OFFICE OF THE GOVERNOR

May 1, 2006

Via facsimile (202) 632-7066 & U.S. Mail

Ms. Andrea Lord, Staff Attorney
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, D.C. 20005

Re: Opposition to Greenville Rancheria's Request for Restored Lands Determination

Dear Ms. Lord:

I am responding to a request from the National Indian Gaming Commission (NIGC) for the State's assistance in determining whether land near Red Bluff in Tehama County, California, constitutes restored lands for the Greenville Rancheria of Maidu Indians (Tribe) pursuant to Title 25 United States Code section 2719(b)(1)(B)(iii) in the Indian Gaming Regulatory Act (IGRA). Thank you for extending the State's time to comment until May 1, 2006.[1] While the State does not dispute the Tribe's status as a restored tribe, it does not believe that the Tribe has clearly demonstrated that the subject land is within its aboriginal territory, as there is no evidence of a longstanding geographical, historical, or cultural connection to the proposed gaming site. Accordingly, the State does not believe that the land qualifies for restoration under IGRA.

I. Background

On April 12, 1897, the United States purchased 40 acres of land for the Greenville Indian Industrial School, between the towns of Taylorsville and Greenville in Plumas County, California. By Executive Order dated November 26, 1902, President Theodore Roosevelt reserved and set apart an additional 160 acres for the school, and the United States purchased another 75 acres on August 16, 1916, for a total of 275 acres. (Exh. A, Bureau of Indian Affairs (BIA) records re Greenville

[1] The State is currently awaiting responses from various federal agencies to requests for records under the Freedom of Information Act (FOIA) (5 U.S.C. § 552 et seq.) that are relevant to this analysis. The State reserves the right to submit supplemental comments or supporting material as additional information becomes available.

Rancheria (Aug. 18, 1976).) The Maidu and other Indians living in the area used the land and government buildings after the school disbanded in the early 1920s. "The land thus became a 'rancheria' by reason of occupancy since it was not originally purchased for 'landless Indians.'" (Exh. B, Senate Report No. 1874, H.R. 2824, "Providing for the Distribution of the Land and Assets of Certain Indian Rancherias and Reservations in California" (85th Cong., 2d Sess., Jul. 22, 1958), p. 25.)

The Secretary of the Interior terminated federal supervision over the Rancheria and its occupants in 1966, selling part of the 275-acre Rancheria to an individual, and distributing the remainder to various occupants, pursuant to the California Rancheria Act of 1958 (Pub.L. No. 85-671, 72 Stat. 619). (31 Fed.Reg. 15494 (Dec. 8, 1966); Exh. A at p. 2.)

In the late 1970s, representatives of 17 California rancherias purportedly terminated under the Rancheria Act, including the Greenville Rancheria, sued the federal government for illegally terminating the rancherias and removing their land from trust status. (*Hardwick v. United States*, United States District Court, Northern District of California, No. C-79-1910-SW (*Hardwick*).) In 1983, the court approved a stipulated entry of judgment whereby the parties agreed individual rancheria members would be restored to their status as Indians and the United States would recognize the rancherias' occupants as Indian entities with the same status they possessed prior to distribution of the rancherias. (Exh. C, Order Approving Entry of Final Judgment in Action (Dec. 22, 1983), and attached Stipulation For Entry of Judgment (Aug. 2, 1983).) The court-approved stipulation described the Greenville Rancheria as consisting of 275 acres "located approximately three miles east of Greenville, Plumas County, California." (*Id.* at Exh. A, Rancheria Descriptions, p. 2.)

The BIA approved the Tribe's constitution in 1995. The Preamble clearly states the "Indians of the Greenville Rancheria, originated near the town of Greenville, Plumas County, California[.]" (Exh. D, Constitution of the Greenville Rancheria, Preamble.) Article III of the Tribe's Constitution defines the Tribe's territorial jurisdiction as follows:

> The jurisdiction of the Tribe shall extend to the territory within the boundaries of the Greenville Rancheria, as established in the judgment entered in Tillie Hardwick v. United States of America, U.S. District Court for the Northern District of California, No. C-79-1710-SW, and to such other lands as may be hereafter acquired by the Rancheria, whether within or without said boundary lines, under any grant, transfer, purchase, adjudication, treaty, Executive Order, Act of Congress, or other acquisition, subject to Federal law. The jurisdiction of the Greenville Rancheria shall also extend to affiliated Indian country which is located contiguous to the Greenville Rancheria or contiguous to other lands acquired by or for the Tribe.

