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February 13, 1997

Ronald Jaeger  
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RE: DRAFT ENVIRONMENTAL ASSESSMENT (JUNE 1996) CONCERNING  
THE MECHOOPDA INDIAN TRIBE'S PROPOSED LAND ACQUISITION  
IN SUTTER COUNTY

Dear Mr. Jaeger:

This letter sets forth Sutter County's informal comments on the June 1996 Draft Environmental Assessment (EA) submitted by the Mechoopda Indian Tribe. Please understand that these comments focus only on major, substantive deficiencies. We received the EA on January 9, and although you extended the original January 24 deadline to February 14, more time is needed to review and comment adequately on such a lengthy, complex document. Time constraints thus precluded thorough analysis of the many factual inaccuracies and technical errors we found.

We can and will address those inaccuracies and errors later, when the final EA is available. One factual misstatement must be addressed now, however, for it casts doubt on the entire EA. The EA repeatedly refers to the December 1991 South Sutter County General Plan Amendment. (See in particular sections 3.7.7 and 4.7.7.) But that document never became effective, having been rejected by a referendum vote in June 1993. Accordingly, at a minimum the EA must be revised to take into account the current Sutter County General Plan and accompanying environmental impact report (both adopted in November 1996).

For convenience, we have grouped the balance of our comments into three general categories: reasonable alternatives, physical impacts, and social and economic impacts.

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Reasonable Alternatives

According to the regulations promulgated by the Council on Environmental Quality, the EA must discuss reasonable alternatives to the proposed casino. It must also discuss the environmental impacts of those alternatives. (40 C.F.R. § 1508.9; see also 30 BIAM Supp. 1, § 4.3.) BIA's own regulations amplify this requirement:

All reasonable alternatives must be considered, including "no action". The alternatives should not be merely exercises done to fulfill this requirement; they should be honest attempts to find other ways to meet the identified need or achieve the identified purpose while reducing or eliminating harmful environmental impacts. The alternatives should be described in detail sufficient to permit comparison of their merits, especially if their impacts are different, e.g., in kind, size, location, intensity, or duration. ([40 C.F.R.] §1502.14)

(30 BIAM Supp. 1, § 4.3 D.)

The avowed purpose of the tribe's proposed casino is to meet BIA's "goal of encouraging tribal self-sufficiency and economic development . . . [and] to encourage effective tribal self-government." (EA § 1.3.) More specifically, according to the EA the casino "will serve the longstanding and vital need of the Tribe by providing much needed economic opportunities." These opportunities purportedly will flow from revenue that "will be used to meet the need for housing, education, job training, cultural restoration/preservation and health care" and from "direct jobs as well as professional and vocational training opportunities." (Ibid.)

One would think that such broadly defined goals could be met in a number of ways. (See City of New York v. Department of Transp. (2d Cir. 1983) 715 F.2d 732, 743 [the scope of alternatives to be considered in an EA depends on how broadly the purpose to be fulfilled is defined].) And yet, the EA lists only one alternative to the proposed action--do nothing at all. (EA § 2.2.)

The discussion of alternatives is arguably the heart of an EA, just as it is the heart of an environmental impact statement. (See 40 C.F.R. § 1502.14; 30 BIAM Supp. 1, § 4.3D.) All reasonable alternatives should be explored and objectively evaluated, and those alternatives should be "honest attempts to find other ways to meet the identified need or achieve the identified purpose while reducing or eliminating harmful environmental impacts." (Ibid.) The tribe's EA ignores these standards, however, substituting an

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unreasonable take-it-or-leave-it discussion (a scant 150 words long) that improperly stacks the deck in favor of the casino. Could the tribe's economic opportunities and self-sufficiency be improved by using the proposed casino site for commercial or industrial purposes instead, or by building the casino elsewhere? Probably so. But the EA fails to explore these possibilities or explain why they are infeasible. This omission alone renders the EA fatally defective.

Physical Impacts

• Drainage and Flooding

As the January 1997 storms illustrate, careful attention must be paid to flooding issues. Unfortunately, the EA is woefully inadequate.

The project site is located in Zones X and A99 on Flood Insurance Rate Maps. Zone A99 is a special flood hazard area subject to inundation by 100-year floods. Indeed, in February 1986 flooding resulted in the closure of Sankey Road in the vicinity of the site. During January 1997, moreover, Sankey Road was closed from Highway 99/70 east to Pleasant Grove Road because of flooding. Had the casino been in place, the only access to it would have been blocked.

None of these issues is adequately addressed. (See EA §§ 3.2.2, 4.2.1.) To assist BIA in properly assessing and mitigating flood risks, the U. S. Army Corps of Engineers should be designated a "cooperating agency." (40 C.F.R. §§ 1501.6, 1508.5.)

