

Stand Up For California!

“Citizens making a difference”

www.standupca.org

P.O. Box 355
Penryn, CA 95663

March 16, 2009

Via Facsimile 916-978-6099

Mr. Dale Morris
Regional Director
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, CA. 95825

**RE: Notice of (Gaming) Land Acquisition Application Filed by the
Enterprise Rancheria of Maidu Indians for 40 Ac in Yuba County
California requesting information for a two-part determination.**

Dear Mr. Morris:

Thank you for this opportunity to provide comment on whether or not the proposed off reservation casino is detrimental to the surrounding community. *Stand Up For California* as you know has been involved in the off Reservation gaming debate for a number of years. Your January 2009, letter represents the very first time a request for additional information for a two-part determination has been made. This letter helps to provide access and transparency to the fee to trust process and we congratulate you on this recent action.

Stand Up For California will comment on three areas. The need to respect the vote of the electorate, the failings of the Memorandum of Understanding between the Enterprise Tribe and the County of Yuba and the BIA's misapplication of the 1994 List Act.

Disenfranchising the Electorate:

On May 18, 2005 Governor Schwarzenegger issued a proclamation which established the criteria by which gubernatorial concurrence with the Secretary of the Interior for off reservation gaming on after acquired lands would be granted. In accordance with the criteria requesting evidence of community support is as follows:

“Tribe and the local jurisdiction demonstrate that the affected local community supports the project, such as by a local advisory vote”. [Emphasis added]

The electorate of Yuba County voted NO by 52%. Yet in reading the proposed DRAFT of the County of Yuba's letter it appears that the County is willing to *disenfranchise* the electorate of Yuba and permit “**Reservation Shopping**” in order to reap financial benefits from the proposed project promised in the development of the MOU.

The City of Wheatland in December of 2002 passed a Resolution opposing the establishment of a casino in Yuba County recognizing the need to respect the vote of the electorate in a 1998 Ballot initiative (Measure R) establishing a Sports and Entertainment Zone in Yuba County. The conflicting action of the various elected officials gives an appearance of special interests at work. And most certainly identifies a detrimental impact on the political systems of the County seriously disenfranchising the electorate of the surrounding community.

The Memorandum of Understanding:

In 2002, the Enterprise Tribe and their investor Gerald Forsythe from Chicago Ill. Began to circulate the story that the Enterprise Tribe was a “restored” tribe and had the “mandatory” right to acquire land in Yuba County as an exception under IGRA. This was the reasoning that many of the “reservations shopping” investors were giving to local officials elsewhere in the State at this time. The mantra was repeated over and over again that it would be best to negotiate an agreement prior to the land going into trust, as local officials would get more out of the deal than if they waited till after the land was in trust. Investors gained leverage in negotiations and circumvent long standing state law and policy on the location and management of gaming.

Thus, the local Memorandum of Understanding that was negotiated with the County of Yuba was not a mutually beneficial agreement. Indeed, it would appear today in 2009 that the County failed to adhere to its obligations in the California of Environmental Quality Act (CEQA). Please see my original letter to the Board of Supervisors apprising them of the failings of the agreement and potential violations of CEQA. (*See Attached*)

Governor Schwarzenegger in 2004 began requiring judicially enforceable comprehensive agreements in tribal state compacts between tribes and the impacted local governments. **This gubernatorial requirement in the tribal state compacts makes the support of the MOU for an off reservation casino of no-value.** Indeed, the County BOS states in the draft letter that “certain financial aspects of the MOU could be updated from 2002 to reflect 2009 costs, such as law enforcement expenses and infrastructure fees”. The update needs more than a financial restructuring as the terms for law enforcement clearly violate P. L. 280.

Misapplication of the 1994 List Act:

In 1994, land based Rancheria Tribes were “administratively elevated” to the federal list of recognized Tribes. In the view of many, the Pacific Regional Office of the BIA misconstrued the List Act Statute of 1994. Many of these groups organized as Tribes for the very first time. The BIA has continued to administratively combine unacknowledged tribal groups with land based groups. Enterprise Rancheria is one such Tribal group. The actions and inactions of the BIA have promoted and tolerated corrupt behavior in the land based Rancherias and the BIA has accepted no responsibility for it.

- As a result the Enterprise Tribe and several others are vulnerable to the recent *Carcieri v. Salazar* ruling.

