

SANTA YNEZ VALLEY CONCERNED CITIZENS

December 18, 2006

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George Skibine, Director
Office of Indian Gaming Management
Office of Deputy Assistant Secretary
Policy and Economic Development
1849 "C" Street, NW
Mail Stop 3657-MIB
Washington, D.C. 20240

Re: Proposed Rules Regarding Gaming on Trust Lands: #1076-AE-81

Dear Mr. Skibine:

Thank you for this opportunity to provide comments on the proposed section 20 regulations. Section 20 of the Indian Gaming Regulatory Act, as well as the trust land regulations under Part 151, have been of grave concern to The Santa Ynez Valley Concerned Citizens. As you are no doubt aware the relationship between Tribe and local community exhibited here in Santa Barbara County has attracted significant local and national publicity and is demonstrative of the weaknesses of both the current regulatory framework and the main agency with oversight, the Western Regional Office of the Bureau of Indian Affairs. While we agree that regulatory reform is necessary and long overdue, failure to reform the Bureau's delivery system, internal controls, and direction will negate the value of the proposed reform. We have included a short addendum of findings pertinent to the situation in Santa Barbara County that demonstrate weaknesses.

Trust acquisition and tribal gaming have substantial and often devastating impacts on the communities in which they are located. Large-scale gaming on trust lands can destroy community character through development inconsistent with local land use, dramatic increases in traffic, pollution, and noise, crime, accidents, and substantial demands on limited governmental resources. Current regulations and a willing Regional Agency serve to create a disincentive for Gaming Tribes to meaningfully identify and address impacts and allow Tribes to circumvent local land use regulations and environmental protections. It is apparent that wealthy Gaming Tribes command a disproportionate share of attention for acquisitions then non-gaming Tribes. Furthermore, we are concerned that regulations not allow Tribes to take land into trust under one development scenario that does not include Gaming and then, after Trust status has been conferred, alter plans to a Gaming utility. The

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situation experienced in Santa Barbara presents a clear example.

Because decisions regarding gaming and trust acquisition have such tremendous impacts on the surrounding communities, the Bureau of Indian Affairs' (BIA) decisions should not be made unilaterally, but instead only with careful consideration of community concerns and impacts. In our experience, however, BIA's approach has minimized interaction with local communities, and excluded us altogether from the decision-making process in any meaningful sense. Unfortunately, our review of the proposed regulations indicates that little is being done to remedy this problem. Our primary concerns regarding the regulations are as follows.

First, the vast majority of gaming taking place on lands acquired in trust after 1988 is permitted under either the restored lands exception or the initial reservation exceptions to section 20. These exceptions should be just that – exceptions. In most cases, the two-part determination process should be applied. While the proposed regulations would include some standards for determining whether one of these exceptions applies, those standards are not sufficiently rigorous, and more problematic, the regulations establish no process whatsoever for decision-making.

Whether a tribe qualifies for the restored lands or initial reservation exception should be an inquiry in which the participation of the public, local governments and the affected communities is actively sought. The regulations should establish a process for a tribe's application for a determination, for publicizing the tribe's request, for consulting with the public and soliciting comments, and for considering the comments. The proposed regulations fail to provide for any of these steps. The regulations should also specify what, if any, role the National Indian Gaming Commission (NIGC) will have in the decision-making process.

In addition, the standards that BIA has proposed in the regulations are not sufficient to protect the public and local community interest. Application of either the initial reservation exception or the restored lands exception appears to hinge on the definition of "significant historic connection." The regulations do not clarify what this phrase means for the initial reservation exception, and for the restored lands exception, the definition is too broad. A "significant historic connection" should be found only when the tribe has had historic exclusive use and occupancy of an area, and a previous federal court or Indian Claims Commission determination on the issue should be binding.

Further, with respect to a modern connection, a modern connection cannot be based on such an easily manipulated standard as the location of tribal
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cannot be based on such an easily manipulated standard as the location of tribal headquarters within 25 miles of the proposed site. Tribal headquarters can be readily moved. A modern connection should require more than simply the existence of office space. The 50% requirement is a better standard in that it is not so readily manipulated.

While the proposed regulations fail to provide any process for determining when an initial reservation or restored lands exception applies, with respect to the two-part determination, the regulations are all process (though inadequate) and no standards. Again, the process described is inadequate with respect to public participation. More than a mere comment period is required when trust land or gaming decisions are being made. Section 20 requires consultation, not a bare minimum comment period. BIA must actually consult on an on-going basis to ensure that local concerns are properly heard and accounted for in the decision-making process. In addition, the regulations should establish standards by which the Secretary will evaluate the impacts of gaming on the tribe and the surrounding community. As it stands, the regulations only describe the information that is to be collected, but state nothing regarding how the Secretary is to consider such information. Controlling effect should be given to the views of the affected local community when off-reservation gaming is proposed. Standards must be established to guide Secretarial decision-making, to ensure that a "detrimental to the surrounding community" finding will be made when there is substantial local opposition.

These are serious problems with the proposed regulations. We appreciate the opportunity to comment. However, in light of the serious deficiencies in the proposed regulations, BIA should revise these regulations to reflect local concerns and then re-issue the regulations in draft for public comment. Thank you for your serious consideration of our comments.

Sincerely,



Charles A. Jackson, Executive Director
The Santa Ynez Valley Concerned Citizens