The Tribe has acquired various land holdings since the Rancheria was restored in 1983. In September 1986, the BIA acquired into trust for the benefit of an individual Tribe member a 1.80-acre parcel located within Rancheria boundaries. Tehama County officials indicate the Tribe purchased

about 51 acres of agricultural land near Cottonwood[2] in 1994, which it then sold 1998. Public records indicate the Tribe also purchased within the Rancheria 1.23 acres in March 1996, 2.5 acres in August 1997, 6.67 acres in August 2003, and .75 acres in September 2005, for a total of 11.15 acres. In August 2002, the Tribe purchased 1.01 acres for an office building and a four-plex in Red Bluff, Tehama County. The Tribe also purchased a two-acre parcel in Shasta County in March 2004, and various-sized parcels in Tehama County in 2004 and 2005. The Tribe asserts it has operated an Indian Health Clinic in Red Bluff since about 1995.

In December 2004, the Tribe asked the BIA to take into trust for gaming purposes about 334 contiguous acres of land located immediately adjacent to and west of Interstate 5, about ten miles north of Corning and five miles south of Red Bluff in unincorporated Tehama County. (Exh. E, BIA Notice of (Gaming) Land Acquisition Application.) The Tribe proposes to develop approximately 48 acres on the southern end of the property for gaming, with no planned development on the remaining acreage. (*Ibid.*) The Tehama County Assessor's Office reports that Caywill New York LLC, the Tribe's gaming development investor, purchased the property around April 2002.

As recently as December 2005, the Tribe's chairperson reaffirmed Greenville Rancheria's ancestral territories are located at the northernmost point of the Sierra Nevada Mountain Range (see Exh. H, attached Dec. 29, 2005, letter from Lorie James, Greenville Rancheria Chairperson, to Paskenta Band), which does not include any of modern-day Tehama County.

II. The Tribe's Submission To The NIGC

In April 2004, the Tribe submitted to the NIGC a request for a restored lands determination, supported by over 3,600 pages of documents, including an undated opinion prepared by the law firm of Stetson & Jordan (Stetson Opinion). The Stetson Opinion argues the Tribe qualifies as an Indian tribe restored to federal recognition, because the Tribe had been terminated pursuant to the California Rancheria Act and restored by the court-approved stipulation in *Hardwick*. As such, the Stetson Opinion contends the 334-acre property near Red Bluff, Tehama County, is part of the Tribe's "restoration" of its historical lands. The Stetson Opinion relies heavily upon an ethnohistorical report prepared by Dr. James M. McClurken dated March 9, 2004 (McClurken Report), to support its conclusions. The Tribe supplemented its submission with a letter from tribal attorney Derril B. Jordan to the NIGC, dated October 12, 2004 (Jordan Letter), that addressed several questions from the NIGC to Dr. McClurken and the Tribe's attorneys. The Jordan Letter was accompanied by a supplemental letter from Dr. McClurken, dated September 14, 2004 (McClurken Letter).[3]

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[2] Cottonwood is located in northern Tehama County and southern Shasta County, a few minutes south of Redding and about 30 miles north of the land being considered here.

[3] On April 4, 2006, the State received copies of most of the Tribe's submissions to the NIGC, pursuant to a FOIA request. The NIGC asserted FOIA "Exemption (b)(6)" and redacted some portions of the record produced to the State.

In sum, the Tribe, through its various submissions, contends its current-day members descended from Maidu and Wintu peoples by intermarriage. (Stetson Opinion at pp. 17-18.) It claims "intermarriage broadened the range of territory which both Maidu and Wintu people could consider home because of their extended family networks." (Stetson Opinion at p. 26.) The Mountain and Konkow Maidu had a combined aboriginal territory of about 4,600 square miles, while the "Wintus also occupied a vast territory in north Central California." (*Id.* at p. 18.) These territories, according to the Tribe, overlapped at Red Bluff, which the Tribe describes as a centrally located "joint use area" "frequented by tribal membership and their ancestors and descendants consistently over the last century and a half as they have sought jobs and the means to survive." (McClurken Letter at p. 4; Stetson Opinion at pp. 18-20, 32, 34.)

