

Stand Up For California! **“Citizens making a difference”**

www.standupca.org

P.O. Box 355
Penryn, CA 95663

August 24, 2009

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

**RE: Public Comment – Soboba Band of Luiseno Indians
Horseshoe Grande fee to trust application**

Dear Director Morris:

This letter contains the comments of *Stand Up For California!* addressing the many impacts of the proposed Soboba Band of Luiseno Indians (“Tribe”) casino expansion within the City of San Jacinto. Many of the identified impacts are serious and significant. *Stand Up For California!!* views this project as an off-reservation gaming proposal. Once the subject land is in trust there is no debate that it is a clear exception for gaming. Nonetheless, this acquisition is a discretionary acquisition and must be supported by the State, local governments and the surrounding community.

The Tribe has a 1999 Compact. In part, it is the failure of tribes to act in good faith and the Bureau of Indian Affairs (“BIA”) to consider the terms of the 1999 Compacts that has created the public and local government backlash to tribal gaming expansion throughout California. The lack of consideration of the terms of the 1999 Compacts extends to environmental, financial and social justice issues. The social, economic and political costs to citizens, local government and state agencies resulting from this failure is the primary motivation for re-negotiation of all 1999 Compacts. *Stand Up For California!* seeks a re-negotiation of the Tribe’s 1999 Compact prior to any acquisition of land for a casino or ancillary development.

Stand Up For California! submits general observations to the Tribe’s DEIS. The Environmental study is incomplete and misleading as an environmental review document because it lacks sufficient detail and provides inadequate analysis of many environmental issues that are routinely considered during such a review of other public and private projects. Additionally, the project must comply with the agreed upon terms of the Tribes 1999 Tribal State Compact (“Compact”).

Discussion:

Stand Up For California! will address the following areas of the DEIS: (1) Tribal State compact compliance, (2) Projects Purposes and Stated Needs, (3) general observations on environmental impacts, (4) Application of Governor's Proclamation of 2005 and (5) Impact of recent *Carcieri v. Salazar* U. S. Supreme Court Ruling and lastly,(6) Concluding requests.

I. Tribal State Compact Compliance:

BIA Must Consider Tribal State Compact Language

The Tribe signed a 1999 Compact which permits a tribe to have two gaming facilities. It is still in effect with the State of California and stipulates that land must meet the standards of "Indian lands" under IGRA. This is the very issue argued in *State of California v. Acting Pacific Regional Director, Bureau of Indian Affairs* Docket No. IBIA 01-140-A August 10, 2004.

Without regard to whether IGRA itself requires that land is taken into trust for gaming, non-gaming or gaming ancillary purposes and meets the statutory standard, the fact is that the tribe executed – and the Secretary approved—a compact imposing that requirement. Thus, as a matter of IGRA the Compact under which the tribe conducts gaming must meet the standards of IGRA and the 1999 California Compact.

The Secretary approved this Compact and noticed it in the Federal Register. In 2009, neither the Regional Director of the BIA nor the Secretary of the Interior can claim that there was not federal awareness of required environmental standards on the subject land. The IBIA concluded in *State of California v. Acting Pacific Regional Director, Bureau of Indian Affairs* Docket No. IBIA 01-140-A August 10, 2004.

“...that the BIA did not commit legal error or abuse its discretion in failing to consider the terms of the compact concerning “gaming facilities,” **because the State failed to bring those terms and the alleged contract violations associated with the Tribe’s use of the property to the BIA’s attention.**”

The BIA must consider tribal state compact language as it applies to a tribe’s request that the BIA take into trust property eligible for gaming. Casino development in Indian Country requires the explicit recognition of risk factors, which include consideration of the capabilities of the tribal government, the Tribe’s geographical location, and public attitudes towards gaming. Painstaking attention must be dedicated to the concerns of affected states and local governments. A Tribal-State compact is an agreement to permit gaming. It is also is an important and vital agreement that maintains the delicate balance of powers between Tribes, states and the federal government. It is an agreement that should be carefully constructed while recognizing the powers and authorities vested in the executive and legislative branches of government. It is an agreement that recognizes and must be enforced to ensure the continued rights of not only the parties but of all citizens.

