Stand Up For California!
"Citizens making a difference"
www.standupca.org

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April 8, 2011

Honorable Dianne Feinstein
United States Senator
Attn: Devin Rhinerson
Senate Hart Building 331
Washington, D.C. 20510
FAX: (202) 228-3841

RE: SUPPORT FOR SENATE BILL "Tribal Gaming Eligibility Act"

Dear Senator Feinstein,

As you know, *Stand Up For California* has been involved with issues associated with Indian gaming for many years in California. Over the last decade and a half our organization has spent a great deal of time assisting communities affected by tribal gaming applications, for gaming on after-acquired lands, each claiming to be an exception under Section 20 of the Indian Gaming Regulatory Act (IGRA). Without doubt, California more than any other state in the nation is significantly affected by gaming investors and tribes making highly questionable claims for an exception under IGRA, especially the "restored lands" exception. We thank you and your staff for your willingness to address this pressing issue. Your proposed language adds a necessary layer of protection which provides guidance and standards to the determination for eligible land for gaming, while retaining the delicate balance of authority between tribes, states and the federal levels of government. We support your legislation.

The "reservation shopping" craze began for California within months after the passage of Proposition 1A in March of 2000. Proposition 1A was a statewide initiative to legalize casino style gaming on Indian lands. Pre-election voters were told that Indian casinos would be on established Indian lands, primarily in remote, rural parts of the state. The voter Pamphlet itself made this clear. In rebuttal to claims that Proposition 1A would put gambling casinos in urban areas, the proponents wrote: "Proposition 1A and federal law strictly limit Indian gaming to tribal land. The claim that casinos could be built anywhere is totally false…" As time has evidenced, federal law does not strictly limit Indian gaming to historically established tribal lands.

The current exceptions in section 20 of IGRA are for "restored lands", an "initial reservation" and the "settlement of a land claim". These were intended to be ***limited exceptions*** for newly

acknowledged and restored tribes so that they would not be prejudiced by the fact that they did not have any land in trust at the time IGRA was adopted. To apply these exceptions without temporal and geographic limitations grants a tribe complete governmental control over after-acquired lands which historically have been non-tribal land. The consequence of transferring after-acquired land into trust for gaming is a disruptive mix of state and tribal jurisdictions which burdens the administration of state and local government and adversely affects neighboring landowners.

Despite the new regulations that were developed in 2008 for Section 20, vague guidelines and standards remain in place for making the determination of restored lands. This has been the gray area that has left room for both political and gaming money influence. This has allowed developers/speculators and tribes to manipulate and fraudulently exercise the exceptions for after-acquired lands. These exceptions and the discretion wielded by the BIA also concern us. These exceptions allow casinos while avoiding the need for State approval and consultations with affected local governments, the surrounding community of citizens and other tribal governments.

The location of a casino is an issue of import that affects a state's police powers. Tribal casinos have an impact on traffic, local businesses, taxation, housing, police and fire services, social services, shared natural resources such as water, air quality, night sky, increased crime and community development. These impacts are significant to both the local and regional areas affected by a proposed casino on after-acquired lands.

Your legislation adds an extra layer of protection necessary to determine if a Tribe has a nexus to the land meeting the exceptions of the IGRA. ***"A substantial, direct, modern connection to the land taken into trust, as of October 17, 1988, and a substantial, direct, aboriginal connection to the land taken into trust"*** your language provides in statute criteria upon which the Secretary of the Interior must make a determination.

We have witnessed in recent days the Department of the Interior usurp the authority of Congress and continue to restore tribes without Congressional authority[1]. Moreover, to issue restored land determinations contrary to the United States Supreme Court ruling in *Carcieri v Salazar.*[2] These actions have raised real and justifiable concern over the future role of the BIA in rulemaking allowing for the potential to continue vague guidelines and standards. Your language addresses the process of determining if land is eligible for gaming and requires the determination as the first-step in any casino proposal. Further that all determinations are considered a "final agency action" which must be signed by the Secretary of the Interior.

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[1] The Wilton Band and the Mishewal Wappo are California tribes. These tribes have attempted to circumvent the federal acknowledgment process and Congress to gain federal recognition; both are seeking stipulated judgments through litigation as restored tribes thus meeting an exception for gaming on after acquired lands.

