ML12324

Stand Up For California!
"Citizens making a difference"

www.standupca.org

P. O. Box 355
Penryn, CA. 95663

May 25, 2012

Amy Dutschke
Regional Director
United States Department of the Interior
Bureau of Indian Affairs (BIA)
Pacific Regional Offices
2800 Cottage Way
Sacramento, Ca. 95825

RE: Notice of (Gaming) Land Acquisitions Application by the Scotts Valley Band of Pomo Indians of California (May 1, 2012). Previous notice was dated March 11, 2005.

Dear Ms. Dutschke,

This letter of comment is submitted on behalf of *Stand Up For California!* in response to a notice received regarding the Scotts Valley Acquisition Application for approximately 29.87 acres located in an industrial area on the Richmond Parkway at Parr Boulevard. The land is located in the unincorporated area of the County of Contra Costa.

The notice issued by your office, asks for ***"information applicable to your organization*** to assist the BIA in the exercise of discretionary authority". (At page 1 paragraph 2)

Stand Up For California! has information that will assist the BIA in the excise of its discretionary authority. Our *organization* is a non-profit, public service corporation with the stated mission of educating lawmakers, law enforcement, local governments and citizens about the cultural, economic, and political impacts of state and tribal government gaming, and to develop a focused policy that safeguards communities, local governments and tribal governments and promotes cooperation and beneficial government to government relationships.

The Indian Reorganization Act (IRA) as the U.S. Supreme Court Justices recently pointed out in oral argument in the *Salazar v. Patchak* case is a land use statute. The intended use of the property is for gaming. The IRA and the Indian Gaming Regulatory Act (IGRA) are linked. *See Air Courier Conference of Am. v Am. Postal Workers Union, AFL-CIO, 498 U.S. 517,530 (1991)* In Scotts Valley Band's fee to trust application both statutes are invoked. Any and all negative impacts, including undermining the constitutionality of California's Indian gaming regime and public policies covering

gaming that affect individual citizens, community groups or California's gaming watchdog organization[1], must be read and considered.

Stand Up For California! objects to the processing of the Scotts Valley Band proposed gaming fee to trust acquisition as a restored lands exception. Our organization views it as an abuse of the limited exceptions in Section 20. The Scotts Valley Band instead should they choose to move forward must use the exception of a two-part determination.

The Scotts Valley Band's application if approved will set a precedent for the restored lands exception in California and the nation. An approval will undermine our States current gaming policy and particularly tribal gaming policy. Approval of the Scotts Valley Band's request for a restored lands determination is contrary to the recent reasoning in the denial of the Guidiville Band's application for a restored lands exception for gaming in the City of Richmond. Moreover, an approval would be contrary to several circumstances in which restored lands have been defined by federal courts.

I. Role of the Public

According to Donald Arnold, Chairman of the Scotts Valley Band of Pomo Indians before the House Resources Committee on April 5, 2006, the **"public"** has a significant role to play in the fee-to-trust acquisition. (At page 7 of his testimony, last bullet point)

> "Finally, after the Secretary of the Interior has considered **all the public comments,** including information about impacts and mitigations, if he/she does decide to acquire trust title to the land, Interior's regulations **provide the public** with a very clear and very unambiguous opportunity to challenge the Secretary's decision in federal court before he/she implements that decision. 25 CFR 151.12(b) requires the Secretary **to give the public at least 30 days' notice of his/her decision** to take land into trust before he /she will actually take the action to acquire trust title." (Emphasis added to the word ***"public").*** (Exhibit 1)

It appears that Chairman Arnold and Secretary Salazar have conflicting opinions over the role of the public in the fee-to-trust regulation. Either Chairman Arnold is intentionally misinforming Congress or the Secretary is misinterpreting the law and its supporting regulation.[2] Nevertheless, the analysis of this fee to trust, while it may be for the benefit of an Indian tribe, must focus on the impact to the State, local government and those who will be directly and practically impacted, i.e. **the public.**

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[1] *Stand Up For California!*

[2] *Stand Up For California!* joined by 27 additional California community groups are urging the United States Supreme Court Justices to require the federal government to take into *account* the legitimate concerns of citizens and their organizations. Secretary of the Interior Salazar is of the opinion that he is under no particular obligation to take into account legitimate concerns of citizen when he decides whether to approve or deny a request by Indian tribes to create new Indians lands for a casino. We look forward to a ruling which we are optimistic will be favorable to citizens and community groups by the end of June.

Stand Up For California! commented on the original Notice of (Gaming) Land Acquisition Application submitted by the Scotts Valley Band in 2005. We have also participated and submitted substantial comment in the DEIS/FEIS process. We are resubmitting those comments as an attachment to this letter of comment. (Exhibit 2 & 3) Additionally, we note and suggest serious consideration of the comments made by the Yocha Dehe Wintu Nation formerly the Rumsey Band of Wintun who made significant comments in 2005 on the fee to trust application of the Scotts Valley Band. The Tribe's comment made clear according to the guidelines in place in 2005 and prior, that the proposed site of the casino in Richmond is not "restored lands". (Exhibit 4)

II. The 29.87 acres located in an industrial area on the Richmond Parkway at Parr Boulevard in the unincorporated area of the County of Contra Costa is not "restored land".

The Scotts Valley Band was restored to recognition by a court approved settlement with the United States in Scotts Valley Band of Pomo v. U.S. No. C-86-3660-VRW (N.D. Cal 1991) Therefore, in order for the Parcel to qualify as "restored lands", the Band must prove it meets the regulatory requirement set forth in 25 C.F. R. 292.12.

1. A "modern connection" to the Parcel (25 C.F.R. 292.12(a)
2. A significant "historical connection" to the Parcel (25 (C.F.R 292.12(b)
3. A temporal connection between the date of the acquisition of the land and the date of the Bands restoration (id.at 292.12(c).

a. A Modern Connection

It appears the Tribes only "modern connection" to the land is through its gaming investor Alan Ginsberg of Florida. The Scotts Valley Band entered into a Stipulated Agreement on March 15, 1991. The federal defendants agreed to accept in trust land *"outside the boundaries"* of the former Rancheria which was currently owned by certain Indians. However, the Stipulation restricts these outside properties to any fee interests in trust or former trust allotments issued to successors in interest of the Rancheria. The City of Richmond is outside the preview of this stipulation. Thus, the Scotts Valley Band is in need of a section 20 concurrence from California's Governor.

b. A Historic Connection

A significant "historical connection" to land is easily identified in the City of Lakeport, Lake County California. For more than 100 years, BIA records have documented the Scotts Valley Band residing in or nearby the City of Lakeport.[3] In 1999, the BIA Tribal Directory lists the Scotts Valley Pomo – Wailaki residing on .79 acres in Lakeport, Lake County California. A Tribal Office is identified at 149 North Main Street, Suite 200,

[3] Please see *Stand Up For California's!* letter of comment from 2005, this covers the history of the Scotts Valley Band from BIA and Congressional Record.

Lakeport. CA 95453.[4] Certainly, if the Band had a modern or historic connection in the unincorporated area of Contra Costa County it would have been reflected in the BIA Tribal Directory as little as a decade ago.

c. Temporal Connection

The Band had its federal recognition status re-established in 1991 pursuant to the Stipulation. Approximately 22 years later, the Tribe now tries to secure the land in Richmond as part of its "restoration" to federal status. There is no evidence that the Tribe has been actively pursuing the Richmond property until recent time. The Band's restoration to federal recognition in 1991 and the proposed recent land acquisition efforts are independent of each other and not part of one continuous transaction. Based on the legal precedent relied upon here in, there is not a sufficient "temporal relationship" between any restoration and the proposed land for a casino in the City of Richmond.

III. Unreasonable Commute

The City of Lakeport, Lake County where the Tribe has .79 ac. of land, according to Google Maps, is 112 miles or approximately 2 hours and 23 minutes commute from the 29.87 acres of land in the unincorporated area of Contra Costa County.[5] Assistant Secretary Larry Echo Hawk recently denied the Guidiville Bands Land Acquisition (Gaming) Application stating that it was an "unreasonable commuting distance", among other failings. (*See*-page 4 paragraph 1 of the Sept. 1, 2011 Letter of Denial to Chairperson Merlene Sanchez)

IV. Restored Lands Exception –BIA, NIGC and Courts have imposed Limitations

Current litigation, *Guidiville Rancheria of California v. Secretary of the Interior, Ken Salazar*[6] is arguing that the Indian Gaming Regulatory Act applies to any land the tribe may seek to acquire and game on. Further, that somehow the promulgation of regulations in 2008 has changed the rules. Not so. Federal courts prior to the promulgation of the 2008 regulations have put in place requirements for the finding of restored lands.[7]

The BIA Solicitor in a memo dated 12-5-2001 regarding the "Confederated Tribes of Coos/etc." agrees that "restored land" does not mean just any aboriginal land ever occupied:

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[4] Exhibit 6 – Copy of BIA Tribal Directory 1999
[5] Exhibit 5 – Google Map – 112 miles and more than 2 hours
[6] *The Guidiville Rancheria of California v The United States of America Ken Salazar* CV 12 1326 filed March 14, 2012 U.S. District Court Northern District of California
[7] There is no legislative history explaining congressional intent with regard to the "restored lands" provision, but there are two important federal court decisions reviewing and analyzing its meaning. *See Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Michigan*, 46 F. Supp. 2d 689, 696 (W.D. Mich. 1999); *Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians v. Babbitt*, 116 F.Supp.2d 155 (D.C. 2000).

> **However, because IGRA provides certain temporal (i.e., the October 17, 1988 limitation for reservation boundaries) and geographic limitations (i.e., land within or contiguous to the tribe's reservation) we cannot view § 2719(b)(1)(B)(iii) to allow gaming on after-acquired lands with no limitations. Consequently, we do not use a dictionary definition of restored to include all land restored. It also seems clear that restored land does not mean any aboriginal land that the restored tribe ever occupied. Tribes that were not terminated and thereby not capable of being restored, lost vast amount of land and were forced to move all over the country such that their reservations on October 17, 1988, are vastly different than their aboriginal land.**[8]

This prior memo appears to have influenced the final decision of September 10, 2004, of the National Indian Gaming Commission on the Wyandotte Nations Amended Gaming Ordinance.[9] In this memo the agency has revised their stance on gaming off-reservation but still clearly disfavors approval of lands far from established land bases:

> **"It is clear that Congress intended to allow some gaming to occur on lands acquired after enactment of IGRA under this provision, but only contemplated gaming on newly acquired lands far from the current or prior reservation in very specific isolated circumstances."**

In 2002, in an opinion involving a Michigan tribe that was later affirmed by the Sixth Circuit, the District Court said nearly the same thing, saying that the term, "restoration maybe read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes **while simultaneously limiting after acquire property in some fashion."** Grand Traverse Band of Ottawa and Chippewa Indians v U.S. Attorney for the Western District of Michigan 198 F. Supp. 2d, 920, 935 (W.D.Mich.2002) aff'd 369 F .3d 960 (6th Cir. 2004) (Emphasis added)

In 2003, in a case involving a California tribe, explained that the restored lands and initial reservation exceptions *"serve purposes of their own, ensuring that the tribes lacking reservation when IGRA was enacted are not disadvantaged relative to more established ones." City of Roseville v Norton* 348 F. 3d 1020, 1030 (D.C. Cir. 2003) But, the court also stated important in this case are the **factual circumstances, location and temporal connection requirements that courts have imposed.**

All of these determinations and court actions occurred prior to the development of the May 2008 regulations. The 2008 regulations did not change the rules. IGRA, the NIGC,

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[8] Memorandum to Asst. Solicitor, Division of Indian Affairs, 12-5-2001, Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt, 116 F.Supp.2d 155 (D.D.C. 2000) in regard to proposed gaming on the Hatch Tract in Lane County, Oregon.

[9] National Indian Gaming Commission, Wyandotte Nation Amended Gaming Ordinance, 9-10-2004, Final Decision and Order

the BIA Solicitors and more importantly federal courts have established limits for restored lands. The proposed gaming application in the City of Richmond by the Scotts Valley Band does not meet the criteria of a restored lands application.

V. Conclusion

The proposed acquisition if approved for gaming will undermine the constitutionality of California's Indian gaming regime. As you may be aware, the State has successfully defend a challenge to the constitutionality of Proposition 1A[10], which challenge alleged that California violated the Equal Protection Clause of the United States constitution when it permitted Indian tribes to conduct class III gaming on Indian lands, to the exclusion of all others. *Artichoke Joe's*, supra, 353 F. 3d at 731. In upholding Proposition 1A, the Ninth Circuit Court of Appeals relied upon the State's restriction of tribal gaming "to carefully limited locations" as a reasonable means of serving the State's interest in protecting the public health, safety, welfare and good order.

The proposed acquisition if approved for gaming will undermine the sovereign authority of tribal governance. In a letter dated January 10, 2010, the Honorable Nelson Pinola, Tribal Chairman of the Manchester-Point Arena Band of Pomo Indians alerts fellow tribal leaders of a pending BIA action that he believes poses a very serious and immediate threat to tribal government gaming. "I believe that if we allow the strong clear, historical, governmental and cultural connection between our land and our sovereignty to be broken we are playing into the hands of the enemies of tribal sovereignty. Their arguments will be strengthened by a BIA decision to simply create sovereign authority over any land that looks good for a business."

The propose acquisition if approved for gaming will disenfranchise the California electorate who voted in 2000 to support tribal gaming on established Indian lands.

Thank you for this opportunity to comment on this application. If you have any questions concerning this comment please feel free to contact Cheryl Schmit, Director, 916-663-3207.

Sincerely,

Cheryl Schmit – Director
Stand Up For California
916-663-3207
cherylschmit@att.net
www.standupca.org

[10] Proposition 1A provided for a limited exception for federally recognized Indian Tribes on California Indian Lands in the States prohibition on Casino style gaming. This statewide ballot measure was supported by 64% of California voters on March 7, 2000.