Compact Environmental Language

As required under Section 10.8 of the Tribal-State Compact (Compact), prior to the construction and operation of gaming related uses, the Tribe must prepare an assessment of potential off-reservation impacts that may result from development of the proposed action. The analysis provided in the DEIS fails to fully consider off-reservation impacts. Rather than the superficial review of potential impacts found in the DEIS, the Tribe must more fully address the direct, indirect, and cumulative impacts that may result from the proposed casino/hotel/restaurants/retail establishments/convention center/events arena/spa and fitness center project.

The 1999 tribal state compact sets forth in section 10.8.1 and 10.8.2 a definition of a “project”, requirements of notification, consultation and comment requirements. In particular there is an independent requirement in section 10.8.2(b) (2) to make good faith efforts to mitigate significant adverse off reservation environmental impacts. The 1999 tribal state compact clearly defined and provided a requirement that land used for gaming or ancillary developments to enhance gaming must meet the standards of the Indian Gaming Regulatory Act (“IGRA”).

- The Secretary of the Interior and the Pacific Regional Director cannot deny knowledge of the environmental standard of the California Tribal State Compact.

Tribal Environmental Ordinance

The DEIS includes the Tribal Environmental Ordinance (Ordinance No. GC00-8) of the Soboba Band of Luiseno Mission Indians (“Tribe”). Ordinance No. GC00-8 states it is consistent with the National Environmental Policy Act, 40 USC §4332, and is further defined in 40 CFR §§ 1510.10-218.” However Section IV (A) of Ordinance GC00-8 only covers “...construction on the Reservation”.

Ordinance GC00-8 does not cover construction of a gaming project off reservation on non-Indian trust lands, nor does it cover proposed construction on lands involved in a fee to trust process. It would appear that the ordinance does not apply to the proposed development. Thus, the Tribe is offering only unenforceable promises of mitigations or cooperation with the surrounding communities, state agencies and affected local governments.

Contrary to the purpose and intent of Ordinance No.GC00-8 if the proposed project were on Reservation lands, the DEIS still fails to follow the qualitative requirements established under NEPA. Specifically, the DEIS does not include a reasonable range of project alternatives without a casino such as: a shopping mall, movie theaters, auto dealership or organic farm; it does not provide an adequate level of analysis of potential effects the proposed action may have on the physical or human environment, and fails to consider the indirect, and cumulative impacts of the Tribe’s proposed action. As such, the DEIS does not provide the Tribe an adequate assessment of the potential effects that may result from the construction and operation of the proposed project off reservation.

The Tribe’s Environmental Ordinance is inadequate as it fails to recognize the differences between Reservation lands, Indian trust lands and lands held in fee by the Tribe. The

establishment of the Environmental Ordinance is a requirement of the 1999 Tribal State Compact. **The weaknesses of the Environmental Ordinance raise concerns over compliance with the 1999 Tribal State Compact.**

II. Projects Purpose and Tribes Stated Need:

The DEIS indicates the project *purpose* for the Tribe is, “to reclaim ancestral territory so that it may exercise sovereignty over Tribal lands and be relieved of state and local taxation and regulation”. The stated *need* is, “to allow the Tribe to develop economically so that it may continue to provide a good quality of life for Tribal Members”. (At page ES-1)

The City of San Jacinto was established in 1888. The Soboba Reservation was established three years later by an Act of Congress in 1891. (26 Stat.712 c. 65 January 12, 1891) Clearly the non-tribal population of the City of San Jacinto and the County of Riverside and the regional area has justifiable expectations that the land remains similar in character. If changes regarding zoning, jurisdiction and critical health and safety issues regarding a change in the governing authority are to be made then it must not be an overreaching federal decision behind the closed doors of the BIA.

For 159 years the land of Horseshoe Grande 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 159 years has been subject to California and local law and in the private ownership of generations of private citizens until its sale to the Tribe on the open market.

Rather than reclaiming ancestral land it appears that the Tribe seeks to circumvent regulatory environmental safeguards, as well as local and state taxes which provide local services. This creates a significant financial burden to the non Indian taxpayers of the regional area.

