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Amy Dutschke
Pacific Region Director
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

By mail and electronic mail

Re: Trinidad Harbor Fee to Trust Application by Cher-Ae Heights Indian
Community of the Trinidad Rancheria

Dear Ms. Dutschke:

I am an interested party in the above-referenced fee to trust application currently
pending before the Bureau of Indian Affairs.

I take this opportunity to submit further comments and appraise you of a recent
development that strongly militates in favor of delaying or denying the fee to trust
application.

As you can see from the attached copy of a Lis Pendens recorded in the Office of
the Humboldt County Recorder, a lawsuit has been filed to quiet title to a public
easement across portions of the subject lands.

Under the doctrine of "immovable property" an exception exists to the rule of
tribal immunity from suit. The doctrine has been strongly endorsed by the U.S.
Supreme Court in Upper Skagit Indian Tribe v Lundgren, 584 U.S. ____ (2018).
The case was not actually decided, but was sent back to the Washington Supreme
Court for an initial decision, since the issue had not been raised until fairly late in
the briefing. Therefore, a decision on the merits of the pending quiet title to public
easement case is quite likely.

I urge the Bureau to refrain from taking the subject property into trust prior to the state courts resolving the public easement issues. There is a well settled judicial rule against "concurrent in rem jurisdiction," which requires that the first court to assume in rem jurisdiction over a *res*, or thing, has exclusive jurisdiction until the matter is resolved. Actions by the federal government that divest a state court of jurisdiction in situations like this are violative of the rule, and are subject to attack on that basis. U.S. v One Cadillac Seville, 866 F.2d 1142, 1145 (9th Cir. 1989); Penn General Casualty Co. v Pennsylvania, 294 U.S. 189, 195 (1935).

Completion of the subject trust transfer prematurely carries a substantial risk of depriving the state court of its jurisdiction to resolve the controversy that has been placed before it. For that reason, the process should be halted until state judicial proceedings are completed.

Thank you for your time and attention, and please do not hesitate to contact me should you wish to discuss this matter.

Very Truly Yours,

/s/

J. Bryce Kenny
Attorney at Law