

Stand Up For California!

"Citizens making a difference"

standupca.org

P.O. Box 355
Penryn, CA 95663

April 28, 2008

VIA HAND-DELIVERY

Amy Dutschke, Acting Regional Director
Bureau of Indian Affairs,
Pacific Region
2800 Cottage Way, Room W-2820
Sacramento, CA 95825

Re: FEIS Comments, Scotts Valley Fee-to-Trust and Gaming Development Project

Dear Ms. Dutschke:

This letter is submitted on behalf of Stand Up For California!, a statewide organization with a focus on gambling issues, to provide the following comments regarding the final environmental impact statement ("Final EIS") for the Scotts Valley Band of Pomo Indians Fee-to-Trust and Gaming Project (the "Project"). Our specific comments are set forth below.

In summary, the Project Final EIS is significantly flawed and lacks adequate information and analysis regarding the project description, environmental effects and mitigation measures. As such, we respectfully request that the Bureau of Indian Affairs ("BIA") significantly revise the Final EIS and recirculate the revised document for public review and comment.

Inadequate Project Description.

1. The Final EIS fails to provide the information needed for evaluation and review of the environmental effects of the Project. The Project description and the purpose and need for the proposed action are truncated and misleading. The Project description fails to adequately identify the entire Project that is being approved. This ambiguity regarding the Project description arises from the Tribe's application for restored lands. Restored lands make the Tribe's land acquisition an indisputable exception for gaming. (*See Exhibit A: Letter from Stand Up for California!, Cheryl A. Schmit, Director, to Bureau of Indian Affairs, Clay Gregory, Regional Director, April 8, 2005.*) Even if the Governor of the State of California negotiates in good faith a tribal state compact, but the Legislature fails to ratify the compact, the Tribe—just like the Lytton Band can open a class II gaming facility and avoid any and all fundamental mitigation requirements. Alternatively, the Tribe could just move forward with a class II facility without even seeking a tribal state compact. Again—no mitigation would be required. This information is relevant to evaluating significant effects on the environment. The National

Environmental Policy Act (“NEPA”) requires that reasonably foreseeable significant adverse environmental effects and impacts be disclosed and considered by the BIA when approving the Tribe’s application to take six parcels into federal trust. Because the Project description is incomplete and unclear, the BIA and reviewing public cannot ascertain exactly what the Project is, and the effects and impacts that the Project will have on the environment.

Recirculation of the EIS is Necessary Due to Changed Circumstances.

2. To comply with NEPA, the Draft EIS should be updated and recirculated to properly describe the affected environmental setting, as it exists upon certification of the Final EIS. The Notice of Intent was published on July 20, 2004, in the Federal Register, to which comments were submitted during the scoping process. The summary of these comments are contained in the *Scotts Valley EIS Scoping Report*, published in October 2004. The Draft EIS was published for review in February 2006. The substantially changed physical and environmental circumstances since the scoping process, approximately four years, and the performance of the analysis in the Draft EIS, well over two years, renders the Draft EIS obsolete and renders the impacts, analysis, alternatives and cumulative impacts identified in the Final EIS insufficient or incomplete, or both.
3. The affected environment is not current, particularly with regard to regional population growth (the Final EIS relies on 2004 data, page 3.7-2), related increases in traffic volume, traffic noise levels, the increase in residential development, increased pedestrian traffic, traffic studies pertaining to the volume and type of vehicles traveling along the pertinent freeway segments, and effects of the increased traffic on local schools. The recirculated Draft EIS should include updated analysis methodologies regarding these changed conditions so the Final EIS does not rely on 2004 estimated baseline conditions, but 2008. Similarly, the Operational Ozone Effects of each alternative was performed using outdated traffic studies and the operational emission estimates, which assume a target year of 2006, does not adequately reflect the environmental setting as it exists upon certification of the Final EIS. The same deficiency exists with regard to Localized Carbon Monoxide Effects. Global greenhouse gas emissions are rapidly rising, and the State of California has enacted laws that acknowledge these circumstances and require cost-effective efforts to reduce greenhouse gas emissions. (*See, i.e.*, AB 32, the California Global Warming Solutions Act of 2006.) As a result, the Project’s effects on air quality and climate change are flawed.
4. The cumulative effects analysis must also be revised to identify existing reasonably foreseeable projects so that the incremental effects of the actions may be analyzed when added to the effects of the Project.

