

Stand Up For California!

“Citizens making a difference”

standupca.org

P.O. Box 355
Penryn, CA 95663

October 10, 2005

Agua Caliente Band of Cahuilla Indians (ACBCI)
650 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Attn: Margaret Park, AICP

RE: Letter of Comment on the Agua Caliente Casino Expansion Rancho Mirage, CA. 2005

Attn: Ms. Park, AICP:

This letter contains the comments of Stand Up For California addressing the many impacts of the proposed Agua Caliente casino expansion on the sphere of influence of Rancho Mirage and the surrounding community of non-tribal citizens. While many of the identified impacts are serious and significant, most all can be mitigated with a comprehensive intergovernmental agreement with the City of Rancho Mirage and/or modification of the proposed development.

Stand Up For California is a statewide organization with a focus on gambling issues affecting California, including tribal gaming, card clubs, horseracing and the state lottery. We have been involved in the ongoing debate of issues raised by tribal gaming and its impacts for nearly a decade. Since 1996, we have assisted individuals, community groups, elected officials and members of law enforcement, local public entities and the State of California as respects to gaming impacts. We are recognized and act as a resource of information to local, state and federal policy makers.

Stand Up For California recognizes the unique geographical land base of the Agua Caliente Band of Cahuilla Indians which is intertwined with the greater community and sincerely appreciates the tribe's willingness to extend courtesies to the public to address mutual concerns. Clearly, the long-term success of the Agua Caliente Band of Cahuilla Indians is reliant upon the support and mutual cooperation with the greater community.

Stand Up For California submits the following discussion of 27 significant impacts which, we believe, require mitigation under the Agua Caliente Band's compact with the State of California and/or that have been inadequately addressed in the Environmental Impact Statement (EIS). A section titled “Additional Discussion” follows specifically identifying the most grievous environmental impacts that demonstrate the insufficiency of the EIS and places the tribe in potential breach of compact.

1. The EIS states it has been prepared, "...to comply with the Tribal Environmental Policy Act (TEPA) (Ordinance No. 28) of the Agua Caliente Band of Cahuilla Indians." Ordinance No. 28 defines "Environmental Impact Statement" as, "...the detailed statement referenced in section 102 of the National Environmental Policy Act, 40 USC §4332, and further defined in 40 CFR §§ 1510.10-218."

Contrary to the purpose and intent of Ordinance No. 28, the EIS fails to follow the qualitative requirements established under NEPA. Specifically, the EIS does not include a reasonable range of project alternatives, does not provide an adequate level of analysis of potential effects the proposed action may have on the physical or human environment, and fails to consider the indirect, and cumulative impacts of the Tribe's proposed action. As such, the EIS does not provide the Tribe an adequate assessment of the potential effects that may result from the construction and operation of the proposed project.

2. As required under Section 10.8 of the Tribal-State Compact (Compact), prior to the construction and operation of gaming related uses, the Tribe must prepare an assessment of potential off-reservation impacts that may result from development of the proposed action. The analysis provided in the EIS fails to fully consider off-reservation impacts. Rather than the superficial review of potential impacts found in the EIS, the Tribe must more fully address the direct, indirect, and cumulative impacts that may result from the proposed casino/hotel project.
3. The construction schedule stated in the EIS is suspiciously aggressive, assuming the completion of Phase I by July 2006. It appears that the decision to construct and operate the proposed casino/hotel project is a foregone conclusion. Such a predetermined decision undermines the purpose and intent of the Tribe's own TEPA. The consideration and review of the environmental document must be unencumbered by pre-established construction schedules or pre-determined decisions that will be made by any Tribal legislative/land use-planning body.
4. The EIS states the objective of the project is "...to provide an expanded tribal governmental revenue base to raise the standard of living of tribal members." The true objective of the proposed project seems to be the capture of a greater share of the potential gaming revenue in the Coachella Valley and the region. (**See Additional Discussion**)

The EIS states other Tribal gaming operations "threaten[s] the continued success and profitability of the Agua Caliente Casino." The Compact, the Indian Gaming Regulatory Act (IGRA), nor NEPA guarantees economic success. Rather these acts enable a Tribe to pursue policies that may improve their economic conditions. The EIS fails to mention the Tribe's hugely successful casino in downtown Palm Springs or the necessity to further increase its share of the gaming market (at the expense of other, smaller, gaming venues operated by less economically successful Tribes) As the EIS mentions the need to stay competitive with other Tribal gaming operations,