CC: Jacob Appelsmith, Sr. Advisor to Governor Jerry Brown
Board of Supervisors Contra Costa County
California Department of Justice – Indian Law and Gaming
United States Senator Dianne Feinstein

Attachments:

Exhibit #1
Testimony of Donald Arnold, Chairman of Scotts Valley Band of Pomo Indians Before the House of Resources Committee

Exhibit #2
Stand Up For California's! April 8, 2005, letter of comment on the gaming fee to trust application

Exhibit # 3
Stand Up For California's! April 28, 2008, FEIS Comments Scotts Valley Fee to Trust

Exhibit #4
Rumsey Band of Wintun May 4, 2005, Comments in Opposition to Scotts Valley Tribe's Request for fee to trust for gaming purposes.

Exhibit #5
Google Maps Distance and direction from Tribe's land in Lakeport, Lake County to Richmond, Contra Costa County

Exhibit #6
1999 Tribal Information and Directory pages 91-92, identify tribal office location and prior Rancheria, etc.

Exhibit #1

**TESTIMONY OF DONALD ARNOLD, CHAIRMAN,
SCOTTS VALLEY BAND OF POMO INDIANS,
BEFORE THE HOUSE RESOURCES COMMITTEE**

April 5, 2006

Introduction

Honorable Chairman Pombo and members of the Committee, my name is Don Arnold and I am the Chairman of the Scotts Valley Band of Pomo Indians. Thank you for the opportunity to speak in front of you today on such an important issue.

Scotts Valley is a small landless Tribe in California that has an application with the Department of Interior to have land placed into trust as a restored tribe for gaming purposes. To date, the Tribe has expended a considerable amount of time and resources in order to comply with the federal fee to trust and restored lands applications process. I hope that I can provide some valuable information about the unique history and needs of California Tribes as well as update you as to where we are in our project and why we are concerned with the proposed legislation. We also would like to specifically speak to the issue of grandfathering and why Scotts Valley and other tribes should not have the rules changed in the seventh inning of the game.

Scotts Valley History

The Scotts Valley Band of Pomo Indians of California is a federally recognized Indian tribe, which has absolutely no trust land base. The Tribe's status as a federally-recognized Indian tribe was illegally terminated in 1965 under the California Rancheria Termination Act, and restored in 1992 pursuant to a judgment of the Federal District Court for the Northern District of California. The Judgment, however, specifically precludes the Tribe from re-establishing our former Rancheria.

As a result of the Federal Government's termination and relocation policies throughout the 20th century, the vast majority of tribal members were relocated to the San Francisco Bay area, and, in 2000, the Bureau of Indian Affairs designated Contra Costa County, California as the Scotts Valley Band of Pomo Indians "service population area." Because a large percentage of tribal members reside in and around the County and the County has been designated as the Tribe's service population area, the Tribal Council

has determined to restore the Tribe's trust land base in the County, and to fully establish the Tribal Government and Tribal community in Contra Costa County. The Property is located in the extreme western end of the County close to the sites of historic Pomo villages and trails and the territory the Pomo ceded to the United States in the 19th century. The Property is thus the closest part of the Tribe's present day service population area to historic Pomo territory. As a result, the Tribal Council has determined that the development and operation of a gaming facility on the Property is an important Tribal Government project designed to improve the economic conditions of the Tribe and its members, increase tribal revenues, enhance the Tribe's economic self-sufficiency and promote a strong Tribal Government capable of meeting the social, economic, educational, cultural and health needs of the tribal members. Accordingly, the Tribe has requested that the Secretary of the Interior acquire title to six (6) parcels of real property totaling approximately 29.87 acres located within an unincorporated area of the County in trust for the benefit of the Tribe.

Application for Land Into Trust

After much time and resources, the Scotts Valley Tribe submitted an application under 25 CFR 151 on January 25, 2005 This application is an extensive compilation of both required and submitted documents filling numerous binders that includes a narrative addressing all requirements within 151 such as need, authority, impacts on the State and Political Subdivisions jurisdictional issues and title requirements.

In addition, a detailed Environmental Impact Statement (EIS) was developed which identifies a range of measures necessary to mitigate significant impacts our project will have on the local community. Not only has the Tribe publicly agreed to mitigate those impacts, but also has offered the County in which our restored trust land base would be located a limited waiver of sovereign immunity in order to make fully enforceable the terms of a Tribal-County agreement regarding the mitigation of impacts to the County.

The Tribe also is currently in negotiations with the City of Richmond to develop an MSA that addresses the mitigation of the impacts to the City of our proposed project. Quite simply, the Tribe wants to be good neighbors of the community in which our restored trust land base is located, and continuously reach out to the community to ensure that happens.

Since Congress included the "restored lands exception" when it enacted IGRA, it is clear that Congress knew and understood the plight of landless illegally terminated tribes, such as Scotts Valley. Congress did not give landless, illegally terminated tribes a free pass. Instead it created a rigorous mechanism for a landless, illegally terminated tribe, like Scotts Valley, to restore its trust land base and operate a gaming facility as a means of promoting tribal economic development, self-sufficiency and a strong tribal government. Scotts Valley is following this mechanism; the only mechanism which can provide our Tribe assurances of its sovereign survival.

Concerns with H.R. 4893

In 1988, Congress saw Indian gaming as an appropriate expression of tribal sovereignty and, accordingly, Congress enacted IGRA to protect and regulate that activity. It is clear, however, that, with certain exceptions, Congress intended to limit Indian gaming to Indian lands that existed on the date of enactment (October 17, 1988).

The problem was that not all tribes held tribal lands in 1988. Congress very specifically intended to assist such disadvantaged tribes by providing that, when they finally obtained land, their land would be treated as if it effectively had been in trust since before October 17, 1988. In other the words, Congress provided the restored lands exception of Section 20 (b) (1)(B)(iii) of IGRA so that eligible tribes such as Scotts Valley could be placed closer to the position they would have been in had the Tribe been restored and held lands in trust prior to1988. By so doing, Congress provided a mechanism by which newly restored tribes would be on a more level playing field with the tribes that were lucky enough to have been restored and had a land base on the date of IGRA's enactment. Congress knew that locking restored landless tribes out of the economic development opportunities made available by IGRA would do an incredible injustice to those tribes.

The purpose and intent of IGRA's restored lands provision is informed by the opinions of the federal courts that have considered this issue. In 2003, in a case involving a California tribe, the D.C. Circuit (in an opinion joined in by now Chief Justice Roberts) explained that the restored lands and initial reservations exceptions "serve purposes of their own, ensuring that tribes lacking reservations when IGRA was enacted are not disadvantaged relative to more established ones." City of Roseville u Norton; 348 F.3d 1020, 1030 (D.C. Cir. 2003). In 2002, in an opinion involving a Michigan tribe that was later affirmed by the Sixth Circuit, the District Court said nearly the same thing, saying that the term "restoration maybe read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion." Grand Traverse Band of Ottawa and Chippewa Indians v. U.S Attorney for the Western District of Michigan, 198 F. Supp. 2d, 920, 935 (W D. Mich. 2002), aff'd 369 F.3d 960 (6th Cir. 2004) (referring to the factual circumstances, location, and temporal connection requirements that courts have imposed). The restored lands provision "compensates the Tribe not only for what it lost by the act of termination, but also for opportunities lost in the interim." City of Roseville, at 1029.

Only rarely does Congress provide the Secretary with special authority or direction to acquire trust land for a particular restored tribe. Therefore, newly restored tribes like Scotts Valley must rely on the general discretionary land acquisition authority given to the Secretary pursuant to Section 5 of the Indian Reorganization Act. (25 U.S.C. 465) As a consequence, landless restored tribes must submit to Interior's usual process for reviewing fee-to- trust applications, including complying with the requirements of Interior's fee-to-trust regulations (25 C.F.R Part 151).

H.R. 4893 would amend Section 20 to impose on newly recognized, newly restored and landless tribes an extensive laundry list of new requirements before those tribes could obtain trust land for gaming. Such comprehensive requirements have never been imposed on tribes with reservations in existence in 1988. Indeed, on its face, H.R. 4893 appears to conflict with Congress' own policy direction to the federal agencies that

they may not promulgate regulations or make any determination that "classifies, enhances or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes."[1]

Section 20 is working as Congress intended. The Section 20 exceptions were intended to place tribes that were either unrecognized or landless in 1988 (Scotts Valley was both) on an equal footing with recognized tribes that had established trust land bases. The exceptions were not intended for recognized tribes with established land bases to improve their competitive environment, and therefore these tribes should not be attempting to use the exceptions for such purposes.

Grandfathering Tribes already in the process

Scotts Valley is a landless illegally terminated/restored tribe that is following the federally established procedures for taking land into trust for gaming purposes, and it is truly hurtful when the illegal termination of our Tribe and the relocation of our people are ignored and we are accused of "off reservation shopping." We are not "reservation shopping", instead we are following the very vigorous requirements the Congress established for restored tribes to restore their trust land base. The tens of thousands of pages included in the Tribe's trust application will show that the Tribe has both a strong historic connection to our proposed restored trust land and an even stronger modern day connection to that same proposed trust land.

Our tribe, as it always has, will tenaciously move forward in its fight for its survival, this time by following the federal procedures set forth for establishing a restored land i.e. pursuant to the provisions and case law governing Section 20(b)(1)(b)(iii) of IGRA and 25 C.F.R 151. This section provides adequate safeguards for tribal, state and local governments, and should not be changed.

There are considerable provisions under current law for public input into the Tribe's restored lands application. In addition to the public consultation and comment requirements built into the fee to trust process, there are a significant number of

[1] See 25 U.S.C. § 476(f).

opportunities for public participation required by the National Environmental Policy Act ("NEPA"). The Department of the Interior has made clear in its recently revised guidelines for gaming acquisitions that most tribal casino projects will require preparation of an EIS to assess a wide range of potential impacts, including ecological, social, economic, cultural, historical, aesthetic, and health impacts. The Scotts Valley project is no exception.

The enormous amount of public opinion that is made a part of the NEPA and EIS processes is perhaps best demonstrated by walking through the extensive process in which Scotts Valley has been engaged:

- On July 20, 2004 the Bureau of Indian Affairs (BIA) published a notice of intent to prepare an EIS in the Federal Register describing Scotts Valley's proposed project, explaining the NEPA process, announcing a scoping meeting, and soliciting written comments on the scope and implementation of the proposed project. Public notices announcing the proposed project and the scoping meeting also were published in local papers. The scoping process was intended to gather information regarding interested parties and the range of issues that would be addressed in the EIS.

- The BIA held the public scoping meeting on August 4, 2004 in Richmond, California, and received comment letters during the scoping process. In December 2004 the BIA issued a scoping report describing the NEPA process, identifying cooperating agencies, explaining the proposed action and alternatives, and summarizing the issues identified during the scoping process.

- The BIA then prepared a preliminary draft EIS, which was circulated to the cooperating agencies for comment. Cooperating agencies for the Scotts Valley project included the County of Contra Costa, California, the City of Richmond, California, the California State Department of Transportation and the Environmental Protection Agency.

- Based on the comments received from the cooperating agencies, the BIA then prepared a draft environmental impact statement which was released for public comment on February 17, 2006. The BIA also held a public meeting in Richmond, CA on March 15, 2006 after the draft EIS had been made available to the public. At that meeting, several members of the community commented on the draft EIS; many of them positively.

- All the comments on the draft EIS, whether received in writing or through the public meeting, are being considered and addressed in the final EIS. The information included within that final EIS will be considered by the Secretary while he/she determines whether or not to take the Scotts Valley parcel into trust. Therefore, the views of local elected officials, local citizens, and even the card rooms will be available to the Secretary for consideration before he/she makes a decision as to whether to take this land in trust for Scotts Valley.

- Finally, after the Secretary of the Interior has considered all the public comments, including information about impacts and mitigation, if he/she does decide to acquire trust title to the land, Interior's regulations provide the public with a very clear and very unambiguous opportunity to challenge the Secretary's decision in federal court before he/she implements that decision. 25 CFR 151.12(b) requires the Secretary to give the public at least 30 days notice of his/her decision to take land into trust before he/she will actually take the action to acquire trust title. Accordingly, if the public ultimately is not satisfied that its concerns have been addressed through either the fee to trust, the NEPA or EIS processes, it can exercise all available remedies at its disposal to prevent the Secretary from taking the land into trust.

In summary, I am here today to advocate among other things for the insertion of "grandfathering language" in HR 4893 that protects those illegally terminated landless tribes, who like Scotts Valley have already gone to considerable effort in their petitions to the federal government for a land base, on which to conduct gaming under the original provisions of IGRA. In conclusion, we hope that if passed, the Pombo Bill will add such "grandfathering language" and cut off dates to its final form before enactment to protect the Tribes who have followed the process and been engaged with time and resources.

Thank you for your attention to this testimony.

Respectfully,

_____

Donald Arnold
Tribal Chairman
Scotts Valley Band of Pomo Indians

Exhibit #2

Stand Up For California!

"Citizens making a difference"
standupca.org

P.O. Box 355
Penryn, CA 95663

April 8, 2005

Clay Gregory –Regional Director
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

RE: Comment on Gaming Land Acquisition Application – Scotts Valley Band City of Richmond

Dear Mr. Gregory:

National and statewide media, state and federal lawmakers are closely watching the decision makers at the Bureau of Indian Affairs. California leads the off-reservation tribal gaming debate because issues of restored and landless tribes are paramount in California. Decision-makers must concern themselves with the recent judicial guidance steering the legal requirement for land to be taken into trust in the decision by the U. S. Supreme Court ***Sherrill vs. Oneida.*** The very integrity of the decision-making and policy-making process must be respected because of the far reaching effects they have on cities, counties and states. This letter sets forth the comments of Stand Up For California regarding the issue of **"restored lands"** for gaming by the Scotts Valley Band of Pomo Indians in the City of Richmond.

