

Feb. 11, 2011

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RE: Singley Hill Homeowners Association concerns over Bear Band Casino of the Rohnerville Rancheria

Dear Mr. Lynch:

This letter is in response to our recent conversation. The letter describes for you (1) the *Singley Hill Homeowners Association* and its brief history of involvement over the contentious issues created by the development of the Bear Band Casino (Casino), (2) current complaints and (3) potential solutions.

Singley Hills Homeowners Association (Association):

The Association, created pursuant to California Corporations Code section 1835, has been recognized by high-ranking State Officials, local government and the public as a Homeowners Association sincere in its efforts to preserve the rural character of their community and peaceful quality of life. This Association clearly understands the need to balance the rights of the non-tribal community with the rights of federally recognized tribal governments.

The Association has been active since 1993 when the Bear Band of the Rohnerville Rancheria (Tribe) began development on the newly acquired trust lands. At that time, participation was to seek environmental mitigations for the proposed housing paid for by Housing and Urban Development Grants specified as homes for needy Indians. To everyone's dismay, in addition to the homes, the Tribe poured a cement foundation for a tent casino. Tribal gaming as you know did not become legal until March 7, 2000.

In 1998, Mr. Eric Cortez, then-President of the Association, was the initial petitioner in the California Supreme Court case which overturned Proposition 5, a measure that attempted to legalize slot machines statutorily. It was Mr. Cortez's declaration along with 3 other community group representatives which described the significant social justice and environmental impacts of tribal gaming facilities in their neighborhoods that achieved a stay in the propositions enactment.

The actions of our community ultimately assisted in providing the State of California the time it needed to develop a much more state friendly Constitutional Amendment that allowed for a “limited exception” for the expansion of tribal gaming.

The Association continued its participation through letters to the Governor seeking mitigations and protections for their community through the development of fair and reasonable language in the tribal state compact. Unfortunately, the resulting 1999 tribal state compact only required a “good faith” effort from the Bear Band for the development of a mitigation agreement. The Tribe did not negotiate an agreement with the County to mitigate impacts. The many impacts that were identified continue today. The 1999 tribal state compact is a failed document causing both social and financial harm to all communities and local governments. Thus, members of the community have continued to participate in press events on the State Capitol Steps and have met with both the Secretary of Legal Affairs and the Director of the Gambling Control Commission under the Schwarzenegger Administration.

The Tribe’s Casino and all amenities have been built on after-acquired lands. The acquisition of after-acquired lands, if it occurred today, may not have resulted in a determination of “restored lands” for this Tribe. The National Indian Gaming Commission opinion is based solely on information provided by the Tribe and its gaming investors. For example, the 1999 Tribal Information and Directory of the Bureau of Indian Affairs, Sacramento Area Office indicated that there were only 8 enrolled tribal members of this Tribe. Yet today the Tribe claims over 300 members. Perhaps more importantly, the original Rancheria is located in Fortuna several miles from the casino site.

While the issue of after-acquired lands was strenuously raised both in state and at the federal levels, the Association lacked the necessary funding to fight that battle in court. Today, the California State Association of Counties, the National Association of County Officials, and United States Senators Boxer, Feinstein, Reid and Kyle have recognized the abuse of the “restored lands” exception for gaming. Citizens are anxious for federal legislation to avoid these abuses.

In the present case, the Association recognizes that this long sought after legislation is too late to protect our community from the development of a casino as it is now up and running. Nonetheless, we are still hopeful that upon tribal state compact re-negotiation there is recognition of the need to ensure smart growth that minimizes impacts in the developments of tribes like the Bear Band that are creating serious and critical impacts to the surrounding communities and significant financial costs to County government general funds.

Current Complaints:

In 2005, the Tribe applied for a liquor license. This brought a new level of concern to the neighbors of the Association. “Accusations” were filed with the Alcoholic Beverage Control

Department (ABC). After a series of hearings, the Association and Tribe reached an agreement in **March of 2006**. The agreement was accepted by ABC as its own and incorporated that agreement into the conditions for sale of alcohol within the license itself.