A tribe is authorized and encourage pursuing endeavors that may improve its economic situation but neither the Compact, IGRA, NEPA, IRA nor any other authority, guarantees economic success. There is no justification for this project as it ignores the successful Casino, golf course, country club and any other diversified holdings of the Tribe which already exist for the benefit and good quality of life for Tribal Members.

NEPA standards for preparing an environmental assessment require an explanation of “the relationship between local short term uses of man’s environment and the maintenance and enhancement of long term productivity”. There is no detail in this DEIS that describes (1) why the tribe must reclaim ancestral lands since the Tribe has already purchased the property on the free market and controls development of the land, (2) why must the Tribe be relieved of local and state taxation of these lands? These issues must be discussed in greater detail in order to appropriately frame the requisite analysis of potential cumulative off reservation impacts.

Property tax is a major source of local funding for schools, parks and recreation and local government services such as: transportation systems, law enforcement, District Attorney and Municipal Jail, and many others services that the Tribe uses. Removal of these lands for the

development of a casino undermines the ability of local government to continue to provide adequate services to the surrounding community of non-Indian citizens. The scarce tax dollars of non-Indian citizens have provided local government services to the existing casino. The Tribe has no Memorandum of Understanding to contract for city or county services, law enforcement or emergency services – so the promised increased revenue does not guarantee a public benefit. The project will directly affect “the good quality of life” of the non-Indian community.

The Tribe states it will create a sizable source of employment for Tribal members and members of the local communities. Economists have long held that casinos transfer jobs in a community, they do not create jobs. Clarification and analysis of the existing job opportunities, a break down of employment of tribal members and community members at the existing facility is necessary data for comparison to the proposed facility in order to appropriately frame the requisite analysis of the potential cumulative off reservation impacts or beneficial impacts as stated in the DEIS.

The Tribe states it will also continue to provide revenues generated from its gaming enterprise to local social, cultural and education programs. Please identify the amount of the revenue and the recipient of this revenue. A detailed report and analysis of the past and present revenues generated to local social, cultural and education programs contrasted to the current impacts is necessary in order to appropriately frame the requisite analysis and potential cumulative off reservation impacts or beneficial impacts as stated in the DEIS.

The promises of new revenue is a statement not based in the reality of the gaming industry in 2009. The Gaming Industry is falling apart. Today’s gaming market is not the go-go boom years of 2006 and prior. Tribal leadership should learn from others to avoid getting caught in questionable decisions such as this proposed off reservation casino development.

One cannot pick up a Las Vegas Sun, or Las Vegas Journal or the Wall Street Journal without reading an account of the falling revenue of the gaming industry. In Detroit Michigan the Chippewa’s casino is going bankrupt. A project that just a few years ago promised economic self-sufficiency and now is an albatross around the necks of the tribal decision makers. Tribal casinos up and down the state with better locations for destination resorts are scaling back projects and laying off employees. This project must be thought through.

III. General Observations of Environmental Impacts

Traffic and Transportation

Issues relevant to this project are: whether the anticipated traffic could cause congestion on public roads, whether the project would increase traffic hazards (by volume as a result of serving alcohol) and whether the project would result in inadequate emergency access. The DEIS fails to adequately address the issue of congestion, air quality and does not adequately address hazards and emergency access or necessary equipment or costs to the surrounding local jurisdictions.

Nor does it consider the general plan of the City of San Jacinto. The project would violate over 20 of the City of San Jacinto’s general plan requirements. The DEIS does not consider that it

creates islands of non-Indian trust land within Indian Country greatly affecting the administration of justice, the delivery of services and the assurance of public safety by local law enforcement to the isolated non Indian homeowners.

Six communities totaling over 1200 residents living on 850 acres of land, would become isolated islands of non Indian lands within Indian country. This complicates the delivery of necessary utility services, emergency services, public health and safety services. Further, this complicates the emergency evacuation in the event of fire, flood or earthquake.

Public Health and Safety

The DEIS proposed mitigation measures are nothing more than unenforceable promises that fail to take into consideration the need to protect the public and the environment. **The mitigation measures must be enforceable if the Tribe is to claim compliance with the “good faith” provisions of the 1999 Compact.**

The California Gambling Control Commission has a regulation to address Emergency Evacuation and Preparedness Plans. The Tribe’s EIS fails to adequately address this concern and needs additional discussion of this failure. Emergency vehicle access and availability is something that is clearly required and must be included in a plan adopted under CGCC-7. The Tribe has one road in and one road out. This does not represent good long term planning.

