



LYTTON RANCHERIA • Lytton Band of Pomo Indians



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TESTIMONY OF CHAIRPERSON MARGIE MEJIA LYTTON RANCHERIA, SANTA ROSA, CALIFORNIA BEFORE U.S. SENATE COMMITTEE ON INDIAN AFFAIRS H.R. 597, THE LYTTON RANCHERIA HOMELAND ACT OF 2017

April 25, 2018

Good afternoon Chairman Hoeven and Vice Chairman Udall, and Members of the Committee on Indian Affairs. My name is Margie Mejia, Chairperson of the Lytton Rancheria in Santa Rosa, California. Thank you for inviting me to present testimony today. I speak in strong support of H.R. 597, the Lytton Rancheria Homeland Act of 2017.

H.R. 597 would right a historical wrong and restore a permanent homeland for the Lytton Rancheria now and for our future generations. The bill provides that lands currently owned by the Tribe in fee would be held in trust by the United States and have reservation status. On behalf of the members of the Lytton Rancheria of California, I ask that you support the Lytton Rancheria Homeland Act of 2017.

Background

The Lytton Rancheria is a Federally-recognized Pomo Indian Tribe from California's San Francisco Bay area. Prior to European contact it is estimated that as many as 350,000 Indians were living in what is now the State of California. By the end of the nineteenth century, that number was reduced by ninety-six percent to a population of approximately 15,000.

The Pomo people occupied lands in the northern part of California that spanned an area from the Pacific coast at the northern San Francisco Bay area to the Lake District in northern California. Their ancestors were devastated by the Gold Rush and hostile local, State and Federal policies towards Indians in the 19th century. By the early 1900's most Indians and Indian tribes from the area who managed to survive were poverty-stricken, landless and homeless. Because of this

unconscionable state of affairs in California, Congress enacted legislation to help purchase reservation lands for many of these Indians and tribes. The Lytton Rancheria is one such tribe that received reservation lands in Sonoma County.

The Tribe resided on the land sustaining itself by farming and ranching until it once again fell prey to a new Federal Indian policy known as "termination". Unfortunately, with passage of the Rancheria Act of 1958, Lytton Rancheria, along with dozens of other California tribes, had its relationship with the Federal government terminated. As a result of termination, the Tribe lost all of its Rancheria lands as well, and it once again became a destitute, landless Indian tribe with no means of supporting itself. As has now been widely accepted, the Rancheria Act was another failed attempt to force Indian tribes to disband. Despite the hardships associated with the continuous loss of its homelands, the Lytton Tribe remained cohesive and strong, not giving up its claim that it had been wrongfully terminated.

In 1987, the Tribe joined three other tribes in a lawsuit against the United States challenging the termination of their rancherias. In 1991, the U.S. District Court for the Northern District of California concluded in Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States of America, No. C-86-3660 (N.D.Cal. March 22, 1991), that the termination of the Lytton Rancheria was indeed unlawful, and by order of the Court, Lytton's Federally-recognized tribal status was restored. Part of the Stipulated Judgment reads, "...that the distributees of the Lytton Rancheria are eligible for all rights and benefits extended to Indians under the Constitution and laws of the United States; and that the Lytton Indian Community and its members shall be eligible for all rights and benefits extended to other Federally-recognized Indian tribes and their members, ..."

Lytton's status was restored, but its land base, now owned by non-Indians, was not returned to the tribe, and with no home to return to, Lytton remained a landless and impoverished tribe. The Stipulated Judgment that ended the case was agreed to by Federal and County authorities and specifically promised the Tribe a new homeland in Sonoma County on lands to be held in trust by the United States. Twenty-four years later, the Tribe is still waiting for a new homeland. H.R. 597 fulfills the promises made by the Federal government in the stipulated judgment.

In 2000, Congress directed the Secretary of Interior to take a small parcel of land into trust for the Tribe for gaming purposes in San Pablo, California (Section 819 of Pub. L. 106-568). This action was taken after due consideration and with strong local support. Pursuant to the action by the Congress, Lytton has established a small, successful Class II gaming operation in that location which is limited by law to electronic bingo games and poker. The Tribe collects revenues from this facility to pay

for tribal services including the provision of education and health care, and has purchased property for a homeland and an area to diversify the Tribe's economic development. While the Tribe's 9.5 acre San Pablo trust parcel is sufficient for the gaming facility, it cannot meet the Tribe's needs for a tribal homeland.

