



OFFICE OF THE GOVERNOR

September 13, 2010

Via Facsimile (916) 978-6099 & U.S. Mail

Mr. Dale Risling
Acting Regional Director
Department of the Interior
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, California 95825

Re: Lone Band of Miwok Indians Proposed 228.04-Acre Fee-to-Trust
Acquisition and Casino Project, Final Environmental Impact Statement

Dear Mr. Risling:

While this office appreciates the opportunity to comment on the Final Environmental Impact Statement (FEIS) dated February, 2009, for the fee-to-trust application and proposed casino project of the Lone Band of Miwok Indians (Tribe), it is regrettable that the request for additional time to comment made on this office's behalf has been denied by the Bureau of Indian Affairs. In addition to the personal circumstances of the attorney who has been responsible for review of the Draft EIS (DEIS), which were made known to the Bureau promptly following receipt of the FEIS and the Bureau's Notice of Availability on August 6, 2010, the length of the FEIS, approaching 3,500 pages and addressing many technical areas, presents an extreme challenge to proper review of the document within any 30-day period. Additionally, we note that three environmental documents for casino projects proposed by other California tribes were recently released for comment. Please be advised that we take seriously our role in reviewing these matters and attempt to provide thorough and thoughtful comments. We ask that in the future appropriate consideration be given to our requests for additional time to submit comments.

Our comments of the FEIS are detailed below.

No demonstrated need for acquisition of Parcels 2 and 12.

Commenting on the DEIS in 2008, this office noted that there was no demonstrated need to acquire Parcels 2 and 12 into trust. Parcels 2 and 12 together account for slightly less than 20 acres of the proposed acquisition. The FEIS response states that these parcels "are necessary for sprayfields and other wastewater and groundwater mitigation measure, and to mitigate the aesthetic impacts of the project." (S6-05 at S-7.) Parcels 2 and 12, however, are located to the north of any sprayfields and other wastewater mitigation facilities identified in the wastewater disposal options. (Note that Figure 2-1, the Alternative A (Phase I) Site Plan, incorrectly refers to Figure 2-1 as supplying details on wastewater disposal options. The correct reference appears to be Figure 2-5.) Neither Figure 2-5 nor any other representation in the FEIS identifies any wastewater or groundwater mitigation measure, or mitigation of aesthetic impacts, that rely on trust status for either Parcel 2 or Parcel 12. Instead, all wastewater disposal and mitigation measures appear to be situated within Parcel 1. (FEIS Figs. 2-1, 2-5, 2-6, 2-7, 2-9, 2-11, 2-12.) The response also states that "[a]s the Tribe currently has no land in trust, there is a need for all of the project parcels to be taken into trust in order to promote Tribal economic development and self-sufficiency" (S6-05 at S-7). This response does not clarify the need for Parcel 2 or Parcel 12 to be included in the trust acquisition or enable the "hard look" at environmental consequences of proposed action, and at possible alternatives, that NEPA requires (*Kleppe v. Sierra Club*, 427 U.S. 390, 410, n. 21 (1976)).

Water Resources.

The FEIS response to this office's prior comments on water resources, concerning reliance on water supplies available to the City of Plymouth, indicates the cumulative analysis assumes no change in water supply to the in-city commercial parcels after they are taken into trust, and refers to the two water options identified in Section 2.0 of the DEIS. Option 2, which the FEIS now identifies as the preferred water supply option, anticipates relying on groundwater extraction rather than obtaining water from the municipal water supply (Option 1). It appears from the FEIS that the City of Plymouth would be able to satisfy some portion of its own and the project's future water needs through the Plymouth Pipeline, which was completed in October 2009, some months after the completion of the FEIS. Since the preferred option does not propose to rely on this source but rather on groundwater, the FEIS should more clearly identify the extent to which the City may be required to rely on some continued groundwater extraction to meet future municipal water needs. Otherwise, the FEIS' supposition that tribal groundwater pumping will allow the Tribe to meet its Alternative A Phase I potable water requirement (which the FEIS identifies as 98,000 gpd) appears uncertain, since the project's ability to realize its total firm yield (reported at approximately 116,640 gpd (FEIS 2-9) cannot be reliably anticipated. The FEIS, issued prior to the advent of the Plymouth Pipeline, reports the City pumping at the maximum rate to meet its then existing needs (FEIS 4.11-7), apparently resulting in an overdraft of the local basin (FEIS 4.3-10), and states that tribal pumping could increase the basin deficit.

