

**KAMALA D. HARRIS**  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**



110 WEST A STREET, SUITE 1100  
SAN DIEGO, CA 92101  
P.O. BOX 85266  
SAN DIEGO, CA 92186-5266

Public: (619) 645-2001  
Telephone: (619) 645-2600  
Facsimile: (619) 645-2012  
E-Mail: James.Waian@doj.ca.gov

August 14, 2014

**Via Facsimile & U.S. Mail**  
**(805) 686-9578**

Santa Ynez Band of Chumash Indians  
Attn: Vincent Armenta, Tribal Chairman  
P.O. Box 517  
Santa Ynez, California 93460

Re: Environmental Evaluation for the Proposed Hotel and Casino Expansion Project, Santa Ynez Band of Chumash Indians

Dear Chairman Armenta:

This letter is submitted on behalf of the State of California (State), at the behest of the Governor's Office, in response to the Environmental Evaluation (EE), dated July 2014, regarding the proposed hotel and casino expansion project (Project) of the Santa Ynez Band of Chumash Indians (Tribe). The Project location is in Santa Barbara County, near the City of Santa Ynez, and adjacent to State Highway 246. The Tribe is the lead agency for the Project.

The State's comments in this letter with respect to the EE are limited to the deficiencies the Governor's Office alone has identified and do not purport to identify potential deficiencies observed by other agencies of the State with regard to their particular areas of expertise.

The State interprets the EE as comparable to an "environmental assessment" under the National Environmental Policy Act, 42 U.S.C. § 4331 et seq. (NEPA) or an "initial study" under the California Environmental Quality Act, Pub. Resources Code, § 21000 et seq. (CEQA). After review of the EE, the State notes deficiencies in the EE, as set forth below. As a result, the State respectfully requests that the Tribe amend the EE since the EE does not adequately consider alternatives to the proposed hotel tower, the EE does not properly consider the visual impacts of the hotel tower, and the EE does not adequately consider the Project's potential impacts resulting

from increased water usage, as required by the policies and purposes of NEPA and CEQA.<sup>1</sup> Alternatively, the State respectfully requests that the Tribe prepare a comprehensive environmental document comparable to an Environmental Impact Statement (EIS) under NEPA or an Environmental Impact Report (EIR) under CEQA.

### PROJECT SUMMARY

The proposed expansion includes up to 215 additional hotel guest rooms in a new 12-story hotel tower, a new meeting room, restaurant space, and associated facilities, a new casino area with associated administrative space, and a new five-story parking structure. (EE, pp. 2-2, 2-5.) While the casino space will be expanded, the number of gaming devices will remain at 2,000. (*Id.* at p. 2-5.) The existing hotel contains 106 guest rooms. (*Id.* at p. 2-2.) In addition to the hotel expansion, the ground level of the existing hotel is to be remodeled and the casino is proposed to receive a major renovation, while the dining area is also to be remodeled. (*Id.* at pp. 2-2, 2-5.) The EE states that a total of 435,000 square feet of new facilities will be added and 150,000 square feet of existing facilities will be remodeled. (*Id.* at p. 2-2.) The EE states that upon completion, the expanded hotel and casino would serve approximately 10,000 patrons per day, up from the 8,800 current daily average. (*Id.* at p. 2-11.) To address the issue of increased water disposal and reclamation needs resulting from increased patronage, the Tribe proposes to increase the capacity of the existing wastewater treatment and reclamation facility. (*Id.* at p. 2-8.) The expanded hotel and casino is expected to require approximately 250 additional employees. (*Id.* at p. 2-11.)

### APPLICABLE ENVIRONMENTAL COMPLIANCE STANDARDS

The Tribal-State Gaming Compact between the State of California and the Santa Ynez Band of Chumash Indians (Compact) requires the Tribe to “adopt an ordinance providing for the preparation, circulation, and consideration by the Tribe of environmental impact reports concerning potential off-Reservation environmental impacts of any and all Projects.” (Compact, § 10.8.1.) The Compact further requires the Tribe to draft the ordinance so that it reflects a good faith effort “to incorporate the policies and purposes of the National Environmental Policy Act and the California Environmental Quality Act.” (*Ibid.*) To fulfill the terms of the Compact, the Tribe enacted Ordinance No. 4, Off-Reservation Environmental Impacts (Ordinance). The Compact also requires the Tribe to “Make good faith efforts to mitigate any and all such significant adverse off-Reservation environmental impacts.” (*Id.* at § 10.8.2.)

---

<sup>1</sup> Many of the policies and purposes of NEPA overlap those of CEQA. To simplify the discussion in these comments, reference will be made to both NEPA and CEQA together, where possible, including the terms used thereunder, or separately when there are specific differences between the two laws.