Section 1.0—Purpose and Need for the Proposed Project.

5. Project Final EIS generally sets forth two purposes or needs: (1) employment opportunities for members of the Pomo Tribe; and (2) economic development opportunities (to enhance self-governance and social, educational and necessary programs) for services for members of the Pomo Tribe and relocated Native Americans in the Bay area. The Final EIS completely omits any discussion of how the various alternatives will meet the stated purposes and needs. This information should be central to choosing the Project alternative that best meets the stated purposes and needs. The proposal further fails to meet the detailed policy of the Department of the Interior. (*See Exhibit B: Memorandum from Carl Artman, Assistant Secretary of the Interior, to Regional Directors of the Bureau of Indian Affairs, January 2008, Subject: Guidance on taking off reservation land into trust for gaming purposes.*) The memo highlights the need to enhance reservations governed by tribal government. It does not appear that Project revenue would be used to create a significant number of on reservation job opportunities. Clearly, the benefit of the casino will be in the form of stipends and other benefits to individual tribal members, not necessarily an enhancement of a reservation governed by tribal government.

Section 2.0—Alternatives.

6. Section 2.2.1 fails to provide any explanation for the way in which Alternative A is the preferred alternative, and fails to even mention whether or how Alternative A meets the Project's stated need and purpose of developing a sustainable source of employment. Instead, this section identifies the management contract with Richmond Gaming, Ltd., under which Richmond Gaming, Ltd. has the exclusive right to manage the casino's operations.
7. Section 2.0 fails to consider a reasonable range of alternatives and essentially analyzes two projects, a casino in some form and a commercial development.
8. No alternative identifies whether or to what extent the Project's stated purposes and needs are fulfilled, as required by NEPA.
9. The alternatives analysis is fundamentally flawed because the Tribe and Richmond Gaming, Ltd. already entered into development and management contracts, on March 23, 2007, specifically for the construction and operation of the proposed casino as described in Alternative A. (Page 2-4.) The execution of these contracts makes a commitment to the proposed casino and necessarily prejudices the Bureau to consider first and foremost, Alternative A. The prejudice of this premature commitment is particularly evident in the

discussion of Alternatives B and C. (See pages 2-13, 2-18 (stating that the Management Contract “is expected to apply to Alternative B and would need to be approved by the NIGC. However, given the reduced size of the facility proposed under Alternatives B and C, it is possible that Richmond Gaming, Ltd. or the Tribe would seek to either renegotiate the agreement or that Richmond Gaming, Ltd. would decline to enter into the agreement due to the changed circumstances and decreased potential revenues likely to result from Alternative B.”).) The existing commitment to Alternative A undermines the policy goals that NEPA seeks to achieve, and severely undermines the credibility of the analysis and conclusions contained in the Final EIS.

The subject land and casino operations are encumbered by the ownership interests of the developer/investor proposed management company. Herein lays a potential violation of IGRA’s sole proprietary interest requirement. IGRA requires as one of the necessary conditions for a tribe to open and operate a casino, a gaming ordinance approved by the National Indian Gaming commission 25 U.S.C. Section 2710 (b) (B); 2710 (d)(1)(A). For approval of a gaming ordinance, IGRA requires among other things, that “the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity.” (25 U.S.C. § 2710 (b)(2)(A).) By virtue of the development and management contracts between the Tribe and Richmond Gaming, Ltd., it appears that it is illogical to even consider the subject land at this time for a casino development.