(FEIS 4.3-10.) The inquiry would appear to be even more critical with respect to Alternative A Phase II, since there appears to be no question that tribal groundwater extraction will be inadequate to meet Phase II's implied increase of about 18 percent in the project's potable water need, which the FEIS states will total 116,700 gpd. (FEIS 2-8, 2-21.) Accordingly, the FEIS

should be modified to reflect the feasibility of Option 2, taking into account the City's potential groundwater needs, if any, based on more current data from the period following the operation of the Plymouth Pipeline.

In addition, the effect of the project's intended use of groundwater on other users under Option 2, as applied to both Alternatives A and B, requires clarification. The FEIS states that tribal groundwater pumping "would not likely affect neighboring wells, although the potential for this impact does exist." (FEIS 4.3-10.) Clarifying information is required in order to permit an informed assessment of the practicality of identified tribal mitigation measures affecting other groundwater users. (FEIS 5-9 – 5-10.) Given the uncertainty over the City's future groundwater extraction needs, it is difficult to determine the likelihood of resort to these measures and how practical they may be.

Problem gambling.

The DEIS concluded that there will be no impact on pathological and problem gambling within the County and surrounding areas because the region has been exposed to many forms of gambling, including destination casinos, for many years. This conclusion does not appear supported in the FEIS. Both the DEIS and the FEIS refer to a study by the National Gambling Impact Study Commission published eleven years ago, and apparently rely on the study's reference to the fact that, at that time, approximately 86 percent of Americans reported having gambled at least once during their lifetimes and 63 percent reported having gambled at least once during the previous year. (FEIS 4.7-8-9.) These facts are insufficient to support a conclusion that a regional population's exposure to gambling renders pathological and problem gambling a less-than-significant impact.

In response to this office's comment on the DEIS's conclusion, the FEIS discusses a more recent study on gambling conducted by the California Research Bureau (CRB, *Gambling in the Golden State: 1998 Forward* (May 2006), identified in the comment, which noted the high percentage of calls to the California Council on Problem Gambling, Inc., generated by persons whose primary gambling preference was Indian casino gambling. (*Id.*, at p. 84.) The response suggests that the study did not take into account factors such as problem gambling education and other assistance offered at Indian casinos, and suggests that the higher percentage of callers attributable to Indian casinos may represent a more successful program of awareness and education compared to other types of legalized gambling. (FEIS S6-13 at S-9.) While these comments may have merit, the FEIS does not seem to recognize the significance of the CRB

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study's findings, which is that individuals with a primary gambling preference for Indian casino gambling constitute the overwhelming majority of all such callers. (*Id.*, at p. 84.) Under these circumstances, exposure of the regional population to the existence of, for example, a tribal casino in nearby Jackson, or another proposed tribal casino in the vicinity of the nearby lone, does not justify dismissal of problem gambling as a less-than-significant impact. In fact, such exposure is among the reasons the FEIS should evaluate problem and pathological gambling as a cumulative impact.

Crime.

The FEIR states that “[w]henver large volumes of people are introduced into a community, the volume of crime is expected to increase,” and that “the criminal incidents would be expected to increase as with any other development of this size.” (FEIS 4.7-10.) These impacts were determined to be “less than significant.” The FEIS does not appear to consider evidence that in California, greater casino presence correlates with higher crime rates including aggravated assault and crimes of violence (CRB, *id.*, at p. 72) and that the kinds of crime that occur where the activities of persons commonly and collectively engaged in close quarters are most likely to engender anti-social behavior. The FEIS should consider such evidence and address criminal impacts specifically related to casinos.

Other comments by State of California.

These comments do not constitute the entirety of the State's comments on the FEIS. State agencies with specific technical expertise on matters that have been, or should have been, addressed in the FEIS may provide additional comments in separate communications.

Thank you for the opportunity to comment on the FEIS.

Sincerely,



ANDREA LYNN HOCH
Legal Affairs Secretary