- the EIS must consider these competing gaming operations when addressing the cumulative effects of the proposed action.
5. The scope of the alternatives presented in the EIS does not provide an adequate selection of feasible alternatives to the proposed action. Only the “Preferred Alternative” (Proposed Project) was considered in the EIS. The EIS failed to identify or even consider that the development of non-gaming uses could provide equal or similar benefits to the Tribe. If Ordinance No. 28 mandates completion of a Tribal EIS modeled on NEPA, and NEPA requires a reasoned collection of project alternatives, it follows that a broader range of project alternatives must be identified and equally analyzed in the EIS.
 6. The EIS states the Tribe has land-use authority over approximately 31,432 acres, yet the project site is the only site where the proposed project (and only the proposed project) will satisfy the objectives of the Tribe. The EIS must include sufficient evidence to support this conclusion.
 7. Generally, the environmental analysis contained in the EIS is vague, superficial, and fails to adequately address the direct, indirect, and cumulative effects of the proposed action.
 8. **Geology and Soils:** The EIS states, “...the intent of the mitigation measures is to provide a structural design that will resist collapse to reasonable life safety from a major earthquake.” The Tribe must state what is “reasonable” life safety (loss of life, injury, etc.) and how the determination of “reasonable” was reached. As the intent of the Tribe is to increase patronage at their proposed facility, the non-Tribal population must be assured the design, construction, and operation of the proposed uses will provide the maximum level of protection from seismic events that is possible. (**See Additional Discussion**)
 9. **Biological resources:** Generally, biological resource surveys have a “shelf life” after which re-survey of the site is required. The field reconnaissance conducted to support the EIS was conducted on April 1, 2004 focused on the Coachella Valley milk-vetch. The EIS must provide evidence sufficient that biological reviews of the project satisfy applicable survey requirements established by the United States Fish and Wildlife Service (USFWS.)
 10. The EIS includes a discussion that leads the reader to conclude that the Endangered Species Act (ESA) does not apply to tribal lands. While Tribal governments enjoy “sovereignty” and are exempt from local and state regulations, they are not fully exempt from corresponding federal regulations. Rather than the selective recitation of past Secretarial directives, the EIS must include a more defensible explanation as to the alleged inapplicability of the ESA on Tribal actions.¹

¹ Note: Ninth Circuit decisions follow the Tuscarora rule that general federal laws apply to Indian tribes in the absence of a clear expression to the contrary. The Ninth Circuit recognizes exceptions for laws that touch exclusive rights of self-governance in purely intramural matters, or where federal law would abrogate treaty

11. The EIS must provide more detailed information related to the applicability of existing plans and agreements crafted for potential on-site sensitive biological resources, including: the Conservation Agreement for the flat-tailed horned lizard, the Habitat Conservation Plan for the Coachella Valley fringe-toed lizard (CVFTL), the Rangelwide Management Strategy for the flat-tailed horned lizard, and the Agua Caliente Tribal Habitat Conservation Plan.
12. The EIS admits the proposed action will result in, "...a small reduction of the remaining habitat" for three sensitive species, yet no quantification of the extent of such a reduction, or more importantly the effects of such a reduction may have on these species, are identified in the EIS. The EIS must fully disclose the direct and cumulative effect associated with the conversion of habitat and elimination of on-site numbers of sensitive species.
13. The biological mitigation relies primarily on the payment of development fees. Payment of fees in isolation does not sufficiently guarantee that potential biological resource impacts have been reduced to a less than significant level. The EIS must provide a more detailed analysis of the impacts to sensitive biological resources, and how the mitigation will reduce these impacts.
14. Mitigation measures B-2 and B-3 do not provide enough detail as to how they will be implemented. Measure B-2 states that an on-site monitor will oversee, "...implementation of the mitigation measures in accordance with the Rangelwide Management Strategy for the flat-tailed horned lizard." These measures must be included to the EIS. Also, measure B-3 states the flat-tailed horned lizards will be relocated to outside of the construction zone. More appropriately, this measure must provide a more detailed accounting of when, where, and in what manner in such relocation of this species, as well as the direct and indirect effects of such relocation efforts.
15. It appears that only a reconnaissance level plant survey was conducted, during which surveyors failed to identify sensitive lizard species on-site. As appropriate, focused sensitive lizard surveys must be conducted pursuant to any governing survey protocol.
16. Drainage and Water Quality: The EIS must include an inventory of the possible contaminants that may be generated on-site during the construction and operation of the proposed uses; and the direct and cumulative impact to existing water quality in the region. The EIS must also provide information on how the proposed action will affect the beneficial uses of the region's water supply.