(We note, incidentally, that were the county to retain jurisdiction over construction on the site, we would require that all structures be constructed one foot above the 100-year based flood elevation. (See EA § 4.2.1.))

Turning to drainage, we are concerned that the EA fails to look thoroughly at stormwater runoff. Development of the site means large areas of impervious paved surfaces (e.g., parking lots) as well as other topographical changes. This will substantially increase drainage of storm waters onto adjacent lands, perhaps causing offsite flooding, including flooding of county roads. (Note that the Sutter County Code prohibits development that increases drainage to county roads.) Extensive offsite and onsite improvements thus will be needed to avoid such problems, e.g., drainage facilities that will convey stormwaters to the Sacramento River. But the EA does not say how drainage will be handled or mitigated other than to speculate about possible arrangements with Reclamation District 1000. (EA § 4.2.3.)

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• Traffic

The EA fails to address the safety and maintenance impacts of adding over 7,000 vehicles a day to county roads. (See EA § 4.7.8.) Will the tribe mitigate these impacts? The EA does not say.

Nor does the EA address how those 7,000 additional vehicles will affect the intersection at Sankey Road and Highway 99/70. (Ibid.) At the least this increase will probably require that a traffic signal be installed. Who pays for that? Again, the EA is silent. In addition, as the area develops, the intersection at Sankey Road and Highway 99/70 may need an interchange. The EA should address this likelihood as well. (Incidentally, section 2.1 misleadingly refers to a Sankey Road "exit" and "offramp" at this intersection when in fact no such facilities exist. Sankey Road intersects Highway 99/70 "at grade," and traffic on Sankey is controlled by stop signs while traffic on Highway 99/70 is uncontrolled.)

The EA also fails to address safety issues that will arise whether or not a signal is installed. (EA §§ 3.7.8, 4.7.8.) During the winter, this section of Highway 99/70 frequently is fogbound. With an additional 7,000 vehicles exiting and entering the highway each day, the heightened risk of serious accidents at the intersection is obvious.

Lastly, the EA says nothing about existing traffic conditions or expected traffic impacts on Riego/Baseline Road or Pacific Avenue. (EA §§ 3.7.8, 4.7.8.) Traffic generated by the casino likely will use these roads as alternative routes to and from Roseville, Placer County, and other areas to the east. But these roads are designed to handle traffic associated with a rural area, not the urban levels of traffic expected from this project.

• Endangered Species

The property is located within the Natomas Basin, which provides critical habitat for two "threatened" species--the Giant Garter Snake and the Swainson's Hawk. Although the EA acknowledges that the project site may contain suitable habitat for these species (as well as for six other species of concern: the Aleutian Canada Goose, the Burrowing Owl, the Mountain Plover, the San Joaquin Pocket Mouse, the Ferruginous Hawk, and the White-Faced Ibis), it contains only the most cursory discussion of impacts and mitigation measures. (EA §§ 3.4.1, 4.4.1, 4.4.2.) Worse, it does not discuss cumulative impacts at all. We suggest that BIA consider mitigation measures similar to those in the draft Habitat Conservation Plan now being prepared by the Sacramento Area Flood Control Agency.

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• Sewer and Water

Water for the project will be provided in part by groundwater extracted through private wells and in part from the Natomas Central Mutual Water Company (NCMWC), which obtains water from the Sacramento River. (EA § 4.2.2.) But how much water will come from each source? The EA does not say. Nor does it say whether NCMWC has committed to supply water or otherwise verified that it can do so. How, then, can the project's impact on water resources and those who currently use them be appropriately analyzed?

Also inadequately addressed are the disposal of sludge produced by the sewage-treatment plant, and the use of reclaimed water and sewage. Where will the sludge be taken? No disposal site is identified. (See § 4.8.5.) Is the use of reclaimed water for irrigation a discharge that requires a permit from the Regional Water Quality Control Board? And how will the reclaimed water be handled during the winter when use for irrigation is impractical? Finally, we note that the water supply calculations in Appendix A to the EA appear to be incomplete.

• Air Quality

Section 3.3.2 states that national ozone standards have not been exceeded. The table on page 3-10 indicates, however, that the maximum concentration level for ozone did exceed the national daily standard in 1993. Which is correct?

• Light and Glare

The EA fails to discuss light and glare impacts from this project. It also fails to discuss mitigation measures needed to eliminate those impacts. (EA § 4.8.3.)

