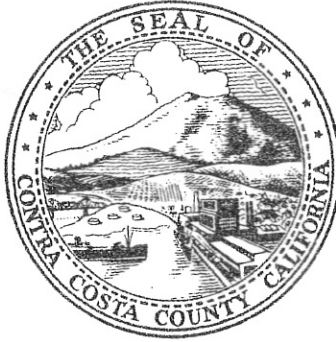


**OFFICE OF THE COUNTY COUNSEL
COUNTY OF CONTRA COSTA**

Administration Building
651 Pine Street, 9th Floor
Martinez, California 94553-1229

(925) 335-1800
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04-233C

SILVANO B. MARCHESI
COUNTY COUNSEL

SHARON L. ANDERSON
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GREGORY C. HARVEY
VALERIE J. RANCHE
ASSISTANTS

April 12, 2005

Clay Gregory
Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento CA 95825

Re: Scotts Valley Band Application

Copy sent via facsimile

Dear Mr. Gregory:

Thank you for the opportunity to comment on the Fee-to-Trust (FTT) application of the Scotts Valley Band of Pomo Indians to acquire land in North Richmond, an unincorporated area of Contra Costa County.

If the land is acquired and used for a casino, as proposed by the Scotts Valley Band, the project will have significant environmental, transportation, service demand, and socio-economic impacts. As part of our due diligence in commenting on the FTT application, we will be reviewing available documents as well as performing independent analyses. Just yesterday, the County received the Administrative Draft of the Environmental Impact Statement which is three thick volumes in length. We also have a federal Freedom of Information Act request pending. The effort is complicated by the need to coordinate among the many County departments that will be affected by this project.

For these reasons, we hereby respectfully request a 30-day extension of the time frame to comment on the FTT application, to May 17, 2005.

Please call me if you have any concerns or questions regarding this request. I would appreciate a response to our request as soon as possible (today or tomorrow, if possible), so that we still have time to submit preliminary comments by Friday, if necessary.

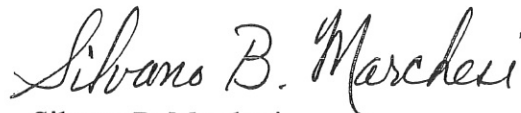
Clay Gregory, Regional Director
April 12, 2005
Page 2

You may also contact our local outside special counsel on Indian affairs, Cathy Christian of Nielsen Merksamer, at 916/446-6752; or Sara Hoffman, Assistant County Administrator, at 925/335-1090. Please copy Ms. Christian and Ms. Hoffman on all correspondence as well. Their addresses are listed below.

We would be happy to meet with you to discuss the FTT application. We very much want to be involved in the process and would appreciate being kept informed as the application progresses.

Again, if you have any questions, please feel free to call me, at 925/335-1810.

Very truly yours,



Silvano B. Marchesi
County Counsel

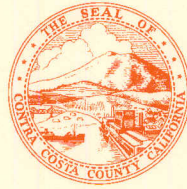
cc: Carmen Facio, Realty Section, BIA
Board Members
Cathy Christian, Esq.
Nielsen, Merksamer, Parrinello, Mueller & Naylor
1415 L Street, Suite 1200
Sacramento CA 95814
Sara Hoffman, Assistant County Administrator
651 Pine St., 11th Fl.
Martinez CA 94553

The Board of Supervisors

County Administration Building
651 Pine Street, Room 106
Martinez, California 94553-1293

John Gioia, 1st District
Gayle B. Uilkema, 2nd District
Mary N. Piepho, 3rd District
Mark DeSaulnier, 4th District
Federal D. Glover, 5th District

Contra Costa County



John Sweeten
Clerk of the Board
and
County Administrator
(925) 335-1900

Clay Gregory, Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

May 17, 2005

RE: Scotts Valley Band of Pomo Indians' Fee-to-Trust Land Acquisition Application

Dear Mr. Gregory:

Thank you for the opportunity to review the Fee-to-Trust Land Acquisition (FTT) Application of the Scotts Valley Band of Pomo Indians (Tribe) for approximately 30 acres of land within the unincorporated community of North Richmond in Contra Costa County.

Contra Costa County opposes the FTT application. Please see attached Resolution No. 2005/181 of the Board of Supervisors, which lays out the policy basis for the County's opposition as well as specific comments on this FTT. In addition, the County believes that no further action should be taken on this matter, including the environmental review process, until and unless there is a complete FTT available.

Please let us know if you have any questions concerning our comments. The County's contact person is Sara Hoffman, Assistant County Administrator, 651 Pine Street, 11th Floor, Martinez, CA 94553; (925)335-1090.

Thank you.

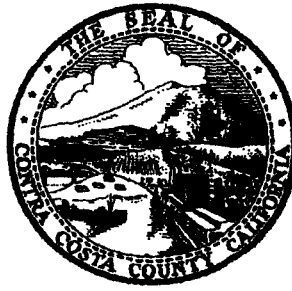
Sincerely,

A handwritten signature in blue ink that reads "Gayle B. Uilkema".

GAYLE B. UILKEMA
Chair, Board of Supervisors

cc: Board of Supervisors Members
The Honorable Gail Norton, Secretary, U.S. Department of Interior
The Honorable John McCain, U.S. Senate, Chair, Indian Affairs Committee
The Honorable Byron Durgan, U.S. Senate, Vice-Chair, Indian Affairs Committee
The Honorable Richard Pombo, U.S. Congress, Chair, Resources Committee
The Honorable Nick Rahall II, U.S. Congress, Vice-Chair, Resources Committee
The Honorable Diane Feinstein, U.S. Senate
The Honorable Barbara Boxer, U.S. Senate
The Honorable George Miller, U.S. Congress
The Honorable Ellen Tauscher, U.S. Congress
The Honorable Don Perata, President Pro Tempore, California State Senate
The Honorable Tom Torlakson, California State Senate
The Honorable Joe Canciamilla, California State Assembly
The Honorable Loni Hancock, California State Assembly
The Honorable Guy Houston, California State Assembly
Peter Siggins, Legal Affairs Secretary, State of California
Robert Mukai, Senior Assistant Attorney General, State of California

D.3



**CONTRA
COSTA
COUNTY**

TO: BOARD OF SUPERVISORS
FROM: Supervisor Gayle B. Uilkema
Supervisor John Gioia
DATE: April 5, 2005
SUBJECT: Indian Gaming

SPECIFIC REQUEST(S) OR RECOMMENDATION(S) & BACKGROUND AND JUSTIFICATION

RECOMMENDATION(S):

1. CONSIDER adopting Resolution 2005/181 on Indian Gaming in Contra Costa County, which opposes the creation or expansion of any further Indian gaming casinos within Contra Costa County as well as the establishment of reservations on which there could be Indian gaming.
2. CONSIDER adopting Resolution 2005/182, which supports Senate Bill 113 (Feinstein), a bill that modifies the effective date of federal trust land for the Lytton Rancheria (Lytton Band of the Pombo Indians).
3. CONSIDER support of ACA 15 (Nation), a constitutional amendment proposal which would place a moratorium on new Indian casinos in California until 2008, pending a study of Indian gaming.
4. CONSIDER comments on a draft bill being proposed by Congressman Pombo which would provide for two "Indian Economic Opportunity Zones" in each state and limit new Indian gaming to those zones.
5. AUTHORIZE and DIRECT staff, the County's State Representative and the County's Federal Representative to communicate the Board's positions to appropriate parties, including but not limited to the County's federal and state legislative delegations, the California State Association of Counties, the Urban Counties Caucus, the National Association of Counties and the cities within Contra Costa County.

CONTINUED ON ATTACHMENT: YES

SIGNATURE:

Gayle B. Uilkema
John Gioia

RECOMMENDATION OF COUNTY ADMINISTRATOR APPROVE OTHER
 RECOMMENDATION OF BOARD COMMITTEE

SIGNATURE (S):

ACTION OF BOARD ON 04/05/2005 APPROVED AS RECOMMENDED OTHER

SEE ATTACHED ADDENDUM

VOTE OF SUPERVISORS

UNANIMOUS (ABSENT GLOVER)
 AYES: _____ NOES: _____
 ABSENT: _____ ABSTAIN: _____

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON MINUTES OF THE BOARD OF SUPERVISORS ON THE DATE SHOWN.

Contact: Sara Hoffman, 335-1090

cc: CAO
 Cathy Christian, Nielsen Merksamer (via CAO)
 Paul Schlesinger, Alcalde & Fay (via CAO)

ATTESTED 04/05/2005
 JOHN SWEETEN, CLERK OF
 THE BOARD OF SUPERVISORS
 AND COUNTY ADMINISTRATOR

BY: *[Signature]* DEPUTY

CERTIFIED COPY
 I certify that this is a full, true and correct copy of the original document which is on file in my office ATTEST JOHN SWEETEN Clerk of the board of Supervisors and County Administrator by Deputy Clerk.

[Signature] on 04/06/05

BACKGROUND/REASON(S) FOR RECOMMENDATION(S):

Less than one year ago, Indian gaming was viewed as a somewhat abstract issue for Contra Costa County. To our knowledge, there were no Indian reservations within the boundaries of Contra Costa County, nor were there any tribal proposals to acquire land for a casino.

When the Board of Supervisors held a workshop on Indian gaming in May 2004, supervisors of nearby counties informed the Board of Supervisors that absence of existing reservations within the County did not mean that there would not be gaming proposals. Landless tribes were "reservation shopping" to acquire land to build casinos.

Today, Contra Costa County is home to one Indian reservation and two proposed reservations. Each of the tribes plans to operate a casino. These three casinos would be within 8 miles of each other within the densely populated urban areas of West Contra Costa County:

- **Lytton Band of the Pomo Indians (Lytton Rancheria), City of San Pablo** – The Lytton Band of the Pomo Indians, a tribe of about 200 members from Sonoma County, was granted a reservation in the City of San Pablo by Congressional enactment on December 27, 2000. The Congressional Act also decreed that the land was deemed to be held in trust prior to October 17, 1988, the effective date of the Indian Gaming Regulatory Act.

The Lyttons originally proposed to construct a 500,000 to 650,000 square foot facility on San Pablo Avenue at San Pablo Dam Road, next to Interstate 80 (the current site of "Casino San Pablo," a card room). The casino was projected to be six to eight stories high and house up to 5,000 slot machines, along with other gaming activities. After considerable public outcry, the number of slot machines was dropped to 2,500 plus 200 gaming tables and the facility reduced to 2 stories, 342,000 square feet, plus 4000 parking spaces.

As required by federal law, the Governor negotiated a Tribal-State Compact with the tribe, which provided local government an unprecedented opportunity to negotiate for mitigation of the off-reservation impacts of the casino. The compact gave Contra Costa County responsibility for negotiating for impacts not only for the county government but also for all affected cities and public agencies except the City of San Pablo (which was authorized to negotiate its own agreement).

Reluctance by the State Legislature to ratify the compact resulted in a March 17, 2005 letter to the Governor by the tribe indicating that it would be moving forward to install Class II electronic bingo games. These bingo games have the appearance of slot machines, but operate under a different mathematical logic. The Class II games are not subject to a tribal-state compact. In its letter to the Governor, the tribe clearly indicates its intent to pursue authorization for the 2,500 slot machines at another time. *"In the longer term, the tribe remains confident that this or a future legislature will eventually recognize the benefits to the state and local government that the compact we negotiated in good faith offers. At that time, we stand ready to work again with you and the legislative leadership to achieve a solution that works for all Californians."*

This announcement should not affect the Environmental Impact Statement in development by the National Indian Gaming Commission, since the Commission must approve the management contract for operation of the casino for either Class II or Class III gaming.

- **Scotts Valley Band of the Pomo Indians, North Richmond** – The Scotts Valley Band of the Pomo Indians is a tribe of about 130 members from Lake County. The tribe has joined with an out-of-state investment group in purchasing 30 acres of land in North Richmond along Parr Boulevard and the Richmond Parkway. The tribe is proposing to construct a 30 foot tall 225,000 square foot casino-resort complex with 2,000 slot machines and other gaming activities. The tribe has petitioned the Bureau of Indian Affairs to designate this property as its reservation, based on its assertion that some of its tribal members settled in Contra Costa County after their tribal status was terminated in the 1950s, thus resulting in Contra Costa County being designated as a "tribal service area." The Bureau of Indian Affairs held a public scoping session on the Environmental Impact Statement on the proposed project on July 30, 2004 and issued the scoping report in December 2004. The completion date for the Environmental Impact Statement is currently unknown.
- **Guidiville Band of the Pomo Indians, Point Molate, City of Richmond** – The Guidiville Band of the Pomo Indians is a tribe of about 120 members from Mendocino County. They have reached agreement with the City of Richmond to purchase approximately 415 acres of land located next to the Richmond-

San Rafael Bridge along San Pablo Bay. They are proposing a casino and resort/hotel complex with a 150,000 square foot gaming floor (2500 slot machines according to one newspaper report), 300,000 square feet of retail facilities, 25,000 square feet of convention and entertainment facilities, an approximately 400 room hotel and a second phase 700 room hotel, 29 cottages remodeled into hotel suites or offices, a boutique spa/hotel, a fire station, tribal governmental offices, a tribal cultural center, 220+ acres of open space or submerged lands, 40 acres of public parks, a public trail, a ferry terminal, possibly a limited number of housing units and parking facilities for approximately 3000 vehicles.

Chevron/Texaco USA which operates a nearby refinery previously filed suit against the proposed land acquisition and had offered to purchase the land. The East Bay Regional Parks District has a pending lawsuit challenging the City of Richmond's approval of the sale of land to the Guidiville Band prior to complying with the California Environmental Quality Act (CEQA). The Sierra Club and other environmentalists are also opposed to the casino.

The Bureau of Indian Affairs held a public scoping session on the proposed Environmental Impact Statement on March 31, 2005.

Tribal Rights to Operate Casinos

Indian tribes in the United States enjoy a unique legal status. On their reservations, they are quasi-independent "sovereign governments" in that they are not subject to any local or state land use, environmental or other laws and regulations that govern all other entities. Indian tribes can essentially do whatever they want on tribal land, subject only to federal law and individual agreements between the tribes and the federal and/or state government. Furthermore, tribes do not pay taxes or other fees normally assessed to provide for infrastructure, environmental protection or health and welfare of the community, except to the extent they have voluntarily agreed to do so.

The laws and regulations surrounding Indian tribes, the creation of reservations and the uses upon those reservations are quite complex, subject to many nuances and exceptions. The Bureau of Indian Affairs is the primary regulatory agency on the federal level; there are limited roles for the state or for local government. For tribes seeking to operate casinos, a simplified way of looking at it would be to determine the date the reservation was established, i.e., when the land was taken into trust by the federal government on behalf of the tribe. The key date is October 17, 1988, the effective date of the Indian Gaming Regulatory Act (IGRA), which divided Indian gaming into three categories:

- Class I - traditional tribal ceremonial gaming;
- Class II - bingo and pull tabs, electronic aids to those games and non-banked card games, such as poker;
- Class III - casino-style gaming such as slot machines and banked games such as blackjack, as well as horseracing lotteries.

The distinction between Class II bingo-based, pseudo-slot machines and Class III slot machines has become less and less over the years. In appearance, they are very much the same. They also sound and spin like slot machines. The internal mechanisms are different. These bingo-based machines link players in a common game through a central computer service that draws the numbers. The bingo-based machines require the player to "interact" with the game by pushing a button, i.e., "daubing" their cards as their numbers drop. As the distinction between a slot machine and bingo-based pseudo-slot machines has diminished, the pressure for new regulatory oversight has increased. The National Indian Gaming Commission plans to release a new proposed set of rules, designed to distinguish between Class II bingo-based, pseudo-slot machines and Class III slot machines. According to newspaper reports, both the Justice Department and tribal representatives object to the new rulings, the former because they are too liberal; the latter because they are too restrictive. The issue is extremely important to local government, since only Class III slot machines are subject to a tribal-state compact, the mechanism through which there can be provisions for mitigation of off-reservation impacts of the casino.

Pre-IGRA Existing Reservations - No state approvals are required to operate Class II gaming. Casinos operating Class III gaming (including slot machines) require approval of the Secretary of Interior and negotiation of a Tribal-State Compact. In California, the state Constitution designates the Governor to negotiate compacts, subject to Legislative ratification. If the State does not negotiate in good faith, the tribe may seek a remedy in federal court. California cannot avoid being sued by tribes in federal court under IGRA because when the voters approved Prop 5, they waived California's sovereign immunity defense which would otherwise block any such lawsuit. If the tribe uses a management contractor, the NIGC prepares an Environmental Impact Statement under the National Environmental Protection Act (NEPA) which identifies off-reservation impacts, but does not require mitigation.

Post-IGRA Reservations – Indian land acquired after 1988 is subject to a “two-part determination process.” This test requires both the Secretary of Interior’s consent to take land into trust on behalf of the Indian tribe and the Governor’s concurrence in the Secretary’s determination.

There are exceptions to the two-part test. Land can be taken into trust as either restored land or newly acquired land. Restored land means that the land was restored to a tribe which was itself restored to federal recognition. The difference is significant. The governor has the right to prohibit Indian gaming on any land that is newly acquired tribal land. The governor does not have this right for land taken into trust after 1988 under the “restored” proviso.

Both the Scotts Valley Band of the Pomo Indians and the Guidiville Band of the Pomo Indians are seeking to acquire land as “restored lands.”

