

Dehesa Valley Community Council, Inc.
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July 5, 2012

Honorable Ken Salazar
Secretary of the Interior
1849 C. Street, NW
Washington, D.C. 20240
Fax: 202 209 6956

Amy Dutschke, Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way, Room W-2820
Sacramento, CA. 95826
Fax: 916 978 6099

**RE: Sycuan Band of the Kumeyaay Nation Fee to Trust Land Acquisition
Application and Environmental Assessment**

Dear Secretary Salazar and Regional Director Dutschke,

I am writing this letter on behalf of the *Dehesa Valley Community Council, Inc.* (DVCC). The purpose of this letter is to remind you of DVCC March 12, 2012 letter to adopt and incorporate, by reference, the comments submitted by the County of San Diego (the County) on September 12, 2011, with respect to the Environmental Assessment (EA) for the proposed acquisition. These comments are important and should be fully addressed when evaluating the EA and considering the Sycuan Band of the Kumeyaay Nation's (the Tribe) application.

The recent 8-1 ruling by the United States Supreme Court in *Match-E-Be Nash --She-Wish Band of Pottawatomis Indians v Patchak* made it very clear that affected community members have standing. Citizens' "interests whether economic, environmental or aesthetic", come within the Indian Reorganization Act (IRA) 465's regulatory ambit. (Pg. 14-18 632 F. 3d 702).

The Justices determined that Section 465 of the IRA is a land use statute. Land use has many considerations. Incompatible development can lead to politically contentious relationships between communities, their local governments and the State. Incompatible land use can have a negative impact on local communities, their regional neighbors and the shared resources of the area. Ultimately, incompatible land use can threaten established local business and its participation in the local and state economies.

Unlimited acquisitions by wealthy casino tribes that have no immediate need for additional land in California constitutes federal interference with the powers reserved to the State in a manner patently at odds with the intent of the Tenth Amendment. The State's loss over land use and

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taxation, two fundamental attributes of its sovereignty have a generational impact on the non-tribal citizens of California.

Allowing up to 17 federally recognized tribes within the County to place into trust land for which they have alleged and asserted an aboriginal claim involves most of the land title held by private citizens and governed by the County. This is an unreasonable impact on taxpayers of the County.

While the Intergovernmental Agreement between the Tribe and the County addresses the County's concerns, it in no way addresses the concerns and direct impacts on the residents of Dehesa Valley. Moreover, there is no binding agreement between the Tribe and Sweetwater Authority, Grossmont School District, Padre Dam Municipal Water District, Otay Municipal Water District, or the San Diego Rural Fire Protection District. The impact of transferring land into trust can potentially impact the East County and South Bay water supply, the local school district and fire prevention and protection.

The Tribe has a 1999 Tribal compact which allows for a second casino. Part of this land acquisition is a prime location for a second casino; it should be handled as such. The fee to trust is not mandated by legislation or judicial settlement. The Tribe signed a 1999 Class III Compact with the State which stipulates that land must meet the standards of "Indian lands" under IGRA.

Without regard to whether IGRA itself requires that land is taken into trust for gaming, non-gaming or gaming ancillary purposes meets the statutory standard, the fact is that the Tribe executed – *and the Secretary approved*—a compact imposing that requirement.

The Tribe has agreed that if it changes the uses of the property, it will mitigate the impacts. The agreement then states that "*Nothing herein is to be construed as requiring the Tribe to agree to any limits on future uses*". This wording presents a conflict and encumbers the land use beyond seven years. The agreement between the County and the Tribe appears to require the approval of the Secretary of the Interior under Part 81, in order to be judicially binding and enforceable.

While the recent agreement between the County and the Tribe indicates a willingness to review any land use change it nevertheless will have the consequence of eliminating regulatory preclusion on any trust land development. Any reasonably foreseeable development on trust land precluded from regulatory review is a compelling argument to require the Tribe to submit a full EIS and business plan.

CONCLUSION:

Transferring the land into trust before all affected parties have an opportunity to make a challenge would be irresponsible on the part of the BIA in light of the recent Supreme Court ruling. DVCC respectfully requests the delay of a decision regarding this land acquisition. The Tribe may wish to consider the benefit of negotiating a judicially enforceable agreement with the

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County and other county agencies through a newly revised State Compact which encompasses the impacts of its existing casino and stating clearly long term mitigations for the impacted area and agencies of this newly acquired property that is contiguous to the established reservation and which is an indisputable exception under IGRA.

Sincerely,



Lory Walls – President
DVCC, Inc.
619-445-5472

CC: Honorable Dianne Feinstein, United States Senator
Honorable Jerry Brown, Governor of California
Honorable Kamala Harris, Attorney General of California
Sara Drake, Asst. Attorney General Indian Law and Gaming
Sycuan Band of the Kumeyaay Nation
San Diego County Board of Supervisors
Sweetwater Authority
Dehesa Valley School District