

AGENDA ITEM TRANSMITTAL REPORT

DEPARTMENT: County Counsel/CAO

SUBMITTED BY: Steven Woodside/Bob Deis

FOR BOARD OF SUPERVISORS/WATER AGENCY
ACTION ON: 05/15/07

AS: () CONSENT (X) REGULAR

THIS ITEM REQUIRES: (Check appropriate boxes)

- | | |
|----------------------------------------------------------------|--------------------------------------------------------|
| <input type="checkbox"/> Hearing | <input type="checkbox"/> 4/5 Vote |
| <input type="checkbox"/> Requests Gold Resolution | <input type="checkbox"/> Appropriation Transfer |
| <input type="checkbox"/> Public Appearance Anticipated | <input type="checkbox"/> Position Alloc List Change(s) |
| <input type="checkbox"/> County Counsel Approval Date __/__/__ | By: _____ |

AGENDA SHORT TITLE: Proposed Graton Rancheria Casino and Hotel Project

REQUESTED BOARD ACTION:

1. Authorize comments to the National Indian Gaming Commission ("NIGC") on the Draft Environmental Impact Statement ("DEIS") and Draft Conformity Determination for the Federated Indians of the Graton Rancheria Proposed Casino and Hotel Project.
2. Authorize staff to incorporate direction from the Board and to submit the comments to the NIGC by June 4, 2007.

Signature of Department Head

Special Instructions to Clerk of the Board: Joint Board of Supervisors / Sonoma County Water Agency Item

FOR AGENDA COMMITTEE USE

County Administrator's Office Recommendation:

- | | |
|------------------------------------------|--------------------------------------------------------|
| <input type="checkbox"/> Approval | <input type="checkbox"/> Submitted with Comment |
| <input type="checkbox"/> Not Recommended | <input type="checkbox"/> Policy Determination by Board |

Analyst Comment:

Signature of County Administrator

Agenda Committee Action:

- Consent Calendar
 Regular Calendar

Date Scheduled: / /
Time Scheduled: _____
(If required)

COUNTY OF SONOMA AGENDA ITEM SUMMARY REPORT

Clerk of the Board Use Only
Meeting Date **Held Until**
 / / / /
Agenda Item No: **Agenda Item No:**
 _____ _____

DEPARTMENT: County Counsel/CAO () 4/5 Vote Required

Contact: Jeff Brax Lori Norton	Phone: 565-3189 565-3345	Board Date: 05/15/07	Deadline for Board Action: 05/22/07
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CURRENT FISCAL YEAR FINANCIAL IMPACT

<u>EXPENDITURES</u>		<u>ADD'L FUNDS REQUIRING BOARD APPROVAL</u>	
Estimated Cost	\$	Contingencies	\$
		(Fund Name:)	
Amount Budgeted	\$	Unanticipated Revenue	\$
		(Source:)	
Other Avail Approp	\$	Other Transfer(s)	\$
(Explain below)		(Source:)	
Additional Requested:	\$	Add'l Funds Requested:	\$
Explanation (if required):			

Prior Board Action(s): 10/21/03: Resolution opposing the casino and resort-hotel complex proposed for area adjacent to Rohnert Park. 3/9/04: Request by County to participate as a “cooperating agency” in the NEPA process. 04/06/04: Board approved comments on Scoping Notice.

Alternatives - Results of Non-Approval: Board could modify, eliminate, or direct staff to return with revised comments on 05/22/07. Comments submitted after 06/04/07, the extended deadline approved by the NIGC for comments, may not be considered by the NIGC.

Background:

In May 2006 the County, in its role of “cooperating agency” received a preliminary draft of the Environmental Impact Statement from the NIGC. The CAO and County Counsel formed a multi-departmental/agency team to review and comment on the sufficiency of the analysis and mitigations contained in the preliminary draft. Staff found the preliminary draft analysis of environmental impacts deficient in nearly every issue area, and on July 6, 2006, the County submitted more than 200 comments. The County anticipated the DEIS would give serious consideration to the comments, and include appropriate revisions in the DEIS.