Moreover, this action by the BIA has created a new phenomenon in California, “disenrollment of long-standing tribal members”. This has an impact not only on the now 3500 disenrolled tribal

Mr. Dale Morris
March 6, 2009

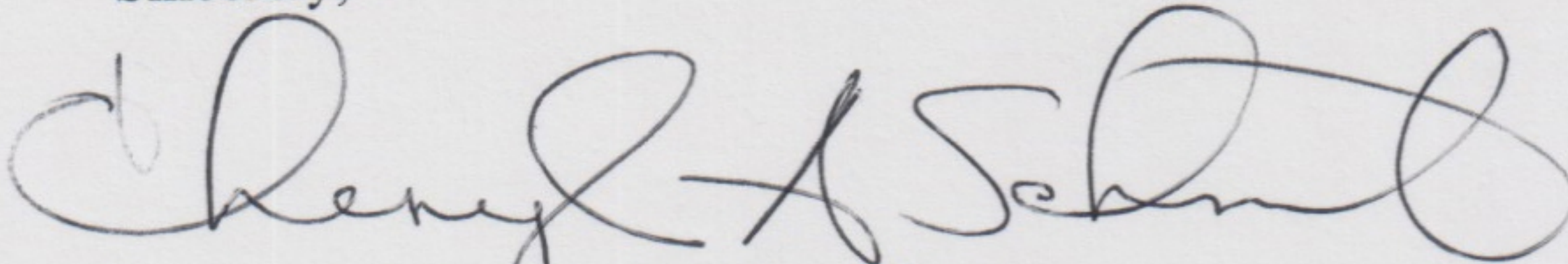
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members of our state but on the surrounding community and public in general. The public is now questioning the legitimacy of Indian Tribal governments everywhere in the State.

Thank you for the opportunity to make comment on a proposed project. It is well documented that his proposed project has created havoc in Yuba County for almost 7 years. *Stand Up for California* supports the Governor's letter of January 30, 2009, for all the reasons he has listed and for those in our letter. **The Secretary should not proceed with the acquisition.**

Sincerely,

A handwritten signature in cursive script, appearing to read "Cheryl Schmit". The signature is fluid and somewhat stylized, with a large initial 'C' and a distinct 'S'.

Cheryl Schmit – Director
916-663-3207
cherylschmit@att.net

CC: Yuba County Board of Supervisor
Governor Schwarzenegger

RESOLUTION NO. 54-02

A RESOLUTION OF THE CITY OF WHEATLAND OPPOSING THE ESTABLISHMENT OF A CASINO IN YUBA COUNTY

WHEREAS, the voters of Yuba County approved a ballot initiative ("Measure R") in January 1998, establishing a Sports and Entertainment Zone on approximately 900 acres of agricultural land in southern Yuba County; and

WHEREAS, the voters of the City of Wheatland and the Wheatland City Council supported Measure R; and

WHEREAS, the voters were told that the intention and purpose of Measure R was for the development and construction of a world-class racing facility and amphitheatre; and

WHEREAS, the developers of the property have not yet fulfilled their promise to the voters and, to date, only the amphitheatre has been built with little progress made towards the construction of the racing facility; and

WHEREAS, the Estom Yumeka Maidu Tribe, Enterprise Rancheria wishes to purchase 40 acres of land within the Sports and Entertainment Zone and have the land placed into Trust for the purpose of developing a gaming casino; and

WHEREAS, there is no mention of a casino in Measure R and a casino is not in keeping with the promise, purpose, or intention of Measure R and the construction of a casino under Measure R can only be made through subjective interpretation; and

WHEREAS, the controversial nature of gaming in California may have prevented the passage of Measure R had the voters known that it would in any way be used to allow the establishment of a casino; and

WHEREAS, the voters deserve to have the original intent of their votes realized with out the subjective interpretation of what could possibly be allowed in the Sports and Entertainment Zone.

NOW, BE IT THEREFORE RESOLVED, that the Wheatland City Council opposes the establishment of a gaming casino in Yuba County.

BE IT FURTHER RESOLVED, any claims that a casino is compatible with the Sports and Entertainment Zone are not consistent with the intention, purpose, and spirit of Measure R nor the promise made to the voters.

PASSED AND ADOPTED by the City Council of the City of Wheatland on this 16th day of December 2002, by the following vote:

AYES: E. Thompson, McIntosh, Coker

NOES: Ulman, Crabtree

ABSTAIN:

ABSENT:

Lisa J. Welch
Lisa J. Welch, City Clerk

Lisa McIntosh
Lisa McIntosh, Vice Mayor

Stand Up For California!

