

1 **McNeill & Belton**
2 Walter P. McNeill, SBN 95865
3 280 Hemsted Drive, Suite E
4 Redding, CA 96002
5 Telephone: (916) 222-8992
6 Facsimile: (916) 222-8892

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8 Attorneys for Complainant/Petitioner
9 Big Lagoon Park Company, Inc.

10 UNITED STATES DEPARTMENT OF INTERIOR
11 SACRAMENTO AREA OFFICE

12 BIG LAGOON PARK COMPANY, INC., a
13 non-profit California corporation,

14 Complainant/Petitioner,

15 UNITED STATES DEPARTMENT OF
16 INTERIOR, BUREAU OF INDIAN
17 AFFAIRS, and BRUCE BABBIT, Secretary
18 of the United States Department of Interior,
19 and RONALD JAEGER, Area Director for the
20 Sacramento Area Office of the U.S.
21 Department of Interior, Bureau of Indian
22 Affairs,

23 Respondents.

**COMPLAINT AND PETITION FOR
REVIEW AND RESCISSION OF
ACCEPTANCE OF CONVEYANCE
OF LAND IN TRUST STATUS,
AND FOR ENVIRONMENTAL
REVIEW REQUIRED UNDER THE
NATIONAL ENVIRONMENTAL
PROTECTION ACT, AND
STATEMENT OF REASONS
THEREFORE.**

24 **I. INTRODUCTION AND SUMMARY OF FACTS.**

25 1. Complainant/petitioner Big Lagoon Park Company, Inc., is a non-profit California
26 corporation, which serves as the homeowners association for owners of over 70 residential and
27 recreational cabins on Big Lagoon, in Humboldt County, California. The location of the cabins is
28 identified on Documentary Exhibit 1 attached hereto.

2. This complaint/petition concerns BIA's acceptance into trust status of an 11 acre parcel
being developed as a casino project by the Big Lagoon Rancheria, in close proximity to the aforemen-
tioned cabins. The location of the subject 11 acre parcel being developed as a casino, and the Big

1 Lagoon Rancheria, are shown on Exhibit 1 attached hereto.

2 3. On July 10, 1918, the original Big Lagoon Rancheria was established on the 9 acre
3 parcel on the southshore of Big Lagoon, as indicated on Exhibit 1. The Rancheria serves a relatively
4 small tribe that has ranged in size from 11 to 17 people.

5 4. On June 9, 1965, the U.S. Department of Interior BIA adopted Regulation 25 C.F.R.
6 §1.4 relating to "State and Local Regulation of the Use of Indian Property." The regulation provides
7 in pertinent part that the Secretary of the Interior or his authorized representative may in specific cases
8 or in geographic areas adopt or make applicable to Indian lands all or any part of such state or local
9 laws, ordinances, codes, resolutions, rules or other regulations pertaining to zoning or controlling use
10 or development of real or personal property, as he shall determine to be in the best interest of the
11 Indian owner or owners in achieving the highest and best use of such property. On July 2, 1965, by
12 official notice published in the federal register as F.R. doc. 65-7193, at 30 Fed.Reg 8722, the
13 Secretary of the Interior adopted and made applicable the laws, ordinances, codes, and other
14 regulations of the State of California, then existing or enacted in the future, limiting, zoning, or
15 otherwise governing or controlling the use or development of real or personal property, held under
16 agreement with any Indian tribe, or held in trust by the United States for an Indian tribe, and located
17 within the State of California. A copy of 25 C.F.R. §1.4, and the aforescribed Notice published
18 in the Federal Register, are attached hereto collectively as Exhibit 2.

19 5. In 1988 the Big Lagoon Rancheria applied for CDBG grant funding from the U.S.
20 Department of Housing and Urban Development (HUD) to acquire the adjacent 11 acre parcel so as to
21 provide housing for tribal members. HUD conducted environmental review under the National
22 Environmental Policy Act (NEPA). In October of 1988 a Finding Of No Significant Impact (FONSI)
23 was made, and notice of same was published. Attached hereto as Exhibit 3 is a copy of the published
24 notice on the FONSI, which describes the project as: acquisition of an additional 11.1 acre of parcel
25 of land by Big Lagoon Rancheria for "Indian housing" using HUD project funding of approximately
26 \$152,334. No comments or objections were made in response to the public notices for the "Indian
27 housing" project. The proposed use of the property for housing was consistent with local Humboldt
28 County land use regulations. There also was no response by the California Coastal Commission to

1 this project located in California's "coastal zone," and the nature of the project as described did not
2 raise any apparent threat to coastal resources. HUD gave final approval to the grant funding for land
3 acquisition. On January 20, 1989, the 11 acre parcel was transferred to the Big Lagoon Rancheria by
4 recorded grant deed, a copy of which is attached hereto as Exhibit 4.

5 7. The 11 acre parcel was acquired by Big Lagoon Rancheria from HUD subject to HUD
6 regulations restricting the use or planned use of the property, particularly 24 C.F.R. §570.505, a
7 copy of which is attached hereto as Exhibit 5 for reference. Pursuant to §570.505 the use or planned
8 use of the property would be restricted for a period ending 5 years after the close out of the grant from
9 which the assistance to the property was provided. The HUD grant file was closed December, 1990 -
10 resulting in a period of restricted use extending through December, 1995. During that time any
11 change of the use or planned use of the property would require the tribe to: (1) provide effected
12 citizens with reasonable notice of, and opportunity to comment on, any proposed change; and (2)
13 either change the use to one which is a proper object of CDBG grant funding, or refund the fair
14 market value of the property to the CDBG grant funding program.

15 8. No later than 1993, and likely much earlier, the Big Lagoon Rancheria planned and
16 determined to develop an Indian gaming casino on the subject 11 acre parcel. The exact date of the
17 change in planned use of the property is not known at this time, but complainant/petitioner is
18 informed and believes that it occurred prior to June 1, 1993, and no later than the tribe's enactment of
19 a tribal gaming ordinance on December 16, 1993.

20 9. Though the use and proposed use of the property was restricted pursuant to 24 C.F.R.
21 §570.505, the Big Lagoon Rancheria did nothing to undertake compliance with the requirements of
22 §570.505. Specifically, there was no action to give effected citizens reasonable notice of, and
23 opportunity to comment on, the proposed change in use; the proposed change in use for an Indian
24 gaming casino is not otherwise a proper object of CDBG grant funding; and the Big Lagoon
25 Rancheria did not undertake to reimburse the fair market value of the property to the CDBG grant
26 funding program.

27 10. On or about June 1, 1993, the Big Lagoon Rancheria adopted tribal Resolution No.
28 571-93, formally requesting the Bureau of Indian Affairs "to accept eleven (11) acres of land acquired

1 for housing development by Big Lagoon Rancheria transferred to the United States in Trust for the
2 collective benefit of the Big Lagoon Rancheria.” A true copy of the tribal resolution is attached hereto
3 as Exhibit 6. The request for trust acquisition and acceptance was submitted to BIA pursuant to 25
4 C.F.R. §151.9, which requires that the written request disclose (inter alia) the “information which
5 would show that the acquisition comes within the terms of this part (Part 151 - Land Acquisitions).”
6 Pursuant to 25 C.F.R. §151.10, in evaluating requests for the acquisition of land in trust status, the
7 Secretary must consider “the purposes for which the land will be used,” (§151.10(c)), and the
8 “jurisdictional problems and potential conflicts of land use which may arise” (§151.10(f)).
9 (1993/1994 Regulations.) The request for acquisition and acceptance into trust status by the Big
10 Lagoon Rancheria (Exhibit 6 hereto) falsely and fraudulently misrepresents the planned use of the 11
11 acre parcel as “housing development,” and there is no disclosure of the true intention and plan by the
12 tribe to develop an Indian gaming casino on the land. The records of the Sacramento area office of
13 BIA do not reflect any disclosure by Big Lagoon Rancheria, nor any recognition by BIA officials or
14 staff, prior to BIA’s final acceptance of the land into trust status, that the true planned use for the
15 property was development of an Indian gaming casino. Consequently BIA did not consider either
16 “the purposes for which the land will be used” or the “jurisdictional problems and potential conflicts
17 of land use which may arise” in making its decision on the request for trust acquisition and accep-
18 tance.

19 11. On December 16, 1993, the Big Lagoon Rancheria adopted a tribal gaming ordinance
20 to provide them with authority to construct and operate a gaming casino on the 11 acre parcel. Later
21 in May of 1994 a management contract application, along with the previously adopted gaming
22 ordinance, was submitted to the Indian Gaming Commission for review and approval. The tribe’s
23 gaming ordinance was later amended and approved by the Indian Gaming Commission on August 10,
24 1994, which continues in force through today. A portion of that gaming ordinance is attached hereto
25 as Exhibit 7. Consistent with its legal obligations throughout this entire process relating to the tribe’s
26 request for acceptance of the land into trust status and its planned use of the property for a gaming
27 casino, both the original 1993 gaming ordinance and the amended ordinance state that: **“The tribe**
28 **shall construct, maintain and operate a gaming facility in a manner that adequately**

1 **protects the environment and the public health and safety and in accordance with the**
2 **NEPA process.”** The foregoing assurance is not merely gratuitous, but rather a legally imposed
3 requirement by the National Indian Gaming Commission for the contents of a gaming ordinance,
4 pursuant to 25 C.F.R. 522.4(b)(7). Despite such assurance the Big Lagoon Rancheria did nothing to
5 ensure compliance with the NEPA process, and instead it initiated the environmental review process
6 by supplying BIA with a false and fraudulent description of the “project” to be reviewed.

7 12. Pursuant to the National Environmental Policy Act (NEPA), and the procedures
8 implementing NEPA for the Bureau of Indian Affairs, “the BIA retains sole responsibility and
9 discretion in all NEPA compliance matters.” (516 D.M. 6, Appendix 4, §4.2(A)(2)(a).) Accordingly
10 BIA was solely responsible and did attempt, to carry out NEPA compliance and review of the request
11 for acquisition and acceptance into trust status of the 11 acre parcel by Big Lagoon Rancheria.

12 13. On January 31, 1994, the Sacramento Area Office of BIA made a Finding of No
13 Significant Impact (FONSI) and determined that an Environmental Impact Statement (EIS) was not
14 required for action on the request by Big Lagoon Rancheria for United States acquisition and
15 acceptance into trust status on the subject 11 acre parcel. The Environmental Assessment, upon
16 which the FONSI is based, gives the following Project Description:

17
18 “The project is a land acquisition project for the development of future Tribal Housing.
19 The Department of Housing and Urban Development has provided funding to
20 purchase a parcel adjacent to the Rancheria, the Bureau of Indian Affairs will place the
property in trust for the Rancheria, IHS will provide water system improvements and
septic system installation for the new homes, with BIA/HIP funds utilized for new
home construction.”

21
22 The purported project would have only 14 to 20 homes at maximum buildout. There is no indication
23 anywhere in the records maintained by the Sacramento Area office of BIA that environmental review
24 has been or ever was given to the true planned use of the property for an Indian gaming casino.

25 14. The Bureau of Indian Affairs clearly relied upon and was misled by the representa-
26 tions by the Big Lagoon Rancheria that the proposed use of the property was for Indian housing.
27 Attached hereto as Exhibit 9 is a copy of the May 2, 1994 memorandum from the Sacramento Acting
28 Area Director, BIA, to the Deputy Regional Solicitor describing the project. The memo references

1 tribal Resolution No. 571-93 (Exhibit 6 hereto) and describes the purpose for acquisition and
2 acceptance into trust status as being “for Indian housing purposes.”

3 15. On June 29, 1994, BIA formally accepted the 11 acre parcel into trust status. A true
4 copy of the “Acceptance of Conveyance” is attached hereto as Exhibit 10. As indicated therein, the
5 authority for the acceptance is cited to be 25 U.S.C. §2202.

6 16. In accordance with the aforescribed Acceptance Of Conveyance, a grant deed was
7 recorded July 20, 1994, transferring title of the subject 11 acre parcel from Big Lagoon Rancheria to
8 the United States of America. A true copy of the grant deed is attached as Exhibit 12.

9 17. In the meantime, the Big Lagoon Rancheria had been processing its gaming ordinance
10 and a gaming management agreement through the National Indian Gaming Commission (NIGC) in
11 Washington, D.C.. The NIGC clearly understood that the Tribe was planning to build a gaming
12 casino on the subject parcel, and that there was a “trust acquisition for gaming for Big Lagoon
13 Rancheria” being considered by BIA. (Exhibit 11.) In a July 7, 1994 letter the NIGC NEPA
14 Compliance Officer reminded BIA that “the Federal action triggering NEPA is the approval of the
15 trust acquisition.” It was noted that NIGC also has NEPA duties triggered by approval of a gaming
16 management agreement. The NIGC requested a response while suggesting a cooperative approach to
17 preparation of a joint NEPA document for the gaming casino. (Exhibit 13.)

18 18. BIA responded to NIGC in a letter dated August 12, 1994, by Dr. Virgil Akins,
19 Superintendent of the Northern California Agency, BIA. (Exhibit 13.) It was stated: **“Please be**
20 **advised that we do not currently have a trust acquisition pending for gaming for the**
21 **subject rancheria.”** After this correspondence BIA records do not reflect any further inquiries
22 from NIGC regarding NEPA review.

23 19. Big Lagoon Rancheria had the option of either contracting out the management of its
24 casino with an outside firm under a “gaming management agreement,” or managing the casino directly
25 using its own tribal members. One important distinction between these options is that a gaming
26 management agreement must be approved by NIGC subject to NEPA review, whereas management
27 by the tribal members involves no federal decision and carries no NEPA review. After NIGC notified
28 Big Lagoon Rancheria that NEPA review was required for its proposed gaming management

1 agreement with Game World Arcata, Inc., the tribe withdrew the agreement from further consider-
2 ation by NIGC, purportedly electing to manage the casino with its own members. The Rancheria
3 suggests, in effect, that an 11 member tribe of men, women, and children, with no prior experience,
4 could manage a \$10,000,000, 44,000 square foot casino, with up to 300 employees and 4,000
5 visitors per week. This maneuver did have the effect of completely circumventing NEPA review, so
6 as to conceal and perpetuate the fraud on BIA which evaded NEPA review for the trust acquisition
7 decision.