17. The EIS does not state how the proposed stormwater detention structure will provide, "...provide a means for water quality improvement." This statement is worthless without further explanation.
18. The EIS states this basin, "...allows for stormwater discharge when stormwater is prevalent." Where, and under what conditions will flows from the detention basin be directed. What are the impacts associated with such discharges. Merely mentioning what will occur, in the absence of any qualitative or quantitative analysis renders the current discussion provided in the EIS impotent.
19. **Transportation and Circulation:** The EIS assumes that a new interchange at Bob Hope Drive will be completed by 2009. The EIS does not provide any assurance that such an improvement will be completed. An interchange was once proposed to provide service to the "new" casino operated by the Morongo Tribe in Cabazon. This interchange has yet to be constructed. Merely stating that the interchange will be constructed does not mean it will be built in the time frame or configuration the Tribe wishes. As the traffic analysis contained in the EIS is dependent on the presences of an interchange by 2009, the EIS must include an analysis of traffic conditions that would occur if the construction of the interchange was delayed or not built at all. In the absence of such an analysis, the EIS will seriously underestimate the potential direct and cumulative impacts associated with the proposed action. **(See additional discussion)**
20. The EIS identifies PM peak hour and Saturday midday traffic volumes in the traffic analysis. As the proposed project includes an entertainment/gaming/hotel/and shopping features, the EIS must identify the peak hour periods that will generate the most traffic. It is anticipated that weekend evening events at the entertainment venue, in conjunction with all other proposed traffic would be the period of most concentrated traffic. The EIS must provide a more realistic range of peak hour traffic scenarios.
21. The cumulative traffic analysis is extended only to the Year 2009. To provide a more accounting of cumulative traffic impacts of the project, the traffic analysis must take into account the buildout (2025 or 2030) traffic volumes of adjacent jurisdictions (cited in their respective General Plans) as well as the anticipated traffic generated by the proposed uses.
22. Mainline freeway analysis must consider impacts on not just the "typical weekday" but also on the weekend, as well as the special event, and holiday/holiday weekend traffic. Selective choosing to discuss only typical weekday mainline freeway impacts provides neither a realistic or honest assessment of the severity of predictable traffic impacts.
23. **Public Services:** The EIS states the Coachella Valley Water District (CVWD) has, "...sufficient capacity to meet the demands of the project." The EIS does not state the impact the provision of water to the proposed project may have on the CVWDs

ability to provide to its other customers. The EIS must include such a discussion on the cumulative effect the provision of services/utilities to the project site will have on the ability of these service/utility providers to accommodate the growth that is anticipated in the region.

24. **Public Safety:** The EIS must disclose how the construction and operation of a high-rise hotel structure will affect the ability of fire agencies to provide services. Are there sufficient ladder trucks to adequately fight a high-rise fire? (**See Additional Discussion**)
25. The EIS trumpets the Tribe's contributions to local public safety organizations. While commendable, these past voluntary donations cannot be considered appropriate mitigation for future project public safety impacts that will surely occur. Additionally, the EIS references, "...funds collected by the State from gaming devices proceeds at Tribal gaming operations." The Tribe must know that distributions from this fund are not guaranteed. Rather than rely on voluntary contributions or unreliable funding mechanisms, the Tribe must provide guaranteed and long-term funding to adequately mitigate for the public safety impacts that will surely result from the operation of the proposed gaming and entertainment uses.
26. **Visual Resources:** As readily discernable from the visual simulations included in the EIS, construction of the proposed on-site uses represents a significant change in the visual character of the project site, the surrounding area, and the viewshed of Interstate 10. The determination of significance state in the EIS is not based on any qualitative or quantitative analysis. Merely stating the project will have, "...no substantial adverse visual impacts" does not make it so. The EIS must provide an appropriate level of analysis to support its conclusions.
27. The EIS must disclose the manner of lighting anticipated to operate when the proposed project is completed. Will the lighting/signage include electronic message boards or displays similar to that located at Casino Morongo? If so, then the impacts these lighting/signage will have on the surrounding area, including motorists on I-10 must be fully assessed in the EIS.

