

# GUIDIVILLE Indian Rancheria

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*Sent via Federal Express*

June 24, 2009

Honorable Larry Echohawk  
Assistant Secretary Indian Affairs  
US DOI Division of Indian Affairs  
1849 C. Street N.W. Rm 6511  
Washington, DC 20240

*Re: Guidiville Meeting on June 24, 2009*

Dear Mr. Echohawk:

On behalf of the Guidiville Band of Pomo Indians, I thank you for taking time to meet with Senior Council Member Nathaniel Bates, from the City of Richmond, Little Fawn Boland, Tribal Legal Counsel, Verrin Kewenvoyouma, Tribal Legal Counsel, Jim Levine, of Upstream Investments, and Michael Derry, our CEO.

Our Tribal Council has designated, Vice Chairman, Donald Duncan and Michael Derry, CEO of our Section 17 Corporation (Black Oak Development) as the people to travel and meet regarding our land acquisition efforts. Myself, and other members of our Council have difficulty traveling due to health issues and family obligations. Mr. Derry gave a full report on the meeting to the Council yesterday morning. While we were disappointed that our Indian Lands Opinion was not released, we were extremely pleased at your openness and quick understanding regarding how necessary it was to release the first draft of the EIS/EIR.

On behalf of our entire membership, we thank you for seeing how necessary it was for the federal government to meet its responsibility as lead agency in moving the NEPA/CEQA along, as components (such as traffic studies for example) within the Draft document are time sensitive in their relevance.

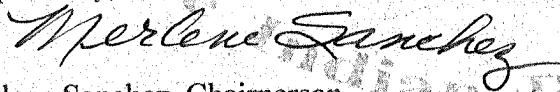
Your compelling testimony at your confirmation hearing regarding solutions for education, healthcare, substance abuse, halting violence in Indian Country, and the need for economic development to help address these matters are ideas our Tribe strongly shares with you. These problems are real in our community and we desperately need to address them to ensure the future health and strength of our people. For us, securing a land base and developing a tribal economy are the top priority in our plan to recover from termination.

Over the next week we will work with your staff to clear up a few of the items they requested prior to the release of the Indian Lands Opinion. As we discussed at our meeting, the release of the Indian Lands Opinion and the EIS/R will make most sense to the public, if they are sequenced close together.

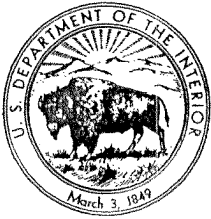
While you couldn't make a site visit to our restored land site this time, be assured we would be honored to host you or staff anytime in the future. The cooperative Tribal, City, County, State, Federal, and community relationships we have forged (both formal and informal) around this regional economic recovery effort are unlike anything ever accomplished in Indian Country to date. We believe it can serve as a new model that empowers tribal government and could be used by other Tribes. We are extremely proud of it.

In closing, on behalf of the Tribal Council, we thank you making the time to meet. Restoration of a land base, and development of an economy is a priority matter tied to the future of the Tribe, and their long journey to recovery from wrongful termination. We very much view the United States, as our partner in this recovery, as it can only happen with the efforts and cooperation of both governments.

Respectfully,



Merlene Sanchez, Chairperson  
Guidiville Band of Pomo Indians



THE SECRETARY OF THE INTERIOR  
WASHINGTON

APR 24 2009

The Honorable Dianne Feinstein  
United States Senate  
Washington, DC 20510

Dear Senator Feinstein:

Thank you for your January 9, 2009 and March 3, 2009, letters to Secretary Salazar in which you expressed concerns regarding the rapid growth of Indian gaming in California.

We are pleased to inform you that we plan to implement all three of Contra Costa County's main recommendations that are geared towards a more efficient, effective, and equitable land determination process. We are developing a new handbook for Bureau of Indian Affairs regional directors to aid in interpreting and applying authority when determining whether or not to take off-reservation land into trust for gaming purposes. The handbook will require public notification for gaming and gaming related land into trust requests upon receipt of an application. It will provide for a sequencing of the land into trust review process that requires an Indian lands determination first and results in a process where the Indian lands recommendation or decision is a final agency action that is reviewable by Federal Court, regardless of the decision on the trust acquisition. We hope these changes address some of the concerns expressed by you and the County.

You stated concern that the California gaming industry has insufficient oversight and that there are no State regulations regarding this industry in California. The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701(5), states that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity." California does not prohibit such gaming activity and the tribes and the State have agreed to regulations within a tribal-state compact for each tribe that is conducting class III gaming within the State of California.

In the case of Guidiville Band of Pomo Indians and Scotts Valley Band of Pomo Indians, we will carefully review their applications in order to establish if the parcels that they request the Department take into trust qualify as restored lands for a restored tribe pursuant to our recently published regulations in 25 C.F.R. Part 292.