"Citizens making a difference"

standupca.org

P.O. Box 355
Penryn, CA 95663

June 14, 2005

Yuba County Board Of Supervisors
Yuba County Government Center
Board Chambers
915 Eighth Street, Suite 109A
Marysville, California

RE: Casino Contract Conundrum

Dear Yuba County Board of Supervisors:

Stand Up For California writes to this honorable Board today to alert you to serious questions regarding the validity and enforceability of the Memorandum of Understanding (MOU) between the County of Yuba and the Enterprise Rancheria. I urge you to seek special outside legal council in this matter because: (1) The county may lack the authority to enter into an agreement based on revenue sharing with a tribal government from casino profits (2) thus, the MOU may be invalid and unenforceable, (3) the County may be in violation of the California Environmental Quality Act (CEQA), and (4) the Enterprise Tribe may be in material breach of the MOU signed December 17, 2002 and (5) which may invalidate the agreement.

Lack of County or City Jurisdictional Authority: The Indian Gaming Regulatory Act (IGRA) authorized states to negotiate compacts for gaming with Indian Tribes. California has both Constitutional and state statutes empowering the Governor to negotiate and the state Legislature to ratify gaming agreements as provided by federal law. There is, however, no express constitutional or statutory authorization for cities or counties to enter into agreements with tribal governments for a share of casino revenue without a provision in a tribal state compact. The County has not sought, nor obtained an legal opinion as to the validity of or the ability to enter in to an MOU.

County Non-Compliance of CEQA: City and County governments which have developed agreements with tribes lacking tribal state compacts or land in trust do not know whether, or the conditions under which, class III gaming will be approved for the land in question. The Yuba County MOU may constitute a "project" under CEQA. The Yuba County MOU contains provisions that purport to legally bind the County to definite courses of action that typically involve physical changes to the environment. In entering this agreement, it appears the county may be in general noncompliance with state environmental review requirements under CEQA. Recent City MOU's have resulted in judicial invalidation agreements by courts. (*Citizens to Enforce CEQA vs. City of*

Hesperia, See also *No Casino in Plymouth vs. City of Plymouth*, *Amador County vs. City of Plymouth*, and *Citizens for Local Gov't Accountability vs. Palm Springs RDA: Settlement Payment*)

Potential Breach of MOU: “Whereas clauses” may constitute admissions by the party or parties agreeing to them to be true. (Evidence Code section 622.) It is imperative that the County be certain that these recitals in the “Whereas clauses” are in fact true. For example:

The very first recital in the December 2002 MOU states:

Whereas, the Tribe is a federally recognized Indian Tribe which has been recognized by the Government of the United States, continuously, since 1915:

This “whereas” raises several issues, including whether this group of Indians was, in fact, ever federally recognized, notwithstanding any recital in the Federal Register. Also, are the signatories to the MOU the legitimate successors-in-interest to the current Enterprise Rancheria? These legal issues are in dispute between the Enterprise Tribe’s own tribal factions with a formal appeal sent to the Indian Appeals Board. Given these legal challenges, this MOU may be premature or invalid or voidable.

Another example:

Whereas, a ruling on the Tribe’s trust acquisition application constitutes a federal discretionary action subject to the National Environmental Policy Act (NEPA);

The MOU with the Enterprise Rancheria was entered in good faith by the County of Yuba based upon the tribes “**discretionary**” land acquisition. (25 CFR 151.11). Since the MOU was signed, the tribe has inexplicably attempted to acquire the land as a Congressional Act – on two separate occasions – without notifying the County of Yuba or Congressman Herger. As you may know, a Congressional Act makes the tribal land acquisition ‘**mandatory**’, **not discretionary**. The land becomes eligible for gaming under a clear and indisputable exception pursuant to IGRA. A Congressional Act exempts the tribe from otherwise complying with the law (as a discretionary acquisition) and the Tribe thereby circumvents state gaming policy recently established by Governor Schwarzenegger and the discretion of the Secretary of the Interior.

This may appear more trouble in light of the fact that the Enterprise Rancheria recently filed a motion to intervene in the re-licensing of the Oroville Dam Project before the Federal Energy Regulatory Commission. The Tribe’s motion asserts a conflicting and revised tribal history of Indian lands and may amount to an attempt to acquire land through a ‘**land settlement**’ with the United States. This demonstrates another attempt by this tribal government to seek a back-door Congressional ‘**mandatory exception**’ – which may violate the terms of the MOU or make it voidable.