III. The Proposed Gaming Site Does Not Qualify As The Tribe's Restored Land Within The Meaning Of IGRA

IGRA established a comprehensive scheme for the regulation of gaming activities on Indian land. Among other things, IGRA prohibits gaming on land acquired after the Act was passed on October 17, 1988. (25 U.S.C. § 2719(a).) The general prohibition of gaming on newly acquired land is subject to several exceptions. The exception the NIGC has asked the State to analyze is the so-called "restored lands" exception, which provides that Indian lands are exempt from the general prohibition if such "lands are taken into trust as part of . . . the restoration of land for an Indian tribe that is restored to Federal recognition." (25 U.S.C. § 2719(b)(1)(B)(iii).)

IGRA does not define "restoration of lands," and the case law and other opinions interpreting whether lands taken into trust are properly "restored" within the meaning of Title 25 United States Code section 2719(b)(1)(B)(iii) are sparse. (See, e.g., *City of Roseville v. Norton* (D.D.C. 2002) 219 F.Supp.2d 130, affd. (D.C. Cir. 2003) 348 F.3d 1020, cert. den. *sub nom Citizens for Safer Communities v. Norton* (2004) 541 U.S. 974; *Grand Traverse Band of Ottowa and Chippewa Indians v. United States Atty. for Western Dist. of Mich.* (W.D.Mich. 2002) 198 F.Supp.2d 920 (*Grand Traverse Band*), affd. (6th Cir. 2004) 369 F.3d 960; *Oregon v. Norton* (D.Or. 2003) 271 F.Supp.2d 1270 [reviewing decision of Secretary following remand by court in *Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians v. Babbitt* (D.D.C. 2000) 116 F.Supp.2d 155 (*Confederated Tribes of Coos*)]; see also *In re Wyandotte Nation Amended Gaming Ordinance*, NIGC Final Decision (Sept. 10, 2004) (*Wyandotte Decision*); NIGC letter to B. Downes re Karuk Tribe of California (Oct. 12, 2004) (*Karuk Opinion*); NIGC Mem. re Mechoopda Indian Tribe of the Chico Rancheria (Mar. 14, 2003) (*Mechoopda Opinion*); NIGC Mem. re Bear River Band of Rohnerville Rancheria (Aug. 5, 2002) (*Rohnerville Opinion*); NIGC Mem. re Grand Traverse Band of Ottowa and Chippewa Indians (Aug. 31, 2001) (*Grand Traverse Opinion*).

The only appellate court to address the issue has held that a "'restoration of lands' would seem to encompass more than only the return of a tribe's former reservation," and given California's "history of Indian tribes' confinement to reservations, it is not reasonable to suppose that Congress

intended 'restoration' to be strictly limited to land constituting a tribe's reservation immediately before federal recognition was terminated." (*City of Roseville v. Norton, supra*, 348 F.3d at pp. 1027-1028.) The NIGC, the Solicitor's Office, and several district courts have interpreted IGRA to impose substantial limits to what qualifies as a "restoration of land" under IGRA.

For instance, the NIGC previously noted that "[t]he phrase 'restoration of lands' is a difficult hurdle and may not necessarily be extended, for example, to any lands that the tribe conceivably once occupied throughout its history." (*Grand Traverse Opinion* at p. 10.) The Solicitor's Office has similarly stated, "restored land does not mean any aboriginal land that the tribe ever occupied." (Office of the Solicitor's Mem. re *Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians v. Babbitt*, at p. 8.) In *Confederated Tribes of Coos*, the district court recognized the term "'restoration' can be limited to avoid the result . . . that *any* property acquired by restored tribes would be eligible for gaming." (*Confederated Tribes of Coos, supra*, 116 F.Supp.2d at p. 164, emphasis added.) Such limitations include "the factual circumstances of the acquisition, the location of the acquisition, or the temporal relationship of the acquisition to the restoration." (*Ibid.*) Indeed, the Tribe acknowledges it must undertake a fact-specific analysis to establish a sufficient nexus between current members and the specific property under consideration here. (Stetson Opinion at p. 16.)