8 20. Following acceptance into trust status there was no actual development activity on the
9 casino project until January, 1996. At that time clearing of the land for construction occurred and
10 ground was broken on the foundation for the casino. In response to inquiries from the media the
11 representatives of the Rancheria disclosed the scope of their true plan for use and development of the
12 property. Attached hereto as Exhibit 14 is a copy of the May, 1996 issue of the "North Coast
13 Journal," which contains a useful and detailed summary of the tribe's plans for the casino project, and
14 related issues. As indicated, the Rancheria represents that it is acquiring more than 130 acres of
15 adjacent wooded land for development, in conjunction with the casino being built on the 11 acre
16 parcel. (See map and diagrams within the article.) The casino would be: 44,000 square feet in size,
17 have 1,000 seats, have 50 foot ceilings and a multilevel interior, draw 2,000 to 4,000 visitors per
18 week, employ 200 to 300 persons, and cost between \$8,000,000 and \$10,000,000 to construct.
19 The adjacent wooded property of over 130 acres being acquired through a dummy corporation for the
20 Rancheria - the "Big Lagoon Development Corp." - is conceptually planned for 2 hotels, an 18 hole
21 golf course, a small R.V. site, gas station and convenience store.

22 21. Though construction of the foundation of the casino commenced in January of 1996, a
23 work stoppage followed shortly thereafter and there is no construction activity occurring at this time.
24 The cause of the work stoppage is not known (it has been reported to be related to financing for the
25 project). Attached hereto as Exhibit 15 are copies of pictures from the site location showing generally
26 the status of the foundation work for the casino. (Pictures taken on 5/25/96.)

27 22. The Big Lagoon Rancheria had hired the engineering firm of Oscar Larson &
28 Associates for engineering work on the casino project, and in particular, the sewage and wastewater

1 disposal system for the casino. In the spring of 1996 the engineers met with the Humboldt County
2 Division of Environmental Health to informally consult and discuss the design and effectiveness of
3 the sewage disposal system contemplated for the casino project. Attached hereto as Exhibit 16 is a
4 copy of the June 3, 1996 letter from the Humboldt Department of Public Health to the engineers for
5 Big Lagoon Rancheria, summarizing the results of their analysis and stating that "it is apparent that
6 Humboldt County sewage disposal regulations and North Coast Regional Water Quality Control
7 Board requirements cannot be met" with respect to environmental health impacts from the Big Lagoon
8 Casino project. In the comments attached to the letter it is noted that Big Lagoon is a diverse,
9 complex, and fragile ecosystem, that is extremely susceptible to nutrient enrichment and eutrophica-
10 tion. The comments describe the high probability risk that the wastewater system for the casino
11 would cause excess nitrogen loading to Big Lagoon, stimulating aquatic plant growth leading to
12 eutrophication. The proposed wastewater system is described as "an inappropriate on-site wastewater
13 system for this project due to wastewater quantity and quality, and proximity to Big Lagoon."

14 23. To date there has been no NEPA environmental review related to the Big Lagoon
15 casino project by BIA or any other federal agency. There has been no notice or submission of the
16 project to the California Coastal Commission for federal consistency review or for consideration as to
17 coastal development permit requirements. Further, there has been no submission to other state
18 agencies with permit and regulatory authority as to land use and water, such as the California
19 Department of Forestry for clearing/harvesting of timber on the casino site, and the California
20 Regional Water Quality Control Board for groundwater impacts and impacts on Big Lagoon.

21 22 **II. NATURE OF RELIEF REQUESTED AND AUTHORITY FOR CONSIDERATION.**

23 **A. NATURE OF RELIEF REQUESTED.**

24

25 24. Complainant/petitioner demands that the U.S. Department of Interior, Bureau of
26 Indian Affairs, reconsider and rescind the "Acceptance Of Conveyance" dated June 29, 1994 (Exhibit
27 10 hereto), whereby the aforescribed 11 acre parcel was granted to and accepted by the United
28 States of America in trust for the Big Lagoon Rancheria. Concurrently complainant/petitioner seeks

1 review of this matter by the Bureau of Indian Affairs and a determination that the decision to accept
2 the conveyance of land in trust status was void ab initio. In addition, complainant/petitioner demands
3 that the U.S. Department of Interior, Bureau of Indian Affairs, fulfill its ongoing responsibility for
4 environmental review under the National Environmental Policy Act, to evaluate the environmental
5 impacts of the true nature of the project as a large-scale Indian gaming casino, to prepare an Environ-
6 mental Impact Statement, and to thereafter proceed in accordance with the requirements of NEPA and
7 all other applicable federal laws.

8
9 B. AUTHORITY FOR REVIEW AND CONSIDERATION.

10 25. The Secretary of the Interior, by and through the Bureau of Indian Affairs, has
11 inherent authority to review, reconsider, and vacate or rescind an earlier agency decision. Belville
12 Mining Company v. United States 999 F2d 989 (1993). The inherent power of an administrative
13 agency to reconsider its own decision does not depend on statutory authority, and exists independent-
14 ly of statutory/regulatory procedures for “appeal” of an agency decision. (Albertson v. FCC, 182
15 F2d 397 (1950); Prieto v. United States, 655 F. Supp. 1187 (1987).) Generally, the reconsideration
16 of an agency decision must occur within a “reasonable time” or under circumstances such that the
17 lapse of time should be excused. (Belville Mining Company v. United States, supra.) There is no
18 hard and fast rule for determination of the timeliness of reconsideration. While it is often stated that
19 reconsideration should occur within a “short period” after the making of the decision (e.g. see Dayley
20 v. United States, 169 Cl. Ct. 305 (1965)), the courts have also opined that though “de novo review
21 was not really conducted within a short time, this court still believes that effective, unbiased de novo
22 review of agency action should be promoted, regardless of the time which has lapsed” (Crager v.
23 United States, 25 Cl. Ct. 400 (1992)). “Public policy should favor executive branch departments and
24 agencies taking corrective actions sua sponte.” (Crager v. United States, supra, p. 411-412.)

25 26. The propriety of reconsideration, as analyzed in the case law, turns on consideration
26 of the following factors, which bear on the fairness and equities of conducting reconsideration:

- 27 1. Fraud in the inducement of the agency decision.
28 2. Material mistake in inducement of the original agency decision.

- 1 3. Whether the original agency decision is void due to illegality.
- 2 4. Whether the agency acted according to its own procedures in making the original
- 3 decision.
- 4 5. The complexity of the decision.
- 5 6. Whether the decision is was factually or legally based.
- 6 7. The probable impact of an erroneous agency decision absent reconsideration.
- 7 8. The lapse of time relative to time limits for appeals.
- 8 9. Whether legally cognizable property interests have been created in reliance on the
- 9 initial decision.

10 To the above factors cited in the case law complainant/petitioner would suggest an additional factor
11 that has not been expressly ruled upon by the courts: **10.** Whether reconsideration is necessary to
12 meet the legal mandates of the National Environmental Policy Act.

13 Moreover, if upon review of this matter BIA finds, as it should, that the decision accepting the
14 parcel into trust status was void ab initio, then there is no time limit for making such a review and
15 determination. (Prieto v. United States, 655 F. Supp. 1187 (1987).) The first three factors above,
16 individually or collectively, would render the decision void - requiring no further consideration of the
17 other factors bearing on the equities of review or reconsideration.

18 27. Upon review of this matter at the outset BIA should find at the outset that the original
19 decision to approval trust status for the parcel was void ab initio, based upon the first three factors set
20 out above: **1. Fraud, 2. Mistake, and 3. Void due to illegality.** In Prieto v. United
21 States, supra, though the court found that review and revocation of the prior decision was not
22 warranted based upon the facts of that case, the court recognized the inherent authority of BIA to
23 review a prior decision and the power of BIA to find a decision void if there are grounds analogous to
24 what constitutes "error" sufficient to justify overturning a judgment found in Rule 60(b) of the
25 Federal Rules of Civil Procedure - i.e. mistake, fraud, or that the original judgment was void. In
26 sharp contrast to the facts of the Prieto case, the matter now before BIA presents irrefutable and
27 compelling evidence of fraud, mistake, and illegality so as to render the original decision void. There
28 is no question that the Big Lagoon Rancheria changed the proposed use of the 11 acre parcel in 1993

1 in contemplation of building a gaming casino, yet the intended purpose for trust acquisition was
2 intentionally misrepresented to BIA as being for "Indian housing" purposes. It is further undisputa-
3 ble that BIA acted upon the request for trust acquisition in the mistaken belief that the property was
4 indeed to be used for Indian housing. In addition the decision is voided by fundamental illegality due
5 to clear violation of the National Environmental Policy Act (NEPA), violation of the land use
6 restrictions placed on the property by Housing and Urban Development (HUD), and violation of the
7 jurisdictional authority of the California Coastal Commission to make a federal consistency determina-
8 tion and to apply its land use regulations. Each of these grounds is more than sufficient for BIA to
9 find its decision to be void.

10 28. These same three factors - fraud, mistake, and illegality - also constitute grounds for
11 reconsideration of the original decision. At a minimum BIA must find that the original decision was
12 so tainted by fraud, mistake, and illegality, that the decision should be reopened and reconsidered in
13 light of disclosure of the true intended usage of the property. The decision upon reconsideration
14 could then be made based upon the truth, rather than upon misrepresentation and mistaken beliefs.

15 29. Factors bearing on reconsideration 4 through 9, listed above, are also cited in Belville
16 Mining Company v. United States, supra, and Prieto v. United States, supra. Review of these
17 factors should just as clearly lead to reconsideration by BIA. The original decision by BIA to approve
18 trust status on a parcel for "Indian housing" purposes obviously was not made in accordance with
19 agency procedures (factor 4), because the Secretary could not have considered either "the purpose for
20 which the land will be used" or the "jurisdictional problems and potential conflicts of land use which
21 may arise" as required by 25 C.F.R. §151.10. The original decision to place the property in trust
22 status was approached in a very simple fashion (factor 5), but it was made "simple" only by the fraud
23 perpetrated upon BIA in processing the request as an "Indian housing" project. Had BIA been given
24 the opportunity to review the true proposed use of the property for an Indian gaming casino, the
25 decision would have required consideration of complex issues related to NEPA compliance (along
26 with preparation of an EIS), compliance with HUD regulations and land use restrictions, and
27 compliance with California Coastal Commission jurisdiction and land use regulation. The decision by
28 BIA was not factually based (factor 6) since it was based on erroneous facts falsely represented by

1 the Rancheria. The probable impact of the erroneous agency decision absent reconsideration (factor
2 7) is enormous; the gaming casino project is an enormous development that would have disastrous
3 environmental consequences for the fragile ecosystem of Big Lagoon, along with a wide range of
4 serious adverse environmental impacts related to traffic, noise, air quality, timber/forest habitat,
5 lights, groundwater, etc.. Though review of the original decision would be well after the normal time
6 limit for an "appeal" (factor 8), and there has been a change in the legal status of the property
7 resulting from the conveyance to the United States in trust (factor 9), any change in position by the
8 Big Lagoon Rancheria in reliance on the original decision has occurred only as a natural consequence
9 of their own fraud and not as a result of any lack of diligence by affected citizens such as complain-
10 ant/petitioner. There has never been truthful, accurate, or legally effective public notice of the gaming
11 casino project; nor has there ever been opportunity for affected public citizens to exercise their
12 fundamental due process rights for notice, hearing, and participation in the governmental decision
13 making process. The affected public has been forced to react to a casino project after observing the
14 construction of a partial building foundation in January of 1996 - a major project emerging from a
15 vacuum of information without any governmental review, oversight, or authorization. Big Lagoon
16 Rancheria is equitably estopped to claim benefit from the fruits of its fraud, and the time that has
17 passed since the original decision cannot legally or in fairness hinder necessary reconsideration of
18 BIA's decision to accept the parcel in trust.

19 30. Finally (factor 10), complainant/petitioner submits that BIA is compelled to reconsider
20 its original decision by its legal obligations under the National Environmental Policy Act (NEPA).
21 Though the casino project is being developed by Big Lagoon Rancheria, "the BIA retains sole
22 responsibility and discretion in all NEPA compliance matters." (516 D.M. 6, Appendix 4, §4.2
23 (A)(2)(a).) Pursuant to 40 C.F.R. §1502.9(c) BIA must react to "significant new circumstances or
24 information relevant to environmental concerns and bearing on the proposed action or its impacts."
25 BIA must perform a proper environmental assessment considering the new information - i.e. the fact
26 that this is a large scale casino project with all the consequent environmental impacts, as opposed to
27 the rather innocuous housing project originally evaluated. Complainant/petitioner is confident that a
28 truthful and objective assessment of the use of the land submitted for trust acquisition will find it to be

1 a "major federal action" under 40 C.F.R. §1508.18, and that an Environmental Impact Statement will
2 have to be prepared. More important, BIA must be mindful of the proscription of 40 C.F.R.
3 §1506.1, providing that until the environmental review is completed and a record of decision is made,
4 "no action concerning the proposal shall be taken which would: (1) have an adverse environmental
5 impact; or (2) limit the choice of reasonable alternatives." The net effect is that BIA must reconsider
6 the original decision and rescind the trust status pending legally required environmental review, so
7 that during that review there can be no further action which would have an adverse environmental
8 impact or limit the choice of reasonable alternatives.

9 31. Any other construction of BIA's NEPA responsibilities would render NEPA a dead
10 letter in the context of BIA approval for placing Indian lands in trust. That is, Big Lagoon Rancheria
11 otherwise would succeed in bypassing NEPA environmental review altogether, by submitting a
12 false/fraudulent and innocuous project description for perfunctory NEPA review and approval, then
13 after transfer of the property in trust claiming sovereign immunity from followup NEPA review after
14 the true nature of the project is revealed. However, BIA's NEPA responsibility does not cease to
15 exist after transfer of the property into trust. Upon discovery of new circumstances or information
16 which calls into question the adequacy of the original environmental review, BIA has no choice but
17 to engage in supplemental environmental review and reconsider the original decision in light of its
18 NEPA responsibilities.

20 III. STATEMENT OF REASONS.

21 32. For the most part the reasons for finding the original decision to be void or rescinding
22 that decision follow the reasons described above for undertaking review and reconsideration. The
23 acceptance of conveyance of land in trust status should be found void and/or rescinded for (at least)
24 six reasons: (1) fraud; (2) mistake; (3) illegality due to violations of NEPA; (4) illegality due to
25 violations of HUD land use restrictions; (5) illegality due to violation of California Coastal Commis-
26 sion land use regulatory authority; and (6) invalidity of statutory authority for taking the land into
27 trust.

28 1. **Fraud.** Little more needs to be said regarding the fraud perpetrated on BIA by Big

1 Lagoon Rancheria's submission of a request for acceptance in trust based upon the false representa-
2 tion that the land would be used for "Indian housing" purposes. If BIA's review process for trust
3 applications is to retain any integrity, this fraud must be remedied by finding the acceptance in trust to
4 be void and invalid.