Additional Discussion:

Impacts # 4:

If the objective of the Tribe is to "... provide an expanded tribal governmental revenue base to raise the standard of living of tribal members." Then, how does the tribe achieve this objective by simply expanding their casino floor? Floor space is an expense and considered only a future asset if and when the Tribe re-negotiates a tribal state compact.

The Tribes financials clearly indicate that 90% + of the gaming revenue is from slot machines. The Tribes 1999 tribal state compact caps the Tribe's machine limit at 2000 machines, a limit which the tribe has already reached between its two casino operations. The introduction of class

II machines does not appear to be an economically viable alternative considering the proposed legislation by the US Department of Justice supported by the National Indian Gaming Commission.

IGT attorneys anticipating compliance with the proposed legislation have already stated the company's intention to roll back its class II machines, changing their appearance to be different from that of a slot machine and to delay the play of each game to 10 seconds or more.

If indeed the Tribe wants to capture the greater share of the potential gaming revenue in the Coachella Valley and the region, why not re-negotiate an amended compact. Partnering with the State at this time would ensure the Tribes long-term goals while addressing the concerns of the surrounding community of citizens, affected local governments and State Agencies. Moreover, a re-negotiated and amended compact would ensure that the Tribes current class II machines would be grandfathered in preserving the Tribes current revenue from gaming machines.

Impact # 8

What is reasonable life safety? Tribal gaming operations in California have recognized the financial benefit of marketing to senior citizens. Many of the tribal gaming operations provide bus services from Los Angeles to a variety of tribal gaming resorts in San Diego and Palm Springs. Buffet brunch and luncheons are free or discounted to seniors on scheduled senior days. Clearly, senior citizens in California are a desirable and lucrative market. Seniors have time, money and the need for recreation.

However, tribal gaming is failing to ensure the safety and well being of senior patrons at casinos. Tribes are now operating multi-million dollar destination resorts. The tribal gaming industry has grown from \$200 million dollars annually in 1998 to over \$19 billion in 2005. The integrity of the Indian gaming industry depends on fair treatment of patrons. Many who are senior citizens enjoying this form of recreation as it does not require great physical strength while providing an outing to break up the daily routines of retirement.

Senior Citizens have been affected in a number of ways by the explosive proliferation of tribal gaming in California. The Los Angeles Times has written numerous stories on Senior citizens gambling away their retirement, the Sacramento Bee has written stories regarding the lack of safety to patrons and the failure of the tort ordinance at tribal gaming facilities. These press stories are a red flag to organizations like the AARP.

It is in the best interests of the long-term success of the Tribe to protect not only the patrons and employees but ensure that the proposed project does not place in jeopardy the safety of the surrounding community. *What is "reasonable life safety"?* The Tribe must not place itself in the embarrassing position in which the City of New Orleans or the Governor of Louisiana finds themselves in answering this serious and critical question? Failing to answer this question adequately places the Indian Gaming industry at risk and further fuels the fire of a backlash on tribal gaming.

Impact # 19

Traffic congestion is inadequately addressed in the EIS. Moreover the EIS does not appear to take into consideration the many transportation and circulation impacts identified in the February 8, 2005 letter from the City of Rancho Mirage. Indeed the EIS fails to address any off reservation impact in this regard. Off reservation impacts are clearly required to be addressed through the 1999 tribal state compact. The EIS is silent as to additional emergency services that may be required due to higher accident rates or increased demand for services generated by the facility that would thereby reduce response resources for the off Reservation community. The EIS fails to discuss the current level of need and use of resources associated with advanced life support ambulance services.

- According to the Information Services Bureau of the Riverside County Sheriff's Department, more than 1,300 police calls have been made to the Agua Caliente Casino since its opening in 2001. The yearly number of calls rose by almost 10% annually since 2001, or almost 40% since 2001.

