



OFFICE OF THE GOVERNOR

July 2, 2008

Via Hand Delivery

Mr. Dale Risling, Deputy Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, California 95825

Re: DEIS Comments, Ione Band of Miwok Indians' Casino Project

Dear Mr. Risling:

We have reviewed the Draft Environmental Impact Statement (Draft EIS) dated November 2007 for the Ione Band of Miwok Indians' (Tribe) fee-to-trust land application and proposed casino project (Project). Thank you for this opportunity to comment on the Project. From the material submitted, we believe that the Draft EIS is deficient in some respects, precluding the requisite hard look at all of the Project's environmental impacts.

The Draft EIS has been prepared in conjunction with the Tribe's application to acquire about 227.58 acres in Amador County into federal trust for the Tribe for the construction and operation of a class II and class III gaming facility. In September 2006, the Office of the Solicitor, Division of Indian Affairs, determined the subject land is eligible for gaming as the Tribe's "restored lands" under title 25 United States Code section 2719 (b)(1)(B)(iii) of the Indian Gaming Regulatory Act (IGRA), and the Associate Deputy Secretary concurred in the determination. We commented in our December 28, 2006 letter to former Regional Director Clay Gregory that the Solicitor's findings were not supported by the facts or law and, therefore, the proposed acquisition did not qualify for IGRA's "restored lands" exception. Nonetheless, our comments on the Draft EIS are as follows.



Mr. Dale Risling, Deputy Regional Director
July 2, 2008
Page 2

The Draft EIS evaluates four development alternatives and a "no action" alternative: Alternative A (a 120,000 square-foot casino with related facilities, a 250-room, five-story hotel, and a 30,000 square-foot event center); Alternative B (a 100,750 square-foot casino with related facilities and the same hotel and event center described in Alternative A); Alternative C (a 79,250 square-foot casino with associated facilities and no hotel or event center); Alternative D (a 123,250 square-foot retail shopping center with no casino, hotel, or event center); and Alternative E (no development). Alternatives A through D include development of a fire station, wastewater treatment plant, and varying numbers of surface parking spaces. Alternatives A, B and C also include an RV park and construction of an earthen dam to create a reclaimed water seasonal storage reservoir.

Here, the Bureau of Indian Affairs (BIA) serves as the lead agency for National Environmental Policy Act (NEPA) compliance, with the National Indian Gaming Commission, United States Environmental Protection Agency, and the City of Plymouth as cooperating agencies. (Draft EIS at p. 1-7.) NEPA requires an agency to take a "hard look" at the environmental consequences of its actions and at possible alternatives. (*Kleppe v. Sierra Club* (1976) 427 U.S. 390, 410, fn. 21.) The critical measure is whether a project will have a "significant" impact. Under NEPA, whether an effect is significant depends both on the project's context and intensity. (40 C.F.R. § 1508.27.) "Context refers to the scope of the action, while intensity refers to the severity of the impact." (*Environmental Protection Information Center v. U.S. Forest Service* (9th Cir. 2006) 451 F.3d 1005, 1009, citing 40 C.F.R. § 1508.27.) NEPA's implementing regulations include a list of ten intensity factors, at least five of which are applicable to our discussion:

- (2) The degree to which the proposed action affects public health or safety.
- (3) Unique characteristics of the geographic area such as proximity to . . . wetlands, [or] wild and scenic rivers
.....
- (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
.....
- (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. [¶]

Mr. Dale Risling, Deputy Regional Director
July 2, 2008
Page 3

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- (10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

(40 C.F.R. § 1508.27(b).)

The following deficiencies in the Draft EIS preclude the lead and cooperating agencies from taking the required "hard look" at the Project's environmental consequences.

No Demonstrated Need To Acquire In Trust Parcels 2 and 12

In determining whether to acquire land in trust, the Secretary considers, among other things, a tribe's need for the land and the purposes for which the land will be used. (25 C.F.R. Part 151.10(b), (c).) Here, the Tribe seeks to acquire in trust 12 contiguous parcels of land. (Draft EIS at p. 1-1 & Fig. 1-3.) The Draft EIS indicates parcels 2 and 12 each contain a single family residence and undeveloped grassland utilized for moderate cattle grazing and raising horses. (*Id.* at pp. 3.8-13, 3.8-16.) No development is planned for parcels 2 and 12 under any alternative evaluated in the Draft EIS. (*Id.* at p. 4.8-23.) Therefore, the Tribe has not demonstrated need for the land for gaming or other purposes.

In addition, if land is acquired in trust for development of a retail shopping center under Alternative D, Figure 2-18 suggests the development could be reconfigured to locate the supporting infrastructure (e.g., fire station, wastewater treatment plant, subsurface disposal field and spray disposal field) entirely within parcel 3. This could accommodate the Tribe's proposed development without the need to acquire into trust parcels 1, 2 and 12, while simultaneously preserving the natural habitat existing on those parcels and reduce or eliminate potential wastewater discharge into Dry Creek, a tributary of the Mokelumne River that flows into the greater San Joaquin River and Delta. (See Draft EIS pp. 3.3-1 to 3.3-3, Figs. 3.3-1, 3.5-1 & 3.5-2.)