In 1923, the Reno Indian Agency ("Agency") had jurisdiction over Indian reservations, colonies, villages and scattered bands of homeless Indians in Nevada and Northern California not under the superintendence of any other jurisdiction. The Agency and its entire personnel gave considerable time surveying and compiling data on populations, locations and needs of the various Indian reservations, colonies, villages and scattered bands of homeless California Indians as presented in its annual report of 1923.

The 1923 records of the Agency indicate approximately 600 Indians; comprising nine groups were actually residing in Lake County, California. One of nine groups, the Scotts Valley Band, was reported as having a population of 60 persons. A tract of 56.58 acres was purchased for the Scotts Valley band in 1911 at a cost of $2,900.00, with funds appropriated under the acts of June 21, 1906 (31 Stat., 325-333), and April 30, 1908 (35 Stat., 70-76) **"to purchase for the use of the Indians in the State of California."** This tract of land was established on the traditional homeland of this group of Indians. (Senate

Report 1874, June 22, 1958) In 1923 there were 28 families represented in this band, including 18 minors.

- The proposed casino location in the City of Richmond is over 100 miles from the established traditional homeland of the Scotts Valley Band.

By 1933, the number of Indians using this land for home sites had dropped to 26, and in 1958 the number was 32, although 3 of the people having assignments were not living on the land. There is no record of a current roll of membership and the group was not formally organized as a tribe, but they acted as a group in making decisions about their land, much like a homeowners' association. It should be noted that neither this group nor any other Rancheria Band was required to meet the criteria of the recognition process; rather tribal groups were administratively created by BIA officials for ease of management of federal lands.

It appears that the Pacific Regional Office of the BIA violated the findings in a 10th Circuit case ***Cherokee Nation of Oklahoma vs. Gale Norton*** ("Cherokee Nation") (November 16, 2004) in placing these unorganized Rancheria groups on the federal recognition list, supposedly in compliance with the 1994 John McCain Legislation.

- In Cherokee Nation, the 10th Circuit rejected the 1996 determination regarding the Delaware's finding that Indian tribes may be recognized only by (1) an Act of Congress, (2) the Part 83 acknowledgment process or (3) a decision of a federal court. The court stated: "Agencies ... must follow their own rules and regulations. The DOI used a procedure heretofore unknown to the law – 'retract and declare' – to purportedly re-recognize the Delaware's. In so doing, the DOI's actions were arbitrary and capricious. The agency simple elected not to follow the Part 83 procedures for recognizing an Indian tribe and, furthermore, did not even properly waive application of those procedures. See 25 C.F.R. § 1.2. We accordingly hold unlawful and set aside the DOI's 1996 final decision. 5 U.S.C. § 706(2)(A). Any action taken on the agency's 1996 final decision is void. 'Further comment on this case is unnecessary.' [citing an 1894 Supreme Court decision]"

The Technical Corrections Act of 1994, Section 5, Pub. L. 103-263, 108 Stat. 707 (May 31, 1994) does not allow acknowledgment to be met.[1] The hasty action of the Pacific Regional Office in moving land base groups to federal recognition is causing havoc in California and has initiated the proliferation of off-reservation gaming. (Also see: ***United Houma Nation vs. Bruce Babbitt*** (October 28, 1996).the BIA to misconstrue the amendment to avoid application of the required criteria for acknowledgement.

[1] Before the BIA published its Proposed Findings on United Houma Nation's (UHN) petition, Congress enacted the Technical Corrections Act of 1994 amending section 16 of the Indian Reorganization Act of 1934, 48 Stat. 987 (June 18, 1934). UHN construes these amendments to preclude the BIA from making any regulatory distinctions between historic and non-historic tribes, thus rendering void the criteria that trouble its petition in 25 CFR part 83 7(e). However, the BIA interprets the amendments to have no effect upon the acknowledgment process.

By a resolution on September 29, 1955, the Scotts Valley Band asked that they be given fee-title to their individual shares of this tract. They requested legal assistance to form an entity to take over and manage a water system and asked that the Rancheria be surveyed so that each assignee may have a legal description of his plot.

The total cost of this request was $10,500.00. The remedy the Scotts Valley Band now seeks is a determination of "restored lands" in the City of Richmond. The City of Richmond was chartered on August 7, 1905, one year before Congress even appropriated money for the purchase of federal lands for homeless Indians of no specific tribal affiliation in California and six years before the Scotts Valley Band was administratively grouped or offered use of federal lands for a home site. On the chartering of the City of Richmond there was a population of 2,150 residents and today that population has grown to 101,373(source: CA State Dept of Finance as of January 1, 2003). The racial demographics of the city indicate a 0.4 % urban American Indian and Alaska Natives. In reality, the Scotts Valley Band is asking for a remedy of a multi-million dollar casino asserting that this is equitable and reasonable relief for the termination of their status as Indians which the group voluntarily asked for by way of resolution on September 29, 1955.

- In other words, the unorganized tribal group voluntarily relinquished any claim to governance over their lands in Lakeport, Lake County over 50 years ago.

In the Stipulation for entry of Judgment, dated March 15, 1991, ("Stipulation") the federal defendants agreed to accept in trust land **"outside the boundaries"** of the former Rancheria which was currently owned by certain Indians. However the Stipulation restricts these outside properties to any fee interests in trust or former trust allotments issued to successors in interest of the Rancheria. The City of Richmond is outside of the purview of this stipulation. Thus the Scotts Valley Band is in need of a section 20 concurrence from California's Governor.

Clearly the non-tribal population of the City or Richmond the County of Contra Costa and the regional area have justifiable expectations that the land remains similar in character and that if changes regarding zoning, jurisdiction and critical health and safety issues regarding a change in the governing authority-- this overreaching federal decision cannot be made behind the closed doors of the BIA.

For 100 years no Indian lands have existed in this City or regional area (i.e. all land has been subject to State law). Common sense dictates that it is unreasonable to place a new political entity which enjoys immunity to civil liability and tax exemption in the middle of an urban center that for 100 years has been subject to California and local law and in the private ownership of generations of private citizens. The very nature of tribal sovereignty will impact and erode the cultural, political and economic systems of the regional area.

Competitors, who include financially strapped cities, developers, consultants, gaming investors, gaming machine manufacturers, and unscrupulous gaming investors, seek to

circumvent regulatory safeguards of the concurrence of the Secretary of the Interior and the Governor of California and the review and scrutiny and regulatory oversight of the Office of Indian Gaming Management and the National Indian Gaming Commission.

Please accept and give serious consideration to these comments from Stand Up For California, keeping in mind the true purpose for which IGRA was enacted. A purpose contrary to how IGRA is now being utilized by tribes and their investors to promote gaming in communities and states that would never have permitted gaming previously. This is not what Congress envisioned.

The Scotts Valley Band of Pomo is not a restored lands determination, rather plain and simple; this is a section 20 concurrence which Governor Schwarzenegger has already denied.

Sincerely,

Cheryl A. Schmit – Director
916-663-3207
schmit@quiknet.com

Exhibit #3

Stand Up For California!

"Citizens making a difference"
standupca.org

P.O. Box 355
Penryn, CA 95663

April 28, 2008

VIA HAND-DELIVERY

Amy Dutschke, Acting Regional Director
Bureau of Indian Affairs,
Pacific Region
2800 Cottage Way, Room W-2820
Sacramento, CA 95825

Re: FEIS Comments, Scotts Valley Fee-to-Trust and Gaming Development Project

Dear Ms. Dutschke:

This letter is submitted on behalf of Stand Up For California!, a statewide organization with a focus on gambling issues, to provide the following comments regarding the final environmental impact statement ("Final EIS") for the Scotts Valley Band of Pomo Indians Fee-to-Trust and Gaming Project (the "Project"). Our specific comments are set forth below.

In summary, the Project Final EIS is significantly flawed and lacks adequate information and analysis regarding the project description, environmental effects and mitigation measures. As such, we respectfully request that the Bureau of Indian Affairs ("BIA") significantly revise the Final EIS and recirculate the revised document for public review and comment.

Inadequate Project Description.

1. The Final EIS fails to provide the information needed for evaluation and review of the environmental effects of the Project. The Project description and the purpose and need for the proposed action are truncated and misleading. The Project description fails to adequately identify the entire Project that is being approved. This ambiguity regarding the Project description arises from the Tribe's application for restored lands. Restored lands make the Tribe's land acquisition an indisputable exception for gaming. (*See* **Exhibit A:** Letter from Stand Up for California!, Cheryl A. Schmit, Director, to Bureau of Indian Affairs, Clay Gregory, Regional Director, April 8, 2005.) Even if the Governor of the State of California negotiates in good faith a tribal state compact, but the Legislature fails to ratify the compact, the Tribe—just like the Lytton Band can open a class II gaming facility and avoid any and all fundamental mitigation requirements. Alternatively, the Tribe could just move forward with a class II facility without even seeking a tribal state compact. Again—no mitigation would be required. This information is relevant to evaluating significant effects on the environment. The National

Environmental Policy Act ("NEPA") requires that reasonably foreseeable significant adverse environmental effects and impacts be disclosed and considered by the BIA when approving the Tribe's application to take six parcels into federal trust. Because the Project description is incomplete and unclear, the BIA and reviewing public cannot ascertain exactly what the Project is, and the effects and impacts that the Project will have on the environment.

Recirculation of the EIS is Necessary Due to Changed Circumstances.

2. To comply with NEPA, the Draft EIS should be updated and recirculated to properly describe the affected environmental setting, as it exists upon certification of the Final EIS. The Notice of Intent was published on July 20, 2004, in the Federal Register, to which comments were submitted during the scoping process. The summary of these comments are contained in the *Scotts Valley EIS Scoping Report*, published in October 2004. The Draft EIS was published for review in February 2006. The substantially changed physical and environmental circumstances since the scoping process, approximately four years, and the performance of the analysis in the Draft EIS, well over two years, renders the Draft EIS obsolete and renders the impacts, analysis, alternatives and cumulative impacts identified in the Final EIS insufficient or incomplete, or both.

3. The affected environment is not current, particularly with regard to regional population growth (the Final EIS relies on 2004 data, page 3.7-2), related increases in traffic volume, traffic noise levels, the increase in residential development, increased pedestrian traffic, traffic studies pertaining to the volume and type of vehicles traveling along the pertinent freeway segments, and effects of the increased traffic on local schools. The recirculated Draft EIS should include updated analysis methodologies regarding these changed conditions so the Final EIS does not rely on 2004 estimated baseline conditions, but 2008. Similarly, the Operational Ozone Effects of each alternative was performed using outdated traffic studies and the operational emission estimates, which assume a target year of 2006, does not adequately reflect the environmental setting as it exists upon certification of the Final EIS. The same deficiency exists with regard to Localized Carbon Monoxide Effects. Global greenhouse gas emissions are rapidly rising, and the State of California has enacted laws that acknowledge these circumstances and require cost-effective efforts to reduce greenhouse gas emissions. (*See, i.e.*, AB 32, the California Global Warming Solutions Act of 2006.) As a result, the Project's effects on air quality and climate change are flawed.

4. The cumulative effects analysis must also be revised to identify existing reasonably foreseeable projects so that the incremental effects of the actions may be analyzed when added to the effects of the Project.

Section 1.0—Purpose and Need for the Proposed Project.

5. Project Final EIS generally sets forth two purposes or needs: (1) employment opportunities for members of the Pomo Tribe; and (2) economic development opportunities (to enhance self-governance and social, educational and necessary programs) for services for members of the Pomo Tribe and relocated Native Americans in the Bay area. The Final EIS completely omits any discussion of how the various alternatives will meet the stated purposes and needs. This information should be central to choosing the Project alternative that best meets the stated purposes and needs. The proposal further fails to meet the detailed policy of the Department of the Interior. (*See* **Exhibit B:** Memorandum from Carl Artman, Assistant Secretary of the Interior, to Regional Directors of the Bureau of Indian Affairs, January 2008, Subject: *Guidance on taking off reservation land into trust for gaming purposes*.) The memo highlights the need to enhance reservations governed by tribal government. It does not appear that Project revenue would be used to create a significant number of on reservation job opportunities. Clearly, the benefit of the casino will be in the form of stipends and other benefits to individual tribal members, not necessarily an enhancement of a reservation governed by tribal government.

Section 2.0—Alternatives.

6. Section 2.2.1 fails to provide any explanation for the way in which Alternative A is the preferred alternative, and fails to even mention whether or how Alternative A meets the Project's stated need and purpose of developing a sustainable source of employment. Instead, this section identifies the management contract with Richmond Gaming, Ltd., under which Richmond Gaming, Ltd. has the exclusive right to manage the casino's operations.

7. Section 2.0 fails to consider a reasonable range of alternatives and essentially analyzes two projects, a casino in some form and a commercial development.

8. No alternative identifies whether or to what extent the Project's stated purposes and needs are fulfilled, as required by NEPA.

9. The alternatives analysis is fundamentally flawed because the Tribe and Richmond Gaming, Ltd. already entered into development and management contracts, on March 23, 2007, specifically for the construction and operation of the proposed casino as described in Alternative A. (Page 2-4.) The execution of these contracts makes a commitment to the proposed casino and necessarily prejudices the Bureau to consider first and foremost, Alternative A. The prejudice of this premature commitment is particularly evident in the

discussion of Alternatives B and C. (*See* pages 2-13, 2-18 (stating that the Management Contract "is expected to apply to Alternative B and would need to be approved by the NIGC. However, given the reduced size of the facility proposed under Alternatives B and C, it is possible that Richmond Gaming, Ltd. or the Tribe would seek to either renegotiate the agreement or that Richmond Gaming, Ltd. would decline to enter into the agreement due to the changed circumstances and decreased potential revenues likely to result from Alternative B.").) The existing commitment to Alternative A undermines the policy goals that NEPA seeks to achieve, and severely undermines the credibility of the analysis and conclusions contained in the Final EIS.

