Stand Up For California!
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April 12, 2011

Amy Dutschke
Regional Director, Pacific Region
Pacific Region – Bureau of Indian Affairs
2800 Cottage Way
Sacramento, Ca. 95825

RE: Comments – Draft Environmental Impact Statement ("DEIS") for the Big Sandy Rancheria Band of Western Mono Indians' Proposed Casino and Resort Project, Fresno County, California

Dear Ms. Dutschke:

This letter represents the comments of ***Stand Up For California*** regarding the proposed project of the Big Sandy Rancheria ("Tribe") on an allotment parcel ("Subject Land") approximately 12 miles from the historic Rancheria.[1] The proposal is for a gaming and entertainment facility that includes a restaurant, bar; hotel and conference center a multilevel parking garage, water and wastewater treatment plant, a water supply system including water storage tanks and an access driveway.

In sum, the project is a considerable undertaking for a remote rural location. The proposed project as described is much more suited for a location zoned commercial or industrial and in proximity to a greater population base with appropriate infrastructure. The lack of appropriate location raises serious questions about the potential viability of this project and its significant direct and indirect impacts on the surrounding area in the foreseeable future.

I. Purpose and Need:

The principal goal of Federal Indian policy is to promote tribal economic development and tribal self-sufficiency and strong tribal government. This is stated in the Findings in the Indian Gaming Regulatory Act ("IGRA"). We understand the stated need for jobs, and the need to protect and preserve significant historic properties, although these needs are unrelated to the purpose of IGRA. However, the DEIS states a purpose and need for the project this is novel. Nowhere in IGRA is there a statement that indicates tribal government gaming is to ***"provide financial benefits and financial security to the individual allottee"*** for whom BIA holds the subject land in trust.

[1] Due to the historical, geographical, cultural, leasing and other issues pertinent to the Big Sandy Tribe's proposed casino on the McCabe allotment, *Stand Up For California* is currently conducting further investigation and fact finding. As a result, our organization anticipates submitting supplemental comments.

(1) "to provide financial benefits and financial security to the individual allottee for whom BIA holds the subject land in trust and
(2) to improve the socioeconomic status of the allottee and the Tribe by providing a sufficient revenue source that will be utilized to build a strong Tribal government…"
(Executive Summary, Purpose and Need ES-1)

Considering the stated purpose ***"to provide financial benefits and financial security to the individual allottee"*** there is no alternative in the DEIS, although alternatives are a universally required element. Has the Tribe included this allottee in its casino per capita distribution plan? That would ***"provide financial benefits and financial security to the individual allottee".*** It seems the Tribe is putting forward only one alternative of a casino –only a casino—is needed because only a casino will satisfy the individual allottee and the Tribes economic goals.

II. Allotted Shopping -- New Frontier of Gaming Proliferation:
As director of *Stand Up For California*, I attended the 2006 Rulemaking Hearing for Section 20 of the IGRA in Sacramento. Briefly discussed was the confusion in IGRA language regarding individually owned allotment lands. Several Indian persons who spoke that day also addressed this issue stating that their allotment parcels needed to be protected from gaming interests and from other tribes attempting to assert governance over their private property. The phrase ***"allottee shopping"*** was coined.

California has over 200 individually owned allotment parcels scattered throughout the state. This creates a heighten public interest in the need to clarify whether or not Class III gaming may lawfully be conducted on ***Allottee lands*** held in the name of individual Indians. These are lands *outside* of the exterior boundaries of any established reservation/rancheria. Some Allottees have willing sold or (from the tone of the Indian persons at the above mentioned meeting) have been coerced to sell their trust lands to a federally recognized tribe. In this specific case the McCabe allottee appears willing to enter into a lease agreement with the Tribe.

This raises a number of administrative issues:

- Is there a federal regulatory process for allotment lands in trust *outside* the boundaries of a reservation/rancheria to transfer to or submit to the governance of a tribe after 1988?

- What demonstrable evidence must a tribe or allottee provide or the Federal Government recognizes in order to make a determination that a specific Indian allotment parcel qualifies for gaming?