5 **2. Mistake.** Without examining the intent or motive of the Big Lagoon Rancheria in
6 this matter, it is sufficient alone that BIA was grossly mistaken as to the proposed purpose of the trust
7 acquisition and the intended use of the property when the original decision was made. BIA's
8 mistaken belief that the property would be used for "Indian housing" completely negated the legally
9 required review by BIA under 25 C.F.R. §151.10 as to "the purposes for which the land will be
10 used" and the "jurisdictional problems and potential conflicts of land use which may arise." This is
11 not a question of whether or not there was an error in judgment by BIA in reviewing the trust
12 acquisition request. The legally required review process by BIA simply did not occur. The original
13 decision has no foundation and therefore should be found to be void.

14 **3. Illegality - NEPA.** NEPA requires preparation of an environmental impact
15 statement as early as possible "so that it can serve practically as an important contribution to the
16 decision making process," and for federal agencies such as BIA review must occur at least at the
17 feasibility analysis (go - no go) stage, with supplementation at a later stage if necessary. (40 C.F.R.
18 §1502.5.) Federal agencies are to take "no action" on a proposal unless they have taken the
19 appropriate steps to insure that the objectives and procedures of NEPA are or have been achieved.
20 (40 C.F.R. §1506.1.) With the true nature of the gaming casino project having now been revealed, it
21 is clear that BIA should have taken "no action" on the trust acquisition request without having
22 undertaken NEPA environmental review and preparation of an environmental impact statement.

23 The environmental consequences of the casino project, and the seriousness of the violation of
24 NEPA, cannot be underestimated. This major development project will be located on a coastal lagoon
25 - which is a complex and fragile ecosystem. The lagoon is a transition area between freshwater and
26 saline ocean water, resulting in a "brackish" environment that accommodates salmon, steelhead,
27 cutthroat trout, flounder, migrating shore birds, and a rich diversity of wildlife. The entire lagoon is a
28 state wildlife area, and most of the land around it is a state park. A gaming casino, especially a

1 development project of the size and scope contemplated here, cannot be located on the shore of Big
2 Lagoon without having serious adverse consequences for water quality, wildlife, plant species, air
3 quality, noise, traffic, etc.. As noted in the review by the Humboldt County Department of Public
4 Health, it is "apparent" that basic regulatory requirements for environmental health and sewage
5 disposal cannot be met for this project; and the proposed means of sewage disposal by diffuse
6 leachate to the ground and water pose a high probability risk of "eutrophication" of the lagoon
7 system. The conversion to trust status without legally required NEPA environmental review has
8 unleashed a project which portends disastrous environmental consequences. The original decision
9 must be found to be void, so that NEPA environmental review can be carried out and the environment
10 protected - not just for the benefit of the residents of the cabins in Big Lagoon Park, but also for the
11 public at large and for the Indians themselves.

12 **4. Illegality - HUD.** BIA cannot close its eyes to the fact that the casino project
13 violated HUD land use restrictions and is a misappropriation and/or misapplication of HUD grant
14 funding, made possible and facilitated by BIA's acceptance of the parcel into trust status. The
15 prohibition in 24 C.F.R. §570.505 against changes in the planned use of property acquired with
16 CDBG grant funding is designed to prevent precisely the type of abuse evident here. That is, the
17 Rancheria is not permitted to accept the federal grant funds designated for "housing," only to bide
18 their time while making plans to develop the property as a casino, then start construction of the casino
19 when they believe (erroneously) that their use of the property is unrestricted. When the planned use
20 of the property was determined to be a casino project - a change made no later than sometime in 1993
21 - the Rancheria was obligated to provide "effected citizens with reasonable notice of, and opportunity
22 to comment on, any proposed change" (24 C.F.R. §570.505(a)); of course that notice and due
23 process was never given to effected citizens or anyone. Then, if it was determined that the new use
24 was not a proper object of CDBG grant funding (which a casino is not), the grant funds should be
25 refunded. Such a patent abuse and defalcation of HUD grant funding is not just offensive, it vitiates
26 the validity of BIA's decision on trust acquisition, which had given no consideration to the change in
27 planned use and the requirements of 25 C.F.R. §151.10. Moreover, to the extent that BIA has a
28 fiduciary obligation to act in the best interests of the Indians, it should protect them from their own

1 greed and insure that federal grant funding intended for "Indian housing" is in fact spent on housing
2 as legally required, or otherwise refunded so that other Indians can have their housing needs met.

3 **5. Illegality - Coastal Zone Management Act and California Coastal Act.**

4 The approval of trust acquisition was illegal and improper in at least two ways with respect the federal
5 Coastal Zone Management Act and the California Coastal Act. BIA failed to provide the California
6 Coastal Commission with a "consistency determination" as required by 15 C.F.R. §930.34. BIA
7 also failed to consider the jurisdictional authority of the California Coastal Commission over land use
8 for the subject parcel.

9 **A. Consistency Determination.** In 1972 Congress enacted the Coastal Zone
10 Management Act (CZMA); 16 U.S.C. §1451 et seq.) to provide monetary assistance to states that
11 develop and implement coastal management programs. In 1976 the California Legislature enacted the
12 California Coastal Act (CCA); California Public Resources Code §3008 et seq.) and put in place a
13 program of land use management for the "coastal zone" in California. To insure that federal activities
14 would not unduly interfere with these federally assisted state programs, federal agencies must comply
15 with 15 C.F.R. §930.34, stating that:

16 "Federal agencies shall provide state agencies with consistency determinations for all
17 federal activities directly affecting the coastal zone . . . federal agencies shall provide
18 state agencies with a consistency determination at the earliest practicable time in the
19 planning or reassessment of the activity. A consistency determination should be
20 prepared following development of sufficient information to determine reasonably the
21 consistency of the activity with the state's management program, but before the federal
22 agency reaches a significant point of decision making in its review process. The
23 consistency determination shall be provided to state agencies at least 90 days before
24 final approval of the federal activity unless both the federal agency and the state agency
25 agree to an alternative notification schedule."

26 In the instant case California's coastal management plan allows for only limited timber harvesting and
27 residential housing in the area where the subject 11 acre parcel is located. BIA did not submit any
28 consistency determination to the California Coastal Commission for review, even as to the purported
"Indian housing" project (which may be at a density that is in conflict with the coastal management
plan). Needless to say, the gaming casino project is in direct conflict with the coastal management
plan. This presents an egregious violation of federal law which can only be remedied by finding the
trust acquisition void/rescinded, and proceeding with the federally mandated consistency review.

1 **B.** BIA also failed to consider (25 C.F.R. §151.10(f)) the land use jurisdiction of the
2 California Coastal Commission and potential conflicts of land use which may arise with respect to the
3 trust acquisition. Indian lands in the State of California are subject to state land use regulation, as
4 authorized by 25 C.F.R. §1.4 and F.R. Doc 65-7193 (30 Fed. Reg. 8722) attached hereto as Exhibit
5 2. The subject 11 acre parcel is within the “coastal zone” regulated by the California Coastal
6 Commission. Though the federal definition of “coastal zone” in the CZMA excludes federal lands
7 held in trust, the CZMA does not preempt state regulation of activities on federal lands under the
8 California Coastal Act. California Coastal Commission v. Granite Rock Company, 480 U.S. 572
9 (1987). Moreover, the CCA specifically provides (Public Resources Code §3008): “that within
10 federal lands excluded from the coastal zone pursuant to the federal Coastal Zone Management Act of
11 1972, the State of California shall, consistent with applicable federal and state laws, continue to
12 exercise the full range of powers, rights, and privileges it now possesses or which may be granted.”
13 Thus, the land use regulations administered by the California Coastal Commission are applicable to
14 the Big Lagoon Rancheria and to the 11 acre parcel which BIA accepted for acquisition in trust.

15 The land use jurisdiction of the Coastal Commission was never given legally required
16 consideration during the trust acquisition process. It should be noted that the Rancheria has already
17 violated California Public Resources Code §30600 and §30106 by undertaking development in the
18 coastal zone without a coastal development permit. The appropriate remedy upon review and
19 reconsideration by BIA is to find the trust acquisition void or voided, providing for proper consider-
20 ation of land use jurisdiction as required by law.

21 **6. Invalid Legal Authority for Trust Acquisition.** BIA’s “Acceptance Of
22 Conveyance” (Exhibit 10) is made “pursuant to the authority of the Indian Land Consolidation Act of
23 January 12, 1983 (96 Stat. 2517; 25 U.S.C. §2202).” The legal authority for BIA to accept the
24 parcel into trust status was and is invalid, and therefore the acceptance and trust status is void.

25 The text of 25 U.S.C. §2202, the law relied upon by BIA, merely incorporates the authoriz-
26 ing provisions of 25 U.S.C. §465, which purport to allow the Secretary of the Interior to accept lands
27 for Indians in trust status. However, 25 U.S.C. §465 was recently found by the courts to be an
28 unconstitutionally vague and overbroad delegation of power by congress, and hence is void and

1 unenforceable. State of South Dakota v. United States Department of the Interior, 69 F.3d 878
2 (November 7, 1995). The South Dakota case is closely parallel to the case at hand, involving a tribe
3 that had land placed into trust status on the false pretext of developing an industrial park, only later to
4 reveal its true intentions of developing a gaming casino. The court began and ended its analysis with
5 the fundamental question of whether federal law permitted BIA to take the property into trust status at
6 all. Upon reviewing the constitutional issues presented, the court concluded that "the Secretary had
7 no authority to acquire the lands in question in trust for the tribe." It is therefore evident that the legal
8 basis upon which BIA accepted the trust acquisition in this case also is invalid, and the acceptance of
9 the conveyance itself is void.

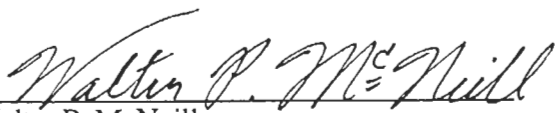
11 IV. CONCLUSION.

12 Complainant/petitioner respectfully requests that BIA review and reconsider the acceptance of
13 conveyance of land in trust status, based upon the facts and the statement of reasons set forth above.
14 Upon doing so BIA will find that its original decision to approve and accept the conveyance in trust
15 status is void, or, in the alternative, that it should be rescinded.

18 DATED: August 21, 1996

Respectfully submitted,

McNEILL & BELTON

20 
21 Walter P. McNeill
22 Walter P. McNeill

FOR SEC. 13, T9N, RIW, HB & M

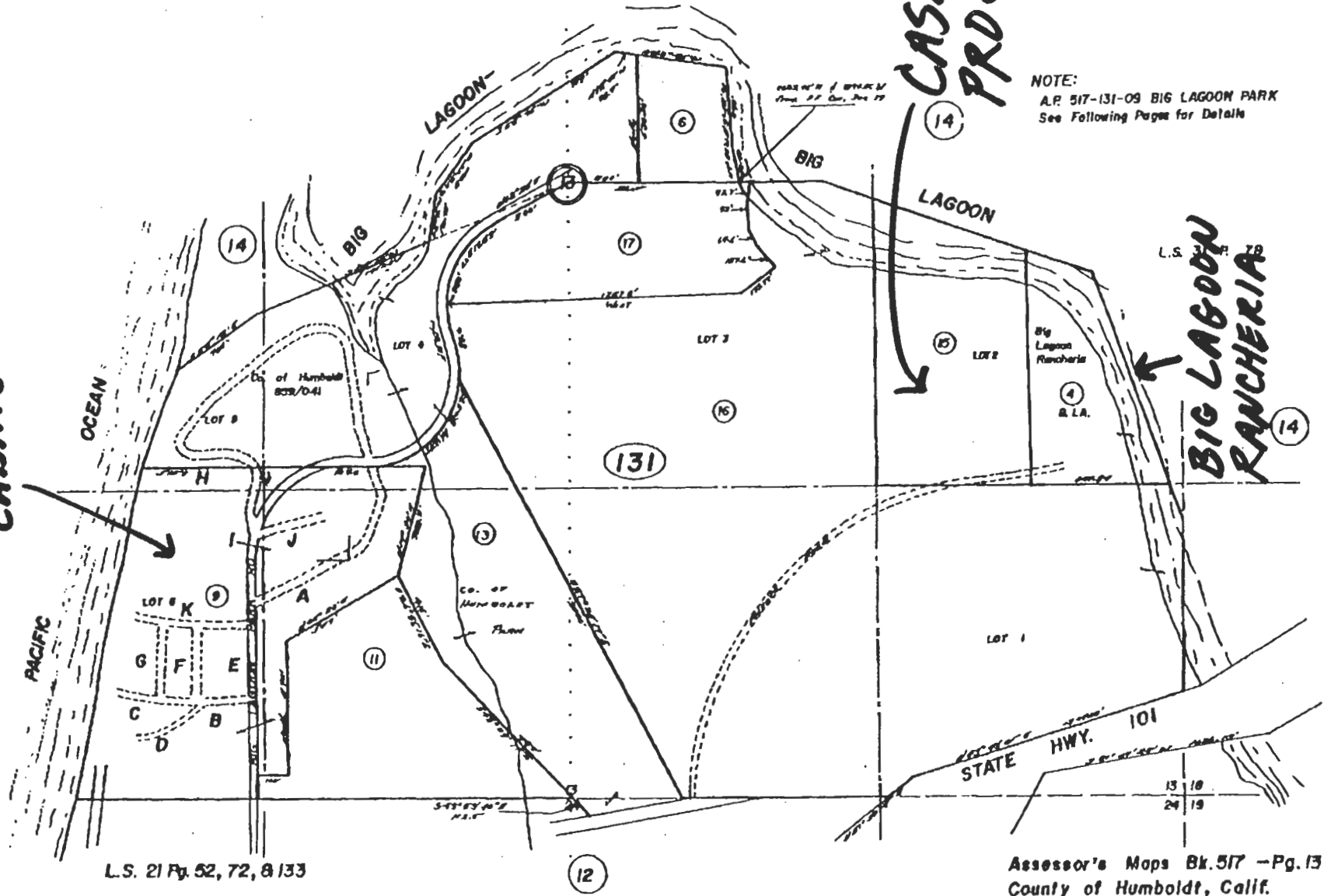
517-13

Exhibit "11"

CASINO PROJECT

NOTE:
A.P. 517-131-09 BIG LAGOON PARK
See Following Pages for Details

BIG LAGOON PARK CO.
CABINS



L.S. 21 Pg. 52, 72, & 133

Assessor's Maps Bk. 517 - Pg. 13
County of Humboldt, Calif.

