

Stand Up For California!
“Citizens making a difference”
www.standupca.org

P. O. Box 355
Penryn, CA. 95663

October 11, 2018

Ms. Tara Sweeney,
Assistant Secretary - Indian Affairs
Department of the Interior
1849 C Street, N.W.
MS-4660-MIB
Washington, D.C. 20240
Telefax: (202) 208-5320

Amy Dutschke,
Regional Director,
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way, Sacramento, CA. 95825
amy.dutschke@bia.gov

**RE: CORRECTIONS REQUESTED –
Notice of Gaming Land Acquisition Application – Tule River Indian Tribe (“Tribe”)**

Dear Assistant Secretary-Indian Affairs Sweeney and Regional Director Dutschke,

Stand Up For California, (“*Stand Up*”) is not opposed to gaming on eligible Indian lands. However, we are opposed to any effort to circumvent or fail to provide full disclosure of applicable regulatory processes, especially when such efforts by design reduce or eliminate the rights of the public or local government to participate in a regulatory process. Thank you for the recent Notice of (Gaming) Land Acquisition Application for the Tule River Indian Tribe, dated September 24, 2018. *Stand Up* received the certified letter on September 29, 2018.

Stand Up requests that you use your authority to withdraw, correct and resubmit the recent notices issued for the Tule River Indian Tribe. This includes the Notice of Gaming Land Acquisition Application, Notice of Availability of a Draft Environmental Impact Statement and a Draft Conformity Determination. The notices omitted and have misstated applicable regulations that will guide the comments of the affected parties. Improper notification of procedures affects the integrity of decision-makers in review of the submitted comments.

The fee-to-trust notice states in the very first line, “Notice **of (Gaming)** and Land Acquisition Application”. Clearly, the fee-to-trust application is being guided by C.F.R. 151.10 and C.F.R. 151.11 as a discretionary process, but the notice omits the necessary steps that the Indian Gaming Regulatory Act layers into this process. The Notice reads “**of gaming**”, but the gaming regulatory process is NOT identified. All the notices should reference 25 C.F.R. 292 sub-section C. The Notices as written give the perception that gaming will occur on established Indian lands instead of land to be acquired after the prohibition of gaming on lands after 1988.

This process is complex and deserves explanation because this application is for an *off-reservation casino*. ***The notices fail to mention this significant fact!*** This fee-to-trust must be approved under the two-part determination test (25 C.F.R 292 Sub Section C). It is up to the Secretary or the Assistant Secretary-Indian Affairs not an authorized representative to determine whether the proposed trust land qualifies for gaming under the Indian Gaming Regulatory Act. This must be determined *before* the Secretary or Assistant Secretary Indian Affairs issues a decision to acquire land in trust.

The Indian Gaming Regulatory Act requires that the Secretary or Assistant Secretary Indian Affairs determine that the casino is in the best interests of the Tribe and not detrimental to the surrounding community. This requires that 25 C.F.R. 151.12 (c) apply not C.F.R. 151.12 (d) as the notices reads.¹ The United States Supreme Court ruling in the Patchak case caused the Assistant Secretary of the Interior to issue Rulemaking on C.F.R. 151.12. The new rule makes explicit that some officials can make final trust acquisition decisions and others cannot. Gaming on after-acquired lands requires a final agency action. Under subsection (c), the Secretary or the Assistant Secretary – Indian Affairs may decide a trust application personally, and their decisions are final for the Department. *See-* 25 C.F.R. 151.12(c):

“A decision made by the Secretary, or the Assistant Secretary-Indian Affairs pursuant to the delegated authority, is a final agency action under 5 U.S.C. 704 upon issuance.”

There is no mention of the Consultation letter that must be sent or the comments that must be collected in C.F.R. 292.19. This is a process necessary to the Secretary of the Interior in making a determination on whether or not the off-reservation casino will have a negative impact on the surrounding community. This will take a minimum of 60 days.

Assuming that the Secretary makes such a determination, the Governor has a year to concur, and at this time, it is unclear whether the Governor of California has the authority to approve such acquisitions. 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).

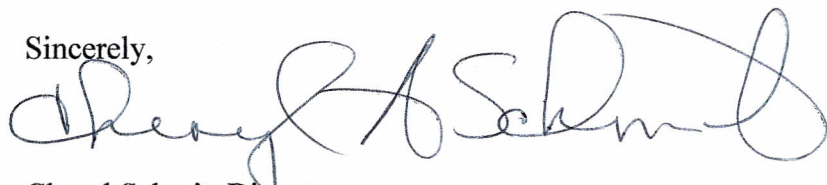
This is important information for affected parties and must be included in the Notice **of Gaming** Land Acquisition Application, Notice of Availability of a Draft Environmental Impact Statement and a Draft Conformity Determination. Citizens, local governments and all affected parties need to understand the **federal process requires additional considerations by the Secretary of the Interior and the Governor’s concurrence.** It is unfair to the public and the Tribe that the Bureau of Indian Affairs, Pacific Regional Office omits or misstates the processes to be followed.

Affected parties must be advised that the Indian Gaming Regulatory Act was enacted to cooperate with a state’s laws not assert overreaching federal authority. We hope that you will withdraw the current Notices and resubmit the Notices providing plain language of the federal processes involved in the Tule River Indian Tribe’s fee-to-trust transaction.

¹ The Notice of Gaming Land Acquisition states the following: “The determination whether to acquire this property in trust will be made in the exercise of discretionary authority which is vested in the Secretary of the Interior **or his authorized representative**, U.S. Department of the Interior.”

Stand Up reserves the right to submit additional comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl Schmit". The signature is fluid and cursive, with the first name "Cheryl" written in a larger, more prominent script than the last name "Schmit".

Cheryl Schmit, Director
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