Water Resources

On June 4, 2008, the Governor issued Executive Order S-06-08, proclaiming a statewide drought and ordering several state agencies to take immediate action to address the serious drought conditions and water delivery limitations that currently exist in California. Consistent with the State's drought conditions, the Draft EIS acknowledges the City of Plymouth is currently experiencing an overdraft of available groundwater. (Draft EIS at p. 3.3-8.) In 1987 the State Department of Health Services (DHS) placed a

Mr. Dale Risling, Deputy Regional Director
July 2, 2008
Page 4

moratorium on development within the City of Plymouth because it could not provide adequate water to its residents with its existing water system. (*Id.* at p. 4.11-26.) In 1990, after the City improved its well source, DHS partially lifted the moratorium, allowing the City to issue no more than 50 building permits. (*Ibid.*) City staff has advised the State that approximately 12 permits remain.

Despite the City of Plymouth's demonstrated water shortage, the first option for each Project alternative to meet water demand is to connect to the City's municipal water system. (Draft EIS at pp. 4.9-1 to 4.9-3, 4.9-10 to 4.9-11, 4.9-19.) The Draft EIS suggests sufficient water will be available from the City when the City and the Amador County Water Agency complete the Plymouth Pipeline Project, which is scheduled to begin construction in 2008 and become operational the same year. (*Id.* at p. 2-8.) At this time, it would be speculative to conclude that the pipeline could satisfy Project demands. Also, any agreement between the City and Tribe to provide water for the Project must first comply with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). (See *County of Amador v. City of Plymouth* (2007) 149 Cal.App.4th 1089, 1095.) To our knowledge, no such agreement exists or has undergone CEQA review, rendering the possible effects on the human environment highly uncertain.

We also note the Draft EIS lacks specific information about whether the City's water source will be adequate to meet Project needs without significantly impacting existing and future customers. The Draft EIS states, without supporting analysis or statistics, that "Alternative A would not increase the projected water demands for the City of Plymouth or Amador County, as the casino and hotel would be located on land designated by Plymouth for commercial use and the water supply obtained from the City of Plymouth's municipal system would be limited to that already provided to the parcels." (Draft EIS at p. 4.11-28.) This statement suggests that with full build out of Alternative A, the Project will not draw more water from the City or County than the amount currently used by the 47-room Shenandoah Inn located on parcel 5, or the two private residences located on parcels 8 and 9. (See *id.* at pp. 3.8-14 to 3.8-15.) Elsewhere, the Draft EIS indicates that with full build out of Alternative A, the Project's water demand would be 32 percent of the City's average daily water supply, or 20 percent if it utilizes recycled water from the proposed on-site wastewater treatment plant. (*Id.* at p. 4.9-2.) It seems unreasonable to conclude that a 120,000 square-foot casino with multiple restrooms, bars and restaurants, a 250-room hotel, and a 30,000 square-foot event center would require no more water than a 47-room motel and two private homes. It is also unclear whether the current commercial and residential developments on City parcels account for 32 percent (or 20 percent) of the City's average daily water supply.

Mr. Dale Risling, Deputy Regional Director
July 2, 2008
Page 5

Without empirical evidence confirming the Project will not draw more water than existing City land uses, the conclusion that no significant cumulative effects to water resources are expected to occur appears unsupported.

If connection to the City's water source is unavailable, the Draft EIS proposes to obtain water from groundwater wells and trucking services, with the option to utilize recycled water from the proposed on-site wastewater treatment plant. (Draft EIS at pp. 2-8 to 2-10, 2-20.) The Draft EIS states that with full build out under Alternative A, the Project can meet water demands with 60 percent groundwater and 40 percent trucked-in water, or 93 percent groundwater and 7 percent trucked-in water if recycled water is utilized. (*Id.* at p. 2-20.) It also proposes increased reliance upon trucks if groundwater levels decrease. (*Id.* at p. 5-8 [proposed mitigation measure 5.2.3(C)(4)].) The Draft EIS includes a "will serve" letter from a commercial water supplier indicating the ability to supply 50,000 to 60,000 gallons per day for a five- to ten-year period. (*Id.* at Appendix D.) If recycled water is not utilized, then 40 percent of the estimated 188,500 gallons per day required for full project build out (see *id.* at p. 2-20) is 75,400 gallons per day, or 15,400 to 25,400 gallons per day more than the amount guaranteed by the "will serve" letter. However, the letter is dated May 20, 2004, and has less than six years remaining on its guaranteed water supply period. Therefore, based on estimates in the Draft EIS, trucked-in water does not appear to be a viable option unless recycled water is utilized. In addition, the option needs to be reevaluated in light of the current drought conditions in California.