The Department received a voluminous record in both these matters including documentation and legal memoranda from Contra Costa County. I want to confirm my understanding that in these two matters, the Tribes have been very open with the County and have distributed the full copies of their applications and all supporting documents.

I hope this additional information is helpful. Thank you for your continuing interest in Indian gaming issues and I look forward to continuing to work with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken". The signature is stylized with a large, sweeping "K" and a cursive "en".

Ken Salazar



# United States Senate

WASHINGTON, DC 20510-0504

<http://feinstein.senate.gov>

January 9, 2009

FEB 23 2009

The Honorable Ken Salazar  
Secretary-designate of the Interior  
c/o Presidential Transition Team  
Washington, DC 20270

Dear Senator Salazar,

Congratulations on your selection to be the next U.S. Secretary of the Interior. As Chairman of the Senate Appropriations Subcommittee on the Interior, the Environment, & Related Agencies, I look forward to working with you closely.

I am greatly troubled by the rapid growth of Indian gaming in California, in particular the expansion of urban and off-reservation casinos in my state. The situation has become critical, with almost 60 casinos located across California – several clustered near San Diego and Sacramento and several others proposed for the San Francisco Bay Area. The Interior Department is currently considering applications by the Guidiville Band of Pomo Indians and Scotts Valley Band of Pomo Indians which could add two new Las Vegas-style casinos in Contra Costa County. I strongly oppose both of these proposals.

In a process commonly referred to as “reservation shopping,” casinos are often proposed far from historical tribal lands, in urban areas or near transportation corridors in order to capture more potential customers. During this process, many of the tribes that plan off-reservation casinos skirt the spirit of the law in order to capitalize on prime locations.

I am concerned with the insufficient oversight of an \$8 billion California industry and believe additional resources and monitoring efforts are necessary before any new casinos are considered. There are no established State regulations in California and only five investigators and two auditors at the National Indian Gaming Commission’s regional office. On the whole, this oversight is woefully inadequate to maintain the integrity of gaming operations throughout California.

I would also like to bring to your attention the Interior Department’s process for considering Indian Lands Determination requests, which often directly correlate to a proposed casino site. This issue was brought to my attention by Contra Costa County and the California State Association of Counties, who have fought for years to ensure a standardized and fair process for land determinations.

I believe that the California counties raise several valid concerns about the current process for consideration of Indian Lands Determination requests. In particular, I would like to draw your attention to the sequencing of the land acquisition process, which is extremely burdensome for counties and currently allows tribes to initiate fee-to-trust applications and environmental impact reviews for casinos on land not yet restored for an individual tribe.

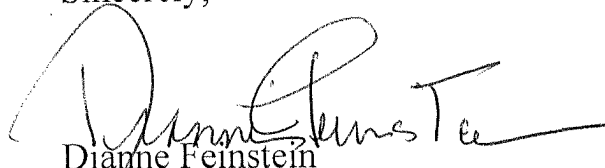
The Indian Lands Determination process is especially important in California given its history of termination and restoration of dozens of Rancheria tribes, several of which aim to develop casinos far removed from their original Rancheria lands. The Indian Lands Determination is often the lynchpin of a gaming proposal coming to fruition.

In the May 20, 2008 Federal Register, new guidelines were published regarding the "initial reservation" and "restored lands" exceptions for gaming on trust lands acquired after October 17, 1988. For both exceptions, the guidance requires land to be within an area where the tribe has *significant* historical connections and be near where a significant number of tribal members reside, be within 25 miles of the tribe's facilities, or have other factors that establish a current connection to the tribe. I urge you to use implement strict criteria for considering both current and historical connections. In many cases in California, tribes are targeting land over 100 miles from their historic and present-day land bases.

I have attached Contra Costa County's letter for your review and would welcome the opportunity to work with you to develop a commonsense timeline for gaming applications on restored Indian land or on any related issue. California has much at stake as tribes look to develop casinos and my top priority in this area is to see that the process is fair, that laws protecting communities against urban and off-reservation casinos are followed both in letter and spirit, and that accountability is upheld. In the meantime, I would urge you to consider withholding any individual decisions on restored lands applications.

I appreciate your consideration and wish you the and best of luck as you prepare for your new and exciting opportunity. If I can be of assistance on these or any other issues, please feel welcome to contact me. Best regards.