The Compact requires the Tribe, through its ordinance, to adhere to and effectuate the policies and purposes of NEPA and CEQA consistent with the Tribe's government interests. NEPA requires that an EIS be prepared for all "major Federal actions significantly affecting the quality of the human environment." (42 U.S.C. § 4332(2)(C).) Similarly, CEQA requires a lead agency to prepare an EIR if there is "substantial evidence" that a project "may have a significant effect on the environment." (Pub. Resources Code, § 21082.2, subds. (a), (d).) Under NEPA, an agency may first prepare an environmental assessment to make a preliminary determination whether the proposed action *may* have a significant environmental effect. (*Nat. Parks & Conservation Assn. v. Babbitt* (9th Cir. 2001) 241 F.3d 722, 730; see 40 C.F.R. §§ 1501.4, 1508.9.) Under CEQA, an "initial study" is required if an EIR is not prepared first. (Cal. Code Regs., tit. 14, § 15063, subd. (a).) Under NEPA, if a significant environmental effect is anticipated, a more detailed EIS is required. (*Native Ecosystems Council v. U.S. Forest Service* (9th Cir. 2005) 428 F.3d 1233, 1239.) Similar procedures under CEQA mandate preparation of an EIR upon determination that a project may have a significant effect on the environment. (Cal. Code Regs., tit. 14, § 15063, subd. (a).) NEPA also requires an agency to take a "hard look" at the environmental consequences of its actions and to provide a "convincing statement of reasons to explain why a project's impacts are insignificant." (*Nat. Parks & Conservation Assn. v. Babbitt, supra*, 241 F.3d at p. 730, quoting *Metcalf v. Daley* (9th Cir. 2000) 214 F.3d 1135, 1141.) As set forth below, the State considers the analysis in the EE to be inadequate under the policies and purposes of NEPA and CEQA in several respects. The following areas require additional discussion and analyses to allow the Tribe to take the required "hard look" at the Project's environmental and interrelated economic impacts.

## COMMENTS

### **A. THE EE FAILS TO PROPERLY ASSESS ENVIRONMENTAL IMPACTS BECAUSE IT FAILS TO CONSIDER POSSIBLE ALTERNATIVES TO THE PROPOSED HOTEL TOWER**

NEPA requires the consideration of all reasonable alternatives to the proposed action. (See 40 C.F.R. § 1502.14.) Similarly, CEQA requires a description of "a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project." (Cal. Code Regs., tit. 14, § 15126.6, subd. (a).) As the only alternative, the Tribe is proposing a 12-story hotel tower that triples the number of existing guest rooms. Despite the NEPA and CEQA requirements, the EE contains no indication that the Tribe considered reasonable, less invasive alternatives to the hotel tower. To comply with the policies and purposes of NEPA and CEQA, the Tribe must amend the EE to discuss reasonable alternatives to the hotel tower. Alternatively, the Tribe may comply with the policies and purposes of NEPA and CEQA by presenting alternatives to the hotel tower in a comprehensive environmental document comparable to an EIS or EIR.

**B. THE EE DOES NOT PROPERLY CONSIDER THE SIGNIFICANCE OF THE VISUAL IMPACTS OF THE HOTEL TOWER**

CEQA requires a finding of significant effect (impact) and the preparation of an EIR “if a lead agency is presented with a fair argument that a project may have a significant effect on the environment” even though the agency “may also be presented with other substantial evidence that the project will not have a significant effect.” (Cal. Code Regs., tit. 14, § 15064, subd. (f).) NEPA contains similar requirements. (See 40 C.F.R. § 1508.27.) The existing hotel and casino have a maximum height of four stories. While the EE contains a discussion of visual impacts, the EE concludes that the 12-story hotel will cause a less than significant visual impact. It is difficult to understand how the EE reaches this conclusion since Santa Barbara County zoning requirements applicable to the surrounding off-reservation area generally limit building heights to 35 feet and the existing 4-story hotel may be the tallest building in the entire Santa Ynez Valley. The expected height of the proposed hotel tower is 140 feet. (EE, p. 3.8-7.)<sup>2</sup>

The Tribe proposes mitigation of visual impacts through the planting of additional vegetation and trees as well as measures to reduce light pollution and glare. (EE, pp. 3.8-12 - 3.8-13.) While light reduction mitigation might have some effect at night, landscaping measures would not appear to be effective with regard to the visual impact of a 140-foot tall hotel tower. Despite the conclusion in the EE that the visual impact of the hotel tower would be “less than significant with mitigation” (*id.* at p. 3.8-11), the fundamental flaw in that analysis is that a 12-story hotel tower would not seem to be compatible with the off-reservation surroundings. The State believes that the hotel tower will cause a significant impact, even with the proposed mitigation measures. As such, the Tribe must either amend the EE to present less invasive alternatives or prepare a comprehensive environmental document comparable to an EIS or EIR.