Therefore, the Tribe bears the difficult burden of clearly demonstrating that the subject land satisfies the factual circumstances, location and temporal relationship criteria for restored lands. For reasons that follow, the State does not believe the Tribe has met its burden.

A. Factual Circumstances Of The Acquisition

The factual circumstances of the acquisition must provide sufficient indicia of "restoration." The cases hold "restoration" denotes a taking back or being put in a former position, or it might mean "reacquired." (*Confederated Tribes of Coos, supra*, 116 F.Supp.2d at p. 162.) "Restoration" does not simply mean "acquired." There must be other indicia that the Tribe's proposed acquisition of the land under consideration here "restores" the Tribe to what it previously had. (See *Karuk Opinion* at p. 6.)

It is our understanding that the Tribe's gaming investment developer purchased the property in April 2002, and a fee-to-trust application has been pending since December 2004. Therefore, the Tribe does not own the property, nor has it been conveyed to the United States. The Tribe must, therefore, establish other indicia that the land acquisition in some way restores the Tribe to its previous status.

B. Location Of The Acquisition

The second consideration involves the land's location in proximity to the Tribe's historical roots.

1. **Nexus Criteria**

While restored lands may include "off-reservation" parcels, "there must be some indicia that the land has in some respect been recognized as having a significant relation to the Tribe." (*Mechoopda Opinion* at p. 8.) In *Grand Traverse Band*, for instance, the district court ruled the land in question was properly "restored" for IGRA purposes, specifically because "evidence clearly established" the land was of "historic, economic and cultural significance" to the tribe. (*Grand Traverse Band, supra*, 198 F.Supp.2d at p. 936.) The land, therefore, could "reasonably be considered to be part of a 'restoration of lands' in a historic, archeological, and geographic sense." (*Ibid.*; see also *Oregon v. Norton, supra*, 271 F.Supp.2d 1279 [affirming Secretary's decision, based on guidance in *Confederated Tribes of Coos*, that land was properly "restored" because of its "historical, geographical and temporal connection to the Tribe."].) In its *Grand Traverse Opinion*, the NIGC further found that restoration was shown by the tribe's "substantial evidence tending to establish that the . . . site has been important to the tribe throughout its history and remained so immediately on resumption of federal recognition." (*Grand Traverse Opinion* at p. 15.)

The NIGC has issued several other opinions that required tribes to demonstrate a geographical and historical nexus to the land in question to qualify for "restoration" under Title 25 United States Code section 2719(b)(1)(B)(iii). In the *Karuk Opinion*, the NIGC found the tribe had not established a sufficient historical nexus to the subject parcel, because it was unclear whether the parcel was ancestral territory or merely a neighboring area. (*Karuk Opinion* at pp. 7-9.) In the *Mechoopda Opinion*, the NIGC concluded the land under consideration was properly "restored" to the tribe because the evidence showed conclusively that the land acquired for the tribe "falls squarely within" the tribe's historic village boundaries. (*Mechoopda Opinion* at p. 3.) Similarly, in the *Rohnerville Opinion*, the NIGC concluded the land under consideration was properly "restored" because the evidence was again conclusive that the tribe had a historical, geographical and cultural nexus with the land. (*Bear River Opinion* at p. 11.) The subject parcel was located within: one mile of two aboriginal villages and two major trails; three miles of five aboriginal villages; three or four miles of the site of a mythic flood in tribal story telling; and six miles from the tribe's original rancheria. It was also important to the NIGC that tribal members resided on the original rancheria at the time of termination. (*Id.* at p. 10.) It was "not merely an acquisition but a restoration of previously used lands." (*Id.* at p. 13.) More recently, the NIGC clarified a tribe's historical connection to the land must be "longstanding" and "ancient" before the land can be "restored" under Title 25 United States Code section 2719(b)(1)(B)(iii). (*Wyandotte Decision* at p. 5.) That a tribe occupied nearby land for several years is not sufficient by itself to justify "restoration" under IGRA, even if "significant roots were put down." (*Ibid.*)

The foregoing cases and opinions confirm that under the location factor, the Tribe must clearly establish a significant "longstanding" or "ancient" geographical, historical, or cultural relation between its current membership and the particular land under consideration. A likelihood that the Tribe's ancestors once used the land in question does not, by itself, establish the requisite connection. Absent such a nexus, the land cannot properly be "restored" to the Tribe within the meaning of Title 25 United States Code section 2719(b)(1)(B)(iii).