The subject land and casino operations are encumbered by the ownership interests of the developer/investor proposed management company. Herein lays a potential violation of IGRA's sole proprietary interest requirement. IGRA requires as one of the necessary conditions for a tribe to open and operate a casino, a gaming ordinance approved by the National Indian Gaming commission 25 U.S.C. Section 2710 (b) (B); 2710 (d)(1)(A). For approval of a gaming ordinance, IGRA requires among other things, that "the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity." (25 U.S.C. § 2710 (b)(2)(A).) By virtue of the development and management contracts between the Tribe and Richmond Gaming, Ltd., it appears that it is illogical to even consider the subject land at this time for a casino development.

10. Page 2-5 contains acknowledgments that the Tribal Government will adopt numerous standards at some unidentifiable time in the future without meaningfully describing the standards. As a result, the Tribe's ostensible commitment to adopt reasonable standards is not concrete or enforceable and no opportunity exists for their evaluation. For example, the Tribe's adoption of standards "no less stringent" than State public health standards for food and beverage handling; air quality, water quality, and safe drinking water standards; and Federal workplace and occupational health and safety standards is not defined.

11. Alternatives A, B, C, and D contain vague and immeasurable commitments by the Tribe to secure security and safety for the proposed casino. As a result, the impacts on municipal or regional services, already overburdened, are not evaluated.

12. The Alternative considered but not fully analyzed, the Lake County Feê Land, is flawed because it assumes that the only alternative project is a casino.

13. The conclusion to terminate the analysis of the Lake County Fee Land alternative is further flawed because it inexplicably assumes that an alternative project would include the development of a "high-rise casino facility," and then uses that baseless assumption to

reject the alternative. The conclusion also raised incompatibility with local zoning issues. Zoning is an irrelevant basis for rejection of the alternative, however, because the Tribe could seek to place the land in trust. Assuming for the sake of argument that zoning inconsistency were to constitute a legitimate basis for rejecting an alternative, it would also stand that local zoning would be a legitimate candidate for analysis of the Project's direct impacts. The EIR would then be deficient in this regard as well.

14. Under the discussion of Environmental Constraints (page 2-30), the Final EIS states that the 15—foot development setback is a constraint to limit future development. The setback requirement, however, is only needed if the proposed rezone is granted. The rezone itself would not be required if the fee property were to be placed in trust. Thus, the setback is not a basis to reject this alternative site.

15. On page 2-26, the Final EIS states that for the Lake County site, casino development would displace existing Tribal members and eliminate the Tribe's future development plans for the site. This conclusion is flawed because it assumes that the only alternative project that could be implemented at the Lake County location is a casino.

16. Under the discussion of Environmental Constraints (page 2-30), the Final EIS states that there is currently no public water or wastewater services for the site and all future development would require upgrades. Because this is also true for the proposed alternative, the nonexistence of current service or infrastructure is an insufficient basis to reject this alternative site.

17. Under the discussion of Environmental Constraints (page 2-30), the Final EIS summarily states that there may be inadequate groundwater reserves to sustain the water demands that would come from the proposed development. This conclusion is asserted without any testing, data, or legitimate verification. It also appears to contradict the Tribe's current rezoning efforts that would allow for higher density residential uses for the Tribe's planned apartment building, duplexes, retirement facility, residential care facility and museum and cultural center.

18. The Selection of the Preferred Alternative is conclusionary and incomplete. The preferred alternative is unsupported because no alternative identifies the way in which the Project's purposes or needs are fulfilled. Alternative A is the alternative stated to best provide the Tribe with a means of securing and maintaining revenue, yet none of the alternatives includes economic development proposals or analyzes the revenue that is likely to be generated; Alternatives A, B, and C omit mention of the number of gaming machines or table games thus, the environmental effects on socioeconomic conditions and other relevant environmental conditions are unknown and inadequately disclosed; no

analysis exists to assess which alternative is best to secure and generate long-term revenue.

Section 3.0—Description of Affected Environment.

Section 3.2—Land Resources

19. The subject site is underlain by ground conditions that will make construction of improvements difficult and additional cone penetration tests ("CPT") will need to be established along with conventional exploratory borings that will allow for the obtaining of samples and the performance of laboratory tests to confirm or refute the interpretations made with the CPT. (*See* **Exhibit C:** Review of Geotechnical Report, Stephen M. Watry, Geotechnical Engineer/Engineering Geologist.)

Section 3.7—Socioeconomic Conditions.

20. The Final EIS states that "[t]wo of the most discussed effects of gambling are crime and bankruptcy" but concludes that casinos have no effect on rates of crime or bankruptcies. (Pages 3.7-9 to 3.7-10.) The conclusion is based on a dated 1999 study and is belied by more recent studies. (*See* **Exhibit D:** *A Casino for San Pablo; A LOSING PROPOSITION*, William N. Thompson, Ph.D., pp.4, 25; *National Gambling Impact Study Report*, Chapter 7; *Rapid Onset of Pathological Gambling in Machine Gamblers*, Breen and Zimmerman; *The Impact of Casino Gambling on Bankruptcy Rates: A County Level Analysis*, Goss and Morse, p.17; *Gambling in the Golden State—1998 Forward*, Charlene Wear Simmons, California Research Bureau, Requested by Attorney General Bill Lockyer, May 2006 (Economic Benefits and Social Costs); *Plea Deals Reached in Murder-for-Hire Case Involving Mexican Mafia, Tribal Members*, Michelle DeArmond and John F. Berry, The Press Enterprise, April 17, 2008; 2007 National Money Laundering Strategy, Appendix A; *Gambling and Crime Among Arrestees: Explaining the Link*, NIJ, Dept. of Justice, July 2004.)

Section 4.0—Environmental Consequences.

Section 4.2—Land Resources.

21. Unexplained discrepancies exist between the figures provided regarding the import/fill material identified for Alterative A (26,900 cubic yards), versus Alternative B (27,300 cubic yards), yet Alternative A involves 27.8 acres, and Alternative B only 20 acres. Similarly, Alternative C, which is 28 acres, inexplicably requires the importation of 47,600 cubic yards of fill material—20,000 cubic yards more than Alternative A. Based

on the illogical estimated figures an underlying flaw must exist in the data, which flaw lends itself to the analysis, impacts determinations, etc.

4.7—Socioeconomic Conditions.

22. The Community Infrastructure discussion regarding schools, pertaining to Alternative A (page 4.7-5) provides that lost revenues will result from decreased school impact fees and property taxes. The Final EIS fails to reveal that additional losses will result from the redirection of existing and future gaming monies, that when spent at non-tribal facilities are subject to all state and local taxes. The failure to address this lost revenue source results in the inadequate analysis of socioeconomic impacts to schools.

23. The Final EIS provides that in-lieu impact fees may be paid to the district to mitigate effects that may result from Alternative A, but fails to make any commitment to do so. (Page 4.7-5.)

24. The discussion of the Potential Social Costs Associated With Problem Gambling (page 4.7-6) indicates that the Tribe will enter into an agreement with the County to establish an appropriate annual contribution to local organizations that address problem gambling issues, but fails to define the term "appropriate". Therefore, this discussion contains no meaningful assurance regarding the level of payment necessary to offset the various noted socioeconomic problems associated with gambling. (*See* **Exhibit E:** Earl L. Grinols and David B. Mustard, *Casinos, Crime, and Community Costs*, September 2004 (rev.).)

Section 4.9—Public Services.

25. The Final EIS inaccurately estimates the additional police services necessary to respond to the crime generated by the Project. The Final EIS fails to adequately determine the level or sufficiency of commitment from the Tribe for the provision of additional law enforcement, cars, and equipment, or contribution towards these associated costs, necessary to respond to crime at the Project site.

26. Although the risks associated with the sale of alcoholic beverages, specifically drunk driving, and their relationship with increased calls to law enforcement are acknowledged, the Final EIS fails to analyze the need for additional law enforcement for this purpose or with respect to the broader criminal activity associated with the Project.

Section 4.10—Other Values.

27. Although the Final EIS does not define the term "community character", it provides that the effects Alternative A could have on it "can be viewed in both a positive and negative light." (Page 4.10-8.) The Final EIS explains that the character of a community can be gleaned from the general plan, yet it fails to appropriately address the impact that results from the Project being inconsistent with the Contra Costa General Plan. The Final EIS states that "Alternative A is inconsistent with the type of development envisioned for the area." (Page 4.10.9.) The conclusion that project-related effects to community character would be "less than significant", is without any basis, notwithstanding the project's promise of creating new jobs, particularly given that Alternative A "can be classified as a regional commercial development, and therefore would be inconsistent with the type of development envisioned by the County for the area." (Page 4.10-9.)

Section 4.11—Environmental Justice.

28. The Project will have negative effects on the surrounding community, a poor, blighted North Richmond neighborhood. The neighborhood is located within a redevelopment zone. "Redevelopment" is generally a public-private collaborative process of removing existing improvements in a designated area and replacing them with new improvements designed to further local government policy goals, embodied in general plans. The policy goals of a redevelopment zone is the revitalization of a depressed area, here, one in which ninety-five percent of the residents living in the core area of North Richmond are minorities. (See 2000 Census tract 3650.02.)

29. The Final EIS states that "[a] significant environmental justice effect is defined as a disproportionately high and adverse human health or environmental effect to minority and low-income populations, *or if such an effect occurs with greater frequency for these populations than for the general population as a whole.*" (Page 4.11-1 (emphasis added).) Alternative A will result in adverse human health or environmental effects, as described in Section 4 of the Final EIS, including air quality, traffic, noise, community character, problem gambling, and crime. The conclusions contained in the Final EIS regarding these effects as being less than significant, or mitigated to less than significant, have no bearing on whether such adverse effects occur with greater frequency for the minority and low-income populations residing in the Project area.

Section 4.12—Cumulative Effects.

30. The Final EIS looks only at cumulative impacts associated with four other casinos, rather than identifying and analyzing similar regional effects irrespective of source. The Final

EIS acknowledges additional reasonably foreseeable development projects exist but it is limited to two projects (Bayside Plaza and Signature Properties), as identified through Contra County's two proposed general plan amendments, and several "transportation projects" that are selected, to the exclusion of other foreseeable projects, because the transportation projects may affect roadway capacity and associated effects near the project site.

31. Further, within the severely illogical cumulative effects methodology, the following deficiency exists: only four impacts are associated with other casinos: urban blight, significant increase in crime, adverse changes in a communities ability to fund services, and changes in access to public or private property. The analysis ignores the cumulative adverse effects on law enforcement, fire protection, air, traffic, and noise.

32. The Final EIS never directly provides any analysis or explanation regarding cumulative impacts of the four proposed alternatives regarding potential increased crime and the associated physical effects of urban deterioration and blight.

33. There is an inadequate discussion of why the San Francisco Bay Region was selected as the boundary for purposes of analyzing cumulative effects. This boundary is unworkable to analyze cumulative effects that are not limited to the same arbitrary boundary.

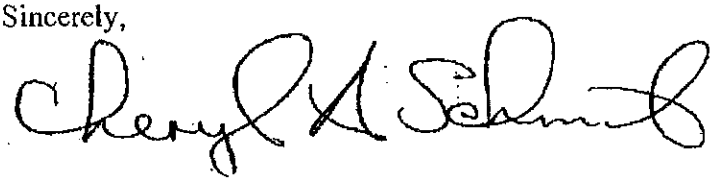
Section 5.0—Mitigation Measures.

Section 5.2.6—Socioeconomic Conditions.

34. The measures identified to mitigate the environmental effects the alternatives will have on problem gambling lack assurances of measurable commitments and defined standards: Mitigation Measure A appears to have no causal relationship with the identified adverse impacts; Mitigation Measure B fails to identify the frequency or duration with which the Tribe will contract with a gambling treatment professional and fails to identify the extent or scope of training; Mitigation Measure C fails to define any behaviors that may indicate problem gambling and fails to define the term "convincingly"; Mitigation Measure F fails to identify the maximum numbers of counselors for whom the Tribe would compensate the County and fails to identify whether the positions are full-time or part-time and permanent or temporary; and Mitigation Measure G fails to identify the term "proportionate share" of compensation. No discussion is provided to support the conclusion that implementation

of the mitigation measures would reduce problem gambling below the significance threshold.

Sincerely,



Cheryl A. Schmit, Director
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Exhibit #4

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May 4, 2005

VIA FACSIMILE (916-978-6099)
AND FEDERAL EXPRESS

Clay Gregory – Regional Director
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

Re: Comments in Opposition to Scotts Valley Tribe's Request to Acquire Land in Trust for Gaming Purposes

Dear Mr. Gregory:

This letter is written on behalf of the Rumsey Indian Rancheria of Wintun Indians of California ("Rumsey"). Rumsey is aware that the Bureau of Indian Affairs Regional Office in Sacramento ("BIA") has received an application from the Scotts Valley Band of Pomo Indians ("Scotts Valley Tribe" or "Tribe") requesting that approximately 30 acres of land located in western Contra Costa County ("Subject Land") be acquired in trust for the Tribe to use for casino gaming ("Request"). Specifically, the Tribe seeks to acquire land for the proposed "Sugar Bowl" casino located in the northeast corner of the intersection of Richmond Parkway and Parr Boulevard in the City of Richmond. Rumsey hereby timely submits its comments in opposition to the Tribe's Request.[1]

I. RUMSEY HAS A RIGHT TO BE CONSULTED ON THE PROPOSED LAND ACQUISITION

The BIA's Notice of (Gaming) Land Acquisition Application ("BIA Notice") states the notice is given pursuant to 25 CFR §§ 151.10 and 151.11. However, the Notice neglects to state that all applications for the trust acquisition of land intended for gaming "must be processed with Section 20 considerations in mind." *See* Office of Indian Gaming Management Checklist for

[1] Due to the historical, geographical, cultural and other issues pertinent to the Scotts Valley Tribe's Request, Rumsey is currently conducting further investigation and fact-finding, which may include the retention of necessary experts and/or consultants. As a result, Rumsey anticipates submitting supplemental comments in opposition to the Tribe's Request.