**C. THE EE DOES NOT ADEQUATELY CONSIDER THE PROJECT’S POTENTIAL ADVERSE IMPACTS ASSOCIATED WITH INCREASED WATER USAGE**

NEPA requires the environmental review process to include an evaluation of economic impacts interrelated to physical impacts of proposed actions:

When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

(40 C.F.R. § 1508.14.)

---

<sup>2</sup> It is the State’s understanding that the proposed hotel tower would be the tallest building in all of Santa Barbara County, where the current tallest building, in downtown Santa Barbara, is eight stories and 116 feet high, and was built in 1924.

The EE concedes that the Project will have some adverse effects on the natural and physical environment, thereby necessitating mitigation measures. Physical impacts on the environment may necessitate expenditures by the State, including those associated with water provided by the State Water Project, in order to reduce the adverse effects of those impacts to insignificance. Consequently, the physical impacts on the environment of the Project are interrelated to economic impacts to the State.

CEQA requires a discussion of available water supply since “Decision makers must, under the law, be presented with sufficient facts to ‘evaluate the pros and cons of supplying the amount of water that the [project] will need.’” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431.) In addition, CEQA requires a demonstrated water supply source to allow for proper evaluation of impacts and, conversely, “speculative sources and unrealistic allocations (“paper water”) are insufficient bases for decisionmaking under CEQA.” (*Id.* at p. 432.)

Under NEPA, the economic cost associated with increased water usage is interrelated to the physical impacts of the Project and must be analyzed in the EE. Under CEQA, available water supply must be evaluated and proven to exist. The EE concludes that even with water recycling mitigation measures, the Project would result in an increase in average daily water demands of approximately 35,700 gallons per day (40 acre-feet per year) over existing water demands. (EE, p. 3.2-15) Water supply for the hotel and casino is currently provided by the Santa Ynez River Water Conservation District (District). The EE states that water supply for the expanded hotel and casino would be provided by the District (Water Supply Option 1), or alternatively by several on-reservation groundwater wells (Water Supply Option 2). While the EE proposes the increased water demand may be met by the District if Water Supply Option 1 is selected, the EE contains an inadequate discussion of the potential economic impacts the Project might have on current and projected regional water supply, including State Water Project use and supply.<sup>3</sup>

For Water Supply Option 2, the EE does not adequately discuss the effects of the increased groundwater usage on existing and projected future off-reservation water uses. The EE concludes that the impacts to groundwater supply and off-reservation wells under Water Supply Option 2 would be less than significant. (EE, pp. 3.2-16 - 3.2-17.) However, the technical analysis contained in Appendix B to the EE provides insufficient backup documentation for this conclusion. In particular, the technical analysis in Appendix B fails to adequately address the question of years of abnormally low precipitation. Instead, the technical analysis in Appendix B focuses on the physical capacity of the on-reservation groundwater wells to provide sufficient water to meet the projected increased demand of the Project, without sufficient analysis of the off-reservation short-term and long-term effects of the increased groundwater usage. As a result,

---

<sup>3</sup> The District is a recipient of water from the State Water Project.

Santa Ynez Band of Chumash Indians  
Attn: Vincent Armenta, Tribal Chairman  
August 14, 2014  
Page 6

the EE does not adequately address the impacts of increased groundwater usage caused by the Project.

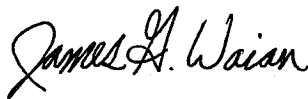
The analysis in the EE of the impacts of increased water usage is incomplete and does not comply with the policies and purposes of NEPA and CEQA. Furthermore, the Tribe should resolve technical and administrative issues regarding the definitive water supply for the project before impacts can be adequately analyzed in the EE.<sup>4</sup>

### CONCLUSION

The EE requires additional analysis to fully assess the nature and scope of the Project's environmental impacts and associated economic impacts in order to comply with the Tribe's obligation under the Compact to generally adhere to the policies and purposes of NEPA and CEQA.

Thank you for this opportunity to comment on the EE.

Sincerely,



JAMES G. WAIAN  
Deputy Attorney General

For KAMALA D. HARRIS  
Attorney General

JGW:cs

cc: Joe Dhillon, Office of the Governor (via U.S. Mail only)

---

<sup>4</sup> The EE includes the statement that "The Tribe also retains federally reserved or 'Winters Rights' to the creek as well as to groundwater under the Reservation." (EE, p. 3.2-6.) The application of federally reserved or "Winters Rights" to groundwater has not been established in California.