

Stand Up For California!
“Citizens making a difference”

www.standupca.org

P. O. Box 355
Penryn, CA. 95663

September 14, 2011

Amy Dutschke
Regional Director Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, Ca. 95825

RE: DEIS Comments, Los Coyotes Band of Cahuilla and Cupeno Indian Fee-to-Trust and Casino-Hotel Project

Dear Ms. Dutschke:

The following comments are being submitted on behalf of *Stand Up For California!* We reserve the right to submit additional comments as the freedom of information request we made of the Pacific Regional Office has not yet received a reply. We will address (1) the purpose and need of the tribe for this fee to trust acquisition, (2) the deficiency of the alternatives listed and omitted, (3) after acquired lands and its impact on the City of Barstow and State of California, (4) unaddressed impacts and (5) conclusion.

The proposed project includes the development of a casino with approximately 57, 070 square feet of gaming floor. The casino related amenities include food and beverage services, retail space, banquet/meeting space, administration space and a hotel tower with 100 rooms. The entire complex will cover 23.1 acres of land located within the incorporated boundaries of the City of Barstow, San Bernardino County, California, just east of Interstate 15 on the way to Las Vegas, Nevada.

I. PURPOSE AND NEED:

The purpose and need of the proposed action is, “... to help provide for the economic develop of the Tribe and stability and self sufficiency of the Tribal government resulting in economic, social and other benefits for the Tribe.” The DEIS further lists the four permitted uses of gaming revenues under the Indian Gaming Regulatory Act as supporting the Tribes purpose and need for this fee-to-trust acquisition of 23.1 acres. The DEIS does not give a clear statement as why the Tribe needs the 23.1 acres of land in the City of Barstow.

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In other words, the purpose and need to take land out of the regulatory authority of the State, take the land off of the state and local government tax rolls, ignore all California environmental laws, civil regulatory laws and complicate the administration of justice to the surrounding community is for a casino as only a casino located on an interstate highway 150 miles from the Tribes established reservation, can satisfy the needs of the Tribe and its gaming investor from out-of-state.

“...the Tribe has no sustained revenue stream that could be used to fund programs and provide assistance to Tribal members.” (DEIS at page 1-2, last paragraph) This statement is out-of-date. Since 2001, the Los Coyotes Band has been listed on the quarterly report of the California Gambling Control Commission for the distribution of the Revenue Sharing Trust Fund (RSTF) money. Non-gaming tribes receive 1.1 million dollars annually in quarterly payments. **This is a sustained revenue stream that the Tribe has enjoyed over the last decade.** This is a significant sum of money to invest, provide health insurance or generate economic activity on-off the reservation. (Approximately 11 million dollars over the last decade)

January 4, 2008, the Assistant Secretary of the Department of the Interior issued a denial letter for the fee to trust acquisition proposed by the Los Coyotes in 2006 for this same spot of land for the same exact purpose. What has changed? The letter clearly states, “*The IRA has nothing to do directly with Indian gaming*” (Page 1 last paragraph). Thus, it appears that the supplemental reasons for purpose and need listed in the DEIS copied at page 1-2 from the Indian Gaming Regulatory Act (Section 2710 (b)(2)(B) (i-iv)) are not valid reasons for this fee-to-trust transfer.

Further, page 1-3 of the DEIS states Congress finds “a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency and strong tribal government” (25 U.S.C. 2701). This section of the Indian Gaming Regulatory Act is written with the intent and spirit of “on reservation” gaming activity. It is not until section 2719 of the Indian Gaming Regulatory Act that the reader is introduced to the “*limited exceptions*” for the acquisition of after-acquired lands for gaming.

In Assistant Secretary Larry Echo Hawk’s September 1, 2011 two part determinations he considers the distance the tribes are from their established reservations. In the positive determination for the North Fork, he states, “More than 60% of the tribal members live within 50 miles of the proposed site. Gaming revenues would allow the Tribe to increase its service-delivery to tribal members, and allow the Tribe to develop a land-base.” In the Enterprise determination, Assistant Secretary Echo Hawk repeats a distance of 54 miles from the Tribes existing trust lands (driving distance).

These are relevant statements to consider for the Los Coyotes proposal. The 23.1 acres of land in Barstow are approximately 150 miles from the established reservation. In the Desert Dispatch August 1, 2011, *Bill would require analysis of off reservation projects*, a statement by a tribal member presents a new concern about distance, “Tina Johnson, a Los Coyotes member, said in an interview at a July 27, public hearing for the casino that over 50 percent of the tribe members live in San Bernardino or Riverside Counties, and that many are planning to work at the casino.”

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Many of these tribal members live on other Indian Reservations in San Bernardino and Riverside Counties, such as the Morongo Reservation. This leaves less than 50% of the Los Coyotes members currently living and seeking to develop business opportunities on the established Reservation. An off reservation casino 150 miles away would only further disrupt the Los Coyotes continuity as a community. The division in the location of the membership as well as the political factions that have developed due to the divided locations already appears to have played a part in the recent arson fire at the location of the proposed “on reservation” casino alternative. *Tribal tensions come to light following Eagle fire*, August 27, 2011, by Edward Sifuentes, North County Times.