NOTE - Assessor's Block Numbers Shown in Ellipse
Assessor's Parcel Numbers Shown in Circles

"This map may or may not be a survey of the land depicted herein. You should not rely upon it for any other purpose other than orientation to the general location of the parcel or parcels depicted. FNTIC expressly disclaims any liability for alleged loss or damage which may result from reliance upon this map."

157

25 CFR s 1.4

25 C.F.R. s 1.4

CODE OF FEDERAL REGULATIONS
TITLE 25--INDIANS
CHAPTER 1--BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR
SUBCHAPTER A--PROCEDURES AND PRACTICE
PART 1--APPLICABILITY OF RULES OF THE BUREAU OF INDIAN AFFAIRS
Current through June 1, 1996; 61 FR 27766

s 1.4 State and local regulation of the use of Indian property.

(a) Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

(b) The Secretary of the Interior or his authorized representative may in specific cases or in specific geographic areas adopt or make applicable to Indian lands all or any part of such laws, ordinances, codes, resolutions, rules or other regulations referred to in paragraph (a) of this section as he shall determine to be in the best interest of the Indian owner or owners in achieving the highest and best use of such property. In determining whether, or to what extent, such laws, ordinances, codes, resolutions, rules or other regulations shall be adopted or made applicable, the Secretary or his authorized representative may consult with the Indian owner or owners and may consider the use of, and restrictions or limitations on the use of, other property in the vicinity, and such other factors as he shall deem appropriate.

[30 FR 7520, June 9, 1965]

<<PART 1--APPLICABILITY OF RULES OF THE BUREAU OF INDIAN AFFAIRS>>

AUTHORITY: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2.

SOURCE: 25 FR 3124, Apr. 12, 1960, unless otherwise noted.

25 C. F. R. s 1.4

25 CFR s 1.4

END OF DOCUMENT

NOTICE FINDING OF NO SIGNIFICANT EFFECT ON THE ENVIRONMENT and NOTICE TO PUBLIC FOR RELEASE OF FUNDS DATE AFTER OCTOBER 15, 1988, WITH VIRGIL MOOREHEAD, TRIBAL CHAIRPERSON, BIG LAGOON RANCHERIA, P.O. BOX 3060, TRINIDAD, CALIFORNIA, 95570, (707)826-2079, AS THE CERTIFYING OFFICER OF THIS NOTICE.

TO ALL INTERESTED AGENCIES, GROUPS AND PERSONS: The above-named Big Lagoon Rancheria Tribal Government will request the U.S. Department of Housing and Urban Development to release Federal funds under Title I of the Housing and Community Development Act of 1974 (P.L. 93-343) to be used for the following project:

The project title is: Land Acquisition for Housing, project purpose is land acquisition, project location is a parcel located adjacent to Big Lagoon Rancheria, with the total project funding at \$152,334.00

It has been determined that such request for release of funds will not constitute an action significantly affecting the quality of the human environment and, accordingly, the above-named Big Lagoon Rancheria has decided not to prepare an Environmental Impact Statement under the National Environmental Policy Act of 1969 (P.L. 91-190)

The reasons for such decision not to prepare such statement are as follows: Based on discussions with agencies, site visits by some agencies, and records search, the Tribal Government has determined no significant environmental impact.

An Environmental Review Record respecting this project has been made by the above-named Big Lagoon Rancheria Tribal Government, which documents the environmental review of the project and more fully sets forth the reasons why such statement is not required. This Environmental Review Record is on file at the above address and is available for public examination and copying upon request at Big Lagoon Rancheria Offices, 791 Eight Street, Arcata, Ca, between the hours of 10-12noon and 2-5:00 p.m. during the weekdays.

No further environmental review of such project is to be conducted prior to the request for release of Federal funds.

Big Lagoon Rancheria Tribal Government will undertake the project described above with Block Grant funds from the U.S. Department of Housing and Urban Development

(HUD), under Title I of the Housing and Community Development Act of 1974. Big Lagoon Rancheria Tribal Government is certifying to HUD that Virgil Moorehead, Tribal Chairperson, in his official capacity as the certifying officer, consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to environmental reviews, decision making, and action; and that these responsibilities have been satisfied. The legal effect of the certification is that upon its approval, the Big Lagoon Rancheria Tribal Government may use the Block grant funds, and HUD will have satisfied its responsibilities under the National Policy Act of 1969. HUD will accept an objection to its approval of the release of funds and acceptance of the certification if it is on one of the following bases:

- (a) that the certification was not in fact executed by the certifying officer; (b) That the Big Lagoon Rancheria Tribal Government has omitted one or more steps in preparing the environmental assessment; has failed to make a finding of environmental significance; has failed to give the Advisory Council on Historic Preservation an opportunity to comment on the undertaking's effect on historic properties; or (c) Other basis established by HUD regulations.

All interested agencies, groups and persons disagreeing with this decision are invited to submit written comments for consideration by the Big Lagoon Tribal Government to Chairperson, Big Lagoon Rancheria, P.O. Box 3060, Trinidad, California, 95570. Such written comments should be received at this office on or before October 15, 1988. All such comments so received will be considered and the Big Lagoon Tribal Government will not request the release of Federal funds or take any administrative action on the project prior to the date specified in the preceding sentence.

Objections may also be prepared and submitted in accordance with required procedure (24 CFR Part 58), and may be addressed to HUD at: P.O. Box 36003, 450 Golden Gate Ave., San Francisco, Ca. 94102. Objections to the release of funds on basis other than those stated above will not be considered by HUD.

No Objection received after October 31, 1988, will be considered by HUD. This notice is submitted and certified by Virgil Moorehead, Tribal Chairperson, Big Lagoon Rancheria, P.O. Box 3060, Trinidad, Ca. 95570.

Exhibit "3"

RECORDING REQUEST #1
HUMBOLDT LAND TITLE COMPANY PA

RECORDED AT REC ST OF
Humboldt Land Title Company
- 1989 - - 1402

DATE JAN 20 1989 TIME 4:15

STEPHEN A. STRAWN -
HUMBOLDT COUNTY RECORDER

BY Pat Williams DEPUTY

FEE 5.00

TAX COLLECTED BY P

MONUMENT SURVEY FUND \$10.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DOCUMENTARY TRANSFER TAX \$ 132.00 COMPUTED ON FULL VALUE OF PROPERTY CONVEYED. OR COMPUTED ON FULL VALUE LESS LIENS AND ENCUMBRANCES REMAINING AT TIME OF SALE



Pat Williams HUMBOLDT LAND TITLE COMPANY
SIGNATURE OF DECLARANT OR AGENT DETERMINING TAX. FIRM NAME

Corporation Grant Deed

FORM APTN 517-131-10

ORDER NO. 70539 MP/EW THIS FORM FURNISHED BY HUMBOLDT LAND TITLE COMPANY

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

LOUISIANA-PACIFIC CORPORATION, a Delaware corporation

hereby GRANT(S) to

BIG LAGOON RANCHERIA, a Federally Recognized Indian Rancheria

the following described real property in the Unincorporated area
county of Humboldt, state of California:

Lot 2 of Section 13, in Township 9 North, Range 1 West of Humboldt Meridian, as shown by the official plat of the Government Survey of said Township.

EXCEPTING THEREFROM that portion thereof, described as follows:

BEGINNING at a point on the South line of said Lot 2, distant 10 chains Easterly thereon from the Southwest corner of said Lot 2; running
thence Northerly 14.50 chains on a line parallel with the West line of said Lot 2, to the waters of Big Lagoon;
thence in a Southeasterly direction, along the shore of the Big Lagoon, to the line between Lots 1 and 2 of said Section 13;
thence West along the South line of said Lot 2, 9.24 chains, more or less, to the point of beginning. *W*

LOUISIANA-PACIFIC CORPORATION

Dated December 28, 1988

Pat Williams
BY: Vice President

Pat Williams
BY: Assistant Secretary

State of Oregon
COUNTY OF Multnomah } s.s.
On this the 9th day of January 19 89

before me, the undersigned, a Notary Public in and for said County and State, personally appeared Lee C. Simpson and C.M. Keyes,

personally known to me or proved to me on the basis of satisfactory evidence to be the Vice President, and Assistant Secretary

personally known to me or proved to me on the basis of satisfactory evidence to be Assistant Secretary of the corporation that executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

Signature Nancy C. Jenkins
My Commission Expires: 9/20/89

FOR NOTARY SEAL OR STAMP

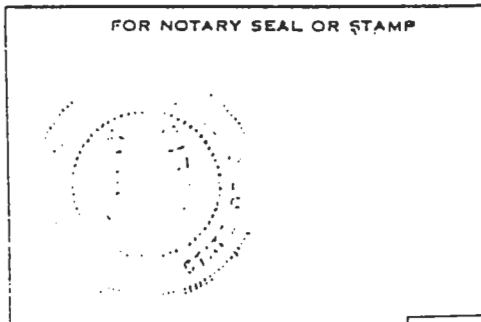


Exhibit "4"

24 CFR s 570.505

24 C.F.R. s 570.505

CODE OF FEDERAL REGULATIONS
TITLE 24--HOUSING AND URBAN DEVELOPMENT
SUBTITLE B--REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT
CHAPTER V--OFFICE OF ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND
DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SUBCHAPTER C--COMMUNITY FACILITIES
PART 570--COMMUNITY DEVELOPMENT BLOCK GRANTS
SUBPART J--GRANT ADMINISTRATION
Titles 1-35 current through June 26, 1996; 61 FR 33302
Titles 36-50 current through June 1, 1996; 61 FR 27766

s 570.505 Use of real property.

The standards described in this section apply to real property within the recipient's control which was acquired or improved in whole or in part using CDBG funds in excess of \$25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of an entitlement recipient's participation in the entitlement CDBG program or, with respect to other recipients, until five years after the closeout of the grant from which the assistance to the property was provided.

(a) A recipient may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the recipient provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either:

(1) The new use of such property qualifies as meeting one of the national objectives in s 570.208 (formerly s 570.901) and is not a building for the general conduct of government; or

(2) The requirements in paragraph (b) of this section are met.

(b) If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in s 570.504(b) (4) or (5), as applicable, shall apply to the use of funds reimbursed.

(d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any CDBG requirements.

[53 FR 41331, Oct. 21, 1988]

<<CHAPTER V--OFFICE OF ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND
DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT>>

Editorial Note: For nomenclature changes to chapter V see 59 FR 14092, March 25, 1994.

<<PART 570--COMMUNITY DEVELOPMENT BLOCK GRANTS>>

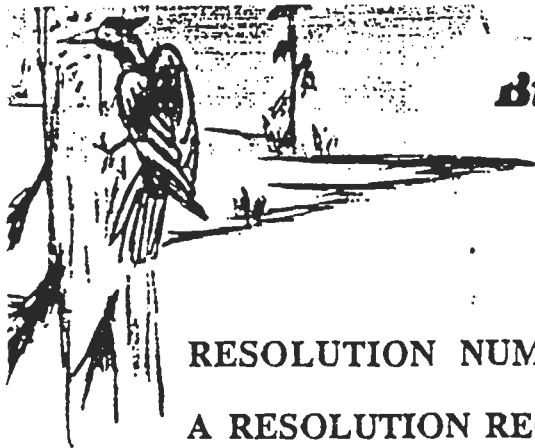
Authority: 42 U.S.C. 3535(d) and 5300-5320.

Source: 40 FR 24693, June 9, 1975; 50 FR 37525, Sept. 16, 1985; 50 FR 39091, Sept. 27, 1985; 53 FR 31239, Aug. 17, 1988; 53 FR 34437, Sept. 6, 1988; 54 FR 31672, Aug. 1, 1989; 55 FR 18494, May 2, 1990; 56 FR 41938, Aug. 26, 1991; 56 FR 56126, Oct. 31, 1991; 56 FR 56906, Nov. 6, 1991; 57 FR 27119, June 17, 1992; 57 FR 40067, Sept. 1, 1992; 57 FR 53397, Nov. 9, 1992; 59 FR 66598, Dec. 27, 1994; 61 FR 5209, Feb. 9, 1996, unless otherwise noted.

<<SUBPART J--GRANT ADMINISTRATION>>

Source: 53 FR 8058, March 11, 1988, unless otherwise noted.

24 C. F. R. s 570.505
24 CFR s 570.505
END OF DOCUMENT



Big Lagoon Rancheria

P.O. Box 3060
Trinidad, California 95570
(707) 826-2079

RESOLUTION NUMBER: 571-93

A RESOLUTION REQUESTING THE BUREAU OF INDIAN AFFAIRS TO ACCEPT ELEVEN (11) ACRES OF LAND ACQUIRED FOR HOUSING DEVELOPMENT BY BIG LAGOON RANCHERIA TRANSFERRED TO THE UNITED STATES IN TRUST FOR THE COLLECTIVE BENEFIT OF THE BIG LAGOON RANCHERIA.

WHEREAS, the Big Lagoon Rancheria is federally recognized Indian Tribe, eligible to have land held in trust for its benefit by the United States Government; and

WHEREAS, Big Lagoon Rancheria has purchased eleven (11) acres of land in Humboldt County, California, for housing development under Community Development Block Grant Project B-88-SR-06-0888, and desires that this land be conveyed to trust status for their collective benefit of the Tribe; and

NOW THEREFORE BE IT RESOLVED that Big Lagoon Rancheria Tribal Council hereby requests that the following described land located in Humboldt County, California, be conveyed to trust status for the tribe:

A.P. No. 571-131-10
(see attached land description)

BE IT FURTHER RESOLVED that the Chairperson is hereby authorized to sign all documents necessary to effectuate the conveyance of said land into trust status.

BE IT FURTHER RESOLVED that the Tribal council hereby asks that every effort be made to expedite this request.

CERTIFICATION

As Chairperson of the Big Lagoon Tribal Council, I do hereby certify that at a duly called meeting duly called and convened on the

Exhibit "6"

June 1, 1993, where a quorum of 5 was present, adopted this resolution by a vote of 5 for and 0 against, with 0 abstaining, and said resolution has not been rescinded or amended in any way.

Virgil Moorehead
Virgil Moorehead, Tribal Chairperson

6/1/93
Date

Beverly Moorehead
Beverly Moorehead, Tribal Secretary

6/1/93
Date

CERTIFICATION BY TRIBAL OPERATIONS	
DATE RECEIVED <u>7/1/93</u>	REVIEWED <u>at</u>
ORIGINAL TO BR <u>Realty</u>	DATE <u>7/1/93</u>
RETURNED TO TRIBE _____	
APPROVED _____	DATE _____

statements and make available such reconciliation upon request by the Commission's authorized representative.