Patron Protections

Tribal gaming operations in California have recognized the financial benefit of marketing to senior citizens. Many of the tribal gaming operations provide bus services from Los Angeles to a variety of tribal gaming resorts in San Diego and Riverside County. Buffet brunch and luncheons are free or discounted to seniors on scheduled senior days. Clearly, senior citizens in California are a desirable and lucrative market. Seniors have time, money and the need for recreation.

However, tribal gaming is failing to ensure the safety and well being of senior patrons at casinos. Tribes are now operating multi-million dollar destination resorts. The tribal gaming industry has grown from \$200 million dollars annually in 1998 to over \$27 billion in 2009. The integrity of the Indian gaming industry depends on fair treatment of patrons, many of whom are senior citizens enjoying this form of recreation which does not require great physical strength while providing an outing to break up the daily routines of retirement.

Senior citizens have been affected in a number of ways by the explosive proliferation of tribal gaming in California. The Los Angeles Times has written numerous stories on Senior citizens gambling away their retirement. The Sacramento Bee has written stories regarding the lack of safety to patrons and the failure of the 1999 tort ordinance at tribal gaming facilities. These press stories are a red flag to organizations like the AARP.

It is in the best interests of the long-term success of the Tribe to protect not only the patrons and employees but ensure that the proposed project does not place in jeopardy the safety of the

surrounding community. Failing to answer this question adequately places the Indian Gaming industry at risk and further fuels the fire of a backlash on tribal gaming.

Law Enforcement

The DEIS does not address the type and scope of criminal activity directly and indirectly attributable to the existing Gaming Facility. What appreciable impact the proposed expansion will have on crime levels, or how criminal activity in the existing facility and proposed expansion has impacted the State's criminal courts. Law enforcement is currently provided at the expense of the Riverside County Taxpayers. No local service contract exists between the Tribe and the Riverside County Sheriff's office.

The project's impact on off reservation law enforcement is uncertain because the DEIS does not discuss how off Reservation communities will be impacted if increased law enforcement service by the Sheriff's Department to the Project results in decreased service elsewhere. **Nor does this DEIS discuss the impact of the administration of justice to the homeowner associations that will become isolated islands of non trust land within Indian Country.**

Geology and Soil

The DEIS indicates the project is located within an earthquake fault zone. However, seismic activity that could result in severe ground shaking is identified at the project site. What mitigation measures are intended to provide reasonable life safety during or after a major earthquake? The Tribe must state what is "reasonable" life safety (loss of life, injury, etc.) and how the determination of "reasonable" is reached. As the intent of the Tribe is to increase patronage at their proposed facility, the non-Tribal population must be assured the design, construction, and operation of the proposed uses will provide the maximum level of protection from seismic events that is possible.

Waste Management

The issue relevant to this project is whether the solid waste generated by the project would affect ground/surface water. There are also concerns regarding the disposal of waste generated as a result of the casino and dining facilities. The DEIS is unrealistic and fails to adequately address and analyze these concerns. Moreover, the proposed projects sits on top of the aquifer that supplies water to the regional area. The project increases the potential for pollution of this water supply and represents a serious and significant concern.

Air Quality

The DEIS fails to adequately address this concern with relationship to state or local air quality standards or whether the proposed project will have a significant impact that is either mitigatable or not. While there is a recommendation that the Tribe "***should***" meet the standards of the local air quality agency – there is no guarantee that it must. The recommendation is simply an **unenforceable promise**. **The Tribe has not addressed its current impacts on state and local air quality standards.**

The DEIS must mirror the California Environmental Quality Act and include direct impacts caused by the operation of a casino and the secondary facilities, along with the indirect impacts caused by the mobile sources of traffic, public employees, and suppliers. Additionally, the initial construction development impacts must also be addressed and required mitigation for these impacts plainly state. This is necessary if California is to reduce its green house gas emissions by 25% by 2020 as required by a state statute passed in 2006.