Year	Calls	Annual Growth rate
2001	189	
2002	276	10%
2003	288	4%
2004	318	10%
2005	231	9%

Total 1,302

- The Palm Springs Police Department reports that the number of police calls at the Agua Caliente Spa Resort Casino in Palm Springs has gone up 400% from 2002 to 2005.²

Year	2002	2005
Number of calls	265	1,338

- The Agua Caliente Casino Expansion Environmental Impact Statement predicts that the project will generate more than 170,000 car trips each week, increasing traffic congestion.
- The EIS states that the project will be completed by 2007, but the construction of the new interchange on I-10, which will help to mitigate major bottlenecks in the area around the casino, will not be done until 2009 at the earliest.
- The Agua Caliente Individual Tribal Casino Account funded less than \$1.5 million to Riverside County agencies in 2004 to mitigate the costs of the tribe's two casinos.³

² The number of police calls is only known through the month of August for 2005. The figure here represents the number of calls estimated for all of 2005.

- Any other business similar to the Agua Caliente's expanded casino would pay an estimated \$9 million in annual taxes to support agencies such as the local police and fire departments that keep area residents safe.

Tax on a Business Similar to the Agua Caliente Tribe's Proposed Rancho Mirage Facility

Estimated Value of Property	\$510,357,142
Property Tax Rate	0.8%
Annual Property Tax	\$4,082,857
Estimated Annual Profit	\$35,725,000
Annual Corporate Tax Rate	8.84%
Annual Corporate Tax	\$3,158,090
Estimated Annual TOT	\$1,752,000
Total Annual Tax	\$8,992,947

The California Gambling Control Commission has proposed a regulation to address Emergency Evacuation and Preparedness Plans. **(Exhibit 1)** The Tribe's EIS fails to adequately address this concern and needs additional discussion of this failure. Emergency vehicle access and availability is something that is clearly required and must be included in a plan adopted under CGCC-7 as currently proposed.

6. **Provisions for First Aid and for Obtaining Emergency Medical Assistance for patrons, employees, and other persons while in the Gaming Facility.**

Failure to address this issue under the 1999 tribal state compact demonstrates a lack of good faith which potentially could represent a significant breach of the tribal state compact related to the health and safety of the public.

A recent letter dated September 21, 2005 from the Department of the Interior addressed to the Northern Arapahoe Tribe regarding permitting operations of Class III gaming due to the failure of the State to negotiate in good faith requires the tribe to adhere to the following standard.

The tribal gaming agency shall make provision for adequate access by emergency vehicles and personnel to any gaming facilities and shall provide ready access for employees, patrons, and other individuals in or near such facilities to a means of contacting emergency agencies, such as by a "911" number.

This is a higher standard than that which the tribe has set in the EIS.

³ <http://www.riverside-tribalcbc.org/GrantAwards.shtml>

Impact # 24:

The EIS fails to disclose how the construction and operation of a high rise hotel structure will affect the ability of fire or emergency agencies to provide services. Here again there is a potential breach of the tribal state compact section 6.4.2

“The Tribe will not offer Class III gaming in a Facility that is constructed or maintained in a manner that endangers the health or safety of the occupants or the integrity of the gaming operation.” (Section 6.4.2 (c) 1999 Tribal State Compact)

Confirming Land Status for Gaming:

There is a heighten public interest to examine the legal status of land proposed for the Agua Caliente Band of Cahuilla Indians casino expansion and ancillary developments. Despite the apparent history and presence of the Agua Caliente Band of Cahuilla Indians there remain questions regarding the land status of the Tribe for gaming at Bob Hope/I-10 location. The Tribe is one of the largest landowners in the area, although its trust land base is proportionately small compared with the land that is mostly held in individual allotments or fee patents by individual Indians.

The land in question, formerly allotment land, was sold to a non-Indian reverting it to fee-patent. The Tribe’s re-purchase of the land and application for trust in 2004 is well after the cut off date of 1988 found in Section 20 of IGRA and relevant if the land is not within the reservation boundaries. The land is described as lying within the boundaries of the reservation but the evidence is not clear whether that is the case. (See 1959, 73 Stat. 602) Clearly, however, it is not held in a restrictive status when the tribe re-acquired it for their gaming development.

The definition of Indian Lands for gaming in IGRA has a two part test.

25 U.S.C. Section 4 [2703] 4

(A) all lands within the limits of any Indian reservation; and

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation **and over which an Indian tribe exercises governmental power.**

Thus critical questions remain:

(1) Was this land held subject to restriction by the United States against alienation? The evidence points to no. (2) Did the Tribe exercise “*governmental power*” over re-acquired lands? Evidence indicates that the soonest possible date of governmental power to be exercised over Indian lands was on the recording date of the sale, March 8, 2004, well after the 1988 cut off date of IGRA. (3) Are the parcels in question within the established boundaries of the original reservation? The 1891 Congressional record is vague in defining the Agua Caliente Band of Cahuilla Indians reservation boundary. Even so, land held in fee patent by a tribal government must comply with local ordinances, regulations and state laws, and specifically taxation.