More specifically, the Tribe agreed to a number of conditions that would restrict the use of Singley Hill Road. Condition No. 8 states:

8. The licensee shall modify the entrance from Singley Road [sic] to Bear River Drive so that public vehicular ingress and egress is available only to and from the south on Singley Road. The modified entrance or a separate entrance shall provide access to the premises from the north on Singley road for emergency vehicles only.

Unfortunately, the Tribe has not lived up to the agreement or the terms of its license. On May 20th, 2009, the Administrative Law Judge John W. Lewis, agreed with the Association and found that the Bear River Casino “is not now, nor have they ever been, in compliance with Condition No. 8.

Compounding the lack of cooperation by the Tribe is its recent fee to trust acquisition. By Notice of Decision dated March 22, 2010, the Tribe has acquired an additional 113 acres of land. There are documented plans for a 4 story hotel with a “sports bar”, an amphitheater for outside concerts, and an RV park, in addition to the 60 or so houses that are presently being built.

All of these projects, with the additional traffic they will bring, will have a huge impact unmitigated on Singley Hill Road and the community at large.

The Tribe has known since March of 2006 that they needed to comply with condition #8. With all the new plans and development creating a massive commercial and residentially dense expansion on the tribal lands, why has compliance with condition #8 not been given consideration? The Association remains hopeful that the Tribe, its consultants and advisors can come up with a solution for the traffic issues that meets it’s agreed upon condition #8.

Traffic and the crime it brings with it:

Traffic and crime have been a major point of contention for the Association. A commercial development in an area that is zoned agricultural has a significant negative impact to the quality of life and to the environment. As attached documents will evidence, there has been a significant increase in DUI’s, collisions, drug arrests, reckless drivers and speeding as well as the increased density of traffic affecting the life-safety of the neighbors and especially the children and the elderly.

As the attached photographs demonstrate¹, Singley Road is a narrow two lane road, there are no shoulders, no lights and the road is not straight. During some months of the year, there is a dense fog that further inhibits visibility.

This traffic has imported crime into the community. The road has become littered with trash, including hazardous materials such as used prophylactics and drug paraphernalia. Property damage to fencing and rural mail boxes as well as vandalism of mail boxes, which did not exist prior to 2005, exceeds many thousands of dollars each year.

For your review and inclusion in the record post-appeal, the following documents have been attached to this letter:

- Letter by the Association to all affected parties dated December 8, 2010, after the November 12, 2010, Alcoholic Beverage Control Appeals Board (ABCAB) ruling to provide a solution acceptable to “all parties concerned”. (*Exhibit 1*)
- The “Humboldt County Sheriffs Incident Report” from 2002 to 2009 which further demonstrates an increase danger to the safety of nearby residents of the Bear River Casino. (*Exhibit 2*)
- Letter Dated Jan. 27, 2011, by the California Highway Patrol which demonstrates the increase in DUI’s and Collisions on Singley Hill Road. (*Exhibit 3*)
- CHP Report of DUI Related Incidents Jan. 2009 – July 2010, 82 DUI’s in 18 months (*Exhibit 4*)
- Letter Dated Feb. 10, 2011 by the California Highway Patrol, names and ages of the DUI suspects. (*Exhibit 5*) We have submitted this list to the California Gambling Control Commission to identify if any are Key Employees of the Bear Band Casino.
- A recent Traffic Collision Report that identifies the DUI suspect as an employee of the casino. (*Exhibit 6*)
- March 22, 2010: Notice of Decision (NOD) by the BIA to take an additional 113 ac. of land into trust for the Bear Band. The NOD includes response to citizens, to the County and Congressman Thompson’s letters of comment. (*Exhibit 7*)
- County of Humboldt comments and additional letters (Congressman Thompson) on the 113 ac. acquisition of the Bear Band. The EA submitted does not sufficiently address all