Gaming Acquisitions, March 2005 ("OIGM Checklist") (referring to Section 20 of the Indian Gaming Regulatory Act or "IGRA," 25 U.S.C. § 2719).

The BIA Notice leaves no room for doubt that the Subject Land sought to be acquired in trust for the Scotts Valley Tribe is for gaming purposes. The BIA therefore is required to conduct an IGRA Section 20 analysis, as set forth in 25 U.S.C. § 2719, before making any final determination on the Request. Specifically, 25 U.S.C. § 2719 prohibits gaming on lands acquired in trust after October 17, 1988 ("After-Acquired Lands"), with very narrow exceptions.

The OIGM Checklist very carefully and in great detail sets forth the BIA requirements for completing a gaming land acquisition package and taking final action. The Checklist also includes information on certain procedural steps to be followed. Among these requirements is consultation with local communities, nearby tribes and state officials. Rumsey is located just 70 miles from the Subject Land and therefore is a "nearby" tribe.

As demonstrated below, none of the narrow exceptions of 25 U.S.C. § 2719 – including the "restored lands" exception – are applicable to the Scotts Valley Tribe's Request. The Scotts Valley Tribe has its historical, archeological, geographical and cultural roots at the Sugar Bowl Rancheria located near Lakeport, California, just off the western shore of Clear Lake in Lake County. Lakeport is approximately 115 miles north of the proposed "Sugar Bowl" casino in Richmond, located in the San Francisco Bay area. The Tribe wholly lacks the requisite nexus to the Richmond site.

Because none of the exceptions applies, the two-part determination process by the Secretary of the Interior ("Secretary") pursuant to 25 U.S.C. § 2719(b)(1)(A) must be adhered to, and the Governor of California must provide concurrence to the acquisition. Specifically, the Secretary must conclude the acquisition (i) is in the "best interest" of the Tribe and its members; and (ii) will not be "detrimental" to the surrounding community. 25 U.S.C. § 2719(b)(1)(A).

As part of this IGRA-mandated process, Rumsey, as a "nearby" tribe to the Subject Land, must be consulted and have a right to have its views heard. Rumsey has a clear interest in the proceedings and therefore is entitled to submit these and future comments.

II. THE SUBJECT LAND DOES NOT FALL WITHIN ANY OF THE IGRA AFTER-ACQUIRED LANDS EXCEPTIONS

A. Overview Of After-Acquired Lands Exceptions

Under the IGRA, gaming on Indian lands acquired in trust by the Secretary after October 17, 1988, is prohibited unless:

(i) the lands are located within or contiguous to the boundaries of a reservation of the tribe in existence on October 17, 1988;

(ii) the lands are located within the tribe's last recognized reservation within the State within which the tribe is presently located;

(iii) the lands are taken into trust as part of a settlement of a land claim;

(iv) the tribe has been newly acknowledged by the Secretary under the federal acknowledgment process and has had land taken into trust as a result of its new acknowledgement; or

(v) the lands are taken into trust as part of the restoration of lands for the tribe and the tribe has been restored to federal recognition.

25 U.S.C. § 2719(a), (b).

If none of these exceptions are applicable, then the two-part Secretary determination of 25 U.S.C. § 2719(b)(1)(A) is the only statutorily permitted way for a tribe to conduct gaming on After-Acquired Lands.

When a tribe contends that one of the foregoing narrow exceptions applies, the OIGM Checklist requires a "conclusive factual and legal finding" to support the applicability of a particular exception. *See* OIGM Checklist at 6. The BIA also must obtain a legal opinion from the Office of the Solicitor concluding that the proposed acquisition comes within one of the exceptions. *Id.* at 7.

The first four exceptions enumerated above are wholly inapplicable here. First, the Subject Land is not located within or contiguous to the boundaries of the reservation of the tribe in existence on October 17, 1988. On that date, the Scotts Valley Tribe was not a federally recognized tribe and did not have a land base, did not reside on land set aside under federal protection against other jurisdictions, and did not assert governmental powers over any land. F. Cohen, Handbook of Federal Indian law at 34-35 (1982 Ed.).

Second, the Tribe also never had a recognized reservation in, or anywhere near the vicinity of, the Subject Land. Indeed, the Tribe's historical lands are located in Lakeport – 115 miles away from the Subject Land. *See* Section II.B.2. below.

Third, the Subject Land is not part of a land claim settlement. Fourth, the Scotts Valley Tribe has not been recently acknowledged by the Secretary under the federal acknowledgment process. *See* 53 Fed. Reg. 9280 (February 25, 1994) (Part 83 Final Rule).

Thus, the exceptions set forth at 25 U.S.C. § 2719(a)(1)-(2) and (b)(1)(B)(i)-(ii) do not apply to the Scotts Valley Tribe's Request.

B. Restoration Is Limited By Certain Factors Prohibiting Acquisition Of Any And All Property For Gaming Purposes

The "restored lands" exception of 25 U.S.C. § 2719(b)(1)(B)(iii) is equally inapplicable here. Pursuant to this exception, the Subject Land would be "taken into trust as part of the restoration of lands for the Tribe." The thrust of the case law and National Indian Gaming Commission ("NIGC") letter opinions is that, under 25 U.S.C. § 2719(b)(1)(B)(iii), land may be "restored" to a federally recognized tribe, provided that specific facts and other criteria are established. As detailed below, the Tribe lacks the requisite criteria for "restoring" the Subject Land under this exception.

The IGRA itself does not define "restoration of lands," and the case law and other precedent interpreting whether lands taken into trust are properly "restored" within the meaning of 25 U.S.C. § 2719(b)(1)(B)(iii) is sparse. *See, e.g., City of Roseville v. Norton*, 219 F. Supp. 2d 130 (D.D.C. 2002), *aff'd*, 348 F.3d 1020 (D.C. Cir. 2003), *cert. denied, Citizens for Safer Cmtys. v. Norton*, 541 U.S. 974 (2004); *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Atty. for the W. Dist. of Mich.*, 198 F. Supp. 2d 920 (W.D. Mich. 2002), *aff'd*, 369 F.3d 960 (6th Cir. 2004); *Oregon v. Norton*, 271 F. Supp. 2d 1270 (D. Ore. 2003) (reviewing decision of Secretary following remand by court in *Confederated Tribes of Coos v. Babbitt*, 116 F. Supp. 2d 155 (D.D.C. 2000)). *See also, In re Wyandotte Nation Amended Gaming Ordinance*, NIGC Final Decision (September 10, 2004) ("Wyandotte Decision"); NIGC Letter to B. Downes re Karuk Tribe of California (October 12, 2004) ("Karuk case" or "Karuk Opinion"); NIGC Memorandum Mechoopda Indian Tribe of the Chico Rancheria (March 14, 2003) ("Mechoopda case" or "Mechoopda Opinion"); NIGC Memorandum re Bear River Band of Rohnerville Rancheria (August 5, 2002) ("Bear River case" or "Bear River Opinion").

In *Confederated Tribes of Coos*, the court recognized that the term "restoration" can be limited to avoid the results where "any and all property acquired by restored tribes would be eligible for gaming." *Id.* at 116 F. Supp 2d at 164. The *Coos* court further observed:

> The term "restoration" may be read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion.

Id.

There are express limits to what constitutes "restored lands". As the NIGC stated in its Grand Traverse Opinion:

> [W]e believe the 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.

NIGC Grand Traverse Opinion, August 31, 2001 at 15. *See also* Office of the Solicitor's Memorandum Re: *Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians v. Babbit* ("It also seems clear that restored land does not mean any aboriginal land that the restored tribe ever occupied.") at 8.

The test applied in the *Coos* case (and adhered to in subsequent precedent) requires that the land to be considered part of any restoration shall be limited by:

(1) the factual circumstance of the acquisition;

(2) the location of the acquisition; and

(3) the temporal relationship of the acquisition to the restoration.

116 F. Supp.2d at 164. Placement within a prior reservation of the tribe also is significant evidence that the land may be considered in some sense restored. *Id.*

The Scotts Valley Tribe's Request does not pass the *Coos* test and therefore falls outside the narrow limits of the restoration exception.

1. Factual Circumstances Do Not Provide Indicia Of "Restoration"

The factual circumstances of the proposed acquisition of the Subject Land fail to provide any indicia whatsoever of "restoration." The cases hold that "restoration" denotes a taking back or being put in a former position. *Coos* at 162. It might mean "reacquired." *Id.* ("The 'restoration of lands' could be construed to mean just that; the tribe would be placed back in its former position by reacquiring lands.")

In any event, "restoration" does not mean "acquired." *Id.* Therefore, there must be other indicia here that the proposed acquisition of the Subject Land "restores" to the Tribe what it previously had. *Id.*

2. Subject Land Has No "Significant Relation" To Tribe

The second element involves location of the land in proximity to the tribe's historical roots. Restored lands may include "off reservation" parcels; however, there must be indicia that the land has been in some respect recognized as having "significant relation" to the tribe. *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Michigan ("Grand Traverse Band I")*, 46 F. Supp. 2d 689, 702 (W.D. Mich. 1999). The location factor has been deemed particularly critical by all of the courts and other authorities reviewing restoration situations.

In *Grand Traverse Band of Ottawa and Chippewa Indians*, for instance, the District Court of the Western District of Michigan ruled the land in question was properly "restored" for purposes of 25 U.S.C. § 2719(b)(1)(B)(iii), specifically because "evidence clearly established" that the land was of "historic, economic and cultural significance" to the tribe. 198 F. Supp. 2d at 936. The land, therefore, could "reasonably be considered to be part of a 'restoration of lands' in a historic, archeological, and geographic sense." *Id.*; *see also Oregon v. Norton*, 271 F. Supp. 2d at 1278, 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 the Karuk case, the NIGC also focused on the geographical and historical relationship between the tribe and the land in question. Based on this review, the NIGC concluded that the land was not properly "restored" to the Karuk under 25 U.S.C. § 2719(b)(1)(B)(iii).

In making its determination, the NIGC acknowledged that the Karuk Tribe was known to have had historic settlements in the vicinity of the Klamath River, including "likely" the land under consideration, and had also used the land in question for hunting and gathering. Karuk Opinion at 6-7. The tribe was then displaced in the mid-1800s by miners and packers, after which the federal government entered into a series of treaties with the Karuk Tribe and other Indians of California, under which the Indians agreed to relinquish any claims to aboriginal territory in exchange for reservations totaling over 8 million acres of land. *Id.* at 7. The treaties, however, were never ratified and did not "specify which of the 8,518,900 acres belonged to the Karuk and which were attributed to the other tribes [that signed the treaties] . . . it is not clear from these records which of the area was specifically attributed to the Karuk." *Id.*

The NIGC observed that an earlier proposed decision on the Karuk matter "is not clear as to whether the parcel in question is ancestral territory or [merely] a neighboring area and is

therefore not helpful to our analysis." *Id.* Additionally, "the Tribe has not provided evidence that the parcel remained important to the tribe throughout its history." Based on (1) the lack of a specific geographical and historical nexus between the Karuk Tribe and the land being considered; (2) the fact that the treaties were never ratified; and (3) the fact that the treaties did not assign the Karuk Tribe to the particular land in question, the NIGC concluded that the land was not properly "restored" to the Karuk. *Id.* As such, the NIGC determined that the IGRA "restored lands" exception was inapplicable.

The logic of the Karuk Opinion is revealed in other decisions concerning the applicability of 25 U.S.C. § 2719(b)(1)(B)(iii). In the Mechoopda case, for example, the NIGC concluded that 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] boundaries" of the limits of the tribe's historic villages. Mechoopda Opinion at 3.

Similarly, in the Bear River case, the NIGC concluded that the land under consideration was properly "restored" because it was located just six miles from the boundaries of the tribe's former rancheria and the evidence was again conclusive that the tribe had a historical, geographical and cultural nexus with the land. Bear River Opinion at 11. It was "not merely an acquisition but a restoration of previously used lands." *Id.* at 13. The NIGC noted:

> The Bear River Band . . . consists of Wiyot, Mattole, Nongatl, and Bear River Indians . . . Within a one (1) mile radius of the parcel are: a mythic pond that is the setting of an old tribal story; two (2) aboriginal villages . . .that were major Wiyot settlements in 1850 . . . Within a three (3) mile radius of the parcel are: five (5) aboriginal villages . . . and a town founded in 1870 after European contact . . . Between three (3) and four (4) miles from the parcel is . . . the site of a mythic flood in a Wiyot story telling of the re-population of the world . . . within a six (6) mile radius of the parcel are: the first Wiyot Town established after European contact . . . and the Rohnerville Rancheria.

Id. at 12.

More recently, the NIGC clarified that the tribe's historical connection to the land must be "longstanding" and "ancient" before the land can be "restored" under 25 U.S.C. § 2719(b)(1)(B)(iii). Wyandotte Decision at 5. That the tribe may have occupied nearby land for several years is not sufficient by itself to justify "restoration" under 25 U.S.C. § 2719(b)(1)(B)(iii), despite the fact that "significant roots were put down." *Id.*

The lesson of the foregoing cases is that there must be some "longstanding" or "ancient" geographical, historical, or cultural connection that specifically ties the tribe to the particular land under consideration. A mere likelihood that the tribe once used the land in question and was supposed to be granted land somewhere, including the land in question, under an unratified treaty are not, by themselves, sufficient proof of the requisite connection. Otherwise, the land cannot properly be "restored" to the tribe within the meaning of 25 U.S.C. § 2719(b)(1)(B)(iii).