Water

This study fails to address concerns over an adequate potable water supply and what provisions are made in the event that the proposed source(s) prove inadequate. The Tribe has agreed to **“forbear in its use of a portion of its water rights for the next fifty years”**, using no more than half the water allotment for those fifty years.¹ That is very nice, but is this enforceable and who will ensure this promise?

Groundwater use has exceeded yield since 1958 and is now in overdraft. A development of this magnitude by any private party would be determined to be unfeasible and beyond consideration. Yet, the Tribe’s response is that, the proposed mitigation plans described in the DEIS have not been presented to corresponding agencies for validation; they are merely ideas of what may happen. The mitigation plans are drafted in order to provide documentation to support the approval of the fee to trust application. They are not assurances, guarantees or commitments of specific actions developed by the Tribe. They are **“unenforceable promises”**.

It is well settled that the establishment of an Indian Reservation carries with it an implied reservation of the amount of water necessary to fulfill the purposes of the reservation with a priority date no later than the date of creation of the reservation. *See- Winters v. United States*, 207 U.S. 564, 576-77 (1908); see also *Arizona v. California*, 372 U.S. 546, 599-601 (1963); *United States v. Winans*, 198 U. S. 371 (1905) Thus, transferring the Horseshoe Grande land into trust affects the aforementioned agreement terms.

Considering the location of the aquifer that supplies water to the regional area, this acquisition would grant control of a water source for the entire regional area to the Tribe. Control of the water source controls development and potential revenues generated from development to the City, the County and the State. **This is a significant financial and political impact of exponential consequences.**

Recent statutes chaptered in February of 2001 placed certain requirements on providing information from water suppliers in their decision to approve or deny commercial, industrial, or residential development based on ground water availability in California, SB 610, and SB 221. These statutes were enacted to protect the limited and shared natural resource of ground water.

¹ Comments on H.R. 2841, by Majel M. Russell, Principal Deputy Assistant Secretary of Indian Affairs, U. S. Department of the Interior. States that the Tribe has been granted abundant water 97,500 acre feet per year for 30 years will recharge the San Jacinto basin, an over drafted basin. The Settlement awards the Tribe \$18 million from local water districts and \$11million from the federal government and the right to 2 billion gallons of water a year from the aquifer.

California like other western states is experiencing an overdraft of ground water supplies in many regions. While these relatively new state ground water laws may have a limited legal influence on the federal fee-to-trust process, they make clear the practicable result of a developments size and scope. The proposed project while not being the source of a potential water shortage problem has the ability to exacerbate a greater problem that will be shared by many should the proposed water source prove inadequate.

As you know, the Bureau of Indian Affairs has authority under 25 C.F.R. section 1.4 (b) to adopt and make applicable to Indian lands, State and local laws, ordinance, rules and regulations. I ask you to consider adherence to these state ground water statutes when evaluating the environmental impacts which will ensure the long-term success of the Tribe.

IV Application of Governor's May 18, 2005 Proclamation

In May of 2005, Governor Schwarzenegger introduced a Proclamation setting forth a general policy on specified matters related to tribal gaming. It is clear that the Subject Land proposed for a casino by the Tribe is non-compliant with this proclamation. The Governor states:

1. **I shall oppose proposals for the federal acquisition of lands within any urbanized area where the lands sought to be acquired in trust are to be used to conduct or facilitate gaming activities.**
2. I shall decline to engage in negotiations for tribal-state gaming compacts where the Indian tribe does not have Indian lands eligible for class III gaming.
3. **I shall consider requests for a gubernatorial concurrence under section 20(b)(1)(A) of IGRA, that would allow a tribe to conduct class III gaming on newly acquired land, only in cases where each of the following criteria is satisfied:**
 - a) **The land that is sought for class III gaming is not within any urbanized area.**
 - b) **The local jurisdiction in which the tribe's proposed gaming project is located supports the project.**
 - c) **The tribe and the local jurisdiction demonstrate that the affected local community supports the project, such as by a local advisory vote.**
 - d) **The project substantially serves a clear, independent public policy, separate and apart from any increased economic benefit or financial contribution to the State, community, or the Indian tribe that may arise from gaming.**

The governor makes clear his opposition to urban casinos but also details criteria under which he will give serious consideration for the authorization of off reservation casinos.

