

Stand Up For California!

"Citizens making a difference"

standupca.org

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August 4, 2006

Honorable Clay Gregory
Regional Director
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, CA. 95825
Fax: 916-978-6099

RE: Comment on Paskenta – Non Gaming land Acquisition Application?

Dear Director Gregory:

Stand Up For California writes today to comment on the recent notice of a land acquisition by the Paskenta Band of Nomiaki Indians (Tribe) in Tehama County. The acquisition is for 320.71 acres of land, much with Highway 5 frontage. The Tribe's stated purpose for this trust acquisition is:

"The Tribe seeks to acquire the Sites in trust status in furtherance of its self determination, including for the purpose of ensuring that uses of said sites incompatible with the Tribe's self governance and self determination does not occur." (Section 1.2 of application)

The Tribe has achieved this goal by purchasing the land in *fee*. The Tribe and only the Tribe has control over the development of these lands. If the tribe is sincere in its statement not to change the zoning or the present use of the lands then there is no need for the trust acquisition.

Further there appears no "*immediate need*" for acquiring this land in trust. The Tribes current land base consists of 1899 acres acquired in trust as its initial reservation on November 30, 2000. That is approximately 8 acre per each of the 238 enrolled members. (Membership listed in the 1999 BIA Directory) The new acquisition would increase that to approximately 10 acre per enrolled member. The Tribe enjoys a successful casino operation and has diversified its business holdings. The Tribe is a model of success.

The Tribe also states in Section 5.1 of the application that a National Environmental Policy Act (NEPA) is not required for this action. While an agency *MAY* exclude from NEPA review categories of actions that do not individually or cumulatively have a significant effect on the

human environment it does not mean that it *SHOULD* when removing significant chunks of land “without any stated business plan” out of the regulatory authority of the State of California.

The Tribe asserts a bold and broad conclusion without a preliminary Environmental Assessment in Section 9.3, Conclusion:

“The acquisition of the Sites in trust is in the best interest of the Tribe, the local community and the State and will not be detrimental to the surrounding community.”

How can the Tribe or the BIA make a determination of “*no significant findings*” without an Environmental Assessment? This acquisition is a major federal action. Moreover, because the land meets an exception under Section 20 of IGRA, it requires an Environmental Impact Statement (EIS).

The Tribe through open market purchases has regain control over the development on these lands, however transferring this land from fee to trust grants the tribe governmental control over these lands. This creates a disruptive and practical consequence to the surrounding areas which are populated by non Indians. Transferring these lands into trust creates a mix of state and tribal jurisdictions which burden the administration of state and local government and adversely affect landowners neighboring the tribal lands.

The Tribe further states that this is a non gaming application. I disagree. This application must be considered and processed as gaming because the land is contiguous to the existing reservation. This acquisition represents a clear and indisputable exception to IGRA and must be processed as land acquired after 1988.

The Tribes 1999 Tribal State Compact permits this tribe to have *two* casinos. Moreover, should the current language of HR 4893 by Congressman Richard Pombo be enacted, the new lands which the Tribe is applying for in trust provide significant casino marketability. This marketability will enable the Tribe to host other tribes and their casinos and earn significant revenues through lease agreements. The Tribe is a member of the California Tribal Business Alliance (CTBA) that is in full support of Congressman Pombo’s legislation.

The ‘Fee to Trust Consortium’ of which the Tribe is a member since its inception repeatedly fails to recognize gaming applications and process them accordingly. The Consortium has also failed to require the appropriate Environmental Impact Statements. The Fee to Trust Consortium is under investigation by the Office of the Inspector General, “...to determine whether the tribes’ allocation of money to fund the consortium was legally authorized and whether the BIA was favoring land in trust applications from those tribes.” (*GAO July 2006 – BIA’s Efforts to Impose Time Frames and Collect Better Data Should Improve the Processing of Land in Trust Applications*)

Applicable Authorities Gaming Application – IGRA – IRA -1999 Tribal State Compact

The Tribe signed a Class III Compact with the State of California which stipulates that land must meet the standards of “Indian lands” under IGRA. Indeed the 1999 Compacts state the following:

Sec. 4.2 Authorized Gaming Facilities. 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 extent limited under IGRA, this Compact, or the Tribe's Gaming Ordinance.

Without regard to whether IGRA itself requires that land is taken into trust for gaming, non gaming or gaming ancillary purposes meets the statutory standard, the fact is that the tribe executed – and the Secretary approved—a compact imposing that requirement. Thus, as a matter of IGRA the Compact under which the tribe conducts gaming must meet the standards of IGRA.

Sec.2.8 “Gaming Facility” or “facility” as defined at Section 4.2 of this Compact means any building in which Class III gaming activities or gaming operations occur, or in which the business records, receipts, or other funds of the gaming operation are maintained but excluding offsite facilities primarily dedicated to storage of those records, and financial institutions, and all rooms, building, and areas including (but not limited to) parking lots and walkways, a principal purpose of which is to serve the activities of the Gaming Operation, provided that nothing herein prevents the conduct of Class II gaming (as defined under IGRA) there in.