- 10.4 The Tribe shall fulfill any other applicable requirements set forth 25 CFR part 571, subpart D-Audits.
- 10.5 All gaming related contracts that result in purchases of supplies, services, or concessions for more than \$25,000 in any year (except contracts for professional legal or accounting services) shall be specifically included within the scope of the audit conducted under this section.

11. Facility.

- 11.1 The tribe shall construct, maintain and operate a gaming Facility in a manner that adequately protects the environment and the public health and safety and in accordance with the NEPA process.

12. Enterprise and Facility Licensing.

- 12.1 The Tribe shall issue a license to a gaming Enterprise subject to the following terms and conditions:

- 12.1.1 The Management Contractor shall have fulfilled or committed to fulfill all requirements set forth in the Act, the Regulations, the Tribal State Compact and this Ordinance applicable to such Management Contractor.

- 12.1.2 The Management Contractor shall have fulfilled all requirements set forth in the Management Agreement that are capable of fulfillment at the time the license is to be issued.

- 12.1.3 The Enterprise shall carry out a program of training and instruction for job applicants accepted for employment by the Enterprise, and shall provide opportunity for upward mobility in employment. No person shall be employed by the Enterprise that has not either completed the foregoing training and instruction or demonstrated that he or she is possessed of the skills necessary to fulfill the requirements of the applicable position.

- 12.1.4 The Enterprise shall provide a competitive package of benefits for all full-time employees.

- 12.2 The Tribe shall issue a license to a gaming Facility as part of the license to the gaming Enterprise subject to the following terms and conditions:

NOTICE OF AVAILABILITY
FINDING OF NO SIGNIFICANT IMPACT
AND ENVIRONMENTAL ASSESSMENT
FOR
LAND ACQUISITION FOR BIG LAGOON RANCHERIA
HUMBOLDT COUNTY, CALIFORNIA

Based on the attached environmental assessment (EA) it has been determined that the proposed action by the Bureau of Indian Affairs Sacramento Area Office, which has reviewed and adopted the environmental assessment for taking into trust eleven acres of land purchased by the tribe with monies received from Housing and Urban Development (HUD) which will not have a significant impact on the quality of the human environment. Therefore, the Bureau has made a Finding Of No Significant Impact (FONSI) and consequently an EIS is not required.

No significant impact will occur to any cultural and natural resources.

Public comment regarding this decision will be accepted for thirty (30) days following the date of this notice.

For information or to obtain a copy of the FONSI and/or environmental assessment, please contact either the Branch of Natural Resources, Sacramento Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825, phone: (916) 978-4703 or the Big Lagoon Rancheria, P.O. Drawer 3060, Trinidad, California 95570, phone: (707) 826-1737.



Acting Area Director

1/31/94
Date

ENVIRONMENTAL
ASSESSMENT

PROJECT DATA

Existing Conditions and Trends:

The property condition has not changed from reported conditions in the Tribe's DHUD/CDBG application, as per DHUD site visits, IHS site visits and perk testing, and Bradely Engineering Soils report. All of these reviews supported Big Lagoon Rancheria's plans for land acquisition for housing development.

~~The property will remain vacant and unused unless the Rancheria purchases the property for housing development.~~

Project Description: (List multi-year activities by year)

The project is a land acquisition project for the development of future Tribal Housing. The Department of Housing and Urban Development has provided funding to purchase a parcel adjacent to the Rancheria, the Bureau of Indian Affairs will place the property in trust for the Rancheria, IHS will provide water system improvements and septic system installation for the new homes, with BIA/HIP funds utilized for new home construction.

see attached for implementation schedule.

ALTERNATIVES1. No federal funding of this project at this location:

If Federal funding is not provided, Big Lagoon Rancheria will be unable to continue new housing development efforts to meet the expanding housing needs of the membership.

If Federal funding is not provided, subject parcel will remain vacant.

2. No project at any location (No action alternative):

Big Lagoon Rancheria will be unable to develop new housing for its membership.

3. Other sites, modification of project design, alternate uses etc. -- Discuss merits and disadvantages of each:

see attached excerpts from the Tribe's DHUD/CDBG 1988 proposal.

LIST OF SOURCE DOCUMENTATION or REFERENCES

1. State Historic Preservation Office, Sacramento;
2. Northwest Coast Information Center; Roscoe Archaeological Report
3. Coastal Commission, Federal Programs
4. OIP/DHUD Site Reviews; Bradely Engineering Report
5. Land Appraisal Report
6. California Fish and Game
7. Humboldt County Planning Office

PROOF OF PUBLICATION

(2015.5 C.C.P.)

STATE OF CALIFORNIA

County of Humboldt

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-mentioned matter. I am the principal clerk of the printer of THE TIMES-STANDARD, a newspaper of general circulation, printed and published daily in the City of Eureka, County of Humboldt, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Humboldt, State of California, under the date of June 15, 1967, Consolidated Case Number 27009 and 27010; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit;

2/8

all in the year 19 94

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Eureka, California,

this 10 day of February, 19 94

[Signature]
Signature

This space is for the County Clerk's Filing Stamp

Proof of Publication of

Notice of Availability of Finding of
No Significant Impact and Environmental

Assessment for Land Acquisition for Big
Lagoon Rancheria, Humboldt County,
California

Public Notices

NOTICE OF AVAILABILITY FINDING OF NO SIGNIFICANT IMPACT AND ENVIRONMENTAL ASSESSMENT FOR LAND ACQUISITION FOR BIG LAGOON RANCHERIA HUMBOLDT COUNTY, CALIFORNIA
Based on the attached environmental assessment (EA) it has been determined that the proposed action by the Bureau of Indian Affairs Sacramento Area Office, which has reviewed and adopted the environmental assessment for taking into trust eleven acres of land purchased by the tribe with monies received from Housing and Urban Development (HUD) which will not have a significant impact on the quality of the human environment. Therefore, the Bureau has made a Finding of No Significant Impact (FONSI) and consequently an EIS is not required. No significant impact will occur to any cultural and natural resources. Public comment regarding this decision will be accepted for thirty (30) days following the

Public Notices

date of this notice. For information or to obtain a copy of the FONSI and/or environmental assessment, please contact either the Branch of Natural Resources, Sacramento, Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825, phone; (916) 978-4703 or the Big Lagoon Rancheria, P.O. Drawer 3060, Trinidad, California 95570, phone (707) 826-1737. Acting Area Director MICHAEL R. SMITH Date 1/31/94 G203472 2/8

memorandum

DATE: MAY 0 2 1994
ActingREPLY TO
ATTN OF:

Area Director, Bureau of Indian Affairs, Sacramento

SUBJECT:

Proposed Trust Acquisition - Big Lagoon Rancheria

TO:

Deputy Regional Solicitor, Pacific Southwest Region, Sacramento

The Superintendent of our Northern California Agency has received a renewed request to accept approximately 11 acres into trust for the Big Lagoon Rancheria. The subject property is contiguous to the existing Big Lagoon Rancheria in Humboldt County.

The parcel containing approximately 11 acres was purchased by the Indians of the Rancheria in 1989 with HUD Community Development Block Grant funds for housing purposes. The improvements on the property include a frame house and a mobile home currently constructed and occupied by tribal members.

The land acquisition request is set forth in tribal resolution No. 571-93 dated June 1, 1993, and by the same resolution, the Tribal Chairman was authorized to sign all documents necessary to complete the trust acquisition.

The Indian Land Consolidation Act (25 U.S.C. §2202) is the statutory authority for the land proposed for trust acquisition. The stated purpose for the acquisition being for Indian housing purposes. The proposal is consistent with the Secretary's land acquisition policy as set forth in 25 CFR 151.3. As the subject parcel is contiguous to the existing Rancheria boundaries, based upon the Secretary's July 19, 1990 policy memorandum, the Area Director has the authority to approve this particular request.

The preliminary title report dated February 2, 1993 lists as exceptions to coverage (1) the lien of supplemental taxes, if any, pursuant to Chapter 3.5 of the State Revenue and Taxation Code, (2) a 1940 easement to Pacific Gas and Electric, (3) rights of others in and to that portion of said lying within a 30-foot wide road right of way, and (4) any adverse claim based upon the assertion that some portion of the property is tide or submerged lands, or has been created by artificial or has accreted to such portions so created.

As to item 1, the title company will be requested to remove the exception from the final title report to be issued on the ALTA 1963 form.

Items 2 and 3 were previously accepted as exceptions by Grant Deed dated March 2, 1990 from Louisiana-Pacific Corporation to the United States of America for the purpose of providing access to the tribal membership of Big Lagoon Rancheria.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
SACRAMENTO AREA OFFICE

ACCEPTANCE OF CONVEYANCE

The undersigned, as the authorized representative of the Secretary of the Interior, Department of the Interior, Bureau of Indian Affairs, hereby accepts that grant of real property described in that Grant Deed dated December 29, 1989 from the BIG LAGOON RANCHERIA to the UNITED STATES OF AMERICA IN TRUST for the BIG LAGOON RANCHERIA. Said grant is accepted by the United States of America pursuant to the authority of the Indian Land Consolidation Act of January 12, 1983 (96 Stat. 2517; 25 U.S.C. §2202).

Date: JUN 29 1994

Ray H. Outcheck
Area Director

Acting

209 DM 8, Secretary's Order 3150
and 3177, and 10 BIAM Bulletin 13,
as amended.

(All-Purpose Acknowledgment to be Attached Hereto.)

Exhibit "B" to Grant Deed

Exhibit "10"

1994-20114-4

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California

County of Sacramento

On 6/29/94 before me, Bobbie Jo Alford, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Amy L. Dutschke
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Bobbie Jo Alford
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Acceptance of Conveyance
re Big Lagoon Rancheria
TITLE OR TYPE OF DOCUMENT

1
NUMBER OF PAGES

6/29/94
DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
Bureau of Indian
Affairs

N/A
SIGNER(S) OTHER THAN NAMED ABOVE

NATIONAL
INDIAN
GAMING
COMMISSION

'94

SUPT. 15-24 '97
ADMIN. lm
POST. NIR
DUE DATE 8/2/94
MEMO 5865
TELE Copy to Realty

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ROUTE Realty/Net. Res.
RESPONSE REQUIRED _____
DUE DATE _____
MEMO _____ LTR _____
TELE _____ OTHER _____
Misssent to
Central Calif. Agency
HB

July 7, 1994

Mr. Jadin Moore
Bureau of Indian Affairs
Central California Agency
1824 Tribute Road
Sacramento, California 95815

Dear Mr. Moore:

The National Indian Gaming Commission (NIGC) understands that the Bureau of Indian Affairs, Central California Agency (BIA-CCA) is in the process of considering a trust acquisition for gaming for Big Lagoon Rancheria near Trinidad, California. This acquisition is part of a proposed gaming management agreement between the Tribe and Gaming World Arcata, Inc.

The NIGC has responsibility for the review and approval of all gaming management agreements. Like the BIA-CCA, the NIGC must assure compliance with the National Environmental Policy Act (NEPA) and other applicable environmental and cultural resource laws and regulations prior to taking any Federal action that may significantly affect the quality of the human environment.

For the BIA-CCA, the Federal action triggering NEPA is the approval of the trust acquisition. For the NIGC, it is approval of the management agreement. Because both of these actions are connected to the same project and are in the same geographic location, Council of Environmental Quality (CEQ) regulations at Section 1501.5(a)(2) require designation of a lead agency to supervise the preparation of the environmental document.

We also understand that the Tribe and management contractor has hired Visions Engineering, Inc. to prepare a NEPA document for the trust acquisition. Because the NIGC will also require submission of a NEPA document prior to approval of the management agreement, it would seem most appropriate for Visions Engineering, Inc. to prepare one document for both agencies.

The NIGC would be happy to take lead agency status under NEPA for this project with the BIA-CCA acting as a cooperating agency. Another alternative would be for both agencies to act as joint leads under NEPA.

We would appreciate confirmation of this letter and a decision regarding the role of the BIA-CCA in the NEPA compliance process

Exhibit "11"

for this project at your earliest convenience so that we can notify the Tribe and management contractor as required. I can be reached at Area Code: (202) 632-0055, or at the address below. Thank you for your consideration in this matter.

Sincerely,



Terry Pfutzenreuter Heide
NEPA Compliance Officer

cc: Virgil Moorehead, Chairman
Big Lagoon Rancheria
Post Office Drawer 3060
Trinidad, California 95570

Angelo Medure
Gaming World Arcata, Inc.
Medure Place, Suite 100
438 R. Line Avenue
Ellwood City, PA 16117

RECORDING REQUESTED BY

HUMBOLDT LAND TITLE COMPANY

MAIL TAX STATEMENTS TO
AND WHEN RECORDED MAIL TO

Name United States of America
Address Trust for Big Lagoon Rancheria
City & P.O. Box 494879
State Redding, Ca 96049-4879

Reco. ~~ed~~ — Official Records
Humboldt Cour. C. rnia
Carolyn Crnich, Recorder

Recorded by Humboldt Land Title Company
Rec Fee 16.00
Non-Conform 12.00
Clerk: KS Total: 28.00
Jul 20, 1994 at 10:00

SPACE AB

DOCUMENTARY TRANSFER TAX \$ Exempt COMPUTED ON FULL VALUE OF PROPERTY CONVEYED. _____, OR COMPUTED ON
FULL VALUE LESS LIENS AND ENCUMBRANCES REMAINING AT TIME OF SALE _____



[Signature] HUMBOLDT LAND TITLE COMPANY
SIGNATURE OF DECLARANT OR AGENT DETERMINING TAX. FIRM NAME

Grant Deed

A.P. NO. 517-131-18¹⁵

ORDER NO. 21700 MP THIS FORM FURNISHED BY HUMBOLDT LAND TITLE COMPANY

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
BIG LAGOON RANCHERIA, A Federally Recognized Indian Rancheria

hereby GRANT(S) to

UNITED STATES OF AMERICA, in Trust for Big Lagoon Rancheria, a Federally
Recognized Indian Rancheria

the following described property in the Unincorporated
County of Humboldt, State of California:

See Description attached hereto and made a part hereof.

Title to the above described property is conveyed subject to any valid existing
easements for public roads, highways, public utilities, pipelines, railroads and any
other valid easements or rights-of-way now on record.

The ACCEPTANCE OF CONVEYANCE by the United States of America is to be attached hereto
as "Exhibit B" and recorded with this deed.