As you may be aware, the State has successfully defended a challenge to the constitutionality of Proposition 1A². This challenge alleged that California violated the Equal Protection Clause of

² 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.

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.

Question: Does the proposed site of the Tribes casino/hotel complex meet the State's Constitutional restriction of tribal gaming "to carefully limited locations"?

It would not appear so, as the State Constitutional exception provided for limited gaming *only* on "California Indian lands". Article 4 Section 19 (f) authorized by a vote of the public on March 7, 2000, clearly limits tribal gaming operations to "*Indian lands in California*" or "*tribal lands subject to those compacts*". California had 52 negotiated and ratified tribal state compacts that were subject to this language when authorized by the voters in 2000. Soboba was one of the 52 named and has an existing casino on land clearly identifiable as "*tribal lands subject to those compacts*", but the Horseshoe Grande property was not and is not in trust and does not meet that definition. The Horseshoe Grande fee to trust proposal is after acquired lands subject to an IGRA process.

Question: Does the proposed casino location meet the criteria of the Gubernatorial Proclamation dated May 18, 2005?

The Governor has stated very clearly in his Proclamation that:

"I shall oppose proposals for the federal acquisition of lands within any urbanized area where the lands sought to be acquired in trust are to be used to conduct or facilitate gaming activities."

The Subject Land is within the City limits of the City of San Jacinto, a City of 36,477 residents. Attached to the Governors Proclamation is a definition of urbanized area which defines urbanized area as any City over 20,000 in population:

"For purpose of this Proclamation, "urbanized area" means the definition of that term as defined in Public Resources Code section 21071, subdivision (a). A list of the cities meeting this definition as of the date of this Proclamation is attached hereto."

3.(d) The project substantially serves a clear, independent public policy, separate and apart from any increased economic benefit or financial contribution to the State, community, or the Indian tribe that may arise from gaming.

Section 20 of IGRA clearly makes this proposed land acquisition eligible for gaming, nevertheless, it is a discretionary acquisition not mandatory. There appears to be no "independent public policy separate and apart" from any increased economic benefit of financial contribution to the State, community or the Indian Tribe other than the benefit of a multi-million

dollar casino for the Tribe. And lets not forget, exemption from taxation, zoning and environmental standards that ensure the sharing of precious natural resources.

3.(c) The tribe and the local jurisdiction demonstrate that the affected local community supports the project, such as by a local advisory vote.

Citizens in California enjoy a very direct form of democracy permitting voters to assert their right to vote and to referendum local and state laws. This process has been recently used in California on a statewide effort regarding four 2008 tribal state compacts. However, it is more commonly put to use at the local level of government to referendum local actions, particularly gambling expansion. The most recent and successful referendum was conducted in the City of Dixon in 2007, which defeated the introduction of a new Horse Racing Track.

The State has long recognized the opposition of citizens to the expansion of gambling and has included in California Business and Professions Code Section 19961. (a)³ The following language related to gambling expansion.

“On or after the effective date of this chapter any amendment to any ordinance that would result in an expansion of gambling in the city, county or city and county shall not be valid unless the amendment is submitted for the approval of voters of the city, county or city and county, and is approved by a majority of the electors voting thereon.”

Because of the potential for backlash in the local community, the need for citizen input has been recognized as important for Indian gaming, even though there is no process in IGRA that contemplates it. Consequently, in some states, like California, a mechanism for a non binding advisory vote by the local community on proposed tribal gaming activities was developed as part of the compacting process. In 1998 California Governor Pete Wilson included a non binding advisory vote in the “Pala Compact”. The advisory vote feature was not included in the 1999 compacts signed by Governor Gray Davis, but was restore as stated in Governor Schwarzenegger’s May 18, 2005 Proclamation and as negotiated in his new compacts with Indian tribes.