As stated in the 2008 letter of denial by then Assistant Secretary Carl Artman, “While the financial benefits of the proposed gaming facility might create revenues for the Tribe and may mitigate some potential negative impacts, the Tribe’s application fails to carefully address and comprehensively analyze the potential negative impacts on reservation life and does not clearly demonstrate why these negative impacts should be out weighted by the financial benefits of tribal ownership of a remote gaming facility.” The current negative impact of two young tribal members facing 10 years to life in federal prison is a far reaching impact leaving a life time scar on the tribal community. No financial benefit can heal or mitigate this negative impact.

II. ALTERNATIVES:

The DEIS provides the following alternatives:

- (A) Barstow casino and hotel complex project
- (B) Barstow Reduced Casino Hotel Complex
- (C) A reduced intensity casino at a 19 acre site within the los coyotes reservation
- (D) A non-gaming alternative specifically the development of a campground facility within the Los Coyotes Reservation
- (E) A no action alternative

The alternatives offered and omitted create a substantial inadequacy in the DEIS. The DEIS is really only proposing a project of a casino. The DEIS proposes a casino off reservation, a reduced casino off reservation, a casino on the reservation, a camp ground or no action. There is no non-gaming alternative for the Barstow site or any other lands off reservation within the Tribes historical areas. This is not a reasonable range of comparable alternatives. The Tribe currently has a campground on the Reservation that fell into disarray but in recent time appears to be in the process of refurbishment.

Omitted from this list of alternatives is a current business venture of the Los Coyote, the Eagle Rock Training Center located on the Tribe’s established Reservation. *Tribal tensions come to light following Eagle fire*, August 27, 2011, by Edward Sifuentes, North County Times. This recent news article indicates that the agreement is still in place.

Why is the Eagle Rock Training Center Agreement not included in the DEIS? The location of the “on reservation casino proposal” and the training center are one in the same? The **DEIS**

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must explain why? There is no explanation in this document. News reports from the North County Times indicate this facility provides a “revenue stream” from government contracts and Hollywood Film productions. Moreover, a call to the County of San Diego verifies that the Tribe has not approached the county to negotiate a casino development on the established reservation. The DEIS due to a lack of a county mitigation agreement fails to provide mitigations for an on reservation casino alternative.

This document lacks a reasonable range of alternatives. The DEIS is offering myopic alternatives for a casino, a casino or a casino. The National Environmental Impact Act requires a reasonable range of alternatives that satisfy the purpose and need and avoid or minimize significant impacts. The alternatives must rigorously and objectively evaluate a comparable form.

California is seeking green energy. The remote location of the reservation and its geography provide entrepreneurial opportunities for solar and wind developments. Perhaps the DEIS should explore such opportunities in comparable form to meet the Tribe’s purpose and need.

III. AFTER ACQUIRED LAND FOR GAMING - 25 CFR 151.11:

After acquired lands for gaming and particularly lands that require the Department of the Interior to consider the location of the land relative to State Boundaries and its distance from the boundaries of the Tribes established reservation must be given considerable scrutiny as the distance increases. The land-use must support the justification of the benefits to the Tribe and that there will be no detrimental impacts to state and local governments.

Under the off reservation exception, the Secretary must determine that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community. The Governor of the State in which the proposed gaming facility would be located must concur in that determination. The Secretary’s determination can only be reach after significant consultation with state and local officials, including nearby Indian tribes. The off reservation exception does not provide nor do any of the other exceptions found in section 20 of IGRA provide objective standards that require determinations to be based on hard factual evidence. Rather, Secretarial determinations are based on political discretion, which more often than naught ignores the voice of the non-tribal public.

- **The impacts of the proposed off reservation casino 150 miles from the Tribe’s established reservation are detrimental to public policy and the good operation of state and local governments.**

Impacts to the City:

The City of Barstow has negotiated a Municipal Service Agreement with the Los Coyotes and is satisfied with the revenue sharing benefits of the agreement. However there are concerns regarding this agreement. In our view, we believe that entering into the agreement with BarWest LLC and the Los Coyotes Band of Mission Indians is/was both unlawful and ill-advised for the following reasons:

Failure to comply with the California Environmental Quality Act (CEQA) prior to the City Council of Barstow performing a legislative act to enter into a binding and enforceable contract with the Los Coyotes Band of Mission Indians and BarWest LLC for the development of Casino complex. *Tribe wants 20 acres made sovereign, Desert Dispatch Thursday July 1, 2003.*

The City Council of Barstow did not comply with the California Environmental Quality Act, (CEQA) before legislatively voting to approve the service agreement. While the City is providing only a preliminary support for the tribal governments proposed project, they have signed a binding and enforceable agreement requiring the City to provide services. The proposed Municipal Service Agreement (MSA) constitutes a “project” under the California Environmental Quality Act and yet no CEQA analysis was ever undertaken, much less completed or made available for public review. **While the tribal government is not subject to CEQA, the City is.**

The proposed MSA contains provisions legally binding the City to several definite courses of actions that will involve physical changes to the environment. The City cannot bind itself to provide additional services at the Tribe’s or Bar West’s request where the City presently lacks the capacity to provide them and must complete both an environmental impacts analysis and consider discretionary approvals in order to upgrade its service facilities.