¹ See photos in Exhibit #9

of the potential impacts/effects of the proposed action. Includes of Summary of all of the potential impacts/effects. (*Exhibit 8*) This raises a serious question of “Good Faith”.²

- Tribes current developments can be reviewed at this link: http://www.danco-group.com/builders/tish_non_plans
- Letter and Photos of property damage that include downed mail boxes, damaged fencing and parkways. (*Exhibit 9*)
- Letters of community members Dec. 2010 – Jan. 2011 (*Exhibit 10*)

On the Governor’s letterhead dated July 2, 2008, commenting on the Ione DEIS, Ms. Hoch, Legal Affairs Secretary, recognized the regional impact of casino crime, the expense to the public and the necessity to appropriately and adequately address it. (At P.6)

“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 situate hotels, and RV Parks.”df

If the Governor’s Office recognized the correlation of increased violent crimes to casino presence, then it should also be an important consideration for the ABC in reviewing any proposed solution in the development of a plan to control and/or limit traffic through the rural residential neighborhood of Singley Road as required by Condition No. 8.

Further complicating the issue of DUI’s and other traffic collisions is the fact that there is no recourse for individual victims of these events. Injured parties have no recourse in seeking damages from the Bear River Casino as a result of its lack of accountable and responsible alcohol sales. The Tribal government enjoys immunity to civil liability. This fact alone should place a heavy weight on responsible decision-makers of the ABC in the issuance of licenses to sell and serve alcohol. *Cook v. Avi Casino Enterprises, Inc.*, 548 F.3d 718 (9th Cir. 2008)³

Recently, two California Highway Patrol officers were assisting a disabled motorist and barely escaped with their lives when a second DUI suspect hit their patrol vehicle. All were employees

² The 1999 tribal state compact sets forth in section 10.8.1 and 10.8.2 a definition of a “project”, requirements of notification, consultation and comment requirements. In particularly there is an independent requirement in section 10.8.2(b) (2) to make good faith efforts to mitigate significant adverse off reservation environmental impacts. The 1999 tribal state compact clearly defined and provided a requirement that land used for gaming or ancillary developments to enhance gaming must meet the standards of the Indian Gaming Regulatory Act (“IGRA”).

³ In this California case, the victim was hit head on by the vehicle of a casino employee who had been drinking at the tribal casino. The victim is now a paraplegic. There is no recourse, as the casino employee was covered by the tribal government’s sovereign immunity to civil liability.

of the Bear Band Casino. (*Exhibit 11* – <http://www.4injured-losangeles.com/chp-officers-narrowly-escape-danger/> “CHP Officers Narrowly Escape Danger”)

The 1999 tribal state compact section 10.5, “**Alcoholic Beverage Service** - Standards for alcohol service shall be subject to applicable law.” But the compact does not provide for third party enforcement of any of the compact provisions. Clearly, the ABC has full authority to license the brewing, sale and service of alcohol (18 U.S.C. Section 1161). But what recourse is there for victims of civil violations, such as “dram shop liability”? This lack of and extension of immunity of liability to casino employees must be given serious consideration by the ABC in its licensing process.

Solutions:

We remain hopeful that the Tribe, its consultants and advisors can find a solution which complies with the agreed upon conditions and satisfies the health and safety concerns of the Association. By addressing those conditions and concerns, we believe the Tribe will have an even more successful gaming venture. However, if the tribe cannot comply with condition No. 8, our community requests the suspension of the Tribes liquor license. Additionally, we request the requirement of a mitigation agreement which includes our concerns regarding Singley Hill Road in any amended tribal state compact.

Please give serious consideration to the concerns raised by the Association. We look forward to hearing from you to discuss any alternate ideas or suggestions.

Sincerely,

Jim Mc Vicker
Spokesman, Singley Hill Homeowners Association

Attachments:

- Exhibits 1-11
- The size and scope of the Tribes current developments can be reviewed at this link: http://www.danco-group.com/builders/tish_non_plans