Moreover, the compact definitions broadly define what lands may be used for gaming or ancillary gaming activity.

- **The Secretary approved these compacts and thus they have become regulations.**

For these reasons, the application for land acquisition of 320.71 ac. must be considered a land acquisition for gaming and gaming related activities. These acquisitions are subject to the processes imposed on after 1988 land acquisitions.

This is very important in California considering the cultural, economic and political impacts on nearby residential and commercial developments. Particularly where the land is being acquired for business purposes, the tribe is required to provide a plan identifying anticipated economic benefits associated with the proposed use. The Tribe must submit a full environmental impact report *prior* to land transferred into trust in order to comply with the intent of the regulation which provides affected parties the opportunity to comment on developments. No plan was submitted with the Paskenta application and the application in Section 5.1 is asking for a categorical exemption.

The application appears to request the land as retribution to be "**banked**" for future use or generations. The Tribe identifies the need for this retribution as the failure of the federal government to ratify 18 treaties in 1852 which affected the Tribes future roll in the Indian Lands Claims litigation. The Tribe also cites the termination of federal title to *fee* lands in the Rancheria Termination Act of 1958. The presents of this language in this application appears intended to sidetrack decision makers to the merits of the issue before them. What is the immediate need of the fee to trust request for this land today? Is this a gaming application? Where is the EIS and the business plan?

- "**Land banking**" is the acquisition of land by tribes for some future undisclosed use. This action circumvents the intent of federal regulations to address serious and critical taxation and jurisdictional issues.

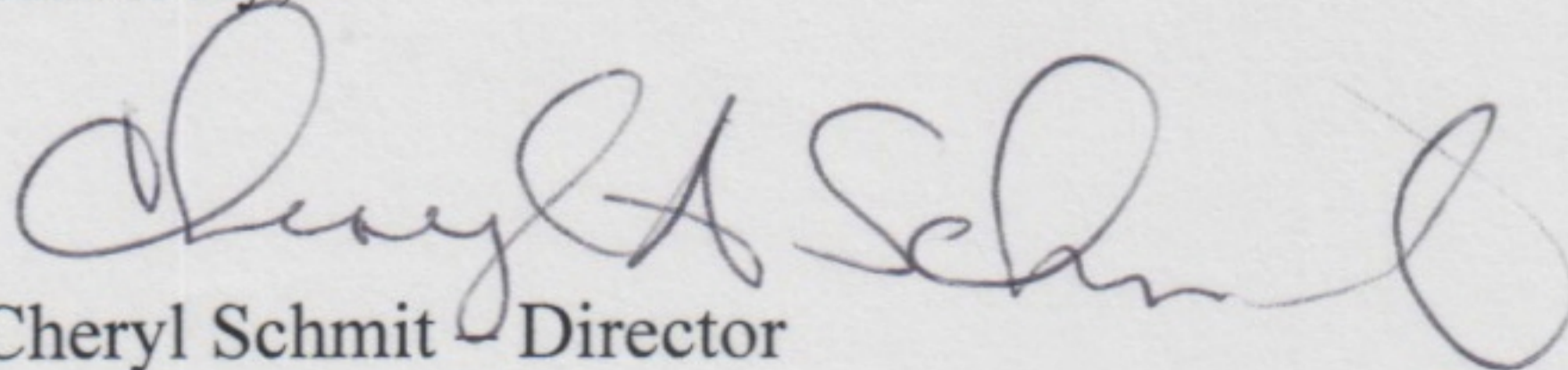
This type of acquisition appears contrary to the 1934 Indian Reorganization Act (IRA). The IRA requires tribes to demonstrate an immediate need for the acquisition for the land. Approval of land banking applications appears to constitute federal interference with the powers reserved to the State in a manner patently at odds with the intent of the Tenth Amendment of the United States Constitution.

Failure to notify affected parties or adhere to administrative procedure requirements such as Environmental Impact Review or a Business Development Plan *prior* to the time of transfer significantly affects the political authority and good working order of states, state agencies and political sub divisions of states, ultimately, affecting all inhabitants of the state.

The Paskenta Band of Nomiaki Indians represents a tribe that has worked hard to address the impacts of their current casino and business developments in a mutually cooperative manner with its neighbors and regional governments. Stand Up For California respectfully requests the re-submission of this application with an Environmental Impact Statement and a required Business Plan. The Tribe may wish to consider the benefit of negotiating a judicially enforceable agreement with the County of Tehama stating clearly that no gaming or gaming ancillary activity will occur on this newly acquired property that is contiguous to the established reservation and which is an indisputable exception under IGRA. Or, the business plan may identify the intended future use of these lands so that appropriate mitigations will occur.

This application as it is must be processed as a gaming application for the aforementioned reasons. Please give Stand Up For California's comments your consideration.

Sincerely,



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CC: Honorable Earl Devaney -Inspector General