Other "whereas" clauses are equally troubling.

Whereas, the County is prepared to support the Tribe's trust acquisition application only if the County is assured that anticipated detrimental impacts to the County and the surrounding communities can be mitigated through a binding and enforceable agreement between the County and the Tribe and the Tribe is willing to enter into such a binding and enforceable agreement:

This clause is vague, ambiguous and subject to various interpretations. For example, what detrimental impacts will there be? How can they be mitigated? What will be the specific terms and provisions of any future "binding and enforceable agreement"? The County itself, in the August 19, 2004 letter to Clay Gregory, Regional Director of the Pacific Region of the Bureau of Indian Affairs, recognized the vagueness of this clause. The letter identifies thirty-six items and supports the conclusion that the casino/hotel resort complex will have a significant and detrimental environmental impact in several respects. However, the tribe has provided no assurance to the County as required in the Whereas clause.

Erecting a casino at this location will entail a multitude of significant and direct impacts. This area, previously zoned farm-land, was voted to become a raceway under the stringent guidelines of CEQA. Without the protection of CEQA to fully mitigate the impacts of a casino/hotel resort complex, including the related facilities such as restaurants and parking structures (see section 1 of the MOU), this project could be an environmental disaster for the County. This is especially true when coupled with the Tribe's plans (section 11) to purchase and take into trust additional contiguous parcels of land. No mitigation has been proposed for these additional facilities and/or parcels. Until this land is in trust, the tribal government and the County must comply with state law and abide by CEQA. Legal counsel will confirm that the tribe's sovereignty does not prevent the enforcement of CEQA on land not held in trust (i.e. owned in fee-simple).

It is further unclear if this proposed casino includes the serving of alcoholic beverages. If so, both state and federal law apply. The administrative regulation (25 CFR Section 291.4 (15)) provides that service of alcohol in a class III gaming facility can only follow the tribe's adoption of a liquor ordinance and approval of that ordinance by the Secretary of the Interior. The ordinance is submitted to the Secretary and reviewed. This process is subject to federal criminal law (18 USC Section 1154- Intoxicants dispensed in Indian Country). California State Constitution XX section 22 applies to public welfare at the manufacturing, importing or sale of alcoholic beverages at tribal casinos. Off-reservation impacts of the sale of alcohol may implicate County services such as law enforcement, ambulance services, and other unaddressed impacts. It seems the approval of the serving of alcohol may implicate indirect impacts subject to CEQA, but not addressed by the MOU.

New State Policy: Section 14: Reopen Provision - The MOU identifies the possibility of state or federal changes in gaming laws, financial obligations or changes which materially impact the parties.

On May 18, 2005 Governor Schwarzenegger made public a Proclamation of State policy regarding off reservation casinos. This proclamation provides four clear criteria that must be met in order for the Governor to consider a section 20 concurrence.

Two days later, James Cason, Assistant Deputy Secretary of the U.S. Department of the Interior, announced a major policy shift at the BIA regarding tribal state compact approvals. This represents a major policy shift that will require tribes to place their land into trust before seeking a tribal state compact. The current two-part determination trust process is taking upwards of 3 to 4 years for gaming acquisitions.

- This new policy by the BIA represents a significant new federal policy that affects both gaming laws and financial obligations and materially impacts the parties.
- The governor's policy of no section 20 concurrences without a demonstration of widespread public support and the lack of an independent public policy affects this MOU.
- The tribe's failed Congressional Acts affects this MOU.
- As noted, the tribe's current motion against the FERC stating a conflicting and revised tribal history impacts the MOU.
- The Enterprise Tribe's Environmental Impact Statement and scoping hearing implicates a significant financial obligation by the tribe affecting the MOU. This also identifies the potential failure of the County to adhere to CEQA.
- The opening of Thunder Valley Casino since the approval of this agreement clearly impacts the financial ability of the tribe to mitigate the impacts of a casino in Yuba County.
- Congressman Pombo's federal legislation to rein in "**reservation shopping**" affects this MOU.

In light of the significant changes to date, the MOU will be even more outdated in 3 to 4 years. Numerous private developments are proposed and being developed around the location of the currently proposed site. These new developments will require additional mitigations not considered in the outdated MOU.