The Lytton Rancheria of the Lytton Band of the Pomo Indians is unique in that it was taken into trust after IGRA, but is treated as though it existed prior to IGRA, due to Congressional action in December 2000. Thus, neither a two-part determination nor a restored lands exception was necessary for the Lytton tribe to use the San Pablo land for either Class II or Class III gaming although Class III gaming requires a tribal-state compact.

Tribal-State Compact – As noted before, IGRA requires that the state negotiate in good faith for a Tribal-State compact with any tribe with a pre-IGRA reservation or post-IGRA reservation that was appropriately approved. The compact establishes the parameters of the government-to-government relationship to regulate tribal gaming and is a negotiated instrument that must be agreeable to both parties. The Tribal-State Compact between Governor Schwarzenegger and the Lytton Band of the Pomo Indians was unprecedented in that it:

- Required negotiation between the City of San Pablo and the tribe for mitigation of off-reservation impacts within the city limits;
- Required negotiation between the County (on behalf of itself, cities other than San Pablo, and other local agencies) and the tribe on mitigation of off-reservation impacts;
- Required negotiation between Caltrans and the tribe for improvements to I-80 and other state-controlled roadways to mitigate the impact of the proposed casino on traffic;
- Provided for “baseball” style arbitration in case agreement could not be reached; and
- Provided that the tribe would pay up to 25% of its net win, distributed among the County (on behalf of itself and other local jurisdictions), Caltrans and the City of San Pablo for off-reservation impact mitigation with the remainder to the state general fund.

Federal and State Environmental Review – Proposals to take land into trust for Indian reservations and to operate casinos are not subject to the California Environmental Quality Act (CEQA). In some cases, land acquisition or casino proposals are subject to the National Environmental Protection Act (NEPA), which requires an Environmental Impact Statement (EIS). An EIS identifies environmental impacts, but it does not require mitigation of those impacts. Furthermore, an EIS does not include analysis of socio-economic impacts or increases in demand for county services.

The Bureau of Indian Affairs conducts an EIS on a proposal to take land into trust. The National Indian Gaming Commission, which is a commission independent from the Department of the Interior, conducts an EIS only if the tribe proposes to use a management contractor to operate the casino, because the Commission is required by IGRA to approve all management contracts for tribal gaming.

Proactive Response by Contra Costa County

Contra Costa County has proactively engaged itself in the Indian gaming issues, seeking both to educate itself and participate to the fullest extent allowed by law. Areas of focus have included:

- Board of Supervisors Indian Gaming Workshop
- CSAC policy documents on Development on Indian Land and Compact Negotiations for Indian Gaming
- Lytton Rancheria – National Indian Gaming Commission Environmental Impact Statement
- Lytton Rancheria – Tribal-State Compact
- Scotts Valley Band – Bureau of Indian Affairs Land Trust Proposal
- Guidiville Band – Bureau of Indian Affairs Land Trust Proposal

Board of Supervisors Indian Gaming Workshop

On February 10, 2004, the Board of Supervisors held a workshop on Indian gaming. Presenters included Supervisor Mike McGowan of Yolo County and chair of the CSAC Indian Gaming Committee; Supervisor Valerie Brown of Sonoma County and CSAC Indian Gaming Committee member; Steve Basha, County Counsel of Yolo County and chair of the County Counsels Workgroup on Indian Gaming; Steve Woodside, County Counsel of Sonoma County; Gerald Raycraft of the Association of Bay Area Governments (ABAG); and Cathy Christian of Nielsen Merksamer Parrinello Mueller & Naylor, a legal expert on Indian gaming and the County's state legislative representative.

The workshop addressed an array of Indian gaming issues; laws, regulations and agreements with tribes; rights and obligations of the County and the tribe; and other counties experiences with the issue. As a result of the workshop, the Board created an Ad Hoc Committee on Indian Gaming composed of Supervisor John Gioia and Supervisor Gayle B. Uilkema. The Board also endorsed the California State Association of Counties (CSAC) policy document on Compact Negotiations for Indian Gaming.

CSAC Policy Documents on Development on Indian Land and Compact Negotiations for Indian Gaming

In May 2004, the Contra Costa County Board of Supervisors adopted the CSAC policy document regarding Compact Negotiations for Indian Gaming. This policy document urged the State to include language in tribal-state compacts that provides for, among other things:

- Mitigation by the tribe of all off-reservation impacts caused by casinos or other related businesses;
- Compliance with local jurisdiction's authority over health and safety issues;
- Payment to local jurisdictions of fair share costs for local government services; and
- Requirements for judicially enforceable agreements between the tribe and local jurisdictions.

Subsequently, CSAC developed a revised policy document that addressed development on tribal land. This policy was in response to the efforts of some tribes to acquire lands outside their current trust land or their legally recognized aboriginal territory and to have that land placed into federal trust and beyond the reach of the County's land use jurisdiction (a practice called "reservation shopping"). The policy also addressed non-gaming tribal development projects where developers seek to partner with tribes to avoid local land use controls and to build projects which would otherwise not be allowed under local land use regulations. Two key provisions of this policy document include:

- support for federal legislation to allow land to be taken into trust only with the consent of the state and the affected county; and
- opposition to the practice of "reservation shopping."

The Board of Supervisors endorsed the CSAC revised policy document regarding Development on Tribal Lands on December 14, 2004.

Lytton Rancheria – National Indian Gaming Commission Environmental Impact Statement

Significant staff time and other County resources have been spent on the proposed casino at the Lytton Rancheria, involving the Board of Supervisors Ad Hoc Committee; the departmental Indian Gaming Workgroup; and a coalition of nearby cities and public agencies concerned about the proposal. The County Administrator's Office also created an extensive list of interested parties for distribution of materials.

On August 11, 2004, the County submitted 10 pages of comments on the scope of the Environmental Impact Statement (EIS) for the proposed Lytton Rancheria Casino project. Issues included: transportation, utilities, noise, soil, hazardous materials and waste, air quality, water and water quality, solid waste, visual, land use, community impacts, life safety and fire, safety and security, justice system, disaster management, health and human services, school and youth, tax, revenue and financial impacts and management and financial capability. In this letter, the County requested status as a cooperating agency so that it could receive copies of the scoping report and draft EIS prior to publication. To date, neither has been received by the County.

Lytton Rancheria – Tribal-State Compact

The County has closely followed the debate on the Tribal-State Compact for the Lytton Tribe. It participated in the Senate Government Operations Committee hearings; Senator Torlakson's visit to the casino site; and Assemblywoman Loni Hancock's legislative town hall meeting at which both Supervisor John Gioia and Health Services Director Dr. William Walker spoke as panelists. Multiple departmental meetings have been held to

discuss the Tribal-State Compact and how to address mitigation. This effort has been frustrated by lack of a complete project description. For example, as to transportation we still do not have information about the number of patrons, the length of stay, the mode of travel, etc. Nonetheless, County departments have worked to identify areas of concern and to better understand the possible range of impacts.

Also, in order to fulfill its responsibility under the Tribal-State Compact as the negotiator for all affected cities and other public agencies, except the City of San Pablo, the County held an open meeting on February 24th. It was very well attended and covered the contents of the Tribal-State Compact, timeframes, mitigations and helped others understand the process. Cities and public agencies were requested to forward a list of their issues and concerns to the County no later than March 31st. The next collaborative meeting is scheduled for April 7th.

Scotts Valley Band – Bureau of Indian Affairs Land Trust Proposal

The Bureau of Indian Affairs held a scoping session on the proposal to take land into trust for the Scotts Valley Band of the Pomo Indians on August 4, 2004. The County submitted extensive comments on the scope of the EIS on August 12, 2004. The scoping report was issued in December 2004 and the County responded with a letter on January 13, 2005, which expressed our concern that the scoping report does not include all the issues raised by Contra Costa County in its August 12th letter. To date, the County has not received any response to that letter, or any indication that the scoping report has been revised.

On March 11, 2005, the County received a certified letter from the Bureau of Indian Affairs requesting information on the potential financial impacts on local government revenues of taking the land into trust. The response is pending.

Guidiville Band of the Pomo Indians – Bureau of Indian Affairs Land Trust Proposal

The Bureau of Indian Affairs held its scoping session on the Guidiville Band of the Pomo Indians proposal to take land into trust on March 31, 2005. Staff was in attendance at that meeting. Comments are in preparation.

Board Policy on Indian Gaming

Class III gaming (slot machines) is permitted on Indian lands in California due to the passage of Proposition 1A by the voters in 2000. It was passed with the assurance that casinos would be operated on existing reservation land, none of which were then in urban areas.

Since 2000, the number of Indian gaming casinos has increased significantly. Landless tribes are seeking to establish reservations in urban areas for the sole purpose of operating a casino. For example, the Lytton Tribe has publicly stated that they do not intend to operate the Lytton Rancheria in San Pablo as anything but a casino. They intend to purchase land in Sonoma County, which is where they are from, to provide homes for their tribal members. The San Pablo casino is strictly a commercial venture designed to generate revenue. At the same time, this reservation is removed from the tax rolls and does not contribute to the overall support of public agencies in Contra Costa County, excepting for the terms of its municipal services agreement with the City of San Pablo. Nonetheless, numerous studies and actual experiences of other communities have shown that tribal casinos have a significant impact on the surrounding community, which, unless mitigated can be detrimental to the health and welfare of its host county. Contra Costa County government has the obligation and the right to provide for the health, safety, environment, infrastructure and general welfare of its residents and therefore should consider a position that best protects its citizenry.

The attached Resolution 2005/181 enumerates concerns about Indian casinos in Contra Costa County; concludes that new casinos within Contra Costa County should not be created, existing casinos should not be expanded and reservations on which there could be gaming operations should not be established; and adopts this position as the official policy of the Board of Supervisors.

Senate Bill 113 (Feinstein)

As noted earlier, the Lytton Rancheria acquired its status as an Indian reservation that was deemed to have been established prior to the effective date of IGRA because of Congressional action on December 27, 2000 (see language below):

PUBLIC LAW 106-568

Notwithstanding any other provision of law, the Secretary of the Interior shall accept for the benefit of the Lytton Rancheria of California the land described in that certain grant deed dated and recorded on October 16, 2000, in the official records of the County of Contra Costa, California, Deed Instrument Number 2000229754. The Secretary shall

declare that such land is held in trust by the United States for the benefit of the Rancheria and that such land is part of the reservation of such Rancheria under sections 5 and 7 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 467). Such land shall be deemed to have been held in trust and part of the reservation of the Rancheria prior to October 17, 1988.

Senator Feinstein's bill, S 113, would modify the 2000 action by deleting the last sentence in the above paragraph. Deletion of the last sentence would have the effect of requiring that the Lytton Band complete the two-part determination process (approval by both the Secretary of Interior and the Governor) prior to engaging in Class III gaming. This would place the Lytton Band in the same position as other tribes that acquire land and put it into trust after October 17, 1988. S 113 reverses the special preference given to the Lytton Band. It does not affect the Lytton Band's acquisition of land in San Pablo nor does it block a casino proposal, subject to the two-part determination process of IGRA.

The attached Resolution 2005/182 enumerates the reasons for supporting S 113 and adopts a position of support by the Board of Supervisors.

ACA 15 (Nation)

ACA 15 is a constitutional amendment proposed by Assemblyman Joe Nation (Marin/Sonoma) which would place a proposition before the voters of California asking them to authorize a moratorium on new Indian casinos in California until 2008, pending a study of Indian gaming. ACA 15 would create a commission on tribal gaming that is charged with studying and reviewing all aspects of tribal gaming in California, including, but not limited to public safety, financial impacts, social and environmental impacts, local control, consolidation initiatives and further necessary statutory or constitutional provisions related to tribal gaming. The commission would be required to submit a report of its study to the Legislature and Governor on or before January 1, 2007.

A 2003 CSAC survey identified 172 known tribes in California (either currently federally recognized or seeking recognition). At that time, there were 54 casinos in operation and 26 proposed casinos in 34 counties. These numbers have since grown rapidly and now include the 3 in Contra Costa County.

ACA 15 would give the State of California time to reflect on the implications of Indian gaming in California and to take into consideration the needs of all parties in the siting of casinos. The study required by ACA 15 would permit the development of a comprehensive public policy.

The attached draft letter to Assemblyman Nation expresses Contra Costa County's support for ACA 15.

Congressman Pombo's Discussion Draft Bill

Congressman Pombo is circulating a discussion draft bill which would authorize the Secretary of the Interior to designate two Indian Economic Opportunity Zones in each state. One zone would be on Indian land, the other on lands that are not currently reservations as of the effective date of the bill (these lands would then be taken into trust on behalf of all the tribes participating in the Economic Opportunity Zone). Participation by tribes would be limited to those which do not have ownership interests in other gaming facilities on other Indian land.

Establishment of a zone is subject to the approval of "the state, city, county, town, parish, village and other general purpose political subdivisions of the state with authority over the land that is current or contiguous to the Indian Economic Opportunity Zone."

Congressman Pombo's bill addresses the proliferation of Indian gaming casinos by creating up to two "mini-Las Vegas's" with multiple casinos. It also recognizes the need for concurrence of local jurisdictions in the process. Both of these elements of the bill are very positive. From the County's perspective, however, the bill would be strengthened through inclusion of the following points:

- Currently, the bill could be read to allow a city to approve an Economic Opportunity Zone within its jurisdiction without concurrence of the county. Yet there could be a significant impact on county services and infrastructure. A new land use of this magnitude should also require concurrence of the host county and the state.
- The County's experience with the current proposed casinos has demonstrated the difficulty of assessing impacts when the County is not the lead agency in the environmental review process. Since these Economic Opportunity Zones could have statewide or regional impacts, it would make sense for the state to have jurisdiction over the environmental review process and be responsible for both its conduct and its certification.

- Numerous studies and the actual experiences of other communities have shown that Tribal casino operations have caused extensive off-reservation impacts, such as increased traffic congestion, noise, air and water pollution and water supply demands, as well as increased law enforcement and public safety burdens, and additional social and health impacts on surrounding communities, costing local governments hundreds of millions of dollars annually. Casinos located in an Economic Opportunity Zone should be required to provide full mitigation of the off-reservation impacts of the casino under a legally enforceable agreement.

The attached draft letter to Congressman Pombo incorporates these points.

The Board of Supervisors

County Administration Building
651 Pine Street, Room 106
Martinez, California 94553-1293

John Gioia, 1st District
Gayle B. Uilkema, 2nd District
Mary N. Piepho, 3rd District
Mark DeSaulnier, 4th District
Federal D. Glover, 5th District

Contra Costa County



John Sweeten
Clerk of the Board
and
County Administrator
(925) 335-1900

April 6, 2005

Congressman Richard W. Pombo
Rayburn Building #2411
Washington, DC 20515

Dear Congressman Pombo:

Indian gaming is an issue of increasing concern to Contra Costa County. There is currently one reservation and two proposed reservations in the highly urban area of West County, all within eight miles of each other. All three tribes plan to operate casinos on their reservations.

While we respect these tribes' efforts to provide for the well-being of their members, we must act to protect the health and welfare of our citizens. As a result, the Contra Costa County Board of Supervisors adopted a policy position on Indian Gaming at its April 5, 2005 board meeting. A copy of the resolution is attached. The Board also took action to support S 113 (Feinstein) which would modify the effective date of the Lytton Rancheria trust acquisition. We have also sent comments on your discussion draft bill under separate cover.

We would very much like to meet with you and/or your staff in the near future to discuss this important issue that is not only impacting Contra Costa County, but counties throughout California.

Sincerely,

A handwritten signature in cursive script that reads "Gayle B. Uilkema".

Gayle B. Uilkema
Chair

cc: Board Members
Paul Schlesinger, Alcalde and Fay

April 5, 2005

Assemblyman Joe Nation
Capitol Building #3013
Sacramento, CA 95814

RE: Support for ACA 15

Dear Assemblyman Nation:

Thank you for your leadership and initiative in introducing ACA 15 which would ask the voters of California to authorize a moratorium on new Indian casinos until 2008, pending a study of Indian gaming issues.

The proliferation of Indian gaming casinos is creating enormous strains on local government that have responsibility to protect the health and welfare of its communities. In Contra Costa County, three casinos are proposed within eight miles of each other within the densely populated area of West County. Access will be on Interstate 80, one of California's most highly congested freeways.

On behalf of the citizens of Contra Costa County, the Board of Supervisors has adopted a position of support for ACA 15. Please let us know if you would like more information about our situation or if there is anything further we could do in support of ACA 15.

Sincerely,

Gayle B. Uilkema
Chair

cc: Board Members
Legislative Delegation
Mayors, Contra Costa County cities
Cathy Christian, Nielsen Merksamer et al

ADDENDUM TO ITEM D.3

April 5, 2005

On this day, the Board of Supervisors considered recommendations to adopt Resolutions 2005/181, 2005/182, adopting a position of support of ACA 15 (Nation), and the consideration of comments on a draft bill proposed by Congressman Pombo and the authorization and direction of staff to communicate the Board's positions on Indian Gaming to appropriate parties, as outlined in the Board Order.

Sara Hoffman of the County Administrators Office presented staff's report to the Board.

The public was invited to address the Board. The following persons provided testimony in support of the proposed actions of the Board:

- Dean Marshall, 5984 Westview Place, San Pablo;
- Barbara Bechnel, 305 Chesly, Richmond;
- Mike Daley, 6143 Rose Arbor Ave., San Pablo, speaking on behalf of the Sierra Club;
- Margaret Hanlon-Gradie, 3407 Clearfield Ave., Richmond;
- Andrés Soto, 2420 Lowell Ave., Richmond;
- Ethel Dotson, 396 South St., Richmond.