The Scotts Valley Tribe's situation is even further attenuated than in the Karuk case. Here, there is no evidence – much less conclusive evidence – that the Scotts Valley Tribe has a special historical, archeological, geographical, or cultural connection to, or nexus with, the Subject Land specifically, as opposed to other lands 115 miles away in Lakeport. Unlike Karuk, there is no evidence that the Scotts Valley Tribe had any historic settlements in the vicinity of the Subject Land, or that the Tribe used the Subject Land for hunting and gathering. Such indicia – which was still insufficient in the Karuk case – is wholly lacking here. Nor is there any evidence that the Tribe occupied land nearby the Subject Land, as was still deemed insufficient in the Wyandotte case.

Indeed, there is contrary evidence affirmatively refuting any historical, archeological, geographical, or cultural connection between the Scotts Valley Tribe and the Subject Land. Pursuant to the Smithsonian's authoritative Handbook of North American Tribes, Volume 8, California (1978) ("Handbook"), the members of the Scotts Valley Tribe are historically viewed as Northeastern Pomo residing in the Lake County area.[2] *See* pertinent portions of Handbook attached hereto as Exhibit 1 at pp. 283, 286-87, 302.

The Handbook provides extensive details of what is presently known of the aboriginal culture forms and practices of about 60 California tribes, including the Scotts Valley Tribe (discussed within the Eastern Pomo section of the chapter titled "Pomo: Introduction" and in the chapter titled "Western Pomo and Northeastern Pomo"). The chapters describe the environment, prehistoric archeology, historical archeology, language classification, culture, and population numbers since the time of European discovery, and the history of exploration and settlement by non-Indians. The information also specifically identifies the historical land base areas of the California tribes.

With respect to the Scotts Valley Tribe, the Handbook identifies that Tribe as having historical and geographical roots within the Northern Pomo territory. *Id.* at 283. The Scotts Valley Tribe is shown as residing at the southern tip in the eastern portion of this territory, located near Clear Lake and within the now-existing Lake County area. *Id.* at 286-87. On a table identifying the Pomo Rancherias, Scotts Valley is listed as being located in Lake County.

[2] Interestingly, Rumsey is located closer to the Subject Land than the Scotts Valley Tribe – Rumsey is approximately 70 miles from the Subject Land.

Id. at 302. Nowhere in the Handbook is there any evidence that the Scotts Valley Tribe had any aboriginal roots, historical, geographical or other ties to the Subject Land. To the contrary, the Handbook references that the Tribe's historical and geographical nexus is in Lake County – not 115 miles away in Contra Costa County. *Id.*

In fact, the Handbook identifies the Costanoans as having their historical and geographical ties to the Subject Land and the San Francisco Bay area generally. Specifically, certain of the Costanoans occupied lands on the eastern shore of San Francisco Bay between Richmond and Mission San Jose – the exact location where the Scotts Valley Tribe is now trying to lay claim. *See* Handbook, pp. 485-495, attached hereto as Exhibit 2. As such, if any tribe has a historical and cultural nexus to the Subject Land, it would be descendants of the Costanoans. Per the Handbook, the Scotts Valley Tribe is Pomo in origin, not Costanoan. *See* Handbook at 283, 286-87, 302 (Exhibit 1).

There is not one shred of factual support that the Tribe has any relevant connection with the Subject Land. There is no evidence that the Scotts Valley Tribe even traveled to the area at issue, much less that the land was "important" to the Tribe throughout history. *See* Karuk Opinion at 7. Nor can it be said that the Tribe had any "longstanding" or "ancient" connection to the Subject Land. *See* Wyandotte Decision at 5. The Handbook discussion unequivocally shows no ties to the Subject Land whatsoever by the Scotts Valley Tribe. All of the Tribe's ties are in Lakeport – 115 miles away. Therefore, the Tribe cannot satisfy the "location" element.

3. No Temporal Relationship Of Acquisition To Tribal Restoration

Even if the Tribe could satisfy the requisite historical nexus to the Subject Land, it still must satisfy the "temporal relationship" element. This it cannot do.

The Tribe had its federal recognition status re-established in 1991 pursuant to the Stipulation. Approximately 14 years later, the Tribe now tries to secure the Subject Land as part of its "restoration" to federal status. There is no evidence that the Tribe has been actively pursuing the Subject Land until recent times. The Tribe's restoration to federal recognition in 1991 and these recent land acquisition efforts are independent of each other and not part of one continuous transaction. Based on the legal precedent relied upon herein, there is not a sufficient "temporal relationship" between any restoration and the proposed lands acquisition.

In sum, there is no – nor will there ever be – "conclusive factual and legal finding" necessary to support the applicability of the restoration exception. *See* OIGM Checklist at 6. As such, the Subject Land cannot be "restored" to the Tribe under 25 U.S.C. § 2719(b)(1)(B)(iii).

C. The Stipulation Does Not Constitute A Restoration Act Mandating Acquisition Of The Subject Land

In *City of Roseville*, there was a specific restoration act mandating the acquisition. There, both the District Court and the Court of Appeals of the District of Columbia ruled that the land was properly "restored" for purposes of 25 U.S.C. § 2719(b)(1)(B)(iii) because the Auburn Indian Restoration Act explicitly authorized the Secretary to acquire the subject land in trust for the tribe. 219 F. Supp. 2d at 161; 348 F.3d at 1022, 1026.

Here, there is no restoration act. The Tribe may try to argue that the Stipulation for Entry of Judgment dated March 15, 1991 ("Stipulation"), can somehow be construed as some official act permitting restoration. The Stipulation, however, serves only to document that the Scotts Valley Tribe was not terminated and the Tribe's Rancheria assets were not distributed pursuant to the Act of August 11, 1964, P.L. 88-419, 78 Stat. 390 ("Rancheria Act"). The purpose of the Stipulation was to re-establish the Tribe's governmental relationship with the Federal government as a federally-recognized Tribe and to re-establish the Tribe's status quo prior to termination with respect to rights and benefits extended to such federally-recognized tribes. A copy of the Stipulation is attached as Exhibit 3.

Specifically, the Stipulation provides that the Federal government agrees to accept into trust status any land "within the boundaries of the former Scotts Valley Rancheria" that:

(1) Is currently in Indian ownership; and,

(2) Was deeded or passed as a direct consequence of termination to certain entities or individuals.

See Stipulation at 5-7.

The Stipulation further permits the Federal government to take land into trust "outside the boundaries" of the former Scotts Valley Rancheria only if the land at issue is currently held in fee or through allotment by (1) any distributee receiving such land under a rancheria distribution plan; or (2) the distributee's dependent or Indian heir, or successor in interest (provided the successor is an Indian of the rancheria or reservation where the allotment/fee is located). *Id.*

The Subject Land does not fall within the explicit terms of the Stipulation permitting trust acquisitions for the Scotts Valley Tribe. The Subject Land is not within the boundaries of the former Scotts Valley Rancheria. Nor does the Subject Land meet the criteria for lands outside the boundaries of the former Rancheria. There is no evidence that the Subject Land is owned by any distributee or his/her dependent, or Indian heir, or successor in interest as required by the Stipulation. *Id.* The Stipulation permits restoration only as to land formerly held or owned by

the Tribe or its members – not land located 115 miles away that has absolutely no connection or nexus to the Tribe.

The Stipulation also permits the Federal government to accept in trust any land "within the former boundaries" of the Scotts Valley Tribe where such land is subsequently acquired by any distributee or other specified individuals or the Tribe itself. Stipulation at 11. Again, the Stipulation does not permit an off-reservation acquisition as is contemplated here, where the land is located many miles distant from the former Scotts Valley Rancheria and has no historical or other requisite nexus to the Tribe.

The Stipulation also specifies a process for restoring trust status. *Id.* at 8. Notwithstanding that the Subject Land does not fall within the Stipulation's description of acceptable "restored" lands, the Tribe has not made any attempt to follow the Stipulation's process for restoration.

The Stipulation provides for the re-establishment of federal benefits provided to members of federally-recognized tribes such as healthcare, education, vocational training and other Federal programs available to Indian tribes. *See* Stipulation at 13. The provision of such services to members of the Tribe – regardless of where they are located – does not convert the locale of such Tribal members to land eligible to be taken into trust for gaming purposes. Indeed, the Stipulation is clear that the provision of Federal services and the restoration of land to the Tribe are separate and distinct elements. The provision of services is wholly unrelated to land restoration. *See* Stipulation at 5-12.

Moreover, the services, rights and benefits accorded to the Tribe pursuant to the Stipulation are specifically mandated by the Indian Reorganization Act ("IRA"), 25 U.S.C. § 461 *et seq.* Stipulation at 4. There is no reference to Section 20 of the IGRA or "restoration" of lands as defined in 25 U.S.C. § 2719(b)(1(B)(iii). The IGRA was passed in 1988 and the Stipulation was executed in 1991. Accordingly, if there was any intent to permit the IGRA "restoration" sought here as to the Subject Land, such intent could have – and should have – been embodied in the Stipulation. It was not. Therefore, the Tribe must abide by the terms of the Stipulation and seek only land as permitted thereunder.

Simply because certain tribal members may have moved to the San Francisco Bay area and have obtained services from the Federal government while residing there, cannot serve as the requisite indicia for permitting "restoration" of land pursuant to the IGRA exception. There is no legal precedent permitting such an assertion, and, in any event, it is in direct contravention of the Stipulation's provisions permitting the restoration of land.

On February 12, 1992, the Federal Register published notice of settlement of the litigation between the Scotts Valley Tribe and the United States. The notice provides that,

pursuant to reinstatement of the Tribe's status they had before termination, the Tribe and its members were now eligible for all rights and benefits extended to other federally-recognized Indian tribes and their members. A copy of the Federal Register Notice is attached as Exhibit 4. The notice provides no mandate for the restoration of any lands to the Tribe. *Id.*

In sum, the Stipulation cannot serve – by any stretch of the imagination – as a restoration act mandating acquisition of the Subject Land. The Tribe needs to seek specific Congressional legislation as was the case with the Auburn Indian Restoration Act in *City of Roseville*. Absent such legislative action, there is no separate restoration act that directs the Secretary to take the Subject Land into trust for the Tribe.

Further, the Scotts Valley Tribe's situation is somewhat similar to that of the Upper Lake Pomo Tribe ("Upper Lake Tribe"). The Upper Lake Tribe obtained a judgment in 1979 against the United States similar in content to the Scotts Valley Tribe's Stipulation. The Judgment set forth certain land entitlements to the Upper Lake Tribe associated with its former trust lands. A copy of the Judgment is attached as Exhibit 5.

In 2002, the Upper Lake Tribe filed a motion seeking to modify the Judgment to permit the Tribe to take land into trust for gaming purposes in the City of West Sacramento in Yolo County. The court denied the motion and noted that the Upper Lake Tribe, in the original lawsuit, had "never demanded nor intended to seek authority for placing property in Yolo County into trust for the Tribe." Judgment at 11. The court further noted that any "continuing obligations" under the judgment to take future lands acquired "within the boundaries of the Rancheria" did not "refer to any duty to continue in perpetuity to place into trust later-acquired lands situated outside the area of the original Rancheria." *Id.* As is the case with the Scotts Valley Tribe, the Yolo County land sought by the Upper Lake Tribe was many miles distant from the former rancheria and clearly was not within the boundaries of the rancheria.

Here, the Scotts Valley Tribe's Stipulation does not contemplate the Richmond site as lands permitted to be taken into trust thereunder. Pursuant to the Stipulation, any lands taken into trust in the future need to fall within the "former boundaries" of the Scotts Valley Tribe's Rancheria – just like the situation of the Upper Lake Tribe. *Id.* And, just as the court correctly denied the Upper Lake Tribe's motion seeking to take land into trust in Yolo County, so must be the result here where the Scotts Valley Tribe seeks to take land into trust 115 miles away from its former Rancheria lands.

D. The Subject Land is not appropriate restitution under the circumstances

Even assuming the Tribe can establish the requisite historical and geographical nexus – which it cannot – the equities also must be reviewed. The Court in *City of Roseville* observed:

> Had the Auburn Tribe never been terminated, it would have had opportunities for development in the intervening years, including the possible acquisition of new land prior to the effective date of IGRA. A "restoration of lands" compensates the Tribe not only for what it lost by the act of termination, but also for opportunities lost in the interim.

348 F.3d at 1029.

Based upon the D.C. Circuit's reasoning in *City of Roseville*, before the Secretary can lawfully acquire the Subject Land in trust for the Scotts Valley Tribe for gaming under the "restored lands" exception, the Secretary must determine that doing so is necessary to provide the "equitable relief of restitution" to the Tribe. Such a determination mandates that the Secretary balance the interests of the Scotts Valley Tribe against the interests of other parties who would be affected by the determination, including other Indian tribes. Restitution, after all, is an equitable remedy. *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 255 (1993).

Whenever such an equitable remedy is considered, it must be considered in light of all the equities surrounding the case, and the ultimate fashion of the remedy must derive from a careful balancing of the interests of all the affected parties. *British Motor Car Distrib. v. San Francisco Auto.*, 882 F.2d 371, 374 (9th Cir. 1989); *FTC v. H. N. Singer, Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1982).

Even assuming – for argument sake only –that the Scotts Valley Tribe is entitled to some form of restitution, it still must be equitable. What form of restitution may ultimately be conferred upon the Scotts Valley Tribe depends on the impacts such restitution would, on balance, have on all the other affected parties, including other federally recognized tribes in Northern California. *See British Motor Car Distrib.*, 882 F.2d at 374; *H. N. Singer*, 668 F.2d at 1113.