10. Page 2-5 contains acknowledgments that the Tribal Government will adopt numerous standards at some unidentifiable time in the future without meaningfully describing the standards. As a result, the Tribe’s ostensible commitment to adopt reasonable standards is not concrete or enforceable and no opportunity exists for their evaluation. For example, the Tribe’s adoption of standards “no less stringent” than State public health standards for food and beverage handling; air quality, water quality, and safe drinking water standards; and Federal workplace and occupational health and safety standards is not defined.
11. Alternatives A, B, C, and D contain vague and immeasurable commitments by the Tribe to secure security and safety for the proposed casino. As a result, the impacts on municipal or regional services, already overburdened, are not evaluated.
12. The Alternative considered but not fully analyzed, the Lake County Fee Land, is flawed because it assumes that the only alternative project is a casino.
13. The conclusion to terminate the analysis of the Lake County Fee Land alternative is further flawed because it inexplicably assumes that an alternative project would include the development of a “high-rise casino facility,” and then uses that baseless assumption to

reject the alternative. The conclusion also raised incompatibility with local zoning issues. Zoning is an irrelevant basis for rejection of the alternative, however, because the Tribe could seek to place the land in trust. Assuming for the sake of argument that zoning inconsistency were to constitute a legitimate basis for rejecting an alternative, it would also stand that local zoning would be a legitimate candidate for analysis of the Project's direct impacts. The EIR would then be deficient in this regard as well.

14. Under the discussion of Environmental Constraints (page 2-30), the Final EIS states that the 15-foot development setback is a constraint to limit future development. The setback requirement, however, is only needed if the proposed rezone is granted. The rezone itself would not be required if the fee property were to be placed in trust. Thus, the setback is not a basis to reject this alternative site.
15. On page 2-26, the Final EIS states that for the Lake County site, casino development would displace existing Tribal members and eliminate the Tribe's future development plans for the site. This conclusion is flawed because it assumes that the only alternative project that could be implemented at the Lake County location is a casino.
16. Under the discussion of Environmental Constraints (page 2-30), the Final EIS states that there is currently no public water or wastewater services for the site and all future development would require upgrades. Because this is also true for the proposed alternative, the nonexistence of current service or infrastructure is an insufficient basis to reject this alternative site.
17. Under the discussion of Environmental Constraints (page 2-30), the Final EIS summarily states that there may be inadequate groundwater reserves to sustain the water demands that would come from the proposed development. This conclusion is asserted without any testing, data, or legitimate verification. It also appears to contradict the Tribe's current rezoning efforts that would allow for higher density residential uses for the Tribe's planned apartment building, duplexes, retirement facility, residential care facility and museum and cultural center.
18. The Selection of the Preferred Alternative is conclusionary and incomplete. The preferred alternative is unsupported because no alternative identifies the way in which the Project's purposes or needs are fulfilled. Alternative A is the alternative stated to best provide the Tribe with a means of securing and maintaining revenue, yet none of the alternatives includes economic development proposals or analyzes the revenue that is likely to be generated; Alternatives A, B, and C omit mention of the number of gaming machines or table games thus, the environmental effects on socioeconomic conditions and other relevant environmental conditions are unknown and inadequately disclosed; no

analysis exists to assess which alternative is best to secure and generate long-term revenue.

Section 3.0—Description of Affected Environment.

Section 3.2—Land Resources

19. The subject site is underlain by ground conditions that will make construction of improvements difficult and additional cone penetration tests (“CPT”) will need to be established along with conventional exploratory borings that will allow for the obtaining of samples and the performance of laboratory tests to confirm or refute the interpretations made with the CPT. (See **Exhibit C**: Review of Geotechnical Report, Stephen M. Watry, Geotechnical Engineer/Engineering Geologist.)

Section 3.7—Socioeconomic Conditions.