Need for Trust Land

Indian tribes have long been held to be distinct political communities. The inherent sovereignty of tribal governments is recognized in the United States Constitution, as well as in treaties, legislation, judicial and administrative decisions. Like other governments, land is essential for tribes to function as governments. Tribal trust lands are especially important to the tribal provision of governmental services for their citizens, such as housing, health care, education, economic development, and the protection of historic, cultural and religious ties to the land.

The Indian Reorganization Act ("IRA") recognized the need for tribes to have and govern their own lands to provide for the advancement and self-support of their people. The legislative history of the IRA clearly documents the intent of Congress to address and ameliorate the extensive loss of land tribes have suffered. Specifically, the IRA made a change in Federal Indian policy which would "establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically."

In addition, every Indian tribe needs to have a homeland in order to assure not only the provision of services to its members but also jurisdiction over its lands to provide the necessary infrastructure and land use planning for future generations. With the exception of the small parcel Congress authorized for gaming in San Pablo, the parcel is not of sufficient size to serve as a tribal homeland, and Lytton Rancheria has been left essentially landless since it was terminated in 1961. For more than fifty years the Tribe has not been able to provide its members a homeland on which to build housing, community and governmental facilities, and to pursue our religious practices without interference from outsiders.

Lytton Rancheria has used revenues from the San Pablo casino to purchase lands, from willing sellers and at fair market value, near its former Rancheria in the Alexander Valley of Sonoma County. Lytton Rancheria has concentrated the purchase of property near the Town of Windsor and currently holds these lands in fee status. The attached map entitled, "Lytton Fee Owned Property to be Taken into Trust - May 1, 2015" shows the property proposed for trust status under H.R. 597 which includes 511

acres. There will be no gaming on any of the lands covered in H.R. 597 which specifically prohibits gaming on any of the lands.

Of the acreage proposed for trust status, the Tribe proposes to use approximately 124.12 acres to address the immediate housing needs of its citizens and for other governmental and community facilities, thereby allowing the Tribe a homeland for its members after fifty years in exile. A portion of the land proposed to be taken into trust is currently being used for economic development purposes such as viniculture.

The Tribe has purchased a number of vineyards and is operating them in an environmentally-sensitive manner. Vineyards that were in various stages of disrepair prior to the Tribe's purchase are now being put back into clean, healthy working order. Small tributaries of the Russian River that have long been clogged and unusable by fish are being cleared out and made environmentally clean again. Additionally, the Tribe has installed wind machines to use during frost warnings to keep the grapes from freezing, rather than using overhead spraying of water from the Russian River like many ranches in the area. This innovative measure will save water from being taken from the Russian River at times that are vital to the river's flow. The Tribe's investment in the ongoing viniculture operations has reinvigorated many previously deteriorating vineyards, and its grapes are being used to produce high-quality wines. Lytton operates its vineyards on a fish-friendly and sustainable basis, many of its vineyards have already received sustainability certification pursuant to the practices of the Sonoma County Winegrape Association and the California Sustainable Winegrowing Alliance.

County of Sonoma

After years of discussion and negotiation, Lytton Rancheria and the Sonoma County Board of Supervisors have agreed to and signed a binding Memorandum of Agreement (MOA). I am pleased to report that both the Lytton Tribal Council and the Sonoma County Board of Supervisors voted unanimously to support the agreement and the legislation to take lands into trust for the Tribe.

The detailed Agreement with the County initially spans a term of a generation and covers almost every aspect of land management once the tribally-owned land is taken into trust status. The MOA is too long to detail in this testimony, but I will cover some of the significant portions:

- An Environmental Assessment was prepared and submitted to the Bureau of Indian Affairs and circulated regarding the residential development area for tribal housing. The Bureau of Indian Affairs issued a Finding of No Significant Impact (FONSI) on June 5, 2012. The MOA contains agreements for the

mitigation of potential impacts from this, or any future, land being taken into trust status for Lytton Rancheria.