- The Terms of the lease between the Tribe and the Allottee directly and indirectly affect the State, local government, the surrounding community of citizens. This raises sub-questions:

    - What if the allottee decides the Tribe's governance over the land is unjust and wishes to terminate the lease or the tribe's governance?

- What if the Tribe fails to make payment to the Allottee and the lease is terminated – there then sits a massive structure on land that is not under the governance of a Tribe that potentially becomes an economic detriment to the allottee, an eyesore and public nuisance.

- What is the criteria and regulatory process for the Secretary of the Interior to approve a business lease that encumbers an individual Allottees federal trust lands for more than 7 years? Does this lease provide to the Tribe an exclusive, inheritable right to use exclude and possess the individual's allotment land? Can a lease be approved that limits the future rights of heirs?

- Does the criteria and regulatory process found in Part 161 provide the Secretary of the Interior with criteria for approval of a *tribe to allottee* lease on allotment lands outside the exterior boundaries of a reservation/rancheria for the sole purpose of a casino?

A. Individual Trust Allotments *Outside* of Reservation/Rancheria Boundaries

The question surrounding allotment land in trust for individual Indians needs clarification due to the definition of Indian lands in the IGRA being in conflict with Indian lands for gaming in section 20. IGRA contains a general prohibition against gaming after October 17, 1988.

> **25 U.S. C. section 4 [2703] (4)**
> (A) all lands within the limits of any Indian reservation; and
> (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the united States against alienation and over which an Indian tribe exercises governmental power.

Section 20 of IGRA which permits gaming by exceptions for certain lands establishes a cutoff date of 1988.

> **25 U.S.C. section 20. 2719**
> **(a)** Except as provided in subsection
> (b), gaming regulated by this Act shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian TRIBE after the date of enactment of this Act unless—(Capps added)

Allottee shopping appears to be yet another avenue for the proliferation of gaming that has the arguable potential to ***fraudulently exercise the exceptions or definitions for gaming on Indian lands.*** It is also interesting to note here, there is a common denominator in these attempts to place gaming on allottee lands. Attorney John Peebles or his law firm Monteau and Peebles has been the attorney of record in the following two examples. Today, he represents the Big Sandy Tribe.

The first example includes:

- The Alturas tribe attempted to construct a gaming facility on fractional interest allotment land over which it recently attempted to exercise governance--land which is a significant distance from the tribe's established land base and recently proclaimed to be under the tribe's governance.

Because of the lack of clarity in the IGRA language, the Alturas tribe began to move forward with the construction of the casino. Thankfully, in this case, the NIGC and the Department of the Interior ("DOI") acted quickly at the request of the Karuk Tribe and the heirs of the fractional interest land who presented evidence that a "will" had been forged. Today, the Alturas Tribal government is in turmoil and not recognized by the Bureau of Indian Affairs, thus unable to collect the 1.1 million dollars annually from the State of California's Revenue Sharing Trust Fund for non-gaming Tribes.

The second example includes:

- The Santana family, an individual Indian family owning trust allotment land as of 2000, attempted to transfer governance of this very marketable location in a City of Cloverdale (population: 8,000) to the Hopland tribal government located approximately 50 miles away.

Attorney Peebles continues his efforts to place a casino on allotment land in Sonoma County. The Santana family is now suing the recognized Cloverdale Tribe over "... who are the legitimate members of the tribe and who can act on their behalf", said John Peebles representing the tribal members who brought the legal action. "We don't think the people in power are those individuals." (*Cloverdale tribe's schism could affect casino plans*, by Clark Mason, The Press Democrat, December 5, 2010)

1. Legal Land Status

The McCabe allotment, the above noted Subject Land, may fit the definition of Indian lands (18 U.S.C.S. section 1151), but that is not the end of the inquiry, because IGRA contains a general prohibition—with certain limited exceptions—against gaming on Indian lands. The issue of when Big Sandy began to exercise jurisdiction over the McCabe allotment has not been answered to satisfaction. Indeed, it would appear that the NIGC determination for gaming[2] on this allotment not only cherry-picked the facts, omitted contrary facts, and failed to use a proper standard to properly evaluate the evidence for determination of the status of the land for gaming.