In addition to being a general rule of equity, such a balancing of interests – when making a 25 U.S.C. § 2719(b)(1)(B)(iii) determination – is plainly required by the Indian Reorganization Act, NEPA, and IGRA itself. *See*, 25 U.S.C. § 476(f) (forbidding federal agencies from making determinations that confer upon recognized tribes enhanced privileged and immunities relative to other tribes); 40 CFR § 1508.8 ("Effects includes ecological . . . aesthetic, historic, cultural, economic, social, or health effects, whether direct, indirect, or cumulative.") (emphasis added).

The *City of Roseville* case is instructive in this regard:

> By providing an exception for restored lands of restored Indian groups, Congress intended to provide some sense of parity between tribes that had been disbanded and those that had not.

219 F. Supp. at 1661 (emphasis added). The court further noted:

> Indeed, the exceptions in IGRA § 20(b)(1)(B) serve purposes of their own, ensuring that tribes lacking reservations when IGRA was enacted are not disadvantaged relative to more established ones.

348 F.3d at 1030 (emphasis added).

The court in *Grand Traverse Band of Ottawa and Chippewa Indians* provides additional definition:

> Given the plain meaning of the language, the term "restoration" may be read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes.

198 F. Supp. 2d at 935 (emphasis added).

In making her determination under 25 U.S.C. § 2719(b)(1)(B)(iii), the Secretary must consider whether "restoring" the Subject Land to the Scotts Valley Tribe for gaming purposes would (1) truly restore a sense of parity with other tribes; (2) eliminate disadvantages as against other tribes; and (3) place the Tribe in a comparable position with earlier recognized and landed tribes. Comparable, however, does not mean providing an extraordinary advantage as is the case here.

Even more importantly to the equities analysis, is recognition that the Tribe cannot be put into a better position than what it previously had – the Tribe can only be placed in a position comparable to its prior position. The *City of Roseville* court recognized that "restoration of lands" referred to lands that would place the Tribe in its "former" position. *City of Roseville*, 219 F. Supp 2d. at 159.

In deciphering what was intended by a "restored" land base, the *City of Roseville* court determined that Congress intended to provide a land base "roughly equivalent to the [tribe's] former land base, which might not be identical." *Id.* The court also looked to the Auburn Indian

Restoration Act for guidance. There, the Act specifically authorized the Secretary to take land into trust located anywhere in Placer County. *Id.* at 161.[3]

In the case of the Scotts Valley Tribe, there is no separate restoration act as in the *City of Roseville* case. Even assuming the Stipulation could be interpreted as such, the Stipulation does not designate land in Contra Costa County as permissible restored lands, nor does it permit the acquisition of lands within the Tribe's "service area." As set forth above, the Stipulation very plainly does not permit – much less mandate – the acquisition of the Subject Land which is 115 miles away from the Tribe's former Rancheria.

The Scotts Valley Tribe, pursuant to a restitution theory, may be entitled to land somewhere. But, that land must be similar to the former Rancheria land in Lakeport. There can be no dispute that the Subject Land – located just minutes from the heavily populated Bay Area – is a far cry from the rural and tranquil setting of the former Sugar Bowl Rancheria in Lakeport. The Subject Land is located in a much more attractive setting from the standpoint of establishing a lucrative casino, than a casino many miles to the north in a rural, not-easily-accessible location. To be sure, the Subject Land would not restore the Tribe to its former land base position. It would elevate the Tribe's position light years beyond what it once had. Such a result is not intended by the restitution envisioned in *City of Roseville.*

In short, the equities of this case mandate against finding the restoration exception as applicable. Acquiring the Subject Land for casino gaming purposes would grant the Scotts Valley Tribe the right to operate a casino in a location that is immediately adjacent to the City of Richmond, only five to ten miles northwest of Berkeley and Oakland, and only ten miles northeast of San Francisco. Such an urban location would be easily accessible via major freeways including Interstate 80, Interstate 580, and the Richmond Parkway. Casino gaming on the Subject Land would certainly divert gaming that would otherwise occur at already operating tribal casinos in more remote locations. These tribes did not have the opportunity to select their casino site; rather their casino location was mandated by the location of their historic lands.

Acquiring the Subject Land in trust for the Scotts Valley Tribe for purposes of gaming would, therefore, not provide a sense of parity between the Tribe and other federally recognized Northern California tribes. Instead, it would create disparity. Acquiring the Subject Land for the Scotts Valley Tribe would not eliminate disadvantages between the Tribe and other nearby

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[3] The lands to be included in the acquisition under the Auburn Indian Restoration Act also included lands within the tribe's "service area". *Id.* at 161. The "service area" lands were specifically permitted to be taken into trust pursuant to the Secretary's authority under the Indian Reorganization Act – there is no reference to restoration under the IGRA exception. Thus, the only land permitted to be taken into trust pursuant to the IGRA restoration exception was land located in Placer County and not in the other five counties within the Tribe's "service area". Any land taken into trust within the Tribe's "service area" fell under the IRA authority, not IGRA. *Id.*

tribes. It would grant an immense economic advantage to the Tribe, at the direct and substantial expense of the other tribes. Acquiring the Subject Land for the Scotts Valley Tribe would not place the Tribe in a comparable position with earlier recognized and landed tribes. It would elevate the Tribe far above these other tribes. Such results would confer more than a just measure of restitution on the Scotts Valley Tribe. The results would be inequitable and unfair.

In conclusion, the Secretary may not rely on the restoration exception under 25 U.S.C. § 2719(b)(1)(B)(iii) to acquire the Subject Land in trust for the Tribe for gaming. To do so would be inconsistent with established case law and violate the Indian Reorganization Act's prohibition against enhancing one tribe's privileges over another. 25 U.S.C. § 476(f); 219 F. Supp. at 1661; 348 F.3d at 1030; 198 F. Supp. 2d at 935. It also would not restore the Tribe to its former position, but tremendously boost its stance well beyond where it once stood. This is not allowed by law.

Surely there are other tracts of land available elsewhere – within the Tribe's historical lands near Lakeport which satisfy the requisite nexus – which the Secretary could "restore" to the Scotts Valley Tribe and put it back into its former position. Such other land tracts, when used for gaming, hopefully would not grant the Tribe a materially unfair advantage, but would nonetheless satisfy any notion of equitable restitution underlying 25 U.S.C. § 2719(b)(1)(B)(iii) and facilitate the Tribe's economic development and self-determination.

It is evident that the Tribe is trying to do an "end run" around the two-step Secretary determination process, whereby nearby tribes, local communities and others have the opportunity to weigh in on the proposed acquisition. Precluding public comment on such a significant project should not be permitted under any circumstances.

III. THE SECRETARY'S REVIEW OF THE REQUEST MUST BE INFORMED BY THE NEPA PROCESS AND THE INDIAN GAMING REGULATORY ACT

The law applicable to land acquisitions under the Indian Reorganization Act and the IGRA indicates that, procedurally as well as substantively, the BIA is approaching the Scotts Valley Tribe's Request in reverse order. The correct order, before the Subject Land can be acquired for the Tribe, consists of, first, a determination of whether the Subject Land can lawfully be used for casino gaming under 25 U.S.C. § 2719; second, a completion of the Environmental Impact Statement ("EIS") underlying the acquisition; and third, a determination whether acquiring the subject land would be appropriate under the test set forth in the IRA, 25 U.S.C. § 465. As explained below, this order of determinations is mandated by the applicable statutes and rules.

A. The Subject Land Must Be Necessary For Economic Development Purposes

Under the Indian Reorganization Act and implementing rules, the Secretary is authorized to acquire property for a tribe in trust status only if: (i) the property is located "within the exterior boundaries of the tribe's reservation or adjacent thereto"; (ii) the property is located "within a tribal consolidation area" or the tribe "already owns an interest in the property"; or (iii) the Secretary determines the acquisition is "necessary to facilitate tribal self-determination, economic development, or Indian housing." 25 U.S.C. § 465; 25 CFR § 151.3(a).

The Subject Land is not located "within the exterior boundaries of the tribe's reservation or adjacent thereto." The Scotts Valley Tribe, while a federally recognized tribe, has no land base, does not reside on land set aside under federal protection against other jurisdictions, and does not assert governmental powers over any land. F. Cohen, Handbook of Federal Indian law at 34-35 (1982 Ed.). Even under the broadest possible definition of the term "reservation," there is no indication that the federal government has set aside land for the Scotts Valley Tribe for any particular purpose. *Compare* Pub. L. No. 107-63, § 134 (2001) (confirming Secretary authority to determine whether land is Indian "reservation") *with Sac and Fox Nation of Missouri v. Norton*, 240 F.3d 1250, 1267-68 (10th Cir. 2001) (holding land set aside for Indian cemetery is not "reservation" for purposes of Indian gaming).

There is nothing in the administrative record to suggest that the Subject Land is located "within a tribal consolidation area" or that the Tribe "already owns an interest in the property." There is no evidence that the Secretary has ever approved a plan for the acquisition of land in trust for any tribe or individual in the area of the Subject Land, nor that the Tribe ever owned in fee simple property comprising the Subject Land. *See* 25 CFR § 151.2(h) (defining "tribal consolidation area").

As noted above, the Subject Land is located 115 miles from Lake County where members of the Tribe historically resided. There is no indication that any Tribal members who may currently reside in the Bay Area have any physical connection with the Subject Land, much less any historical or cultural nexus.

To satisfy the Indian Reorganization Act requirements, the Secretary then must determine that the acquisition is "necessary to facilitate tribal self-determination, economic development, or Indian housing." 25 CFR § 151.3(a)(3). As explained below, such a determination by the Secretary would be premature at this juncture.

B. The EIS Must Be Completed Before The Subject Land Can Be Acquired

In its related publications under the National Environmental Policy Act ("NEPA"), the Department of the Interior is already on record that the "purpose" of the acquisition of the

Subject Land would be "to help provide for the economic development" of the Tribe. 69 Fed. Reg. 43431, 43431 (July 20, 2004). This, in turn, would give the Tribe "self-governance capability" by providing it with a sustained revenue stream. *See* Draft EIS Scoping Report § 2.1 (Project Purpose and Need). There is no mention that the acquisition is necessary to facilitate Indian housing.

The EIS will consider the comparative environmental and socioeconomic impacts of alternative casino and non-casino retail development uses of the Subject Land, each of which to some extent would satisfy the economic development and tribal self-determination "purposes" of the acquisition. *Id.* at § 2.2. The EIS also will consider the "no action" alternative, under which the Subject Land would not be placed in federal trust and the stated "purposes" would not be met. *Id.*

As long as the Subject Land is going to be used for one of the casino or non-casino retail development alternatives identified in the EIS, the Secretary may be authorized to acquire the Subject Land because the acquisition would facilitate economic development and tribal self-determination. 25 CFR § 151.3(a)(3). On the other hand, if none of these alternatives is selected – in favor of the "no action" alternative in the EIS – then the Secretary will not be authorized to acquire the Subject Land. Whether the Secretary has authority to acquire the Subject Land for the Tribe depends materially on the outcome of the EIS process. This means the Secretary must wait for the conclusion and take into consideration the results of the EIS process before determining whether to acquire the Subject Land for the Tribe.

C. The IGRA Must Be Considered Before The EIS Can Be Completed

The EIS process cannot include the study of project alternatives, the implementation of which would be unlawful or speculative. *Headwaters, Inc. v. Bureau of Land Management*, 914 F.2d 1174, 1180 (9th Cir. 1990); *Life of the Land v. Brinegar*, 485 F.2d 460, 472 (9th Cir. 1973), *cert. denied*, 416 U.S. 961, (1974).

For instance, if implementing the casino alternatives would be unlawful, then they should not be included in the EIS. This is made clear in the NEPA rules governing the EIS alternatives analysis. These rules are applicable to all federal agencies, including the Department of the Interior:

> This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment . . . and the Environmental Consequences . . . it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among

> options by the decision maker and the public. In this section agencies shall . . . (e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement **unless another law prohibits the expression of such a preference.**

40 CFR § 1502.14 (emphasis added); *see, e.g., Kilroy v. Ruckelshaus*, 738 F.2d 1448, 1454-55 (9th Cir. 1984) ("the extent to which the EIS should have addressed ocean disposal alternatives depended on the extent of the restrictions imposed by the Federal Water Pollution Control Act"); *NRDC v. Evans*, 279 F. Supp. 2d 1129, 1165 (N.D. Cal. 2003) (rejecting argument that the fact that an EIS alternative "later turns out to be inconsistent with another federal law is not grounds for disqualifying it from the alternatives analysis").

An EIS cannot include a study of project alternatives otherwise prohibited by law. With respect to the Scotts Valley Tribe's Request, the Secretary must first establish that implementing one of the casino alternatives would be lawful, before assessing their impacts in the EIS. In turn, the EIS must be completed before the Secretary can determine whether to acquire the Subject Land.

If it turns out that the casino alternatives cannot lawfully be implemented, then the authority of the Secretary to acquire the Subject Land for the Tribe will rest entirely on whether the non-casino retail alternative can actually satisfy the economic development and tribal self-determination "purposes" of the project. If the EIS process reveals that the non-casino retail alternative cannot satisfy these project "purposes," then the Secretary would lack authority to acquire the Subject Land. 25 CFR § 151.3(a)(3).

In sum, the Secretary must first determine whether the casino alternatives can lawfully be implemented before completing the EIS process and before the Secretary can determine whether to acquire the Subject Land for the Scotts Valley Tribe. Whether the casino alternatives can lawfully be implemented depends materially on whether gaming on the Subject Land would be allowed under Section 20 of the IGRA (25 U.S.C. § 2719). It follows that the Secretary must issue a determination under 25 U.S.C. § 2719 before the EIS process is concluded and before she can make a determination whether to acquire the Subject Land under the Indian Reorganization Act, 25 U.S.C. § 465, and its implementing rules, including 25 CFR § 151.3(a).