Social and Economic Impacts

The focus of sections 3.6, 4.6, and 5.0 is on the tribe's socioeconomic status. This seems misplaced. The focus should instead be on the socioeconomic effects caused by the project to the project site and surrounding areas. (See 40 C.F.R. §§ 1502.3, 1502.16, 1508.8, 1508.9(b), and 1508.14; 30 BIAM Supp. 1, §§ 4.1, 4.3D, 4.3E, 4.3F, 5.1, 5.3A; see also 42 U.S.C. § 4332(2)(C).) Perhaps more troubling, the EA fails to address the project's impact on law enforcement, fire and emergency services, and health and welfare.

• Law Enforcement

The EA virtually ignores the substantial social and economic impacts this project will have on Sutter County law enforcement

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personnel. (EA §§ 3.8.4, 4.8.4.) All it says is that the tribe's security force "should be capable of dealing with any instances of disorder or disturbance that may arise." The only mention of Sutter County agencies is the suggestion--almost an afterthought, really--that casino management "enter into a mutual aid or similar agreement with the Sutter County Sheriff Department."

According to the sheriffs in five comparable counties that already have Indian gambling establishments (Yolo, Amador, Shasta, Lake, and Calaveras), without exception their offices have been saddled with most if not all of the responsibility for responding to criminal activity related to those establishments. Arrests, investigations, calls for service, prisoner transportation--these and other law enforcement duties must be performed by county law enforcement personnel even though two of the tribes in the counties have their own police departments and the other three have their own security forces, as is proposed here. Note, moreover, that the Sutter County Sheriff's burden will be compounded by distance: both his headquarters (from which deputies are dispatched) and the county jail (to which prisoners must be transported) are in Yuba City, 28 miles from the project site.

Equally distressing, the EA says absolutely nothing about impacts on the Sutter County Consolidated Municipal and Superior Court, the Sutter County District Attorney, or the Sutter County Probation Department. Businesses that promote gambling inexorably produce crimes such as theft, forgery, embezzlement, fraud, juvenile delinquency, child abuse, and domestic violence, not to mention drug abuse, alcohol abuse, and driving while intoxicated. And be assured, it will be the taxpayers of Sutter County, not the tribe, who will pay the costs of policing, trying, and incarcerating persons who commit such crimes. (See, e.g., the article entitled A Busted Flush at pages 26 through 28 of the January 25, 1997, edition of The Economist.)

Sutter County is already hard pressed to meet its citizens' existing law enforcement needs. The substantial negative impacts of this project on the sheriff, courts, district attorney, and probation department are certain to occur. They must be addressed.

- **Fire and Emergency Services**

The EA mentions the Pleasant Grove Fire Station, implying that it will provide services to the project. (EA §§ 3.8.4, 4.8.4.) But the personnel at this station are volunteers, and their equipment is suitable only for a rural level of service. Thus, the station is ill-equipped to handle the increased number of traffic accidents (including vehicle fires) likely to result from the project, let alone a major fire at the casino. As to emergency medical services, section 4.8.4 understates the probable impact of the project. Cardiac events, seizure disorders, diabetic emergencies, and other complex medical problems can be expected to occur

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regularly whenever "hundreds of people" are gathered. How will these emergencies be met? The county does not have adequate resources in the project area to respond appropriately.

• Health and Welfare

The problems identified above in the discussion of law enforcement will also significantly impact on the Sutter County Human Services Department. It meets the health, mental health, welfare, and social services needs of the county's residents. The EA says nothing about these impacts, however.

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As demonstrated, the EA raises more questions than it answers, and it fails to address many of the project's obvious significant impacts. Note, too, that acquiring the site in trust will remove it from the county's tax rolls while at the same time the project will increase the demand for county services. What is more, the unhappy experience of several communities throughout the country is that casinos not only are incompatible with existing businesses in the area but also tend to discourage other, desirable businesses from coming in. This tendency could thwart Sutter County's goal, codified in the general plan adopted last year, that the project site and all land in the vicinity of the site be developed for industrial and commercial uses.

Given these significant impacts, it seems clear that further environmental study is needed. Indeed, the very length of the EA (91 pages) indicates that an environmental impact statement must be prepared. (See 30 BIAM Supp. 1, illustration 7, entitled "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," at page 32, ¶ 36b ["Agencies should avoid preparing lengthy EAs except in unusual cases . . . . In most cases, however, a lengthy EA indicates that an EIS is needed."]); also see 30 BIAM Supp. 1, § 4.3 ["An EA should normally be no more than 15 or 20 pages . . . ."].)

We appreciate your affording us the opportunity to comment informally on the draft EA, and we hope you find this letter useful.

COUNTY OF SUTTER

  
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DICK AKIN, CHAIRMAN  
BOARD OF SUPERVISORS

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