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Santa Ynez Band of Chumash Indians  
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11 August 2014

**COMMENTS CONCERNING  
THE NOTICE OF AVAILABILITY FOR THE  
PROPOSED CHUMASH HOTEL AND CASINO  
EXPANSION PROJECT AND THE  
ENVIRONMENTAL ANALYSIS CONTAINED IN  
A DOCUMENT DESCRIBED AS AN  
ENVIRONMENTAL EVALUATION [ E.E. ]**

The following comments are submitted based on a review of the EE prepared by and circulated by the Santa Ynez Band of Mission Indians (Chumash).

**INTRODUCTION:**

The Santa Ynez Band of Mission Indians, hereinafter (the Band) has prepared a document

they have described as an EE. This document does not meet the requirements of the National Environmental Policy Act (NEPA) as a Notice of Proposed Project (NOP) nor does it meet the requirements of a Draft Environmental Impact statement pursuant to the California Environmental Quality Act (CEQA) which is required by both the Tribal-State Gaming compact and state law.

The Notice of Availability and EE documents also do not meet the requirements for the preparation of a Tribal Environmental Impact Statement (TEIS) required for all Indian tribal Gaming expansions occurring after 2004.

In addition the notification, circulation and publication of these documents do not comply with NEPA, CEQA or the TEIS requirements and are therefore defective and ineffective. The “Notice of Availability” establishes a “review period” from 15 July 2014 to 14 August 2014 but does not set out the date for submitting and receiving comments and does not reflect that it was published and properly served upon those persons and agencies in a manner required by federal and state law.

**SUBSTANTIAL OFF “RESERVATION” IMPACTS:**

The EE concedes that substantial “off reservation” environmental impacts *WILL* result from the proposed development and hotel, casino and resort expansion project in *at least* the following areas of public concern:

I. Aesthetics

III. Air Quality

IV. Biological Resources

VI. Geology and soils

VII. Hazards and hazardous materials

VIII. Water Resources

IX. Land Use

XI. Noise

XII. Population and Housing

XIII. Public Services

XIV. Recreation

XV. Transportation and Traffic

And also to;

## **XVI. Utilities**

In addition to these admitted areas in which the proposed casino and hotel expansion project will have significant off “reservation” impacts the EE concedes, at item XVII, that there will also be substantial and significant off “reservation” impacts due to the cumulative affects of the proposed project and other projects all of which will impact the off reservation environment in the surrounding areas.

## **ENVIRONMENTAL AND REGULATORY SETTING:**

### **1.2 BACKGROUND**

The EE asserts that the proposed expansion project is situated on Indian reservation lands established in 1906. The project is NOT on any Indian reservation lands as no reservation was created either by Act of Congress, Presidential decree, or set aside, or any judicial judgment or decision. In 1906 the members of 5 ancestral families living in the area, were given a written conditional license to occupy and to use the land referred to and on which

this proposed project is located, by the Catholic Archdiocese in 1906 upon the Superior Court judgment that the Church owned title to the land in absolute fee.

Subsequently in the text of the EE the document refers to the site of the proposed expansion project as being on federal Indian trust lands. The land on which this proposed expansion project is to be constructed is NOT owned by the federal government and held in Indian trust. The land is fee land owned by the Band and which was given to them subsequent to 1906 by a series of grant and quit claim deeds from the owners of the land.

### **1.3 PURPOSE AND NEED**

There is no demonstrable need for this 135 member band of Indian descendants to construct the proposed casino and hotel expansion. The band owns several multimillion dollar properties including the "Chumash casino Hotel and Resort. They own the largest hotel in nearby Solvang, the Corque Hotel as well as another large hotel, the Hadsten House hotel in Solvang. They own and operate a large gas station and mini-mart nearby, another gasoline station approximately ½ mile away and among other valuable properties, a large office complex in nearby Buellton.

Many tribal members own expensive homes off the reservation, own expensive automobiles and other assets and receive on the order of \$50,000 distributed as profits (called “per capita” distributions) made to each tribal member every month payable quarterly, or over \$600,000 every year for each member. They enjoy exemption from state income taxes and sales taxes on purchases they make and do not have to pay property taxes and other taxes needed to fund the public services and infrastructure provided by the state and County at the non-Indian taxpayers expense and which the band and it’s business use daily.

In addition, despite gross income of over \$285,000,000 millions annually, the 135 member band still receives over two (\$2,000,000) million dollars every year in federal distributions of welfare and grant money from the federal government distributed to “Indian tribes” without regard for their wealth and income. (this amounts to over \$14,000 for each of the 135 band members).

#### **1.4 EE PROCESS**

As set out above, what is described as an EE process does not comply with NEPA, CEQA or the TEIS document required by law including, notice,

publication and circulation and consultation with other cooperative governmental agencies at the federal, state and local levels.