- Clearly, the authority of state or local government to impose property taxes on property of nonmembers situated on tribal lands, i.e., within a reservation, under *Utah & Northern Railway v. Fisher*, 116 U.S. 28 (1885) and *Thomas v. Gay*, 169 U.S. 264 (1898).
- As for Indians on fee-patented lands located within the boundaries of a reservation, the Supreme Court in *County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation*, 502 U.S. 251 (1992), said states and local governments may assess property taxes on those lands. This is for trust allotments that have passed out of restrictive status into fee.⁴
- In *Cass County v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103 (1998), the Court went further and said the above rule applies even if the Tribe re-acquires the parcel in fee that has passed out of allotment or trust status. As long as the Tribe owns it in fee, it is taxable by the state or local governments as real property. Of course, once the Tribe has the re-acquired lands placed back into trust under 25 U.S.C. sec. 465; it will become immune to real estate taxes.

Non-gaming Trust Acquisition of 2004:

Inspector General Earl E. Devaney has issued reports of his recent investigation into tribes applying for trust acquisitions in which they assert that the land will not be for gaming. The Inspector General has disclosed 10 instances in which this has occurred. Stand Up For California is confident that the number is higher than 10 and that the Agua Caliente Band of Cahuilla Indians land acquisition and final determination on June 22, 2004 is the 11th such instance.

The Tribe's application for trust for the 140.41 ac. is deceptive. The Tribe states the goals for this Land is:

1. preservation and restoration of cultural, natural and scenic values,
2. create a strong sense of place that reflects the cultural and natural history of the Tribe,
3. creates an interpretation of Native American history and culture and
4. generate sustained revenue for total support through public access and recreation.

The Tribe further states:

“The subject property is for the protection of sovereign rights and restoration of original trust lands. The property will eventually be used for economic development for the Tribe. The Tribe has no intention of changing the use of the property should the land be brought into trust status.”

⁴ Agua Caliente purchased the parcels in question on Jan. 20, 2000 and the deed was recorded on March 8, 2000. The Tribe was the owner of real property for the years, 2000, 2001, 2002, 2003, and 6 months of 2004.

There is no mention of the proposed gaming development that was announced March 13, 2000, or the fact the facility was built, widely advertised and has stood as a major landmark along I-10 and Bob Hope Avenue since 2001.

It would appear that the Department of the Interior, Bureau of Indian Affairs Palm Springs Agency has severely injured the Department's credibility as an unbiased agency. The Agency is tasked with processing fee to trust applications directed at recognizing the difference between gaming and non-gaming developments. Nevertheless, in 2004 when the Department issued its 'Notice of Decision', it failed to recognize the land acquisition as gaming or gaming related and instead acknowledged the land acquisition as:

“This parcel is currently zoned as C=Commercial; RH= Resort Hotel; M+ Manufacture and 2B (2/5 ac) Zoning for the site will not be changed and therefore no jurisdictional problems are foreseen.” (June 22,2004 Notice of Final Decision-BIA)

The “Notice of Decision” ignores the fact that a casino already exists. The “Notice of Decision” is silent on whether or not the Tribe must adhere to local zoning, ordinances, California Environmental Quality Act or pay owed local and state taxes on real property. (See recent U.S. Supreme Court ruling on *Sherrill vs. Oneida*)

In fact, this failure of the Palm Springs Agency Bureau's final determination must raise significant concerns for the Tribe about a potential appeal before the U.S. District Court, either in California or the District of Columbia against the Secretary of the Interior potentially violating the Administrative Procedures Act. There is a 6 year statute of limitations to substantive challenges to an agency's application of an agency's final decision.

Tribal State Compact:

The Tribe signed a Class III Compact with the State of California which stipulates that land must meet the standards of “Indian lands” under IGRA. Indeed the 1999 Compacts state the following:

2.8 “Gaming Facility” or “facility” as defined at Section 4.2 of this Compact means any building in which Class III gaming activities or gaming operations occur, or in which the business records, receipts, or other funds of the gaming operation are maintained but excluding offsite facilities primarily dedicated to storage of those records, and financial institutions, and all rooms, building, and areas including (but not limited to) parking lots and walkways, a principal purpose of which is to serve the activities of the Gaming Operation, provided that nothing herein prevents the conduct of Class II gaming (as defined under IGRA) there in.