Advisory votes have the potential to assist Counties and Cities in the development of local intergovernmental agreements with tribes that are seeking off reservation casinos or the expansion of existing casinos on established and historic Indian reservations. A no vote by the local community, while non binding may trigger the need to renegotiate a tribal county agreement, force a search for means to mitigate local adverse impact, defuse local opposition or to build public support for a project. On Tuesday August 18, 2009, the California State

³ This language was developed in 1998 in the California Gambling Control Act. The Preamble of the Act succinctly states the States position on the gambling industry. 19801. The Legislature hereby finds and declares all of the following: (a) the longstanding public policy of this state disfavors the business of **gambling**. State law prohibits commercially operated lotteries, banked or percentage games, and **gambling** machines, and strictly regulates pari-mutuel wagering on horse racing. To the extent that state law categorically prohibits certain forms of **gambling** and prohibits **gambling** devices, nothing herein shall be construed, in any manner, to reflect a legislative intent to relax those prohibitions.This continues through (m). The State voters did provide a *limited exception* for tribal gaming in 2000.

Legislature considered Assembly Concurrent Resolution ACR 56. This resolution while not carrying the force of law clearly expresses the sentiment of the State Legislature's view in opposing after acquired lands for the development of casinos and the necessity of judicially enforceable agreements that mitigate environmental impacts and pay for services by local jurisdictions.

***Stand Up For California!* urges a vote of the public consistent with long standing public policy on gambling before the BIA makes a controversial determination for transferring land into trust for the establishment of a second casino location off reservation for the Tribe.**

V. Impact of recent *Carcieri v. Salazar* U. S. Supreme Court Ruling

The recent United States Supreme Court ruling of *Carcieri v. Salazar* has many implications affecting not only the fee-to-trust process but the governance of tribes potentially undermining the ability to contract, secure loans or provide insurance coverage. This raises serious concerns about the Tribe's ability to meet the terms of its 1999 Compact.

While the Soboba Band of Luiseno is a Tribe that *may potentially* document being "under federal jurisdiction" as early as 1891 there are a number of tribes in the State that cannot. Many of these tribes are seeking a "*Carcieri fix*" as it is needed to acquire land for off reservation casinos anywhere from 35 miles to over 100 miles from the existing or former Rancheria or Reservation lands. While Tribes seek lands for casinos, states, local governments and citizens seek "objective standards" in the fee to trust process. It would be prudent to postpone acquisitions in California until the Carcieri issue is resolved.

The regulations set out in 25 CFR 151 and analyzed by the GAO do not define or provide guidance to the decision makers. The regulation criterion is subjective. There is no guidance in the regulations on what constitutes an acceptable level of tax loss or how to evaluate the tax loss from approving an application. Moreover, there is no guidance in the regulations on what types of jurisdictional and land use concerns might warrant denial of the application. Thus, controversial applications such as this one have followed a path that often leads to adversarial, protracted and difficult litigation. This is easily avoided if the Department of the Interior decision makers work with states and local jurisdictions to develop objective standards. Moreover, it is recommended that Department of the Interior decision makers consider the shared natural resources of both tribal and non tribal communities of the regional area.

A "Carcieri fix" will be complicated and without doubt have an impact on the process of any Section 20 application.

CONCLUSION

Stand Up For California! appreciates the opportunity to comment on the proposed project addressing the serious and significant concerns of the public demonstrated by the large attendance at both the scoping hearing and the recent public comment hearing on the DEIS. We

submit our comment identifying the weaknesses of the current DEIS as stated in the reasons set forth above. We hope that you give them your consideration.

We request that the Tribe withdraw this application for 535 acres, amend its environmental ordinance and give significant effort to renegotiating its 1999 Compact with Governor Schwarzenegger incorporating all of the necessary public policies that will provide long-term success for the Tribe. This application for off reservation land is a significant detriment to the surrounding community, local government, the regional water supply, air quality, control of green house gasses and to the very citizens who in 2000 supported Tribal effort's for economic self-sufficiency.

Most importantly, we urge the Tribe to immediately contract with the Riverside County Sheriff for law enforcement services on the existing Reservation. The Tribe must initiate a concerted and cooperative effort to address the trafficking of illegal guns, drugs and gang activity on the Reservation.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl A. Schmit". The signature is written in black ink and is positioned below the word "Sincerely,".

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

CC: Save Our Communities Council
City of San Jacinto, City Manager and Council
County Board of Supervisors, Riverside County
Honorable Arnold Schwarzenegger, Governor of California
Honorable Jerry Brown, Attorney General of California
Honorable Dianne Feinstein, United States Senator