2. Historic Ethnographic Works Place The Subject Land Outside The Tribe's Aboriginal Territory

In this instance, the Tribe has not clearly demonstrated a sufficient historical nexus to the proposed gaming site for it to qualify as restored land. To accept the Tribe's arguments, the NIGC must first reject all other ethnographic information available regarding the Tribe's aboriginal territory, including the writings of noted historians Alfred Kroeber, Ralph Beals and Joseph Hester who individually and collectively conclude Mountain Maidu territory did not include the subject land.[4] Specifically, the Tribe asks the NIGC to disregard Kroeber's informed and "widely accepted ethnographic pronouncements regarding the boundaries of Maidu and Wintu territories," largely because—according to Dr. McClurken—Kroeber's field researchers failed to document their sources. (McClurken Letter at pp. 2-3.) Over 150 years of established ethnographic data and the same historians' works have formed the basis for several NIGC land opinions, countless BIA decisions regarding, among other things, tribal service areas, and several court decisions regarding aboriginal Indian territories. (See, e.g., *Mattz v. Arnett* (1973) 412 U.S. 481, 486 & fns. 4-5; *Karuk Tribe of California v. Ammon* (Fed. Cir. 2000) 209 F.3d 1366, 1370 & fn. 2; *Elser v. Gill Net Number One* (1966) 246 Cal.App.2d 30, 38; *Acosta v. San Diego County* (1954) 126 Cal.App.2d 455, 465.)

Notwithstanding Dr. McClurken's "alternative analysis," the Tribe acknowledges "[t]he exact boundaries of Maidu and Wintu aboriginal territory, to the extent that such existed, remain an open question." (Jordan Letter at pp. 2, 8.) The NIGC has indicated a restored lands determination requires more certainty than an "open question" about a tribe's aboriginal territory—it must establish a specific nexus to the land at issue. (See *Karuk Opinion* at pp. 7-9; *Grand Traverse Opinion* at p. 15; *Mechoopda Opinion* at p. 3; *Bear River Opinion* at pp. 10-13.)

3. The Tribe's Historic Connection To Red Bluff Is Speculative

The Tribe discusses the "likelihood" that Red Bluff was a "transitional zone or joint use area used by both Maidu and Wintu Tribes during aboriginal times" to establish a nexus (Stetson Opinion at p. 19.) However, this discussion fails to establish with any certainty that the specific land at issue, located five miles south of Red Bluff, was important to the Tribe throughout history.

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[4] Apparently, the NIGC previously expressed concern over the discrepancy between Dr. McClurken's assertions and the conclusions of Kroeber, Beals and Hester. (See Jordan Letter at p. 2, McClurken Letter at pp. 2-5.)

The Tribe further claims a historical connection to the Red Bluff area because both Maidu and Wintu were "*highly mobile* and *accessed the resources in each others* [sic] *territories*, and both groups used natural resources in the Red Bluff area as part of their subsistence strategies." (Stetson Opinion at p. 19, emphasis added.) Specifically, the Tribe claims Maidu Indians became migratory workers to survive economically, and "Red Bluff was one of the towns in which people sought work." (*Id.* at p. 23.) The Tribe's suggestion that federal Indian law policy forced its Wintu and Maidu ancestors from their homeland and into Red Bluff to find employment (*id.* at p. 26), is evidence that Red Bluff was not in fact their traditional homeland. Demonstrated mobility for employment opportunities does not demonstrate longstanding or ancient roots in a community. Consistent with this notion, Dr. McClurken reported members who traveled away continued to return to Greenville (McClurken Report at p. 3), the Tribe's undisputed historic land base.