The following persons provided testimony opposing the proposed actions of the Board:

- Les Williams, 3261 Bress Ave., Alameda, speaking for himself as a Pomo Indian;
- Lee Jones, 200 Willard, Richmond;
- Ted Smith, 770 So. 13th, Richmond;
- Jerry Jefferson, 1729 5th St., Richmond;
- Fred Jackson, 1852 3rd St., Richmond;
- Dorothy Lightner, 1555 3rd St., Richmond, did not wish to speak but wished her support of the testimony of Fred Jackson be recorded;
- Jim Levine, 1900 Powell St., Emeryville;
- Pauline Girvin, 175 Seminary Ave., Ukiah, speaking as attorney for the Scotts Valley Band of Pomo Indians;
- Donald Arnold, 22889 Nevada Rd., Hayward, speaking on behalf of the Scotts Valley Band of Pomo Indians.

The following persons did not speak, but wished to go on record in support of the proposed Scotts Valley casino project in North Richmond:

- Ernestine Cambell, 1608 N. Gade, Richmond;
- [illegible] Ortega, P.O. Box 429, Richmond;
- Harriet Wafer, 36 Sandford Ave, Richmond;
- Juanita Williams, 1555 3rd St., Richmond;
- Adah Frefman, 3200 Tulare Ave., Richmond;
- Kenya Higgins, 1525 Giaramita St., Richmond;

- Aldric N. Slaughter, 1868 First St., Richmond;
- Helen Skipper, 317 Duboce Ave., Richmond;
- Ellen Jones, 15553 # 222, Richmond;
- Alferd Reese, 317 Duboce Ave., Richmond;
- Rosalind Williams, 1555 3rd St., Richmond;
- Tijan Turner, 1555 3rd St., Richmond;
- Benjamin Morris, 1555 3rd St., Richmond;
- Annie Smith, 317 Duboce, Richmond;
- Bob Ellison, 259 Sanford Ave., Richmond;
- Charles Gatson, 317 Duboce, Richmond.

The Chair returned the item to the Board.

Supervisor Gioia requested an amendment to Resolution 2005/181, changing the phrasing of the third "Whereas" from "...none of which were in urban areas," to read: "...none of which were then in densely populated urbanized areas."

Supervisor Gioia stated he feels the Board has an obligation to be protective of both communities and of regional impacts. He said there is no doubt that the opening of a Las Vegas-style casino would change the character of the community, and he said that there are serious doubts about whether the opening of a casino is the best way for a community to achieve economic sufficiency. He said it is important to sort out promises from reality, noting in particular the area of quality jobs being brought into the community by casinos. He said that ongoing discussions of these matters by the Board will be important.

Supervisor DeSaulnier remarked on the comments provided by Donald Arnold of the Scotts Valley Band of Pomo Indians, who stated in his testimony that Board actions could negate sovereignty of Native Americans, because "this [gaming] is what the government gave us." Supervisor DeSaulnier said he felt that statement reflects what is a national tragedy.

Supervisor Piepho expressed support of this item as a preventative means to protect the County's vital resources.

Supervisor Uilkema noted that in every evaluation seen so far trying to evaluate possible mitigation, infrastructure and service systems such as police, health, water, and transportation would be overwhelmed. She also noted that she does not believe the casino proposals are aligned with the will of the people when they voted for Proposition 1A in March 2000.

The Board of Supervisors took the following action by unanimous decision:

ADOPTED Resolution 2005/181 on Indian Gaming in Contra Costa County, opposing the creation or expansion of any further Indian gaming casinos within Contra Costa County as well as the establishment of reservations on which there could be Indian gaming; **ADOPTED** Resolution 2005/182, supporting Senate Bill 113 (Feinstein); **SUPPORTED** ACA 15 (Nation); **CONSIDERED** comments on a draft bill being proposed by Congressman Pombo which would provide for two "Indian Economic Opportunity Zones" in each state and limit new Indian gaming to those zones; **AUTHORIZED and DIRECTED** staff, the County's State Representative and the County's Federal Representative to communicate the Board's positions to appropriate parties.

#

THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA

PASSED by the following vote of the Board of Supervisors on this fifth day of April 2005

AYES: SUPERVISORS GIOIA, PIEPHO,
DESAULNIER AND UILKEMA

NOES:

ABSENT: SUPERVISOR GLOVER

ABSTAIN:

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: 04/05/2005
JOHN SWEETEN, Clerk of the Board
of Supervisors and County Administrator

By [Signature] Deputy

RESOLUTION NO. 2005/181

Subject: Indian Gaming in Contra Costa County

WHEREAS, Contra Costa County is supportive of California Native Americans' right to exercise control over their tribal lands and recognizes and respects the tribal right of self-governance to provide for the welfare of tribal members and to preserve traditional tribal culture and heritage;

WHEREAS, Contra Costa County also has a legal responsibility to provide for the health, safety, environment, infrastructure, and general welfare of its residents;

WHEREAS, casino-style gambling on Indian lands was authorized by the voters through the passage of Proposition 1A in March 2000 with the assurance that tribal gaming operations would be limited to existing Indian reservations, none of which were then in densely populated urbanized areas;

WHEREAS, the people of the State of California and of Contra Costa County have expressed their desire to curtail the expansion of casinos and gambling in the State of California by overwhelmingly rejecting in November 2004 two statewide initiatives to expand Nevada style gambling to non-tribal lands and permit unlimited numbers of slot machines on tribal lands;

WHEREAS, the federal government, through the Bureau of Indian Affairs, has the authority to take land into trust for Indian reservations anywhere in California and under certain conditions to authorize Indian gaming and in doing so, has no obligation to ensure mitigation of off-reservation impacts of the reservation or casino;

WHEREAS, Contra Costa County supports the California State Association of Counties' Policy Documents regarding Development on Indian Lands and Compact Negotiations for Indian Gaming, including opposition to the practice known as "reservation shopping" where a tribe seeks to place land into trust outside its aboriginal territory over the objection of the county;

WHEREAS, there has been no objective determination as to whether any of these tribes has a significant historic connection to Contra Costa County;

WHEREAS, there is already one Indian casino in the densely populated urban area of western Contra Costa County, with two other tribes seeking to put land into trust and operate casinos, all within 8 miles of each other;

WHEREAS, numerous studies and actual experience of other communities have shown that Tribal casino operations have caused extensive off-reservation impacts, such as increased traffic congestion, noise, air and water pollution and water supply demands, as well as increased law enforcement and public safety burdens, and additional social and health impacts on surrounding communities, costing local governments hundreds of millions of dollars annually;

THEREFORE, BE IT RESOLVED, that the Contra Costa County Board of Supervisors opposes the creation or expansion of any further Indian gaming casinos within Contra Costa County, an urban county, as well as the establishment of reservations on which there could be gaming operations;

BE IT FURTHER RESOLVED, that the Contra Costa County Board of Supervisors authorizes and directs its staff to take and support any and all administrative, legal or legislative actions in furtherance of this position.

RESOLUTION NO. 2005/181

THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA

PASSED by the following vote of the Board of Supervisors on this fifth day of April 2005

AYES: SUPERVISORS GIOIA, PIEPHO, DESAULNIER, AND UILKEMA

NOES:

ABSENT: SUPERVISOR GLOVER

ABSTAIN:

RESOLUTION NO. 2005/182

Subject: Support of Senate Bill 113 (Feinstein) which modifies the effective date of federal trust land for the Lytton Rancheria (Lytton Band of the Pomo Indians)

WHEREAS, the Indian Gaming Regulatory Act (IGRA) requires that tribes complete a “two-part determination” process prior to engaging in Class III gaming on newly acquired land;

WHEREAS, IGRA requires the approval of both the state Governor and the Secretary of the Interior for tribes to operate gaming casinos on lands acquired and put into trust after October 17, 1988;

WHEREAS, IGRA also requires that the Secretary of the Interior consult with local communities and nearby tribes as part of this two-part process;

WHEREAS, in 2000, these provisions of IGRA were abrogated by Congressional action that directed the Secretary of the Interior to accept land in the City of San Pablo into trust for the benefit of the Lytton Band of the Pomo Indians and specified that “such land shall be deemed to have been in trust and part of the reservation of the [Lytton] Rancheria prior to October 17, 1988”;

WHEREAS, this Congressional action gave special preference to the Lytton Band of the Pomo Indians above that given to other tribes and other local communities and was inconsistent with the principles of equality under the law;

WHEREAS, this Congressional action was also contrary to the intent of Proposition 1A which allows casino style gambling on Indian lands and was passed by the voters of California with the assurance that Indian gaming operations would be limited to existing Indian reservations, none of which were then in urban areas;

WHEREAS, Senator Dianne Feinstein has introduced S 113, which would delete the designation of the Lytton Rancheria land as land deemed to be held in trust prior to October 17, 1988 and thus subject the Lytton Band to the same provisions of IGRA that apply to all other tribes who acquire land after 1988;

WHEREAS, S 113 does not affect the Lytton Band’s acquisition of land in San Pablo, nor does it prohibit a casino proposal if approved pursuant to the two-part determination process of IGRA.

NOW THEREFORE BE IT RESOLVED, that the Contra Costa County Board of Supervisors supports S 113 as a measure that restores equity in the process of considering the interests and needs of all parties in the determination of whether to allow Indian gaming;

BE IT FURTHER RESOLVED, that the Contra Costa County Board of Supervisors respectfully requests its Congressional delegation and all members of the Senate and House of Representatives to support S 113.

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

RESOLUTION NO. 2005/182

ATTESTED: 04/05/2005
JOHN SWEETEN, Clerk of the Board
of Supervisors and County Administrator
By [Signature] Deputy

County of Contra Costa State of California



Comments on Scotts Valley Band of Pomo Indians' Fee-to-Trust Land Acquisition Application

Contra Costa County has reviewed the Governor's comments on the Scotts Valley Band of Pomo Indians' Land Acquisition Application, by letter dated May 13, 2005. The County concurs with the Governor's concerns, and supports his opposition to the land acquisition. By this reference, the County incorporates and adopts the Governor's May 13, 2005 letter in opposition to the application as though set forth in full herein.

The County has also reviewed the comments of Snell & Wilmer on behalf of the Rumsey Indian Rancheria of Wintun Indians, also in opposition to the Scotts Valley Tribe's request to acquire land in trust for gaming purposes (letter dated May 4, 2005). By this reference the County also incorporates and adopts those comments of opposition as though they were set forth in full herein.

Along with the Governor and the Rumsey Indian Rancheria of Wintun Indians, Contra Costa County *opposes* the Fee-to-Trust Land Acquisition (FTT) Application of the Scotts Valley Band of the Pomo Indians (Tribe) for approximately 30 acres of land within the unincorporated community of North Richmond in Contra Costa County. The following are Contra Costa County's initial comments on the FTT. We will provide supplemental comments as additional issues arise, other information becomes available, or as the occasion requires.

FTT Should be Rejected Since It is Incomplete

The central element of the Tribe's FTT and the Bureau of Indian Affairs' (BIA) consideration of taking land into trust is the Tribe's alleged historic connection to the land. In the FTT the Tribe asserts that "the Tribe's ethno-historic report demonstrates that the Tribe's request and the Federal relocation policies are based upon the Tribe's historic use of the Bay Area." (FTT p. 4)

Yet no ethno-historic report is attached to the application. Rather, a footnote states that "the ethno-historic report will be submitted with the request for Indian lands determination and upon submission the report...will be incorporated herein as Exhibit 9 as if the report...were included herein at the time of the filing." (FTT p. 4)

The absence of this essential report in the FTT is unacceptable. It removes the burden of proof from the Tribe, poses barriers for the County and others in reviewing the application and distorts the timeframe for consideration of the application. The BIA should reject the application, return

it with all accompanying documents to the Tribe, and halt the environmental review process. No consideration should be given to the FTT until and unless the Tribe submits a complete application.

Tribe is Not Precluded from Re-Establishing Its Land Base in Lake County

In a 1991 Stipulated Judgment¹, the Tribe agreed not to attempt to re-establish the former boundaries of its 56.88 acre Rancheria, which was located in Lake County. The Stipulated Judgment, however, expressly contemplates “Future Land Acquisitions Within Former Boundaries.” The federal government, by way of the Stipulated Judgment, agreed to take into trust lands within the former Rancheria boundaries then owned or subsequently acquired by the Tribe or any of its members, as well as land outside those boundaries held by the Tribe or its members at the time of the Stipulated Judgment. (Stipulated Judgment, ¶¶ 5, 6, 8; Exhibit 3 to Fee-to-Trust Application.)

In construing a similar Stipulated Judgment involving another tribe that was part of the *Scotts Valley* litigation, one court has stated that the intent of the Stipulated Judgment, including the parties’ agreement not to re-establish the former Rancheria boundaries, was essentially to maintain the status quo as to land within those former boundaries, i.e., land owned by non-Indians at the time of the Stipulated Judgment would not be affected by that Judgment and any land within the boundaries subsequently purchased by Indians would “remain consistent” with local land use plans. (*Mechoopda Indian Tribe of Chico Rancheria v. Schwarzenegger*, 2004 U.S. Dist. LEXIS 8334 at *30 (E.D. Cal., March 12, 2004).)

An agreement to effectively maintain the status quo of the land within the former Rancheria boundaries is quite different from a preclusion from acquiring land within those boundaries, land near those boundaries, or land anywhere else in Lake County. The Tribe is precluded (by its own agreement) only from re-establishing the exact boundaries of its former land base in Lake County; it is not precluded from re-establishing any land base in Lake County. The Tribe itself has recognized that it can re-establish a land base in Lake County, and has indicated an intention to do so. (“Many of the members who moved to the Bay Area for employment will return to Lake County when the Tribe re-establishes the Rancheria and becomes involved in economic development projects.” (*Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria, Tribal History* <<http://www.svpomo.org/history.htm>> [as of May 10, 2005]) See Exhibit A: “Tribal History of the Scotts Valley Band of Pomo Indians.”)

Property Bears no Historic, Geographic, or Temporal Connection to Tribe

In determining whether land that is not part of a tribe’s historic reservation can or should be deemed “restored” for purposes of 25 U.S.C. § 2719(b)(1)(B)(iii), courts have looked at the land’s “historical, geographical and temporal connection to the Tribe,” (*Oregon v. Norton*, 271 F.Supp.2d 1270 (D. Ore. 2003)), or whether there is evidence that “the land was of historic, economic and cultural significance to the Band.” (*Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the United States Atty.*, 198 F.Supp.2d 920 (W.D. Mich. 2002).) The Property at issue here bears no such connection and has no such significance to the Tribe.

¹ *Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria, et al. v. United States of America, et al.*, United States District Court (N.D. Cal.), Case No. C-86-3660 WWS.

1. Tribe has no Historic Connection to Contra Costa County in General or to the Property Specifically

Contra Costa County was historically home to the Costanoan (also known as Ohlone²), Miwok, and Yokut people. (See, e.g., California Indian Tribal Groups map in the California Indian Library Collections <http://www.mip.berkeley.edu/cilc_images/bibs/maps/tribemap.gif> [as of May 16, 2005], attached as Exhibit B: “California Indian Tribal Groups.”) Numerous maps indicate that the Property itself was in Costanoan territory. (See, e.g., Levy, *Costanoan*, in Handbook of North American Indians, vol. 8 (1978) Fig. 1, page 485, a copy of which is attached as Exhibit C: “Ethnic groups and tribelets map”; Kroeber, Handbook of the Indians of California (1925) Fig. 42, page 465, a copy of which is attached as Exhibit D: “Costanoan dialect areas and approximate sites of some settlements.”) According to Levy:

“[t]he term Costanoan is a linguistic one; it designates a language family consisting of eight languages. In 1770 the Costanoan-speaking people lived in approximately 50 separate and politically autonomous nations or tribelets Karkin was spoken in a single tribelet on the southern edge of Carquinez Strait Chochenyo or East Bay Costanoan was spoken among the tribelets occupying the east shore of San Francisco Bay between Richmond and Mission San Jose, and probably also in the Livermore Valley, by about 2,000 people.” (Levy, *supra*, p. 485.)

None of the cited maps or texts corroborates any historic relationship between the Pomo and Contra Costa County, nor has the Tribe offered any evidence of any such relationship. Rather, as noted in the maps and texts and admitted by the Tribe itself, the Tribe’s historic territory is within Lake County, as detailed below.

2. Tribe has no Historic Connection to Land Contiguous to Contra Costa County

The Tribe claims that it “ceded” land contiguous to Contra Costa County to the government in 1851 treaty negotiations. These treaties were never ratified and so should not be considered. Even if they were, they do not show an historic connection between the Tribe and Contra Costa County.

While it is true that 1851 treaty negotiations between the Pomo and other tribes on one hand and the federal government on the other proposed that the tribes collectively cede land (designated as #297 on the map attached as Exhibit 10 to the Fee-to-Trust Application) to the government, neither the Pomo in general nor the Tribe specifically inhabited the part of the land that is now the Marin Peninsula, which is the only portion of that land even arguably contiguous to Contra Costa County. Marin and Contra Costa Counties are separated by the San Francisco and San Pablo Bays and are contiguous only in the sense that county lines “meet” in the middle of the bodies of water that are now spanned by a twentieth century bridge. For aboriginal people, county lines and bay-spanning bridges did not exist.

² “In 1971 descendants of the Costanoan united in a corporate entity, the Ohlone Indian Tribe” (Levy, *Costanoan*, in Handbook of North American Indians, vol. 8 (1978) p. 487.)