This Conveyance is made under the authority of the Act of January 12, 1983
(P.L. 97-459; 96 Stat. 2515; 25 USC 2202)

Dated December 29, 1989

BIG LAGOON RANCHERIA

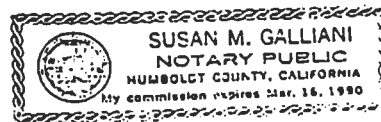
STATE OF CALIFORNIA }
COUNTY OF HUMBOLDT } SS.

By: [Signature]
Virgil Moorehead, Chairman

On January 11, 1990 before me, the undersigned,
a Notary Public in and for said County and State, personally
appeared VIRGIL MOOREHEAD

FOR NOTARY SEAL OR STAMP

_____, personally known
to me or proved to me on the basis of satisfactory evidence
to be the person whose name is subscribed to the
within instrument and acknowledged that he executed
the same.



[Signature]
Susan M. Galliani, Notary

DESCRIPTION

Lot 2 of Section 13, in Township 9 North, Range 1 West of Humboldt Meridian, as shown by the official plat of the Government Survey of said Township.

EXCEPTING THEREFROM that portion thereof, described as follows:

BEGINNING at a point on the South line of said Lot 2, distant 10 chains Easterly thereon from the Southwest corner of said Lot 2; running
thence Northerly 14.50 chains on a line parallel with the West line of said Lot 2, to the waters of Big Lagoon;
thence in a Southeasterly direction, along the shore of the Big Lagoon, to the line between Lots 1 and 2 of said Section 13;
thence West along the South line of said Lot 2, 9.24 chains more or less, to the point of beginning.

"EXHIBIT A" to the Grant Deed for the Big Lagoon Rancheria

AUG 12 1994

Terry Pfutzenreuter Heide
NEPA Compliance Officer
National Indian Gaming Commission
1850 M Street, N.W., Suite 250
Washington, D.C. 20036

Dear Ms. Heide:

This is in response to your letter dated July 7, 1994, whereby you have requested information regarding a gaming trust acquisition for the Big Lagoon Rancheria near Trinidad, California.

Please be advised that we do not currently have a trust acquisition pending for gaming for the subject rancheria. However, upon receipt of an application for trust status from the rancheria, we will be happy to coordinate our NEPA compliance activities with your agency.

If you should have any further questions regarding this matter, please feel free to contact Cynthia Williamson, Realty Specialist at the above address or by telephone at (916) 246-5141, Ext. 56.

Sincerely,
js/ V. Akins

Dr. Virgil Akins
Superintendent

cc: Virgil Moorehead, Chairman
Big Lagoon Rancheria
P.O. Drawer 3060
Trinidad, CA 95570

bcc: Administration
Chrono
Subject

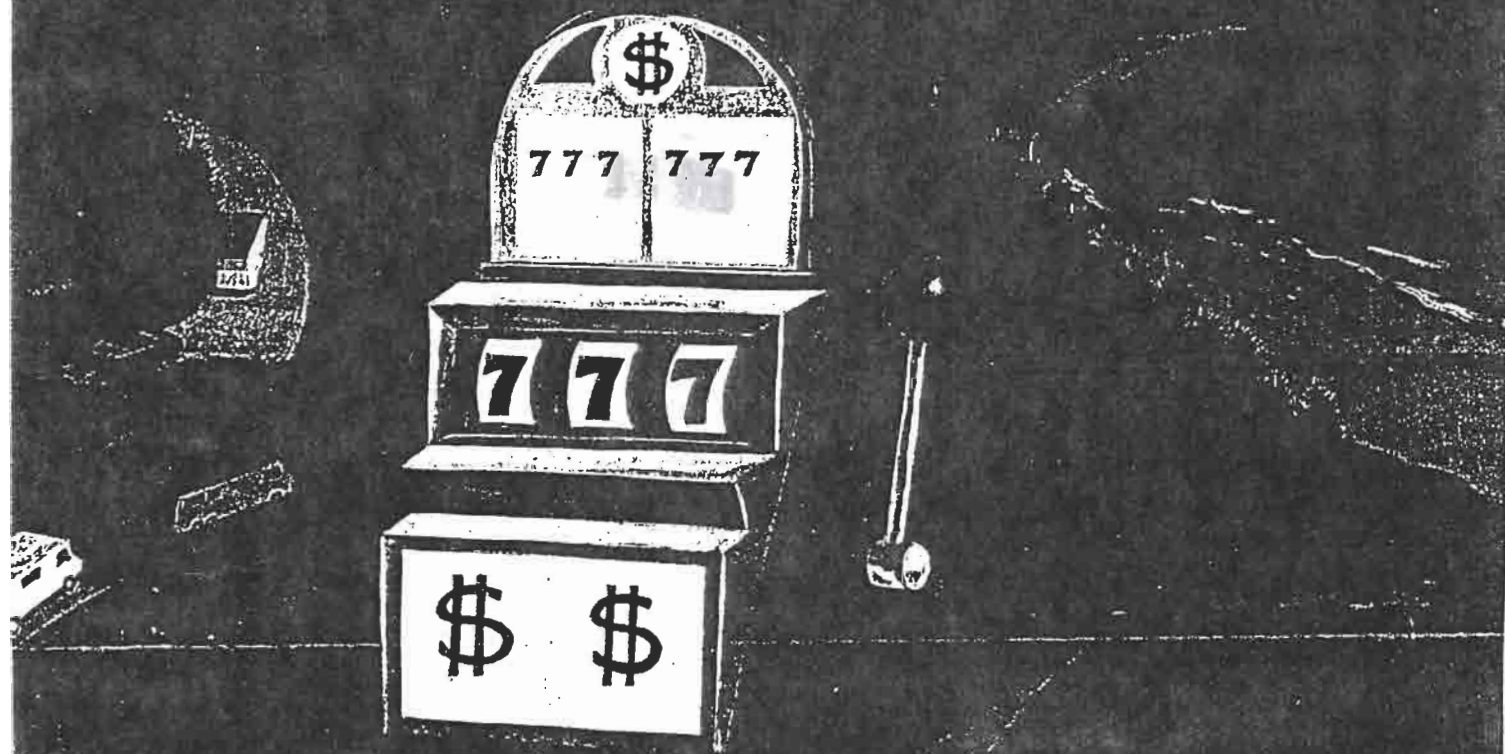
CWILLIAMSON 8/11/1994 FTTBL.DOC

Exhibit "13"

North Coast
JOURNAL

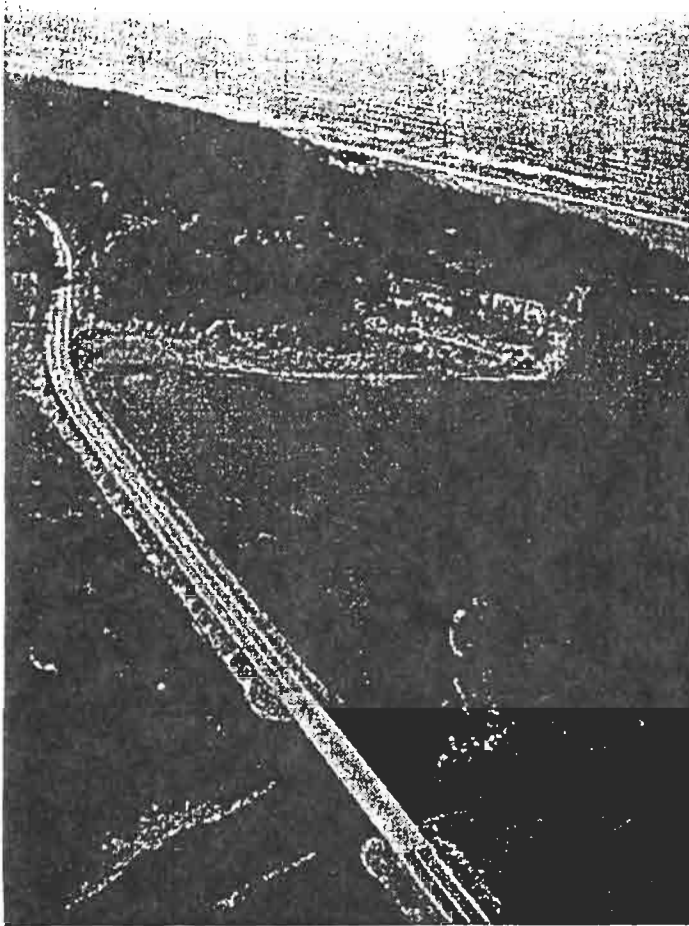
OF POLITICS, PEOPLE & ART • Humboldt County, California • Vol. VII, Issue 5 • May 1996

FREE



GAMBLE
ON
BIG LAGOON

Exhibit "14"



The rancheria's chairman insists the casino development will respect the lagoon's environment.

"I have four generations living at the rancheria — grandfather, mother and father, me and my kids," says Virgil Moorehead. "We plan on staying there the rest of our lives ... to say that we're going to go in there and tear it up, pollute the lagoon, is ludicrous."

Big Lagoon is big, and popular with fishers, boaters, duck hunters and swimmers. The three-mile sand spit separating it from the ocean provides excellent beach walking, driftwood collecting and agate hunting, with spectacular views of the sea, the lagoon and the redwood-covered hills.

The lagoon usually opens to the sea several times a year at its north end, making for "brackish" water that accommodates salmon and steelhead along with freshwater cutthroat trout and some salt-water species like flounder. Such rich aquatic life draws thousands of migrating shorebirds; the entire lagoon is a state wildlife area and the land around it is mostly state park. The main public access is at Big Lagoon County Park on the south, just west of the rancheria and casino site.

Controversy isn't new to the lagoon. At a recent county hearing, water and jet skiers protested 5 mph speed limits, while others called the noisy watercraft a nuisance to wildlife and a threat to swimmers.

But speed limits are small change compared with the big-money battle brewing over what may become the largest coastal resort development between San Francisco and Coos Bay. And unlike other recent controversies over land development, this fight was over — well, almost over — before it started.

Like any other federally recognized Indian tribe, the Big Lagoon Rancheria has a special sovereign status. It's not empowered to violate criminal laws or conduct diplomacy with foreign countries, but for most purposes the rancheria makes its own laws for its own land and people.

"We are a government," says Moorehead. And a few years ago the government of Big Lagoon Rancheria decided it wanted to explore developing a casino, just as the state has a lottery to raise money.

The era of commercial tribal casinos was inaugurated in 1988 with the passage by Congress of the Indian Gaming Regu-



PHOTO OF VIRGIL MOOREHEAD BY BRANDI ...

GAMBLE ON BIG LAGOON

by JIM HIGHT

FORGET THE MIDWAY. DITCH THE CRUISE SHIPS. Skip the amphitheater.

The biggest entertainment and tourism development on the North Coast is coming to the shores of Big Lagoon, brought to you by one of the smallest Indian tribes in California.

Opening in two phases beginning this summer, the Big Lagoon Casino has been designed by Alan Lapidus Associates, architects for Donald Trump and Disney World. It will hold as many as 1,200 people.

Along with bingo, slots, video poker and the usual table games, the casino will draw guests with live entertainment, full liquor service, a restaurant and a choice view of the lagoon.

And that's just the beginning.

Bankrolled by an aggressive casino investor, the 17-member Big Lagoon Rancheria is acquiring more than 130 acres of adjacent wooded land for development. Its favored "conceptual possibility": a resort with two hotels, an 18-hole golf course and RV park.

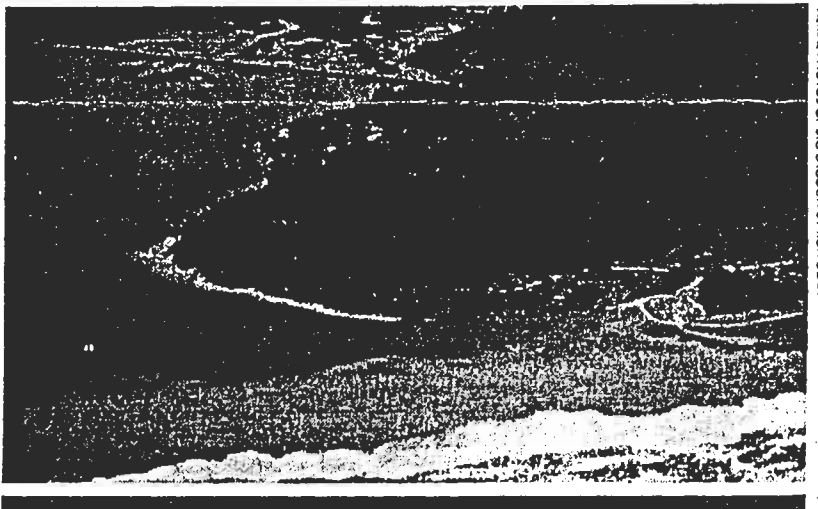
All of which makes the rancheria's neighbors extremely nervous.

Fulltime residents and cabin owners who share the lagoon's southern shores and nearby ocean bluffs worry about traffic, noise and light from the 24-hour casino complex. And they — along with county health officials and state park biologists — fear that the casino's sewage will pollute the groundwater and the lagoon.

The usual concerns about a big new development in any neighborhood are compounded in Big Lagoon by the fact that the rancheria's status as a sovereign entity frees it from any regulation by state or local government.

"It's everybody's worst nightmare come true," says Dan Frost, a Redding attorney who owns a cabin in the Big Lagoon Park Corp., an old neighborhood of 76 privately owned cabins.

"What we have are developers and gamblers coming into an area to do anything that they please, regardless of its effect on their neighbors and on the environment," says Frost.