Without regard to whether IGRA itself requires that access roads and parking lots be located on land meeting the statutory standard, the fact is that the tribe executed – and the Secretary approved—a compact imposing that requirement. Thus, as a matter of IGRA the Compact under

which the tribe conducts gaming, the land on which casino access roads, hotel expansion, sky bridge and retail center are constructed must meet the standards of IGRA.

For this reason, the recent land acquisition of the 140.41 ac. should have and still must be considered a land acquisition for gaming and potentially subject to the processes imposed on after 1988 land acquisitions including a full Environmental Impact Statement and the two part determination and potential gubernatorial concurrence imposed by IGRA Section 20(b) (1) (A), 25 U.S.C. section 2719(b) (1) (A).

Conclusion:

The Agua Caliente Band of Cahuilla Indians is truly a Tribe that tells a 'rag to riches' story. A story that became a reality due to the business oriented leadership of the Tribal Council. A re-negotiated compact with the State of California provides the Tribe a significant benefit -- a stable and long-term relationship with the State for gaming. This relationship is important to the continuing success of Tribal economic growth and self-reliance. The new compact is a standard upon which to establish and nurture enduring relationships with the non-tribal public and surrounding jurisdictions.

Stand Up For California thanks you for this opportunity to review the EIS and make written comment. These comments will be supplemented as additional research is completed. We sincerely hope that the comments contained in this correspondence are helpful and provide useful information to tribal leadership. We again further encourage you to give serious consideration to compact re-negotiations with the State of California. Should you have any questions or concerns regarding the above, please do not hesitate to contact me at your convenience.

Sincerely,

Cheryl Schmit – Director

916-663-3207

schmit@quiknet.com

CC: Honorable Peter Siggins – Secretary of Legal Affairs
Honorable Dan Kolkey – Tribal State Compact Negotiator
City of Rancho Mirage

Attachments:

Exhibit 1 – Proposed Uniform Regulation CGCC-7. Emergency Evacuation and Preparedness Plans

Exhibit 2: Community endorsement letter

Exhibit 1**Proposed Uniform Regulation CGCC-7. Emergency Evacuation and Preparedness Plans**

1. (a) For the purpose of ensuring the physical safety of the gaming operation patrons and employees, and any other person while in the gaming facility pursuant to Compact section 8.1.2, the Tribal Gaming Agency shall require prompt development and implementation of an Emergency Evacuation and Preparedness Plan ("Plan") for the tribal gaming facility to include but not be limited to the following emergencies:
 1. (1) Fires
 2. (2) Earthquakes, Floods and Other Natural Disasters
 3. (3) Bomb Threats
 4. (4) Hazardous Spills or Toxic Exposure
 5. (5) Other critical incidents, as determined by the Tribal Gaming Agency
 6. (6) **Provisions for First Aid and for Obtaining Emergency Medical Assistance for patrons, employees, and other persons while in the Gaming Facility.**
 7. (1) Clear, written policies listing the job titles of the personnel who are responsible for making decisions, monitoring emergency response actions, and securing or protecting the gaming operation's cash or equivalent assets and records,
 8. (2) Procedures addressing each of the items in subsection (a)(1) to (6), inclusive.
 9. (3) Facility evacuation procedures including a designated meeting site or sites outside the facility. A process to account for employees after an evacuation and a process to ensure that all patrons have been evacuated.
2. (b) Each Plan shall include the following:
 1. (c) The Tribal Gaming Agency shall provide certification of the Plan annually to the Division of Gambling Control in the California Department of Justice, and make the Plan available for review upon request.
 2. (d) The Tribal Gaming Agency shall require that the gaming operation management:
 1. (1) At least annually, review with all employees the requirements of the Plan applicable to the employee, to ensure that each employee has a general understanding of the provisions of the Plan applicable to his or her position and understands his or her specific duties under the Plan and the appropriate exit or exits to be used, where applicable.
 2. (2) Review the requirements of the Plan with each new employee, at the time the new employee begins work, to ensure that each new employee has a general understanding of the provisions of the Plan applicable to his or her specific duties under the Plan and the appropriate exit or exits to be used, where applicable.

Exhibit 2:

Letter from community resident