Sincerely,



Dianne Feinstein  
United States Senator

Enclosure

## County Administrator

County Administration Building  
651 Pine Street, 11<sup>th</sup> Floor  
Martinez, California 94553  
(925) 335-1080  
(925) 335-1098 FAX

David J. Twa  
County Administrator

# Contra Costa County



## Board of Supervisors

John M. Gioia  
1<sup>st</sup> District  
Gayle B. Uilkema  
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Federal D. Glover  
5<sup>th</sup> District

December 19, 2008

The Honorable Dianne Feinstein  
331 Hart Office Building  
Washington, DC 20510

Dear Senator Feinstein:

California is fast becoming the nation's casino mecca: over 1/3 of all gaming applications pending before the Department of the Interior were in California, as of July, 2006 (25 out of 69 nationwide). None are on existing reservations, so all require an Indian Lands Determination as well as the Fee-to-Trust application and associated casino project environmental review. There could be many more applications: in addition to the 107 already recognized tribes in California, 61 tribal groups have filed, or declared their intent to file, for recognition as tribes, mostly as "restored" tribes. Any resulting casino projects would also require an Indian Lands Determination.

The current casino approval process is not fair to local governments, the State of California or other tribes. It does not include local government notification of an Indian Lands Determination Request and does not allow for appeal until after the fee-to-trust decision. Participation in the process is costly, since the Request, Fee-to-Trust application and associated casino project environmental review proceed concurrently with the Indian Lands Determination Request.

Contra Costa County's experience is illustrative of what is happening throughout California. Two tribes have pending "restored" casino project applications. These tribes have no connection to Contra Costa County: their historic territories and present-day land bases are over 100 miles north of the County and across the San Francisco and San Pablo Bays. We learned of their Indian Lands Determination Requests only through Freedom of Information Act requests. It has cost us hundreds of thousands of dollars and enormous staff resources to participate in a process that will be wasted time, effort and expenditures...by the County, the tribes, and Bureau of Indian Affairs...if the Indian Lands Determination Request is not approved. The process would be more efficient, effective and equitable by:

- ❖ **Sequencing land acquisition process, with the Indian Lands Determination Request *first***
- ❖ **Public Notification of Requests, with notice to Counties**
- ❖ **Final Agency Action on Requests, with notice to Counties**

**Indian Lands Determination Request First-** Concurrent processing has resulted in Contra Costa County spending hundreds of thousands of dollars to participate in the Indian Lands Determination Request, Fee-to-Trust application and environmental review processes for the two casino projects. The Tribes have undoubtedly spent even more. The BIA has also spent considerable staff time.

The efforts of the BIA, County and Tribes will be wasted if the Requests are not approved (and the County has submitted evidence that clearly demonstrates lack of geographic, cultural, historic or modern ties to the land). The Governor has already publicly opposed both casino projects, so concurrence under the two-part determination process is not likely. Even if he were willing to consider a project, new fee-to-trust applications and environmental reviews would be needed, since the existing ones presume restored land status.

Sequencing land acquisition process, with the Indian Lands Determination Request *first*, would be more efficient and equitable:

- Reduce tribe and local government costs
- Reduce unnecessary work load of BIA staff, allowing them to focus on applications that do not require, or have approved Indian Lands Determinations
- Expedite the overall process, to the benefit of all.

**Public Notification of Indian Lands Determination Requests-** In testimony before the Senate Indian Affairs Committee in October, 2007, then Assistant Secretary-Indian Affairs Carl Artman stated:

“Taking land into trust is an important decision not only for the Tribes seeking the determination, but for the local community where the land is located.”

Yet, Contra Costa County learned of the Indian Lands Determination Requests of the Scotts Valley Band and Guidiville Band only through Freedom of Information Act (FOIA) requests. Except for the FOIA requests, the County would not have had the opportunity to submit evidence regarding the Requests, likely resulting in flawed decisions by DOI.

Similarly, the state has a vital interest in Requests, since the decision as to whether or not a casino project qualifies under the IGRA restored lands exemption establishes the rights, responsibilities and limitations of the Governor in his consideration of casino proposals and negotiation of State-Tribal compacts.

Other tribes also have an interest in Indian Lands Determination Requests:

“Casino gaming on the Subject Land would certainly divert gaming that would otherwise occur at already operating tribal casinos in more remote locations. These tribes did not have the opportunity to select their casino site; rather their casino location was mandated by the location of their historic lands. Acquiring the Subject Land in trust for the Scotts Valley Tribe for purposes of gaming would, therefore, not provide a sense of parity between the Tribe and other federally recognized Northern California tribes. Instead, it would create disparity. Acquiring the Subject Land for the Scotts Valley Tribe would not eliminate disadvantages between the Tribe and other nearby tribes. It would grant an immense economic advantage to the Tribe, at the direct and substantial expense of the other tribes. Acquiring the Subject Land for the Scotts Valley Tribe would not place the Tribe in a comparable position with earlier recognized and landed tribes. It would elevate the Tribe far above these other tribes. Such results would confer more than a just measure of restitution on the Scotts Valley Tribe. The results

would be inequitable and unfair.” Rumsey Indian Rancheria of Wintun Indians’ Comments in Opposition to Scotts Valley Band’s Fee to Trust Application, May 4, 2005, at 15-16 (emphasis in original).