## 2.1 PROJECT SETTING and EXISTING SETTING:

As set out above, the project to expand the casino and hotel complex is not situated on either Indian reservation lands or federally owned Indian trust lands.

Because of this fact the EE will require certification that the project is in fact on eligible *“Indian Lands”* as defined in 25 *United States Code* 2703 (4) and is not a casino illegally operating on inelligible Indian lands as prohibited by law. See 25 *Code of Federal Regulations* 573.4 sub. (12) and (13). The EE does not address this issue and does NOT certify the proposed project is not in violation of 25 CFR 573.4. (12). and (13). supra.

## 2.3 PROJECT CHARACTERISTICS AND ADMITTED UNMITIGATED AND SUBSTANTIAL “OFF-RESERVATION” IMPACTS AS HEREINAFTER DISCUSSED:

Despite describing an expansion of the casino and hotel adding 435,000 square feet of new facilities

and renovations to 150,000 square feet of the existing structures and amenities the EE completely fails to address or adequately address and mitigate what are conceded to be numerous substantial off-“reservation” impacts and cumulative impacts. These are discussed briefly as follows:

### 2.3.1 Water supply

The water supply from purveyors has not been identified and certified that the existing purveyors can and will serve the proposed expansion and significant additional water required. That additional use is conservatively estimated as an additional 35,700 gallons per day and does not adjust for drought and landscaping elements.

Assertions are made that recycled water can be used in fire suppression and the sewage system without identifying the separate systems required to distribute the recycled water nor any mechanisms identified to test and assure no cross contamination with the potable water supply.

No accurate information concerning the availability of well water to augment any additional water needs is provided nor the impacts on the ground



water table which is, as yet, not an adjudicated groundwater basin.

### **2.32 Wastewater Treatment and Disposal:**

The provisions for the increased wastewater treatment and disposal needs are inadequate, vague and ambiguous and do not provide the mechanisms to safely and adequately test and distribute this wastewater including analysis of chemical and contaminant contents and proper removal before discharge to the environment.

### **2.3.3 Grading and Drainage:**

The Grading and Drainage impacts are not adequately analyzed including the removal of contaminated and hazardous materials before runoff from parking surfaces are allowed to discharge into natural streams and drainages.

### **2.3.4 Protective Measures and Best Management Practices:**

The best practice and mitigations set out in this section are vague, unspecific and in most cases fail to adequately describe how they would be implemented in the proposed expansion project. For example the issue of swimming pool usage, over

splash drainage and evaporation are issues not even addressed and the aviation warning lights to be installed on the hotel tower are not addressed in the context of land use and aesthetics and instead are simply dismissed as “not being visible from the ground”, even though their off-site visibility will be extreme and grossly harmful to the view corridors and aesthetics for surrounding property owners.

The air quality mitigations are inadequate and lacking in any consultation and input from relevant cooperative agencies like Santa Barbara County and the Air Pollution Control District which has a monitoring site South and East of the project site.

References are made throughout to several “tribal ordinances” for biological resources, fire ordinances and others without providing their provisions. Like the Tribal Environmental ordinance itself, upon which this EE was created, no citation is provided to the ordinance, where it has been published and where the public and the various cooperative agencies can exam such ordinances to determine their provisions, applicability and adequacy for the protection of the environment as required by law, including the Indian Gaming and Regulatory Act, CEQA, NEPA, the tribal-state compact and the TEIS required for this proposed expansion project.

## 2.4 Project Construction:

No specific information is furnished concerning the excavation and foundation needed to construct a massive 12 story hotel and casino structure including a pool to be on the roof and also the proposed parking garage where it is clear these excavations are to be in the bed of, or immediately adjacent to, the existing creek waterway and no geological or earthquake analysis is provided. Neither is there any provisions for the testing of and distribution of the earth removed from excavation for the construction foundation.

## 2.5 Future Operation:

The proposed casino and hotel expansion is reported to create 250 additional jobs and accommodate an additional 2,000 to 3,000 patrons daily without any discussion of the impacts on existing public services, schools, transportation and other infrastructure to adequately address these significant unmitigated impacts.

## 3.0 ENVIRONMENTAL ANALYSIS

The bulk of this section is essentially a redundant restatement of other matters, buttressed by standard tables and information downloaded from

internet sources and added to the EE as appendices and exhibits attached. It reflects no adequate consultation with the state and local agencies involved or who constitute cooperative agencies to be consulted concerning the elements of this project and the many admitted substantial off-site impacts.