More importantly, is the NIGC the proper agency to make a determination for gaming in this specific instance? Unquestionably, the determination of legal land status for gaming is interwoven into NIGC statutory authority to make final agency decisions when (1) presented with a tribal gaming Management contract (2) a tribal gaming ordinance or (3) defined enforcement actions. However, IGRA while providing the Commission with statutory authority to make final agency actions in the regulation of gaming did not provide NIGC with authority for

[2] Memorandum dated September 2006, from Attorney John Hay, through Attorney Coleman to Chairman Phil Hogen

a final agency action on the determination of Indian lands. Nor did it provide a transparent process in which affected or interested parties can participate in the development of an Indian lands opinion.

In addition to the above, there are historical conflicts that have not been addressed or resolved. The 1923 Annual Report from the Reno Indian Agency indicates that there were a little over 800 Indians residing in Fresno County. However, those that belong to the various bands number about 684. The Auberry Band (Big Sandy- Tribe) numbered 144. A tract consisting of 288 acres was purchased for the Indians of the Auberry Band. The Report also states that no further purchase of land will be required. There is no mention of allotments outside of the exterior boundaries of the Rancheria being under the jurisdiction of the Tribe.

There is a dispute by another nearby Tribe, the Table Mountain Band, who also has made a claim of jurisdiction over the land. (*Big Sand Casino Sparks Debate* by Shannon Handy Feb. 2, 2011)

> "Table Mountain, a casino located about a mile from the proposed site, argues part of the land Big Sandy wants to use is a sacred burial ground. Big Sandy, however, says that claim is based more on competition than facts. Loretta Tuell said, "And we believe it is a historic ancient village with many burials with many pounding rocks, with many issues you can't litigate very easily." John Peebles said, "I think there's a real concern on Table Mountain, members and their leadership that they will have a substantial reduction in income which will affect their quality of life. It's economics."

This issue between the two Tribes must be resolved as it affects the greater community. Locating a casino on land that does not meet the legal threshold of IGRA undermines our states gaming policy, undermines the nature of tribal sovereignty and more importantly disenfranchises the voters who supported the authorization of tribal gaming in 2000.

The NIGC in-house attorney opinion of 2006 did not fully analyze this conflict of jurisdiction or governance. Moreover, the NIGC Indian Lands determination sited and no doubt used as an example a 1996 determination for jurisdiction over the allotment land, based on a treaty tribe from the State of Oregon. As has been well documented, California is NOT a treaty state and has unique Indian law and land issues. Any comparison to a treaty tribe or a tribe from another state is an improper standard and seriously affects the legitimacy of any opinion for gaming on an allotment parcel in California.

The 2006 NIGC opinion also referenced *Alaska v Native Village of Venetie Tribal Gov't,* again Alaskan Natives in the State of Alaska have their own unique land issues created by the Alaskan Native Claims Settlement Act (ANCSA). This is not applicable to the history of California Indians or California Indian land law and it does not address the issue of when governance was exercised.

The NIGC in 2008 prepared an opinion for gaming on the Benter Allotment, located in Siskiyou County, California. Contrasting the 2006 Mc Cabe allotment opinion to the 2008 opinion over tribal jurisdiction on the Benter allotment exposes significant deficiencies. Examples of tribal services are recent day and well after the cutoff date of 1988 in the IGRA. Moreover, the mere

provision of social programs such as health, education and welfare benefits are merely forms of general federal aid of an "Indian service area" and not indicia of active tribal governance over an allotment outside of the exterior boundaries of a Reservation/Rancheria.

Considering that the McCabe allotment is 12 miles from the Big Sandy Rancheria and about 1 mile from the Table Mountain Rancheria it is reasonable to conclude that travel from Big Sandy to the McCabe allotment in the relevant historical time periods, would have been difficult to travel and would have been traveled only rarely. Travel in relevant historical time periods from Table Mountain to the McCabe allotment however is an easy walk that could have occurred several times daily.