- **Because no analysis was done the public was not able to identify an exhaustive list of all possible actions required by the proposed MSA at the July 1, 2004 informational hearing. That would have necessitated an environmental analysis.**

Redevelopment Agency litigation: The cities of Hesperia and Palm Springs¹ negotiated through their Redevelopment Agencies in violation of California State law. It appears the subject land for the casino in Barstow is within the purview of the City’s Redevelopment Agency. Health and Safety Code§ 33426.5.² This issue has previously been litigated by the State successfully against cities negotiating with tribes. This raises concerns over compliance with state law.

- (c) A development or business, either directly or indirectly, for the acquisition, construction, improvement, rehabilitation, or replacement of property that is or would be used for gambling or gaming of any kind whatsoever including, but not limited to, casinos, gaming clubs, bingo operations, or any facility wherein banked or percentage games, any form of gambling device, or lotteries, other than the California State Lottery, are or will be played.

Impacts to the State:

The proposed Land if acquired for gaming will undermine the constitutionality of California’s Indian gaming regime. As you may be aware, the State has successfully defend a

¹ The Desert Sun, 11-04.03, by Brian Joseph, *Palm Springs deal sparks lawsuit*

² The Hesperia Star, 10-21-2003, by Peter Day, *Casino Battle Heats Up*

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challenge to the constitutionality of Proposition 1A³, which challenge alleged that California violated the Equal Protection Clause of the United States constitution when it permitted Indian tribes to conduct class III gaming on Indian lands, to the exclusion of all others. *Artichoke Joe's*, supra, 353 F. 3d at 731. In upholding Proposition 1A, the Ninth Circuit Court of Appeals relied upon the State's restriction of tribal gaming "to carefully limited locations" as a reasonable means of serving the State's interest in protecting the public health, safety, welfare and good order.

The proposed Land if acquired for gaming will undermine the sovereign authority of tribal governance. In a letter dated January 10, 2010, the Honorable Nelson Pinola, Tribal Chairman of the Manchester-Point Arena Band of Pomo Indians alerts fellow tribal leaders of a pending BIA action that he believes poses a very serious and immediate threat to tribal government gaming. "I believe that if we allow the strong clear, historical, governmental and cultural connection between our land and our sovereignty to be broken we are playing into the hands of the enemies of tribal sovereignty. Their arguments will be strengthened by a BIA decision to simply create sovereign authority over any land that looks good for a business."

The propose Land if acquired for gaming will disenfranchise the state electorate. In 2000 voters of California were asked to grant a monopoly to tribal governments for class III gaming on Indian lands. It was never the intent that new Indian lands would be created for the sole purpose of casinos. **In recent time, citizens have considered support for expanding gaming to all gaming interests in the State if off reservation gaming on after acquired lands is permitted.**

IV. UNADDRESSED IMPACTS

On July 31, 2011, the San Bernardino Sun published a story by Jim Steinberg; the *Las Vegas train threatens Barstow*. This news report raises both interesting and devastating predictions that the DEIS has not addressed as potential impacts to the marketability of a casino at this location in the City of Barstow. "The proposed Desert X-press, would divert 33 percent of the traffic on the 15 Freeway that stops in Barstow and cause the loss of 2,295 jobs, Barbieri's report says." The proposed high speed train would link Victorville to Las Vegas bypassing the City of Barstow. This change in gaming marketability presents a circumstance that requires a supplemental Environmental Impact Statement.

V. CONCLUSIONS:

The citizens of the City of Barstow who are not supportive of an off reservation casino promoted by a Tribe from 150 miles away with investors from out of state, have justifiable expectations that the community remains similar to its present character.

Stand Up For California! appreciates the opportunity to submit the foregoing comments and

³ Proposition 1A provided for a limited exception for federally recognized Indian Tribes on California Indian Lands in the States prohibition on Casino style gaming. This statewide ballot measure was supported by 64% of California voters on March 7, 2000.

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trust that the Secretary will consider this analysis. We hope you will find these comments helpful and useful in your decision making process. An approval of an off reservation casino in the City of Barstow will have far reaching impacts. Please do not hesitate to contact us if you require additional information or have questions.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl A. Schmit". The signature is written in black ink and is positioned above the typed name and contact information.

Cheryl Schmit

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