie
Legislative Director
California Coastal Commission
(916) 445-6067