

Stand Up For California!

“Citizens making a difference”

www.standupca.org

P.O. Box 355
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June 17, 2009

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

RE: Sycuan Application for Approximately 2000 ac. must be considered a Gaming Application

Dear Director Morris:

Stand Up For California writes today regarding the recent Environmental Assessment submitted to the Pacific Regional Office of the BIA for approximately 2000 acres of contiguous lands, by the Sycuan Band of Mission Indians in San Diego County. We recognize that the BIA has not even certified the Environmental Assessment as yet, but in these strained economic times it is important that all of us conserve and use wisely our resources. Thus, we submit three reasons for your serious consideration of why the recent land applications must be processed as a gaming application, requiring a full Environmental Impact Statement.

The aforementioned application must be considered and processed as gaming because: (1) the land is contiguous to the existing reservation and represents a clear and indisputable exception for gaming under IGRA for after-acquired lands, (2) consider the language of the Tribe's 1999 Tribal State compact which is currently in effect, permits this tribe to have two casinos and defines broadly what lands may be used for gaming or ancillary gaming activity, (3) the Pacific Regional Director of the Bureau of Indian Affairs and the Secretary of the Interior cannot deny knowing these lands have been previously proposed for a gaming acquisition.

(1) Subject Lands are Contiguous to the existing Reservation

View map at <http://www.standupca.org/off-reservation-gaming/contraversial-applications-in-process/sycuan/Sloan%20Canyon%20-%20Resort%20Proposed%20Land%20Use.pdf> Dehesa Valley is identified by the Dehesa School boundary lines which include 18 square miles or roughly 11,520 acres. Should the proposed 2000 additional acres of lands be transferred into trust, the Sycuan Band of Mission Indians will own and exercise governmental authority over approximately 25% of the Dehesa Valley. This translates into approximately \$800,000.00+ annually that would be lost to local tax revenues. This amount of loss would significantly affect local services to the community and the coffers of the County. The exercise of tribal governmental control over newly acquired lands creates a disruptive and practical consequence

to the surrounding areas which are populated by non Indians. Transferring additional lands into trust creates a mix of state and tribal jurisdictions which burden the administration of state and local government and adversely affect landowners neighboring the tribal lands. This creates a significant loss of community control and quality of life.

(2) Consider Tribal State Compact Language

The Tribe's signed 1999 Class III Compact permits a tribe to have two gaming facilities and is still in effect with the State of California which 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. Indeed the 1999 Compacts state the following:

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

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

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

The Secretary approved this compact and noticed it in the Federal Register.

(3) Knowledge of Prior Gaming Acquisition

In 2009, the Regional Director of the BIA nor the Secretary of the Interior can claim that there was not federal awareness of proposed gaming on the subject lands. 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.**”

In 2006, the Sycuan negotiated an amended tribal state compact with the Governor of California. The compact contained the following language. The new Sycuan agreement section 4.2 provides for the tribe to establish a casino on newly acquired lands, if the tribe is able to transfer new land into trust and if the land conforms to the standards of the Indian Gaming Regulatory Act (IGRA). The section reads as follows:

Authorized Gaming Facilities. The Tribe may establish and operate not more than two(2) Gaming Facilities on its Indian lands within the boundaries of its Reservation as it exists as of the execution date of this Amended Compact or as those boundaries thereafter may be adjusted to include approximately sixteen hundred (1,600) acres that are contiguous to the existing Reservation boundaries. A description of the contiguous 1,600 acres is set forth in Exhibit B hereto. The Tribe may combine and operate in each Gaming Facility any forms and kinds of gaming permitted by law, but only to the extent allowed under IGRA, this Amended Compact and the Tribe's Gaming Ordinance.

Exhibit B lists approximately 25 parcel APN's. Which the BIA has confirmed would be eligible for gaming. Please note, even though this compact was approved by the voters and noticed in the federal register by the Secretary of the Interior, it is not in effect as the Sycuan tribal council declined ratification of the agreement. It does indicate federal awareness of proposed gaming on these lands.

Conclusion

It is the policy of the BIA to process contiguous land applications as 'on-reservation' acquisitions. Considering that these lands are an exemption under IGRA for gaming it is reasonable that the Secretary of the Interior give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition and impose additional requirements for approval as found in the regulations for 'off-reservation acquisitions'. This would provide greater weight to the concerns raised by the local community and impacted governmental agencies and jurisdictions.

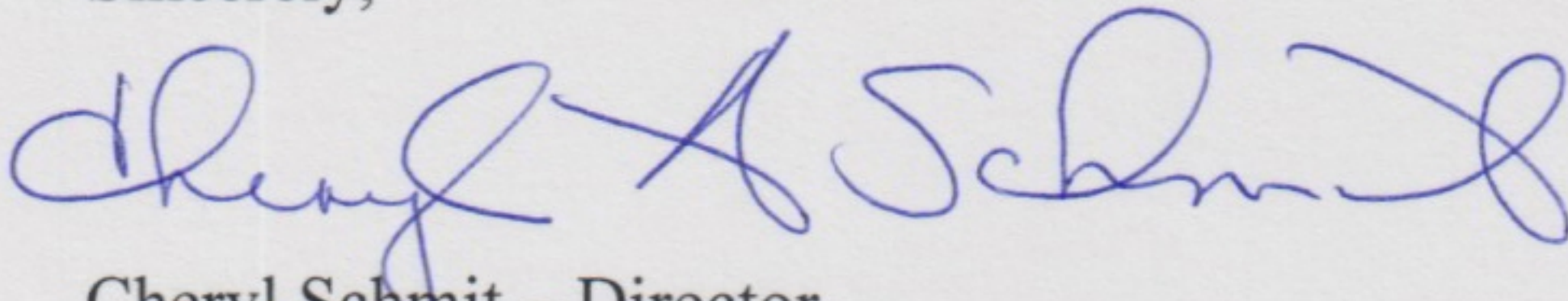
The BIA must consider tribal state compact language as it applies to a tribe's request that the BIA take into trust property (eligible for gaming) even though the application states non-gaming. Casino development in Indian Country requires the explicit recognition of risk factors, which include consideration of the capabilities of the tribal government, the Tribe's geographical location, and public attitudes towards gaming. Pains-taking attention must be dedicated to the concerns of affected states and local governments. A Tribal-State compact is an agreement to permit gaming it 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 should recognize and be enforced to ensure the continued rights of not only the parties but of all citizens.

The Secretary of the Interior and the Pacific Regional Director cannot deny knowledge of the prior proposed gaming plans. Nor can the Secretary of the Interior or the Pacific Regional Director deny that there has been significant concern over the Tribe changing its mind over the

use of lands previously acquired in trust, from non-gaming to ancillary projects to support gaming. Or as more recently demonstrated changing its mind over adoption of a Tribal State Compact amendment. Thus, for the BIA to process the aforementioned applications as non-gaming with this prior knowledge of proposed gaming would be an abuse of the discretion of the Pacific Regional Director. The BIA must consider all reasonably foreseeable land uses including gaming before agreeing to accept land into trust for a tribe.

For these reasons, the aforementioned applications must be considered gaming and gaming related activities. The Sycuan application is subject to the processes imposed on after 1988 land acquisitions. Stand Up For California respectfully requests a response in writing.

Sincerely,



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CC: Governor Arnold Schwarzenegger
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United States Senator Dianne Feinstein
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