[2] A recent Record of Decision granted the Cowlitz Tribe's trust application for after-acquired lands for gaming. U.S. Secretary of the Interior Kenneth Salazar and Assistant Secretary of the Bureau of Indian Affairs Larry Echo Hawk ignored a 2009 U.S. Supreme Court ruling. The decision in *Carcieri v. Salazar* restricted the federal government's ability to take land into trust for tribes not under federal jurisdiction prior to 1934. The Cowlitz Tribe was federally recognized in 2000.

The criteria to determine ***substantial direct connection*** establishes the truth by clear and convincing evidence free of substantial doubt, and with competent evidence that is verifiable rather than anecdotal. Citizens are long tired of the many new theories and revisionist social philosophies that have allow for gaps of 20 to 100 years or more of historical evidence. The public does not want to hear that the Department of the Interior or the National Indian Gaming Commission is allowed to cherry pick the evidence and facts while it ignores comments and reports by affected parties in order to grant positive determinations for gaming. Your legislation responds to the need for clear and convincing evidence.

Your language establishes guidance for a specific tribal group's affinity to the specific land to be acquired for gaming. The ***aboriginal connection*** must be demonstrative and compelling ensuring that there is factual and legal circumstance that determines beyond doubt the linking of a specific tribal group to the land to be acquired for gaming. Evidence must be much more than just a migration trail or impermanent occupancy of an area, provisional residency or visitation for trade, education or work, through intermarriage or confederation with another tribe, or based on the history of other bands in the same language or ethnic group or based upon the occupancy or ancestry of only some tribal members.

Your language requires evidence which demonstrates that there was or is tribal governance and jurisdiction over tribal members living on the proposed after-acquired land. A less precise standard would lead to unpredictable results, anthropological manipulation and to conflicts with other tribes that may also claim an aboriginal and historical connection to the same land. The focus must be on the primary location where the specific tribal group or band has resided as a continuous political body.

The ***modern connection*** serves two important purposes. First, it requires continuity in the tribal connection to the land. The current tribe must demonstrate that the modern tribe has direct linkage to the historic or aboriginal tribe and its village. This must be a continuous transaction that demonstrates the temporal relationship between restoration of a tribe and the proposed lands to be acquired. Second, adding the phrase of "***as of October 17, 1988,*** to the substantial, direct, modern connection is essential. Several of the Tribes making off reservation proposals have set-up business offices sometimes in conjunction with the developer/investor near the proposed lands to be acquired for the casino. Tribes have declared this to be its direct modern connection.[3] If this cynical type of a connection is to be accepted, tribes can create a modern connection to land anywhere. The inclusion of the 1988 date establishes and provides an important benchmark for guidance.

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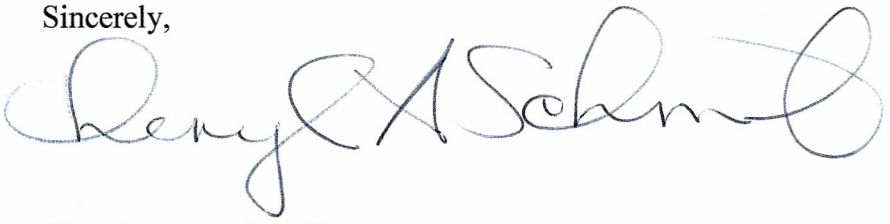
[3] Some tribes are using newly established business offices to comply with the 2008 Section 20 regulation of 292.12(a) (2) and (3). The argument that a tribal government is landless and that the land to be acquired is near where a significant number of tribal members reside is being manipulated. Many of the California Rancheria tribal governments have very small populations often from as few as 5 to 100 persons on the high-side. Regulation 292.12 could potentially allow a tribe with 40 members to move 20 of its members' to a new area to establish a modern connection and make a claim of restored lands. Or establish a tribe's headquarters within 25 miles of the proposed land for the casino. Does this regulation accurately reflect the spirit and intent of the language of IGRA providing a limited exception for determining restored lands for gaming?

The current process for making land determinations for gaming lacks fairness, objectivity and transparency. Continuing down this path undermines our states established gaming policy[4], it undermines the sovereign authority of tribal governance, but of utmost importance, it disenfranchises the electorate. Please list *Stand Up for California* in support of the"Tribal Gaming Eligibility Act".

Sincerely,



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CC: Senate Committee Indian Affairs
House Sub-Committee – Indian Affairs

[4] The vote on the Statewide ballot "Proposition 1A" on March 7, 2000, shaped California's Indian gaming policy. Citizens voted for a "limited exception" for the expansion of casino style gaming for federally recognized Indian Tribes with California Indian lands.