As discussed in Section II above, the case law and NIGC opinions support the conclusion that the Subject Land cannot be "restored" to the Scotts Valley Tribe under 25 U.S.C. § 2719(b)(1) (B)(iii). If the Subject Land is to be acquired for the Tribe, it must adhere to the two-part Secretary determination pursuant to 25 U.S.C. § 2719(b)(1)(A).

IV. THE TWO-PART SECRETARY DETERMINATION PROCESS IS THE ONLY OPTION AVAILABLE TO PERMIT ACQUISITION OF SUBJECT LAND

As demonstrated above, all of the IGRA After-Acquired Lands exceptions are inapplicable to the Subject Land. The only remaining option is where the Secretary, after consultation with the Tribe and appropriate state and local officials (including officials of "nearby" Indian tribes), determines that a casino on newly acquired lands would be in the "best interest" of the Indian tribe and its members, and would not be "detrimental" to the surrounding community, and the Governor of the state concurs in the Secretary's determination. 25 U.S.C. § 2719(b)(1)(A).

Without question, Rumsey is a "nearby" tribe to the Subject Land. As noted above, Rumsey is located 70 miles from the Subject Land – which is almost 50 miles closer than the Scotts Valley Tribe itself. As a nearby tribe, Rumsey would have to be consulted during the two-part Secretarial process. At this juncture, Rumsey takes no position as to the merits of such a determination. Instead, Rumsey reserves its comments until the appropriate time if and when the Secretary undertakes the consultation process.

Nevertheless, Rumsey believes the Tribe will have a difficult burden to demonstrate that the proposed acquisition of the Subject Land would not be detrimental to the surrounding community and would be in the best of interest of Indian Country as a whole. Further, pursuant to the OIGM Checklist, the greater the distance the acquired land is from the Tribe's reservation, the greater the justification will have to be to support the additional benefits to the Tribe. *See* OIGM Checklist at 5. With the distance here being 115 miles, the justification will need to be significant and substantial.

Presumably, there are other tracts of land elsewhere in California – and within the Tribe's historical and cultural lands in Lakeport – that can be taken into trust for the Tribe whereby the acquisition is more amenable to the local communities, nearby tribes and state officials. Rumsey advocates that the Tribe seek other land where it has the requisite historical and cultural nexus in which to engage in gaming and other economic development.

V. CONCLUSION

The Subject Land cannot be taken into trust under the "restored lands" exception under the IGRA. The Subject Land must instead adhere to the two-part Secretary determination process which mandates consultation with nearby tribes, including Rumsey, local communities and other officials. This process also requires concurrence by the California Governor.

Rumsey appreciates the opportunity to submit the foregoing comments and trusts that the Secretary will consider its analysis in determining whether to grant the Scotts Valley Tribe's

Request. As noted above, these comments will be supplemented in due course. If you have any questions regarding these comments, please let me know.

Very truly yours,

Snell & Wilmer

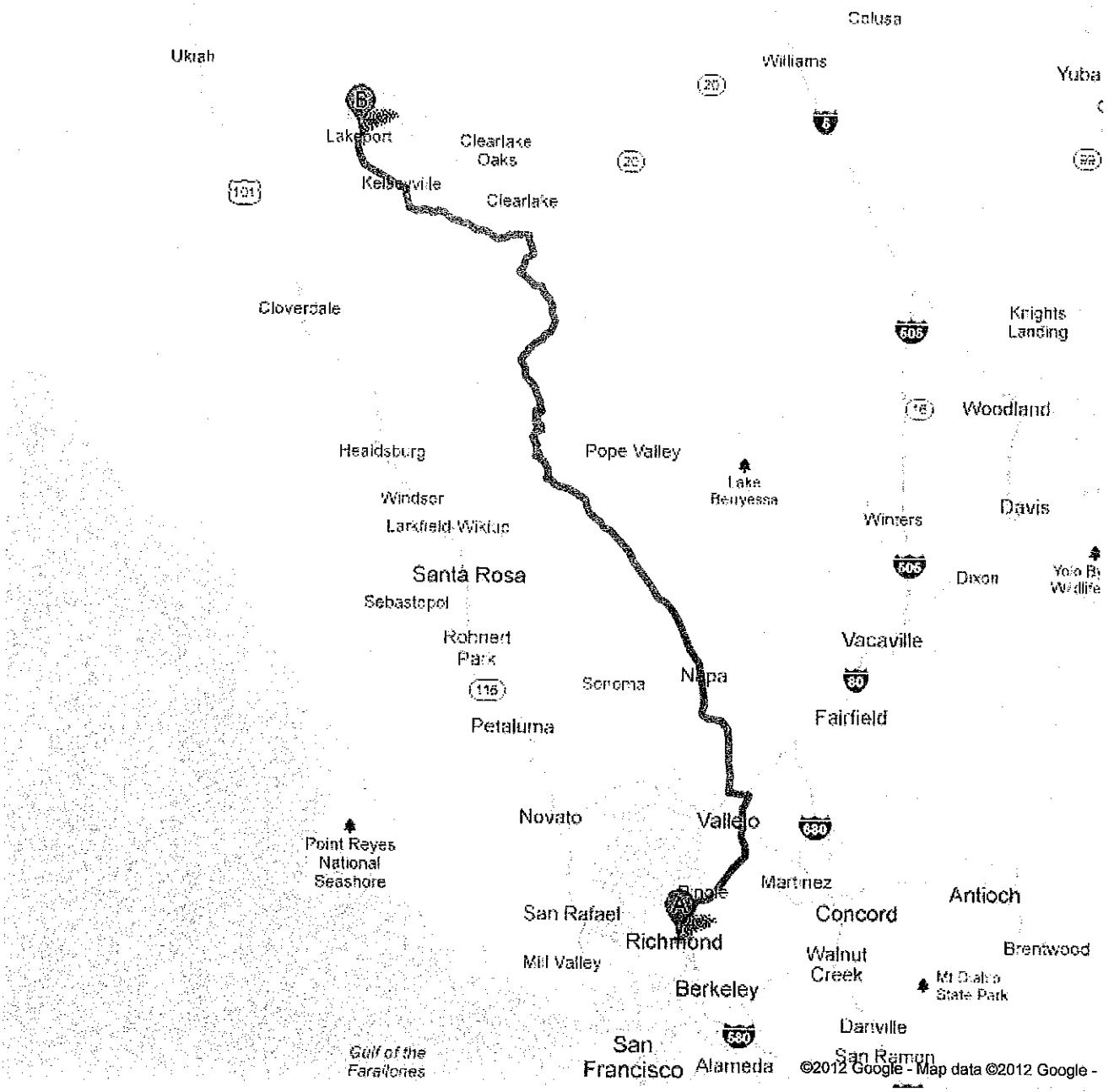
Heidi McNeil Staudenmaier

HMS:vc
Enclosures
cc: Howard Dickstein, Esq.

Exhibit #5

Google

Directions to Lakeport City Hall
225 Park Street, Lakeport, CA 95453 - (707) 263-5615
112 mi – about **2 hours 23 mins**
Scotts Valley Off Reservation Casino



City of Richmond
450 Civic Center Plaza, Richmond, CA 94804 - (510) 620-6513

	1. Head **east** on **Nevin Ave** toward **27th St**	go 246 ft total 246 ft
	2. Take the 1st left onto **27th St**	go 0.1 mi total 0.2 mi
	3. Take the 1st right onto **Barrett Ave** About 3 mins	go 1.0 mi total 1.1 mi
	4. Turn left onto **San Pablo Ave** About 1 min	go 0.1 mi total 1.2 mi
80	5. Slight right to merge onto **I-80 E** toward **Sacramento** Partial toll road About 18 mins	go 16.4 mi total 17.6 mi
37	6. Take exit **33** to merge onto **CA-37 W** toward **Napa** About 2 mins	go 2.1 mi total 19.8 mi
	7. Take exit **19** for **CA-29/Sonoma Blvd** toward **Napa**	go 0.3 mi total 20.1 mi
29	8. Turn right onto **CA-29 N/Sonoma Blvd** Continue to follow CA-29 N About 49 mins	go 37.9 mi total 58.0 mi
	9. Turn right onto **Lincoln Ave** About 2 mins	go 1.0 mi total 59.0 mi
29	10. Continue onto **CA-29 N/Robert Louis Stevenson's Historic Trail to Silverado** Continue to follow CA-29 N About 38 mins	go 31.0 mi total 90.0 mi
29	11. Turn left to stay on **CA-29 N** About 23 mins	go 19.8 mi total 110 mi
	12. Turn right onto **Co Rd 502/Soda Bay Rd**	go 203 ft total 110 mi
	13. Take the 1st left onto **S Main St** About 4 mins	go 1.8 mi total 112 mi
	14. Turn right onto **1st St**	go 292 ft total 112 mi
	15. Take the 1st left onto **Park St** Destination will be on the left	go 381 ft total 112 mi

Lakeport City Hall
225 Park Street, Lakeport, CA 95453 - (707) 263-5615

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Directions weren't right? Please find your route on maps.google.com and click "Report a problem" at the bottom left.

Exhibit #6

1999

SCOTTS VALLEY

TRIBAL INFORMATION AND DIRECTORY

GENERAL

Tribe:	Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria
Tribal Affiliation:	Pomo - Wailaki
Reservation:	Scotts Valley Rancheria
Population:	140 (Tribal Profile 92)
Gross Acreage:	.79 Acres
Location:	Lake County; Lakeport, California
Agency:	Central California Agency
Gaming:	No

TRIBAL GOVERNMENT

Organization:	Non-IRA Constitution approved by tribe 8/29/92
Governing Body:	General Council - Five Elected Members from Tribal Membership
Elections:	Tribal Council - 3 Highest votes hold office 3 years - Remaining 2 highest votes hold office 2 years
Meeting:	Regular General Council - First Saturday of the Month General Membership Meets - Quarterly
Tribal Office:	149 North Main St., Suite 200, Lakeport, CA 95453 Telephone: (707) 263-4771 / Fax: (707) 263-4773

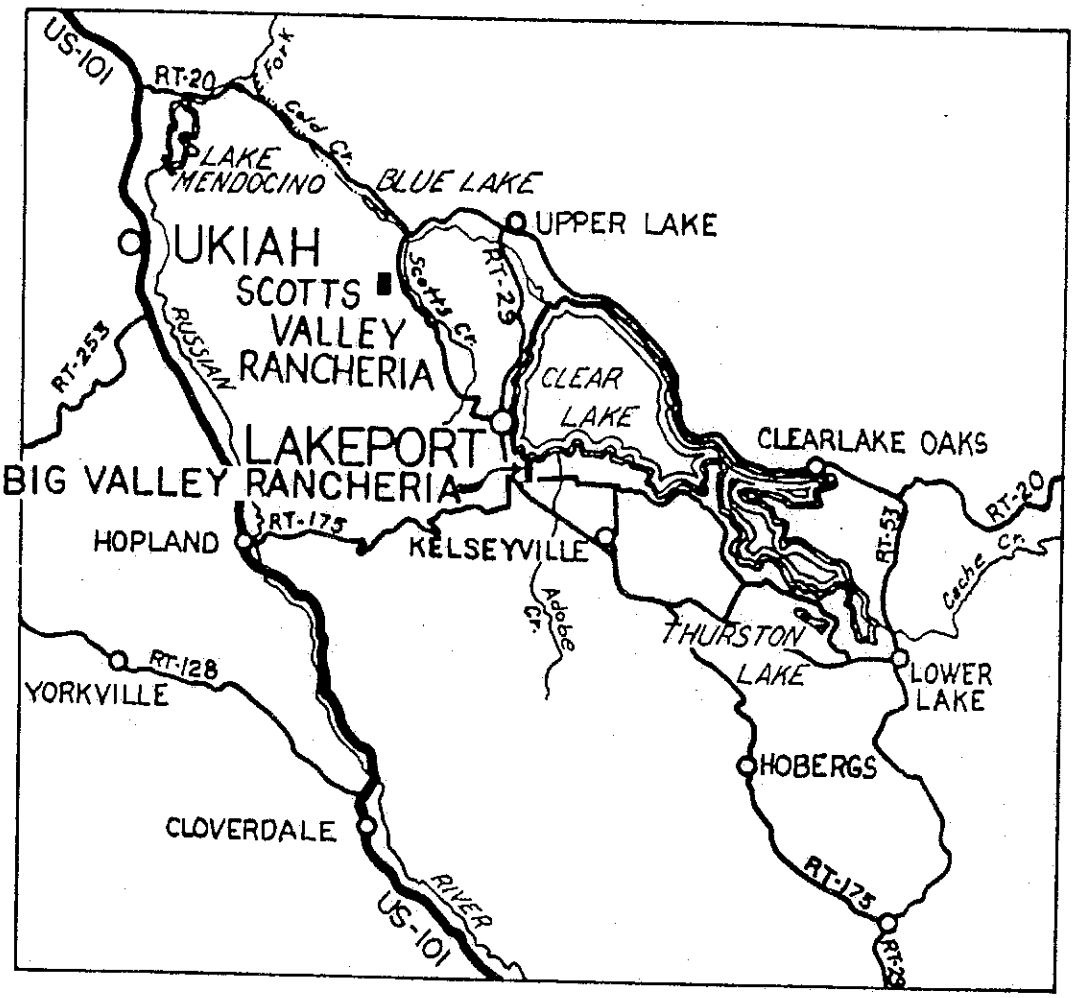
LAST ELECTION: 08/00/98

*TRIBAL OFFICIAL

Chairperson: Les Miller

* 5 Member Council - Elected at various times

REMARKS Notice of Reinstatement to Former Status for the Guidiville Band of Pomo Indians, The Scotts Valley Band of Pomo Indians and Lytton Indian Community of California. Effective September 6, 1991. Federal Register/Vol. 57, No. 29/Wednesday, February 12, 1992/Notices.



BIG VALLEY SCOTTS VALLEY RANCHERIAS