This recycled statement of issues, already identified earlier as significant off-“reservation” impacts, does not satisfy the analyses and mitigation needed, nor does it discuss in any of the categories any alternatives or alternative analysis from which a best course of action (or inaction) or best alternative could possibly be determined.

Of particular concern is the likelihood of overdrafting the ground water basin and contaminating the ground water basin and downstream property owners and water users from the discharge of wastewater into the Sanja Cota Creek, a contributory to the Santa Ynez river. High levels of drug use have been identified by both patrons and residents on these Indian lands including hotel guests and no method is outlined on how these drugs, such as methamphetamine, will be tested for and removed from the discharge water.

**Off-“reservation Traffic, Circulation and Transportation issues:**

The purported analysis and mitigation for the off-“reservation” traffic and transportation impacts is woefully inadequate and does not contain any adequate consultation and information from the numerous affected and cooperating agencies. The existing and proposed expanded casino and hotel are immediately adjacent to state route 246 a main 2 lane arterial highway already congested currently with heavy traffic. The addition of another 2,000 or so patrons and 250 employees is not adequately addressed or mitigated in the EE analysis. In particular the proposed expanded hotel/casino complex proposes a greatly enlarged meeting room, restaurants and other facilities catering to an enlarged transient use by visitors and customers beyond casino gamblers, hotel guests and those attending shows and other events in the casino Samala room and the resulting increases in average daily trips in and out of the facilities.

This significant increase in traffic is not adequately analyzed nor is the likely impact on the confined roadways immediately adjacent to the expanded facility. None of these impacts are adequately addressed or mitigated. The Level of Service (LOS) at intersections to the North and west of the existing hotel casino are already deteriorating particularly in the town of Solvang, also the

intersections of both Refugio/Alisol road (high school interchange) and at other intersections like the Alamo Pintado/246 Road intersection and those in central Solvang are, at times, at LOS level of F.

### Public Services and Infrastructure:

The analysis of public services and infrastructure impacts are woefully deficient and provide no adequate mitigation or alternatives. The criminal activity at the existing casino (that which is reported), represents only about half of the actual criminal activity there. The existing casino has the largest number of calls in the area for police services provided by the Santa Barbara County Sheriff Department. The vast majority of calls to the fire Department in the Santa Ynez Valley are calls to provide services to the casino and hotel, frequently for health care emergency services.

Funding for these agencies, including jails, courts and other related services and infrastructure are largely paid for by property taxes. Currently the hotel/casino complex pays no property taxes, and although the band and its on site businesses collect both a "sales tax" and a "bed tax" these monies are retained by the band and pocketed and not furnished to the non-Indian agencies providing

these substantial public services and infrastructure.

Although the state law (proposition 1A authorizing gambling on Indian lands) provided for a fund to help mitigate the costs to state and local governments and communities for these significant burdens, that “*Special Distribution Fund*” most often does not have sufficient funds to do so. That is because if the other fund created by Proposition 1A, the Revenue Sharing Trust Fund” runs low on funds monies are taken from the Special Distribution Fund to make them up,

That RSTF fund provides money to Indian tribes with no casino or having less than 300 slot machines. They receive payments annually of 1.1 million dollars. There are 65 more tribes currently seeking tribal recognition who will become eligible to receive these millions of dollars if acknowledged thus further diminishing funds available for impact mitigation in the Special Distribution Fund.

In addition, the monies that are available for distribution from this fund are distributed by grants that are made through the local committee established for that purpose and that committee operates largely at the discretion of the Indian Band and there is no certainty that mitigation

funds will be distributed or provided for the needed impacts of the casino and hotel expansion set out in this EE and that funding source is unreliable.

The EE attempts to deal with significant future costs for public services and infrastructure by relying upon and dependence upon this Special Distribution fund which could easily be empty in the immediate future with no alternative source of funding other than increasing the burden on non-Indian taxpayers to provide required funding for all these many expanded services and necessary infrastructure created by the expansion project, .

### **Population factors:**

This EE makes no effort to mitigate the increased impacts resulting from the employment of another 250 employees and other related growth which will significantly impact all public services including area schools. In addition the Santa Ynez band has several proposals to remove land they have purchased in the vicinity from the tax rolls by placing it into federal Indian trust, which will further reduce the tax revenue available to state and local agencies responsible to provide these services, construct and maintain infrastructure for this proposed casino and hotel expansion.



## Santa Ynez Airport Impacts:

The current EE asserts that the airport will not be impacted. This is incorrect. The construction of a 150 foot tall, rectangular hotel building in the runway approach safety zone overlay zone will severely impact air safety to the Santa Ynez airport. Responding to the Santa Ynez Band's application on form 7460 the Federal Aviation Agency (FAA) has ordered an aeronautical safety study for this proposed obstruction. [*FAA Case No. 2014 AWP 4898*] The results of that report will not be concluded for at least 45 days. The proposed EE is therefore premature and can not be certified and likely will have to be re-noticed and circulated once this safety hazard report is concluded and included.

