

Stand Up For California!

“Citizens making a difference”

www.standupca.org

P. O. Box 355
Penryn, CA. 95663

November 18, 2019

Anna Naimark
Sr. Advisor to the Governor
Office of the Governor
State Capitol
Sacramento, CA. 95814

**RE: The Exercise of the Governor’s Executive Power
“Establishing Objective Criteria for Off Reservation Gaming”**

Dear Ms. Naimark,

Stand Up For California, (Stand Up) writes today regarding Assistant Secretary-Indian Affairs (AS-IA) Tara Sweeney’s request for Governor Newsom to concur in the decision to permit gaming eligibility on off-reservation land in the City of Porterville, Tulare County for the Tule River Indian Tribe. This is the first off-reservation two-part determination casino proposal presented to Governor Newsom. Stand Up has concerns about the many *unintended consequences* that a determination to concur will create, including setting the precedent for this Administration for gaming expansion off-reservation. Gubernatorial concurrence will also incentivize tribes and gaming investors wanting to move from rural locations to more urban market areas.¹ Permitting off-reservation gaming will require the State to confront challenging questions about which tribe gets what and why.

Tule River Indian Tribe’s proposed casino resort includes 105,000 square foot casino, 250 room hotels, restaurants, event center and a conference center as well as parking. This proposal is approximately twenty miles from the Tribe’s 1864 congressionally established reservation. The AS-IA’s determination is constrained by the requirements of the Indian Gaming Regulatory Act (IGRA) and the regulations implementing that Act, as set forth in 25 C.F.R. Part 292. The AS-IA must consult with the state, state agencies, other local political subdivisions and affected tribal governments of the proposed off-reservation casino and set forth the results of that consultation in a record of decision.

Gubernatorial review, however, is very different. Federal law does not constrain the Governor’s decision making, nor prescribe standards he must follow. The Governor, however, is limited by state laws and policies. He has a constitutional obligation to ensure that state laws are enforced and his gambling policy ensures the welfare of the public and the good operation of government free from corruption. The ultimate removal of land from the authority and jurisdiction of the State of California via a two-part determination creates significant change in the human environment – including impacts in areas affecting social well-being, law enforcement, air quality, surface water resources, groundwater resources, water quality, sewage, traffic, urbanization, jurisdiction

¹ If the Governor concurs in the Tule River no detriment determination, it will be difficult to deny other tribes from taking the same action.

and lost state and local tax revenues – for the sole purpose of a casino that has unintended consequences potentially undermining our State’s current gaming policy.

As you know, the scope of the Governor’s authority under the California Constitution is a legal question that is pending before the California Supreme Court. It is in the best interests of the Governor to defer taking any action until after the court answers whether or not the California Constitution provides the Governor the authority to permit removal of land from State jurisdiction? Authorizing the federal government to strip the State of its jurisdiction is a wholly different action than negotiating gaming compacts for existing Indian lands. The Governor may first wish to consider whether or not California should permit off-reservation gaming at all.

To make that determination, the Governor should consider several questions:

- (1) What impact does the expansion of off reservation gaming have on Tribes that have complied with the language of Proposition 1A in 2000?
- (2) What is the fiscal and other impacts to the states established gaming policy and its impact on commercial and established tribal gaming interests of California?
- (3) What environmental documents meeting “*state standards*” are there to rely upon to protect the integrity of the Governor’s decision making process to concur, not concur or take no action?

Should the Governor determine that off-reservation gaming makes sense, this immensely important decision should not be made by the Governor alone. The State Legislature should have input and there must be standards that govern the process. Allowing one person to wield so much power is antithetical to the governmental structure that Californian’s established in their Constitution. California gave the Governor only limited powers. Limited powers avoid corruption, improper influence and advance sound decision-making, which requires input from many sources, not just one.

If California is to permit off reservation gaming, there must be a clear process that involves:

- (1) Approval of the affected community, including a vote of the affected county/city or county and city, consistent with our current law regarding gambling expansion;
- (2) A rigorous environmental review process in accordance with State laws;
- (3) A careful analysis of socio-economic impacts and the cumulative impacts of the proposal consistent with state standards and policy;
- (4) Comprehensive intergovernmental agreements that mitigate environmental impacts, and the cost of county or city services such as law enforcement, fire and emergency services; and
- (5) The right to seek judicial relief before final ratification by State Legislature.

Since the legalization of slot machines, banking and percentage gaming on Tribal lands in 2000, tribal casinos have been considered in the urban areas of Los Angeles, Long Beach, Garden Grove, San Gabriel Valley, Santa Ana, Oxnard, Hesperia, Barstow, Monterey, San Jose, Richmond, Vallejo and Novato. Off-reservation gaming should be a well-thought-out decision made only after considerable information gathering and debate. Assuming that the State wants further casino expansion, there must be a rigorous process that

ensures that removal of state lands for casino developments is in the best interest of the State and ensures the rights of all California citizens.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cheryl A. Schmit". The signature is written in black ink and is positioned above the typed name and contact information.

Cheryl Schmit, Director
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