Additionally, the Tribe attempts to connect its modern members to its nomadic ancestors by producing "Hourglass Trees" to show the genealogical heritage of the ten members who were the distributees of the original Rancheria assets at the time of termination, and that various generations of members and their antecedents were born in towns such as Redding, Susanville, Oroville, Yuba City, Greenville, Quincy and Red Bluff. (Stetson Opinion at p. 23.) The NIGC did not make the "Hourglass Trees" available to the State for review and discussion. Nonetheless, the Tribe claims that modern members, who claim Maidu and Wintu ancestry, live throughout Plumas, Yuba, Butte, Shasta and Tehama Counties, including Red Bluff. (McClurken Letter at pp. 4-5.) Absent from the record, however, is any discussion about the proposed gaming site. Because Maidu is historically divided into three distinct groups, and Wintu is even more diverse (McClurken Letter at pp. 1-2.), it is incumbent upon the current members to establish a direct lineal connection to the specific Maidu and Wintu subgroups it claims "jointly used" the Red Bluff area, and more specifically, its ancestors that used the proposed gaming site in a culturally significant manner.

To meet this burden, the Tribe relies upon a single member's testimony that his relatives "lived and worked in and around Red Bluff and throughout the region[,]" some as far away as 30 to 45 minutes east of Red Bluff. (Stetson Opinion at p. 23.) But there is no indication of how large the member's family is or was, how many of his relatives are or were enrolled Tribal members, or when or where exactly they "lived and worked in and around Red Bluff." Instead, the member stated his family lived in the "Red Bluff/Payne's Creek area." (*Id.* at p. 20.) The Tribe acknowledges Payne's Creek is about 15 miles east of Red Bluff. (*Ibid.*)

4. The Tribe Does Not Establish A Sufficient Modern Connection To The Subject Land

The Tribe also relies upon population statistics to support a modern connection to the land. It claims "more of the Tribe's adult members currently live in Red Bluff *and* the Shasta County communities of Anderson, Shasta Lake, and Redding, than live in Plumas County. Twenty-nine adult

members live in Red Bluff *and* the Shasta County communities, and only twenty-one . . . live in Plumas." (Stetson Opinion at pp. 26-27, emphasis added.) "The remainder of the Tribe's 96 adult members live in other California counties and in other states." (*Id.* at p. 27, fn 13.) This information, which combines the Tribe's Red Bluff and Shasta community populations, does not address critical information, such as the number of enrolled members that currently live on the subject land, or in Red Bluff, or within close proximity to the subject land. The Tribe also claims it is "investing its resources in serving members who live in this area." (*Id.* at p. 27.) But the use of HUD grant monies to purchase housing units in Shasta County cannot fairly be considered an investment in the land under consideration here.

The NIGC has also apparently expressed concern with the lack of any significance attributed by the Tribe to Red Bluff or Tehama County in its early drafts of the Tribe's constitution, and its exclusion of voting districts or polling places within those areas. (Jordan Letter at p. 2.) Dr. McClurken acknowledges the jurisdictional limitations in the Tribe's constitution reflect the "federal government's mandate that the jurisdiction of the tribe would extend only to land within the boundaries of the Greenville Rancheria as defined just prior to termination in 1959[.]" (McClurken Letter at p. 5.) The omission is consistent with the absence of any nexus to Tehama County or Red Bluff upon restoration, or as recently as 1995 when the BIA approved the constitution.

In any event, the Tribe emphasizes that its administrative operations—which were centered in Red Bluff from 1990 to 1999 before returning to the Rancheria—its health clinic operation in Red Bluff, and the BIA's designation of Tehama County as a "near reservation" service area collectively demonstrate a nexus to the proposed gaming site. (Jordan Letter at p. 2.) We do not believe that locating Tribal governmental offices in Red Bluff, five miles from the subject land, for a few years equates to a longstanding political nexus to the subject land. Indeed, Dr. McClurken reports the Tribe initially moved its government seat from the "historic Greenville Rancheria" to Redding—nearly 30 miles north of Red Bluff and even farther from the proposed gaming site—because 75 percent of its members lived in the Redding area. (McClurken Report at p. 6.) To avoid any competition or conflict with the service area of the Redding Rancheria, the Tribe relocated its headquarters to Red Bluff. (*Ibid.*) Therefore, it appears that the Tribe did not relocate its governmental operations to Red Bluff for culturally or historically significant reasons—it did so to avoid conflict with a Redding-based tribe and because of its central location. (See Stetson Opinion at p. 29.)

The Tribe also suggests its operation of a health clinic in Red Bluff since about 1995 demonstrates significant ties to the area. (Stetson Opinion at p. 29.) The medical clinic, however, services enrolled members of many federally recognized tribes and demonstrates no exclusive ties to the general area.