20. The Final EIS states that “[t]wo of the most discussed effects of gambling are crime and bankruptcy” but concludes that casinos have no effect on rates of crime or bankruptcies. (Pages 3.7-9 to 3.7-10.) The conclusion is based on a dated 1999 study and is belied by more recent studies. (See **Exhibit D**: *A Casino for San Pablo; A LOSING PROPOSITION*, William N. Thompson, Ph.D., pp.4, 25; *National Gambling Impact Study Report*, Chapter 7; *Rapid Onset of Pathological Gambling in Machine Gamblers*, Breen and Zimmerman; *The Impact of Casino Gambling on Bankruptcy Rates: A County Level Analysis*, Goss and Morse, p.17; *Gambling in the Golden State—1998 Forward*, Charlene Wear Simmons, California Research Bureau, Requested by Attorney General Bill Lockyer, May 2006 (Economic Benefits and Social Costs); *Plea Deals Reached in Murder-for-Hire Case Involving Mexican Mafia, Tribal Members*, Michelle DeArmond and John F. Berry, The Press Enterprise, April 17, 2008; 2007 National Money Laundering Strategy, Appendix A; *Gambling and Crime Among Arrestees: Explaining the Link*, NIJ, Dept. of Justice, July 2004.)

Section 4.0—Environmental Consequences.

Section 4.2—Land Resources.

21. Unexplained discrepancies exist between the figures provided regarding the import/fill material identified for Alternative A (26,900 cubic yards), versus Alternative B (27,300 cubic yards), yet Alternative A involves 27.8 acres, and Alternative B only 20 acres. Similarly, Alternative C, which is 28 acres, inexplicably requires the importation of 47,600 cubic yards of fill material—20,000 cubic yards more than Alternative A. Based

on the illogical estimated figures an underlying flaw must exist in the data, which flaw lends itself to the analysis, impacts determinations, etc.

4.7—Socioeconomic Conditions.

22. The Community Infrastructure discussion regarding schools, pertaining to Alternative A (page 4.7-5) provides that lost revenues will result from decreased school impact fees and property taxes. The Final EIS fails to reveal that additional losses will result from the redirection of existing and future gaming monies, that when spent at non-tribal facilities are subject to all state and local taxes. The failure to address this lost revenue source results in the inadequate analysis of socioeconomic impacts to schools.
23. The Final EIS provides that in-lieu impact fees may be paid to the district to mitigate effects that may result from Alternative A, but fails to make any commitment to do so. (Page 4.7-5.)
24. The discussion of the Potential Social Costs Associated With Problem Gambling (page 4.7-6) indicates that the Tribe will enter into an agreement with the County to establish an appropriate annual contribution to local organizations that address problem gambling issues, but fails to define the term “appropriate”. Therefore, this discussion contains no meaningful assurance regarding the level of payment necessary to offset the various noted socioeconomic problems associated with gambling. (See **Exhibit E**: Earl L. Grinols and David B. Mustard, *Casinos, Crime, and Community Costs*, September 2004 (rev.).)

Section 4.9—Public Services.

25. The Final EIS inaccurately estimates the additional police services necessary to respond to the crime generated by the Project. The Final EIS fails to adequately determine the level or sufficiency of commitment from the Tribe for the provision of additional law enforcement, cars, and equipment, or contribution towards these associated costs, necessary to respond to crime at the Project site.
26. Although the risks associated with the sale of alcoholic beverages, specifically drunk driving, and their relationship with increased calls to law enforcement are acknowledged, the Final EIS fails to analyze the need for additional law enforcement for this purpose or with respect to the broader criminal activity associated with the Project.

Section 4.10—Other Values.

27. Although the Final EIS does not define the term “community character”, it provides that the effects Alternative A could have on it “can be viewed in both a positive and negative light.” (Page 4.10-8.) The Final EIS explains that the character of a community can be gleaned from the general plan, yet it fails to appropriately address the impact that results from the Project being inconsistent with the Contra Costa General Plan. The Final EIS states that “Alternative A is inconsistent with the type of development envisioned for the area.” (Page 4.10.9.) The conclusion that project-related effects to community character would be “less than significant”, is without any basis, notwithstanding the project’s promise of creating new jobs, particularly given that Alternative A “can be classified as a regional commercial development, and therefore would be inconsistent with the type of development envisioned by the County for the area.” (Page 4.10-9.)

Section 4.11—Environmental Justice.

