

Stand Up For California!

"Citizens making a difference"

standupca.org

P.O. Box 355
Penryn, CA 95663

July 22, 2019

Honorable David Couch, Chairman
Kern County Board of Supervisors
2700 M Street Suite 100
Bakersfield CA 93301-2323

RE: Kern County IGA with the Tejon Indian Tribe

Dear Chairman Couch and Honorable members of the Board,

Stand Up for California, ("Stand Up") has reviewed the Kern County Agenda for July 23, 2019. The Board of Supervisors ("BOS") is planning to vote and approve the Intergovernmental Agreement ("IGA") with the Tejon Indian Tribe for a casino. It is disappointing from a public policy perspective that Kern Supervisors and or staff have negotiated an IGA prior to the public having an opportunity to review the document prior to the release of the Draft Environmental Impact Report ("DEIS"). Local government usually provides at the very minimum an opportunity for the public to weigh in equal to other projects less significant than a \$600 million dollar tribal casino.

Stand Up appreciates the Tejon Tribe's willingness to negotiate an IGA addressing the fiscal impact to law enforcement, fire, emergency services and local taxation. However there are significant elements missing. The agreement does not attempt to address potential environmental, housing, community impacts; it focuses exclusively on provision of certain services and hotel tax. What about air pollution from traffic, light pollution, water and sewer impacts? Some County governments have included significant language to ensure the equitable sharing of ground water. The agreement makes no mention of traffic circulation, road upgrades or mitigations on additional new lands taken into trust over time.

The IGA addresses fiscal payments for the casino, but what about the housing area, RV Park and farm lands? What if the land is taken into trust but is determined not eligible for gaming? The IGA does not cover future changes in the land-use by the Tribe.

This will be the first off-reservation casino proposal presented to Governor Newsome. The County has determined "... *that the development, construction and operation of the Project (Hard Rock Casino) would not be detrimental to the County and the surrounding community...*" this is an overly broad statement without consulting with the public who may be affected. Rushing a vote on this

document before the public has an opportunity to review the DEIS appears an effort by the County to *shut down public participation*.

This twenty year IGA binds all future County Supervisors who may not be supportive of an off-reservation casino. Worse, the agreement terminates in "20" years. None of the provisions of the IGA survive termination which includes waivers and enforcement rights. Because of the limited term and termination events there is room for mischief with the tribal state compact process. Clearly, this IGA gives great leverage to the Tribe.

The County has a constitutional obligation to adhere to state gaming law and gambling policy. California has a long standing public policy which requires the vote of citizens when commercial gaming operations expand beyond a certain percentage of their current operation or when a local government decides to expand its gaming ordinance. Kern County is not even giving citizens the opportunity to review the IGA before the BOS takes a vote.

As Stand Up has written to the BOS in the past, there is a serious legal question that is currently before the California Supreme Court regarding the ability of the Governor of California to concur. Can the Governor by himself remove land out of the States regulatory authority and jurisdiction for the development of an off-reservation casino? 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 State Constitutional and statutory authority to grant concurrence for off-reservation gaming.** The case has been appealed and is pending a hearing before the California Supreme Court. (*Stand Up For California et al, v. State of California, et al*, Supreme Court Case No. S239630). (*Also - United Auburn Indian Community of the Auburn Rancheria v. Brown*, No. S238544).

A prudent consideration is to wait until there is a ruling in the aforementioned cases before committing the County to a twenty year IGA. Supervisors must ask themselves:

- Is the proposed off-reservation casino consistent with state gaming policy and law?
- Has California environmental law been adhered too?
- Have affected local governments and or state agencies entered into intergovernmental agreements in a manner that is consistent with state environmental law, cooperative law enforcement protocol agreement, agreements for payments to District Attorney, comity with tribal courts for child support and spousal payments?
- *Has the process been fair, objective and transparent?*

How can the IGA between County of Kern and the Tejon Indian Tribe be considered a legitimate agreement supported by the larger population if there has not been any public comment accepted in its development, public hearings with an opportunity to debate the agreement or more significantly a vote of the electorate to support an off-reservation casino. The integrity of that process must indicate that all affected parties were included and it must be more than a letter/postcard from the developers and vendors who stand to make money. Is the support unsolicited and non-paid

Stand Up respectfully ask the County to discuss the need for evidence of public debate and input as actions of responsible government necessary before the County votes. Please accept these ideas for your greatest consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cheryl Schmit". The signature is written in black ink on a white background.

Cheryl Schmit – Director
916-663-3207

Anna Niamark, Sr. Advisor to the Governor