



OFFICE OF THE GOVERNOR

November 28, 2005

*Via Facsimile & First Class U.S. Mail*

Ms. Rhonda Morningstar Pope  
Tribal Chairperson, Buena Vista Rancheria of Me-Wuk Indians  
4650 Coalmine Road  
Ione, CA 95640  
P.O. Box 162283  
Sacramento, CA 95816

Re: Final Tribal Environmental Impact Report

Dear Chairperson Pope:

I am writing to respond to Judy Albeitz's correspondence of November 10 and 22, 2005, addressed to Peter Siggins, and to express the State of California's concerns regarding the Final Tribal Environmental Impact Report ("Final TEIR"), dated October 12, 2005, prepared for the Buena Vista Rancheria of Me-Wuk Indians ("Tribe") and its casino project, the Flying Cloud Gaming and Entertainment Facility ("Flying Cloud Casino"). We have reviewed the Final TEIR, the comments provided by the County of Amador, and Ms. Albeitz's responses. We also appreciate hearing the Tribe's views during our meeting with your legal counsel last week. Based on our review of the Final TEIR, however, we have concluded that it does not satisfy the requirements of the Tribal-State Compact between the State of California and the Tribe, as amended by the parties and effective on December 20, 2004 ("Compact").

As you are aware, when negotiations over the Compact amendment commenced in 2004, this Administration sought improvements to the environmental protection provisions of the Tribe's 1999 Compact. The provisions negotiated between the Administration and the Tribe require the Tribe to prepare a detailed analysis of the significant environmental effects of, possible alternatives to, and potential mitigation for, the proposed casino project, in the form of the Tribal Environmental Impact Report ("TEIR"). (Compact, § 10.B.1.) The TEIR is intended to form the factual basis for negotiations between the Tribe and affected local governments to conclude an enforceable intergovernmental agreement under which the proposed Flying Cloud Casino's environmental effects will be addressed. Accordingly, the Compact states that "the

formulation of mitigation measures [in the TEIR] should not be deferred until some future time." (Compact, § 10.8.1, subd. (b).)

The Tribe's preparation of a thorough TEIR is critical to the purposes of the Compact's environmental protection provisions. Without adequate information in the TEIR - information needed by both the Tribe and the local governments in their negotiations for the intergovernmental mitigation agreement(s) - the burden of environmental analysis improperly shifts to the affected local governments.

Notwithstanding the comments received by the Tribe following release of the draft TEIR, the Final TEIR does not provide some critical information about the project, its impacts, and possible alternatives and mitigation measures. This is information required by the Compact. The following text is from the Final TEIR's Conclusion:

The Buena Vista Rancheria recognizes its financial responsibilities with respect to the Off-Reservation impacts of the proposed Project. The Tribe, however, lacks the necessary civil authority and governmental powers over other jurisdictions to assure implementation of mitigation. . . . Accordingly, the Tribe cannot assure full and timely implementation of the mitigation on Off-Reservation lands. The County retains full authority. . . . The proper role of the Tribe is to provide funding for a comprehensive mitigation program in whatever amounts are shown to be fair by an impartial calculation. (Final TEIR, § 6.0, p. 125.)

While we agree that the Tribe is financially responsible for the casino's off-reservation impacts, it is equally important that a meaningful consultative process with local governments and others occur during the preparation of the TEIR so that the Tribe is able to obtain the information it needs to prepare an adequate document. The Tribe should engage stakeholders and other governments in such a way that all parties to the intergovernmental negotiations are sufficiently informed to ensure that constructive negotiations between the Tribe and Amador County can commence and ultimately succeed. Unfortunately, we do not believe that the Tribe's TEIR provides sufficient detailed information upon which negotiations may be based.

Under the Compact, it is not the role of the Governor's Office to engage in a point-by-point critique of the Final TEIR. Nevertheless, it may be helpful to provide the State's perspective on two concerns in particular that have already been raised by the County of Amador, as examples of the ways in which the TEIR fails to meet the requirements of the Compact. With respect to the Tribe's traffic analysis, the County has commented that the Tribe's promise to fund traffic improvements, in some instances on a "fair share" basis, without specific information regarding the nature and cost of the proposed mitigation measures, provides no basis upon which the County may negotiate the cost of mitigation. (Final TEIR, Table 3.3.) We feel this is a fair critique of the Tribe's approach to the environmental analysis. Moreover, given the limited information provided in the TEIR, an arbitrator may be prevented from rendering a sound decision on this matter.

Ms. Rhonda Morningstar Pope  
November 28, 2005  
Page 3

Additionally, the Tribe's approach to explaining how it will supply the facility with potable water does not provide a clear understanding of the off-reservation environmental impacts of the proposed project. The Final TEIR states that the Tribe has initiated an exploratory drilling program, but has no results to share. (Final TEIR, § 3.7.2.) The Tribe indicates that potable water will be hauled in the "early stages" of operation, but has no basis to conclude that potable water will ever be available on site to replace haulage as the means of water supply. Moreover, the Final TEIR states suppliers of hauled potable water have not yet been identified, but when they are, the Tribe will then make an assessment of the potential for impacts resulting from the hauling of this water. (Final TEIR, § 3.7.2.) This approach to the analysis of potable water issues does not comply with the requirements of the Compact. (Compact, § 10.8.1, subd. (b) [stating that "[f]ormulation of mitigation measures should not be deferred until some future time".])

We trust that you will take immediate action to ensure that negotiations with the County can proceed in a meaningful and productive manner, in keeping with the purposes of the Compact. We believe that the proper course of action would be for the Tribe to rescind certification of the Final TEIR. Such action is necessary if the TEIR process is to work as intended. Presumably, the Tribe's participation in the informational workshops and previous negotiations with the County can be utilized and, where appropriate, incorporated into the revised Final TEIR. It is our hope that negotiations between the Tribe and the County may recommence as soon as possible.

We hope that the Tribe is amenable to this course of action. While we believe that negotiations should be left solely to the Tribe and the County, we are committed to taking whatever action is necessary to ensure the Compact's environmental protections are given effect in the manner intended. We hope this will be accomplished without formal action by the State.

Thank you for your attention to this important matter.

Sincerely,



ANDREA LYNN HOCH  
Legal Affairs Secretary

cc: Judy Albietz, Esq.  
George C. O'Connell, Esq.  
Daniel Kolkey, Esq.  
Robert Mukai, Senior Assistant Attorney General

Ms. Rhonda Morningstar Pope  
November 28, 2005  
Page 4

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