28. The Project will have negative effects on the surrounding community, a poor, blighted North Richmond neighborhood. The neighborhood is located within a redevelopment zone. “Redevelopment” is generally a public-private collaborative process of removing existing improvements in a designated area and replacing them with new improvements designed to further local government policy goals, embodied in general plans. The policy goals of a redevelopment zone is the revitalization of a depressed area, here, one in which ninety-five percent of the residents living in the core area of North Richmond are minorities. (See 2000 Census tract 3650.02.)
29. The Final EIS states that “[a] significant environmental justice effect is defined as a disproportionately high and adverse human health or environmental effect to minority and low-income populations, *or if such an effect occurs with greater frequency for these populations than for the general population as a whole.*” (Page 4.11-1 (emphasis added).) Alternative A will result in adverse human health or environmental effects, as described in Section 4 of the Final EIS, including air quality, traffic, noise, community character, problem gambling, and crime. The conclusions contained in the Final EIS regarding these effects as being less than significant, or mitigated to less than significant, have no bearing on whether such adverse effects occur with greater frequency for the minority and low-income populations residing in the Project area.

Section 4.12—Cumulative Effects.

30. The Final EIS looks only at cumulative impacts associated with four other casinos, rather than identifying and analyzing similar regional effects irrespective of source. The Final

EIS acknowledges additional reasonably foreseeable development projects exist but it is limited to two projects (Bayside Plaza and Signature Properties), as identified through Contra County's two proposed general plan amendments, and several "transportation projects" that are selected, to the exclusion of other foreseeable projects, because the transportation projects may affect roadway capacity and associated effects near the project site.

31. Further, within the severely illogical cumulative effects methodology, the following deficiency exists: only four impacts are associated with other casinos: urban blight, significant increase in crime, adverse changes in a communities ability to fund services, and changes in access to public or private property. The analysis ignores the cumulative adverse effects on law enforcement, fire protection, air, traffic, and noise.
32. The Final EIS never directly provides any analysis or explanation regarding cumulative impacts of the four proposed alternatives regarding potential increased crime and the associated physical effects of urban deterioration and blight.
33. There is an inadequate discussion of why the San Francisco Bay Region was selected as the boundary for purposes of analyzing cumulative effects. This boundary is unworkable to analyze cumulative effects that are not limited to the same arbitrary boundary.

Section 5.0—Mitigation Measures.

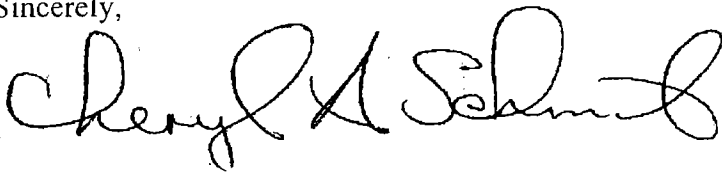
Section 5.2.6—Socioeconomic Conditions.

34. The measures identified to mitigate the environmental effects the alternatives will have on problem gambling lack assurances of measurable commitments and defined standards: Mitigation Measure A appears to have no causal relationship with the identified adverse impacts; Mitigation Measure B fails to identify the frequency or duration with which the Tribe will contract with a gambling treatment professional and fails to identify the extent or scope of training; Mitigation Measure C fails to define any behaviors that may indicate problem gambling and fails to define the term "convincingly"; Mitigation Measure F fails to identify the maximum numbers of counselors for whom the Tribe would compensate the County and fails to identify whether the positions are full-time or part-time and permanent or temporary; and Mitigation Measure G fails to identify the term "proportionate share" of compensation. No discussion is provided to support the conclusion that implementation

Amy Dutschke, Acting Regional Director
Bureau of Indian Affairs, Pacific Region
April 28, 2008
Page 10

of the mitigation measures would reduce problem gambling below the significance threshold.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl A. Schmit". The signature is fluid and cursive, with the first name "Cheryl" being the most prominent.

Cheryl A. Schmit, Director
Stand Up For California!
(916) 663-3207
schmit@huges.net
www.standupca.org