The NIGC released the public Draft EIS (“DEIS”) and the Draft Conformity Determination (“DCD”) on March 9, 2007, and conducted information workshops and public hearings on April 4th and 5th. The NIGC initially required written comments on the DEIS and DCD to be postmarked by May 14, 2007. Following numerous requests from the public, the County, and other federal, state, and local governments, the NIGC extended the comment period to June 4, 2007.

The County conducted as rigorous a review as possible given the size and complexity of the document and the very limited comment period. Staff found the DEIS analysis of the potential environmental impacts continues to be deficient in nearly every issue area. In fact, many of the comments previously submitted by the County have not been adequately addressed in the DEIS. The degree of deficiency is such, that the document is fatally flawed, fails to meet the requirements of the National Environmental Policy Act (NEPA) and must be corrected, revised, and re-circulated.

The County’s comments, although not exhaustive, point out numerous deficiencies including: failure to fully analyze all feasible alternatives, inaccurate baseline information, inaccurate statements, and substantive gaps and flaws in approach, methodology and analysis.

The most significant deficiencies, are that the DEIS:

1. Fails to accurately convey the enormity of the proposed project, and appropriately identify the unprecedented impacts on the environment and community.
2. Fails to identify and analyze a reduced-intensity alternative at the Wilfred site.
3. Grossly underestimates the project’s traffic impacts on local roads and Highway 101. Fails to differentiate between funded improvements and those planned or hoped for in the vicinity of the project, and fails to analyze the consequences of the project on traffic without the assumed improvements.
4. Misrepresents jurisdictional authority. Does not accurately describe government agency responsibility and how public services are provided in the County. For example, it relies on the City of Rohnert Park to provide services, even though the proposed project sites are located in the unincorporated County and Rohnert Park has no authority to provide services outside its city boundaries.
5. Improperly concludes that the project will not result in significant socioeconomic impacts, and proposes inadequate mitigations.
6. Improperly estimates the impact on County services including: law enforcement, justice system, fire and emergency medical services, etc., and proposes inadequate mitigations.
7. Fails to consider ongoing revenue loss to the County (property tax, sales tax, transient occupancy tax, development fees, etc.) resulting from the land being taken into Trust.

Attachments: A - Executive Summary, B - Summary of comments, by issue area, on the Graton Rancheria Proposed Casino and Hotel Project DEIS,

On File With Clerk: C - Detailed comments, by issue area, on the Graton Rancheria Proposed Casino and Hotel Project DEIS, D - Comment Transmittal Letter to the NIGC

CLERK OF THE BOARD USE ONLY

Board Action (If other than "Requested")

Vote:

Background (cont.)

The Clean Air Act requires Federal agencies to assure that their actions conform to applicable implementation plans for achieving and maintaining the National Ambient Air Quality Standards for criteria air pollutants. The NIGC prepared a DCD for the proposed project which is also deficient and incomplete with respect to NOx. The DEIS concedes that a conformity determination is necessary because NOx emissions from the proposed project exceed the *de minimus* levels, but provides no further analysis and identifies no NOx emission reductions of offsets.

The County's comments are intended to highlight deficiencies in the DEIS and DCD, thereby providing the NIGC and its consulting firm, an opportunity to prepare a Final EIS and DCD that meet the requirements of the NEPA to fully disclose, analyze, and mitigate the proposed projects environmental impacts, and to properly analyze all feasible alternatives.

Future Actions

Staff anticipates the NIGC will release an Administrative Draft of the Final EIS and CD to cooperating agencies, in early 2008. This will provide another opportunity for the County to provide comments to the NIGC. Public release of the Final EIS and CD is anticipated to occur mid-year in 2008.

The "Agreement to Agree" required the County and Tribe to initiate negotiations regarding mitigation issues within 30 days after release of the DEIS. The County and Tribe met on April 4, 2007. Staff anticipates focused negotiations will begin after the County has had an opportunity to review all of the public comments and analyze the consultant's responses. Publication of the Final EIS will trigger a 45-day window for submitting final negotiation proposals and requesting arbitration under the Agreement.

The action before you today is to consider the County's comments, provide direction to staff as appropriate, and authorize staff to submit comments to the NIGC by the June 4, 2007 deadline.