

January 10, 2006

Honorable Duncan Hunter
United States Congressman
11870 Cordell Court, Suite 206
El Cajon, California 92020

RE: Sycuan Band of Kumeyaay Indians and Abuse of federal acquisition

Dear Congressman Hunter:

Dehesa Valley Community Council (DVCC) is writing to advise you of a potential "bait and switch" by the Sycuan Band of Kumeyaay Indians (Tribe). The Tribe has acquired new land for gaming or gaming related purposes after 1988 without the scrutiny of the Office of Indian Gaming Management. The Tribe specifically identified the land use on its fee to trust application as future tribal housing and a variety of cultural purposes. Instead the Tribe has constructed a five-level, 2,000 space parking structure.

Most importantly and as a matter of federal statute, IGRA's prohibition on gaming in section 20 (25 U.S.C. sec. 2719) applies to "lands acquired by the Secretary in trust for the benefit of an Indian TRIBE after October 17, 1988." (Caps added.) As long as land is acquired for the Tribe after 1988, section 2719 of IGRA applies.

The Tribe's land acquisition and final determination on May 14, 2004 was an application for trust for 82.85 ac. contiguous to the existing casino. The Department of the Interior, Bureau of Indian Affairs, is tasked with processing fee to trust applications directed at recognizing the difference between gaming and non-gaming developments. Nevertheless, in 2004 when the Department issued its 'Notice of Decision', it failed to recognize the land acquisition as gaming or gaming related.¹

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

Sec. 4.2 Authorized Gaming Facilities. The Tribe may establish and operate not more than two Gaming Facilities, and only on those Indian lands on which gaming may lawfully be conducted under the Indian Gaming Regulatory Act. The Tribe may combine and operate in each Gaming Facility any forms and kinds of gaming permitted under law, except to the extent limited under IGRA, this Compact, or the Tribe's Gaming Ordinance.

Without regard to whether IGRA itself requires that land is taken into trust for gaming, non gaming, or gaming ancillary purposes meets the statutory standard, the fact is that the

¹ There is a six year statute of limitations on final federal actions to substantive challenges of an agency's decision to a particular challenger pursuant to *Wind River Mining Co. v. United States*, 946 F 2d 710(9th Cir. 1991) ("*Wind River*")

tribe executed – and the Secretary approved—a compact imposing that requirement. Thus, as a matter of IGRA, the Compact under which the tribe conducts gaming must meet the standards of IGRA.

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

Moreover, the compact definitions broadly define what lands may be used for gaming or ancillary gaming activity. The Secretary approved these compacts and thus they have become regulations.

- **We ask that the Secretary of the Interior re-examine the fee to trust application for the 82.85 ac. providing opportunity for community comment and required mitigations.**
- **Additionally we ask that the Secretary pay particular attention to the Tribe's proposed land acquisition of 1600 ac. off reservation in 2007 for gaming purposes as stated in its newly amended Tribal State Compact. Indeed the newly amended Compact may not be approved by the Secretary of the Interior until the proposed land acquisition is completed in accordance with the federal policy established in the “Warm Springs Letter”.²**

The current land use of the 82.85 ac. confirms the legitimate concerns expressed by Robert R. Copper, Deputy Chief Administrative Office, County of San Diego, in a letter dated March 30, 2001, that the land would include gaming purposes. Respectfully, the responsibilities of the Bureau of Indian Affairs dictate that the Secretary of the Interior re-examine this application for land use since the actual gaming and ancillary gaming use is significantly different than disclosed to the Department when the Tribe was seeking trust acceptance. The Tribe's change in land use has had a dramatic and adverse impact upon the neighboring residents and their health, safety and quality of life.

For these reasons, the recent land acquisition in 2004 of the additional 82.85 ac. parcel should have and still must be considered a land acquisition for gaming and gaming related activities. The acquisition may still be subject to the processes imposed on “after 1988” - 2 - land acquisitions due to the Department of the Interior, Office of the Inspector General Report on – “*Process used to assess applications to take land into trust for gaming purposes*” September 2005 (See Exhibit 1). The report required the National

² United States Department of the Interior Letter to Honorable Theodore R. Kulongoski, Governor, State of Oregon, May 20, 2005.

Indian Gaming Commission to certify land used for gaming purposes by tribes demonstrating that it meets the legal threshold for gaming found in the Indian Gaming Regulatory Act.

The Tribe should have submit a full environmental impact report prior to land transferred into trust in order to comply with the intent of the regulation which provides affected residents the opportunity to comment on developments. The land was transferred into trust as a need for future homes. A *bait and switch* action circumvents the intent of federal regulations to address serious and critical taxation and jurisdictional issues over a land acquisition for gaming or ancillary gaming purposes.

How a land acquisition is processed is of extreme importance to community members in Dehesa Valley. The newly amended tribal-state compact identifies 1600 ac of land to be transferred for gaming purposes. Therefore it is very important that the future land acquisitions be processed as "gaming and gaming related acquisitions".³

The Dehesa Valley Community Council urges you to seek both administrative and legislative reform for this purpose. Our community will whole heartedly support that effort. California has been and continues to be severely affected by this type of *bait and switch* tactic. Clearly the Secretary of the Interior has the authority under existing law to impose conditions on the use of trust land. Requiring Tribes to adhere to 25 CFR 1.4 (b) would provide major safeguards to the environment and restore good will in communities.

If policy changes are not forthcoming, we urge you to seek federal legislation for that purpose. Your serious consideration is greatly appreciated.

Sincerely,

Suzanne Walker
vice chair

Dehesa Valley Community Council

CC: Supervisor Dianne Jacob
Robert R. Copper, Deputy Chief Administrative Officer
United States Senator Dianne Feinstein
Jack L. Rohmer, Associate Director, Office of the Inspector General
Jim Cason, Assistant Secretary, Bureau of Indian Affairs
David Longly Bernhardt – Solicitor, Department of the Interior
Phil Hogen, Chairman, National Indian Gaming Commission

³ A federal Agency is required to adhere to its own regulations. "...failure to adhere to agency regulations may amount to a denial of due process if the regulations are required by constitution or statute." Arzanipour v. Immigration and Naturalization Service, 866 F. 2d 743 746 (5th Cir. 1989) "...power to issue regulations is not power to change the law..." *US v. New England Coal and Coke Company* 318 F.2d 138 (1963)

George Skibine, Office of Indian Gaming Management
Andrea Lynn Hoch, Legal Affairs Secretary
Stephanie Shimazu, Deputy Legal Affairs Secretary
Robert Mukai, Senior Assistant Attorney General – Indian Law and Gaming Unit
Sara Drake, Supervising Deputy Attorney General – Indian Law and Gaming Unit