

AGUA CALIENTE BAND OF CAHUILLA INDIANS

TRIBAL PLANNING & DEVELOPMENT

HAND DELIVERED

January 19, 2006

Patrick Pratt, City Manager
CITY OF RANCHO MIRAGE
69-825 Highway 111
Rancho Mirage, CA 92270

RE: Discussion Items for Negotiating an Inter-Governmental Agreement

Dear Mr. Pratt:

Thank you for your letter of January 13th. The Tribe shares the City's interest in developing a "mutually beneficial mitigation agreement." The specifics of your letter are both very comprehensive and surprisingly bold. While it will take some time to respond to all the details of your letter, please accept the following as an initial preliminary response.

The Tribal Environmental Impact Statement (TEIS) has been prepared and will be completed in accordance with the Tribal Environmental Policy Act (TEPA) and the Compact with the State of California. Section D6 of the TEPA limits "major Tribal actions" to "physical actions...which have a direct and demonstrable effect on the human environment." Some of the issues you raise are outside the scope of TEPA and relate to social and economic conditions. Additionally, your comments do not separate on-Reservation impacts from off-Reservation impacts. Our obligation is to identify off-Reservation impacts only. The final TEIS will include a variety of mitigation measures to reduce or eliminate any adverse off-Reservation environmental effects of the project. Additional mitigation measures have been formulated as a result of comment letters received through public review, including the City's. The Tribe has met all the appropriate standards required by Tribal regulations and the Compact, and based on this and the above, there is no reason to delay the Final TEIS any further.

The Tribe continues to be committed to developing a negotiated agreement with the City regarding future development impacts on a government-to-government basis. We have not provided our proposals or suggested subsequent meetings due to the delay in the finalization of the traffic analysis, which from our perspective is the predominant element of impact to the City. You may recall that we voluntarily committed to revising the traffic analysis in response to the City's comments, which created an additional +/- 60-day delay in the finalization of the TEIS. Technically, since the project is, for the most part, within the unincorporated territory of the County of Riverside, meeting the County standards would be adequate. The City made reasonable comments on the initial traffic analysis, which the Tribe is taking great steps to address; although, not obligated to do so.

Development of an additional retail component of the project envisioned for 40 acres of Trust land west of Bob Hope Drive and south of Ramon Road was included in the TEIS. This retail development has been deleted from the project. There are no definitive or agreed-upon plans for the retail development at this time. If it is decided to implement this retail development at a later date, the development would be subject to applicable environmental review. This greatly reduces any perceived impacts.

Additionally, many of the City's perceived impacts are either shared by the County of Riverside or wholly attributable to the County. Tribal staff is struggling to determine where actual, realistic impacts and their corresponding mitigation measures should be placed and who should be the benefiting agency. It may be beneficial to all that a meeting be convened of all three parties to resolve this matter.

The detailed costs estimates you present should be greatly altered by the foregoing. However, the detailed impacts you have itemized, while good headings for topics of discussion, raise considerable concern in a number of areas:

1. There does not appear to be any rational nexus to actual impacts of the project. (i.e. Are there standards the City is relying upon related to public safety calls generated by a hotel facility?)
2. There are fairly detailed cost estimates presented, which have no justification, no supporting empirical data, and in many instances, do not differentiate between total cost and fair share.
3. A number of the measures are based on arbitrary City standards. The project is largely not within the City boundary and, as Tribal Trust Land, is not subject to City (or County) codes and/or policies.
4. City public safety services are provided through contract by the County. Does the County support the City's conclusions? If the Tribe provides mitigation to the County for public safety impacts, is the City prepared to demand the corresponding services and facilities from the County?
5. Are these estimated impacts and requests for mitigation consistent with those the City has requested of other developers outside the City limits?
6. With regards to "revenue sharing," does the City have similar agreements with other, neighboring jurisdictions? If so, please provide a copy. Does the County concur with this approach?
7. With regards to "affordable housing," has the City imposed/requested similar requirements on other developers (i.e. Eisenhower Medical Center, the River,

Monterey Market Place, Desert Gateway, Marriott/Shadowridge)? If so, please provide us any details related to this and copies of any related documents. The request to provide 40 acres for 250 units of "affordable housing" is either a typographical error or an error in math. Forty (40) acres of land can easily provide over 600 units of affordable housing(?). What is the basis of these numbers?