Moreover, the BIA's designation of Tehama County as a "near reservation" service area does not support a conclusion that the proposed gaming site is culturally significant to the tribe, or that the "BIA has acknowledged the expanded territory of the Tribe." (Stetson Opinion at pp. 29-30.) Instead,

the designation entitles Tribal members and their Indian family members who live in nearby counties outside the Rancheria boundaries to receive BIA financial assistance, or social service programs, which would otherwise be limited to members who live within the Rancheria boundaries. (See 65 Fed.Reg. 31188 (May 16, 2000).)

5. There Is No Evidence The Proposed Land Acquisition Is A Restoration Of Previously Used Land That Was, Or Is, Culturally Significant To The Tribe

Traditional factors that might otherwise establish a tribal nexus to the land are not provided in this case. For instance, there is no evidence of occupancy on the site by any Rancheria ancestor; use of the site for fishing, hunting or gathering purposes; geographic features or locations on the site that are culturally significant to the Tribe; recognition by local officials that the site is closely tied to the tribe; frequent visits to or use of the site by Tribe members; the presence of a burial ground, sweatlodge, roundhouse, historic village, settlement, or town on the site; or any building or structure, past or present, that serves an important tribal function. Although restored lands need not necessarily be located within or adjacent to a tribe's pre-termination reservation or rancheria boundaries, such a location would be more compelling than land located over 100 miles from the Tribe's existing Rancheria and historic land base, as acknowledged by the Tribe and federal court.

Moreover, most ethnographic and anthropologic information appear to confirm that the subject land is within the aboriginal territory of the Paskenta Band of Nomlaki Indians (Paskenta Band), and outside the Mountain Maidu band's widely recognized ancestral range. Even though a professional archeologist has not surveyed the land, and there is no visual evidence of any historic Indian occupation, the Paskenta Band maintains the land is within its aboriginal territory. Given the conflicting Indian claims to the property, it does not appear the NIGC can resolve the matter favorably for the Tribe without independent consultation with the Paskenta Band and other local tribes. (See 25 U.S.C. § 476(f)-(g) [forbidding federal agencies from making determinations that confer upon recognized tribes enhanced privileges and immunities relative to other tribes]; 40 C.F.R. § 1508.8 ["Effects includes such ecological . . . , aesthetic, historic, cultural, economic, social, or health effects, whether direct, indirect, or cumulative."].)

C. Temporal Relationship Between Acquisition And Tribal Restoration

A complete "restored lands" analysis also requires consideration of the "temporal relationship" element. In this regard, there is no evidence the Tribe has been actively pursuing the subject land until recent times. The Tribe's restoration to federal recognition in 1983 and the current land acquisition effort appear to be independent of each other, and not part of the same restoration process. According to the NIGC, the Tribe must show the subject land was important to the Tribe immediately upon resumption of its federal recognition. (*Grand Traverse Opinion* at p. 15.) Here, over 21 years elapsed between the Tribe's restoration in 1983 and its request in 2004 that the federal government accept the land into trust. While the land is not yet in trust, and there is no finite period in which the acquisition

must occur, the Solicitor has determined a 14-year gap is not too long, but the NIGC has expressed an opinion that an 18-year gap is too attenuated. (Office of the Solicitor's Mem. re *Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians v. Babbitt*, at pp. 13-14; *Karuk Opinion* at p. 9.)

III. Conclusion

The Tribe's submission to the NIGC does not clearly demonstrate it has maintained any longstanding geographic, historic or cultural ties to the proposed gaming site. Due to the lack of evidence that this is a restoration of previously used lands, it is the State's position that the Tribe's request for a restored lands determination should not be granted at this time. Thank you for considering our comments on the matter.

Sincerely,

Andrea Lynn Hoch

ANDREA LYNN HOCH
Legal Affairs Secretary

Attachments

cc: Penny Coleman, Acting General Counsel, NIGC
Philip Hogen, Chairman, NIGC
Lorie James, Chairperson, Greenville Rancheria of Maidu Indians
Judith K. Albietz, Esq.
Derril B. Jordan, Esq.
Everett Freeman, Chairman, Paskenta Band of Nomlaki Indians
George Russell, Tehama County Board of Supervisors