More importantly, the Marin Peninsula was inhabited by the Coast Miwok. (See “Fig. 22 – Coast Miwok territory and settlements,” from Kroeber, Handbook of the Indians of California (1925) Fig. 22, p. 274, a copy of which is attached as Exhibit E: “Coast Miwok territory and settlements”; see also, Kelly, *Coast Miwok* in Handbook of North American Indians, vol. 8 (1978) pp. 414-425, and Fig. 1, p. 415, a copy of which is attached as Exhibit F: “Tribal territory and villages.”)

3. *Tribe has Presented no Evidence of its Alleged Connections to the “Bay Area” and Such Connections do not Equate to Ties to Contra Costa County in any Event*

The “San Francisco Bay Area,” the fifth largest metropolitan area in the United States, is generally defined as encompassing a nine-County area of approximately 8,700 square miles with a population of over 7 million. (*San Francisco Bay Area* in Wikipedia <http://en.wikipedia.org/wiki/San_Francisco_Bay_Area> [as of May 9, 2005].) Reference to ties to the Bay Area in general are therefore not particularly helpful in establishing alleged ties to Contra Costa County. The Tribe has failed to provide any evidence of any significant ties to the Bay Area generally or to Contra Costa County specifically.

The Tribe bases its claim of ties to the Bay Area largely on a 1972 Report of the California Rancheria Task Force (Exhibit 7 to Fee-to-Trust Application). That Report contains a recommendation “to relocate all families [in the Tribe] to a suitable area.” Nowhere, however, does the Report indicate what a “suitable area” is, nor has the Tribe presented any evidence in support of its Application that the Tribe, or any of its members, was in fact relocated by the federal government to any specific location.

Rather, the Tribe’s Web site, which does indicate that “forty percent” of the Tribe live in the San Francisco Bay Area, represents that “[m]any of the members who moved to the Bay Area for employment will return to Lake County when the Tribe re-establishes the Rancheria and becomes involved in economic development projects.”³ (*Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria, Tribal History* <<http://www.svpomo.org/history.htm>> [as of May 10, 2005].) To the extent, therefore, that members of the Tribe currently reside in the greater Bay Area, the Tribe has represented that they moved for employment opportunities, not because they were forcibly relocated there.⁴

4. *Service Population Area Designation Not Relevant to FTT*

Notwithstanding the lack of any documented historical connection to Contra Costa County, the Tribe nonetheless asserts a modern day connection to the County in support of its attempt to have the Property taken into trust as restored land: “Based on this federally mandated relocation [of Tribal members to the Bay Area], the Secretary

³ As noted above, this statement also belies the Tribe’s claim in its Fee-to-Trust Application that it is somehow precluded from re-establishing a land base for economic development in Lake County.

⁴ Given the size of the San Francisco Bay Area (and the much smaller size of Contra Costa County as one of nine Counties therein), the Tribe’s failure to provide any specifics regarding exactly where in the Bay Area its members purportedly live is significant. Nowhere does the Tribe claim that any of its members reside, or have ever resided, in Contra Costa County.

designated Contra Costa County as a “service population area” for the Tribe...” (FTT p. 3). The source document for the designation is contained in Exhibit 8, a May 16, 2000, Federal Register notice of “near reservation designations” for 29 California tribes. (The terms “service population area” and “near reservation designation” appear to be synonymous as used by the Tribe.)

The Federal Register states that these are “near reservation designations of certain tribal entities . . . recognized as eligible to receive services from the BIA.” The Register further states “In the absence of officially designated ‘near reservation’ areas, such services are provided only to Indian people who live within reservation boundaries. The tribes identified below are now authorized to extend financial assistance and social services to their eligible tribal members (and their family members who are Indian) who reside outside the boundaries of a federally recognized tribe’s reservation, but within the areas designated below.”

Near reservation locations for the Scotts Valley Rancheria are listed as the counties of Mendocino, Lake, Sonoma and Contra Costa.

The only significance of the near reservation designation is with respect to availability of services – without designation, a tribe can only provide services to members living on a reservation. The Tribe’s website indicates that the Tribe does provide services to its members in Lake County. There is no evidence, however, that the Tribe actually provides services in Contra Costa County (or Sonoma or Mendocino for that matter).

Furthermore, unlike many other states, California counties’ general assistance (welfare) programs are structured as loan programs, not grant programs. Since federal regulations require that welfare for Tribal members be grants, not loans, all California counties are subject to “near reservation designations.” If Contra Costa County’s welfare program were a grant program, there would be no “near reservation designation.”

Additionally, it appears that the Bureau of Indian Affairs’ action to approve the “near reservation designation” is a ministerial action only. According to BIA staff, the BIA received a resolution from the Tribe requesting the designation. The BIA did no independent research or evaluation of the Tribe’s request, such as checking to see if any of the Tribal members resided in Contra Costa County.

Further, the Tribe alleges a cause and effect relationship between relocation and “near reservation designation.” This is not true. At least 30 years separated the two events. Any federally mandated relocation took place, if such relocation took place at all, in the 1970s or earlier. The Federal register was published on May 16, 2000. “Near reservation designations” relate solely to service availability, and there is no indication in the Federal Register as to the basis for the near resignation designation of Contra Costa County. There is certainly no indication in the Federal Register that Contra Costa County was given a near reservation designation for the Tribe because Tribal members were subject to mandatory relocation to Contra Costa County at some prior time.

Contra Costa County has submitted a Freedom of Information Act request for the Tribal resolution on the “near reservation designation” and associated documents. More comments may be submitted upon review of that material.

5. *Tribe’s Historic Territory is in Lake County*

According to the Tribe, “We are one of several bands of Pomo Indians located in Lake County. The Pomo Tribes are currently located in Lake, Mendocino and Sonoma Counties in Northern California. The ancestors of the Pomo Tribes were in this area for thousands of years before Europeans arrived.” (*Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria, Tribal History* <<http://www.svpomo.org/history.htm>> [as of May 10, 2005].) The Tribe’s Web site’s statements regarding its historical territory (unlike its statements in the Fee-to-Trust Application) are amply documented.

For example, The Handbook of North American Indians, vol. 8 contains a map depicting the Pomo territory based on the seven Pomo languages (Fig. 2, p. 276, *see* Exhibit G: “Territorial extent of the 7 Pomoan languages...”)⁵. The Tribe’s historical territory was among that of the Northern Pomo. (The Handbook of the North American Indians, vol. 8, Fig. 5 p. 283, *see* Exhibit H: “Territory of the Northern Pomo.”) The Handbook of the Indians of California contains a map documenting the territory of the Hokan “family” of which the Pomo were a part, which map shows the “continuous and rather compact” territory of the Pomo – in an area which encompasses parts of what are now Lake, Mendocino and Sonoma Counties and which is well north of modern-day Contra Costa County. (Fig. 17, p. 223, *see* Exhibit I: “Distribution of the Hokan family in California.”)

The Tribe simply has no historical connection to the Property. This situation can be contrasted with those in prior instances wherein tribes sought to have property outside their historic reservations taken into trust for gaming purposes. For example, the Coos Tribe of Oregon was terminated in 1954 and restored in 1984, with certain land restored in the process. (*Oregon v. Norton*, 271 F. Supp. 2d 1270, 1272 (D. Ore. 2003).) In 1998, the tribe had the “Hatch Tract” accepted into trust and sought to conduct gaming on the property pursuant to the “restored land” IGRA exemption. (*Id.* at 1273.) The “Hatch Tract” was the site of a former tribal village and was within the reservation to which tribe members were removed in 1862. (*Id.* at 1272-73.) Under those circumstances, the Secretary determined that the Tract “bears a significant, historical, geographical and temporal connection to the Tribe,” (*id.* at 1276), and the court found that the Secretary’s determination was not “arbitrary or capricious.” (*Id.* at 1280.)

Similarly, the court in *Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the United States Atty.*, 198 F. Supp. 2d 920 (W.D. Mich. 2002) found that land outside historic reservation borders fell within the restored land exemption based on the Band’s “substantial and uncontradicted” evidence “that the parcel was of historic, economic and cultural significance to the Band,” and thus could be considered “part of a restoration of lands in an historic, archeologic and geographic sense.” (*Id.* at 936-37.) In that case, the

⁵ “[W]hat we call Pomo – the Indian had no word for it – refers to no definable cultural entity, but only to a sort of nationality expressed in speech varying around a basic type. . . .” (McLendon and Oswalt, *Pomo: Introduction* in The Handbook of North American Indians, vol. 8 (1978) p. 276, quoting Gifford and Kroeber 1939:119.)

land in question was within lands ceded by the tribe to the United States in 1836. (*Id.* at 925.) Although the land fell outside the Band’s 1836 treaty reservation boundary, the land had been contemplated for the reservation originally, and was only 1.5 miles outside the reservation’s ultimate boundary. (*Id.*) Further, the land was “at the heart of the region that comprised the core of the Band’s aboriginal territory and was historically important to the economy and culture of the Band.” (*Id.*) The Band had occupied the region in which the land was located “from at least 100 years before treaty times until the present.” (*Id.*) *Additionally*, in “the twentieth century, the Band . . . maintained an economic, spiritual and cultural connection to the area.” (*Id.*)

The Tribe here has not produced any evidence by which it could make a similar showing with respect to the Property. The Property is not itself, nor is it within, land historically, economically, spiritually or otherwise important to the Tribe. There is no connection between the Tribe and the Property, and the Property should thus be considered newly-acquired for purposes of the Tribe’s Fee-to-Trust Application.

FTT Conflicts with Community Improvement Efforts

The proposed land acquisition site is located within the unincorporated community of North Richmond. It is a low-income, minority community with high unemployment rates and dependency on County support services. Contra Costa County is implementing a Redevelopment Plan for the North Richmond community, designed to improve the living conditions and physical environment of North Richmond as well as to create new employment opportunities.

The proposed land acquisition conflicts with the County’s community improvement efforts and would have a negative impact on them.

1. Casino Project Is NOT Consistent With County General Plan

The Tribe asserts that the proposed Casino Development Project is consistent with the County General Plan. This is false.

The project site is within the Heavy Industry land use designation of the General Plan. Development of casinos, adult entertainment or shopping malls is not allowed in Heavy Industry areas. The potential for the casino to spur similar development or support services such as hotels on surrounding Heavy Industrial lands would further worsen land use conflicts with adjacent parcels and detract from the community’s development as currently planned.

2. Casino Project Is NOT Consistent With North Richmond Redevelopment Plan

The Redevelopment Plan contains a land use element, which incorporates by reference the County’s General Plan and implementing ordinances. Therefore, the Casino Development Project is inconsistent with the land use element of the Redevelopment Plan.

The Redevelopment Plan also contains a financial element. Since the FTT action would also eliminate property tax payments from the property, it is inconsistent with the financial element of the Redevelopment Plan.

As a result the FTT and proposed Casino Development Project are inconsistent with the Redevelopment Plan.

3. *Casino Development Project Would Contribute to “Blight” in North Richmond*

A key factor in designating an area as blighted is whether adjacent or nearby uses are incompatible with each other and would prevent the economic development of those parcels or other portions of the project area. The Proposed Casino Project would contribute to blight by introducing uses that would conflict with the land uses that exist or are planned for the area.

Furthermore, the proposed project would make it more difficult to retain and expand the jobs provided by the industrial uses.

4. *Property Tax Loss and Its Effect are Mischaracterized and Would Be Devastating*

The Tribe contends that the property tax loss to Contra Costa County is only \$104,027 out of a tax base of over \$1 billion and, therefore, “de minimus” (FTT, p. 9). This is incorrect.

Contra Costa County’s total revenues for FY 04-05 are approximately \$1.2 billion. The property taxes are estimated at \$204 million, out of a total of \$270 million in general purpose revenue. The remaining County revenues, \$861 million, are program specific and so restricted.

The Tribe also misrepresents how property taxes are calculated and distributed. The \$104,027 figure represents the total taxes for all the parcels for FY 04-05. The 1% (Prop 13) tax receipts were \$75,160. The other voter-approved rate based taxes were \$9,400. Other levies and bonds were \$19,447. The *base* 1% taxes are distributed among 22 public agencies, including Contra Costa County. The voter approved bonds are distributed among six agencies. The remaining revenues are fixed costs that are levied based on the particular parcel; for example, a sewer connection. If the property were not within a Redevelopment Area, the County General Fund would have received \$11,237.

The key here, though, is that the parcels are within the North Richmond Redevelopment Project Area governed by the Contra Costa County Redevelopment Agency: therefore the estimated loss of revenue primarily accrues to the Redevelopment Agency.

If the project site were developed consistent with the County General Plan, the new assessed value would generate tax increment to the Redevelopment Agency of approximately \$317,000 per year (industrial/light industrial use). Capitalized through the sale of bonds this revenue would generate \$4 million for the Agency to reinvest into the North Richmond community. Over the next 32 years, the remaining life of the North Richmond Redevelopment Plan, the Redevelopment Agency would receive a total of \$10,143,262 in revenues.

If the casino project were subject to local property tax, the revenue flow to the County Redevelopment Agency would be \$1,935,811 per year over the next 32 years, based on an improvement value of \$200 million. Capitalized through the sale of bonds this

revenue flow would generate \$24.2 million for the Agency to reinvest in the North Richmond community.

At the termination of the Redevelopment Program the forgone property tax revenue from a tax-exempt casino would shift and become a revenue loss to the County and all other taxing entities.

Loss of the tax increment will have a significant impact on the Redevelopment Agency's ability to improve the community. The Redevelopment Agency's current tax increment is \$1.4 million per year. If the project site is valued as Industrial/Light Industrial, the loss represents 23% of the Agency's annual revenue. Valued as a casino, the loss from the tax-exempt casino alone is 136% of current annual revenues.

These losses do not include the opportunity losses that will occur when nearby lands are not improved for Industrial/Light Industrial uses, due to business avoidance of increased traffic and other negative off-reservation impacts of the casino. Approximately 300 undeveloped or underdeveloped acres will be affected within the Redevelopment Area boundaries. If none of these Industrial/Light Industrial lands are improved as designated in the County General Plan/North Richmond Redevelopment Implementation Plan, the estimated annual loss in property tax increments to the Agency is in the range of \$5-7 million per year, with a concurrent loss of \$60-85 million in bonding capacity.

In California, redevelopment agencies are charged with the task of improving blighted areas. Financing is through the property tax increment; that is, the Redevelopment Agency receives most of the increases in property taxes that accrue to the site after the date that the land is incorporated into a redevelopment plan. This tax increment is then used on an ongoing basis for improvement or as security in the sale of bonds to finance infrastructure and other improvements over the life of the redevelopment project area.

If the BIA approves the FTT, it will have a devastating impact on the ability of the North Richmond Redevelopment Agency to improve the North Richmond community, to the unalterable detriment of the community and its primarily low-income, minority residents.

Casino Project Would Have Adverse Employment and Economic Effects

Under the County's land use plan and redevelopment plan, the project site would be developed as an industrial use, offering wages that would exceed those offered by a casino. While the Tribe alleges that there would be offsetting positive economic benefits, the analyses on which the Tribe relies have not been subject to independent review, since they were not made available to the County. Consequently, they cannot be regarded as a credible source of information and should be disregarded when the BIA considers the FTT.

1. Casino Wages are Less Than Offered by Industrial Uses

The Tribe states that the casino will bring a significant economic benefit to the surrounding community by providing the equivalency of 2108 full-time jobs with earnings of *up to* \$32,400 per year (italics added) (FTT, p. 10).

The \$32,400 appears to be the upper limit of salaries and there is no listing of the number of jobs by salary level. The highest wages that would be offered at the casino do not compare to those that would be expected if the site were developed in accordance with its industrial land use designation. Furthermore, no mention is made of benefits, so it must be assumed that these jobs will not provide health care, vision care, dental care, life insurance, sick leave, vacation, or retirement benefits.

The 2003-2004 Occupational Outlook report for East Bay counties (Alameda and Contra Costa counties) is a publication that includes 40 comprehensive occupational profiles based on surveys with local employers as well as a review of the top 100 occupations in the East Bay. The following list of semi-skilled and skilled jobs by annual salary level⁶ that might be offered at the site if it were developed in accordance with its land use designation are listed below.

Occupation	Annual Salary
Chemical Plant and System Operators	\$51,921
Electricians	\$48,915
Glaziers	\$53,633
Industrial Truck and Tractor Operators	\$35,875
Laborers and Freight, Stock, and Material Movers, Hand	\$25,282
Maintenance and Repair Workers, General	\$39,966
Plumbers, Pipefitters, and Steamfitters	\$54,253
Team Assemblers	\$32,188
Welders, Cutters, Solderers, and Brazers	\$43,717

In contrast, listed below are positions and related annual salaries⁶ that might be offered at a casino.

Occupation	Annual Salary
Bartenders	\$17,980
Cashiers	\$21,448
Combined Food Preparation and Serving Workers	\$17,210
Cooks, Restaurant	\$24,662
First-Line Suprvrs./Mgrs. of Food Preparation & Serving Workers	\$28,477
Food Preparation Workers	\$19,649
Security Guards	\$23,698
Waiters and Waitresses	\$17,338

The disparity is even greater if the casino does not provide benefits to its workers, as might be expected for more traditional industrial jobs. Benefits include medical insurance, dental insurance, vision insurance, life insurance, sick leave, vacation, and retirement. Without these benefits, particularly for the “working poor,” the County is the safety net when employees become sick or disabled.

⁶ Wage levels from the Labor Market Information Division of the California Department of Employment Development.

