CALIFORNIA TRIBAL
BUSINESS ALLIANCE

April 27, 2006

Mr. George Skibine, Director
Office of Indian Gaming Management
Bureau of Indian Affairs
United States Department of the Interior
1849 C Street, N.W.
MS 4140 MB
Washington, D.C. 20240

RE: COMMENTS ON PROPOSED REGULATIONS 25 CFR PART 292

Dear Mr. Skibine:

Thank you for the opportunity to comment on the draft of proposed Bureau of Indian Affairs regulations for implementing Section 20 of the Indian Gaming Regulatory Act (IGRA). The following are the initial comments of the California Tribal Business Alliance.

The tribes that are members of the California Tribal Business Alliance are the Pala Band of Mission Indians, the Paskenta Band of Nomlaki Indians, the Pauma Band of Luiseño Indians, the Rumsey Band of Wintun Indians, the United Auburn Indian Community, and the Viejas Band of Kumeyaay Indians.

The Alliance believes that land qualifying as an "initial reservation" and "restored land" eligible for gaming for a tribe after 1988 must be land within that tribe's traditional homeland over which the tribe historically exercised governmental authority. 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 its people. Abandoning that jurisdictional foundation surrenders an essential ingredient of sovereignty – territoriality. It undermines the tribal sovereignty over Indian lands that so many tribes have fought so hard to maintain and regain.

While the Alliance members generally believe that the proposed regulations provide more guidance for evaluating proposals to take new land into trust for gaming purposes, we have specific concerns regarding three sections.

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1. Initial Reservation . Section 292.6 would define what lands qualify under the "initial reservation" exception and therefore are eligible for Indian gaming, even though acquired after 1988, as follows: (1) a tribe that has been acknowledged or federally-recognized through the federal administrative process; and (2) the lands are located in an area where the tribe has significant historical and cultural ties.

The Alliance is pleased that "service area" has been eliminated in this later draft as part of the definition of the geographic region in which an initial reservation may be located. "Services areas" were devised in by the Bureau of Indian Affairs and Indian Health Service in the mid twentieth century for the purpose of providing federal services to Indians whose tribes were terminated and who were forced to move from their historical tribal areas. This term has no connection to a tribe's traditional homeland or the territory over which the tribe exercised its sovereign governmental authority.

2. Restored lands. Section 292.7(b) should more specifically require that "restored lands" eligible for gaming be land within the tribe's traditional homeland over which the tribe exercised governmental jurisdiction.

In addition, in both 292.6 and 292.7, where the language provides that a "modern connection" to lands proposed to be taken into trust for gaming requires that "a majority of the tribe's members reside within fifty (50) miles of the location of the land," some time period for that residency should also be required. Without this revision, this language would encourage the instant relocation of a tribe, which is entirely feasible in the case of a tribe with a small membership roll, and would undermine the purpose of the section.

Furthermore, we believe the regulations should require consultation with tribes, including unrecognized tribes, into whose historical territory a tribe is proposing to move and have land taken into trust for gaming activities.

We recommend these revisions so that the regulatory language does not encourage off-reservation casino deals in which non-Indian developers encourage California tribes to claim territorial rights in more marketable locations outside their traditional homelands. For example, speculators who have only recently discovered that there are Indians in California, the nation's best casino market, propose fanciful deals in which they option or buy land in a profitable market and then shop for a tribe to move there. Such a wandering tribe becomes a business, rather than a government. Businesses are organized to make money, and they come and go. But governments must endure and fulfill a broader purpose of meeting the needs of their people through the generations.

We believe that if some tribes are willing to voluntarily leave behind their traditional homelands, it will become more difficult to defend tribes against being forced from their lands against their will. Also, when these tribes move, they end up in another tribe's homeland, compromising that tribe's sovereign authority and cultural identity.

We believe the practice of investors encouraging tribes to look outside their historical lands for placement of casinos not only damages the sovereignty of all tribes but also is one of the biggest potential threats to the public's long-term goodwill towards tribal gaming. In California, the continuation of Class III Indian gaming depends upon retaining support from the voting public, which by Proposition 1A amended the state's constitution to grant exclusive rights for casino gaming to California tribes.

3. Two-Part Determination Application's Mitigation of Off-Reservation Impacts.

Finally, the Alliance believes that the Secretary of Interior should require intergovernmental agreements between tribes and local governments to provide meaningful mitigation of impacts resulting from an application to take land into trust for gaming after 1988 under the Two-Part Determination for land which does not qualify under any of the exceptions in Section 20 of the Indian Gaming Regulatory Act. The proposed regulations at Section 292.13(c) and (d) require an application to identify detrimental impacts on the economic development, income, and employment of the surrounding community and "costs of those impacts to the surrounding community and sources of revenue to accommodate them." These proposed regulations fail to provide an affirmative requirement or standard that will ensure detrimental off-reservation impacts resulting from new gaming operations on new reservations -- such as public safety costs, public services costs, and significant environmental impacts -- are successfully mitigated and that the local governments in whose jurisdiction the land resides agrees that proposed mitigation is sufficient and effective.

Thank you for this initial opportunity to comment on the draft Section 20 regulations. We look forward to making additional comments after the regulations are published in the Federal Register.

Sincerely,

Paula Lorenzo, Chairwoman
California Tribal Business Alliance