Moreover, the DOI/BIA seems to have forgotten and overlooked the terms of the Stipulated Judgment which describes the Tribe's exterior boundaries – and there is **no mention** of the Mc Cabe allotment. (*Big Sandy v Watt*)[3] In Governor Schwarzenegger's letter dated September 9, 2005 to NIGC, he states the following:

> "Notably, the court did not invest the Tribe with jurisdiction over off Rancheria trust or allotted lands beneficially owned by individual members. Instead, the judgment carefully limits land within the Tribe's former Rancheria boundaries as fitting with the statutory definition of Indian country. Moreover, Rancherias are lands, not governments, held in trust by the United States for homeless Indians with no specific tribal affiliation. Thus, the Tribe's recent Constitutional amendment purporting to expand the Tribe's territorial jurisdiction to include "all Indian country (as defined by 18U.S. C. section 1151) held by or for the benefit of the Tribe or any member of the Tribe, wherever located, "does not appear to be a valid extension of Tribal jurisdiction beyond the court's judgment, which simply reestablished the Rancheria boundaries (See Tribe's Apr. 19, 2005 letter to NIGC at p. 12 italics added)"

The states position raises serious questions such as:

- When did the current allottee become a member of the Big Sandy Band?
- Does this allottee benefit from any type of tribal payments AND can the allottee provide a record dating before 1988?
- Does the Tribe have a record of this member voting in elections prior to 1988?

Indeed, United States Attorney Katherine W. Hazard of the U.S. Department of Justice, Environment and Natural Resources Division, as recently as March 8, 2011, argued in *Amador County, California v. Kenneth Lee Salazar, (Unites States court of appeals District of Columbia circuit, case no. 10-5240)* that the County of Amador is legally bound by a 1987 stipulated judgment that restored the Buena Vista Rancheria. Would Attorney Hazard argue now that the Big Sandy is ***not bound*** by the limits of its 1983 stipulated judgment?

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[3] Original filed March 28, 1983, it is important to note, there is **NO TRIBE** involved in this litigation, only individuals. Clearly the Rancheria meets the definition of Indian lands, as there is federal superintendence and it is occupied by a dependent Indian entity. When and how did the Big Sandy achieve federal acknowledgement? The Stipulated Judgment only granted land and status to individual Indians.

If the date of tribal membership or any of this activity is after October 17, 1988, it would indicate that the McCabe allotment would have to meet the legal threshold of one of the limited exceptions in Section 20 of IGRA. But Big Sandy has an established Rancheria upon which it conducts gaming and thus does not qualify for any of the limited exceptions in section 20 of the IGRA.

Further questions include:

- What is the date of the lease, after 1988?
- Has it been approved?
- Do the terms of the lease limit the Tribes jurisdiction over the subject land in any temporal or geographic manner or any other limitation?
- How and when did the Tribe exercise jurisdiction over the McCabe allotment?

Additionally, the Governor's letter of Sept. 9, 2005 makes mention of the Tribe amending its Constitution in 2004[4]. **Clearly, that date is 16 years after the passage of IGRA.**

The Tribes document to the NIGC states that Frank McCabe served on the "Tribal Business Committee" during the 1930's. BIA has stated there is a record of the Business Committee as early as 1935 to handle "affairs of the community". However, no actual letter has been provided. It is assumed the "Business Committee" was involved in social events or events related to the operation of the nearby Baptist Church. Church social events do not constitute participation in or submission to governance of the Tribe. Also interesting at this time is the Senate Report by the 85th Congress to accompany H. R. 2824, which states that the Tribe identified with the Paiutes and were counted with that group in the 1930 census. Indeed, the Senate Report indicates that the Band belongs to the Mono Tribe of Indians and in the early days inhabited Inyo County and neighboring counties in Nevada. Inyo County and counties in Nevada represent a significant distance for access to the McCabe allotment.

The question of legitimate land status and jurisdiction must be answered with clear and convincing evidence free of substantial doubt that is verifiable rather than subjective. The public does not wish to hear any new theories or revisionist social philosophies that allow for gaps of 20 to 100 years or more of historical evidence. Nor does the public want to hear that the DOI or the NIGC is allowed to cherry-pick the evidence and facts while it ignores comments and reports by affected parties in order to grant positive determinations for gaming.