Socioeconomic Conditions and Environmental Justice

The Draft EIS includes an economic impact analysis that is based upon a Municipal Services Agreement between the Tribe and the City of Plymouth that a state court has subsequently found invalid. (Draft EIS at Exh. R, Gov. Impacts VI-5; *County of Amador v. City of Plymouth, supra*, 149 Cal.App.4th at p. 1095.) It is also speculative because the analysis is premised upon assumed revenue sharing provisions in a Tribal-State gaming compact that has not yet been negotiated. Further, it miscalculates lost property tax value at \$22,121.96. (Draft EIS at Exh. R, Gov. Impacts VI-1, VI-5.) As indicated on page six of our December 28, 2006, comment letter, the 12 parcels were assessed \$34,689.60 in taxes in 2005.

The Draft EIS indicates payment of school impact fees would reduce the impact on local schools to less-than-significant levels. (Draft EIS at pp. 4.7-6 to 4.7-7; see also *id.* at § 5.2.7(D)-(G).) There is, however, no confirmation from Amador County School District that the proposed one-time contribution would sufficiently offset acknowledged impacts.

Mr. Dale Risling, Deputy Regional Director
July 2, 2008
Page 6

The Draft EIS also concludes there will be no impact on pathological and problem gambling in Amador County and its surrounding areas because the region has been exposed to many forms of gambling, including destination casinos, for many years. (Draft EIS at p. 4.7-9.) This conclusion is unsupported and fails NEPA's requirement that an agency evaluate a project's cumulative impacts. The conclusion is based upon a report published by the National Gambling Impact Study Commission in 1999. (*Id.* at pp. 4.7-8 to 4.7-9.) The 1999 report did not have the opportunity to evaluate tribal gaming in California as it exists today. Additionally, the Draft EIS does not consider more recent studies by the California Research Bureau (CRB) detailing the correlation between Indian casinos and compulsive and problem gambling and estimating that the costs associated with problem and pathological gamblers is about \$1 billion per year in California. (CRB, *Gambling in the Golden State: 1998 Forward* (May 2006) CRB 06-004, 72, 83-85, 127-139.) Approximately 77.5 percent of calls to the California Council on Problem Gambling, Inc., a nonprofit organization, are generated by gamblers whose primary preference is gambling in an Indian casino. (*Id.* at p. 84.) To combat these adverse social effects, the State has earmarked some revenues from existing compacts to fund state programs for problem and pathological gamblers (see Gov. Code, § 12012.85, subd. (g)(2)) and has included many provisions in existing compacts to address problem and pathological gambling. The Draft EIS needs to evaluate the cumulative impacts the proposed casino would have on problem and pathological gamblers, using more recent studies and in light of the proximity of an existing tribal casino near the City of Jackson and a proposed tribal casino near the City of Lone. (Draft EIS at pp. 4.11-3 to 4.11-4.)

The Draft EIS concludes the Project will cause minimal adverse impacts on crime. (Draft EIS at p. 4.7-10.) The conclusion, however, is unsupported. For instance, the Draft EIS includes no evidence supporting the assertion that legalized gaming reduces crime by reducing illegal gaming, decreasing employment and stimulating the local economy, or that communities with casinos are just as safe as communities without casinos. (*Id.* at pp. 4.7-9 to 4.7-10.) The 2006 CRB report, however, confirms that in California higher crime rates, including aggravated assault and violent crimes, are correlated with a greater casino presence and result in increased public expenditures (\$15.33 per capita) for law enforcement. (CRB, *Gambling in the Golden State: 1998 Forward*, *supra*, at p. 72.) The Draft EIS, however, includes no information regarding the type and scope of criminal activity directly and indirectly attributable to the region, the existing gaming facility in the county, or any similarly situated hotels and RV parks.

The contention that the introduction of "any" large scale development will result in an increased volume of crime (Draft EIS at pp. 4.7-9 to 4.7-10) does not address the nature of this proposed Project and crime impacts specifically related to a casino that are not present with other large scale development. In addition, the assertion that increased

Mr. Dale Risling, Deputy Regional Director
July 2, 2008
Page 7

tax revenues would fund expansion of law enforcement services required to accommodate planned growth lacks supporting detail and evidence as to what revenue would be subject to state or local taxation, rendering the impact highly uncertain.

Conclusion

The Draft EIS appears to need work in several areas, including additional information to fully assess the nature and scope of the Project's environmental impacts, and whether the proposed mitigation measures are sufficient. These comments do not constitute the entirety of the State's comments on the Draft EIS. Other State agencies with specific technical expertise may provide additional comments in separate letters.

Thank you for the opportunity to comment on the Draft EIS, and we look forward to your response.

Sincerely,


ANDREA LYNN HOCH
Legal Affairs Secretary

cc: Matthew Franklin, Chairman, Ione Band of Miwok Indians