## Cumulative Impacts:

In addition to the many faulty analyses and failures to adequately discuss and mitigate clear substantial off-“reservation” impacts or propose alternatives, the EE fails to address the many cumulative impacts, particularly those planned and intended by the Santa Ynez Band themselves who own 13 acres adjacent to and across highway 246 (Mission Drive) from the existing casino and hotel complex and are seeking to bring that land into

trust. If successful this will further reduce the tax basis and increase the demand on public services and infrastructure in the immediate vicinity.

The applications to bring these lands into trust are specifically vague and do not define what uses are intended on that land. Once land is transferred into trust the Band is able to engage in or authorize whatever development they desire free from most state and local regulatory controls and ordinances, thus the development of intense business and commercial development will further exacerbate the many off-“reservation” impacts already significantly impacted by this proposed casino/hotel expansion, such as greatly increased auto and bus traffic, increased pedestrian crossings between the property across the road and the casino and hotel complex, undefined traffic and transportation problems in the adjacent grid and complex access and traffic control problems not mitigated or adequately analyzed by this EE.

The additional cumulative demands upon and use of public services, etc. are also substantial impacts to the costs likely to occur in the future, which must be paid by local and state governments and the non-Indian community taxpayers and the sources of those funds are not provided for in the EE analysis.

The band has recently constructed a large gas station mini-mart and carwash at the corner of SR 246 and Edison Street. In addition, the casino runs a shuttle bus service from the hotels they own in Solvang, their offices in Buellton and will undoubtedly run shuttle services from the new expanded casino/hotel complex and the towns of Solvang and Buellton. No attempt is made in this EE to analyze those significant impacts to traffic and circulation in the area which will worsen if the proposed casino and hotel expansion occurs.

## CONCLUSION:

The Environmental analysis document the band has circulated (the EE) does not comply with any of the substance or procedural requirements of NEPA, CEQA, the Tribal-State Compact and the current requirement for the preparation of and consultation with local communities required under the state mandated TEIS for expanded gaming operations

The EE concedes the existence of numerous substantial off-“reservation” (or off-site) impacts and does not adequately analyze, address and mitigate them and in many cases fails to even identify numerous future off-“reservation” impacts to the community and primary transportation

corridor on SR 246, (a state scenic highway) from the intersection with SR 154 through the area of the casino/hotel complex, past the Santa Ynez High School and YMCA, through downtown Solvang all the way to Buellton.

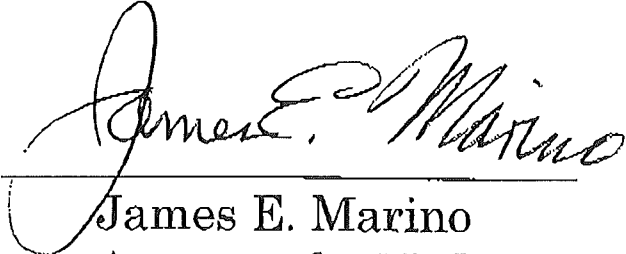
The EE is prematurely circulated due to the failure to obtain required consultative input from numerous cooperative agencies, both federal (NIGC, BIA, DOI, FAA, EPA, etc) and from the State (Transportation Agencies, Gambling Control Commission, Water Resource and Environmental safety and Wastewater Disposal agencies and the Governor with regard to the Tribal-State compact TEIS requirements and environmental requirements imposed by both federal and state law. Also the EE fails to include consultative written clearance input from required state agencies and local agencies like the County of Santa Barbara, Cities of Solvang and Buellton, local Water agencies, School Districts, SGCAG and the Air pollution Control District (APCD).

#### **LACK OF ALTERNATIVES IDENTIFIED AND IDENTIFICATION OF CUMULATIVE IMPACTS:**

Lastly the EE completely fails to address and identify viable alternatives to this proposed project

in order to determine what might be the best alternative, including documentation of why no expansion is appropriate, and in addition the EE fails to address the many cumulative impacts particularly those which are likely to result from the conduct, activities and development of nearby properties owned by the Santa Ynez Band of Mission Indians and which are slated for commercial development and possible transfer into federal Indian trust status. These events future events would greatly exacerbate the many off-“reservation” impacts that will likely occur as a direct or indirect result of the current proposed casino hotel expansion development.

Respectfully Submitted;

A handwritten signature in black ink that reads "James E. Marino". The signature is written in a cursive style with a large, looping initial "J".

James E. Marino  
Attorney for No More  
Slots” and for other  
Interested persons