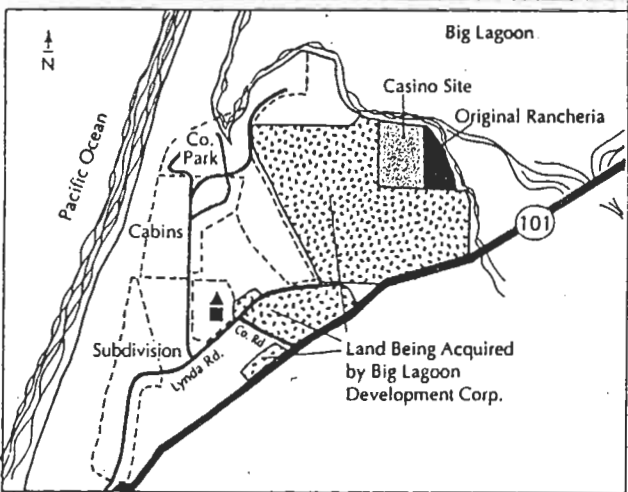
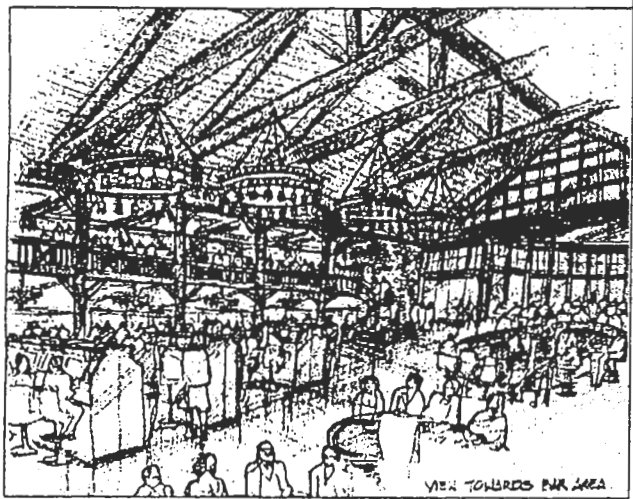
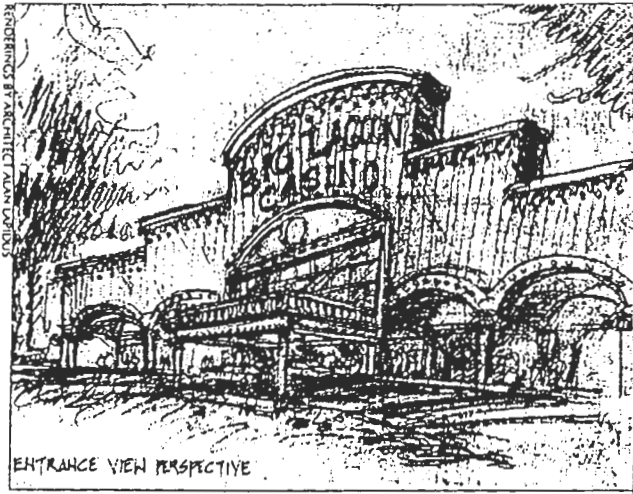


AERIAL PHOTOS OF BIG LAGOON BY RON DEAN

latory Act. IGRA allows tribes to establish casinos on tribal land as long as they draft and receive approval for a gaming ordinance from the National Indian Gaming Commission.

As tribal casinos have proven successful, they seem to have sprung up everywhere. There are two in Humboldt County — Cher-Ae Heights in Trinidad and the Lucky Bear in Hoopa — and rancherias in Blue Lake and Loleta have said they plan to develop casinos on their land. The attorney general's office — which contends tribal gaming is illegal but can't act because it lacks jurisdiction — estimates there about three dozen in the entire state.

Angry over what he calls "misinformation and rumors" about the casino project,



Tribal Chair Moorehead was initially reluctant to provide any facts beyond the bare description of a 44,000-square-foot, 1,000-seat casino outlined in his March 28 press release. But after a couple of phone conversations, he agreed to sit down for an in-depth interview.

Meeting in the rancheria's Hotel Arcata office, the soft-spoken, 36-year-old former McKinleyville High wrestler was joined by his father, Ted, and by Alfred Salazar, owner of Spirit Gaming Inc., the tribe's consultant and financial backer for the casino.

With artist's renderings and floor plans in hand, the three described a casino in the grand style of Vegas or Reno rather than the boxy, windowless

— albeit popular — casinos common on most Indian lands. "We're going to have entertainment, a restaurant and lounge," says Moorehead. "It's going to be a first-class, quality casino."

"This is not going to be another smoke-filled casino like some of these other temporary facilities," adds Salazar. "It will have a ceiling height of about 50 feet ... with a multi-level interior. And it sits right on the lagoon."

The cost of building the casino will be between \$8 million and \$10 million, a large chunk of work for local firms, which Moorehead is happy to list: McKenny & Sons, Oscar Larson & Associates, DL Fox Construction, Walter B. Sweet, Eureka Ready Mix Concrete Co. and Myrtle town Lumber & Supply. He estimates 200 to 300 persons will be employed once the casino opens.

While the rancheria has some assets, notably the Hotel Arcata, which it acquired with the assistance of Arcata economic development officials, the millions required to build what's envisioned at Big Lagoon come from Spirit Gaming. "We're the ones with the money," says Salazar.

The Denver-based company has grown rapidly from a small partnership into a large publicly held company which will soon appear on the NASDAQ stock exchange, according to Salazar. The firm has backed several other large tribal casinos, notably, the Spa, a four-star hotel developed into a casino resort by the Cahuilla tribe near Palm Springs. Spirit is also a major investor in a Wisconsin gambling enterprise owned by the Oneida Nation, which grossed \$172 million in 1995, according to the *LaCrosse Tribune*.

Salazar is the first to describe the potential development on more than 130 acres the tribe is in the process of acquiring. "The rancheria is looking toward the future," he says. "The overall plan calls for two hotels, an 18-hole golf course, a small RV site, gas station and convenience store."

A little more reluctant to predict such a large development, Moorehead explains that "this is one conceptual possibility we're looking at. The tribe has not finalized a master plan yet. The only thing definite is the casino."

In terms of land acquisition, however, a five-acre parcel south of Lynda Lane has been purchased and three parcels of more than 130 acres in all (most of which is owned by Louisiana-Pacific) are in escrow to Big Lagoon Development Corp., an entity set up by the rancheria and Salazar.

Given such ambitious plans, one question becomes obvious: How will the casino draw enough visitors to justify such an investment, especially with the popular Cher-Ae Heights casino just six miles south?

"We did a professional feasibility study with Hospitality Services in Los Angeles," says Salazar. "They gave us the statistics about the number of visitors (to the county) ... and the market for available discretionary gambling dollars in the area. They recommended a configuration of services that would let us compete in the market."

Even a competitor, Dale Risling, tribal chairman of the Hoopa Valley Indian Reservation, acknowledges that "a nice casino probably would do well if it's designed comfortably and has a restaurant ... A lot of casinos are just bingo halls with a little casino area, and most of them don't sell liquor."

Upon Big Lagoon, the neighbors, local officials and state park and Fish and Game biologists aren't worried about the Big Lagoon Casino floundering in a saturated gambling market. Quite the opposite. They're worried about seeing their beloved lagoon turned into a North Coast version of Lake Tahoe. Or seeing the lagoon polluted or the groundwater rendered undrinkable from thousands of toilet flushes per day.

"I've been going up there for 68 years and I would hate to see the commercialism that's coming," says Eureka resident Helen Person, a cabin-owner. "I'd also hate to see anything happen to the lagoon (or the groundwater). I don't know how they are going to be able to have many, many customers and have their sewage treated properly."

"There is a great potential for an environmental disaster there if things are not done properly," says Dennis Kalson, county environmental health director. "Where do you (dispose of large quantities of sewage) on a piece of property like Big Lagoon? Can you do that without polluting the aquifers or the lagoon itself? I can't answer those questions, and I hope that they've planned all this beforehand. If not we'll have to deal with the aftermath."

The specter of runaway sewage problems from a tribal casino built without county review came to life a couple years ago in the small town of Rumsey, Calif., near Clearlake.

"(The Cash Creek Indian Bingo casino) put in a septic system that was not sized adequately to accommodate all the customers they had. It ran over and raw sewage ran down the hillside onto a highway," said Tom To, Yolo County director of Environmental Health. At the county's request, the problem was quickly corrected, says To, who believes it happened because the casino drew far more guests than its builders — the Wintun tribe — anticipated.



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WINE TASTING & FARMER'S MKT.
PRESENTED BY:
MAINSTREET ARCATA
DESIGN: JERRY LEE WALLACE

But if its sewage plans had been reviewed prior to building, "that would have solved the problem before it started," he says.

The possibility of casino sewage polluting groundwater has alarmed people in the Loleta area, where the Rohnerville Rancheria recently announced plans to construct a casino on Singley Hill.

The county and the Indian Health Service had assisted the rancheria in designing a septic system for a small housing development, but when the tribe announced plans to build a casino on the same site, concern and confusion escalated. Who would review the tribe's plans? Would any government entity — aside from the rancheria itself — be responsible?

"The environmental assessment for that area talked about a maximum buildout for that piece of property being 14 to 20 homes," remarks First District Supervisor Stan Dixon. "That's all the soil could tolerate for an environmentally sound septic system ... How can anyone suggest that a casino that employs several hundred people and accommodates from 2,000 to 4,000 visitors a week (as the tribe predicted) could operate there safely?"

Dixon says he wrote and telephoned repeatedly to the National Indian Gaming Commission, the agency that must sign off on tribal gaming ordinances before casinos can be built. He finally reached someone in authority and heard that "the commission does have jurisdiction and the project is subject to the National Environmental Policy Act ... NEPA requires that they look at environmental impact of sewage disposal and water quality and traffic issues."

After informing NIGC official Terry Hyde about the environmental problems on Singley Hill, Dixon says "I felt encouraged. She promised me she'd get me a response ... I'm hopeful they will put a stop order on the casino."

Yet the NIGC has only one field representative for California, with no direct telephone — only voice mail in Washington, D.C., a message to which was not returned. So review of sewage system designs, monitoring of water quality and other environmental impacts is likely to be spotty at best.

(At press time, the future of the Rohnerville Rancheria's Bear Paw Casino in Loleta was in doubt. The temporary structure originally planned has been deemed insufficient for North Coast winters, and tribal Chairman Wayne Moon said the project's financing is in question. Plans for a casino in Blue Lake are also on hold. "We've been trying for several years, but we've never been able to get the funding," says Arla Ramsey, tribal administrator.)

The Mooreheads seem eager to reassure those who are worried about the resort and frustrated that non-Indians don't understand what Indian sover-

eighty means.

"The California Indians were paid about six cents an acre to legally affirm the taking of the state from us," says Ted Moorehead, 67. The former longshoreman remembers spurning offers from L-P and others to sell his Big Lagoon lands over the years. "L-P lawyers came to me and told me they'd buy me another place away from the Lagoon (if I sold out.) I said 'Buy me the Eureka Inn and I'll do it.'"

So he feels no need to apologize today for being in a position where his community can purchase L-P land to create a project that will put his grandchildren through college. About potential sewage problems, the younger Moorehead offered some strong assurances. He says, and state officials confirm, that the rancheria is voluntarily obtaining environmental reviews from the state Water Quality Control Board. And when the development's sewage system is designed, the county environmental health department will be given an opportunity to look it over and comment.



PHOTOS BY CHERYLE EASTER

"We have engineers designing everything ... The engineers have licenses. When they do something they're putting their licenses on the line. They're not going to do something that's going to jeopardize their licenses, and we're not going to do anything that jeopardizes our home or our reputation."

Indeed, the rancheria has hired a respected local firm, Oscar Larson & Associates, to design its waste water disposal and freshwater systems. "In our discussions with the rancheria, it's very clear that we're trying to meet or exceed the county's health requirements and the standards imposed by the regional board (for waste water disposal)," said Marty McClelland, Oscar Larson operations manager.

It's a profound twist of history that puts tribes like the Big Lagoon Rancheria in a position to use money from gambling investors to do something akin to what was done to them by European-Americans: acquire

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undeveloped land and use it for purposes that are repugnant to the long-term inhabitants or neighbors.

The Moorehead's Yurok and Tolowa ancestors were dispersed and made landless over the decades following white settlement in the mid-1800s. While family members lived in Big Lagoon since the 1930s, the tribe only obtained title to the nine-acre Big Lagoon Rancheria under the Homeless Indians Act in the late '60s, according to Moorehead.

When it acquired the 11-acre parcel next door, it applied to the BIA to have it brought into trust status, in which the U.S. government holds title to it on behalf of the tribe. After trust status was obtained, the casino development could proceed.

The rancheria plans to seek a transfer of its Hotel Arcata liquor license up to the casino. A spokesman for the Alcoholic Beverage Control Department says that liquor service would have to be separate from the casino. Other casinos in California with liquor licenses manage this with glass barriers or low walls.



Helen Person (page opposite) of Eureka, who owns a primitive cabin adjacent to the rancheria project, has been vacationing at Big Lagoon for 68 years. Another neighbor, Phyllis Helligas, left, said she worries about potential water pollution, lights from the casino — and traffic.

Opponents of the casino development would have little standing in opposing the license transfer, since ABC rules require only that people living within 500 feet of the liquor sale site need to be notified. And the rancheria's closest neighbors are well outside that distance.

Stopping the BIA from taking additional lands into trust for the rancheria is probably the only legal avenue that neighbors, county officials and Big Lagoon users have to stop or slow down any development beyond the casino.

Redding BIA staff members say that they know of no cases in which a tribe's application to take land into trust was denied due to complaints or concerns about a casino's impact on the environment. IGRA puts some restrictions on tribes taking newly acquired land into trust for casinos, but these may not even apply in this case since gambling will probably be limited to the rancheria's existing trust lands.

What is known is that local opposition will be in-

tense. "We're going to be working with the BIA to oppose any trust status for the nearby property," says Frost, who mentions he's already been hailed outside his cabin by a would-be gambler asking "where's that new casino?"

In that effort, Frost and some of his Big Lagoon neighbors may have allies in other parts of the state where potential tribal gambling developments have drawn opposition. In Placer County, the Auburn Rancheria is reportedly holding up on plans to acquire 60 acres of rural land off Highway 80 for gaming purposes because of local resistance.

"The Placer County Board of Supervisors has unanimously voted that anything that (the rancheria) does in the county should conform to local planning and licensing ordinances," says County Supervisor Kirk Uhler. "We're intent on seeing that our authority as a government agency to regulate land use will be respected, and we'll do whatever we have to do to make sure (of that)."

But Big Lagoon opponents probably won't gain many backers from San Diego County, where three huge casinos are thriving to the point where American Indian tribes and individuals have become significant donors to nonprofit groups. The Barona, Viejas and Sequan bands have set up their own regional health services that tightly monitor the casinos, other tribal facilities and even serve non-Indians.

Not interviewed for this story were any of the unemployed who might seek a job at Big Lagoon Casino, or people who'd like a fancier place to play their favorite games of chance, or tourists who have seen enough redwoods, or musicians who'd appreciate another nightclub venue.

There's no question that Big Lagoon Casino can provide jobs and pay checks that Humboldt County needs. The net impact on the regional economy will surely be positive, especially if it draws some visitors who wouldn't otherwise visit Humboldt County.

Losses will be harder to figure. Will a busy casino inflict a new level of noise on a lagoon already popular with jet-skiers? Will it spoil the view or pollute the lagoon? And how many new cases of "pathological gambling," as psychology researchers refer to it, will take root on the shores of Big Lagoon?