Additionally, Governor Schwarzenegger has established judicially enforceable agreements in the newly negotiated compacts. The new compacts include "**disincentives**" for local government to host off-reservation casinos. Revenue sharing is with the State of California, not with local governments. Local government may anticipate only land use and service mitigations in Schwarzenegger compacts.

Further, this MOU is intended to obligate the County to support the tribes land acquisition in return for "**unenforceable promises**". There is a great deal of inconsistency in the treatment of promises and representations by the Tribe. Violation of

Section 3, 6, and 7-1 contain breach language. However the remaining sections contain only promises made by the tribe. For example:

Section 4: there is reference to mutual interest in acting against 'crimes which may be committed against the Tribe, its members, personnel, business entities or patrons.' Why no mirror reference to such crimes committed by those persons or entities against non-Tribal entities/persons?

Further, in Section 4 with reference to public benefit fraud there is a provision for a "redacted copy" of a document to be provided. What is the public policy rational behind this? What is to be redacted? Who decides? Is this to protect tribal members who might violate the law?

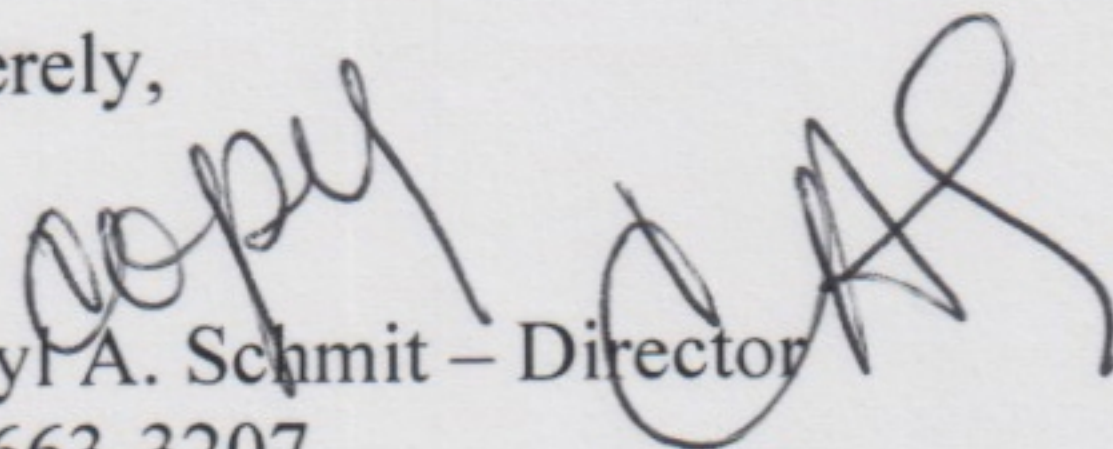
Overall, there is a disconnect with regard to the amount the County is to receive for law enforcement services. The amount is capped at Five Hundred Sixty Five Thousand Dollars (\$565,000.00). The problem is that if the County does not employ adequate personnel or acquire adequate equipment to provide law enforcement services "at a level at least equal to that provided to the County as a whole", the tribe may **WITHHOLD** up to Five Hundred Sixty Five Thousand Dollars (\$565,000.00). The problems is obvious: The County may end up providing services, but the Tribe may deem it less than other areas and unilaterally withhold the funds. Moreover, what if the cost of providing those services (at an equal level) exceeds \$565 thousand dollars?

- **These are just a few of the many serious and critical inconsistencies in this agreement.**

Stand Up For California urges you to seek special outside legal counsel familiar with Indian law, gaming law and environmental law regarding the validity, to discern the enforceability of this MOU. Other issues remain. For example, it is unclear if Tribal Resolution NO. 02-27, passed by the Enterprise Tribal Council on December 18, 2002, grants authorization to the persons signing the MOU.

Absent clear legal direction, it is unclear to what extent, if any, the parties are bound by the MOU. At the very least, there are public policy concerns and financial burdens that may overwhelm the County taxpayers today and into the future.

Sincerely,


Cheryl A. Schmit – Director
916-663-3207

CC: Yuba County Administrator
215 Fifth Street, 3rd Floor
Marysville, CA 95901

Yuba County Counsel
215 Fifth Street, 3rd Floor
Marysville, Ca. 95901

Honorable Peter Siggins, Secretary of Legal Affairs to Governor Schwarzenegger
Honorable Attorney Dan Kolkey, Tribal State Compact Negotiator
Honorable Congressman Wally Herger
Honorable Congressman Richard Pombo
Honorable United States Senator Dianne Feinstein