According to the Self-Sufficiency Standard Report for California, December 2003, a self-sufficiency wage for an adult with an infant is \$40,736 per year. For an adult with a preschooler, it is \$42,705 per year. For adult with a school-age teenager the self-sufficiency wage is \$37,299. These figures are deemed to be low in West Contra Costa County due to the high cost of living. A California Budget Project report published in October 2003 shows that a living wage for a single parent was \$61,986 in the San Francisco Bay Area at that time.

2. *Economic Benefits of Casino Development Project at Best Questionable*

The Tribe asserts that the Casino Development Project will have a positive economic benefit on the local economy due to purchases of goods and services from local businesses and ancillary activities generated by the facility. The County has been unable to examine the source documents attached to the FTT, including Exhibit 20, “Market Study and Financial Projections” (Klas Robinson QED, May 2004); Exhibit 21, “Financial Projections/Pro Forma”; and Exhibit 25, “Scotts Valley Band of Pomo Indians Economic and Fiscal Impact Report” (Klas Robinson QED, December 2004). These exhibits were not included in the materials provided to the County under its Freedom of Information Act (F.O.I.A.) request. Rather, they were listed in the exhibit list as “exempt from disclosure under F.O.I.A.”

The Bureau of Indian Affairs should either 1) reject the application until and unless the County receives the opportunity to review the entire Fee-to-Trust Application including all of the exhibits or 2) not rely on any information contained in exhibits not available for County review when considering the FTT.

Financial Impact on State and County Mischaracterized

The Tribe alleges that both the County of Contra Costa and the State of California will reap significant financial benefits from the proposed casino project. These allegations presume agreements that are not in place and may never be in place, as well as misrepresent the scope and purpose of such agreements.

1. *No Financial Benefit for Contra Costa County or Other Local Jurisdictions.*

The Tribe asserts that the County and other local jurisdictions will “benefit enormously under the terms of the Tribe’s compact with the State of California because such a compact will require the Tribe to work cooperatively with local governments to reach agreement on the provision of municipal services in mitigation of adverse impact on local communities resulting from either the trust acquisition or the Tribe’s intended use of the property” (FTT, p. 10). This is not true.

If there were a compact and if it were modeled after the latest compact negotiated by the Governor, the County would only be eligible to receive reimbursement for its costs of increased services and infrastructure. At best, the County might be “kept whole” in an agreement with the Tribe. However, there are no assurances that the Tribe would fully reimburse the County for its increased costs. The County would have no legally binding mechanism to assure full reimbursement and would need to rely upon the “generosity” of the Tribe.

Furthermore, the development of a casino will adversely affect the quality of life in West Contra Costa County. Full mitigation of the transportation impacts is not possible due to its location in a highly urbanized, densely populated area with an already overextended transportation system. There is no possible mitigation for the social cost and human suffering that would be associated with the effects of problem and pathological gambling and the proximity of the casino, including but not limited to, divorce, suicide, truancy, bankruptcy, domestic violence, elder abuse (particularly fiduciary abuse), criminal activity, mental illnesses, child abuse and neglect, alcoholism and use of other drugs, smoking and its associated health effects, traffic accidents, and driving under the influence, to name a few.

2. *No Guarantee of Financial Benefits for the State of California*

The Tribe asserts that the State of California will benefit financially from the establishment of the casino development by entering into a compact that will result in the Tribe paying the State anywhere from \$47.8 million to \$93.9 million annually (FTT, p. 10).

Financial benefits to the State of California should not be a consideration in determining whether or not the FTT should be approved. Even if it were a consideration, the financial benefits are questionable at best. The Lytton Band of the Pomo Indians is developing a casino in the neighboring City of San Pablo, absent a Tribal/State Compact and without any financial benefit to the State. The Lyttons have declared their intent to operate with 800 to 1,000 bingo-based, pseudo-slot machines and other Class II gaming. If the FTT were approved as “restored” land, the Scotts Valley Band could also operate Class II gaming machines that do not require a compact or any other state approval.

FTT Does Not Address Need for Tribal Member Employment

It is Contra Costa County’s understanding that one of the BIA’s purposes in taking land into trust is the development of stable, sustainable sources of employment for Tribal members. The FTT does not demonstrate how taking this land in Contra Costa County in trust for the Casino Development Project – or for any project – would best provide that employment.

The FTT does not provide any information about the jobs that would be provided at the proposed casino or how those jobs would be suitable to the skill sets of the Tribal members. There is no indication that Tribal members even reside in the vicinity of the project site and therefore would be within commute distance of the jobs offered. Also, there is no indication that revenues would be used to effectively address the factors that cause the unemployment or underemployment among Tribal members.

FTT Driven Solely for Purposes Of Revenue

The FTT states that the Tribe and its members would be receiving revenues of approximately \$80 to \$105 million per year from the Casino Development Project (based on Tribal member distribution figures; the FTT also cites revenues of \$72 – 94 million annually). According to the FTT, 20% of the revenues would go directly to Tribal members; 23% to Tribal governmental

operations, including Tribal services such as education, health care, family services, housing and cultural programs; and 55% into an economic development fund for land acquisition and creation of additional businesses for the benefit of the Tribe and its members.

Divided among 181 members of the Tribe, this would result in significant revenues:

Tribe and Member Annual Revenues, As Asserted by the Tribe

	Minimum	Maximum
Direct Member Payments (per Member)	\$88,398	\$116,022
Tribe Operations (per Member for Support Services)	\$101,657	\$113,702
Economic Development Fund (per Member)	\$243,094	\$319,337
TOTAL	\$433,149	\$549,061

However, it is the County’s understanding that these revenue figures are very low, according to industry standards. Assuming \$150 of revenue per day per slot machine and 2,000 slot machines, gross revenues would be at least \$300,000 per day or approximately \$1.1 billion per year. Even with a 50% overhead rate, the Tribe’s revenues would be \$547.5 million per year. Using the Tribe’s distribution figures (which, incidentally, distribute only 98% of the revenues), Tribal revenues would be even greater:

Tribe and Member Annual Revenues, estimated at \$150/Day/slot machine

Direct Member Payments (per Member)	\$604,970
Tribe Operations (per Member for Support Services)	\$695,720
Economic Development Fund (per Member)	\$1,663,670
TOTAL	\$2,964,360

While direct member payments are federally taxable, services provided by the Tribe as well as the revenues within the economic development fund are tax-exempt. Therefore the net value of these revenues is much greater.

It is clear that the Scotts Valley Band is interested in acquiring trust land in Contra Costa County only for revenue purposes, and as such, is engaging in the practice commonly known as “reservation shopping.” Contra Costa County believes that, as such, the land acquisition is not consistent with the intent and purpose of the Indian Gaming Regulatory Act, or Proposition 1A, approved by the people of California in 2000.

Conclusion

For all of the above reasons and in light of the facts set forth in this response, Contra Costa County urges the BIA to deny the Tribe’s FTT application. We are available to discuss this response upon request.

EXHIBITS

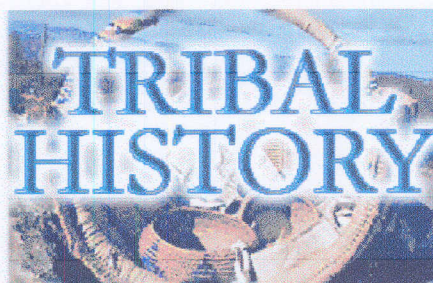
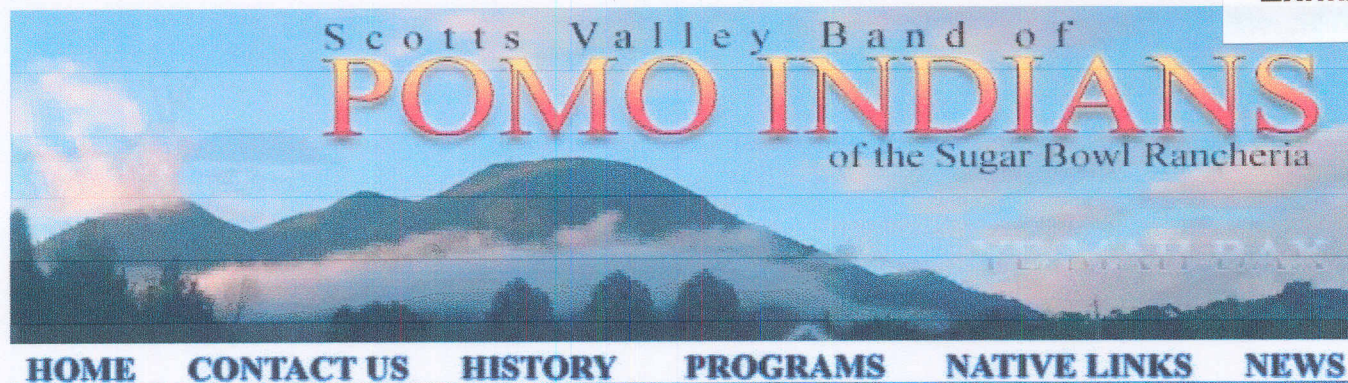
FOR

CONTRA COSTA COUNTY'S

COMMENTS ON

SCOTTS VALLEY BAND OF POMO INDIANS'

FEE-TO-TRUST LAND ACQUISITION APPLICATION



Scotts Valley is a federally recognized Indian Tribe. We are one of several bands of Pomo Indians located in Lake County. The Pomo Tribes are currently located in Lake, Mendocino and Sonoma counties in Northern California. The ancestors of the Pomo Tribes were in this area for thousands of years before Europeans arrived.

The United States Government negotiated 18 separate treaties (known as the Barbour Treaties) with California Indians in the early 1850s but Congress bowed to pressure from the California delegation and the treaties were never ratified. The eight million acres promised California Natives in the negotiated treaties were never provided leaving the California Indians homeless. The Pomo people lived as squatters or ranch workers at local missions and on local ranches until "rediscovery of the lost" treaties in 1905. Between 1906 and 1910, legislation was passed appropriating funds to be used to purchase small tracts of land for Rancherias.

In 1909 the Scotts Valley Tribe received a 56 acre parcel which became known as the Sugar Bowl Rancheria, however, the Tribe was terminated as a result of the California Rancheria Act of 1958. The land was distributed to individual members but was lost as a result of fraud, non-payment of taxes due to poverty and lack of knowledge, etc. Scotts Valley was one of forty Tribes terminated in California during the 1950s and early 60s.

In 1992, after Scotts Valley sued the United State Government, a Federal Court determined that the termination was illegal. The Tribe was "unterminated" but the land was gone. Scotts Valley is in the process of re-establishing. The Tribe is governed by a seven member elected Tribal Council. The Council meets once a month. We have a Constitution and

numerous Ordinances in place. The Tribal Office is located at 9700 Soda Bay Road, Kelseyville, California. Scotts Valley has received several grants since re-instatement including a HUD grant to purchase land for housing.

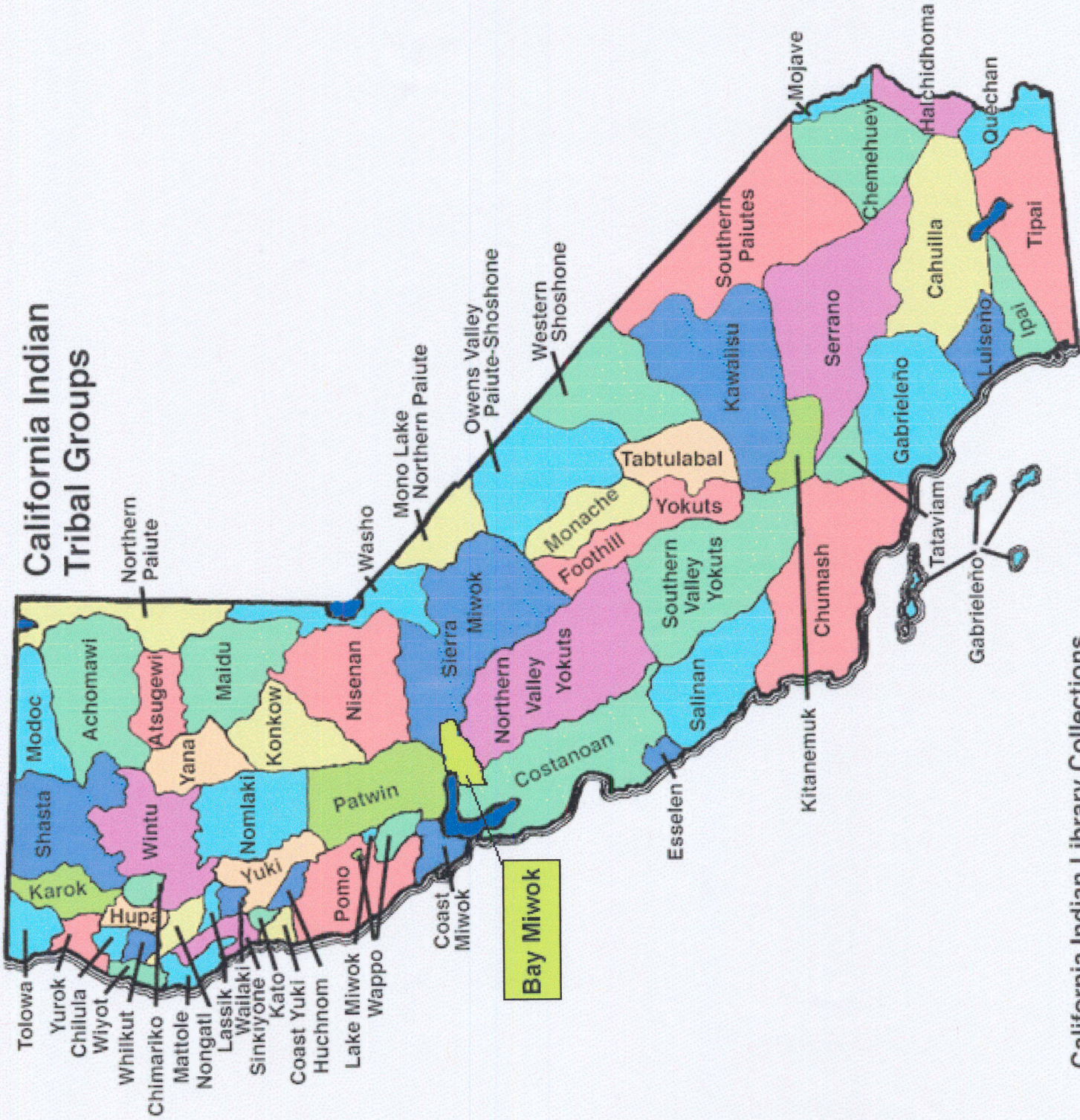
Tribal enrollment is 162 members. Approximately forty percent of Tribal members live in the San Francisco Bay Area and the remainder live in Lake and Mendocino Counties. Many of the members who moved to the Bay Area for employment will return to Lake County when the Tribe re-establishes the Rancheria and becomes involved in economic development projects. The Tribe intends to rebuild a Tribal community and businesses that will allow for self-sufficiency.

Lake County is a rural County approximately 125 miles north of San Francisco, 50 miles east of the Pacific Ocean and 100 miles northwest of Sacramento. Highway 20 runs east and west between Highway 101 and Interstate 5. After government, tourism is the largest industry in the County. Clear Lake is the largest natural fresh-water lake in the state and attracts thousands of visitors annually for fishing, boating and other water sports. For more information contact Rose Mary Want [E-Mail Rose Mary Want](mailto:Rose.Mary.Want@svpomo.org)



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California Indian Tribal Groups



territory

noan is a linguistic one; it designates a consisting of eight languages. In 1770 the king people lived in approximately 50 litically autonomous nations or tribelets. eilet had one or more permanent village ous seasons of the year parties went out s to temporary camps at scattered loca- let territory to engage in fishing, hunting, of plant foods. The average number of belet was approximately 200. Tribelet s to have ranged from about 50 to about e larger tribelets usually had several es; frequently these were located in close r another.

ups recognized by the Costanoan them- of tribelets who spoke a common lan- l in a contiguous area. Many of the an ethnic area were distinguished from slight differences of dialect. This is in the Rumsen and Awaswas ethnic

s comprising the family and their loca- ve approximately as follows. Karkin was gle tribelet on the southern edge of and appears to have had approximately hochenyo or East Bay Costanoan was e tribelets occupying the east shore of ay between Richmond and Mission San ly also in the Livermore Valley, by about myen or Santa Clara Costanoan was e south end of San Francisco Bay and ta Clara Valley and seems to have had akers. Ramaytush or San Francisco spoken by about 1,400 people in San Francisco counties. Awaswas or Santa was spoken among the people living shore between Davenport and Aptos in nty; its speakers numbered about 600. ken among the tribelets of the Pajaro and seems to have had about 2,700 ers of Rumsen numbering about 800 er Carmel, Sur, and lower Salinas rivers. ad was spoken by about 900 people on (Levy 1970)