- In the residential development area, the MOA contains agreements on how many units will be built, the size of the units and who can reside there. Some oak trees will be cut in the residential area, however the Tribe has marked and will protect the larger heritage trees, and is providing the County with funding to replace, on a 1 to 1 ratio, the smaller trees that are cut down.
- The Tribe has agreed to strict environmental protection and mitigation efforts for the residential project, including the community and governmental facilities. The Tribe has also agreed that for a potential future lodging facility and winery, it will prepare an Environmental Impact Statement in compliance with NEPA and negotiate with the County on mitigating impacts. The Tribe has waived its sovereign immunity in the MOA and has agreed to binding arbitration if there is disagreement on mitigation.
- Lytton Rancheria has agreed to provide compensation for substantial mitigation and other costs to the County. These include a one-time payment of \$6 million dollars for mitigation of, among other things, County roads, native oaks, woodlands; and a one-time payment of \$100,000 for costs incurred by the County to prepare and implement the MOA.
- The Tribe has agreed to a continuous payment to the County based on the valuation of the land as determined by the County Assessor's Office. In addition the Tribe has agreed to pay to the County 12% of all rents collected by the Tribe on hotel rooms and vacation rentals.
- This MOA with Sonoma County, involved a great deal of effort, but serves as an example of how local governmental entities and Tribes can work together to address each other's concerns in a thoughtful and respectful manner. I very much appreciate the efforts of Sonoma County to work with the Tribe and appreciate its support for this legislation.

Lytton Rancheria is a Good Neighbor

Lytton Rancheria has prided itself in being a good neighbor to the communities surrounding its lands. For example, in San Pablo, the Tribe provides more than 50% of the City's operating budget and donates to many local charities. The Tribe also sponsors an annual golf tournament to benefit the Brookside Foundation thus providing \$100,000 a year for health care services to an impoverished community. The Tribe has donated \$50,000 to the Boys and Girls Clubs of San Pablo, and contributes \$25,000 a year to the Friendship House in San Francisco to help aid in drug and alcohol rehabilitation in the Bay Area. I proudly serve as the Chairperson of the Board of Directors of the Friendship House.

The Tribe is a naming sponsor of the Luther Burbank Center for the Arts in Sonoma County, donating \$500,000 a year for children's programs and musical instruments. Lytton has recently agreed to give \$250,000 a year for five years to the Charles Shultz Children's Charities, which includes three different children's charities in Sonoma County. The Tribe has also contributed over \$300,000 to other Tribal entities in Sonoma, Lake and Mendocino Counties to address the immediate needs of Native Americans impacted by the devastating fires that recently occurred in northern California. These are just a few examples of Lytton Rancheria using its resources to assist its local communities and neighboring Tribes.

On the Federal level, Lytton Rancheria does not accept any Federal funding for which it is eligible as a Federally-recognized tribe with the exception of Indian Health Service (IHS) funding, which the Tribe immediately turns over to the Sonoma Indian Health Clinic. This Clinic provides health care for all Indians residing in Sonoma County, regardless of tribal affiliation. The remainder of the Federal funding that the Tribe is eligible to receive goes to the local BIA agency to assist other tribes

Memoranda of Agreement

As referenced above, realizing that having land in trust in Sonoma County would change some of the current uses of the land, the Tribe has spent years meeting with, negotiating and forming agreements with the County of Sonoma, the local school district and the local fire department. All of these entities strongly support H.R. 597.

Windsor Fire Protection District

Lytton Rancheria has entered into a Memorandum of Agreement with the Windsor Fire Protection District to provide emergency services to tribal members located in the proposed tribal housing area, which is within the District's jurisdiction. Under the Agreement, the Windsor Fire Protection District will provide the initial response to all emergency incidents for fire, medical, rescue or other reported emergency reasons.

In return for these services, the Tribe has agreed to make payments to the fire district including: \$50,000 a year for equipment purchases, and \$80,000 a year for one full-time firefighter. In addition, the Tribe has agreed to pay to the District, prior to the start of construction: \$750 per each single family home, \$525 per each multi-family unit, and \$340 per every 1,000 square feet of space for a community center and tribal retreat center. Once property is in trust status the Tribe has also agreed to pay the District on an escalating basis yearly. The beginning payment would be \$25,000 a year and increase up to \$50,000 a year for the term of the agreement. Further, the Tribe has

agreed to provide additional funding if necessary in the case of an emergency such as terrorism, earthquake or other acts of God.

The Tribe will comply with California Fire Code and Fire Safety Standards Ordinance during construction of all housing and tribal buildings. The Tribe will also be responsible for providing adequate water and pressure for firefighting.

Windsor Unified School District

Lytton Rancheria has entered into a Memorandum of Agreement with the Windsor Unified School District to prepare for and mitigate an increase in school-aged children who would move into the proposed tribal housing. The Tribe has agreed to pay, based on the Environmental Assessment for the housing project, the amount of \$1 million dollars. This amount is similar to the amount that would be owed to the School District if the land were developed by a non-tribal entity.

Town of Windsor

The Tribe has discussed the possibility of using services from the Town of Windsor for water and sewer for the tribal housing area since the development would be just outside the current Town water and sewer boundaries. This decision is likely to be made through public referendum. If approved by the Town residents, the Tribe is prepared to pay its fair share of costs required for such services as well as to assist the Town with other priorities it has for its citizens.