The NIGC opinion of 2006 must be revisited and overturned.

2. <u>Consequences of Secretarial in-action to make an Indian lands determination</u>

The Tribe has a 1999 tribal state compact negotiated by the Governor of California, ratified by the State Legislature, approved by the Secretary of the Interior and noticed in the federal register. This tribal state compact in section **4.2 Authorized Gaming Facilities**, states:

[4] Tribal Council Resolution #0604-03 June 12, 2004

> The Tribe may establish and operate not more than two gaming facilities and only on those Indian lands on which gaming may lawfully be conducted under the Indian Gaming Regulatory Act. The Tribe may combine and operate in each Gaming Facility any forms and kinds of gaming permitted under law, except to the extend limited under IGRA, this Compact, or the Tribes, Gaming Ordinance.

While it may be argued that IGRA does not require the Secretary to make an "Indian lands determination" or a "determination of tribal jurisdiction" the Secretary of the Interior nonetheless, has a trust obligation to tribes. Failure to make an Indian lands determination for gaming jeopardizes the Tribe by potentially placing the Tribe in breach of section 4.2 of the compact.

The status of the land for gaming left unanswered potentially affects the Tribe's future efforts for amendments to its tribal state compact increasing the number of slot machines or expanding the scope of gaming. Additionally, it impacts the County of Fresno, other parties who can demonstrate an injury traceable to an improper lands determination and of course, other Tribes with established lands in the area.

This is a heads up to the Regional Director of the BIA and the Secretary of the Interior; there can be no claim that there was not federal awareness of the proposed gaming on the subject lands. The IBIA concluded in *State of California v Acting Pacific Regional Director, Bureau of Indian Affairs* Docket No. IBIA 01-140-A August 10, 2004.

> "…that the BIA did not commit legal error or abuse it discretion in failing to consider the terms of the compact concerning "gaming facilities". Because the State failed to bring those terms-and the alleged contract violations associated with the Tribe's use of the property to the BIA's attention?"

The 2006 Indian lands determination must be overturned and a new Indian lands determination must become a ***final agency action*** by the Secretary of the Interior in order to resolve any and all current and future conflicts over tribal state compact compliance.

B. Casino Vision - Tribal Investor History and Current Litigation:

In 2004: the Tribe announced it was signing a contract with Caesars Entertainment for the development, construction and management of the Tribe's new casino at the allotment site. The industry of tribal gaming was in an aggressive growth surge, yet the terms of the contract between the Tribe and Caesars announced to the press indicated even then that development of a large scale facility at this location 12 miles off reservation was a risk. (7 year contract at 30% management fee - most contracts at this time in California were running 5 years at 22% management fee) Needless to say, this proposal never came to fruition. (*Caesars Entertainment to sign agreement with tribe to build casino*, Sept. 16, 2004 www.caesars.com/corporate/)

In 2006: ABC channel 30 news announced that Harrah's Entertainment (Caesars sold to Harrah's) backed out of the deal with the Tribe to build a massive casino resort. County supervisor Henry Perca was quoted, "I've heard that Hard Rock casinos are interested in coming

to the county. Whether that's true or not, I don't know. But that's the talk out in the town." (June 23, 2006 abc30.com)

On March 29, 2007: (*Commercial Property News*, by Tonie Auer) writes that American Vantage subsidiary of Brownstone L.L.C. signed the development agreement and credit agreement with the Big Sandy. The Tribe will embark on a vision of creating a Big Sandy Rancheria Resort, Casino and Spa. The Tribe is now suing its former investor and states it has a new investor.

In a press release dated Feb. 17, 2011/PRNewswire announced that the Big Sandy Rancheria Tribe of Western Mono Indians filed a complaint for declaratory relief in the U.S. District Court for the Eastern District Court of California to declare invalid the previously executed Development agreement and credit agreement. Ronald J. Tassinari, Chairman of Brownstone and Chief Executive Officer of AVCS commented:

> "We believe the Tribe's lawsuit has no merit. It is our position that the Company's contracts with Big Sandy remain fully enforceable and valid, and we have retained the services of the Sacramento law firm of Stevens, O'Connell and Jacobs to vigorously defend this lawsuit and preserve these contracts through all available legal means. Brownstone also intends to aggressively assert cross claims on the defaulted loans and see damages as available under the law. These actions could delay the project for an indeterminate amount of time."