“...we believe that allowing a tribe to extend its jurisdiction hundreds of miles from its traditional homeland causes irreversible erosion to tribal sovereignty and tribal governmental jurisdiction. The recognized territory of a tribe has historical and cultural significance, and it is a key element in the legal basis for a tribe’s sovereign authority over its land and people. Tribes that abandon that jurisdictional foundation are giving up an essential ingredient of sovereignty – territoriality.

...Furthermore, when these tribes move, they end up in another tribe’s homeland, compromising that tribe’s sovereign authority and cultural identity. We also believe that moving tribes from their traditional homelands, whatever the reason undermines public support for the gaming franchise voters awarded tribes through Proposition 1A in 2000 and violates the pledge made by tribes that gaming would take place only on tribal lands.

So to argue that tribal opposition to off-reservation casinos is purely anti-competitive politics suggests that you view tribes as just another business, and not as sovereign governments rooted in the territory of their people, governments that must endure and meet the needs of their people through the generations.

We want to make sure that you are aware that there are much broader issues at stake when off-reservation casinos are proposed, and that the views of tribes expressing concerns with these proposals are not cast in a dismissive or belittling context.” *August 15, 2006 letter to the Honorable Roy Ashburn, California State Senate by the Chairman of the California Tribal Business Alliance*

Without notification of Indian Lands Determination Requests,

- Counties, cities, the state and other tribes can be “blinded-sided” by tribes seeking to establish land bases for casinos outside their historic and modern day territory.
- The DOI’s decision may be flawed and not based on a full review of all facts, if other jurisdictions do not have the opportunity to submit information.

Notification to counties should be by registered mail to the Board of Supervisors.

**Final Agency Action on Requests, with County notification-** Restored status gives tribes preemptive rights to casinos by allowing them to bypass IGRA’s two-part determination by the Secretary of the Interior and concurrence of the Governor. This results in the loss of important protections for local communities and other tribes:

- *NO Required* DOI consultation with officials of the state government, local governments and nearby tribes.
- *No Required* finding by the Secretary that the acquisition is in the best interest of the tribe and its members *and* that it is not detrimental to the surrounding community.
- *No Required* concurrence with the Secretary’s determination by the Governor, which allows him to weigh tribal benefits against the impacts on the local community and other tribes.

Conversely, under the exception provisions,

- Community impact is not a consideration in siting, sizing or operating the casino
- Governor’s good faith negotiations on the State-Tribal Compact required, regardless of the appropriateness of the proposal and its impact on others. This also limits the Governor’s leverage in ensuring appropriate mitigation provisions in the compact.
- Tribes can operate Class II gaming facilities without any compact or mitigation of off-reservation impacts.

The Indian Lands Determination is a monumentally important decision, since it can establish the right of a tribe to a casino under IGRA's exception provisions. Yet, DOI's decision on an Indian Lands Determination Request is not now considered a final agency action, and therefore, not subject to challenge unless part of the fee-to-trust decision.

Indian Lands Determinations can put the interests of tribes seeking to build casinos in lucrative markets far from their aboriginal lands above the interests of other tribes that operate casinos on their traditional homelands and above the interests of communities that must bear the burden of off-reservation impacts. This was not the intent of the IGRA exception provisions.

No agency is perfectly correct in all of its decisions. The democratic system is built upon checks and balances, with appeal provisions and/or rights to judicial review. Fee-to-trust acquisitions and environmental impact statements are subject to challenge. Yet, in many ways, Indian Lands Determinations have greater, longer lasting consequences.

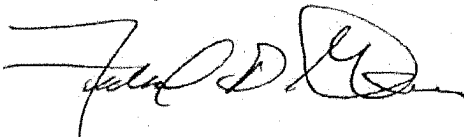
Indian Lands Determinations should be deemed final agency actions and DOI should notify the state, county governments, and nearby cities and tribes of the decision, so that appropriate challenges can be within established time frames.

**Conclusion-** Contra Costa County has been the "ground-zero" county for the development of Indian casinos in highly urbanized areas of California. Our experience has demonstrated the urgent need for reform of the current review process.

Senator Feinstein, we appreciate your past interest and concern on Indian gaming issues. Your leadership on this issue is critical as well. We would very happy to provide additional information and to work with your staff as you deem appropriate.

Thank you for your consideration.

Sincerely,



FEDERAL GLOVER, Chair  
Board of Supervisors

cc: Contra Costa County Board Members  
Cathy Christian, Nielsen Merksamer  
Sara Hoffman, Indian Affairs Advisor