Governor of California

Governor Jerry Brown Jr. has consistently voiced support for the Lytton Tribe's efforts to secure a Tribal Homeland. The Governor, on behalf of the State of California, supports this legislation.

Opposition to the Lytton Homeland Bill

I am aware of two entities opposing the Lytton Homeland bill - a small group of individuals living in and around the town of Windsor who call themselves the "Citizens for Windsor", and the City of Petaluma. I point out the opposition in my testimony because I do not want to take the chance that the assertions raised by these entities will go unchallenged during the hearing on our bill.

The Citizens for Windsor have consistently made false claims to the press and various government officials. Those claims can be summarized as follows:

- 1) The Tribe intends to destroy a self-sustaining Blue Oak Woodlands by cutting down 1500 trees.

The County has recognized in the MOA that the Tribe has adequately mitigated the loss of the trees. It should be noted that the trees are not protected by local, State or Federal law and that the Tribe has been advised to thin the forested area for fire protection purposes regardless of whether the housing is constructed.

2) The Tribe's project threatens the water supply of the local community.

The water resources to be used in these projects will most likely be groundwater. Under California law, the groundwater under the Tribe's property is owned by the Tribe – not the local community. In addition, the area where the Tribe's land is located is not an area of groundwater depletion as determined by the County of Sonoma.

3) The Tribe threatens to spray raw sewage water close to a neighboring community.

If the Tribe does not use the sewer services of the Town of Windsor, it will construct its own wastewater treatment plant. In the MOA, Sonoma County has agreed to such construction with the addition of certain requirements contained in an exhibit attached to the MOA. The treatment plant will operate much in the same way as the plant operated by the Town of Windsor, which is located directly across the street from a residential subdivision. No raw sewage will be sprayed. To do so would violate a host of local, State and Federal laws.

4) The Tribal projects are inconsistent with local zoning and land use requirements.

When land is taken into trust for Tribes, local land use and zoning laws typically no longer apply. In conjunction with the County, the Tribe developed its own general plan and with the exception of the housing project and the winery and hotel locations, the Tribe will comply with the County's land use and zoning laws for the term of the MOA.

5) The Tribe can build whatever it wants without environmental consideration.

While it is true that state environmental law will not apply to the lands that are taken into trust by the United States, the Tribe and County have carefully crafted an environmental review and mitigation process that requires the Tribe to mitigate any off-reservation impacts of future projects. The housing project impacts have been addressed pursuant to Federal law (NEPA) and a FONSI was issued in 2012.

6) The Lytton Tribe is prohibited by the Supreme Court's *Carciere* decision from having land taken into trust.

There are several paths for Indian Tribes to take land into trust. Congress has plenary authority to take land into trust on behalf of Tribes and has done so on numerous occasions. In addition, Congress has delegated authority to the Department of the Interior (DOI) pursuant to Section 5 of the Indian Reorganization Act (25 U.S.C. §

5108) to take land into trust for “Indians”, and the definition of the term “Indian” includes Indian Tribes.

As the members of this Committee know, Congress’ authority to take land into trust for a Tribe is separate from the Interior Department’s administrative process. Judicial decisions affecting the administrative process do not prohibit Congress from enacting our Homeland legislation. In short, the *Carciere* decision has no impact on Congress’s legislative authority to establish the Lytton Homeland.

In reviewing the opposition letter sent by the City of Petaluma to Senators Feinstein and Harris, the City takes the position that it is opposed to the legislation because it does not believe that Federally-recognized tribes should be able to have fee land taken into trust regardless of need or purpose. In other words, the City disagrees with long-standing Federal policies encouraging and strengthening tribal self-sufficiency and self-determination. I urge the members of this committee to reject the city’s position as it is not only inconsistent with well-established Federal law and policy, but is also counter to the needs and interests of all tribes.