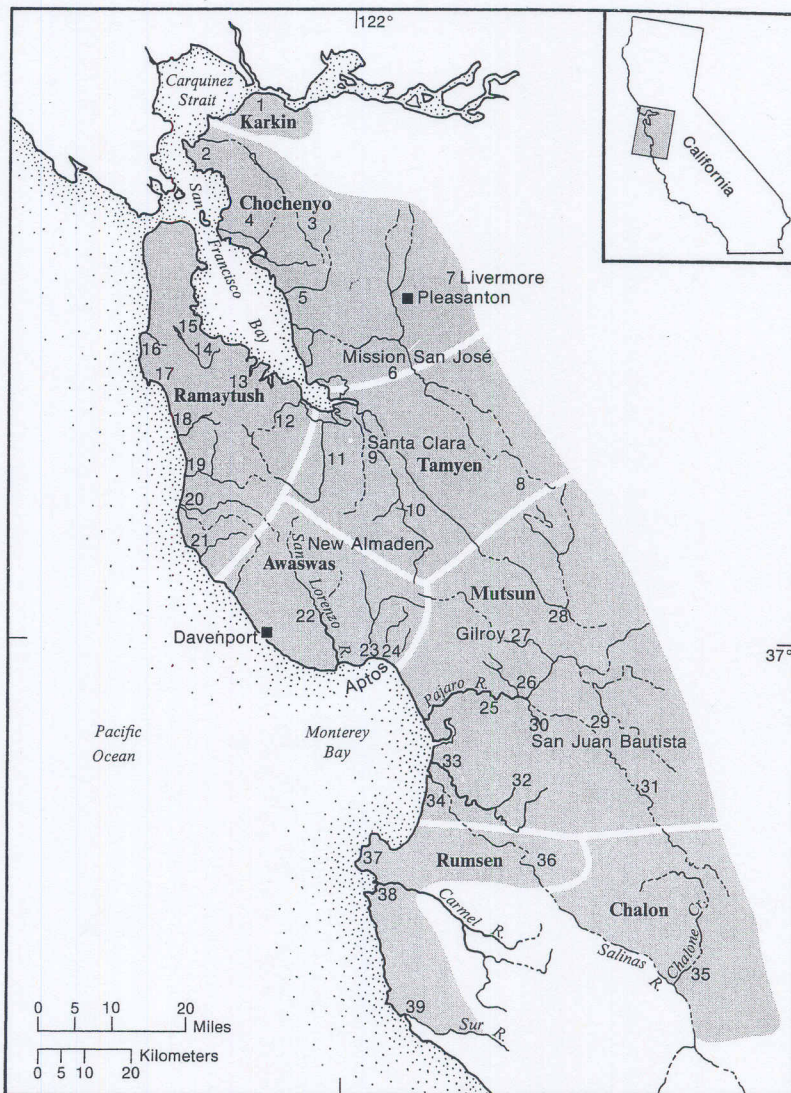


Fig. 1. Ethnic groups and tribelets (late 18th century). Tribelets: 1, *karkin* (Los Carquines); 2, *xučyun*; 3, (Palos Colorados); 4, (San Antonio); 5, *lisyan*; 6, *ʔoroyšom* (San Francisco Solano); 7, *šewnen* (El Valle); 8, (Santa Ysabel); 9, (Santa Clara); 10, (San Juan Bautista); 11, (San José Cupertino); 12, *puyšon* (Arroyo de San Francisco); 13, *lamššin* (Las Pulgas); 14, *šalšon* (San Matheo); 15, *šipliškin* (San Bruno); 16, *ramay* (Cañada de las Almejas); 17, *šatunumno* (San Egidio); 18, *kotxen* (La Purísima); 19, *ʔolxon*; 20, *kaxašta* (San Antonio); 21, *čitaktak* (San Juan); 22, *šayant* (San Juan Capistrano); 23, *ʔuypi* (San Daniel); 24, *ʔaptoš* (San Lucas); 25, *ʔawsayma*; 26, *xuristak*; 27, *kulu-listak* (San Bernardino); 28, *ʔorestak*; 29, *košetak*; 30, *xumontwaš*; 31, *paxšin*; 32, *mutsun* (La Natividad); 33, *wačron*; 34, *kalenta ruk*; 35, *čalon*; 36, *ʔensen* (Los Sanjones); 37, *ʔačista* (San Carlos); 38, *ʔičxenta* (San José); 39, *sarxenta ruk* (R. del Sur). Names in parentheses are Spanish designations.

The eight branches of the Costanoan family were separate languages (not dialects) as different from one another as Spanish is from French. They form a language

and travel to the shore. Mollusks perhaps made a more dependable if less prized diet than venison.

Sonoma Valley up to about Glen Ellen has been attributed to the southwestern Wintun as well as the Coast Miwok. The evidence is so directly conflicting that a positive decision is impossible.

Tchokoyem or Chocuyen has been used as a designation for the Coast Miwok in Sonoma Valley or in general. Its origin is unknown. Other "tribal" denomi-

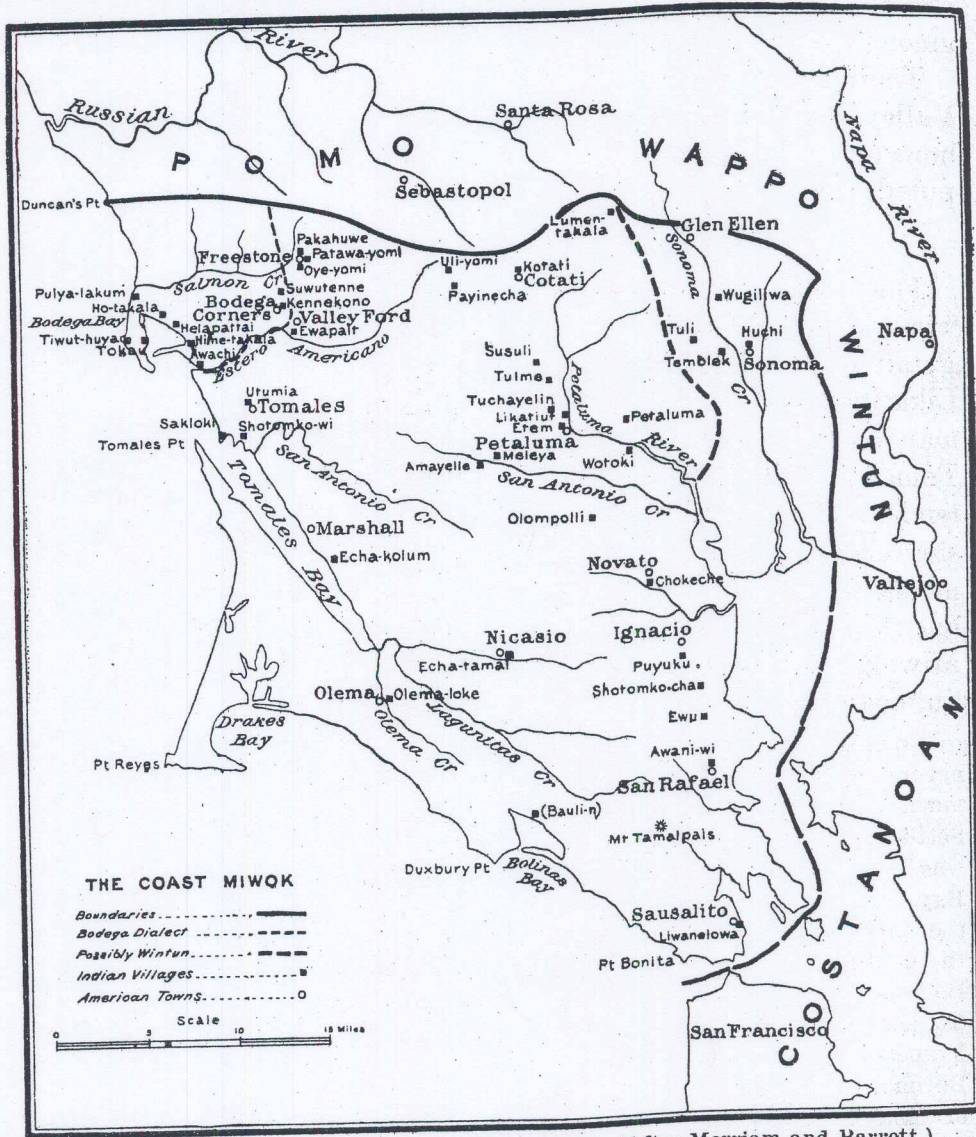


FIG. 22.—Coast Miwok territory and settlements. (After Merriam and Barrett.)

nations, such as Timbalakees, Petalumas or Yolhios, Olompalies, Tamalanos or Tumalehnias, Baulines, and Oleomi, appear to have no other basis than village names. If a generic term of native origin were desirable to introduce for the group as a whole, Micha, "person," or Micha-ko, "people," would be most appropriate.

Similarly, Hotsa-hō might be coined as a designation for the Lake Miwok, if there were need.

The southern Pomo call the Bodega people: Akamtata; the Wappo, those about Petaluma: Onwalisa.



Fig. 1. Tribal territory and villages. 1, pakahuwe; 2, patawa yómi; 3, *yóye yómi*; 4, suwutene; 5, *kén-e kó-no*; 6, pulya-lakum; 7, ho-takala; 8, helapattai; 9, tiwut-huya; 10, tokau; 11, hime-takala; 12, awachi; 13, ewapait; 14, utumia; 15, sakloki; 16, shotomko-wi; 17, *ʔéč-a kúlum*; 18, uli-yómi; 19, *páyin ʔéč-a*; 20, *kót-ati*; 21, susuli; 22, tulme; 23, tuchayelin; 24, likatiut; 25, etem; 26, *péta lú-ma*; 27, wotoki; 28, *melé-ya*; 29, amayelle; 30, olompolti; 31, *čóik ʔéiče(?)*; 32, *ʔéč-a támal*; 33, olema-loke; 34, puyuku; 35, shotomoko-cha; 36, ewu; 37, awani-wi; 38, bauli-n; 39, liwanelowa; 40, *lúmen laká-lu(?)*; 41, *wúki líwa*; 42, huchi; 43, tuli; 44, temblek. All names from Kroeber (1925); those italicized have been respelled by Catherine Callaghan.

persons today have some Coast Miwok blood but apparently no knowledge of native culture and no interest in it. Effectively people and culture have disappeared.

Culture

Subsistence

Terrain was in part coast—low-lying, or with cliffs, and with extensive bays, lagoons, sloughs, and marshes—and in part, open valleys alternating with low hills. Mount Tamalpais was the point of highest elevation. Vegetation ranged from salt-marsh plants to grasses, oaks, red-

woods, and pines; animals, from sea foods to deer and bear. In short, resources were diversified and well suited to an economy based on fishing, hunting, and gathering.

The annual cycle is clear. Some animal foods, such as deer and crab, were available all year. Winter and early spring were times of shortage, when stored dried acorns and seeds, plus kelp (*čól-a*) (TS) were the mainstay. Nevertheless, there were salmon runs; mudhens were available, and in late winter, geese. In spring, small fish stranded at low water in pools on the rocks were collected, and another kelp (*háškula*) (TS) was eaten. Villages were adjacent to shore, lagoon, or slough; but

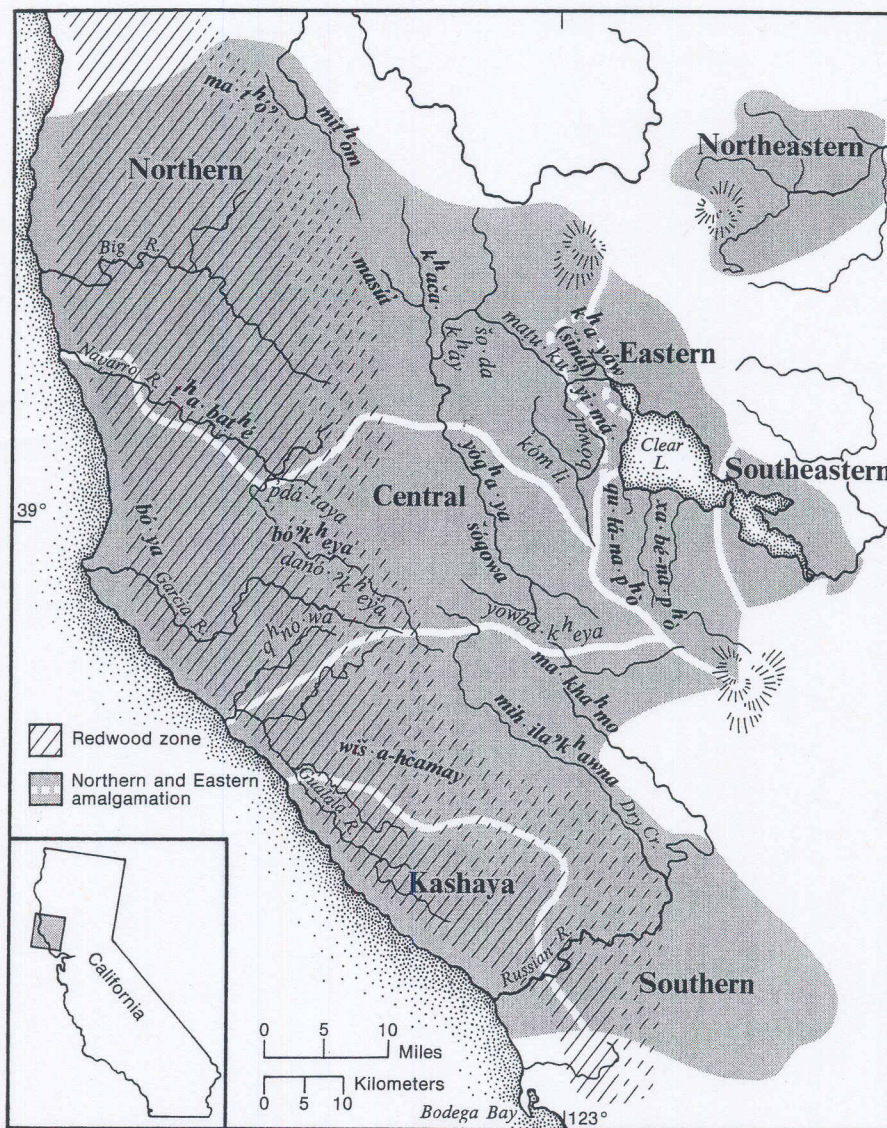


Fig. 2. Territorial extent of the 7 Pomoan languages and their constituent tribelets or village-communities, with probable boundaries at the time of first White contact. The redwood zone is approximated.

important. Rather, the size of the tract of land claimed seems to have been determined by the need to assure access to a sufficient supply of food (which is why the absolute limits of a group's territory are sometimes not clear). Differences in the carrying capacity of the environment resulted in several village-communities sometimes being in close proximity, as along the Russian River, and others being rather distant (fig. 2).

Apparently the size of the population of these village-communities varied considerably (only estimates of pre-contact population size are available). Thus, in Redwood Valley, Kniffen (1939:375) estimates that the single

dwelling houses. simultaneous average would be. However, each on sometimes that not occupied.

In some sources (and good families three So communities lands are among a Sherwood

The so seems to kinship remarkable community (Kniffen's study of the Pomoan language family) (Stewart from a more complex Stewart were gov a war capt one or m chiefs) for captain v inheritance from am

Gifford well:

what was no defini

Northern Pomo tribelets lay and, from a frontage of 22 n an irregular band inland the northwestern shore of eastern Pomo. To the north Yukian groups and to the e majority of the tribelets inage of the upper Russian upper Outlet Creek, which

r the speakers of Northern rticular groups, who often derived from the name of they lived. A frequent nes is *p^hó[?]ma[?]*, containing [?]; the derivative will be ä). Also quite freely used he independent word *čá[?]* e one(s)', forming termina-

-*k^heya[?]* 'the one(s) from'. did not live year-round encroachment of White but various tribelets had for collecting seafood in hunted and gathered food r and along the coast for In this they shared rights 943:32ff.) presents rather 'oma considered the land e that this region was the some territory of at least

(Gifford 1939b); conse- tained as Coast Yuki, as roeber (1925). Figure 5 n Pomo names for two

sidered the area around n Mitom-Poma, under e interior, took up year- about 1850, they were ated them in battle and

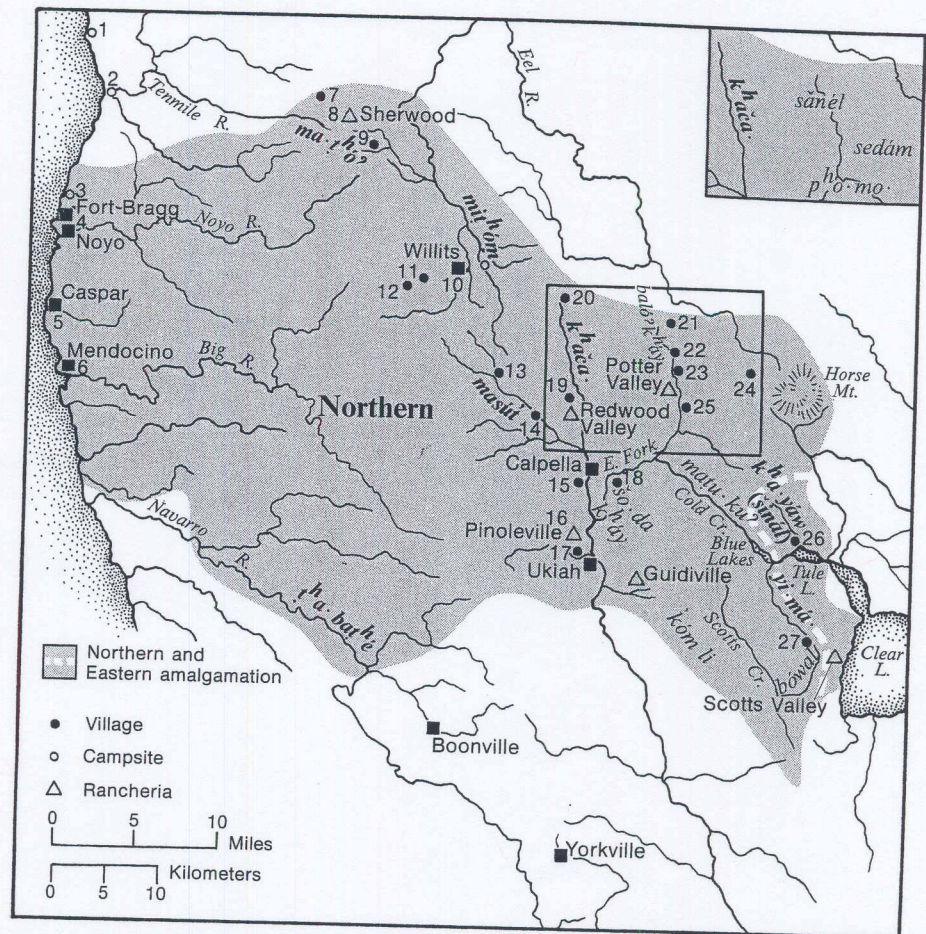


Fig. 5. Territory of the Northern Pomo. For the names corresponding to the numbers, see text.