One loss that can be tallied already is the spoiling of whatever good spirits were left between the small band of Indians living on one side of the point and the non-Indians living and vacationing on the other. As one side takes hold of a long-awaited opportunity, secure in the justice of its position, the other is frustrated by a degree of powerlessness that its members have probably never felt in quite the same way. | |

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TWENTY FIVE YEARS:

Lawana Martin

THIRTY YEARS:

Phyllis Dorey

THIRTY FIVE YEARS:

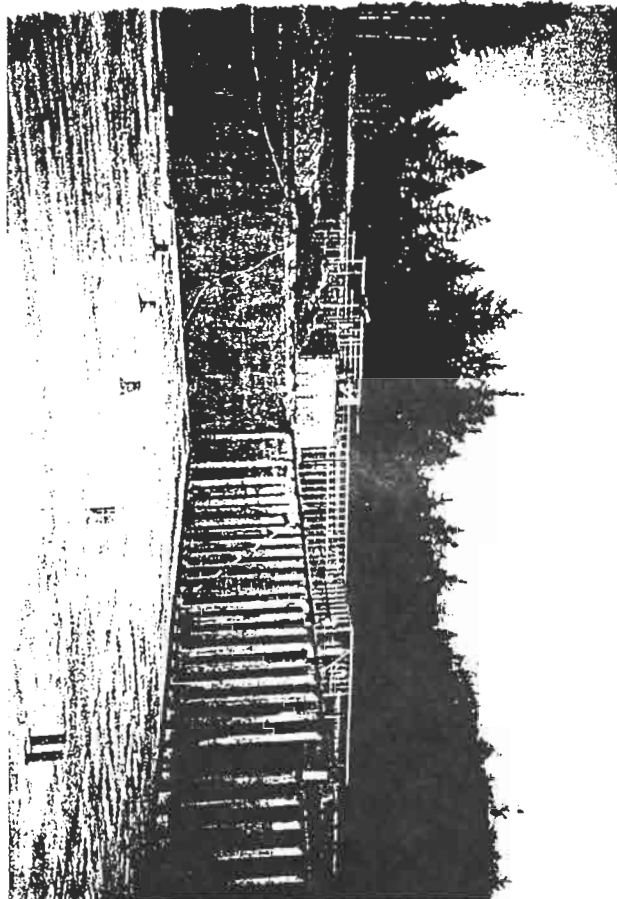
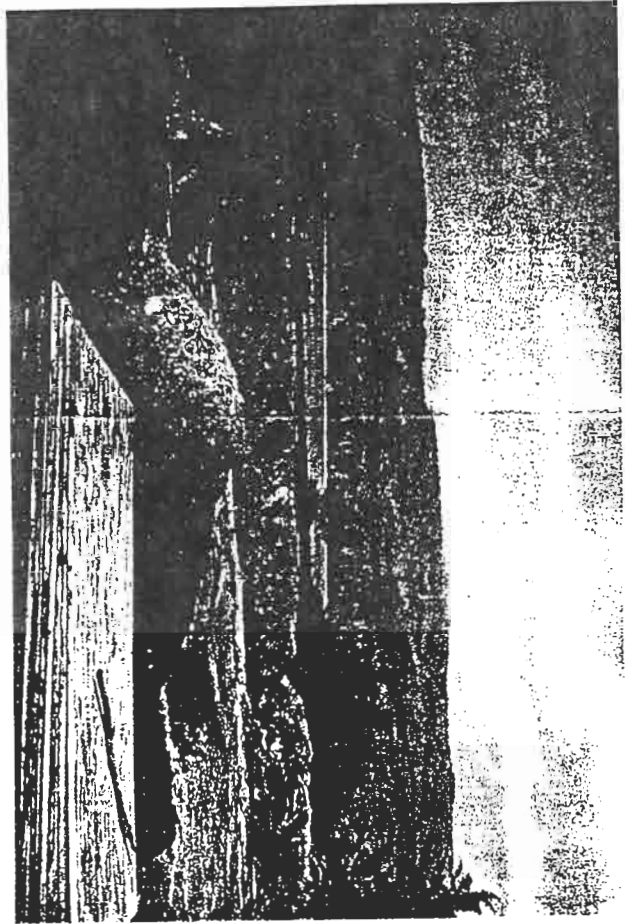
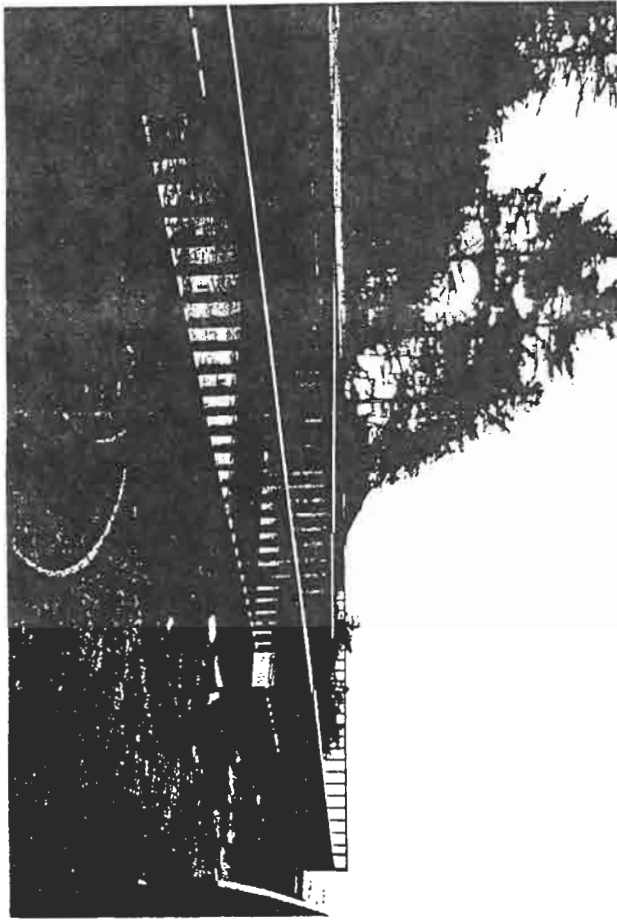
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5-25-96 Big Lagoon Rancheria Casino

Exhibit "15"



**HUMBOLDT COUNTY
DEPARTMENT OF PUBLIC HEALTH
DIVISION OF ENVIRONMENTAL HEALTH
100 H STREET, SUITE 100, EUREKA, CA 95501**

(707) 445-6215
FAX (707) 441-5699

June 3, 1996

Oscar Larson & Associates
317 Third Street
Eureka, CA 95501

ATTN: John De Boice

RE: Big Lagoon Casino Sewage Disposal System, Big Lagoon,
California

Dear Mr. De Boice:

Pursuant to our recent meeting, the Humboldt County Division of Environmental Health (HCDEH) would like to thank you for the opportunity to provide input and assistance into the sewage disposal aspects of the Big Lagoon Casino Project. As you are aware, several inquiries have been received by our office in regard to the project. It was, therefore, both helpful and informative to be able to participate in the May 15, 1996 meeting.

From that meeting, there was communicated a desire to address the potential environmental health impacts that the project would present with respect to the predicted sewage flows. Due to a number of limiting conditions at the site, it is apparent that Humboldt County Sewage Disposal Regulations and North Coast Regional Water Quality Control Board Requirements cannot be met. To help minimize impacts, HCDEH recommends the following:

1. Quantities of wastewater flow must be accurately established. Flows from existing comparable facilities should be used in projecting maximums.
2. The nature of the wastewater must be established and documented. Nitrate loading must be quantified. The proposed Wisconsin Mound will provide minimal nitrogen removal from the waste stream prior to discharge into groundwater.
3. A reserve (repair) leachfield area must be identified or contingency plans in place to established criteria to respond to the possibility of disposal field failure.
4. The best available pre-treatment technologies should be considered (i.e., recirculating gravel filter, intermittent sand filter, aeration, etc.). Pretreatment

PROMOTING A HEALTHFUL HUMAN ENVIRONMENT

Exhibit "16"

Oscar Larson & Associates
ATTN: John De Boice
June 3, 1996
Page 2

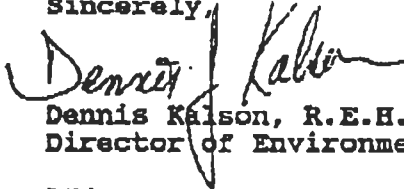
RE: Big Lagoon Casino Sewage Disposal System, Big Lagoon, CA

of high strength wastewater to a level equivalent to domestic waste strength levels is recommended. It would be prudent to separate restaurant wastes from other sources.

5. Effluent filters should be placed at outlets of septic tanks and grease traps.
6. Dual pumps should be installed in pump chambers.
7. Microdosing should be considered for effluent disposal.
8. Low flow fixtures should be considered but not incorporated into design criteria.
9. Reconsider the proposed curtain drain as it does not meet Basin Plan Criteria for slope or impermeable layers. As currently proposed the curtain drain may act as a conduit to sewage effluent.
10. A written assessment of the impact of the proposed system upon the quality of public waters and public health should be provided. Included in this assessment should be a groundwater monitoring program and a groundwater mounding analysis.
11. The designer should prepare and submit operations and maintenance instructions.
12. Construction of systems of this size and complexity needs to be in substantial conformance with plans and specifications. The professional who prepared the plans should certify that the system was installed in conformance with the plans.

We consider these recommendations to be minimum standards of quality assurance. Should new information be submitted to this department for review, we would be pleased to provide our assistance. If you to have any questions or need any clarification, please give me a call at (707) 445-6215.

Sincerely,



Dennis Kalson, R.E.H.S.
Director of Environmental Health

DK/se

cc: Virgil Moorehead, Hotel Arcata
Bill Rodriguez, NCRWQCB
Paul Kirk, Supervisor
Paul Dalka, R.E.H.S.

Comments on proposed onsite wastewater treatment and disposal system for Big Lagoon Rancheria Casino

Coastal lagoons are diverse and complex ecosystems that provide many beneficial values and functions. Lagoons are also fragile ecosystems. Due to their hydrology, lagoons are extremely susceptible to nutrient enrichment and eutrophication. Many of the coastal lagoons in both Humboldt and Del Norte Counties have been impacted by anthropogenic activities such as grazing, roads, impacts to fringe wetlands, and development. A potential source of nutrient enrichment to lagoons is from diffuse pollution (non-point source runoff). A major component of diffuse pollution can be groundwater contamination from onsite wastewater systems.

Coastal lagoons are transition areas between fresh water regions and saline regions. In saline and brackish waters, nitrogen and phosphorus ratios are low and nitrogen tends to be the limiting nutrient controlling growth of aquatic plants. Due to the intrusion of saline waters, there is a strong possibility that Big Lagoon is nitrogen limiting. Excess nitrogen loading to Big Lagoon could stimulate aquatic plant growth leading to eutrophication.

The proposed onsite wastewater system (Wisconsin mound) will provide minimal nitrogen removal from the wastewater load prior to discharge into groundwater. Nitrogen, found in the ammonia phase, further reduces dissolved-oxygen concentrations of natural waters as it is oxidized bacterially to nitrate. Also, ammonia can potentially be toxic to fish under certain environmental conditions. The proposed onsite system will allow conversion of ammonia to nitrate (nitrification), as long as the subsurface soils below the Wisconsin mound remain aerated (unsaturated). To promote nitrification, it is important that groundwater mounding below the Wisconsin mound is minimal to provide at least a 2 foot unsaturated zone in the native soil. However, nitrogen in the nitrate form is essential a conservative substance once in groundwater (minimal denitrification occurs). It is likely that the groundwater flow under the project site is towards Big Lagoon. A high probability exists that nitrate and unconverted ammonia (nitrogen) could enter Big Lagoon as impacted groundwater from the proposed onsite wastewater system infiltrates into the Lagoon.

To summarize, the proposed onsite wastewater system (Wisconsin mound) is an inappropriate onsite wastewater system for this project due to wastewater quantity and quality, and proximity to Big Lagoon. To address some of the proposed wastewater system impacts, the following, at a minimum, should occur :

- Groundwater mounding analysis below the proposed wastewater disposal area.
- Cumulative Impacts Study of nutrient loading, potential eutrophication, impacts from pathogens, etc., to Big Lagoon from the proposed wastewater system.
- Properly design the proposed wastewater system to optimize treatment and nutrient removal. Utilize modern materials and methods in the design of the wastewater system, focusing on layout, pumping chambers, pumps, distribution system, dosing, controls, etc.
- Initiate a background water quality sampling program for Big Lagoon.
- Initiate a long-term water quality monitoring of Big Lagoon.

1 **PROOF OF SERVICE**

2 I am employed in Shasta County, California; I am over the age of 18 years and not a party to
3 the within action; my business address is McNeill & Belton, Attorneys at Law, 280 Hemsted Drive,
Suite E, Redding, CA 96002; on this date I served:

4 **COMPLAINT AND PETITION FOR REVIEW AND RESCISSION OF**
5 **ACCEPTANCE OF CONVEYANCE OF LAND IN TRUST STATUS,**
6 **AND FOR ENVIRONMENTAL REVIEW REQUIRED**
7 **UNDER THE NATIONAL ENVIRONMENTAL PROTECTION ACT,**
8 **AND STATEMENT OF REASONS THEREFORE.**

9 **BY MAIL:** I mailed a true copy thereof in a sealed envelope, with postage thereon fully
10 prepaid, in the United States Mail at Redding, California, addressed as set forth below.

11 **BY FACSIMILE:** I sent a true copy of the above document via facsimile transmission to
12 the office(s) of the parties as set forth below on this date before 5:00 p.m..

13 **BY PERSONAL SERVICE:** I caused such true copy of the above document to be hand-
14 delivered by David Ransom to the office(s) of the parties as set forth below.

15 Virgil Moorehead
16 Big Lagoon Rancheria
17 P.O. Box 3060
18 Trinidad, California 95570

19 **BY FEDERAL EXPRESS:** I caused such true copy of the above document to be
20 delivered to Federal Express for overnight courier service to the office(s) of the parties as set
21 forth below.

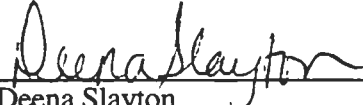
22 I am readily familiar with the firm's practice of collection and processing correspondence for
23 mailing. Under that practice it would be deposited with the U.S. postal service on that same day with
24 postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the
25 party served, service is presumed invalid if postal cancellation date or postage meter date is more than
26 one day after date of deposit for mailing in affidavit.

27 I hereby certify that the document(s) listed above was/were produced on paper purchased as
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STATE: I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

FEDERAL: I declare that I am employed in the office of a member of the bar of this court at
whose direction the service was made.

Executed on August 26, 1996 at Redding, California.


Deena Slayton