Closing

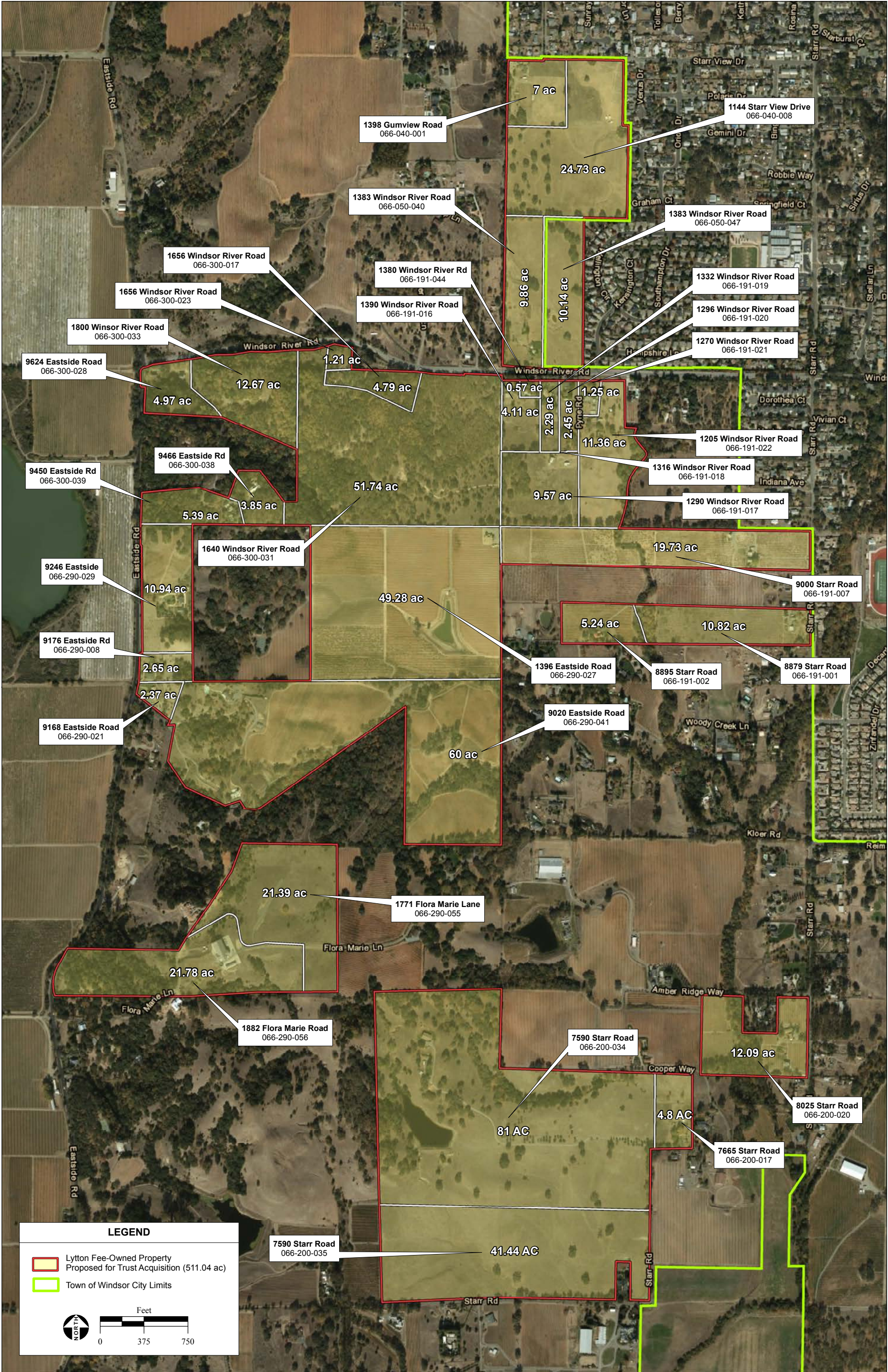
In closing Mr. Chairman, I want to thank you and the members of this committee again for holding this hearing addressing the number one priority of my tribe – the re-establishment of a homeland on which the Lytton people can once again live communally now and for future generations. We have been fighting back from losing our lands (the last time) for more than 50 years, and I do not want another of our tribal elders to pass away without knowing that there is once again tribal land to house our people.

All people need a homeland and we are no different. We are not asking for Federal or State lands. We have been able to purchase our own land and we have done the hard work of securing agreements with our local non-Indian communities. All we need now is for the United States to finish what was promised to us when our status was restored. As a sovereign tribal government, we want our land to be held by the Federal government in trust for the Lytton Rancheria.

Passage of H.R. 597, the Lytton Rancheria Homeland Act of 2017, will restore my people to where we were before termination. I hope you will continue to support the Lytton Rancheria and report H.R. 597 out of committee and to the full Senate in the near future.

Thank you.

Lytton Fee Owned Property to be Taken into Trust - May 1, 2015



SOURCE: Sonoma County General Plan 2020, updated 2012; USDA aerial photograph, 6/13/2010; AES, 1/18/2017