8. With regards to "health department inspections," is the City suggesting that there is or has been a problem with food and beverage services at the Agua Caliente Casino? If so, we would greatly appreciate any factual incident reported to us immediately. Otherwise, as specified by Section 10.2(a) of the 1999 Tribal-State Gaming Compact, the Tribe is required to, and has, adopted standards concerning food and beverage handling that are no less stringent than state public health standards. The Tribe is required to allow inspection of food and beverage handling operations at the project site by state or county health inspectors during normal business hours, unless such inspections are routinely made by an agency of the US Government to ensure compliance with equivalent standards of the United States Public Health Service. No extension of County or local jurisdiction concerning health issues is provided for in the 1999 Tribal-State Gaming Compact.

As a courtesy, the Tribe invites the City to inspect the Casino's food preparation in the Tribe's guest service areas. The Tribe takes great pride in quality of the food and beverage services at all Tribal facilities.

9. Regarding "building, design and land use standards," the Tribe equally has adopted building and land use policies and respects the City's corresponding policies as manifested through our Land Use Agreement; however, the project is not within the jurisdiction of the City. The Tribe, by Ordinance, has adopted the Uniform Building Code and, as such, has complied with Section 6.4.2(b) of the Tribal-State Gaming Compact.

Approximately one year ago, I met with the City's General Plan Consultant, the City's Community Development Director and the County's Senior Planning Official to discuss a cooperative planning effort and a variety of planning strategies, which were contemporary and visionary. This unique area with its multi-modal transportation elements shows great potential for the entire Valley. We are not sure why this dialogue has stopped or why the Tribe was not actively involved in the General Plan Update, but we continue to be ready to resume this dialogue.

10. With regards to the Sunaire parcel, the entirety of Section 24, T4S, R5E, SBBM, was included in the Agua Caliente Indian Reservation created by the Executive Order of Rutherford B. Hayes on September 29, 1877. The entirety



of Section 24 was patented to the ACBCI as part of its reservation by federal patent No. 168071, issued by President Taft on January 5, 1911. The entirety of Section 24 has remained part of Agua Caliente Indian Reservation since that time, and continues to be part of the reservation today. As discussed by the U.S. Supreme Court in *Solem v. Bartlett*, 465 U.S. 463, 470 (1984), once Congress establishes a block of land as a federal Indian reservation, all parcels within that block retain their reservation status forever until Congress clearly acts to change the exterior boundaries of that reservation. Therefore, each of the parcels within Section 24 has been since 1877, and now is, part of the Agua Caliente Indian Reservation. Under the Indian Gaming Regulatory Act, 25 USC §2703(4)(A), if a parcel of land is within a reservation it is automatically "Indian land" on which gaming can occur.

The question presented, however, implies the Tribe is operating outside the law and this question is not properly part of the environmental review process. This is provided in a limited manner to eliminate the issue. If you wish to pursue this further, it should be done so separate from this and/or the environmental review process.

With the foregoing being said, the Tribe appreciates the City's initiative in presenting an itemization of issues to address and the potential support of the expansion of gaming related to that. I suggest that the staffs of the two governments meet shortly after the traffic analysis is complete, using the topics your letter outlines as a start in a true government-to-government negotiation. The finalization of the TEIS should have no bearing on this process or its expected outcome.

Very truly yours,

Thomas J. Davis, AICP
Chief Planning & Development Officer
**AGUA CALIENTE BAND
OF CAHUILLA INDIANS**

TJD/jb

- C: Tribal Council
- Art Bunce, Tribal Attorney
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