

Chairman Zack Scrivner and
Honorable Members of the Board of Supervisors
Of Kern County

Stand Up For California!

“Citizens making a difference”

www.standupca.org

P. O. Box 355
Penryn, CA. 95663

March 16, 2017

Chairman Zack Scrivner, and
Honorable Members of the Board of Supervisors
1115 Truxtun Ave.
Bakersfield, CA. 92201-4636
board@co.kern.ca.us

RE: Recent 5th District Court Decision and California Supreme Court Case Affecting Proposed Tejon Casino

Dear Chairman Scrivner and Honorable Members of the Board,

On behalf of *Stand Up For California!* (“Stand Up”)¹, I write to update Kern County regarding the Tejon Indian Tribe’s proposed casino development near Mettler, California. On December 12, 2016, the 5th District Court ruled in favor of *Stand Up For California v State of California*, F069302 (Super. Ct. No. MCV 062 850). The Court agreed that the Governor lacked authority to grant concurrence for off-reservation gaming. The case has been appealed to the California Supreme Court.

The 5th District Court ruling directly affects the Tejon Tribe’s casino proposal in the County of Kern. The Tejon Tribe has sent a letter to the California Supreme Court requesting that the Court grant review of *Stand Up For California et al, v. State of California, et al*, Supreme Court Case No. S239630. The Tejon Tribe’s letter clearly States that the Tribe does not hold beneficial title to any trust land and that a Secretarial two-part determination is the only exception under Section 20 of the IGRA that is available to Tejon’s efforts to achieve the acquisition of land for a casino enterprise. (*See – Attached letter*)

While Stand Up is not opposed to gaming on eligible Indian lands, we are opposed to any effort to circumvent applicable regulatory processes, especially when such efforts are— by

¹ Stand Up is a nonprofit public corporation that focuses on gambling issues affecting California including tribal gaming. Our organization has been involved in the ongoing debate of issues raised by gaming and its impacts since 1996 and is recognized as an important informational resource for local, state and federal policy makers on gaming issues.

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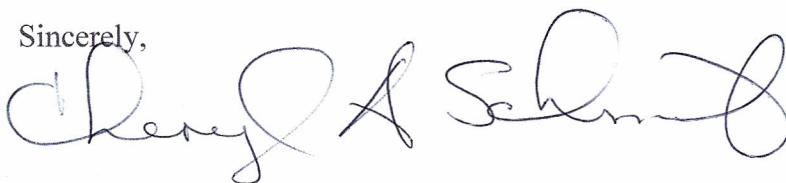
design— intended to reduce or eliminate the power of elected officials to protect the very people that elected them to office. Stand Up strongly opposed the Tejon Tribe’s first efforts in Kern County as the Tribe was seeking an exception under “*the last recognized reservation*”. An exception that would have greatly reduced if not eliminated any leverage County Officials could exercise to negotiate for environmental and financial mitigations.

It is now clear that the *last recognized reservation* exception is not available to the Tejon Tribe. The Tejon Tribe is now seeking a two-part determination exception. The regulations governing the two-part determination exception gives greater weight to the comments and actions of the County Supervisors by requiring the Secretary to determine that the casino project will not be detrimental to the surrounding community. ***However, the question remains does the Tejon Indian Tribe meet the federal criteria for a two-part determination?***

The County must consider the unusual aspect of the Tejon Tribe’s federal status. Yes, the Tribe appears on the Federally Recognized List of Tribes - that is not in dispute. Nevertheless, the Tejon Tribe was “reaffirmed” in 2012. “Reaffirmation” is not a process provided for by federal statute or regulation. As a consequence, the Bureau of Indian Affairs’ reaffirmation of the Tribe creates a problem. IGRA’s exceptions to the prohibition against gaming on newly acquired lands do not apply to “reaffirmed” tribes—only newly acknowledged or restored tribes. (See 25 C.F.R. Part 292)². Because “reaffirmation” is an extra-legal process, at best, the Tejon do not qualify for the normal exceptions to the gaming prohibition on after acquired lands.

Stand Up will continue to provide additional information regarding the Tejon Tribe’s request as it becomes available. If you have any additional questions please do not hesitate to call on us.

Sincerely,



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² “Congress’s creation of an exception for gaming on lands acquired into trust as part of the restoration of lands for an Indian Tribe restored to federal recognition. We believe Congress intended restored tribes to be those tribes restored to federal recognition by Congress or through the part 83 regulations. We do not believe that Congress intended restored tribes to include tribes that arguably may have been administratively restored prior to the part 83 regulations. Moreover, Congress in enacting the Federally Recognized Indian Tribe List Act of 1994 identified “only the part 83 procedures” as the process for administrative recognition” (Federal Register May 8, 2008, Page 29363)