This investor is not making idle threats! ***Stand Up For California*** views the above statement with the serious intent in which it is delivered. Certain words jump out at you, "aggressively assert cross claims", or "defaulted loans", "damages" and "these actions could delay the project for an indeterminate amount of time". Obviously, it is a senseless waste of taxpayer money in our current economic condition to move forward in a federal process that will use up DOI/BIA funds and valuable resources if there is no viable investor, management contract or that the Tribe is hampered by difficult protracted litigation.

If the Tribe has a new investor – who is it? This is important information for the public and the State of California. Tribal state compacts have significant requirements that must be met by anyone earning more than $25,000.00 per year from contracts with tribal casinos. A thorough background check must be made of those earning more than $25,000.00 as well as key employees. The public has a right to know who will be managing the day-to-day operations of the proposed casino.

August 2005: The Tribe apparently has a history of not honoring its contracts. ABC news reported that the Tribe's Mono Wind Casino remains closed and faces some tough decisions after a court ruling. The Court Ordered the Tribe to pay $175,000.00, to the plaintiff Michael Troilo, an employee that the Tribe had wrongfully terminated. Five months later, ABC local news again reported that Fresno County Sheriff's Deputies raided the Mono Wind Casino and seized some of the casino property as part of the wrongful termination settlement also by Court Order.

There are too many other claims to list. Suffice it to say, a much greater inquiry is required before beginning the process of a DEIS.

III. Environmental Impacts

The DEIS does not adequately examine the transforming effect the casino will have on the regional area and what follows after the casino is in operation. The proposed location is east of the small town of Friant in Fresno County, California. The nearby community of Friant of approximately 800 citizens will be significantly affected by a massive casino building surrounded by acres of pavement for parking, buses, RV's and resource supplier vehicles and trucks. The traffic will exponentially increase; growth in this rural agricultural area will accelerate. Impacts include:

Traffic- the DEIS identifies necessary road improvements within the County and highway systems. California Environmental Quality Act documents must be prepared for these improvements to occur. The traffic will exponentially increase and growth in this rural agricultural area will necessarily accelerate. It appears for the most part that Fresno County would be the lead agency for road improvements. However, it may be necessary to work with Caltrans. Additionally, encroachment permits must be reviewed and approved. The Tribes suggested mitigation is a contribution of funds towards the improvements.

Crime - On the Governor's letterhead dated July 2, 2008, commenting on the Ione DEIS, Ms. Hoch, Legal Affairs Secretary, recognized the regional impact of casino crime, the expense to the public and the necessity to appropriately and adequately address it. (At P.6)

> "The 2006 CRB report, however, confirms that in California higher crime rates including aggravated assault and violent crimes are correlated with a greater casino presence and result in increased public expenditures ($15.33 per capita) for law enforcement. (CRB, Gambling in the golden State: 1998 Forward, supra. At P. 72.) The Draft EIS however includes no information regarding the type and scope of criminal activity directly and indirectly attributable to the region the existing gaming facility in the county, or any similarly situate hotels, and RV Parks."df

The Study does discuss the need for additional officers based on a ratio of officers to a population of 1000. Casinos are an entirely different type of operation. The ratio 2 deputies per 1000 population may be average, but considering the impact of 10,000 car trips a day, a water supply 10 miles away that could affect an emergency evacuation in the event of fire and the propensity of the industry of gaming to crime, 4 deputies would be more realistic if there is genuinely a concern for the safety of patrons, employees and the surrounding community. The Tribes suggested mitigation is a contribution of funds for services.

Water – the DEIS does not appropriately address the issue of ground water impacts. This is California and water is in short supply. The DEIS at 3.8-13 states, "Groundwater in the project area is of limited quantity and quality". Wells in the project area reach 900 feet, and contain dangerous levels of uranium. Thus the Tribe is seeking groundwater 10 miles away from the project site. In other words, the water is to be trucked in creating additional traffic issues.