White settlers, transferred two miles southward to the town and river Noyo (the English name being derived from the Indian).

5. *čatám* 'several jumping across'; the Caspar area.
6. *búl dám* 'trail past *búl*'; *búl* may refer to 'blowhole'. The name applies to the area at the mouth of Big River and to the town Mendocino. A trail from Mitom terminated there.

Tabate (*täbä'tä*). Twelve miles inland, along the Navarro River, was the community of *t^ha' ba^hé* 'much gravel'. No descendants of the aboriginal inhabitants are at the site and statements in earlier records are indecisive on their linguistic affiliation. Barrett's classification (1908:map) as Northern is continued here because there is no real evidence to the contrary and the name seems more Northern than Central. In Northern *ba^hé* is 'much, many'; in Central it is 'big (of a single object)' and

of the basin of this stream they occupied nothing at all; and north, only one affluent of one branch of Eel River, namely, or Deep Creek, which flows in a coastwise valley almost continuous with that of Russian River, but in the opposite direction. The

TICS.
26; group names,
230; distribution
populaton, 237;

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ariko, Karok,
e south is an-
nd Chumash.
ngeners. The
a. Less than
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More words,
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Coast Range
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had moved a
Clear Lake.
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and sequence
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ussian River,
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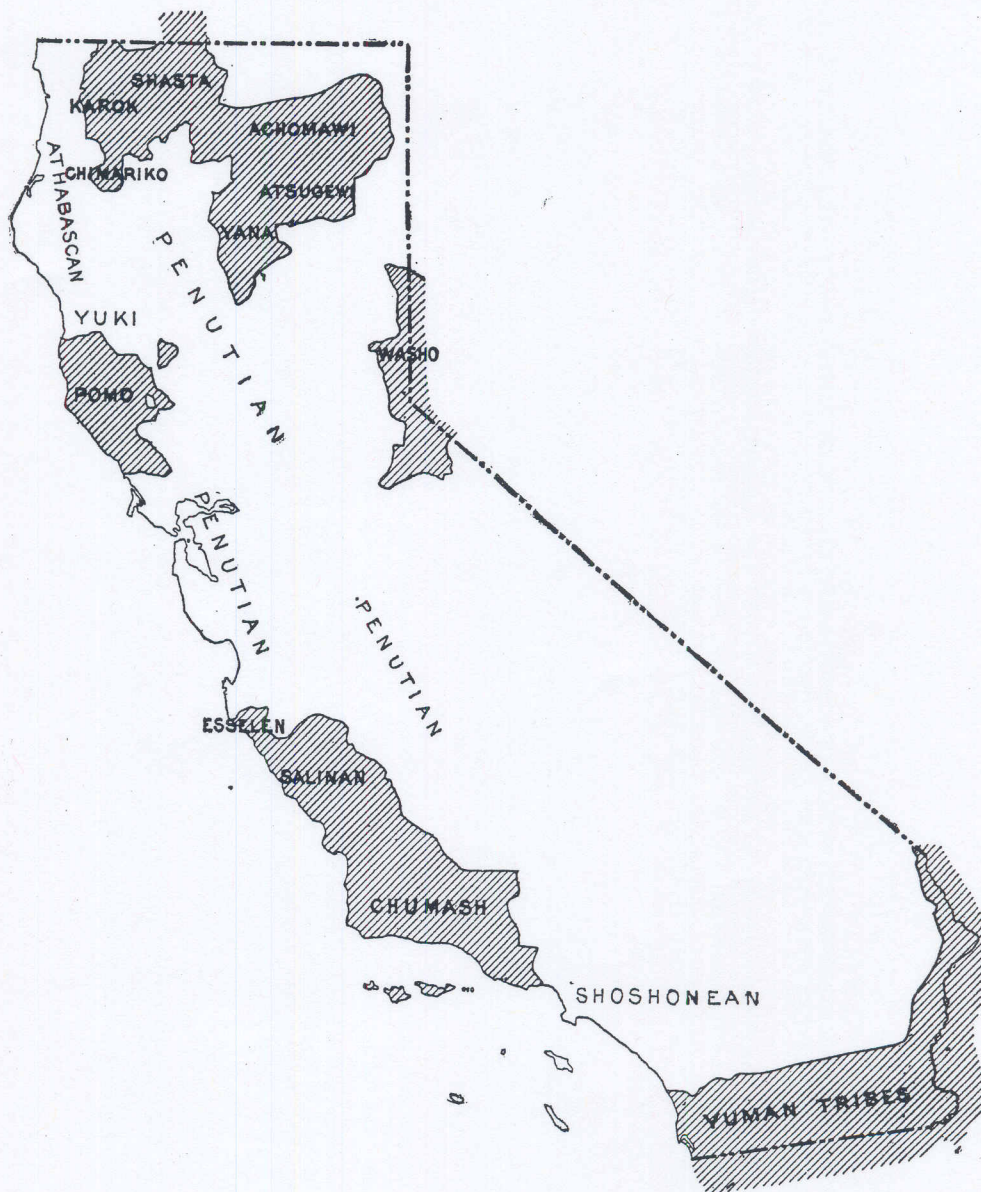


FIG. 17.—Distribution of the Hokan family in California.

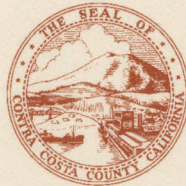
sources are together, the mouths nearly 200 miles apart. Except for its headwaters, where the Yuki sat firm, and its very mouth, which the maritime Algonkin Wiyot occupied, Eel River was the stream par excellence of the Athabascans of California as distinctively as the Russian was a Pomo river.

County Administrator

County Administration Building
651 Pine Street, 11th Floor
Martinez, California 94553-1229
(925) 335-1080
(925) 335-1098 FAX

John Sweeten
County Administrator

Contra Costa County



Board of Supervisors

John M. Gioia
1st District

Gayle B. Uilkema
2nd District

Mary N. Piepho
3rd District

Mark DeSaulnier
4th District

Federal D. Glover
5th District

Clay Gregory
Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

July 7, 2005

RE: SCOTTS VALLEY BAND OF POMO INDIANS FEE TO TRUST LAND ACQUISITION APPLICATION

Dear Mr. Gregory:

This letter supplements Contra Costa County's May 17, 2005 initial comments on the Scotts Valley Band of Pomo Indians Fee to Trust (FTT) Land Acquisition application for approximately 30 acres within the unincorporated community of North Richmond in Contra Costa County.

The following attached documents are submitted as further evidence in support of denial of the FTT application. These documents include:

- *Scotts Valley Tribal Council Resolution No. SV 29-95* – This resolution, unanimously adopted by the Tribal Council on December 2, 1995, states that “the Scotts Valley Band of Pomo Indians aboriginal territory is located in Lake County....”
- *BLA Meeting Notes of November 9, 1995* – Handwritten notes of Carmen Facio state that the Tribe is considering acquisition of land near Lakeport, Lake County, for a casino, hotel and other facilities. The Tribe's consideration of this site in Lake County is further evidence that the historic, geographic and temporal connections of the Tribe are to Lake County, not to Contra Costa County.
- *BLA letter dated April 10, 1996* – This letter from the BIA to the chair of the Scotts Valley Band states “...we may accept off-reservation (or nontraditional-area) lands into trust if the applicant tribe has a strong justification and the proposal is *unopposed* [emphasis added] by the state and local governments. Both the Governor of the State of California and the Contra Costa County Board of Supervisors is opposed to this FTT application.

Please let us know if you have any questions concerning this additional testimony. Thank you for your consideration.

Sincerely,


Sara M. Hoffman
Assistant County Administrator

cc: Board of Supervisors
John Sweeten, County Administrator
Silvano Marchesi, County Counsel



Scotts Valley Band of Pomo Indians

SCOTTS VALLEY TRIBAL COUNCIL RESOLUTION NO. SV 29-95

A RESOLUTION OF THE TRIBAL COUNCIL OF THE SCOTTS VALLEY BAND OF POMO INDIANS REQUESTING THAT THE SECRETARY OF THE INTERIOR DENY THE REQUEST OF THE PINOLEVILLE INDIAN COMMUNITY TO ACCEPT TITLE TO CERTAIN PROPERTY IN TRUST FOR THE PINOLEVILLE INDIAN COMMUNITY IN LAKE COUNTY, CALIFORNIA

- WHEREAS, the Scotts Valley Band of Pomo Indians is a sovereign, self-governing Indian tribe formally recognized by the United States Government; and
- WHEREAS, Article VI, Section 1 (a), of the Constitution of the Scotts Valley Band of Pomo Indians invests the Tribal Council with the authority to negotiate and contract with agencies of the Federal, State, local, Tribal governments, private entities and individuals on behalf of the Tribe; and
- WHEREAS, the Pinoleville Indian Community is a federally recognized Indian Tribe organized under the provisions of the Indian Reorganization Act; and
- WHEREAS, the Pinoleville Indian Community is the beneficial owner of the Pinoleville Indian Reservation located in Mendocino County, California; and
- WHEREAS, the United State of America owns property in trust for the Pinoleville Indian Community within the exterior boundaries of its existing Reservation; and
- WHEREAS, the Pinoleville Indian Community's aboriginal territory is located within Mendocino County; and
- WHEREAS, there are sufficient parcels of property located in Mendocino County that are adequate for construction of a residential housing project for the Pinoleville Indian Community in Mendocino County; and
- WHEREAS, the Scotts Valley Band of Pomo Indians is a federally recognized Indian Tribe, which at the present time has no land base; and
- WHEREAS, the Scotts Valley Band of Pomo Indians aboriginal territory is located in Lake County; and
- WHEREAS, the Scotts Valley Band of Pomo Indians is attempting to acquire property in trust within Lake County as close as possible to its original Reservation; and

Resolution No. S.V. 29-95

WHEREAS, the Pinoleville Indian Community's attempt to acquire property in Lake County in trust for the Community will make it more difficult for the Scotts Valley Band of Pomo Indians to acquire a land base now or in the future in Lake County; and

WHEREAS, the Scotts Valley Band of Pomo Indians believes that the Pinoleville Indian Community should acquire land within Mendocino County as close as possible to its original Reservation; and

WHEREAS, the County of Lake is a depressed County, which does not have sufficient funds, as it is, even to provide the basic level of water, sewer, police, and fire protection service to the existing Indian Reservations within Lake County; and

WHEREAS, the County of Lake is opposed to any new development on Indian Reservation within the County of Lake or acquisitions of land in trust by Tribes in Lake County that will put additional demands on County services without paying for the cost of service; and

WHEREAS, because of these factors, the Scotts Valley Band of Pomo Indians believes that it is in their best interests to oppose the Pinoleville Indian Community's acquisition of land in trust in Lake County.

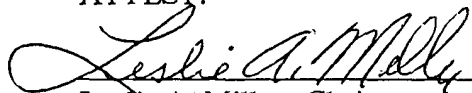
NOW, THEREFORE, BE IT RESOLVED, that the Scotts Valley Band of Pomo Indians, acting through its Tribal Council, hereby requests that the Secretary of the Interior reject the request of the Pinoleville Indian Community to accept title to lands for the Community in trust in Lake County.

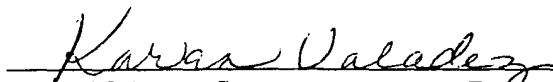
FURTHER BE IT RESOLVED that the Scotts Valley Band of Pomo Indians supports the Pinoleville Indian Community's efforts to acquire land and have that land taken into trust for them for housing in Mendocino County.

CERTIFICATION

The foregoing resolution was duly enacted on December 2, 1995, and approved by a vote of 6 ayes, 0 noes, and 0 abstentions by the Scotts Valley Tribal Council and that said resolution has not been rescinded or amended in any way.

ATTEST:


Leslie A. Miller, Chairperson Date 12-2-95


Karen Valadez, Secretary Date 12-2-95

Meeting - Notes
Sacramento Area Office
Real Property Management

Date: 11-9-95 Employee: Carmen Jarvis
Subject: Land acquisition - Scotts Valley
Present: See attached roster

Notes: 1 site, 20-ac. site near Konocti Resort, Lakeport
1 site, 18-ac. site about 1 mile away. Want
Casino, hotel, etc. amusement park, restaurant. Tribe
Does not want to do stand-alone casino. Now
negotiating w/owners, hope to start E.A. soon;
they already selected firm out of Arizona.
Should have apps ready to submit by
March '96. To submit apps @ one time.
They will be contacting local govt re plans.
Casino site is already zoned commercial.

File Reference: 4609-910 - Land Acq.

info copy to: Area Natural
Resources

Meeting - Notes Continued
Sacramento Area Office
Real Property Management

Notes: One site is for HUD project. They have
already purchased.

Elk. needs to include exact location of
homesites w/ subdivision plan.

Major issues likely to be:

water

sanitation

traffic

proximity to Clear Lake (Cops of Engineers)

low enforcement (due to Elem situation)

Note:

Marston was given copy of 8th Circuit Court
decision which held that Sec. 5 of the IRA
is unconstitutional.

File Reference: _____

Sacramento Area Office
Bureau of Indian Affairs

Meeting Date: 11/9/95

Participant(s):

<u>Name</u>	<u>Representing</u>	<u>Telephone No.</u>
<u>CARMEN FACIO</u>	<u>BIA-SAO</u>	<u>(916) 979-2585</u>
<u>Kayla Danks</u>	<u>BIA-CCA</u>	<u>(916)-566-7117</u>
<u>JACK MITCHELL</u>	<u>Wittman Mitchell & Skola</u>	<u>619-451-1120</u>
<u>Tim McATEER</u>	<u>TJM Consultants</u>	<u>(415) 681-4113</u>
<u>MIKE SMITH</u>	<u>BIA-Sacramento Area Office</u>	<u>(916) 979-2600</u>
<u>RON JAEGER</u>	<u>BIA /SAO</u>	<u>916-979-2600</u>
<u>Harold M. Bratford</u>	<u>BIA-CCA</u>	<u>916 566-7121</u>
<u>May Canyon</u>	<u>Scotts Valley Band</u>	<u>(707) 263-4777</u>
<u>Les Miller</u>	<u>Scotts Valley Pomo</u>	<u>" "</u>
<u>Les Mauter</u>	<u>Scotts Valley</u>	<u>707-462-6846</u>

BUREAU OF INDIAN AFFAIRS
SACRAMENTO AREA OFFICE
2800 COTTAGE WAY
SACRAMENTO, CA 95825-1846

Leslie A. Miller, Chairman
Scotts Valley Band of Pomo Indians
149 North Main Street, Suite 200
Lakeport, California 95453

APR 10 1996

Dear Mr. Miller:

In your March 9, 1996 letter, you indicated that you had mailed us a resolution regarding the proposed Pinoleville land acquisition project in Lakeport to which you received no response.

In checking our records, we note that copies of your letter dated December 12, 1995 directed to the Pinoleville Chairperson stating Scotts Valley's nonsupport for their land acquisition were provided both to this office and the Central California Agency. Included with that December 12th letter was the Scotts Valley Tribal Council Resolution No. SV 29-95 requesting Secretarial rejection of the Pinoleville land acquisition application. Unfortunately, we did not know that you expected a response from this office, and the letter was set aside for future consideration in the event the Pinoleville group actually submitted a land acquisition application.

In your March 9, 1996 letter, you specifically seek clarification regarding the acquisition of lands in the wider "Pomo" area. As set forth in the current land acquisition regulations at 25 CFR 151, the Secretary may acquire lands for tribes (1) when the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; (2) when the tribe already owns an interest in the land; or (3) when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing. The issue of off-reservation land acquisition for tribes was addressed by the amendment to the regulations published in the Federal Register on June 23, 1995.

The new Part 151.11, Off-reservation (Nongaming) acquisitions, specifies that the Secretary shall consider the following when the land is outside of and noncontiguous to a tribe's reservation:

- (1) the criteria listed in 25 CFR 151.10 [as also amended];
- (2) the location of the land relative to state boundaries and distance from the tribe's reservation, giving greater scrutiny to the tribe's justification of anticipated benefits, with greater weight being given to concerns raised by state and local government. (Emphasis added.)

In other words, we may accept off-reservation (or nontraditional-area) lands into trust if the applicant tribe has a strong justification and the proposal is unopposed by the state and local governments. Should the state or local

SIIRNAME COPY

government oppose the acquisition proposal, prior to any final Secretarial decision, the tribal applicant will be expected to undertake efforts to resolve any valid issues or concerns, or demonstrate what efforts were made to do so. Should the Secretary decide to approve the acquisition over the objections of any party, that decision may be subject to an administrative appeal or judicial action, or both, depending upon whether or not the decision is made by the Area Director or the Assistant Secretary-Indian Affairs.