An issue not mentioned is how this affects the life-safety of the public in the event of fire. Will… water trucked in and stored be sufficient in the event of a life-threatening fire?

The surrounding area is zoned agricultural, thus any impact to ground water will have a significant financial impact on the growing of crops or the grazing of cattle. There should be serious consideration of off reservation well interference; not only at the project site but in the location 10 miles away where the water is being drawn. Potential well interference and drawdown related to off reservation wells should be given great consideration.

Light Pollution – This project may adversely affect wildlife migration in the area and is not addressed.

Social Economic Conditions/Environmental Justice – The focus of the DEIS is on taxation, jobs and conflicts in the administration of justice. Tribes do not pay local or state taxes on trust property or revenue earned on trust property. Taxes are not paid on per capita payments as long as members live on their own Tribes Reservation/Rancheria. So it is unclear, if the brief discussion on taxes is about the payroll taxes that employees of a tribal gaming facility pay or taxes that vendors or resource suppliers pay?

Criminal Justice - Issues of conflict over the administration of justice need to be addressed. It is without dispute that California's criminal law is fully enforceable in Indian Country granting California Sheriffs both the authority and the obligation to protect Indian and non-Indians from criminals on California's Reservation and Rancherias. At the same time, California Indian governments have a federal status that presents a number of gray areas to members of law enforcement in the exercise of this obligation.

There clearly needs to be channels of communication, cooperation, education and most importantly the development of mutually agreed upon protocols if not enforceable agreements for the safety of all Californians.

This issue of the administration of justice is now further complicated with the introduction of Special Law Enforcement Commissioned Officers (SLEC's) employed by Tribal governments. These issues need clarification, particularly the off reservation authority and jurisdiction of SLEC officers as recently demonstrated by a high speed chase in San Diego. (*Reach of Tribal Police Goes Beyond the Reservation*, by Steve Schmidt, March 14, 2011, San Diego Union Tribune) In the event of property damage or personal injury, avenues for reimbursement and compensation need to be made clear.

There is no mention of programs to address problem and compulsive gambling issues, garnishment of wages for dead beat parents or court ordered settlements. These impacts are reasonably foreseeable, direct and indirect and must be evaluated, documented and provided for public review. Reasons must be given for why these impacts are not being addressed.

IV. Mitigations:

In total, the mitigations offered in the DEIS are contributions of funds – pledges of money-- towards the impact. This is woefully insufficient. To properly mitigate these impacts the Tribe

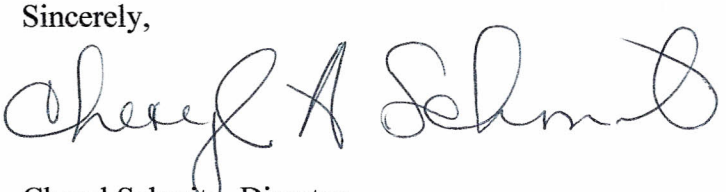
must enter into a judicially enforceable Memorandum of Understanding with the County of Fresno. The agreement must not be negotiated until the issue of tribal jurisdiction on the McCabe allotment is resolved by a "final agency action".

V. Conclusion:

There is no doubt that the DEIS is attempting to examine the many impacts both on and off of the trust land that the gaming and entertainment facility will create. However, in chapter 5, section 5.9 "Land Use and Planning", the report declares that there are no feasible mitigation measures that would avoid the significant effects of the project on the surrounding land uses that have been identified. Indeed the land is zoned agricultural and surrounded by thousands of acres of conservation lands. The report repeats in a number of instances in chapter 5 that because no significant effects were identified, no mitigation is necessary to address the concerns of local residents, businesses or Conservation Associations in the nearby or regional area. But the report does not say why!

The architectural plans for casino "Alternative 1" will ultimately consist of a structure totaling 532,000 square feet not counting the parking structure and parking areas. This project will affect growth including effects and other effects related to induced changes in the pattern of land use, population density, accelerated growth rate, and related effects on air and water and other natural systems including ecosystems. The DEIS fails to adequately address these issues.

Sincerely,



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