You indicate in your correspondence that you have been approached about property in the Bay Area and Sonoma County. Before further consideration is given to purchasing lands within these areas, we highly recommend that you openly discuss any proposal with the Boards of Supervisors for the purpose of determining support or opposition. Present and prior land acquisition proposals within Marin and Sonoma Counties have proven to be very controversial. We are enclosing a copy of the Sonoma County Board of Supervisor's Resolution dated March 19, 1996 which sets forth Sonoma County's position.

We also wish to caution you about considering the purchase of any lands subject to an "agricultural preserve" contract pursuant to the state's "Williamson Act". The State of California has taken the position that the agricultural preserve status cannot be deemed null and void merely by acquisition by the United States in trust for a tribe. The State Attorney General has indicated that it was the State Legislature's intent that any acquisition by the U.S. must be for a "public purpose" in order for the agricultural preserve contract to be deemed cancelled. Unfortunately, there is a state court action (involving another tribal land acquisition proposal) currently pending which may have an impact on this matter.

Enclosed is an information packet regarding the submission of trust land acquisition applications which includes the herein-referenced regulations. Please feel free to contact us if we may be of further assistance.

Sincerely,

/s/ Carmen G. Facio

Acting Area Director

Enclosures

cc: Superintendent, CCA (w/copy of inc.)
Bob Barth, HUD, Ofc. of Indian Programs (w/copy of inc.)

FACIO:cf 4/9/96

File ref:

RPM

4609-P10 Land Acq/Scotts Vly

The Board of Supervisors

County Administration Building
651 Pine Street, Room 106
Martinez, California 94553

John Gioia, 1st District
Gayle B. Uilkema, 2nd District
Mary N. Piepho, 3rd District
Susan A. Bonilla, 4th District
Federal D. Glover, 5th District

Contra Costa County



John Cullen
Clerk of the Board
and
County Administrator
(925) 335-1900

May 5, 2008

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

RE: Supplemental Comments -- Restored Land Fee-to-Trust Application of the Scotts Valley Band of Pomo Indians

Dear Ms. Dutschke:

Attached please find Contra Costa County's Supplemental Comments on the Scotts Valley Band of Pomo Indians' Fee-to-Trust (FTT) Application for lands in Contra Costa County that the tribe claims are "restored lands" under Section 20 of the Indian Gaming Regulatory Act (IGRA) and therefore eligible for gaming activities. The County previously filed comments in opposition to the tribe's Indian Lands Determination Request and comments concerning the Final Environmental Impact Statement (FEIS). These supplemental comments concern the FTT application and proposed Indian Gaming facility and address the FTT review and approval criteria established by 25 CFR section 151.11, including the January 3, 2008 memorandum from the Assistant Secretary of the Interior for Indian Affairs entitled "Guidance on taking off-reservation land into trust for gaming purposes."

Please contact Sara Hoffman, Indian Affairs Advisor at 925-890-1344 or Cathy Christian, Nielsen, Merksamer, outside Indian Affairs Legal Counsel for Contra Costa County at 916-446-6752 if you have any questions regarding these comments.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Federal D. Glover".

FEDERAL D. GLOVER
Chair, Board of Supervisors

cc: Members, Board of Supervisors
Governor Arnold Schwarzenegger
Senator Diane Feinstein
Senator Barbara Boxer
Congressman Jerry McNerney
Congressman George Miller
Congresswoman Ellen Tauscher
Senator Tom Torkakson
Senator Don Perata
Assemblymember Mark DeSaulnier
Assemblymember Loni Hancock
Assemblymember Guy Houston
John Cullen, County Administrator
Silvano Marchesi, County Counsel
Cathy Christian, Nielsen, Merksamer
Sara Hoffman, Indian Affairs Advisor

Contra Costa County



Supplemental Comments in Opposition to the Scotts Valley Band of Pomo Indians' Fee-to-Trust Restored Land Acquisition Application May 5, 2008

Contra Costa County filed its first comments in opposition to the Scotts Valley Band of Pomo Indians' Fee-to-Trust (FTT) Restored Land Acquisition Application on May 17, 2005. Additional comments were filed on July 7, 2005. Since then, pursuant to a Freedom of Information Act Request, the County received a copy of the Tribe's request for an Indian Lands Determination under Section 20 of the Indian Gaming Regulatory Act (IGRA) and filed comments in opposition on December 11, 2006 and April 22, 2008. In addition, the Bureau of Indian Affairs (BIA) released the Final Environmental Impact Statement (FEIS) on the FTT application and proposed Indian Gaming facility in March 2008 to which the County filed comments on April 28, 2008.

These comments supplement the previous comments filed by the County and address issues raised by the Indian Lands Determination Request and the FEIS. These comments also discuss FTT review and approval criteria established by 25 CFR section 151.11, including the January 3, 2008 memorandum from the Assistant Secretary of the Interior for Indian Affairs entitled "Guidance on taking off-reservation land into trust for gaming purposes."

Alternative Actions available to the Secretary of the Interior in response to the FTT application. In its comments on the Draft EIS, the County requested that the EIS examine the impact of all of the alternative actions that the Secretary of the Interior could take regarding the Fee-to-Trust Application, including the following alternatives:

- Taking into trust the project site land as "newly acquired" land.
- Taking into trust the project site land as "restored" land.
- Not taking the project site land into trust.
- Taking other land into trust consistent with the provisions of the 1991 Stipulated Judgment. (County DEIS Comment 1-52)

The BIA's response to the County's comment was:

"The Secretary has been requested to take the casino site into trust for the benefit of the Tribe and a request has been made to have those lands considered "Restored Lands" under the exceptions to the prohibition to gaming in IGRA. While it is possible that the

Secretary could decline to take the proposed casino site into trust, that would render the DEIS moot. The Tribe has requested that the lands qualify as restored lands, and that determination will precede the Secretary's determination on whether to take the lands into trust. The other options the commenter listed are not available to the Secretary in making his determination on the Tribe's fee-to-trust application." (FEIS Volume II, Response 1-52)

In making these comments, the County is assuming that the BIA's response is correct and that the Secretary has only two choices: take the property into trust as restored land or deny the FTT application. If that is not correct, then the County respectfully requests the opportunity to submit additional comments on why the property should not be taken into trust as newly acquired land.

Indian Lands Determination a decision on the restored lands FTT application. As quoted above, according to the BIA, the project site must be found Indian Lands prior to a decision on the FTT application. The County has submitted extensive evidence that conclusively demonstrates that the Tribe has no historic, modern or temporal connection to the property and that the lands do not qualify for an Indian Lands Determination. (Parenthetically, the County notes that it has been required to go the expense and effort of responding to the EIS *before* the Secretary has determined whether the land is Indian land under IGRA – which puts the proverbial cart before the horse and causes the County to wonder whether the Indian Lands question has been pre-determined.)

The FEIS also contains a number of statements that substantiate the County's position in opposition to the tribe's request for a determination that the project site in Contra Costa County is eligible for gaming under the "restored land" exception in Section 20 of IGRA, and indeed, provides additional evidence that the land should not be taken into trust. The County believes that these admissions by the BIA in the FEIS are significant. We attach our April 22, 2008 letter in opposition to the Indian Lands Determination request to George Skibine, Acting Director, Office of Gaming Management, as further evidence in support of our opposition to the FTT application.

Even the Tribe acknowledges that Lake County is their homeland, as pointed out by the County. (See Contra Costa County's December 6, 2006 opposition, pp. 14-15 and Exhibits B and C thereto. Exhibit B is Resolution No. 29-95 adopted by the Scotts Valley Tribal Council in 1995, four years *after* the tribe was re-recognized pursuant to litigation, and states that the Scott's Valley Band's aboriginal territory is located in Lake County. Exhibit C is a March 19, 1996 letter from the Tribe to the BIA acknowledging that their land base is in Lake County.)

The Tribe's own members have also disputed claims of any affiliation to Contra Costa County. In November 2007, tribal members filed a petition to recall the tribal Chairman and a majority of the tribal council, citing stacked membership rolls, unfair payouts to tribal members and tribal history distortions in an effort to

“sell the casino plan to federal officials” (December 27, 2007 Contra Costa Times newspaper article attached).

FTT would not carry out the Federal Government’s responsibility to help the Tribe develop land uses that “improve the long term economic condition of the Tribe and its members through the development of a stable, sustainable source of employment....” (FEIS page 1-2). The FEIS states that one of two purposes and needs of the project is long-term sustainable employment for tribal members. Yet, the FEIS does not address this issue:

- There is no indication that the employment being generated by the proposed project or project alternatives would generate jobs suitable to the skill sets of the tribal members.
- There is no indication that tribal members reside in the vicinity of the project, and therefore would be within commute distance for any of the jobs offered.
- There is no indication that revenue will be used to effectively address the factors that cause the unemployment or underemployment among tribal members.

Without a thorough examination and analysis of these issues relating to employment, it cannot be determined that the proposed casino project will provide employment to tribal members. Thus, the FTT application must be denied on the basis that the project cannot demonstrate that it meets the purpose and need for tribal member employment.

Lake County is both the historic and modern day home of the Tribe and most of its members, so its trust land should also be in Lake County. The Tribe currently owns 33.5 acres in Lake County, acquired through a HUD grant, on which it plans/has begun (status not known) construction of “22 residential units, a 22,500 square foot two-story apartment building, and three lots for duplex housing units,” as well as a Tribal retirement facility, a Tribal residential care facility, restaurant, Tribal museum and cultural center (FEIS page 2-30). The Tribe clearly intends to house and employ a significant number of its 181 members on the Lake County site.

In addition, in March 2007, the US Department of Agriculture-Rural Development awarded a grant to the California Coalition for Rural Housing, a coalition of five Lake County tribes, including the Scotts Valley Band (March 16, 2007 Lake County Record-Bee newspaper article attached). The grant funded a tribal housing capacity development project that included housing and community development applications.

By its own actions, the Tribe has attested to its long-term, continuing commitment to its Lake County and its existing land base.

Currently, there is no evidence that tribal members live near the vicinity of the Contra Costa County project site. Section 3.7 of the FEIS states that “This section provides social and economic information for members of the Tribe...including population, housing and employment....” (FEIS page 3.7-1). Despite this statement, the referenced section provides no information on where tribal members live. The description on tribal member employment is limited to the statement “Some Tribal members are employed by local Bay Area businesses.” (FEIS page 3.7-1) and so does not provide any enlightenment regarding residency either.

The County submitted a Freedom of Information Act (FOIA) request over a year ago for information that would verify residency, but was denied on the basis that it would provide detailed, personal information. The County then made it clear that redacted information would be acceptable, such as a listing of the number of tribal member residences by zip code or census tract. The County still has not received a response to that reasonable request.

Current residency of tribal members is an issue that is considered as part of the FTT decision. Yet, no verifiable data is available. According to a December 27, 2007 Contra Costa Times newspaper article, the Tribe has asserted that 49% of its tribal members live within 50 miles of the Contra Costa County project site. However, the Contra Costa Times also reported that the Times had obtained a recent roster of adult members of the Tribe, which showed that “barely one third list addresses within 50 miles....” Even these members are not long term residents, but are being “paid as much as \$3,000 per month” to live near the casino site, which, if true, constitutes a blatant attempt by the Tribe to circumvent the FTT review process (See article attached).

Prior to accepting the Contra Costa County project site into trust as restored lands, the Secretary of the Interior should conduct a thorough investigation of the residency of tribal members, including distance from the project site and length of residency. Without this investigation, it would not be possible to conclude that the FTT would meet the purpose and need for tribal member employment or to satisfy the commutable distance criteria discussed below.

Section 151.11 (b) considerations also lead to the conclusion that the FTT application must be denied. The great distance between the Tribe’s land base in Lake County and the casino site in Contra Costa County is relevant to the issue of whether or not the land would qualify as restored land as well as off-reservation trust land. As Assistant Secretary Carl Artman noted in his January 3, 2008 memorandum to BIA regional directors and the Director, Office of Indian Gaming Management, “greater scrutiny” must be given to the tribe’s justification for land going into trust “as the distance between the acquisition and the tribe’s reservation increases.” If the distance exceeds a “commutable distance,” a series of questions must be answered to determine if the negative effects on reservation life are outweighed by the financial benefits of a gambling enterprise

located at a distant location. The Tribe's land base in Lake County is over 100 miles from the proposed casino project, and so is not a "commutable" distance, especially considering the traffic congestion in the San Francisco Bay area.

By the January memorandum, the federal government has clearly acknowledged that the distance between the lands sought to be placed in trust and the Tribe's reservation is a significant factor in the ultimate decision. If the proposed casino site in Contra Costa is located more than a "commutable distance" from the Scotts Valley Band's homeland and the tribe cannot justify abandoning its current and aboriginal location, then it stands to reason that the land should not be taken into trust.

Lake County, dismissed in the FEIS as a project alternative, would be best suited for providing employment opportunities for tribal members. The FEIS examined a number of casino project alternatives, all located at the Contra Costa County project site. It dismissed fee land currently owned by the Tribe in Lake County as an alternative due to "site development constraints." (See the County's Comments on the FEIS on why dismissal was not justified.) Yet, if the goal is to provide employment for tribal members, Lake County would be a better location for an Indian gaming facility, since it would be near tribal housing.

Members of the Tribe have also spoken out on the need for economic development and employment opportunities in Lake County. During the Scoping Session, two tribal members spoke against the proposed Contra Costa County casino project:

- "We need our casino in our territorial lands in Lake County, Clear Lake...." Written Comment Card-Sтивен Elliott of Scotts Valley Band of Pomo Indians (Scoping Report, page 79)
- "...the request for land into trust by the Tribe is very weak because of the distance from our reservation to Richmond, CA...." Written Comment Card-Les Miller of Scotts Valley Band of Pomo Indians (Scoping Report, page 80)

FEIS currently does not meet the standards for adequacy under NEPA, and must be revised for compliance prior to any approval of the FTT application. Unfortunately, the FEIS fails to properly identify levels of significance or what would constitute a potentially significant impact for major areas of concern. Mitigation measures are not necessarily responsive to the impacts. Particularly disturbing is the continued reliance on the Municipal Services Agreement with the City of Richmond for mitigation of off-reservation impacts of the project within the unincorporated area, where the City has no jurisdictional authority. As discussed earlier, the Lake County fee land project alternative is inappropriately dismissed, despite its technical and economic feasibility and proximity to the homes of most Tribal members. These blatant

errors and other flaws in the FEIS lead to the conclusion that the document does not meet the standard described in the Bureau of Indian Affairs NEPA Handbook (30 BIAM Supplement 1):

“...a diligent attempt [shall] be made to obtain the information necessary to include a full evaluation of all significant impacts in NEPA documents....The Bureau should not move ahead on proposals where relevant information is lacking as this may preclude the meaningful analysis of alternatives, impacts or the means to mitigate impacts.”

The Secretary of the Interior should defer approval of the FTT application until the FEIS is fully compliant with NEPA and its implementing guidelines.

If a decision is made to approve the FTT application (and the County strongly believes that there is no basis for approval), then the Record of Decision should include adherence with all identified mitigation measures, all actions/activities that led to findings of less than significant impact and all development, operation and maintenance standards referenced in the FEIS. Once the project site becomes Indian Lands, the Tribe need not comply with the standards identified in the FEIS or any of the mitigation measures unless they are part of the Record of Decision. Consequently, it is imperative that the decision includes this level of protection for the environment and the health and safety of the community.

The Board of Supervisors

County Administration Building
651 Pine Street, Room 106
Martinez, California 94553

John Gioia, 1st District
Gayle B. Uilkema, 2nd District
Mary N. Piepho, 3rd District
Susan A. Bonilla, 4th District
Federal D. Glover, 5th District

Contra Costa County



May 5, 2008

John Cullen
Clerk of the Board
and
County Administrator
(925) 335-1900



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

RE: Supplemental Comments -- Restored Land Fee-to-Trust Application of the Scotts Valley Band of Pomo Indians

Dear Ms. Dutschke:

Attached please find Contra Costa County's Supplemental Comments on the Scotts Valley Band of Pomo Indians' Fee-to-Trust (FTT) Application for lands in Contra Costa County that the tribe claims are "restored lands" under Section 20 of the Indian Gaming Regulatory Act (IGRA) and therefore eligible for gaming activities. The County previously filed comments in opposition to the tribe's Indian Lands Determination Request and comments concerning the Final Environmental Impact Statement (FEIS). These supplemental comments concern the FTT application and proposed Indian Gaming facility and address the FTT review and approval criteria established by 25 CFR section 151.11, including the January 3, 2008 memorandum from the Assistant Secretary of the Interior for Indian Affairs entitled "Guidance on taking off-reservation land into trust for gaming purposes."

Please contact Sara Hoffman, Indian Affairs Advisor at 925-890-1344 or Cathy Christian, Nielsen, Merksamer, outside Indian Affairs Legal Counsel for Contra Costa County at 916-446-6752 if you have any questions regarding these comments.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be "Federal D. Glover".

FEDERAL D. GLOVER
Chair, Board of Supervisors

cc: Members, Board of Supervisors
Governor Arnold Schwarzenegger
Senator Diane Feinstein
Senator Barbara Boxer
Congressman Jerry McNerney
Congressman George Miller
Congresswoman Ellen Tauscher
Senator Tom Torkakson
Senator Don Perata
Assemblymember Mark DeSaulnier
Assemblymember Loni Hancock
Assemblymember Guy Houston
John Cullen, County Administrator
Silvano Marchesi, County Counsel
Cathy Christian, Nielsen, Merksamer
Sara Hoffman, Indian Affairs Advisor